

**IN THE COURT OF THE SESSIONS JUDGE, SESSIONS DIVISION,
ALAPPUZHA**

Present: Smt. BHARATHI.S, Addl.Sessions Judge II

Friday the 24th day of April, 2026.

CRIMINAL APPEAL No.191/2025 (Filed on.16.10.2025)

From which court the appeal
is preferred

:

Chief Judicial Magistrate
Court, Alappuzha.

No. of the case in that Court

:

C.C.No. 321/2023

Appellant/Accused

:-

Sinanudheen.H, aged 47 years,
Moorikkulam,Kottamkulangara
Ward, Alappuzha, Kerala.

(By Adv.Sri.Sreejesh.B)

Respondents/Complainants :-

1. Shejeer S, aged 32 years,
S/o. Salim
T.S.Manzil, Mullathuvalappu,
Mullathu Ward, Thiruvampady
P.O., Alappuzha, Kerala.
2. The State of Kerala,
represented by the Public
Prosecutor, Sessions Court,
Alappuzha.

Sentence and law under which
it was imposed in that court

:

Accused is convicted and
sentenced to undergo Simple
Imprisonment for a period of 4
(four months) and to pay a
compensation of Rs. 2,50,000/-
(rupees two lakh and fifty
thousand only) to the
complainant u/s. 357(3)
Cr.PC. In default, to undergo

Simple Imprisonment for a period of 3 (three months).

Whether confirmed, modified, revised, and if modified, the modification

:

Criminal appeal is partly allowed by confirming the conviction in CC.321/2023 of Chief Judicial Magistrate Court, Alappuzha and modifying the sentence to undergo imprisonment till the raising of court and to pay a fine of ₹2,95,000/- (Rupees Two lakh and ninety five thousand only), in default, simple imprisonment for three months u/S.138 of the Negotiable Instruments Act. Fine amount, on realisation shall be paid to the complainant as compensation u/S.357(1) of the Code of Criminal Procedure.

Dates of

Presentation	Filing	Notice issued by court to appear	Bail bond if the appellant is let out on bail	Appellant ordered to appear	Hearing	Sentence or order
18.10.25	16.10.25	21.10.25	25.10.25	18.10.25	17.04.26	24.04.26

This appeal having been finally heard on 17.04.2026 and the court on 24.04.2026 delivered the following:-

JUDGMENT

1. This is an appeal filed u/S.415 of the Bharatiya Nagarik Suraksha Sanhita challenging the judgment of conviction and sentence passed by the Chief Judicial Magistrate Court, Alappuzha in CC.321/2023 dated 20.09.2025.
2. CC.321/2023 was filed before the trial court based on a complaint alleging an offence punishable u/S.138 of the Negotiable Instruments Act. As per the impugned judgment, the trial court found the accused guilty, convicted and sentenced him to undergo simple imprisonment for a period of four months u/S.138 of the Negotiable Instruments Act with a direction to pay compensation of ₹2,50,000/- to the complainant u/S.357(3) of the Code of Criminal Procedure, in default, to undergo simple imprisonment for three months. Aggrieved by the said judgment of conviction and sentence, accused preferred this appeal.
3. Parties to the appeal are referred hereunder in accordance with their status before the trial court for the sake of convenience.
4. Case of the complainant placed before the trial court, in brief, is the following:- Complainant and accused are friends. Accused borrowed ₹2,50,000/- from the complainant on 25.04.2022. Towards the repayment of the said amount, accused issued Ext.P1 cheque dated 08.08.2023 in favour of the complainant. When the cheque was presented by the

complainant, the same was dishonoured for the reason 'drawer's signature incomplete/differs'. The complainant thereafter issued notice to the accused through his Advocate. But, he did not respond. Hence the complaint.

5. On appearance of the accused before that court, the said court after furnishing the relevant records, read over the particulars of offence and explained to the accused, to which he pleaded not guilty. Complainant thereafter examined PW1 and marked Exts. P1 to P5 before the trial court. On closing the evidence of the complainant, the trial court examined the accused u/S.313 of the Code of Criminal Procedure. No defence evidence adduced by the accused. After hearing both sides, the trial court passed the impugned judgment.
6. As per the impugned judgment, the trial court found that all the legal requirements necessary for a prosecution u/S.138 of the Negotiable Instruments Act were complied in the case. Though the accused has denied the signature on Ext.P1 cheque, the trial court as per the impugned judgment found that the accused did not take any steps to substantiate and prove the said contention. The trial court further found that the complainant has established the fact that Ext.P1 cheque was signed by the accused in his presence and therefore the accused had a burden to rebut

the presumption u/S.139 of the Negotiable Instruments Act. According to the trial court, nothing material was brought out during the evidence of PW1 to doubt his claim regarding execution of the cheque. The fact that the accused did not even send any reply to the statutory notice was also taken note of by the trial court. According to the trial court, the accused did not rebut the presumption u/S.139 of the Negotiable Instruments Act.

