

**George Vs. Jose**

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**SooperKanoon Citation :** [sooperkanoon.com/727215](http://sooperkanoon.com/727215)

**Court :** Kerala

**Decided On :** May-30-2006

**Reported in :** II(2007)BC365; [2006]133CompCas715(Ker); 2006(3)KLT863

**Judge :** K.A. Abdul Gafoor, J.

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

**Appeal No. :** Crl. A. No. 1145 of 2002

**Appellant :** George

**Respondent :** Jose

**Advocate for Def. :** K.G. Anil Babu and; Cyriac Kurian, Advs. and; P.M. Habee

**Advocate for Pet/Ap. :** Sebastian Davis, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K.A. Abdul Gafoor, J.**

1. In this appeal filed by the complainant, the only question that arises for consideration is whether there was demand, in terms of Clause (b) of the proviso to Section 138 of the [Negotiable Instruments Act, 1881](#), (for short 'the Act') for payment of the amount covered by the cheque in question.

2. The cheque was one issued by the accused, on 13.2.1993. It bounced for want of sufficient funds in the account maintained by the accused. These are not disputed facts. Ext.P4 is the notice issued by the complainant to the accused on 25.8.1993 demanding payment of the amount covered by the cheque. But, it did not reach the hands of the accused, though it was in the last known address of the accused, while he was in India. It was returned unserved on the reason that the accused had left for abroad. This is the defence adopted by the accused before me as well as before the Court below.

3. It is in evidence through DW.1, a jeep driver, that he had taken the accused as well as the complainant in his jeep to Thiruvananthapuram Airport and that the accused had left India for Muscat from Thiruvananthapuram on 13.2.1993. Thus, the complainant had gone to Thiruvananthapuram Airport on 13.2.1993 to see off the accused, who was leaving for Muscat. The cheque is also of the same date, obviously, the accused might have given the cheque before he left for Muscat. Thus, from the evidence of DW.1, it is clear that the complainant did have the knowledge that after drawing the cheque and handing over it to him, the accused had left India. In such circumstances, before making the statutory demand in terms of Clause (b) of the proviso to S. 138 of the Act, the complainant ought to have verified the whereabouts of the accused. The complainant did not do so. It was without doing so, the alleged demand was made as per Ext. P4 notice, which was returned back to the complainant unserved. Going by the passport details produced before the court below by the accused, he was away from India so that he could not have received Ext.P4. When the factum that the accused had left India for abroad was known to the complainant, he would have issued the statutory notice to the accused in his correct address, to lay a complaint under Section 138 of the Act, after verifying the whereabouts and address of the accused. Therefore, this is a case where there was no such statutory notice at all. Therefore, the finding of the court below cannot be stated to be faulty to invite interference from this court.

Appeal failed, dismissed.