IN THE COURT OF ADDITIONAL SESSIONS JUDGE – I, ALAPPUZHA
Present: Sri.Roy Varghese, Addl.Sessions Judge – I
Wednesday the 25th day of March, 2026

CRIMINAL APPEAL No. 194/2024
Filed on: 24.10.2024

From which Court the appeal is preferred	:	Judicial First Class Magistrate's Court-IV, Alappuzha.
No. of the case in that Court	:	ST No. 1/2021
Appellant/Accused:-	:	1. M/S. Travancore Paints & Polimers, Mancombu, Thekkekkara P.O., Kuttanadu represented by its proprietor Sunny Thomas. 2. Sunny Thomas, S/o K. Thomas, Kalathil House, Mancombu, Thekkekkara P.O., Kuttanandu.

(By Adv. Kiran Lal Dilawar)

Respondents:-	:	1. Adithya Bankers & Chits, Mullackal, Alappuzha represented by its proprietor R. Anilkumar, S/o Raghavan, Mullacakal, Alappuzha. 2. State of Kerala represented by its Chief Secretary Thiruvananthapuram through Public Prosecutor, Alappuzha.

(R1. by Adv. Bijily Joseph)

Sentence and law under which it was imposed in that Court : The impugned judgment dated 30.09.2024 in ST No. 01/2021 in the files of the Judicial First Class

Magistrate's Court-IV, Alappuzha is hereby modified. The conviction of the appellants/ accused Nos 1 & 2 for the offence punishable u/S.138 of the N.I Act is hereby confirmed. The appellants/accused Nos. 1 & 2 are, thus, sentenced to undergo imprisonment till the rising of the court and to pay compensation of ₹.2,39,000/- to the 1st respondent/complainant. In default of payment of compensation, he shall undergo simple imprisonment for a further period of two months. The bail bonds of the appellants/accused Nos. 1 & 2 stand cancelled and is directed to surrender before the Trial Court to serve out the sentence.

This appeal allowed in part, accordingly.

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

Dates of

Presentation	:	24.10.2024
Filing	:	24.10.2024
Notice issued by Court to appear	:	28.10.2024
Bail bond if the appellant is let out on Jail	:	--
Finally heard on	:	17.03.2026
Judgment	:	25.03.2026

This Criminal Appeal having been finally heard on 17.03.2026 and the Court on 25.03.2026 delivered the following:-

J U D G M E N T

This appeal arises from the judgment dated 30.09.2024 in ST No. 01/2021 in the files of the Judicial First Class Magistrate's Court-IV, Alappuzha in a private complaint filed under Ss. 190 & 200 of Cr.P.C. r/w. S.142 and convicting the accused therein for the offence punishable u/s.138 of the N.I. Act. The 1st appellant is the 1st accused proprietorship concern represented by the 2nd appellant/ 2nd accused proprietor; and the 1st respondent is the complainant respectively in the Trial Court. The 2nd respondent is the State of Kerala represented through the Public Prosecutor.

2). The learned Magistrate, after trial, convicted the accused (both accused) and sentenced him u/s.255(2) Cr.P.C to simple imprisonment for a period of 3 months and to pay compensation of ₹.4,27,980/- to the complainant u/S.357(3) of Cr.P.C.; and in default of which the accused shall undergo simple imprisonment for a further period of 2 months.

3). The prosecution case in the complaint is that the 1st respondent/complainant is a proprietary concern engaged in money lending business and represented by its proprietor; that the 1st appellant/1st accused is also a proprietary concern represented through the 2nd accused, its proprietor; that on 07.09.2012 the latter borrowed an amount of ₹.2,00,000/- from the former; and towards the discharge of the said liability, the latter executed and issued a post-dated cheque for a sum of ₹.2,13,990/-, together with interests, dated 17.03.2013 to the former. Upon presentation of the said cheque for collection, it dishonoured for the reason 'funds insufficient' and hence instituted the above complaint after statutory notice.

4). On the side of the prosecution, PW-1 & PW-2 were examined and Exts.P-1 to P-7 series marked. Exts. X-1 to X-3 marked through PW-2. On the defence side, DW-1 examined and no documentary evidence. After trial, the learned Magistrate convicted and sentenced the appellant/accused as above, challenging which this appeal.

