

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE**AMBALAPUZHA**

Present : Aiswarya Ann Jacob

Judicial Magistrate of First Class

Dated this, the 27th day of March, 2026.

S T No. 659/2017

Complainant : Alleppey Hill Produce Trading & Processing
Co. Ltd represented by its Director
Rani Antony, aged 50 years,
W/o. Antony Chacko, Ettuketil House,
Chathanadu, Alappuzha.

Rep. by Adv. B. Sivadas

Accused : Omana KM, aged 38 years, W/o. Prasannan,
Parappil, Mannancherry, Alappuzha.

Rep. by Adv. Vijayakumar

Offence : U/s.138 of Negotiable Instruments Act

Plea : Not guilty

Finding : **Guilty**

Sentence or Order : In the result, the accused is **convicted** under section 255(2) of the Code of Criminal Procedure, 1973 to undergo simple imprisonment till rising of the court and is directed to pay a sum of Rs. 1,53,230/- (One Lakh Fifty Three Thousand Two Hundred and Thirty Only). In default of payment of fine, the accused shall undergo Simple imprisonment for a period of one month. The fine amount when paid is directed to be paid to the complainant as compensation under section 357(1) (b) of the Criminal procedure Code, 1973.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's name	Occupation	Residence	Age
	Omana KM	W/o. Prasannan		Parappil, Mannancherry, Alappuzha.	38

DATES OF

Occurrence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of Evidence
01.12.15	20.03.17	08.09.17	08.09.17	-	19.01.18	06.01.26

Close of trial	Sentence/ Order	Service of Copy of Judgment or finding on account	Explanation of delay	Period of detention undergone during investigation, inquiry of trial for the purpose of section 428 Cr.P.C.
26.03.2026	27.03.2026	...	No delay	...

This case having been heard on 26.03.2026 and the court on 27.03.2026 delivered the following :

J U D G M E N T

1. This is a case arising out of a private complaint filed by the complainant alleging offence punishable under section 138 of the Negotiable Instrument Act (hereinafter referred to as NI Act).

2. Complainant's case, in brief, is as follows : The accused owed the complainant firm an amount of Rs.99,500/- and issued a cheque bearing number 399908 for Rs. 99,500/- (Ninety Nine Thousand Five Hundred Only) dated 01.12.2015 drawn on his account with the South Indian Bank Ltd, Alappuzha Branch. On the assurance of the accused that there are sufficient funds in his bank account to honour the cheque, the complainant presented the cheque through his account with the South Indian Bank Ltd, Alappuzha Branch, for collection and the same was dishonoured and returned unpaid for the reason "Funds Insufficient". Dishonor memo was issued by the bank on 17.12.2015. A lawyer notice dated 15.01.2016 was sent to the accused demanding the payment. The notice was received by the accused but neither any reply nor payment was made by the accused. As the accused failed to repay the cheque amount within 15 days from the date of receipt of the notice, the accused has committed the offence punishable under section 138 of the Negotiable Instrument Act and hence this complaint.
3. After perusing the complaint, cognizance was taken for the offence u/s.138 of Negotiable Instrument Act and summons was issued against the accused. On appearance of the accused through counsel she was enlarged on bail. Copy of the complaint and records were furnished with. Particulars of the offence u/s.138 of the Negotiable Instrument Act was read over and explained to the accused to which she pleaded not guilty and claimed to be tried.
4. To prove the case of the complainant, the complainant was examined as PW1 and Exts.P1 to P5 were marked.
5. On the closure of the complainant's evidence, the accused was examined under section 313(1)(b) of the Code of Criminal Procedure, 1973 about the incriminating circumstances brought out in the complainant's evidence to which she denied all of them. She contended that two cheques were provided to the complainant as a security while she joined the employment and subsequently when issues arose regarding her gratuity, the aforesaid cheques were misused by the complainant.
6. Heard both sides. Perused the records.

7. The following points arose for consideration:

- i Whether the complainant had complied with the mandatory statutory formalities before instituting the complaint?
- ii Whether the accused had executed and issued Ext.P1Cheque to the complainant to discharge a legally enforceable debt?
- iii Whether the presumptions under Sections 118(a) and 139 of the N.I. Act, be drawn in favour of the complainant?
- iv Whether the accused had succeeded in rebutting the presumption under Sections 118(a) and 139 of the N.I. Act?
- v Whether the accused had committed an offence under section 138 of the Negotiable Instruments Act?
- vi What is the order as to sentence or compensation if any?

