

**Starline Agencies Vs. R.B. Agencies**

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**SooperKanoon Citation :** [sooperkanoon.com/725953](http://sooperkanoon.com/725953)

**Court :** Kerala

**Decided On :** Mar-08-2006

**Reported in :** II(2007)BC323; 2006(3)KLT485

**Judge :** K.R. Udayabhanu, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138

**Appeal No. :** Crl.A. No. 177 of 2001

**Appellant :** Starline Agencies

**Respondent :** R.B. Agencies

**Advocate for Def. :** K. Mohana Kannan, Adv.

**Advocate for Pet/Ap. :** Dinesh Mathew J. Muricken, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K.R. Udayabhanu, J.**

1. The appellant is the complainant in S.T. No. 293/1997, the proceedings initiated under Section 138 of the Negotiable Instruments Act in which the accused was acquitted.

2. It is the case of the complainant firm that it is dealers in pipe fitting equipment wholesale had supplied goods to the first accused firm on cash credit basis and A2 who is the owner of the first accused firm had issued the impugned cheque for Rs. 33,630/- towards the amount due as per bills dated 28.3.96, 1.4.96 and 2.5.96. The cheque was dated 30.11.96 and when it was presented, the same was got dishonored on the ground 'funds insufficient'. Lawyer notice was sent to which the accused had replied raising untenable contentions. The evidence adduced in the matter consisting the testimony of PWs. 1 to 4, and Exts. P1 to 10; and the defence examined DW-1 and Exts. D1 and D2 marked.

3. It is the case set up by the accused that he had purchased pipe fittings prior to 30.11.95 and the amount due towards the same was Rs. 33,630 for which cheque bearing No. 549309 i.e., the impugned cheque was issued. The above amount was paid in 4 instalments as per demand drafts dated 12.12.95 for Rs. 10,630/-, 6.12.95 for Rs. 10,000/-, 28.12.95 for Rs. 5,000/- and 31.1.96 for Rs. 5,000/-. According to him, receipt of the amounts were endorsed 'for non presentation of the cheque' on the photo copies of the relevant demand drafts. There was only a balance of Rs. 3000/-. But on 14.1.96, damaged pipe fittings for Rs. 2241/- were returned to the complainant and hence only Rs. 241/- is due.

4. The case of the complainant that when Ext. P1 cheque was presented, the same got dishonoured, lawyer notice was sent in time and as there was no payment as per the demand, the proceedings were initiated in time were proved from the version of PW-1, the proprietor of the complainant firm who was examined as PW-1. PW-2 the manager of the drawee bank has also testified with respect to the dishonour of the cheque and PW-3, another manager of the same bank has proved Ext. P7 ledger extract of the account of the accused. The complainant has produced the documents with respect to the dishonour of the cheque, despatch of notice and also Ext. P7 reply notice which would positively establish that the cheque was presented in time, lawyer notice was sent in time and that the same was received by the accused. I find that in the instant case, a detailed discussion as to the issue as to whether the amounts as contended by the appellant and disputed by the accused is due, is not warranted as Ext. P1 cheque so far as the year noted therein is concerned i.e. '96' has been subjected to very

manifest material alteration. There is overwriting and the same is done in a crude manner. This Court as well as the top court of land has held in unequivocal terms that if an alteration by erasure, interlineations or otherwise, is made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration so as to prevent the person who has made or authorised the alteration and those claiming under him, from putting the deed in suit to enforce against any party bound by it who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or made. *Loonkaran Setha v. Ivan E. John* : [1977]1SCR853 ; *Jawahar Trading Corporation v. Ramadas* 1989 (2) KLT 932; *Ramachandran v. Dinesan* : 2005(1)KLT353 . Evidently, the accused has not consented to the material alteration effected to the instrument. Hence, I find that the finding of the court below that Ext. P1 cheque has been subjected to material alteration is upheld. The appeal is dismissed.

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