



2025:KER:73485

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947

CRL.A NO. 277 OF 2023

AGAINST THE JUDGMENT DATED IN ST NO.351 OF 2016 OF
JUDICIAL FIRST CLASS MAGISTRATE TEMPORARY COURT,
NEYYATTINKARA

APPELLANT/PETITIONER:

P.S. MADHUSOODANAN
AGED 59 YEARS
S/O.PARAMESWARAN PILLAI, RESIDING AT REVATHI
BHAVAN, GANDHIPURAM, MOOLAKARA, KOTTUKAL,
THIRUVANANTHAPURAM, PIN - 695501

BY ADVS.
SRI.PIRAPPANCODE V.S.SUDHIR
SHRI. AKASH S.
SHRI. GIRISH KUMAR M S
SMT.V.S.VARALEKSHMI
SMT.DEVIKA JAYARAJ

RESPONDENTS:

- 1 ALAMELU AMMAL
KERALA KHADI AND VILLAGE INDUSTRIES GRAMA
SOUBHAGYA SHOP NO. 24, ATTUKAL SHOPPING COMPLEX,
EAST FORT, THIRUVANANTHAPURAM., PIN - 695023
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, OFFICE OF
THE ADVOCATE GENERAL, HIGH COURT BUILDING,
ERNAKULAM, PIN - 682031

BY ADVS.
SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.BALACHANDRAN



2025:KER:73485

OTHER PRESENT:

SMT. SEENA.C (PP)

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
03.03.2023, ALONG WITH CRL.A.278/2023, 291/2023 AND HAVING
BEEN FINALLY HEARD ON 25.09.2025 THE COURT ON 06.10.2025
DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947

CRL.A NO. 278 OF 2023

AGAINST THE JUDGMENT DATED IN ST NO.353 OF 2016 OF
JUDICIAL FIRST CLASS MAGISTRATE TEMPORARY COURT,
NEYYATTINKARA

APPELLANT/S:

P.S.MADHUSOODANAN
AGED 59 YEARS
S/O.PARAMESWARAN PILLAI, RESIDING AT REVATHI
BHAVAN, GANDHIPURAM, MOOLAKARA, KOTTUKAL,
THIRUVANANTHAPURAM:695 501

BY ADVS.
SRI.PIRAPPANCODE V.S.SUDHIR
SHRI. AKASH S.
SHRI. GIRISH KUMAR M S
SMT.V.S.VARALEKSHMI
SMT.DEVIKA JAYARAJ

RESPONDENT/S:

- 1 VENKITESWARAN
RESIDING AT PRA-2, PUNNAPURAM ROAD, KAITHAMUKKU,
THIRUVANANTHAPURAM, PIN - 695024
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, OFFICE OF
THE ADVOCATE GENERAL, HIGH COURT BUILDING,
ERNAKULAM, PIN - 682031

BY ADVS.
SRI.GOPAKUMAR R.THALIYAL



2025:KER:73485

SRI .R .B .BALACHANDRAN

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
03.03.2023, ALONG WITH CRL.A.277/2023, 291/2023 AND HAVING
BEEN FINALLY HEARD ON 25.09.2025 THE COURT ON 06.10.2025
DELIVERED THE FOLLOWING:**



2025:KER:73485

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947

CRL.A NO. 291 OF 2023

AGAINST THE JUDGMENT DATED IN ST NO.352 OF 2016 OF
JUDICIAL FIRST CLASS MAGISTRATE TEMPORARY COURT,
NEYYATTINKARA

APPELLANT:

SURESH KUMAR
AGED 58 YEARS
SOUPARNIKA, THEKKEVILA, KOTTUKAL. THEKKEVILA,
KOTTUKAL, THIRUVANANTHAPURAM, PIN - 695501

BY ADVS.
SRI.PIRAPPANCODE V.S.SUDHIR
SHRI. AKASH S.
SHRI. GIRISH KUMAR M S
SMT.V.S.VARALEKSHMI
SMT.DEVIKA JAYARAJ

RESPONDENTS:

