
(2012) 09 KL CK 0045
In the High Court Of Kerala
Case No : Criminal MC. No. 424 of 2005

Kuruville

APPELLANT

Vs

Sathi Rajan Rajeev Nivas and State of Kerala

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 21(1), 21(2), 21(3), 21A
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 118(g), 123, 124, 126, 13

Citation : (2013) 2 BC 120

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : S. Sanal Kumar, Smt. Bhavana Velayudhan, Sri. M.R. Arun Kumar and Smt. T.J. Seema, for the Appellant; M.S. Kalesh, Sri. R.S. Kalkura, Sri Sreejith V.S., Public Prosecutor, Sri. Bechu Kuriam Thomas, Amicus Curiae and Sri. Jijo Paul, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Justice N.K. Balakrishnan, J.—This petition is filed u/s 482 of Cr.P.C. to quash the complaint and order passed there on by the learned Magistrate in S.T. No: 624/2004 of C.J.M. Court, Kottayam. That complaint was filed against the petitioner alleging commission of offence punishable u/s 138 of Negotiable Instruments Act. The learned Magistrate after recording the sworn statement and perusing the records issued process to the accused. Petitioner contends that the cheque was issued by him to one Chithrabhanu and it was crossed by him noting "A/C Payee only". According to the petitioner, the said cheque was never intended to be negotiated. Annexure A3 is the copy of that cheque. The accused contends that contrary to the directions, the cheque was handed over by Chithrabhanu to the complainant. On coming to know of the fact, he issued notice to the drawee bank not to honour the cheque. It was also contended that there was sufficient funds in the account of the petitioner to honour the cheque.

2. The important question raised by the petitioner is that when two parallel

transverse lines are put across a cheque and when it is noted "A/C Payee only", is that cheque negotiable and whether such a payee gets authority to indorse so as to entitle the indorsee to prosecute the drawer of the cheque for offence u/s 138 of N.I. Act. Since the question involved is found to be of general importance, Sri. Bechu Kurian was appointed by this Court as Amicus Curiae. Sri. Bechu Kurian and the learned counsel appearing for both sides addressed their arguments at length.

3. To understand the various terms which are relevant for consideration it is better that those relevant provisions are extracted here.

Section 6 of Negotiable Instruments Act defines "cheque" as:

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

(explanation is omitted as unnecessary)

"Bill of exchange" is defined in section 5 of N.I. Act as:

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is miss-named or designated by description only.

Section 7 of N.I. Act defines "Drawer", "Drawee" as:

The maker of bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

4. Proviso (a) to Section 138 of N.I. Act makes it mandatory that the cheque should be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Proviso (b) to that section mandates that the payee or the holder in due course of the

cheque, as the case may be, should make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Therefore, prosecution by a holder in due course is also perfectly maintainable, the learned counsel for the respondent submits.

5. Section 9 of N.I. Act defines "Holder in due course" as:

Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if [payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

(underlined by me to give emphasis)

Relying on the definition of "holder in due course" mentioned in section 9 of N.I. Act and the proviso (b) to section 138 of N.I. Act, the learned counsel submits that negotiability of the cheque cannot be restricted or curtailed and, therefore, the indorsee also should be "holder in due course" as mentioned in proviso (b) to section 138 of N.I. Act. The presumption u/s 118(g) of the N.I. Act is that the holder of a negotiable instrument is a holder in due course. Section 13 of N.I. Act defines "Negotiable instrument" to mean that a promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

6. Sri. Bechu Kurian, learned Amicus Curiae, would submit that unless there are words prohibiting transfer or indicating an intention that the cheque is not transferable, it has to be presumed that cheque is a negotiable instrument. In other words, negotiability of the instrument cannot be restricted simply for the reason that two parallel lines were put across at the left top corner of the cheque. According to the respondent, in Annexure A3 cheque there is no such words or expression indicating or restricting negotiability of the instrument.

7. The word "negotiation" is defined in section 14 of N.I. Act as:

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.

Section 15 defines "Indorsement" as:

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser".

8. The indorsement on the reverse of Annexure A3 cheque, according to the learned counsel for the complainant, would make it indubitably clear that the indorsement is not blank and that there is a specific direction to pay the amount mentioned in the instrument to Smt. P.D. Sathi, the complainant herein. Therefore, the provisions of the N.I. Act relating to a payee shall per force apply to an indorsee (the complainant herein), the learned counsel submits.

