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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

CRL.A NO. 1867 OF 2007

JUDGMENT DATED 25.07.2001 IN CC NO.325 OF 1998 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ALUVA

APPELLANT/COMPLAINANT:

TENNY JOSE, MANAGING DIRECTOR,
STEEL HOUSE, KARUKUTTY P.O., ERNAKULAM DISTRICT.

BY ADV SHRI.JOHNSON P.JOHN

RESPONDENT/ACCUSED AND STATE:

1 MANAGING PARTNER, NEW METALISED AGENCY,
IRON AND STEEL MERCHANT, KOTTAYAM.

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

SRI. M.S. BREEZE, SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 16.12.2025, THE COURT ON 19.12.2025 DELIVERED THE FOLLOWING:

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'C.R'

JOHNSON JOHN, J.

Crl. M.A. No. 1 of 2025 &
Crl. Appeal No. 1867 of 2007

Dated this the 19th day of December, 2025

J U D G M E N T

This appeal by the complainant is against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881 ('N.I Act' for short).

2. As per the complaint, the accused purchased goods from the company in which the complainant is the Managing Director and towards payment of the amount due, the accused issued cheque dated 01.12.1997 for Rs.1,39,285.50.

3. When the complainant presented the cheque for collection, the same was dishonoured due to insufficiency of funds in the account of the accused and in spite of issuance of statutory notice, the accused failed to pay the cheque amount to the complainant.

4. Before the trial court, from the side of the complainant, PW1 examined and Exhibits P1 to P8 were marked and no evidence adduced

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from the side of the accused.

5. After hearing both sides and analysing the evidence, the trial court found that there is no valid notice as contemplated under Section 138(b) of the N.I Act and therefore, the complainant has not succeeded in proving the offence under Section 138 of the N.I. Act against the accused and hence, the accused was acquitted.

6. Heard Sri. Johnson P. John, the learned counsel for the appellant, Sri. Nidhin Raj Vettikkadan, the learned State Brief representing the first respondent/accused and Sri. M.S. Breeze, the learned Senior Public Prosecutor for the second respondent.

7. The learned counsel for the appellant argued that the finding of the trial court that the complainant filed the complaint on the basis of a second notice after dishonouring the cheque for the second time is without appreciating the evidence in a proper manner and the trial court ought to have found that apart from Exhibit P4 statutory notice, the complainant has not issued any previous notice under Section 138(b) of the N.I Act.

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8. The learned counsel for the appellant pointed out that Exhibit P7, memorandum of association and articles of association of the company—Steel House Pvt. Ltd., would show that the complainant herein—Tenny Jose is the Chairman-cum-Managing Director of the said company. In clause 32 of the articles of association, it is stated that Mr. Tenny Jose shall be the Chairman-cum-Managing Director of the company. But, Exhibit P6, copy of the certificate of incorporation of the company–Steel House Pvt. Ltd. shows that the said company was incorporated under the Companies Act, 1956 on 12.09.1996. The complainant, Tenny Jose, filed this complaint on 04.04.1998. But, no document is produced to show that the company authorised the complainant, Tenny Jose to file this complaint and the complainant has no case that the Board of Directors of the company passed any resolution authorising the complainant to file this complaint on behalf of the company.

9. The learned State Brief representing the accused/first respondent pointed out that the payee in Exhibit P1 cheque is M/s. Steel House Pvt. Ltd. and the complaint is filed by the Managing Director of

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Steel House against the Managing Partner of New Metalised Agency without disclosing the name and address of the said Managing Partner and further, PW1 has categorically admitted in cross examination that when Exhibit P1 cheque was previously dishonoured, he issued notice on 12.01.1998 informing about the dishonour of the cheque and demanding the cheque amount and that subsequently, the cheque was again presented for collection and the same was again dishonoured and thereafter, Exhibit P4 notice dated 10.03.1998 was issued to the accused and that the complaint filed on the basis of a second notice after dishonouring the cheque for the second time is not maintainable and therefore, there is no reason to interfere with the finding of the trial court in this regard.

10. The evidence of PW1 in cross examination shows that the cheque involved in this case was previously presented for collection along with other cheques and when the same was dishonoured, notice dated 12.01.1998 was issued to the accused informing about the dishonour of the cheque and demanding payment of the cheque amount and in spite of notice, the accused has not paid the cheque amount and subsequently, the cheque was again presented for collection and when

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the same was again dishonoured, Exhibit P4 notice was issued.

11. The learned counsel for the appellant cited the decision of the Honourable Supreme Court in ***MSR Leathers v. S. Palaniappan and Another*** [2012 (4) KHC 2] and argued that an offence under Section 138 of the N.I. Act is committed every time payment is defaulted upon the issue of notice within the statutory period. In paragraph 13 of the above decision, the Honourable Supreme Court held thus:

> "13. What is important is that neither S.138 nor S.142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier. That such presentation will be perfectly legal and justified was not disputed before us even at the Bar by learned counsel appearing for the parties and rightly so in light of the judicial pronouncements on that question which are all unanimous. Even Sadanandan Bhadran's case (supra) the correctness whereof we are examining, recognized that the holder or the payee of the cheque has the right to present the same any number of times for encashment during the period of six months or during the period of its validity, whichever is earlier."

12. The decision of the Honourable Supreme Court in ***MSR***

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Leathers (supra) would show that a prosecution based on a second or successive default in payment of the cheque amount is permissible, even if no prosecution was launched based on the first default which was followed by a statutory notice and that subsequent dishonour of the cheque and issuance of statutory notice will create a new cause of action and therefore, the findings of the trial court in this regard is not legally sustainable.