5). Upon hearing the learned counsels on either side and on perusing the records as well as on going through the facts and circumstances of the case, the points that arise for consideration in this case are as follows:-

(*i*) *Whether the Ext.P-1 cheque was executed and issued by the appellant/ accused to the 1st respondent/ complainant?*

(ii) Whether the Ext.P-1 cheque is supported by valid consideration?

(iii) Whether statutory procedures have been complied by the 1st respondent/ complainant?

(iv) Whether the impugned judgment dated 30.09.2024 in ST No. 01/2021 in the files of the Judicial First Class Magistrate's Court-IV, Alappuzha, is to be set aside or modified?

6). **The Points (i) to (iii)** :- These points taken together for consideration for brevity of convenience as they are interconnected. The learned counsel for the appellant vehemently contended that the 1st respondent not established that it is a licenced financier to claim interests. In the cross-examination of PW-1, while the licence and authority of the 1st respondent to run a financial firm was raised, he undertook to produce the document/licence, but not done so. In the absence of producing the licence for running a financing firm, the interest claimed by the Ext.P-1 cheque would be illegal and hence, not a legally enforceable debt. The borrowed amount is only ₹. 2 lakhs, but Ext. P-1 cheque is for ₹. 2,13,990/-, which includes interests claimed without authority and therefore, it is without valid consideration. Further, the execution and drawing of the Ext.P-1 cheque not proved by the respondent/ complainant. The foundational facts for invoking presumptions u/S.118 & 139 of the N.I Act not brought out on record by the 1st respondent. In the absence of discharging the fundamental elements to prove drawing of the cheque and a valid consideration, the presumptions are not attracted. Hence, the appellant/accused is sought to be acquitted.

7). Per contra, the learned counsel for the 1st respondent/ complainant argued that the 1st respondent had revealed the licence number of the financial firm in the complaint itself. Prior to it, he had issued Ext.P-3 Demand Notice and in the Ext.P-5 Reply Notice, this appellant not refuted the licence or authority of the 1st respondent firm to conduct a financial firm. The 1st respondent duly proved the execution of the Ext. P-1 cheque by the appellant by deposing as PW-1 and the signature in it corroborated by PW-2 Bank Manager on verification of the signatures of the appellant in the Ext. X-1 Account Opening Form and Ext. X-2 series Customer Information Forms. Since all the procedural formalities duly complied and the presumptions under the N.I Act unrebutted, the appeal is only to be dismissed.

8). On a perusal of the materials on record, the 1st respondent/ complainant gave evidence through its proprietor by swearing an affidavit *in-lieu* of chief-examination as PW-1 stating that on 07.09.2012, he paid ₹.2,00,000/- to the 2nd appellant/ 2nd accused at the Office of the 1st respondent. The Ext.P-1 cheque executed in his presence and handed over to him by the 2nd appellant towards the discharge of this liability. As brought out in evidence, upon presentation of the Ext.P-1 cheque for collection, it was dishonoured for the reason 'funds insufficient' with an endorsement as Ext.P-2 dishonour memo. Thereupon, the complainant caused to issue Ext.P-3 Lawyer's Notice dated 01.07.2013 demanding cheque amount as could be seen evident from Ext.P-4 postal receipt dated 01.07.2013 and received by the appellants by Exts.P-7 series A/D Cards. No amount paid towards the discharge of the liability. Thus, the initial burden discharged by the complainant u/s.138 of the N.I Act and hence the presumptions u/s.139 & 118 of the N.I Act have been attracted.

9). PW-2 is the Branch Manager of Federal Bank, Alappuzha Branch, who deposed that the 1st accused having a Current Account with that Bank and she produced the Ext.X-1 Account Opening Form along with Ext.X-2 series Customer Information Forms. Ext.X-3 is the Certification u/S. 65 B of the Indian Evidence Act attached to the Exts. X-1 & X-2 series. Ext. P-1 Cheque put to her and she identified the signature of the 2nd accused. During cross-examination, she refuted the suggestions regarding differences in the signature in it to that of the Exts. X-1 & X-2 series.

10). Now the burden shifted to the appellant/ accused to establish that the presumption u/s.139 of the NI Act is rebutted. Regarding the burden of proof for rebutting the presumption u/s.139 of NI Act, the standard of proof required is only by preponderance of probabilities. The Apex Court in *Rangappa Vs. Mohan (2010(2) KLT 682)* held that *'it is a settled position that an accused has to rebut the presumption u/s.139, the standard of proof for doing so is that of preponderance of probabilities'.*

11). During cross-examination of the 1st respondent/ complainant as PW-1, he stated as could produce the documents of registration of the 1st respondent financial firm under the Kerala Money Lenders Act. But the licence or documents of registration under the Kerala Money Lenders Act not produced by the 1st respondent. The 1st respondent already revealed the Licence Number of the firm issued from the Commercial Taxes Department of the Government of Kerala.

