

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 21st day of April, 2026

S. T. No.2560/2019

Complainant : Gentleman Chit Funds Co. (India)
Pvt.Ltd. having its
branch at South of Devi Temple,
Cherthala, represented by its
Power of Attorney Holder Mr.T.Devarajan,
60 years, S/o Thankappan, Anandalayam,
Thirunalloor.P.O, Pallippuram Village,
Cherthala
[By Adv. Jackson Mathew]

Accused : Manju C
(By Adv. Sri. E D Zacharias)

Offence : under section 138 of N I Act
Plea : Not guilty
Finding : Not guilty
Sentence/order : Accused is acquitted u/s.255(1) of Cr.P.C.

DESCRIPTION OF ACCUSED

Sl. No.	Name	Father's/ Husband's name	Occupation	Residence	Age
1	Manju C	Thankachan	...	velammaparambu, Muhamma P O, Cherthala.	40/ 2021

DATE OF: -

Occurrence	Complaint	Appearance	Released on bail	Commencement of trial	Close of trial	Sentence or order
01.12.2013	10.02.2014	25/10/22	17.07.2019	02.05.2023	13.04.26	21/4/26
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

Accused stands of trial for offence punishable u/s.138 of Negotiable Instruments Act.

2. **The gist of the complaint is as follows**:-The case of the complainant in brief is that the accused was a subscriber in two chitties conducted by the complainant company. In Chitty No. H-12/11 having sala of ₹1,00,000/-, and the accused received ₹80,000/- on 25.04.2012 and defaulted payment of installments. The accused had also subscribed to another chitty bearing No. 4/12 with chittalan no.36, having sala of ₹2,00,000/- and received ₹1,60,000/- on 27.10.2012 and defaulted payment. It is alleged that thereafter the accused settled the accounts for a total sum of ₹1,01,510/- and issued the cheque in question towards discharge of the said liability. The cheque when presented was dishonoured for "funds insufficient" and despite statutory notice, the accused failed to make payment.

3. On appearance of accused, the copies of relevant records were served to him. The particulars of offence u/s 138 of Negotiable Instruments Act was read over and explained to the accused to which she pleaded innocence and claimed for trial.

4. In order to prove the accused's complicity the complainant was examined as PW1. Exts.P1 to P14 were marked. Two other witnesses were examined as PW2 and PW3 On the basis of the prosecution evidence, the accused was examined u/s S.313 (1)(b) of Cr.P.C. She denied the incriminating circumstances and contended that the cheque was misused and that no such liability exists.

5. Heard both sides and perused the arguments notes filed by both sides. .

6. On going through the materials on record, the following points are formulated for consideration: -

- 1) *Has the complainant complied with all statutory formalities before filing the complaint?*
- 2) *Has the accused executed Ext.P1 cheque in favour of the complainant for discharging a legally enforceable debt?*
- 3) *Has the accused committed offence punishable u/s 138 of N.I. Act?*
- 4) *What is the appropriate sentence to be awarded if accused is found guilty?*

7. **Point No. 1:** PW1 deposed that the accused was a subscriber in two chitties conducted by the complainant company and in discharge of the liability arising out of the said chitty transactions, the accused issued Ext.P1 cheque for a sum of ₹1,01,510/- drawn on the account maintained by her. According to PW1, the accused had subscribed in Chitty No. H - 12/11 having a sala of ₹1,00,000/- commenced on 25.04.2012 and had received the prized amount of ₹80,000/- and thereafter committed default in payment of instalments. PW1 further deposed that the accused had also subscribed in another chitty bearing No. 4/12 with chittalan no.36 having a sala of ₹2,00,000/- and had received the prized amount of ₹1,60,000/- on 27.10.2012 and defaulted payment therein also. It is the further case of PW1 that thereafter the accused approached the complainant and settled the total liability for ₹1,01,510/- and in discharge of the said liability issued Ext.P1 cheque..

8. On the other hand the accused totally denied the alleged transaction. During his examination under S. 313 Cr.P.C she had stated that she is innocent in the case and denied the incriminating

circumstances against her. She stated that she paid the entire amount in connection with the chitty and it is a false case.

