

IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST
CLASS-I, CHERTHALA

Present:-Smt. Sherin K George, Judicial Magistrate of the First
Class-I, Cherthala

Dated this the 25th day of April, 2026

S. T. No. 471/19

Complainant : Girija K.P., W/o. Radhakrishnan,
Maparambil House,
Kadakarapally P.O., Cherthala.
(By Adv. Sri.K B Harshakumar)

Accused : Biju K.P., S/o. Prabhakaran,
Maparambil House,
Kadakarapally P.O., Cherthala.
(By Adv. Sri. Suraraj PS)

DESCRIPTION OF ACCUSED

Sl. No.	Name	Father's/ Husband's name	Occupation	Residence	Age
1	Biju KP	Prabhakaran	...	Mallaparambil house, Kadarakkapally P O, Cherthala.	40/ 2021

DATE OF: -

Occurrence	Complaint	Appearance	Released on bail	Commence- ment of trial	Close of trial	Sentence or order
22/10/2018	19/12/2018	02/03/22	02/03/22	20/12/22	10/12/2025	25/04/26
Service of copy of judgment or finding			Explanation for delay.			
....					

This case having been finally heard and this day the court delivered the following:

JUDGMENT

1. The accused stands trial for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The gist of the complaint is as follows:- The complainant alleges that the accused approached her for financial assistance for his business purpose and borrowed a sum of ₹3,00,000/-. In discharge of the said liability, the accused issued Ext.P1 cheque dated 22.10.2018 drawn on State Bank of India, Cherthala Branch. When the cheque was presented, it was dishonoured for the reason "Funds Insufficient". Thereafter, the complainant issued statutory notice, but the accused failed to repay the amount and hence the complaint.

3. On appearance of the accused, copies of records were furnished. The particulars of offence were read over and explained, to which the accused pleaded not guilty and claimed trial.

4. To prove the case, PW1 and PW2 were examined and Exts.P1 to P5 were marked. After closure of complainant's evidence, the accused was examined under Section 313 Cr.P.C. He denied all incriminating circumstances and stated that no such transaction took place and that the cheque has been misused. From the side of defence, DW1 and DW2 were examined and Exts.D1 to D18 were marked.

5. Heard both sides.

6. The following points arise for consideration:

(1) Whether the complainant has complied with the statutory requirements under Section 138 of the Negotiable Instruments Act?

(2) Whether Ext.P1 cheque was executed by the accused in discharge of a legally enforceable debt?

(3) Whether the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act?

(4) What is the order?

7. **Point no 1:**Ext.P1 is the cheque dated 22.10.2018. Ext.P2 is the dishonour memo. Ext.P3 is the lawyer notice. Ext.P4 is the postal receipt and Ext.P5 is the acknowledgment card. On verification, it is seen that the complaint is filed within time and statutory requirements are complied with. Hence, Point No.1 is found in favour of the complainant.

8. Point no 2:The definite case of PW1 is that the accused, who is none other than the brother of her husband PW2, borrowed a sum of ₹3,00,000/- from her on 22.06.2018 for the business purpose of the accused's coir factory and, in discharge of the said liability, issued Ext.P1 cheque dated 22.10.2018 drawn on the State Bank of India, Cherthala Branch.

According to PW1, the transaction took place in her house and the accused himself came there, received the amount in cash, and handed over Ext.P1 cheque with the assurance that on presentation the amount would be honoured. PW1 would further depose that the cheque was from a joint account of the accused and his wife Sheeba, and that the accused told her that his wife had also signed the cheque and that the amount would be paid on presentation. Thereafter, according to PW1, when the cheque was presented through her account in Federal Bank, it was dishonoured for insufficiency of funds and despite issuance of statutory notice, the amount was not paid.

9. At first blush, the version of PW1 appears to be a straightforward loan transaction between close relatives. But when her evidence is tested in cross-examination, several circumstances emerge which make her version doubtful. PW1 admitted that she is only a beautician, that she does not have a fixed monthly income, that her earnings depend upon availability of work, and that she is not an income tax assessee. She has no bank withdrawal record, no passbook entry, no account statement, no document evidencing availability of ₹3,00,000/- on the date of alleged transaction, and no independent documentary proof to show that she had the financial capacity to advance such

a huge amount in cash. In a prosecution under Section 138 of the Negotiable Instruments Act, where the very basis of the case is a large cash loan, the Court would naturally expect some convincing material regarding the source of funds. In the absence of any such material, the version of PW1 that she had ₹3,00,000/- readily available in cash becomes doubtful.