13. The learned State Brief representing the accused/first respondent cited the decision of the Honourable Supreme Court in ***Naresh Potteries v. Aarti Industries*** [2025 SCC OnLine SC 18] and argued that the complaint in regard to dishonour of a cheque issued in favour of a company, should be filed in the name of the company. In paragraph 15 of the judgment in ***Naresh Potteries*** (supra), the Honourable Supreme Court held thus:

> **15.** This court in the case of National Small Industries Corporation Ltd.v. State (NCT of Delhi) [(2009) 147 Comp Cas 11 (SC); (2009) 1 SCC 407; (2009) 1 SCC (Civ) 192; (2009) 1 SCC (Cri) 513; 2008 SCC OnLine SC 1710; [2008] INSC 1308.] had an occasion

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to consider the validity of a complaint under section 138 of the Negotiable Instruments Act and the satisfaction of the requirement under section 142 thereof, as well as to determine as to who could be considered to be the complainant/representative in a case where the complaint is to be filed by an incorporated body. This court held as follows [See page 18 of 147 Comp Cas.] :

> "The term 'complainant' is not defined under the Code. Section 142 of the Negotiable Instruments Act requires a complaint under section 138 of that Act to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The Negotiable Instruments Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section 200 of the Code requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses. The requirement of section 142 of the Negotiable Instruments Act that the payee should be the complainant, is met if the complaint is in the name of the payee. If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of the Negotiable Instruments Act does not specify who should represent the company, if a company is the complainant. A company can be represented by an employee or even by a non-employee

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> authorised and empowered to represent the company either by a resolution or by a power of attorney…
>
> Resultantly, when in a complaint in regard to dishonour of a cheque issued in favour of a company or corporation, for the purpose of section 142 of the Negotiable Instruments Act, the company will be the complainant, and for purposes of section 200 of the Code, its employee who represents the company or corporation, will be the de facto complainant. In such a complaint, the de jure complainant, namely, the company or corporation will remain the same but the de facto complainant (employee) representing such de jure complainant can change, from time to time. And if the de facto complainant is a public servant, the benefit of exemption under clause (a) of the proviso to section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation."
>
> (emphasis supplied)

14. In this case, the payee in Exhibit P1 cheque is M/s Steel House (Pvt.) Ltd. But, the complainant is Tenny Jose, Managing Director of Steel House. Section 142 of the N.I Act reads thus:

> "142. **Cognizance of offences**.—1[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
>
> (a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
>
> (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the

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proviso to section 138:

2[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

15. It is well settled that where the payee is a company, the complaint should necessarily be filed in the name of the company and a power of attorney holder or agent cannot file complaint in his personal capacity. In ***Dhanasingh Prabhu v. Chandrasekar*** [(2025) 10 SCC

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96], the Honourable Supreme Court considered the difference between a partnership firm and a company and held that a partnership firm, unlike a company registered under the Companies Act, does not possess a legal personality and firm's name is only a compendious reference for describing its partners and that the fundamental distinction between a firm and company rests on the premise that the company is separate from its shareholders.

16. In ***Dhanasingh Prabhu*** (supra), the Honourable Supreme Court also held that a partnership firm has no separate recognition either jurisprudentially or in law, apart from its partners. It was also held that while a Director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offence is committed by the partners of the firm and not just the firm *per se*.

17. As noticed earlier, the accused is shown as Managing Partner of New Metalised Agency and no living person is shown as representing

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the accused—Managing Partner of New Metalised Agency in the cause title of the complaint.

18. When the learned State Brief representing the accused/first respondent raised the above aspects, the learned counsel for the appellant filed Crl. M.A. No.1 of 2025 for amending the cause title of the complaint and the appeal memorandum by substituting the name of the company, Steel House Pvt. Ltd. as the complainant and also for incorporating the name and address of one Muraleedhara Panicker, S/o. Ramakrishna Pillai as the Managing Partner of the firm 'New Metalised Agency.

19. In ***S.R. Sukumar v. S. Sunaad Raghuram*** [(2015) 9 SCC 609], the Honourable Supreme Court considered the question whether a criminal court has power to order amendment of a complaint and held thus:

> "19. What is discernible from *U.P. Pollution Control Board case* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made

> relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint."

20. In this case, the original complaint was filed on 04.04.1998 and Crl. M.A. No. 1 of 2025 seeking amendment is filed on 25.11.2025. There is no enabling provision in the Criminal Procedure Code for entertaining an application for amendment of the complaint. The complainant, Tenny Jose, who filed the amendment application to substitute the name of the complainant and the accused at the appellate stage has not produced any document to show that the company, M/s. Steel House Pvt. Ltd., has authorised him to file this complaint or amendment application.

21. I find force in the argument of the learned State Brief that the name of the complainant and the accused cannot be substituted at the

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appellate stage and that the amendment sought for does not relate to a curable infirmity that can be corrected by a formal amendment. Since the amendment sought for is having the effect of substituting the name of the complainant and the accused after 27 years of filing the complaint, I find that the same would cause prejudice to the accused and it cannot be allowed at the appellate stage. As noticed earlier, the trial court took cognizance of the offence against the mandate of Section 142(1)(a) of the N.I Act and therefore, I find that the amendment application and the appeal are liable to be dismissed.

In the result, Crl. M.A. No. 1 of 2025 and the appeal are dismissed.

sd/-

JOHNSON JOHN,
JUDGE.

Rv