Case Citation: (2026) ibclaw.in 5368 HC

2026:KER:66914

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2026 / 11TH BHADRA, 1948

CRL.MC NO. 6887 OF 2022

CRIME NO.0/0 OF ,

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.2265 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,THRISSUR

PETITIONER/2ND ACCUSED:

R V JOSE,
AGED 67 YEARS
S/O THOMAS, VELLAPAD PALA, NOW RESIDING AT GOOD SHEPHERED BUILDING, PAKKILKARA, NATTAKOM VILLAGE, KOTTAYAM DISTRICT- 686013

BY ADVS.
SRI.K.R.ARUN KRISHNAN
SMT.DEEPA K.RADHAKRISHNAN
SHRI.SANAL C.S

RESPONDENTS/STATE OF KERALA AND DEFACTO COMPLAINANT:

1 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 **VIVEK K RAHUL,**
S/O K B RAHULAN, KUNDUVARA VALAPPIL HOUSE,
KOORKKANJERI P.O, THRISSUR 680007

BY ADVS.
SRI.DALBI EMMANUEL, PUBLIC PROSECUTOR

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SMT.K.VINAYA
SHRI.RAVI KRISHNAN
SHRI.K.J.MANU RAJ
SRI.A.P.VASAVAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.09.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 02nd day of September, 2026

ORDER

The petitioner is the 2nd accused in C.C. No. 2265 of 2017 on the file of the Court of the Judicial First Class Magistrate-II, Thrissur ('Trial Court', for short), which has been registered on the basis of Annexure A1 complaint filed by the 2nd respondent, alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act (NI Act).

2. The 2nd respondent has filed the complaint against the petitioner and the 1st accused on the allegation that the two cheques issued by them towards the legally enforceable debt were dishonoured due to insufficiency of funds in the bank account of the accused. Despite sending statutory demand notice, the accused have not paid the cheque amount. Therefore, the accused have committed the above offences.

3. It is the petitioner's specific case that, on the date of execution of the cheque, he was not in Thrissur. In fact, the petitioner does not even have a bank account and he has not signed the disputed cheque. There were certain financial transactions between the 1st accused and the 2nd respondent. It is in discharge of the said transaction that the 1st accused had issued cheque in favour of the 2nd respondent. It is without looking into any of these aspects that the Trial Court has taken cognizance of the offence and issued summons to the petitioner. Even if the petitioner withstands the trial, it is not going to result in a conviction. Therefore, the entire proceedings may be quashed.

4. I have heard the learned counsel for the petitioner, learned Public Prosecutor and the learned counsel appearing for the 2nd respondent.

5. The 2nd respondent's specific case in the complaint is that the petitioner and the 1st accused

borrowed money from him and in discharge of legally enforceable debt, issued two signed cheques in favour of the 2nd respondent, which were dishonoured due to insufficiency of funds in the bank account of the accused persons.

6. It is the petitioner's specific contention that he was not in station on the date when the cheques were handed over. Likewise, he has not executed the cheques and does not have a bank account.

7. In **Rangappa v. Sri Mohan** [(2010) 11 SCC 441], the Hon'ble Supreme Court has held that the presumption mandated by Section 139 of the Act includes the existence of a legally enforceable debt or liability. It is observed that this presumption is rebuttable, and the accused must raise their defence at trial.

8. In **Rajeshbhai Muljibhai Patel and Others v. State of Gujarat and Another** [(2020) 3 SCC 794], the Supreme Court has held that High Courts should not quash a criminal complaint filed under Section 138 of

the Act by going into disputed questions of fact regarding the cheque in question being issued for the discharge of debt or liability. Moreso, when Section 139 raises a statutory presumption as regards the cheque being issued for the discharge of a debt or liability.

9. Likewise, in **Rathish Babu Unnikrishnan v. State (NCT of Delhi) and Another** [(2022) 20 SCC 661], the Supreme Court held that when there is a legal presumption under Section 139 of the Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at the pre-trial stage to quash the complaint.

10. Going by the allegations in the complaint, the defence now raised by the petitioner and also the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, I am of the definite view that the defence raised by the petitioner are matters to be considered at trial and not before this Court by invoking the inherent powers under Section 482 of the Cr.P.C. Furthermore, even though the

petitioner has raised a contention that he does not have bank account, not a scrap of paper has been produced before this Court to substantiate his contention. Thus, I am not inclined to exercise inherent powers of this court under Section 482 of the Cr.P.C. to quash the proceedings.

In the aforesaid circumstances, this Crl.M.C. is dismissed, by reserving the right to the petitioner to raise all contentions before the Trial Court, which, in turn, is directed to consider and dispose of the complaint in accordance with law, untrammelled by any observations made in this order. As the complaint is of the year 2017, the Trial Court is directed to consider and dispose of the complaint in accordance with law as expeditiously as possible. The Registry is directed to communicate this order to the Trial Court.

Sd/-

C.S.DIAS
JUDGE

NJ/dkr

APPENDIX OF CRL.MC NO. 6887 OF 2022

PETITIONER ANNEXURES

Annexure I	**A CERTIFIED COPY OF THE COMPLAINT FILED UNDER SECTIONS 190 AND 195 OF THE CR. PC BY THE INSPECTOR, STATION HOUSE OFFICER, KOORKKANCHERY POLICE STATION DATED 17.06.2017 AND NOW PENDING AS CC NO 2265 OF 17 ON THE FILE OF THE JFCM-II, THRISSUR**
Annexure II	**TRUE COPY OF CHEQUE BEARING NO.897007 ON THE ACCOUNT OF INDIAN BANK**
Annexure III	**COPY OF THE CHEQUE BEARING NO.897008 DATED 26.05.17**
Annexure IV	**COPY OF LAWYER NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER 09/06/2017**
Annexure V	**COPY OF REPLY NOTICE ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 20/06/2017**

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