IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 12TH DAY OF MARCH 2026 / 21ST PHALGUNA, 1947

CRL.A NO. 685 OF 2015

AGAINST THE JUDGMENT DATED 31.12.2014 IN ST NO.158 OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, KARUNAGAPPALLY

APPELLANT/COMPLAINANT:

RAJESH,
AGED 41 YEARS,
S/O. GOPALA KRISHNA PILLAI, SREELAKSHMI VEEDU,
NJAKKANAL MURI, OACHIRA VILLAGE.

BY ADVS.
SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

RESPONDENTS/ACCUSED & STATE:

1 AMBILI,
AGED 34 YEARS,
D/O. REMADEVI, ANIL BHAVANAM,
KANNANALLOOR PO, KOLLAM 691 576.

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

BY ADV SRI.M.R.SASITH FOR R1
SENIOR PUBLIC PROSECUTOR SRI VIPIN NARAYAN .A

THIS CRIMINAL APPEAL HAVING BEING FINALLY HEARD ON 05.03.2026, THE COURT ON 12.03.2026 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.Appeal No.685 of 2015

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Dated this the 12th day of March, 2026

J U D G M E N T

Judgment in S.T.No.152/2012 dated 31.12.2014 on the files of the Judicial First Class Magistrate Court-II, Karunagappally, is under challenge in this appeal at the instance of the complainant. The sole accused before the trial court is the 1st respondent herein and State of Kerala represented by Public Prosecutor is the 2nd respondent.

2. Heard the learned counsel for the appellant/complainant, the learned counsel for the 1st respondent as well as the learned Special Public Prosecutor appearing for the 2nd respondent, in detail. Perused the trial court records and the judgment under challenge.

3. The parties in this appeal will be referred hereafter with reference to their status before the trial court as `the complainant' and `the accused'.

4. On dishonour of a cheque dated 05.03.2011 for

Rs.2,50,000/-, alleged to be issued by the accused to the complainant, the complainant launched prosecution alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (`N.I Act' for short hereinafter), by the accused. The trial court proceeded with trial and recorded the evidence. PW1 was examined and Exts.P1 to P7 were marked on the side of the complainant. No defense evidence was adduced.

5. On appreciation of the evidence, the learned Magistrate acquitted the accused on the finding that the accused did not commit the offence under Section 138 of the N.I Act. It is pointed out by the learned counsel for the complainant that though PW1 examined in this case is the power of attorney holder of the complainant and he had direct knowledge regarding the transaction, his evidence was rejected by the learned Magistrate on the ground that, in the preliminary witness schedule filed along with the complaint, the name of PW1 was not cited. Secondly, no evidence was adduced by the complainant to show that the complainant had Rs.2,50,000/- in his hands to advance to the accused, as contended. It is submitted by the learned counsel for the appellant that, in fact, the

financial capacity of the complainant or the source of the money not at all disputed by the accused. According to the complainant, these reasons are insufficient to record acquittal. Therefore he pressed for interference in the verdict impugned.

6. Whereas the learned counsel for the accused/1st respondent supported the trial court verdict and submitted that no evidence was adduced by the complainant to prove the transaction which led to the execution of Ext.P1 cheque and, therefore, the verdict would only be liable to be sustained.

7. In consideration of the rival submissions, the points arise for consideration are:

(i) Whether the trial court went wrong in finding that the accused did not commit any offence under Section 138 of the N.I Act?

(ii) Is it necessary to interfere with the judgment impugned in any manner?

(iii) The order to be passed?