8. Point (i) : The complainant firm represented by its director got herself examined as PW1 and had filed an affidavit in lieu of examination in chief reiterating the entire facts as stated in her complaint. It was contented that the amount of Rs. 99,500/- was provided to the accused as instalments, with the initial payment of Rs. 35,000/- and Rs. 20,000/- issued via cheque bearing No. 216855 and 216858 respectively dated 29.08.2015. The subsequent payment was made via cheque dated 14.09.2015 for an amount of Rs. 30,000/- through the South Indian Bank Alappuzha Branch. Apart from this Rs. 10,000/- and Rs.4,500/- were provided to the accused as cash on 05.08.2015 and 26.11.2015. A perusal of the records indicates that Ext.P1 cheque bearing No.399908, drawn on the South Indian Bank, Alappuzha Branch, for an amount of ₹99,500/- (Ninety Nine thousand Five Hundred only) was issued dated 01.12.2015. The aforesaid cheque though presented for payment, was returned unpaid for the reason 'Funds Insufficient' on 17.12.2015 and this is evident from Ext.P2. The lawyer notice dated 15.01.2016 was issued requesting payment and the postal receipt dated 15.01.2016 indicates that the notice was issued within the statutorily prescribed period.

9. The Hon'ble Apex Court in **C. C. Alavi Haji v. Palapetty Muhammed and Another** (2007 (2) KHC 932) held that "*where the payee dispatches the notice by*

registered post with correct address of the drawer of the cheque, the principle incorporated in S.27 of the G.C. Act would be attracted; the requirement of Clause (b) of proviso to S.138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque". The above said principle was reiterated by the Hon'ble High Court of Kerala in **Bastin P.C. v. George (2025 (4) KHC 353)**.

10. A perusal of the records indicate that the cheque was presented within the validity period of three months provided in the act and was dishonored for the reason 'Funds Insufficient'. Furthermore, Ext.P3 lawyer notice was issued within a period of 30 days from the date of dishonor and the complaint was filed within the statutorily prescribed period contemplated u/s.142(1)(b) of the Act after due compliance with the statutory formalities. The notice was duly received by the accused on 20.01.2016 and the payment was not seen made till date. That apart, the accused has no case that the address in the notice does not belong to him or that the complaint is not maintainable on any of the above grounds. Hence this point is ruled in favor of the complainant.

11. Point (ii): The complainant had filed an affidavit in lieu of examination in chief in tune with the averments contained in the complaint and was examined as PW1. The case of the complainant is that the accused borrowed an amount of ₹99,500/- which was paid both via cheque and in cash on the assurance of repaying the same. Later, the accused issued Ext. P1 cheque dated 01.12.2015 for the repayment of the amount of ₹99,500/. When the complainant presented the cheque through South Indian Bank Alappuzha Branch, it was returned unpaid with the reason "Funds Insufficient". Despite receiving a legal notice from the complainant demanding repayment, the accused failed to pay the amount. Hence the complaint was filed after the issuance of statutory notice.

12. On the other hand, the defence put forth by the accused is that the cheque in question was issued as a security at the time the accused commenced employment with the complainant's establishment. The complainant had dishonestly misused the

said cheque by presenting it for encashment, pertaining to some disagreements which later arose regarding the payment of gratuity.

13. The foremost question which requires to be considered is whether the complainant had proved the execution of Ext P1 cheque. The definite case of the complainant is that the accused had affixed her signature in the cheque and had given it to the complainant in discharge of her liability of ₹99,500/-. PW1 had also testified in conformity with this allegation.

14. The only defence raised by the accused is a complete denial of the financial transaction in question. Apart from this, the accused does not have a case that the cheque was not signed by her. It is even seen admitted by the accused that the cheques were issued, by her but only as a security at the relevant time when she had joined the employment. Nothing which doubts the execution of the cheque was also brought out in the cross examination of PW1. Hence this court is of the considered opinion that the complainant had proved the execution of Ext P1 cheque beyond reasonable doubt.

15. Point No. (iii) to (v): As the matter to be discussed in these points are interrelated, to avoid confusion these are considered together. To attract the presumption under section 139, the complainant shall prove two major ingredients. Firstly, the execution of the cheque by the accused and secondly the issuance of the cheque by the accused to the complainant. Hence as provided under section 118 and 139 of the NI Act, when the complainant proves the execution of the cheque, an automatic presumption that the cheque was issued towards the discharge of a legally enforceable debt and was supported by valid consideration is available to the complainant. This in turn indicates that the burden now rests upon the accused to prove that the aforesaid presumption is a rebuttable one.

16. The Hon'ble Apex Court in **Uttam Ram v. Devinder Singh Hudan and Another (2019 (5) KHC 179)** held that "*A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it*

was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability”.

17. The combined effect of these statutory provisions is that once the complainant discharges the initial burden of proving the fundamental ingredients, the law automatically raises a presumption in favour of the complainant that the cheque was issued in discharge of a legally enforceable debt and that the same was supported by valid and lawful consideration. The burden therefore shifts to the accused to prove that the aforesaid presumption is a rebuttable one.

