IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.REV.PET NO. 854 OF 2012

AGAINST THE JUDGMENT PASSED IN Crl.A NO.253 OF 2010 OF ADDITIONAL DISTRICT & SESSIONS (ADHOC) COURT, PATHANAMTHITTA FILED AGAINST THE JUDGMENT OF DATED IN ST NO.2015 OF 2009 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, PATHANAMTHITTA

PETITIONER (APPELLANT - ACCUSED):

1 **RAJAN.P.GEORGE (expired)**
SON OF GEORGE, POWETH HOUSE, MANJINIKKARA, OMALLOOR P.O., KOZHENCHERRY TALUK, PATHANAMTHITTA.

2 **LALAMMA RAJAN**
AGED 63 YEARS, W/O LATE RAJAN P. GEORGE POWETH VENUS BUNGALOW, MANJINIKKARA, OMALLOOR P.O. KOZHENCHERRY TALUK, PATHANAMTHITTA- 689647 IS IMPLEADED AS ADDL.PETITIONER NO.2 AS PER ORDER DATED 27.01.2025 IN CRL.M.A 1/2022 IN CRL.R.P 854/2012.

3 **LARSON RAJAN GEORGE**
AGED 26 YEARS, S/O. LATE RAJAN P. GEORGE POWETH VENUS BUNGALOW, MANJINIKKARA, OMALLOOR P.O. KOZHENCHERRY TALUK, PATHANAMTHITTA -689647 IS IMPLEADED AS ADDL.PETITIONER NO.3 AS PER ORDER DATED 27.01.2025 IN CRL.M.A 1/2022 IN CRL.R.P 854/2012.

4 **JESILY SARA RAJAN**
AGED 29 YEARS, D/O. LATE RAJAN P. GEORGE POWETH VENUS BUNGALOW, MANJINIKKARA, OMALLOOR P.O. KOZHENCHERRY TALUK, PATHANAMTHITTA -689647 IS IMPLEADED AS ADDL.PETITIONER NO.4 AS PER ORDER DATED 27.01.2025 IN CRL.M.A 1/2022 IN CRL.R.P 854/2012.

5 JEMILY ELSA RAJAN
AGED 36 YEARS, D/O. LATE RAJAN P. GEORGE POWETH VENUS BUNGALOW, MANJINIKKARA, OMALLOOR P.O. KOZHENCHERRY TALUK, PATHANAMTHITTA -689647 IS IMPLEADED AS ADDL.PETITIONER NO.5 AS PER ORDER DATED 27.01.2025 IN CRL.M.A 1/2022 IN CRL.R.P 854/2012.

BY ADVS.
SRI.R.S.KALKURA
R.GIREESH VARMA
V.K.NANDAKUMARAN

RESPONDENTS (RESPONDENTS - STATE & COMPLAINANT):

1 STATE OF KERALA
REPPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2 JOHN.K.JOHN
RESIDING AT KANEDETH HOUSE, PANNIAYALI,
OMALLOOR P.O., KOZHENCHERRY TALUK, PATHANAMTHITTA.

BY ADV M.V.S.NAMPOOTHIRY FOR R2
SRI.SANGEETHARAJ N.R., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.04.2025, THE COURT ON 11.04.2025 PASSED THE FOLLOWING:

O R D E R

The concurrent verdicts of the Judicial First Class Magistrate Court-II, Pathanamthitta, in S.T. No.2015/2009 and that of the Additional Sessions Court (Ad-hoc)-I, Pathanamthitta, in Crl.A.No.253/2010, convicting and sentencing the petitioner for the commission of offence under Section138 of the Negotiable Instruments Act,1881 *(in short, 'NI Act'),* are under challenge in this revision. Since the revision petitioner passed away during the pendency of this revision, his legal representatives were impleaded as additional petitioners 2 to 5.

2. The case of the complainant/second respondent is that two cheques of Rs.5,00,000/- each executed and issued by the original revision petitioner (referred to as 'accused' hereafter) towards the discharge of a liability he incurred with the second respondent in connection with three promissory notes, were dishonoured due to insufficiency of funds in the account of the accused, and that the accused did not care to make payment of the outstanding amount of Rs.10,00,000/-, despite the receipt of a statutory notice issued to him.

3. Before the Trial Court, the complainant was examined as PW1 and nine documents were marked as Exts P1 to P9. From the part

of the accused, two witnesses were examined as DW1 & DW2, and four documents were marked as Exts D1 to D4. After an evaluation of the aforesaid evidence, the learned Magistrate found that the accused committed the offence under Section138 of the NI Act. He was accordingly convicted and sentenced to imprisonment till the rising of the court and to pay a compensation Rs.10,00,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure, 1973.

4. The accused preferred appeal before the Sessions Court, Pathanamthitta, which was considered by the Additional Sessions Judge (Ad-hoc)-I, Pathanamthitta. As per the judgment dated 14.02.2012 in Crl.A.No.253/2010, the learned Additional Sessions Judge upheld the findings of the learned Magistrate and dismissed the appeal. Aggrieved by the above judgment of the Appellate Court, the petitioner filed the present revision before this Court.