Section 16 of N.I. Act defines Indorsement "in blank" and "in full" - "Indorsee" as:

(1) If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

(underlined by me to lay emphasis)

9. Proviso (c) to section 138 of N.I. Act also makes it clear that the drawer of the cheque has a duty to make payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice, the learned counsel for the respondent submits. Therefore, in view of section 16 (2) of N.I. Act, the indorsee also gets the same right as the payee. In other words, indorsee has to be treated as payee for the purpose of proviso (b) and (c) to section 138 of N.I. Act. There can be no dispute regarding the fact that the indorsement on the reverse of Annexure C is "in full" leaving no ambiguity at all that the indorsement is in favour of the complainant herein, the complainant contends.

10. The presumption u/s 139 of N.I. Act is available to the holder of the cheque that he received the cheque of the nature referred to in section 138 of N.I. Act for the discharge, in whole or in part, of any debt or other liability. The contention that the presumption u/s 139 of N.I. Act is available only to the holder of the cheque and not to the holder in due course cannot be sustained in view of section 118(g) of the Act. By virtue of section 16 (2) of N.I. Act, the right available to a payee is available to an indorsee as well and as such the "holder in due course", as defined in section 9 of the Act, also is entitled to the same presumption. Even if the presumption u/s 139 of N.I. Act is not available, still the "payee", which term includes "holder in due course", can establish that the original holder of the cheque received it in discharge of a legally recoverable debt or liability and if so the only other point which the holder in due course may have to establish is that there was an indorsement as stipulated in section 16(2) of the Act.

11. For a proper understanding, sections 123 and 124 are quoted hereunder:

Section 123 says:

Cheque crossed generally - Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124 says:

Cheque crossed specially - Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

12. Annexure A3 shows that between the two transverse lines, "account payee only" was written. So it would leave no doubt that the purport of the crossing is to give direction to the banker not to pay the cheque across the counter but to pay it only to a banker, who may be either the drawer banker or a different one. It is pointed out that by doing so it affords a protection and safeguard to the owner of the cheque, because by securing payment through a banker, it may easily be detected through whose or which account the money was paid. Though the words "not negotiable" are not written between the transverse lines, since the words "account payee only" are written, it can be found that the crossing of the cheque as mentioned above, restrained its negotiability, Sri. Sanal Kumar the learned counsel for the petitioner argues. But the learned counsel for the respondents would submit that since section 14 permits negotiation and when the indorsement on the back of the instrument is made for the purpose of negotiation, the person in whose favour it is indorsed becomes indorsee because by virtue of section 16(2) of the N.I. Act, the provisions of N.I. Act relating to payee apply to an indorsee as well.

13. It is also argued that the practice of writing the words "account payee only" does not, in fact, restrict the negotiability of the cheque but it is only intended to protect the drawer against theft or loss and that it only gives a direction to the receiving bank that the drawer desires to pay the particular cheque into the bank which keeps the account of the payee. Where the cheque is crossed generally the banker on whom it is drawn shall not pay it otherwise than to a banker. Similarly where the cheque is crossed specially, the banker to whom it is drawn shall not pay it otherwise than to a banker to whom it is crossed or his agent for collection.

14. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation. If the negotiability of any such instrument has not been restricted or excluded, the maker or indorsee can indorse and negotiate the instrument. A negotiable instrument may be negotiated only on payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

15. Section 126 says that where a cheque is crossed generally, the banker, on

whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

16. Relying on the decision of *Universal Guarantee Pty. Ltd. v. National Bank of Australasia, Ltd.* [1965] 2 All England Law Reports 98, it was argued that the words "not negotiable" do not prevent the cheque from being negotiated but mean that the holder of the cheque cannot have, and is not capable of giving a better title to the cheque than that of the holder from whom he obtained it and that the addition of the words "a/c payee" or "a/c payee only" refer to the payee named in the cheque and not the holder at the time of its presentment, but they do not prevent, in law, the further negotiability of the cheque. It is argued that the words, as aforesaid, merely operate as a warning to the collecting bank that if it pays the proceeds of the cheque to some other account it is put on inquiry and it may be in a difficulty in relying on any defence. That decision was rendered while considering the provisions of sections 86, 87 and 88 of Bills of Exchange Act, 1909-58 of the Commonwealth of Australia.