12). Here, the 1st respondent tendered evidence as PW-1 that he paid ₹. 2,00,000/- to the 2nd appellant and this 2nd appellant executed and issued Ext.P-1 cheque for an amount of ₹. 2,13,990/-, which includes interests for a period of six months. The amount was paid on 07.09.2012 and a post-dated cheque dated 17.03.2013 issued towards the discharge of the liability including interest for the amount received by the 2nd appellant. On calculating the interests of ₹. 13,990/- for the ₹. 2 lakhs for a period of 6 months, the interests claimed per annum is @ 14%. This cheque dishonoured on 15.06.2013 and after statutory notice, the complaint was filed before the Judicial First Class Magistrate’s Court, Alappuzha on 26.07.2013. Ext.P-6 is a receipt executed and issued by the appellant/accused admitting the receipt of ₹. 2,00,000/- from the 1st respondent agreeing to repay this amount together with interests @ 14% and thus calculated ₹. 2,13,990/- as on 17.03.2013. The execution of this receipt is attested by his wife. The 1st respondent financial firm is not relying on the Account Statements for claiming pending arrears in the interests, but for the cheque amount as compensation. No exorbitant interest claimed by the 1st respondent. In individual commercial transactions it is lawful to claim rate of interest at par with the Benchmark Prime Lending Rate (BPLR) of the year 2012, which was @ 14.50%. In the matter of mutually agreed interests and that too @ 14%, the 1st respondent firm need not establish that it is a financial firm.

13). Going by the statement during the questioning u/S. 313 of Cr.P.C. the appellant/ accused submitted that he is innocent and the signature in Ext.P-1 is forged. He has no dispute regarding the licence for running of financial firm by the 1st respondent in the statement.

14). The 1st appellant is represented by the 2nd appellant, who mounted the box as DW-1 and deposed that two blank cheques along with the RC particulars of his vehicle received by the 1st respondent while receiving amounts in a daily chit conducted by the 1st respondent. He deposed as received ₹. 1,80,000/-, which according to him was repaid by installments on every Saturdays. An amount of ₹.1,65,000/- repaid as such and thereafter, could not repay due to financial stringency. He disputed signing of Ext.P-1 cheque. During cross-examination, he admitted the signature in Ext.P-6 Receipt. Ext.P-1 cheque put to him and stated as issued to the 1st respondent.

15). In the Ext.P-5 Reply Notice the appellant admitted the receiving of ₹. 2,00,000/- and execution and issuance of a cheque by him. According to him, an amount of ₹. 26,000/- already been collected by the 1st respondent towards interests and thereafter, he repaid ₹. 1,00,000/- by two installments. Thus, he stating in the Reply Notice as repaid ₹. 1,26,000/- and there is a pending liability of ₹. 74,000/- only.

16). Thus the appellant/accused not having a consistent version either in the suggestion to PW-1 or in the explanation to questioning under Sec.313 of the Code or in the Ext.P-5 Reply Notice or in his evidence as DW-1. He has taken divergent contentions which are mutually destructive to each other. In the Ext.P-5 Reply Notice, it is admitted that the appellant had received ₹. 2,00,000/- and executed and issued a cheque to the 1st respondent while receiving this amount. As per this Reply Notice, he stating as repaid ₹. 1,00,000/- and that ₹.26,000/- collected by the 1st respondent from him towards interests, but no documents. In the deposition as DW-1, he stating as repaid ₹. 1,65,000/-, but no records. Ext. P-6 Receipt acknowledging the liability of the cheque amount. There is no dispute or challenge regarding this receipt, rather it is admitted in cross-examination of DW-1 (2nd appellant).

17). From a total evaluation of the materials on record, the case put forward by the prosecution seems to be more probable. Thus, the appellant/ accused has not successfully rebutted the presumptions u/Ss. 118 & 139 of the NI Act.