5. Heard the learned counsel for the additional petitioners 2 to 5 and the learned counsel for the second respondent/de facto complainant.

6. Though various contentions are incorporated in this revision petition, the learned counsel for the petitioner confined himself to two challenges which, according to him, would vitiate the prosecution under

Section138 of the NI Act which the second respondent launched against the accused. Firstly, it is argued that the complainant/ second respondent failed to establish that the impugned cheques were issued in discharge of a legally enforceable debt or liability. Secondly, it is pointed out that the evidence on record would reveal that the impugned cheques were not drawn on an account maintained in the name of the accused, and hence, the offence under Section138 of the NI Act is apparently not attracted.

7. The learned counsel for the petitioner, by referring to the proof-affidavit filed by the complainant before the Trial Court, submitted that the liability allegedly incurred by the accused in connection with the execution of three promissory notes, and the issuance of the cheques towards the discharge of the above liability is admitted in that proof affidavit. As rightly pointed out by the learned counsel for the petitioner, the complainant has stated in paragraph No.3 of the proof affidavit that the accused borrowed an amount of Rs.3,00,000/- on 16.05.2006, Rs.3,50,000/- on 20.09.2006, and again Rs.3,50,000/- on 20.07.2007 on the basis of the promissory notes executed on those dates in his favour. It is further stated in paragraph No.4 of the proof affidavit that the impugned cheques (Exts P1 & P2) were issued

towards clearing the aforesaid liability of Rs.10,00,000/- which the accused owed the complainant. That being so, it is the incumbent responsibility of the complainant to establish the aforesaid liability incurred by the accused by execution of the promissory notes in favour of the complainant. The complainant has miserably failed to prove that the accused had borrowed the total amount of Rs.10,00,000/- from him on 16.05.2006, 20.09.2006 & 20.07.2007 by the execution of promissory notes on those dates. It is true that there is a contention put forward by the complainant that the above promissory notes were returned to the accused, when he handed over Exts P1 & P2 cheque leaves to the complainant. It is not possible to accept the contention of the complainant in the above regard since he could not evade from his primary responsibility to establish that Exts P1 & P2 cheques were issued in discharge of a valid debt or liability.

8. In a similar case, a learned Single Judge of this Court had held in ***Shaji v. Ignatius & Anr.*** **[2009 (1) KHC 740]** that when it is alleged that the cheque was issued towards the repayment of the amount due under a promissory note, without proving execution of the promissory note and the consideration for the promissory note, it is not possible to uphold the case of the complainant that the cheque was

issued towards payment of the amount covered by the promissory note. The dictum laid down by this Court in the aforesaid decision is squarely applicable to the facts and circumstances of this case. Thus, it has to be concluded that the complainant had failed to fulfill the basic requirement in a prosecution for the offence under Section138 of the NI Act by showing that the cheques were issued by the accused in discharge of a legally enforceable debt or liability. Neither the Trial Court nor the Appellate Court had considered these aspects in the correct perspective while deciding the case in favour of the complainant.

9. By adverting to the evidence of DW2, the Bank Manager concerned, the learned counsel for the petitioner pointed out that it has been successfully brought out through the testimony of the above witness, as well as the relevant bank records marked as Exts D2 to D4, that the account on which Exts P1 & P2 cheques were drawn was not in the name of the accused. Thus, it is argued that the offence under Section138 of the NI Act is not attracted in the facts and circumstances of this case since the complainant could not show that the impugned cheques were drawn by the accused on an account maintained by him.

10. Ext D2 is the certified copy of the cheque issue register maintained at the Bank where DW2 had been working as Manager. It is seen from the above document that the impugned cheques in this case which related to account No.55025 were in respect of the account maintained by the establishment by name C.K. Cattle Feeds. So also, Ext D3 copy of the Account Mandate would disclose that the relevant account relating to the impugned cheques was in the name of C.K. Cattle Feeds. In addition to that, the entries in Ext D4 cheque book from which the impugned cheques were released, could confirm the fact that the account holder was none other than C.K. Cattle Feeds. Therefore, to fasten the accused with criminal liability in connection with the issuance of Exts P1 & P2 cheques, it has to be established that the accused was the proprietor of C.K. Cattle Feeds and that he issued the above cheques in the said capacity. As far as the present case is concerned, the complainant has not established the above requirement of law for slapping the offence under Section138 of the NI Act against the accused. That fatal omission in the above regard, was also not taken seriously by the Trial Court or the Appellate Court. In the above circumstances, it can only be held that the complainant had failed to establish that the accused committed the offence under Section138 of

the NI Act in connection with the issuance and dishonour of Exts P1 & P2 cheques. Needless to say that the impugned judgments rendered by the Trial court and the Appellate Court are liable to be set aside.

In the result, the revision stands allowed. The judgment rendered by the Judicial First Class Magistrate Court-II, Pathanamthitta, on 17.08.2010 in S.T.No.2015/2009, and the Additional Sessions Court (Ad-hoc)-I, Pathanamthitta, on 14.02.2012 in Crl.A.No.253/2010, are hereby set aside. The petitioner (accused) is acquitted of the offence under Section138 of the NI Act attributed to him in this case.

(sd/-)

G. GIRISH, JUDGE

DST