10. Another important feature in the evidence of PW1 is the existence of material omissions. In cross-examination, PW1 stated that the accused had demanded money from her one week prior to the alleged date of borrowal. She also stated that the accused had come to her house one week earlier and asked for money. But this important fact does not find place either in the complaint or in the proof affidavit filed in lieu of chief examination. Ofcourse omission is not a minor one. If really the accused had approached her earlier, requested financial assistance, and then returned a week later to borrow the amount, that would be a significant part of the transaction narrative. Therefore, it is to be held that, its omission from the complaint and proof affidavit affects the credibility of PW1's improved version given at the time of cross-examination. Likewise, though PW1 asserts that the cheque belonged to a joint account of the accused and his wife Sheeba, she admittedly made no enquiry

with Sheeba regarding the transaction or the execution of the cheque. If, as per her version, the accused told her that the wife had also signed, one would expect at least some enquiry with the co-account holder. The absence of such normal conduct makes the version of PW1 appear unnatural and cannot be belived as a man of ordinary prudance. Apart from that, she was confronted with several earlier proceedings and pleadings. It was brought out that there were serious matrimonial disputes between her and PW2 and that several proceedings had been instituted between them earlier. Though PW1 attempted to feign ignorance regarding some of those proceedings, she admitted that there were family problems and that cases had arisen in that connection. She admitted her signature in the compromise petition in C.C. No.1440/2016, which was marked as Ext.D1, and also admitted that the said case was settled. She was also confronted with earlier maintenance proceedings and pleadings wherein questions relating to her income, means and source of livelihood had been raised. These circumstances are not merely background facts. They become highly relevant because the defence specifically contends that the present cheque case is rooted not in a genuine loan transaction but in the long-standing

matrimonial and family disputes among PW1, PW2 and the accused.

11. Coming to the evidence of PW2, he is projected by the complainant as the witness who was present at the time of transaction and execution of the cheque. PW2 deposes that the complainant in the case is his wife and that the accused is his brother. He states that the accused had earlier asked his wife for money for business purpose and, acting on that request, on 22.06.2018 at about noon the accused came to their house, received ₹3,00,000/- from PW1, and thereafter wrote up and signed Ext.P1 cheque dated 22.10.2018 for ₹3,00,000/- and handed it over to PW1 in their presence. He identifies Ext.P1 as the cheque so handed over by the accused. If PW2 were a wholly independent and trustworthy witness, his evidence would have lent substantial corroboration to the version of PW1. But on a close reading of his cross-examination, this Court finds that his evidence is beset with serious infirmities.

12. First of all, PW2 is not an independent witness in the true sense. He is the husband of PW1 and at the same time the brother of the accused. More importantly, his evidence shows that there were long-standing matrimonial disputes between him and PW1, and several litigations had arisen between them. He

admits that he had earlier filed a complaint alleging that certain documents kept in his almirah had gone missing. Though he tries to water down that allegation by saying it arose from misunderstanding and that later the matter was compromised, the defence confronted him with earlier pleadings and certified copies which show that the allegations were far more specific. His evidence therefore has to be appreciated with great caution.

13. In this context, Ext.D14 assumes great importance. Ext.D14 is the certified copy of a private complaint filed by PW2 against PW1. In that complaint, PW2 specifically alleged that PW1 had taken away several items from his custody by opening the almirah with a duplicate key. I have examined the schedule of articles in mentioned Ext.D14 and is not vague. It specifically mentions various cheque leaves of different persons and banks, including “cheque belongs to Biju and Sheeba of SBI, 3 in number”, along with other cheque leaves, revenue stamp papers, gold ornaments and documents. In cross-examination, PW2 admitted that Ext.D14 was indeed the certified copy of the private complaint filed by him, that the Biju and Sheeba mentioned therein are his brother and sister-in-law, and that the cheques referred to therein are theirs. Though he later tried to say that he had returned those cheques, he could not produce

any document to show that the same had in fact been returned. He also had no convincing explanation as to when, how, or under what acknowledgment they were returned. This is a very serious circumstance. If, according to PW2's own earlier complaint, cheque leaves belonging to the accused and his wife were already among the documents alleged to have been taken away by PW1 in the year 2013, and if that complaint later ended in compromise by Ext.D1 compromise petition dated 29.08.2017 followed by Ext.D2 order dated 31.08.2017, then the Court is entitled to ask a natural and reasonable question: how did Ext.P1, a cheque dated 22.10.2018 from the joint account of the accused and Sheeba, come into the possession of PW1? The complainant has no satisfactory answer to this. The prosecution has no case that Ext.P1 was a freshly issued cheque from a new cheque book produced after the earlier compromise. There is also no evidence to show that the cheque leaf in question was subsequent to the settlement and independent of the earlier missing cheque leaves. Thus, the defence case that Ext.P1 was already in the possession of PW1 and later misused becomes highly probable.

