

## Supply House Vs Ullas and Another

**Court:** High Court Of Kerala

**Date of Decision:** May 30, 2006

**Acts Referred:** Negotiable Instruments Act, 1881 (NI) â€” Section 138

**Citation:** (2007) 3 BC 645 : (2006) 4 CivCC 335 : (2006) 133 CompCas 709 : (2006) CriLJ 4330 : (2006) 3 ILR (Ker) 695 : (2007) 1 KLJ 63 : (2006) 3 KLT 921 : (2007) 5 RCR(Criminal) 406

**Hon'ble Judges:** K.A. Abdul Gafoor, J

**Bench:** Single Bench

**Advocate:** T.M. Chandran, for the Appellant; Grashious Kuriakose and P.M. Habeeb, (P.P.), for the Respondent

**Final Decision:** Dismissed

### Judgement

K.A. Abdul Gafoor, J.

Acquittal of the respondent for the offence punishable u/s 138 of the N.I. Act is assailed in this appeal by the

complainant. According to him, he was a dealer in house hold articles. Accused also did have a shop of the similar articles somewhere else. The

accused used to purchase articles on credit from the shop of the complainant. On this count amount was due from the accused. He issued Ext.P1

cheque. It was a post dated one bearing date 24-3-1998, for an amount of Rs. 58,520/- drawn on State Bank of India, Thodupuzha. It was

presented to the bank in August, 1998. It bounced as is revealed by Ext. P2. There upon complainant made a demand for payment of the amount

covered by Ext.P1 cheque by issuing a notice, Ext. P4. This was responded to in Ext.P7. As the complainant did not get payment, prosecution

was launched. The case of the accused was that Ext.P1 cheque was issued as price of 28 number of mixies, which he had ordered from the

complainant on 9-2-1998. But the complainant failed to supply the item. Therefore he issued Ext. D4 stop memo to the Bank, on 10-3-1998.

Copy of the order that he had placed was produced as Ext.D1. That was on 9-2-1998. As the complainant did not honour the order placed in

Ext.D1 for which Ext.P1 cheque was issued, it was not towards discharge of any liability that the accused did have at that time towards the

complainant. So no case to attract Section 138 had been made out, the accused defended the case. Appreciating the evidence on record the court

below found that Ext.P1 cheque was not one issued in discharge of the liability that the accused had incurred towards the complainant.

2. It is submitted by the appellant that going by Ext. D3 and Ext. P8, the accused had admitted liability towards the complainant. In Ext.D3 dated

16-3-1998 the accused had even though intimated the complainant not to present the cheque in question in bank, he had agreed to settle the

account later. This is also revealed from Ext. P8 communication issued by the complainant on 12-8-1998 as well. Thus when there was liability

incurred by the accused towards the transaction subsisting between the parties the appellant was justified in presenting Ext.P1 cheque towards the

subsisting liability, even though it was issued as price of the 28 numbers of mixies ordered as per Ext.D1. As on the date of the presentation of the

cheque for encashment in the bank, as revealed by Exts.D3 and P8 there was subsisting liability from the part of the accused towards the

complainant. Therefore Ext.P1 cheque cannot be stated to be one issued otherwise than towards discharge of the liability.

3. Ext. D1 dated 9-2-1998 is the order that the accused had placed with the complainant. It disclosed that he was ordering 28 numbers of mixies

and that he was enclosing there with Ext.P1 cheque for Rs. 58,520/- being the price amount for 28 number of mixies ordered. Order was placed

on 9-2-1998 and the cheque is dated 24-3-1998. It was thus a post dated cheque towards thus ordered. Ext. D4 is the stop memo that the

accused had issued to his bankers directing the bank that, the cheque had been issued along with an order placed by the accused on the

complainant who failed to supply the articles so ordered and therefore the amount as per the cheque shall not be paid. This was as early as on 10-

3-1998 even before the date of Ext.P1 cheque and far earlier than its presentation by the complainant in the bank. It is after that he intimated to the

complainant in Ext. D3 letter dated 16-3-1998 that he had not given the articles ordered and therefore the cheque shall not be presented to the

bank. Of course, it contains a further request that settlement of the other transactions could be done later, Thus even before the date of the cheque,

the accused had informed the complainant that it shall not be presented to the bank because of the failure of the complainant himself in not

supplying the items ordered as per Ext.D1, enclosing there with Ext.P1 post dated cheque. Thus it is clear that the accused had not incurred the

liability for the amount covered by Ext.P1, a post dated cheque. The statement of account referred to in Ext. D3 in respect of other transactions

cannot found to be linked with Ext.P1 cheque. It was issued for a particular purpose. True, Ext. D3 and Ext. P8 indicate that accused owes some

amount to the complainant, which has to be settled between the parties, as offered by the accused in the said letters. But what was the amount so

due on settlement was not proved by the complainant. Whether it is in excess of the amount covered by Ext.P1 or whether it is less than the

amount covered by Ext.P1 is a material aspect as regards the alleged liability on that count. In order to deem that one had committed offence u/s

138, the amount covered by the cheque shall be either in discharge of the liability incurred by the drawer, either in full or in part. It cannot in any

way in excess of the liability incurred. Unless the complainant proves that the liability to be settled is to the tune of the amount covered by Ext. P1,

he could not have made use of that cheque for such liability. Therefore, Ext. P1 cheque cannot be stated to be one issued in discharge of the

liability to the tune of the amount covered by it, which was really issued, as is revealed by Ext.D1, as the price amount for 28 numbers of mixies,

which the complainant had not supplied. Therefore the acquittal of the accused cannot be stated to be unjustified to invite interference in the

appeal.

Appeal fails and is dismissed.