IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 8TH DAY OF AUGUST 2025 / 17TH SRAVANA, 1947

CRL.REV.PET NO. 1530 OF 2018

AGAINST THE JUDGMENT DATED 04.09.2018 IN Crl.A NO.2 OF 2015 OF ADDITIONAL SESSIONS COURT - II, MANJERI ARISING OUT OF THE JUDGMENT DATED 11.12.2014 IN ST NO.466 OF 2011 JUDICIAL MAGISTRATE OF FIRST CLASS, NILAMBUR

REVISION PETITIONER/APPELLANT/ACCUSED:

ABDULLA.P, AGED 48 YEARS
S/O ALAVI, POTHANKODAN HOUSE, VANIYAMBALAM,
WANDOOR AMSOM, NILAMBUR, MALAPPURAM DISTRICT
BY ADVS.
SRI.P.SAMSUDIN
SHRI.K.C.ANTONY MATHEW
SHRI.JITHIN LUKOSE

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1 **MANAPPURAM GENERAL FINANCE AND LEASING LTD MANAPPURAM HOUSE, VALAPPAD P.O. 680 567, THRISSUR DISTRICT, REPRESENTED BY MR. JAYAN T. MANAGER AND CLUSTER HEAD LEGAL**

2 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH OF KERALA,ERNAKULAM-682031.

FOR R1 BY ADV SRI.B.S.SURESH KUMAR

R2 K M FAISAL -PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING ON 31.7.2025, THE COURT ON 08.08.2025 DELIVERED THE FOLLOWING:

"C.R"

M.B.SNEHALATHA, J

Crl.R.P.No.1530 of 2018

Dated this the 8th day of August, 2025

O R D E R

This revision petition is directed against the concurrent verdict of conviction and order of sentence against the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I Act).

2. The case of the complainant company is that on 28.06.2007, the accused entered into a vehicle loan-cum-hypothecation agreement with it for purchasing a vehicle and availed a loan of ₹1,19,000/-, agreeing to repay the loan amount in 36 monthly instalments with interest at the rate of 17.7% per annum. But the accused defaulted in repaying the amount. When demanded back the amount, he surrendered the vehicle to the complainant, which was sold in public auction and sale proceeds were accounted towards the loan amount. The balance amount due was ₹1,11,644/- and in

discharge of the said liability, accused issued Ext.P4 cheque for ₹1,11,644/- in favour of the complainant company. Upon presentation of Ext.P4 cheque, it was returned dishonoured due to insufficient funds in the account of the accused. Upon receipt of dishonour memo from the bank, complainant caused to sent Ext.P7 lawyer notice. Notice sent to the accused was returned 'unclaimed'. Accused deliberately evaded the notice. Accused has not paid the amount covered by Ext.P4 cheque and thereby committed the offence under Section 138 of N.I.Act.

3. Accused pleaded not guilty to the accusation and denied his liability to pay any amount. It was contended that the complainant misused the signed blank cheque issued by way of security.

4. After trial, the learned Magistrate found the accused guilty under Section 138 of N.I Act and he was convicted and sentenced to undergo imprisonment till rising of the court and to pay a fine of ₹1,11,644/-. In default of payment of fine, to undergo simple imprisonment for three months. It was further directed that if the fine amount is realized, the same shall be paid to the complainant as compensation under Section 357(1) Cr.P.C.

5. Challenging the conviction and sentence, though the accused preferred appeal as Crl.A No.2/2015 before the Sessions Court,

Manjeri, the same was dismissed by the learned Sessions Court, confirming the conviction and sentence.

6. Revision petitioner/accused assails the conviction and sentence on the ground that the trial court and the appellate court have not appreciated the evidence in its correct perspective. It is contended by the accused that when he committed default in repayment of the instalment amount, the vehicle which was purchased under the hire purchase agreement was repossessed by the complainant company and therefore, the complainant company has no further right to demand any amount from him and Ext.P4 cheque was not issued for any legally enforceable debt. It was further contended that the rate of interest claimed by the complainant as per the terms of the hire purchase agreement was excessive and violative of the provisions of Kerala Money-Lenders Act, 1958; that the complainant misused the blank cheque delivered by the accused by filling it up and has claimed exorbitant rate of interest exceeding 12% per annum and therefore the offence under Section 138 of N.I.Act will not attract.

7. PW1, who was examined on the side of the complainant company, has testified that accused availed a vehicle loan of ₹1,19,000/- from the Nilambur branch of complainant company after

executing Ext.P2 loan-cum-hypothecation agreement. According to him, accused defaulted in payment of the loan amount; that an amount of ₹1,11,644/- was due from the accused; that the accused issued Ext.P4 cheque in discharge of the said liability.

8. Admittedly Ext.P4 is a cheque issued from the account maintained by the accused and it bears his signature. The accused would admit that he had availed a vehicle loan from the complainant company after executing a vehicle loan-cum-hypothecation agreement. The defence canvassed by the accused is that the blank signed cheque given by him as security at the time of availing the vehicle loan was misused by the complainant company. Accused has no case that he has repaid the loan amount availed by him.

9. There is absolutely no evidence to show that accused had delivered any blank cheque to the complainant company and the complainant misused any cheque issued by the accused. Rather, the evidence on record would show that accused issued Ext.P4 cheque for the amount due to the complainant.