- 1 ALAMELU AMMAL
KERALA KHADI AND VILLAGE INDUSTRIES GRAMA
SOUBHAGYA SHOP NO. 24, ATTUKAL SHOPPING COMPLEX,
EAST FORT, THIRUVANANTHAPURAM, PIN - 695023
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, OFFICE OF
THE ADVOCATE GENERAL, HIGH COURT BUILDING,
ERNAKULAM, PIN - 682031

BY ADVS.
SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.BALACHANDRAN



2025:KER:73485

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 03.03.2023, ALONG WITH CRL.A.277/2023, 278/2023 AND HAVING BEEN FINALLY HEARD ON 25.09.2025 THE COURT ON 06.10.2025 DELIVERED THE FOLLOWING:



JUDGMENT

[CRL.A Nos.277/2023, 278/2023, 291/2023]

Criminal Appeal No.277/2023 has been filed challenging the judgment dated 30.12.2022 in S.T.No.351/2016 on the file of the Judicial First Class Magistrate Temporary Court, Neyyattinkara through which a complaint filed by the appellant alleging the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') by the 1st respondent in the said appeal/accused was found not maintainable and the 1st respondent/accused was acquitted under Section 255(1) of the Cr.P.C.

2. Criminal Appeal No.278/2023 has been filed challenging the judgment dated 30.12.2022 in S.T.No.353/2016 on the file of the Judicial First Class Magistrate Temporary Court, Neyyattinkara, through which a complaint filed by the appellant alleging the commission of offence punishable under Section 138 of the N.I. Act by the 1st respondent in the said appeal/accused was found not maintainable and the 1st respondent/accused was acquitted under Section 255(1) of the Cr.P.C.



3. Criminal Appeal No.291/2023 has been filed challenging the judgment dated 30.12.2022 in S.T.No.352/2016 on the file of the Judicial First Class Magistrate Temporary Court, Neyyattinkara through which a complaint filed by the appellant alleging the commission of offence punishable under Section 138 of the N.I. Act by the 1st respondent in the said appeal/accused was found not maintainable and the 1st respondent/accused was acquitted under Section 255(1) of the Cr.P.C.

4. Crl.A.Nos.277/2023 and 278/2023 are filed by the same person, while the appellant/complainant in Crl.A.No.291/2023 is the brother of the appellant/complainant in the other two appeals. The 1st respondent/accused in Crl.A.Nos.277/2023 and 291/2023 is the wife of the 1st respondent/accused in Crl.A.No.278/2023.

5. The appellants/complainants contend that the respondents/accused used to consult the appellant/complainant in Crl.A.No.291/2023 for astrological advice and had requested him for a loan to tide over their financial difficulties. It is alleged that the appellant in Crl.A.No.291/2023 had advanced a sum of Rs. 4,00,000/- to the 1st respondent/accused in that case, while the appellant in Crl.A.Nos.277/2023 and 278/2023 had advanced a total



sum of Rs.9,00,000/- to the respondents in those appeals. According to the appellants, the respondents/accused had issued cheques for the repayment of the amounts borrowed, and since those cheques were dishonoured, they initiated proceedings alleging commission of offences punishable under Section 138 of the N.I.Act. The trial court concluded that the accused were entitled to be acquitted as the complaints were filed beyond the statutory period contemplated by Section 142 of the N.I.Act. A perusal of the judgments impugned in these appeals will indicate that the learned Magistrate had reached such a conclusion based on the law laid down by this Court in ***Jayakrishnan v. Unnikrishnan and another, 2015 (5) KHC 683***, where this Court took the view that where the statutory notice which is contemplated by the provisions of Section 138 of the N.I.Act had been returned with the endorsement 'refused', the cause of action for filing a complaint would begin to run from the date on which the notice was returned to the sender and not after 15 days from the date of receipt of such notice. In other words, it was held that when a notice is returned as 'refused', the period of limitation contemplated by the provisions under Section 142 of the N.I.Act would run from the date on which the notice was returned, and the question of granting 15 days for



payment does not arise. It is not disputed before me that, if the view taken by the learned Magistrate based on the law laid down in **Jayakrishnan** (*supra*) is found to be correct, the individual complaints filed by the appellants would be beyond the time contemplated by the provisions of Section 142 of the N.I.Act and would, therefore, not be maintainable as no application for condonation of delay had been filed along with the individual complaints. Since the singular issue involved is common, these appeals can be conveniently disposed of by common judgment.