18). The 1st respondent/complainant adduced evidence to substantiate his contentions. As the case under consideration of this appeal is concerned, the appellants/accused Nos. 1 & 2 not succeeded in discharging the burden to rebut the presumption u/S 139 of the statute. Accordingly, it is found that the Ext.P-1 cheque drawn by the appellant towards the discharge of a legally recoverable debt and the offence u/S.138 of the N.I Act is attracted.

19). All the procedural mandates as contemplated under the provisions of the Negotiable Instruments Act have been duly complied by the 1st respondent/ complainant as it has been rightly found by the Trial Court. These points found against the appellant.

20). **Point No. (iv)**:- As already discussed above, the appellant/ accused has not successfully rebutted the presumptions u/Ss. 118 & 139 of the NI Act. The 1st respondent/complainant complied all the procedures in the above cases. There is nothing to interfere with the findings and conviction by the trial court in all the above cases.

21). In the matter of sentence, the learned Magistrate imposed compensation amounts in excess of the cheque amount considering interests for the cheque amount, expenses of the litigation etc. In this aspect, it would be appropriate to have a glance on the decision of the Hon'ble High Court in *Sasikumar Vs. Ushadevi (2023 KER 61128)*, wherein it is held:

"A reading of Chapter XVII of the Act and the laudable object sought to be

achieved by the legislation, and its interpretation on the point of sentencing, leaves no room for any doubt that the criminal court while sentencing an accused for the offence under Section 138 of the Act has to keep the compensatory part in mind, which has to be commensurate to the cheque amount and not to exceed twice the amount, so that it can be appropriated towards the compensation payable to the complainant under Section 357 of the Code."

22). In the decision *Kalamani Tex (M/s.) and Another Vs. P. Balasubramanian (2021 (2) KHC 517),* the Hon'ble Apex Court considered the matter of award in compensation and para 20 of it is extracted hereunder:

"As regard to the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum."

23). Thus, the Hon'ble High Court as well as the Hon'ble Supreme Court reiterating the principle of awarding compensation upto twice the amount of cheque amount as levied under S.138 of the NI Act.

24). In the case on hand, the above cheque is dated

17.03.2013 and the above complaint was filed on 26.07.2013, after complying all the statutory formalities. On 04.10.2017, the 1st respondent/complainant filed proof affidavit. This appellant/accused was absconding and this case included in the LP Register. This case delayed due to Covid-19 pandemic and thereafter, he surrendered before the trial Court upon information of the Non-Bailable Warrant. On 17.03.2021, he was again released on bail. Subsequently, as per the request of the accused, cross-examination of the PW-1 adjourned and he abstained from appearing in the Court. Again Non-Bailable Warrant issued against the accused, bail bond forfeited and case delayed as he was not appearing.

25). Thus, the evidence could be proceeded only from 03.04.2023 onwards due to the dilatory tactics of the appellant. The 1st respondent is entitled for compensation in excess of the cheque amount, which is just and reasonable considering the litigation cost, interests as well as depreciation of money value.

26). However, the learned Magistrate fixed compensation as double the cheque amount, even without framing a point as to quantum of compensation or a separate hearing for the same. Therefore, the sentence of imposing exorbitant compensation warrants interference by this Court. It would be appropriate to award ₹.25,000/- as additional compensation, in excess of the cheque amount.

In the result, the impugned judgment dated 30.09.2024 in ST No. 01/2021 in the files of the Judicial First Class Magistrate's Court-IV, Alappuzha is hereby modified. The conviction of the appellants/ accused Nos 1 & 2 for the offence punishable u/S.138 of the N.I Act is hereby confirmed. The appellants/accused Nos. 1 & 2 are, thus, sentenced to undergo imprisonment till the rising of the court and to pay compensation of ₹.2,39,000/- to the 1st respondent/complainant. In default of payment of compensation, he shall undergo simple imprisonment for a further period of two months. The bail bonds of the appellants/accused Nos. 1 & 2 stand cancelled and is directed to surrender before the Trial Court to serve out the sentence.

This appeal allowed in part, accordingly.

(Dictated to the Confidential Assistant, and transcribed by him, corrected and pronounced by me in open Court on this day, the 25th day of March, 2026).

Sd/-
ROY VARGHESE,
ADDL.SESSIONS JUDGE- I.

APPENDIX:- NIL

Id/-
ADDL.SESSIONS JUDGE- I.

Fair copy of Judgment in
Crl.Appeal 194/2024
Dated: 25.03.2026