10. It was contended by the learned counsel for the revision petitioner that the rate of interest charged by the complainant company was in violation of Section 7(1) of the Kerala Money-Lenders Act, 1958 and therefore Ext.P4 cheque cannot be treated as

one issued for a legally enforceable debt. The learned counsel for the revision petitioner/accused contended that in view of Section 7(1) of the Kerala Money-Lenders Act, 1958 no money lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate of interest charged by the commercial banks on loans granted by them. The learned counsel further pointed out that Sub Section (3) of Section 7 of the said Act provides that a money-lender shall not demand or take from the debtor any interest, in excess of that payable under sub-section (1). In support of his contention, the learned counsel for the revision petitioner placed reliance on the decision of this Court in *Basheer M.H v. Wheels Auto Finance, Kaloor and another (2017(3) KHC 3)* wherein it was held that the cheque issued to the money lender was not enforceable in law as it included interest exceeding the interest stipulated in Section 7(1) of the Kerala Money-Lenders Act.

11. Now we can have a look at Section 7 of the Kerala Money-Lenders Act, 1958 (as it stood prior to amendment dated 19.07.2019)

> **"7. Interest and charges allowed to money-lenders.**
>
> [(1) No money-lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate of interest charged by commercial banks on loans granted by them:

> Provided that money-lender shall be entitled to charge a minimum of one rupee as interest on any transaction:)
>
> (Provided further that the Government may specify, by notification, the rate of interest under sub-section (1) from time to time.)
>
> (2) A money-lender may demand and take from the debtor such charges and in such cases, as may be prescribed.
>
> (3) A money-lender shall not demand or take from the debtor any interest, in excess of that payable under sub-section (1).
>
> (4)No money-lender shall give any presents, gifts, commission or any amount other than the interest provided in sub-section (2) of section 4 to any depositor in connection with the deposits received by such money-lender or receive any presents, gifts, commission or any amount other than the interest and other charges specified in this section from any person to whom money is advanced."

12. Undisputably the complainant company is a non banking financial company regulated by the Reserve Bank of India in terms of the provisions of Chapter III B of RBI Act, 1934.

13. In *Nedumpilli Finance Company Limited v. State of Kerala and Others. [(2022) 7 SCC 394]* the Hon'ble Apex Court held that Kerala Money-Lenders act will have no application to the non banking financial companies (in short 'NBFC') regulated by the Reserve Bank of India in terms of the provisions of Chapter III B of the Reserve Bank of India Act. In paragraph 6.19 of *Nedumpilli Finance Company Limited* (cited supra) the Apex Court held as follows:

> "6.19. Once it is found that Chapter III-B of the RBI Act provides a supervisory role for the RBI to oversee the functioning of NBFCs, from the time of their birth (by way of registration) till the time of their commercial death (by way of winding up), all activities of NBFCs automatically come under the scanner of RBI.

> As a consequence, the single aspect of taking care of the interest of the borrowers which is sought to be achieved by the State enactments gets subsumed in the provisions of Chapter III-B."

14. The Hon'ble Apex Court held that the entire life of a NBFC from the womb to the tomb is regulated and monitored by the Reserve Bank of India. The non banking financial companies regulated by the Reserve Bank of India in terms of the provisions of Chapter IIIB of the RBI Act, 1934 cannot be regulated by the Kerala Money-Lenders Act, 1958. Therefore, the argument advanced by the learned counsel for the accused that the interest claimed by the complainant was excessive and in violation of Kerala Money-Lenders Act 1958 and therefore it was an illegal transaction and for that reason, Ext.P4 cheque cannot be treated as a cheque issued in discharge of a legally enforceable debt etc. are untenable.

15. The presumption under Section 139 N.I Act entails an obligation on the court to presume that the cheque in question was issued by the drawer or accused in discharge of a debt or liability. Of course, it is a rebuttable presumption. It is a settled position of law that the standard of proof for doing so is that of preponderance of probabilities. Accused has not succeeded in rebutting the said presumption. For rebutting the presumptions under Section 118(a) and 139 of N.I.Act accused has to lead credible evidence. Mere

denial of the case of the complainant is not sufficient to shift this burden on the complainant.

16. In *Kalamani Tex and another v. P.Balasubramanian* reported in [*(2021) 5 SCC 283]*, the Hon'ble Apex Court held as follows:

> "Adverting to the case in hand, we find on a plain reading of its judgment that the Trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn Under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him."

17. In *Rangappa v. Mohan* reported in *AIR 2010 SC 1898*, the Hon'ble Apex Court held that the presumption mandated by Section 139 of N.I.Act includes a presumption that there exists a legally enforceable debt or liability. This is of course a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. It was also held that in view of Section 139 of N.I Act there is an initial presumption, which favours the complainant.

18. Accused failed to rebut the presumption under Section 139 of the NI Act. Per contra, the complainant has succeeded in establishing that Ext.P4 cheque was issued by the accused in discharge of a legally enforceable debt. Ext.P9 would show that the

registered notice sent to the accused was returned as 'unclaimed'. The endorsement in Ext.P9 would show that in spite of the intimation, accused failed to accept the notice. Therefore, the same is presumed to have been served upon the accused. In spite of service of notice, accused failed to repay the amount covered by Ext.P4 cheque.

19. Hence, I find no reason to interfere with the finding rendered by the learned Magistrate and the learned Sessions Judge that the accused has committed the offence punishable under Section 138 of the N.I Act.

The revision petition is devoid of any merit and accordingly, it is dismissed.

The trial court shall take steps to execute the sentence.

Registry shall transmit the records to the trial court forthwith.

Sd/-

M.B.SNEHALATHA
JUDGE

ab