9. Pertinently it brooks no contradiction as to the fact that the cheque and signature belongs to the accused. Now the presumption u/s.139 of N.I. Act would operate as per the dictum of the Hon'ble Apex Court in **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, followed in **Vasanthakumar T v. Vijayakumari, (2015) 8 SCC 378**. But it was held in *Rangappa's* case that: *"The presumption mandated by S.139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption, and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant."*

10. In **Basalingappa v Mudhisappa, 2019 (2) KHC 451**, Hon'ble Apex Court held that *"To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely."*

11. Earlier in **M S Narayana Menon v. State of Kerala, (2006) 6 SCC 39**, the Hon'ble Supreme Court had made it loud and clear that *"the standard of proof required for such rebuttal is preponderance of probabilities and not proof beyond reasonable doubt. Thus, so long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. For rebutting presumption available to accused what is required is to raise a probable defence. For that purpose even the evidence adduced on behalf of*

complainant would be relied upon. The rebuttal does not have to be conclusively established, but such evidence may be adduced either by entering into witness box or through cross examination of complainant and his witnesses or even from the material produced on record. It is for the Court to believe the defence to exist or to consider its existence to be reasonably probable having regard to the standard of proof and reasonability of prudent man."

12. In this case, before adverting to the defence put up by the accused, let me examine whether PW1 has succeeded in making out a prima facie case with cogent evidence so as to rope down the accused with criminal liability. PW1 deposed that the accused was a subscriber in two chitties conducted by the complainant company. According to PW1, the accused subscribed in Chitty No. H - 12/11 having sala of ₹1,00,000/- with 20 instalments of ₹5,000/- each and she received the prized amount of ₹80,000/- on 25.04.2012. PW1 further deposed that the accused had also subscribed in Chitty No. 4/12 having sala of ₹2,00,000/- with 20 instalments of ₹10,000/- each and she received the prized amount of ₹1,60,000/- on 27.10.2012. It is the further case of the complainant that the accused committed default in both chitties and thereafter approached the complainant and settled the total liability for ₹1,01,510/-, in discharge of which Ext.P1 cheque was issued.

13. On the other hand, the accused denied the legally enforceable liability and contended that the cheque was misused. The definite defence is that the complainant has not proved the actual subsisting liability corresponding to the cheque amount. The accused also challenged the proof regarding the settled amount and the manner in which the alleged liability was calculated. It is true that when the cheque and signature are admitted or proved, the presumption under Section 139 of the Negotiable Instruments Act would operate in favour of the

complainant as laid down in *Rangappa v. Sri Mohan (2010) 11 SCC 441* and followed in *Vasanthakumar v. Vijayakumari (2015) 8 SCC 378*. But such presumption cannot be stretched to presume the **quantum of liability in the absence of satisfactory evidence**.

14. It is equally well settled in *Basalingappa v. Mudibasappa (2019 (2) KHC 451)* and *M.S. Narayana Menon v. State of Kerala (2006) 6 SCC 39* that the said presumption is rebuttable and that the accused need only raise a probable defence on the touchstone of preponderance of probabilities. Such rebuttal can be made even from the materials produced by the complainant. Therefore, before considering whether the defence has succeeded in rebutting the presumption, it is necessary to examine whether the complainant has laid a clear factual foundation to show that Ext.P1 cheque was issued towards the discharge of the specific liability of ₹1,01,510/- pleaded in the complaint.

15. The complainant relies mainly upon Exts.P8, P9, P10, P11, P12 and P13 to prove the transaction and liability. Ext.P8 is the chitty agreement relating to Chitty No. H - 12/11. It shows that the accused joined a chitty having sala of ₹1,00,000/- with 20 instalments of ₹5,000/- each. This document can at best establish that the accused was a subscriber in the said chitty and that there existed a contractual relationship between the parties. It may also probabilise the complainant's case that the accused had undertaken to remit the instalments as per the terms of the chitty. It is pertinent to note that, but Ext.P8 by itself does not prove the exact amount that remained due from the accused on the date of cheque. It is only the foundational document showing the creation of the chitty relationship.

16. Ext.P9 is the chitty agreement relating to Chitty No. 36/4/12 having sala of ₹2,00,000/- with 20 instalments of ₹10,000/- each. This document also only proves that the accused was a subscriber in the said

chitty scheme. Like Ext.P8, it establishes the existence of a transaction between the parties. But as adversed Ext.P9 also does not disclose what precise amount remained due from the accused at the relevant time, nor does it show how the complainant computed the figure of ₹1,01,510/-.