6. The learned counsel appearing for the appellants would submit that whether or not the statutory notice had been returned as 'refused; or had actually been received by the respondents/accused, the cause of action to file a complaint would run only from the completion of the 15 days contemplated by clause (c) of the *proviso* to Section 138 of the N.I.Act. He relies on the judgment of the Supreme Court in **C.C. Alavi Haji v. Palapetty Muhammed and another, (2007) 6 SCC 555** and also on the judgment of the Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan and another, (1999) 7 SCC 510** in support of his contention. It is submitted that this Court in **Jayakrishnan** (*supra*) did not notice the judgments of the Supreme Court referred



to above, and therefore, the law laid down in **Jayakrishnan** (*supra*) is *per incuriam*.

7. The learned counsel appearing for the respondents/accused would submit that the judgment of the Supreme Court in **Alavi Haji** (*supra*) did not deal with the question considered by this Court in **Jayakrishnan** (*supra*). It is submitted that a reading of the judgment in **Alavi Haji** (*supra*) indicates that the Supreme Court was considering the effect of Section 27 of the General Clauses Act, 1897, which deals with the presumption regarding service of notice, when the notice is sent to the correct address by registered post. It is submitted that while the refusal to accept a notice issued at the correct address by the registered post can be presumed to be service of notice for the purposes of Section 138 of the N.I.Act when the notice had been refused, there was no question of giving a 15-day period for the drawer of the cheque to make the payment. In other words, it is submitted that when the drawer of the cheque had refused the notice, the same indicates his refusal to pay any amounts under the cheque and the cause of action to file a complaint starts immediately after the notice is returned to the sender.

8. Having heard the learned counsel appearing for



the appellants in these cases and the learned counsel appearing for the respondents/accused and on a perusal of the law laid down by the Supreme Court in ***Alavi Haji*** (*supra*), I am of the view that the point raised is squarely covered in favour of the appellants by the judgment of the Supreme Court in ***Alavi Haji*** (*supra*). In ***Alavi Haji*** (*supra*), the Supreme Court was considering a reference by a bench of two judges of the Supreme Court as to whether in the absence of any averment in the complaint to the effect that the accused had a role to play in the matter of non-receipt of legal notice or that the accused had deliberately avoided service of notice, the complaint could have been entertained in the light of law laid down in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456***. While considering the above question, the three-judge bench in ***Alavi Haji*** (*supra*) held as follows:-

“6. As noted hereinbefore, Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. However, with a view to avert unnecessary prosecution of an honest drawer of the cheque and with a view to give an opportunity to him to make amends, the prosecution under Section 138 of the Act has been made



subject to certain conditions. These conditions are stipulated in the proviso to Section 138 of the Act, extracted above. Under Clause (b) of the proviso, the payee or the holder of the cheque in due course is required to give a written notice to the drawer of the cheque within a period of thirty days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. Under Clause (c), the drawer is given fifteen days' time from the date of receipt of the notice to make the payment and only if he fails to make the payment, a complaint may be filed against him. As noted above, the object of the proviso is to avoid unnecessary hardship to an honest drawer. Therefore, the observance of stipulations in quoted Clause (b) and its aftermath in Clause (c) being a precondition for invoking Section 138 of the Act, giving a notice to the drawer before filing complaint under Section 138 of the Act is a mandatory requirement.

7. The issue with regard to interpretation of the expression "giving of notice" used in Clause (b) of the proviso is no more res integra. In K. Bhaskaran v. Sankaran Vaidhyan Balan the said expression came up for interpretation. Considering the question with particular reference to scheme of Section 138 of the Act, it was held that failure on the part of the drawer to pay the amount should be within fifteen days "of the receipt" of the said notice. "Giving notice" in the context is not the same as "receipt of notice". Giving is a process of which receipt is the accomplishment. It is for the payee to



perform the former process by sending the notice to the drawer at the correct address and for the drawer to comply with Clause (c) of the proviso. Emphasising that the provisions contained in Section 138 of the Act required to be construed liberally, it was observed thus: (SCC p. 519, paras 20-21)

“20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

21. In Maxwell's Interpretation of Statutes, the learned author has emphasised that ‘provisions relating to giving of notice often receive liberal interpretation’ (vide p. 99 of the 12th Edn.). The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he



is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in Clause (b) of the proviso to Section 138 of the Act show that the payee has the statutory obligation to 'make a demand' by giving notice. The thrust in the clause is on the need to 'make a demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does."