14. The effect of Ext.D14 is not weakened merely because PW2 later states that the earlier complaint was given

under misunderstanding. What matters is that PW2 had, at an earlier point of time, made a definite allegation that PW1 had taken away cheque leaves including those belonging to Biju and Sheeba. That circumstance directly touches upon the possibility of possession of Ext.P1 by PW1. Once such prior possession is probalised, the burden on the complainant to prove fresh execution of Ext.P1 on 22.06.2018 or on the date of alleged issuance becomes much heavier. That burden is not discharged in this case.

15. Ext.D15 and the evidence of DW1 further weaken the complainant's case. DW1 is the Advocate who prepared the objection filed in M.C. No.95/2013 on the instructions of PW2. He proves Ext.D15 and the relevant portions marked in it. Through DW1, it is brought out that in the earlier matrimonial proceedings PW2 had taken a specific stand that PW1 was not running any beauty parlour, that she had no job or income, that neither she nor her family had any financial capacity, and that even the marriage had been conducted by borrowing money and ornaments from others. The significance of this evidence lies in the fact that it directly impacts the version of PW1 in the present case that she had sufficient means to lend ₹3,00,000/- in cash. True, a party may change financial position over time. But when

the complainant is asserting the availability of a large cash amount in 2018, and the defence brings on record prior sworn statements and objections suggesting that she had no independent income or financial strength, the Court cannot ignore that contradiction. DW1's evidence was not shaken in cross-examination. He specifically deposed that Ext.D15 was prepared on the instructions of PW2 and signed after reading over and explaining the contents. Therefore, Ext.D15 stands as a substantive circumstance affecting the credibility of PW1's claim of financial capacity.

16. Apart from that the conduct of PW2 also does not inspire confidence. On some aspects he claims exact recollection of dates and facts, yet on crucial matters such as earlier cases filed by him, the contents of his own pleadings, and the disposal of earlier proceedings, he repeatedly says that he does not remember because the matters are old. At one place he says he had returned the cheques belonging to Biju and Sheeba, but admittedly there is no record of return. At another stage he accepts that the complaint Ext.D14 did contain the allegation regarding missing cheques of Biju and Sheeba. Such vacillating and selective memory substantially weakens his reliability. His close relationship to both sides and his earlier litigations with

PW1 make him an interested and unsafe witness unless his version is strongly corroborated and importantly such corroboration is available here.

17. Another serious aspect pertains to the nature of Ext.P1 itself. The cheque is said to be from a joint account of the accused and his wife Sheeba. PW1's version is that the accused told her that his wife had also signed and that she would honour it. But no evidence is adduced regarding the execution by Sheeba, no enquiry was made with her, and she is not examined. There is no convincing case as to whether both signatures were required for operation of the account, whether the cheque was validly executable by the accused alone, or whether the complainant verified the involvement of the co-account holder. In a case where the complainant herself says that the account is joint and the cheque was said to have the wife's participation, the complete absence of any evidence regarding the co-account holder creates another serious doubt on the complainant's version of execution. The surrounding relationship among the parties also cannot be brushed aside. PW1 is the wife of PW2. The accused is the brother of PW2. The evidence on record unmistakably shows prior family disputes, matrimonial litigations, complaints and counter-complaints. In such a factual

background, it is to be cautious in accepting a bare oral version of a large cash loan unsupported by records. The possibility of false implication due to existing family hostility cannot be ruled out. The defence case is not something fanciful or speculative; but on the other hands it is rooted in documentary material brought on record by the defence itself. Ext.D1 and Ext.D2 show compromise and settlement of earlier criminal proceedings between PW1 and PW2. Ext.D14 shows prior allegation by PW2 that PW1 had taken away cheque leaves including those of the present accused and his wife. Ext.D15, proved through DW1, shows prior assertions that PW1 had no job or income. These documents, read with the admissions of PW1 and PW2, create a chain of circumstances which make the defence version probable.