7. Following are the points for consideration in the appeal:-
 1. Whether the accused issued Ext.P1 cheque to the complainant in discharge of a legally enforceable debt?
 2. Whether the accused has committed offence punishable u/S.138 of the Negotiable Instruments Act?
 3. Whether any interference is required on the impugned judgment of conviction and sentence ?
 4. What shall be the proper order ?
8. Heard both sides.

Points 1 to 4:-

9. PW1 is the complainant himself. He deposed supporting the allegations in the complaint. According to him, accused is his friend and he borrowed ₹2,50,000/- and in discharge of the said liability, accused issued Ext.P1 cheque from his house. He further deposed that the cheque was

dishonoured for the reason 'drawer's signature incomplete/differs' on 09.08.2023 and the accused did not respond inspite of issuance of a statutory notice.

10. On going through the records marked on the side of the complainant, it is found that Ext.P1 is a cheque dated 08.08.2023 for ₹2,50,000/-. The payee is the complainant and the drawer is the accused. Ext.P2 is the dishonour memo of Ext.P1 cheque which would show that the said cheque was dishonoured on 09.08.2023 for the reason 'drawer's signature incomplete/illegible/differs/required'. Ext.P3 is the copy of statutory notice dated 23.08.2023 sent to the accused, Ext.P4 is its postal receipt and Ext.P5 is the acknowledgment card. As per Ext.P5, the notice was received by the accused on 24.08.2023. The complaint was filed on 05.10.2023 (complaint is seen signed and the filing date is seen endorsed by the complainant as 05.10.2023 and the verification is seen done on 07.10.2023. No court seal with date is seen affixed on the complaint). It has been held by the Hon'ble Apex Court in **Laxmi Dyechem (M/s) v. State of Gujarat and Others** reported in **2012 (4) KHC 826**, that dishonour on the ground that the "signatures do not match" or that the "image is not found" implies that the specimen signature do not match the signature on the cheque which would constitute a dishonour within the

meaning of Section 138 of the Act. The Hon'ble Apex Court held that so long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence u/S.138 subject to other conditions prescribed being satisfied. Therefore, it can be seen from the above documents that all the legal formalities for a prosecution u/S. 138 of the Negotiable Instruments Act have been fulfilled in the case and the complaint has been filed within the statutory time period.

11. The accused has taken a contention that he has no acquaintance with the complainant. He took a defence that he has issued a blank unsigned cheque to one Alexander in connection with a chit transaction and he did not return the said cheque even after the closure of transaction with him. According to him, the said cheque was misused by the complainant and Alexander by filing this case. He denied the signature in Ext.P1.
12. When the accused denied the execution, it is for the complainant to satisfactorily prove the same. Then only he is even entitled for the benefit u/S.139 of the Negotiable Instruments Act.
13. U/s.139 of the Negotiable Instruments Act,

“It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature

referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability”.

14. As said earlier, PW1 has deposed about the transaction claimed by him.

During his cross examination, he deposed that accused is acquainted with him for more than the last three years. He further deposed that the accused signed in Ext.P1 cheque in front of him from his house. Though the accused has contended that the cheque was forged and exploited in this case by the complainant joining hand with one Alexander, there is nothing in the evidence of PW1 that the complainant has got any acquaintance or connection with any such Alexander. Accused did not even disclose the address of the said Alexander. In spite of denying the signature in Ext.P1, the accused has not taken any steps to substantiate his contention. He did not also bother to enter the witness box and to face the cross examination regarding his contention. As such, on going through the evidence of PW1 and on a reanalysis of the same, it is found that there is nothing to disbelieve the claim of PW1 regarding the transaction and execution of Ext.P1 cheque by the accused. It is also highly unbelievable that a person would receive an unsigned blank cheque from another person as claimed by the accused for any reason, what so ever it may be. Considering the above, it is found that there is no merit in the contention

of the accused that the signature on Ext.P1 cheque is not that of him. There is also no evidence on the side of the accused to the effect that his account had sufficient fund on the date of Ext.P1 cheque.

