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The **Kerala High Court** in the case of **Wilfred Jose vs Jayapal [CRL.A No. 1964 of 2008]** dated **May 18, 2026**, has held that in a prosecution under Section 138 of the Negotiable Instruments Act, the complainant discharges the initial burden when he enters the witness box and gives substantive evidence regarding the transaction and the execution of the cheque, including that the accused brought, wrote, signed and executed the cheque, and such evidence remains unshaken in cross-examination. Once that initial burden is discharged, the presumptions under Sections 118 and 139 of the NI Act become available to the complainant, and the court cannot reject the complainant's version on conjecture.

If the court has accepted that the accused himself wrote and signed the cheque, it cannot, in the absence of supporting material, hold that the transaction was otherwise than as spoken to by the complainant. The burden then shifts to the accused to rebut the presumptions either from the materials on record or by adducing independent evidence, added the Court.

The Court noted that once the complainant had entered the witness box and given substantive evidence regarding the transaction and the mode of execution of the cheque, and that version had not been shaken in cross-examination, the complainant had discharged his initial burden. The Court further noted that the accused had contended that cheque had reached the complainant through one Radhakrishnan, but the accused did not adduce any evidence in support of that case and did not examine Radhakrishnan.

The Court held that, after finding that the accused himself wrote and signed the cheque, the Magistrate could not, without supporting material, conclude that the underlying transaction was otherwise than as stated by the complainant.

Accordingly, the Court set aside the acquittal, convicted the accused under Section 138 of the NI Act, and sentenced him to simple imprisonment for one day till rising of the Court and payment of fine of Rs. 4.50 lakhs, of which Rs. 4.25 lakhs were directed to be paid to the complainant as compensation under Section 357(1)(b) CrPC, with default imprisonment of six months. The accused was directed to surrender before the Magistrate on May 29, 2026.

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