17. The decision in *Durga Shah Mohan Lal Bankers Vs. Governor General in Council and Others*, , has also been referred to here. There it was held:

A cheque is under the law a negotiable instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in section 126 of Negotiable Instruments Act, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially. There is no other effect of crossing. In *Carlton v. Ireland*, (1856) 25 L.J. Q.B. 113, Coleridge J. stated at p. 114:

It may be that the effect of the crossing is to require caution on the part of the person taking it, & to throw upon him the obligation of showing that he had taken it bona fide, & had given value for it; but it cannot be carried further without interfering with the negotiability of the instrument.

Lord Cairns C. said in *Smith v. The Union Bank of London*, (1875) 1 Q.B. D.31 34, that,

Whatever may have been the effect of a crossing, the negotiability of the cheque was not thereby restrained.

18. The learned counsel for the complainant/respondent submits that in the case on hand the negotiability of the cheque was not destroyed since it was not specifically noted "not negotiable" on the face of the cheque and as such even though the cheque was crossed its negotiability was not restrained.

19. In the decision of the Special Bench in *Tailors Priya, a firm Vs. Gulabchand Danraj, a firm*, following the English Law it was stated thus:

The law has been summarized thus in Halsbury's Law of England" 3rd Edn. Page 183 paras 3, 4, 7:

"Account payee". The marking to a particular account, as "account payee" or "account of A.B.", has no warrant or recognition in the Bills of Exchange Act, 1882. It does not affect the transferability of the cheque: See 1891-1 QB 435 (supra). Nor it is submitted, does it affect its negotiability. See 1924-1 KB 775 (supra). This particular crossing has been in use too long for it to be disregarded, and it must be taken to convey an intimation to the collecting banker that the proceeds of the cheque are only to be placed to the specified account (1904-2 KB 465 and (1914) 3 KB 356 CA). It is therefore, the custom of most banks to decline to take the cheque for any other account, and a disregard of the intimation would probably be deemed negligence ((1906) 23 TLR 65).

(1) that the marking "a/c payee" does not restrict the negotiability of the cheque, (See (1891) 1 Q.B. 435 CA) and

(2) that a cheque drawn payable to "T.C. And others or bearer", "A/c payee" is not payable to bearer, but should be credited to the account of "T.C. And others".

(3) Where a cheque is marked "a/c payee only, "not negotiable" and the payee indorses it to his banker for collection, the banker is a holder and indorsee of the cheque.

If, then, the collecting banker pays a cheque marked "a/c payee" otherwise than to that account, he does so at his own risk; presumably if he does not keep the payee's account he may refuse to handle the cheque.

It was also held in the said decision thus:

It is thus found that a cheque is a negotiable instrument and may be transferred or negotiated by indorsement and delivery, making the indorsee the holder in due course. But unlike other negotiable instruments, there are specific provisions with regard to crossed cheques. Those provisions have been mentioned above. If the words "not negotiable" are used with special crossing, then it is still transferable but not negotiable. The Negotiable Instruments Act does not provide specifically for a crossing, "a/c payee" or "a/c payee only". At one time it used to be thought in England that such indorsement had no legal effect and it was even thought that such indorsement invalidated a cheque. However, the practice of making such Indorsement is so widespread and has been going on for such a length of time, that it can no longer be said that such a crossing would invalidate a cheque. But, there has really been no satisfactory decision with regard to the legal consequences of such crossing. The two cases mentioned above, which are always cited, do not specifically deal with such Indorsement, except a passing observation of Lord Scrutton L.J. in (1924) 1 KB 775.

20. It was held that according to law, as it stands, a cheque payable to order or bearer and crossed "a/c payee" or "a/c payee only" but without the indorsement "not negotiable", is a negotiable instrument, and may be negotiated, but the

collecting banker has a duty to put the money, when collected, into the account of the payee indicated, and into no other account.