8. Since in Bhaskaran case the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short "the GC Act") could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.



9. *All these aspects have been highlighted and reiterated by this Court recently in Vinod Shivappa case. Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted. It was further observed that once the payee of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee*



*is not available on the given address. This Court held:
(SCC p. 463, para 15)*

“15. We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive



notice. Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 of the Code of Criminal Procedure. The question as to whether the service of notice has been fraudulently refused by unscrupulous means is a question of fact to be decided on the basis of evidence. In such a case the High Court ought not to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.”

*10. It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the GC Act would be attracted; the requirement of Clause (b) of proviso to Section 138 of the Act stands complied with **and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque.** Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address.”*
(Emphasis supplied)

It is thus clear that even where the notice was refused or unclaimed, the same would be deemed to be served by virtue of the provisions



contained in Section 27 of the General Clauses Act provided the notice had been issued at the correct address of the accused by registered post and the cause of action for filing the complaint would commence only on completion of the 15 days contemplated by clause (c) of the *proviso* to Section 138 of the N.I. Act. In **Jayakrishnan** (*supra*), this Court was dealing with the revision petition filed by the accused who contended that where the notice had been refused, the complaint could not have been filed before the expiry of 15 days from the date on which the notice that was refused was returned to the sender. While rejecting that contention, this Court held as follows:-

“6. In the above view point, I am of the opinion that 15 days' period provided for payment is applicable to the drawer, who received the notice only, and in the case where the drawer refused to accept the notice, the payee is not liable to wait for expiry of 15 days from the date of refusal to get the cause of action accrued. In the case where notice is received by the drawer, the cause of action arises only on the expiry of 15 days; whereas, in the case of 'refusal', the cause of action would arise on the day on which the payee gets back the returned notice on refusal by the drawer and the period of 30 days for filing the complaint begins to run from that day onwards. So, the complainant is justified in filing the complaint immediately



after the receipt of the returned lawyer's notice, without waiting for the expiry of 15 days. In this analysis, I find that the complaint is maintainable under the relevant law and there is no legal infraction with the statutory compliance under S.138(c) or S.142(b) of the NI Act.”

On a reading of the judgment of the Supreme Court in ***Alavi Haji*** (*supra*), I am constrained to hold that the view taken by this Court in ***Jayakrishnan*** (*supra*) is *per incuriam* and without noticing the decision of the Supreme Court in ***Alavi Haji*** (*supra*). In light of the above finding, these appeals are to be allowed. However, since the matter was decided on the sole ground that the complaints in question were filed beyond the statutory period contemplated by the provisions of Section 138 of the N.I. Act, I have no option but to set aside the impugned judgments and remand the matter for fresh consideration of the trial court.

9. Accordingly, these appeals are allowed by way of remand and the judgment dated 30.12.2022 in S.T.No.351/2016, S.T.No.353/2016 and S.T.No.352/2016 on the file of the Judicial First Class Magistrate Temporary Court, Neyyattinkara will stand set aside. S.T.Nos.351/2016, 353/2016 and 352/2016 will stand restored to the file of the Judicial First Class Magistrate Temporary Court, Neyyattinkara (or to any another court to which jurisdiction



is presently given) and shall be disposed of in accordance with the law by that court. I make it clear that no other issue other than the issue as to whether the individual complaints, which are subject matter of these cases, have been filed within time has been considered by this court, and all other issues are left open to be considered by the trial court. The parties shall appear before the trial court at 11.00 A.M on 13.10.2025, and thereafter the proceedings shall be concluded in accordance with the law. The appeals are disposed of accordingly.

Sd/-

**GOPINATH P.
JUDGE**

acd