18. The learned counsel for accused vehemently argued that there does not exist any legally enforceable debt and hence a prosecution under sec 138 NI Act is not sustainable. It was argued that the complaint conspicuously fails to set out the particulars of the transaction by virtue of which the accused became indebted to the complainant. The details of these transactions were brought out only during the course of evidence while it was tendered before the Court, and therefore, such belatedly introduced details cannot be treated as reliable so as to establish the existence of a legally enforceable debt. Hence it was argued that the existence of a legally enforceable debt is not proved by the complainant. To substantiate this contention, reliance was placed on the decision of the Hon’ble Apex Court in **Rajco Steel Enterprises (M/s.) v. Kavita Saraff (2024 KHC 6199)**. But the dictum laid down in the aforesaid decision cannot be applied to the facts of the present case.

19. The learned counsel for the accused had also relied upon the decision of **Krishna Janardhan Bhat v. Dattatraya G. Hegde (2008 (1) KHC 410)** wherein it was held that *“Existence of legally recoverable debt is not a matter of presumption under S.139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability”.*

20. A mere omission to enumerate the details of the transaction details in the complaint will not by itself, render the debt unenforceable. It is noteworthy that while being examined as PW1, the complainant had specifically explained the transactions

that led to the debt. Nothing was also brought out in cross examination to contradict or discredit her testimony. Even the ability of the complainant to lend such money was not seen questioned. Hence the argument advanced by the accused that there exists no legally enforceable debt is devoid of merit and is accordingly not tenable.

21. A plain reading of sec 118(a) and sec 139 NI act clarifies that the expression used in both the sections are ‘until the contrary is proved’ which indicates that they are rebuttable presumptions. Regarding the nature of proof to rebut the presumption, a reference is made to the three Judge bench decision of the Hon’ble Supreme Court in **Rangappa v. Sri Mohan (2010 KHC 4325)** wherein it was held that “*the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under S.139, the standard of proof for doing so is that of 'preponderance of probabilities'*”.

22 In **Bir Singh v. Mukesh Kumar (2019 (1) KHC 774)** it was held that “*a blank cheque leaf, voluntarily signed and handed over by accused, which is towards some payment, would attract presumption under S.139, in the absence of any cogent evidence to show that cheque was not issued in discharge of a debt. Mere filling up of cheque by payee would not invalidate cheque and it does not amount to alteration*”. Reference is also made to the decision in **Kishan Rao v. Shankargouda (2018 (3) KHC 684)** where it was held that “*when the cheque contained the signatures of the accused and it was given to the appellant to present in the Bank then the presumption under S. 139 was rightly raised which was not rebutted by the accused. It is for the accused to rebut the presumption by adducing sufficient evidence*”.

23. The question which now requires consideration is whether the accused had raised a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case. In the case at hand, the accused has no

case that the signature on Ext P1 cheque does not belong to him. The only contention raised was regarding the fact that there does not exist any transaction as alleged by the complainant and that the complainant had misused the cheque issued by the accused as a security while she joined the employment.

24. In **Kalamani Tex v. Balasubrahmanian** (2021 (2) KHC 517), it was held that “*once the signature of an accused on the cheque is established, then the 'reverse onus' clause becomes operative. In such situation, the obligation shifts upon the accused to discharge the presumption imposed upon him*”. Therefore, it is for the accused to rebut the presumption operating in favour of the complainant.

25. The sole defence raised by the accused herein is that the cheque in dispute was not issued in discharge of any debt or liability, but was given merely as a security and the same was misused by the complainant. It is well established through a catena of judicial precedents that once the execution of the cheque is established, a presumption operates in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act, to the effect that the cheque was issued for the discharge of a legally enforceable debt or liability. A vague allegation which lacks any corroboration is not sufficient to rebut the presumption which is already available in favour of the complainant. Instead, it is the bounden duty of the accused to prove this aforesaid fact based on "preponderance of probabilities." A careful scrutiny of records indicate that no material whatsoever has been adduced, and no witness has been examined, to substantiate the claim that Ext. P1 was issued as a security alone. Even if it is accepted for the sake of argument that the cheque was issued as a security, the dictum laid down by the Hon'ble Supreme court in **Sunil Todi and Others v. State of Gujarat and Another** (2022 (1) KHC 35) clearly establishes that “*handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques*”.

26. The learned counsel for complainant had placed reliance on the recent decision of the Hon'ble High Court of Kerala in **Abhilash v. Latha Biji Narayanan @ Latha Kumari** (2025 KHC OnLine 11183) wherein it was held that “*where accused*

admits signature on the cheque but denies the transaction claiming the cheque was given as security for another person's loan, and fails to examine material witnesses or adduce credible evidence to substantiate this version, the presumption under S.118 and S.139 remains unrebutted and conviction is sustainable". The facts of the above-mentioned decision resembles with the facts in the present case. Consequently, in the absence of anything on record either to indicate that the accused had discharged the aforesaid liability or the fact that the cheque was misused by the complainant, it cannot be held that the accused had succeeded in rebutting the presumption available to the complainant.

