

**Gopakumar vs Mathew John,**

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**SooperKanoon Citation :** [sooperkanoon.com/1444355](http://sooperkanoon.com/1444355)

**Court :** Kerala

**Decided On :** Oct-17-2022

**Judge :** Honourable Mrs. Justice Mary Joseph

**Appeal No. :** Crl.MC/532/2020

**Appellant :** Gopakumar

**Respondent :** Mathew John,

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH  
MONDAY, THE 17TH DAY OF OCTOBER 2022 / 25TH ASWINA, 1944  
CRL.MC NO. 532 OF 2020 AGAINST THE ORDER/JUDGMENT ST  
573/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I,  
DEVIKULAM PETITIONER/ACCUSED: GOPAKUMAR AGED 52  
YEARS S/O. PARAMESWARAN PILLAI, AMBURAN BUILDING,  
MANORAMA JUNCTION, KOTTAYAM TALUK, KOTTAYAM DISTRICT  
AND RESIDING AT GAYATHRIMADOM HOUSE, POOPPARA KARA ,  
POOPPARA VILLAGE, UDUMBANCHOLA TALUK, SANTHANPARA  
P.S, POOPPARA P.O, IDUKKI DISTRICT PIN 685 619 BY ADV  
GOPAKUMAR(Party-In-Person) RESPONDENT/COMPLAINANT &

STATE: 1 MATHEW JOHN, S/O. JOHN, MALEKUNNEL HOUSE, ADVOCATE DEVIKULAM, DEVIKULAM P.O, KDH VILLAGE, DEVIKULAM TALUK, PERMANENTLY RESIDING AT MALEKUNNEL HOUSE, POTTANKADU P.O, BISONVALLY VILLAGE, IDUKKI DISTRICT, PIN 685 565 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA 682 031 R1 BY ADV SRI.G.SREEKUMAR (CHELUR) R2 BY SRI.DENNIS DEVASSY, GOVT. PLEADER THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17.10.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:-

**MARY JOSEPH, J.**

----- Crl.M.C. No. 532 of 2020 ----- Dated this  
the 17th day of October, 2022

## **ORDER**

This is a petition filed by the accused in a prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act) seeking to invoke the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short Cr.P.C) to quash it. The copy of the complaint filed under Section 142 N.I. Act to launch the prosecution is produced alongwith the petition on hand as Annexure A1.

2. Shri. Joseph George, the Learned Counsel for the appellant raised the following contentions to justify his claim to quash Annexure A1 complaint.

1. Annexure A1 does not disclose an offence under Section 138 N.I Act.

2. Six cheques were issued by the petitioner herein to

the receiver appointed by the Munnar Special -:3:- Tribunal as security to safeguard the claim if any made by the receiver and those are therefore, not supported by a valid consideration or are issued to discharge any legally enforceable debt.

3. Annexure A1 complaint is filed in a personal capacity and not in the official capacity as a receiver.
4. Annexure A1 is hit by Section 219 of Cr.P.C.
5. Annexure A1 is silent regarding the date on which the intimation regarding lawyer notice was given to the accused.
6. There was only a single notice demanding the amount due under different cheques.
7. Cause of action is not shown in Annexure A1.

3. Though arguments are elaborated on the above counts,

those, in the view of this Court will not empower this Court to invoke the jurisdiction under Section 482 Cr.P.C to quash Annexure A1. It is pertinent to note on a reading of Annexure A1 that ingredients to attract the offences prima facie, are -:4:- incorporated. Rest of the allegations can only be decided during the trial proposed to be held on the basis of Annexure A1. The grounds elaborated being insufficient for invocation of jurisdiction under Section 482 Cr.P.C to grant the relief sought, CrI.M.C is dismissed. Sd/- MARY JOSEPH, JUDGE. ttb -:5:- APPENDIX OF CRL.MC 532/2020 PETITIONERS ANNEXURES : ANNEXURE A-1 CERTIFIED COPY OF THE COMPLAINT IN ST JUDICIAL 1ST CLASS MAGISTRATE COURT, DEVIKULAM ANNEXURE A-2 THE COPY OF ORDER DATED 23-03-2017 IN OP(C) NO. 817/2017 OF THIS HON'BLE COURT ANNEXURE A-3 TRUE PHOTOCOPY OF THE ORDER DATED 04-04- 2017 IN MTOP 8/2017 OF THE COURT OF MUNNAR SPECIAL TRIBUNAL ANNEXURE A-4 TRUE PHOTOCOPY OF ORDER DATED 24-04-2018 IN MTOP 8/2017 OF THE COURT OF MUNNAR SPECIAL TRIBUNAL ANNEXURE A-5 TRUE PHOTOCOPY OF THE JUDGMENT DATED 03- 07-2019 IN MFA (MT) OP 70/2018 OF THIS HON'BLE COURT. ANNEXURE A-6 THE PHOTOCOPY OF THE JUDGMENT DATED 26- 09-2019 IN OS 36/2017 OF THE HON'BLE MUNSIFF'S COURT, DEVIKULAM. -:6:-