21. The decision in *M. George & Bros. v. Cherian* 1990(1) KLT 133 has also been referred to here. That was a case where a post dated cheque was issued by the first defendant to the 3rd defendant as a security for payment of amount due to him. Defendants 1 and 2 also contended that cheques were not negotiable and the plaintiff is not a holder in due course. The main contention urged by defendants 1 and 2 was that cheques are not negotiable instruments within the definition of section 13 of the Negotiable Instruments Act. The question for consideration in that case was whether mere scoring of the word "bearer" will make the instrument non-transferable and the endorsee therein will not become a holder in due course. It was found that if the 1st defendant wanted to make the cheque not negotiable, he should have indicated his intention by crossing the cheque and writing "not negotiable". The drawer could have made the instrument not negotiable by writing "payable only to the payee" named therein. That contention was Negatived and the appeal was dismissed by this Court.

22. The aforesaid decision was followed by the Division Bench in *Muthoottu Chitty Fund and Others Vs. V.C. Lukose and Others*, . There the contention was that when the word "bearer" had been scored off in the cheque, it lost its negotiability and then ceased to be a negotiable instrument. The contention that the scoring off of the word "bearer" manifested an intention of the maker to annihilate the negotiability of the document, was not accepted by the Division Bench. It was held that mere scoring off of the word "bearer" does not posit the existence of words indicating an intention that it shall not be transferable. It is not as though illustrations of such an indication of an intention are unavailable, in the handling of negotiable instruments during the course of the commercial revolution.

23. The learned counsel for the petitioner submits that as there were complaints of misusing the facility of crediting the proceeds of "account payee" cheques into the account of other customers, the Reserve Bank of India, after considering all aspects issued directions on 30.01.2006. The relevant portion of the directions in that notification No. RBI/2005-06/292 UBD.BPD. Cir. No. 30/14.01.062/2005-06 dated 30.01.2006 reads:

3. Being satisfied that in consonance with the legal requirements and in particular the intent of the Negotiable Instruments Act, and with a view to protect the UCBs being burdened with liabilities arising out of unauthorized collections, and in the interest of the integrity and soundness of the payment and banking systems, and in order to prevent recurrence of deviations observed in the recent past, the Reserve Bank has considered it necessary to prohibit the banks from crediting "account payee" cheque to the account of any person other than the payee named therein. The Reserve Bank accordingly directs the UCBs that they should not collect account payee cheques for any person other than the payee constituent.

4. Where the drawer/payee instructs the bank to credit the proceeds of collection to any account other than that of the payee, the instruction being contrary to the intended inherent character of the-"account payee" cheque, bank should ask the drawer/payee to have the cheque or the account payee mandate thereon withdrawn by the drawer. This instruction would also apply with respect to the cheque drawn by a bank payable to another bank.

5. These directions are issued in exercise of the powers conferred u/s 35A of the Banking Regulation Act, 1949 (AACs)

24. In the light of the aforesaid directions again circulars were issued to the banks stating that the bank should not collect "account payee" cheques for any person other than the payee constituent and that if the drawer/payee instructs the bank to credit the proceeds of collection to any account other than that of the payee, the bank should ask the drawer/payee to have the cheque or the account payee mandate thereon withdrawn by the drawer. It was also made clear that the said instruction will also apply with respect to the cheque drawn by a bank payable to another bank.

25. Relying on the decisions of the apex Court in *Corporation Bank Vs. D.S. Gowda and Another*, *Central Bank of India Vs. Ravindra and Others*, and *Sudhir Shantilal Mehta Vs. C.B.I.*, it is argued by the learned counsel for the petitioner that the circulars issued by the Reserve Bank of India in exercise of the powers under sections 35-A and 21-A, have statutory force. Such directions issued by the Reserve Bank of India were held to be valid and lawful. The circular/letter was meant for all banks. When such circulars are binding on the banks, it would be binding on the officers. So any omission or commission on the part of any authority or Officer of the Bank would amount to acting in violation of any direction of law. It was held by the apex court that direction of law need not be a law made by Parliament or a Legislature; it may be made by an authority having the power therefor.