27. The counsel for the accused further argued that the authority of PW1 to represent the complainant firm had not been established through any documentary evidence, and that in the absence of such proof of authorization, the testimony of PW1 cannot be relied upon. But it is pertinent to note that during the cross examination of PW1, the learned counsel for accused himself put forth a suggestion to the witness concerning the appointment of the accused to the complainant company. The very act of making such a suggestion implicitly acknowledges that PW1 occupied a position of authority in the complainant company. The relevant portion of the cross examination is extracted below for reference. “പ്രതിയെ കമ്പനിയിൽ നിയമിച്ചത് ഞാനാണ്. കമ്പനിയിലേക്ക് ആളെ നിയമിക്കുമ്പോൾ നിങ്ങൾ 2 ഒപ്പിട്ട ബ്ലാക്ക് ചെക്ക്കളു ഒപ്പിട്ട ഒരു ബ്ലാക്ക് പേപ്പറും വാങ്ങിക്കാറുണ്ട് എന്ന് പറയുന്നു. (Q) ശരിയല്ല (A)”. The suggestion put to PW1 that it was her who had appointed the accused to the company, is a clear indication of the fact that PW1 held an authoritative position in the complainant firm. Once the accused makes a suggestion that assumes a certain fact, he cannot later retract from it and adopt a contradictory view contending that the authority of PW1 was never established. It means that the person making the suggestion cannot approbate and reprobate at the same time.

28. The Hon'ble Apex Court in **Avadh Kishore Dass v. Ram Gopal and Others** (AIR 1979 SC 861) held that “*It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them*

or his representative in interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted". On applying the above dictum to the facts of the present case, this court is of the view that a mere failure of PW1 to produce formal documentary evidence of her authority to represent the complainant firm is not fatal to the complainant's case. The accused, through the suggestions put forth during cross-examination, has impliedly admitted the authority of PW1 to act on behalf of the complainant firm. This implied admission raises an estoppel against the accused and shifts the burden onto him to indicate that such admission is incorrect. Hence the contention that the authority of PW1 was not established is liable to be rejected.

29. Admittedly after evaluating the entire evidence, I find that the accused did not pay the amount covered by Ext P1 cheque to the complainant within 15 days from the date of receipt of the statutory notice. The complainant has established his case beyond reasonable doubt and hence the accused is found guilty for the offence punishable under section 138 of the Negotiable Instruments Act. Hence these points are found in favour of the complainant.

30. Point (vi): As it is already found earlier that the complainant had proved the execution and issuance of Ext P1 Cheque to be in the discharge of a legally recoverable debt and was dishonoured for want of funds in the account of the accused, the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act. In the facts and circumstances of the case, I find that the accused is not entitled to get protection under the benevolent provisions of the Probation of offenders Act.

31. The dictum laid down by the Hon'ble High court of Kerala in **Jacob K.M v. State of Kerala and another [2020(1)KHC 291]**, shall be given due relevance. It was held that "*An offence under Section 138 of the Act is almost in the nature of a civil wrong which has been given criminal overtones (See Kaushalya Devi Massand v. Roopkishore, 2011 KHC 28.) 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."

32. In the result, the accused is convicted under section 255(2) of the Code of Criminal Procedure, 1973 to undergo simple imprisonment till rising of the court and is directed to pay a sum of Rs. 1,53,230/- (One Lakh Fifty Three Thousand Two Hundred and Thirty Only). In default of payment of fine, the accused shall undergo Simple imprisonment for a period of one month. The fine amount when paid is directed to be paid to the complainant as compensation under section 357(1) (b) of the Criminal procedure Code, 1973.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court, on this, the 27th day of March, 2026).

Sd/-

Judicial Magistrate of First Class

Ambalapuzha

APPENDIX

List of Complainant/Defence/Court Witnesses :

A. Complainant witnesses :

PW1	Rani Antony
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B. Defence witnesses : Nil

C. Court witnesses: NIL

List of Complainant/Defence/ Court Exhibits

A. Complainant's Exhibits:

1	Ext.P1/ PW1	Original cheque
2	Ext.P2/ PW1	Dishonour memo

3	Ext.P3/ PW1	Copy of legal notice
4	Ext.P4/ PW1	Postal receipt
5	Ext.P5/ PW1	Acknowledgment card

B. Defence Exhibits : Nil

C. Court Exhibits : Nil

D. Material objects : NIL

Sd/-

Judicial Magistrate of First Class

Ambalapuzha

//True Copy//

Judicial Magistrate of First Class

Ambalapuzha