15. On analysing the evidence placed before the trial court, it is found that the complainant has succeeded in satisfactorily proving the execution of Ext.P1 cheque by the accused.
16. In **Sunitha v. Sheela Antony** reported in **2020 (3) KHC 138**, the Hon'ble High Court of Kerala held as follows:

“Once execution of the cheque by the accused is proved, the presumption under Section 139 of the Act comes into play. The burden is upon the accused to rebut the presumption. It is obligatory on the court to raise the presumption under Section 139 of the Act in every case where the factual basis for raising the presumption is established. It is a presumption of law as distinguished from a presumption of fact. When the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion. But this does not preclude the person against whom the

presumption is drawn from rebutting it and proving the contrary”.

17. In the light of the above dictum and in view of the provision u/S.139 of the Negotiable Instruments Act, the complainant is entitled for a presumption under this Section.
18. The question now to be considered is whether the accused has succeeded in satisfactorily rebutting the presumption available to the complainant. In the decision stated above, the Hon’ble High Court has also held as to how and when the presumption can be treated as rebutted. The Hon’ble High Court held as follows:

“In the case of a mandatory presumption, the burden which rests on the accused person would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable”.

19. In the case on hand, on analysing the evidence placed, it is found that accused did not succeed in satisfactorily rebutting the presumption available to the complainant. The accused has no case that he has taken any legal action against the complainant or the above said Alexander claimed by him alleging any misuse of the cheque. In spite of receiving the statutory notice, he did not even send any reply. All these facts would show that the accused did not succeed in satisfactorily rebutting the presumption available in favour of the complainant. It is also found that the complainant has succeeded in satisfactorily proving the offence alleged against the accused u/S.138 of the Negotiable Instruments Act. The trial court has properly appreciated the evidence on record, found the accused guilty and convicted him u/S.138 of the Negotiable Instruments Act. I find no reason to interfere with the said finding.
20. The judgments of the Hon'ble Apex Court and the Hon'ble High Court with respect to the imposing of sentence in cases relating to offence u/S.138 of the Negotiable Instruments Act are relevant at this stage.
21. In ***Vijayan v. Baby and another***, the Hon'ble Apex Court held as follows:
- “The Courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per***

annum as the reasonable quantum of loss) and direct payment of such amount as compensation".

22. In **Jacob K.M v. State of Kerala and Another reported in 2020 (1) KHC 291**, the Hon'ble High Court of Kerala dealt with regarding the sentence to be imposed in a case u/S.138 of the Negotiable Instruments Act. In the above decision, the Hon'ble High Court of Kerala held as follows:

"Coming to the question of sentence, it is to be noted that the gravity of an offence under Section 138 of the Act cannot be equated with an offence under the Indian Penal Code or other criminal offences. An offence under Section 138 of the Act is almost in the nature of a civil wrong which has been given criminal overtones. Substantive sentence of imprisonment shall not be imposed in such cases except in exceptional circumstances. At the same time, direction to pay compensation to the complainant by way of restitution in regard to the loss on account of dishonour of the cheque shall be made. It would mean not only the payment of the cheque amount but interest thereon at a reasonable rate".

23. On going through the impugned judgment, it is seen that the trial court has imposed a sentence of simple imprisonment for four months and directed to pay compensation of ₹2,50,000/-, in default, simple imprisonment for three months. Ext.P1 cheque is for ₹2,50,000/- and is dated 08.08.2023. The impugned judgment was pronounced on 20.09.2025, i.e., after completion of two years and one month. Therefore, if simple interest of 9% as directed in ***Vijayan v. Baby and another*** is calculated for two years, the interest would come to ₹45,000/-. If this amount is added to the cheque amount, the total would come to ₹2,95,000/-. Therefore, the sentence imposed by the trial court cannot be found as correct. In view of the above dictums, the sentence imposed on the accused is to be modified to one of imprisonment till the raising of court and fine of ₹2,95,000/-, in default, simple imprisonment for three months with a direction to pay the fine amount to the complainant as compensation u/S.357(1) of the Code of Criminal Procedure. Since the substantive sentence is reduced, imposition of fine will not amount to enhancement of sentence. The Criminal Appeal is therefore to be partly allowed by confirming the conviction and modifying the sentence. Points are answered accordingly.

24. In the result, criminal appeal is partly allowed by confirming the conviction in CC.321/2023 of Chief Judicial Magistrate Court, Alappuzha and modifying the sentence to undergo imprisonment till the raising of court and to pay a fine of ₹2,95,000/-(Rupees Two lakh and ninety five thousand only), in default, simple imprisonment for three months u/S.138 of the Negotiable Instruments Act. Fine amount, on realisation shall be paid to the complainant as compensation u/S.357(1) of the Code of Criminal Procedure.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 24th day of April, 2026.

Sd/-

BHARATHI S.

ADDL. SESSIONS JUDGE-II

APPENDIX:- NIL

Id/-

ADDL. SESSIONS JUDGE-II