26. The learned counsel for the petitioner would submit that when such directions were issued by the Reserve Bank of India to other banks they are bound by law to follow such directions, for, any omission or disobedience on the part of the officer would amount to acting in violation of those circulars/directions. Therefore, the learned counsel submits that if such a direction was issued to the Banks, then if a crossed cheque with the words "A/c payee only" was dishonoured on the ground that the person who presented the cheque claimed to be only an "indorsee" or "holder in due course" and not the "account payee", namely; to whose favour the cheque was drawn, then the indorsee or holder in due course of such a crossed -"Account Payee" cheque cannot sustain an action against the drawer of the cheque. The further direction in the circular, mentioned above, is that if an instruction is made by the payee contrary to the inherent character of "account payee" cheque then it is the duty of the bank to ask the drawer/payee to have the account payee mandate thereon withdrawn by the drawer. According to the learned counsel that would further make the

position manifest that such a cheque cannot be honoured if it is presented for collection by a person other than the "account payee".

27. It was held by the apex court in ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others, thus:

Section 21 deals with the power of RBI to control advances by banking companies. Section 21 empowers RBI to frame policies in relation to advances to be followed by banking companies. It further says that once such policy is made all banking companies shall be bound to follow them. Section 21(1) is once again a general provision empowering RBI to determine policy in relation to advances whereas Section 21 (2) empowers RBI to give directions to banking companies as to items mentioned there i.e. in Section 21(2). u/s 21(3) every banking company is bound to comply with directions given by RBI at the peril of penalty being levied for noncompliance. Section 35-A says that where RBI is satisfied that in the interest of banking policy it is necessary to issue directions to banking companies it may do so from time to time and the banking companies shall be bound to comply with such directions. Thus, in exercise of the powers conferred by Sections 21 and 35-A of the said Act, RBI can issue directions having statutory force of law.

Relying upon the aforesaid decision, the learned counsel for the petitioner submits that the drawer bank was precluded from honouring the cheque because it was presented by the "indorsee" or "holder in due course" and as such prosecution u/s 138 of N.I. Act, initiated by the "indorsee" or "holder in due course", is unsustainable. There can be no doubt that RBI is empowered to lay down conditions on which the banking companies will operate.

28. The learned counsel for the petitioner would submit that in the case on hand, since the cheque was crossed and it was written as "a/c payee only", there can be no doubt that negotiability of the instrument was restrained. In this connection, section 50 of the Negotiable Instruments Act and the illustration given to the section, which also is relevant, can be referred to here.

Section 50 reads:

The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations

B signs the following Indorsement on different negotiable instruments payable to bearer:-

(a) "Pay the contents to C only"

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C." These Indorsement exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These Indorsement do not exclude the right of further negotiation by C.

(underlined by me to lay emphasis)

29. Since in the case on hand the cheque was crossed in the manner indicated earlier, illustration (a) mentioned above would certainly be applicable, as the instrument, i.e. crossed cheque with indorsement "A/c. Payee only", would exclude the right of further negotiation. It is abundantly clear that in this case the cheque was crossed and it was noted as "a/c payee only". Further negotiation is thus excluded or restrained and as such the payee cannot indorse the instrument in favour of the complainant, in this case, so as to entitle or empower him to file a complaint against the drawer. No doubt, it does not affect the right of the indorsee to sue the indorser.

30. Section 51 also has relevance, which reads:

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Therefore, it is clear that if negotiability of the instrument has been restricted as mentioned in section 50, the payee cannot indorse the instrument in favour of another. Therefore, sections 50 and 51 also would reinforce the argument advanced by the learned counsel for the petitioner that the words employed "a/c payee only", after the cheque was crossed, would restrain the negotiability of the instrument. It is in the light of these provisions also the notifications issued by the Reserve Bank of India as referred to above, have to be understood.

31. Though it was not specifically noted on the face of the cheque "not negotiable", the fact that the cheque was crossed and as it was written "a/c payee only" would leave no doubt that the complainant, who is only an indorsee of such a crossed cheque, cannot maintain a complaint u/s 138 of N.I. Act. Therefore, I hold that the indorsee of a crossed cheque, where it was specifically noted "a/c payee only" cannot sustain an action for prosecution u/s 138 of N.I. Act. In the result this petition is allowed. The proceedings in S.T. No: 624/2004 of C.J.M. Court, Kottayam, will stand quashed.

Before parting with, I would like to place on record my deep appreciation for the

sincere effort made by Sri. Bechu Kurian, learned Amicus Curie and the learned counsel appearing for the parties for assisting the court.