Points (i) to (iii)

8. In this case, in order to prove the transaction and

execution of Ext.P1 cheque by the accused in favour of the complainant, one Dinesh Lal, the Power of Attorney Holder of the complainant, was examined as PW1. He filed chief affidavit in support of the prosecution case and his evidence is that he was a close friend of the complainant and he had witnessed the transaction involved in this case and he had full and complete knowledge regarding the transaction which led to execution of Ext.P1 cheque. He also deposed about his involvement in chitty business. It was through him, Ext.P1, the original cheque and Ext.P2 dishonour memo, Ext.P3 cheque return memo, Ext.P4 Advocate notice, Ext.P5 postal receipt, Ext.P6 postal acknowledgment card and Ext.P7 Power of Attorney were tendered in evidence. Thus the evidence of PW1, who is the Power of Attorney Holder, would show that he had witnessed the transaction which led to execution of Ext.P1 cheque and he deposed that the accused borrowed Rs.2,50,000/- from the complainant on 05.03.2011 from the residence of the complainant. He had answered all queries put to him during cross examination and his evidence regarding the transaction and execution of Ext.P1 not at all shaken. However, the learned Magistrate took a hyper technical view in this case to hold that since the name of PW1

was not cited in the preliminary witness schedule, his evidence could not be believed. In this connection, it is pertinent to note that the legal position is well settled on the point that a Power of Attorney Holder is competent to file a complaint and he is equally competent to give evidence on behalf of the complainant. But it is essential that when the Power of Attorney Holder of the complainant gives evidence, he should be aware of the transaction which led to execution of Ext.P1 cheque, otherwise his evidence being hearsay has no probative value.

9. Here PW1 examined is the Power of Attorney Holder of the complainant and he had given evidence, supporting the transaction led to execution of the cheque, as a person who witnessed the transaction and consequential issuance of the cheque by the accused. But the learned Magistrate was not inclined to believe the evidence of PW1 for the reason that his name was not cited initially in the witness schedule filed by the complainant. In this connection, it is held that, in a prosecution generated on a private complaint, if there is omission in giving the name of one among witnesses in the initial witness schedule, the same is not a reason to disbelieve the evidence of such a witness for the said reason alone, who

got examined and his evidence was not shaken even during cross examination. Therefore, the learned Magistrate went wrong in discarding the evidence of PW1. In fact, by the evidence of PW1 the complainant successfully proved the transaction that led to the execution of Ext.P1 cheque so as to canvass the benefit of the presumptions under Sections 118 and 139 of the N.I Act in favour of the complainant. In the instant case, there is nothing available to hold that these presumptions are in any way rebutted by the accused.

10. Regarding the finding of the learned Magistrate that no evidence was tendered to show that the original complainant was financially sound enough to lend Rs.2,50,000/- to the accused on the material day, is also of least significance in the instant case. That is to say, in a prosecution alleging commission of offence under Section 138 of the N.I Act, the accused can challenge the financial capacity of the complainant to advance the money so as to make the prosecution allegation dis-believable. But for which, there must be a challenge by the accused during the trial stage and failure to challenge the same would stand to hold that the accused was convinced of the financial capacity of

the complainant to advance the cheque amount involved in the case. In the instant case, no challenge was raised by the accused stating that the complainant was incapable of giving Rs.2,50,000/-, as alleged, on 05.03.2011. Thus the accused, in fact, did not dispute the financial capacity of the complainant in any manner. In such a case, no burden is cast upon the complainant to prove his financial capacity to advance the said amount, and the same cannot be a reason to disbelieve or non-suit the complainant.

11. For the above reasons, the verdict of the Judicial First Class Magistrate Court-II, Karunagappally would require interference and accordingly the same is liable to be set aside.

12. In the result, the appeal stands allowed. The verdict of acquittal under challenge stands set aside and the 1st respondent/accused is found to be guilty for the offence punishable under Section 138 of the N.I Act and she is convicted for the said offence. Accordingly, she is sentenced for the said offence as under:

(i) The 1st respondent/accused is sentenced to undergo imprisonment till rising of court and to pay fine of Rs.4,00,000/- (Rupees

Four lakh only) and in default of payment of fine, to undergo default imprisonment for a period of six months.

(ii) The 1st respondent/accused is directed to appear before the Judicial First Class Magistrate Court-II, Karunagappally, on 10.04.2026 to undergo the modified sentence and in the event of failure to appear, the learned Magistrate is directed to execute the sentence without fail.

Registry is directed to forward a copy of this judgment to the Judicial First Class Magistrate Court-II, Karunagappally, for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/