18. It is trite that the presumption under Section 139 of the Negotiable Instruments Act is rebuttable. The accused is not required to prove his defence beyond all reasonable doubt. It is sufficient if he raises a probable defence on the touchstone of preponderance of probabilities. In the present case, the defence has successfully done so by relying upon the oral evidence of PW1 and PW2 themselves, the admissions elicited in cross-examination, and the defence documents Exts.D1, D2, D14 and D15. Once such a probable defence is raised, the burden shifts

back to the complainant to prove the transaction and execution beyond reasonable doubt. That burden has not been discharged here.

19. On a cumulative appreciation of the entire evidence, this Court is unable to place implicit reliance on the testimony of PW1 and PW2. In such circumstances, I am of the view that Ext.P1 cannot be held to have been duly executed by the accused in favour of the complainant for discharging a legally enforceable debt. The complainant has failed to prove the transaction as pleaded. The defence has succeeded in raising a probable and acceptable version that the cheque was already in the possession of PW1 and has been misused. Hence, Point No.2 is found against the complainant.

20. **Point No.3:-**From the discussion of Point No. 2, it was already concluded that the Complainant failed to establish the execution of Ext. P1 and that it was for discharging a legally enforceable debt. In such circumstances, I cannot hold that the Accused had committed the offence punishable under S. 138 of the Negotiable Instruments Act. Point No. 3 is found against the Complainant.

21. **Point No.4:-**In the result, the Accused is found not guilty of the offence punishable under S. 138 of the Negotiable

Instruments Act and he is acquitted under S.255 (1) of the Code of Criminal Procedure. The bail bond executed by him stands cancelled and he is set at liberty.

Dictated to my personal laptop, corrected and pronounced by me, in open court, on this the 25th day of April 2026.

Sd/-
Sherin K George
Judicial First Class Magistrate-I,
Cherthala.

APPENDIX

List of Prosecution/Defence/Court

Witnesses Prosecution Witnesses

Rank	Name	Nature
PW1	Girija K.P.	Complainant
PW2	Radhakrishnan	Husband of PW1

Defence Witnesses

Rank	Name
DW1	Adv E D Zacharias
DW2	Nikhil

Prosecution Exhibits

Sl. No	Exhibit	Description
1	P1	Cheque
2	P2	Dishonour memo
3	P3	Notice
4	P4	Postal receipt
5	P5	AD card

Defence exhibits

Sl. No	Exhibit No.	Description
1	Ext.D1	Certified copy of compromise petition in C.C. No.14440/2016 between PW1 and PW2 dated 29.08.2017
2	Ext.D2	Certified copy of order in C.C. No.14440/2016 dated 31.08.2017
3	Ext.D3	Certified copy of complaint in S.T. No.471/2019 filed by PW1 against Meera under Section 138 NI Act for ₹50,000/-
4	Ext.D4	Certified copy of order in S.T. No.471/2019
5	Ext.D5	Certified copy of cheque in S.T. No.471/2019
6	Ext.D6	Certified copy of complaint in S.C. No.39/2017 filed by PW1 against Jayapalan under Section 138 NI Act for ₹3,00,000/-
7	Ext.D7	Certified copy of affidavit filed by PW1 in S.C. No.423/2014
8	Ext.D8	Certified copy of deposition of PW1 in M.C.

Sl. No	Exhibit No.	Description
		No.95/2013 along with proof affidavit
9	Ext.D9	Certified copy of affidavit filed by PW1 in S.T. No.471/2019
10	Ext.D10	Certified copy of interim order in proceedings relating to claim against PW2
11	Ext.D11	Certified copy of M.C. No.15/2016 filed by PW1 against PW2
12	Ext.D12	Certified copy of complaint/order in earlier proceedings (as marked during cross)
13	Ext.D13	Certified copy of objection/pleading of PW2 in earlier proceedings
14	Ext.D14	Certified copy of private complaint filed by PW2 against PW1 alleging theft of cheque leaves and documents
15	Ext.D15	Certified copy of objection filed in M.C. No.95/2013
16	Ext.D16	Copy of reply notice sent by accused
17	Ext.D17	Postal receipt of reply notice
18	Ext.D18	Acknowledgment card of reply notice

Sd/-
 Sherin K George,
 Judicial Magistrate of the First Class-I,
 Cherthala.

// True copy //

Judicial Magistrate of the First Class-I,
 Cherthala.