17. Ext.P11 is the disbursement voucher/receipt relating to one of the chitties. It shows that the accused received ₹80,000/- on 25.04.2012 under Chitty H - 12/11. This document supports the complainant's case to the extent that the accused had availed the prized amount in the ₹1,00,000/- chitty. Thus Ext.P11 supports the origin of one limb of the liability pleaded in the complaint. However, Ext.P11 again does not prove the outstanding amount as on the date of alleged settlement. It merely proves receipt of the prized amount by the accused.

18. Ext.P10 has been relied on by the complainant as one of the supporting documents relating to the transaction. But on going through the materials, this Court does not find any clear and cogent statement in Ext.P10 showing the consolidated outstanding amount of ₹1,01,510/-. There is no proper break-up in Ext.P10 demonstrating principal due, interest due, default charges, or any other component to make up the cheque amount. Therefore, even if Ext.P10 is accepted, it does not satisfactorily bridge the gap between the original chitty transactions and the final settled amount alleged in the complaint.

19. Ext.P12 is the ledger relating to Chitty No. 4/12, i.e. the ₹2,00,000/- chitty. On a careful reading of Ext.P12, it is seen that the credit entries are shown 1,08,100. The total outstanding amount is not shown. Thus, Ext.P12 does not indicate any subsisting liability under the ₹2,00,000/- chitty. Far from supporting the complainant's case of continuing default and a huge balance, Ext.P12 gives an impression that the account in that chitty had been squared off. If really there was

substantial arrears under that chitty contributing to the alleged settlement amount, the same ought to have been reflected in Ext.P12 in clear terms. But no such balance is shown therein. This aspect assumes much significance because the complaint specifically pleads that the accused defaulted in the ₹2,00,000/- chitty also and that both chitties together culminated in the settled liability of ₹1,01,510/-. When Ext.P12, which is the ledger produced by the complainant itself, does not disclose any such outstanding balance in the second chitty, the case of the complainant as to the quantum of liability becomes doubtful and creates a serious dent in the prosecution case.

20. Ext.P13 is the ledger relating to Chitty H - 12/11, i.e. the ₹1,00,000/- chitty. This ledger would show that the accused received ₹80,000/- and had remitted several instalments. But the crucial feature in Ext.P13 is that it shows only a future liability of ₹15,000/-. Thus, according to Ext.P13, the balance remaining in the first chitty is only ₹15,000/-. If that be so, Ext.P13 does not support the complainant's case that a total sum of ₹1,01,510/- became due and payable by the accused on settlement.

21. When Exts.P12 and P13 are read together, the difficulty in the complainant's case becomes more apparent. Ext.P12 does not show any balance liability in the ₹2,00,000/- chitty. Ext.P13 shows only ₹15,000/- as future liability in the ₹1,00,000/- chitty. Therefore, the documents produced by the complainant itself do not disclose how the complainant arrived at the settled figure of ₹1,01,510/-. If the complainant's case is that over and above the ledger liability there were interest components, penal charges, or settlement additions, it was incumbent upon the complainant to produce a proper statement of account or settlement memo showing the break-up. No such reliable and comprehensive document is forthcoming. There is no consolidated

account statement demonstrating the carry forward balance from both chitties, no calculation sheet showing the addition of interest, no settlement statement signed by the accused, and no written document evidencing the alleged settlement for ₹1,01,510/-.

22. The very cornerstone of the complainant's case is that the accused approached the complainant and settled the account for ₹1,01,510/-. But significantly, the complainant has not produced any settlement agreement, settlement statement, acknowledgment of debt, or any contemporaneous document executed by the accused acknowledging the said sum. In a case where the ledger documents themselves do not reflect the cheque amount, the burden on the complainant to prove the settlement becomes heavier. Mere oral assertion by PW1 that the accused settled the amount for ₹1,01,510/- cannot be accepted without supporting records, especially when the documentary evidence on record does not support such quantum.

23. Another important aspect put forth by the learned counsel for accused is that. PW1 deposed in tune with the averments in the complaint and stated that the accused had subscribed in two chitties conducted by the complainant company and thereafter, on settlement of accounts, issued Ext.P1 cheque for ₹1,01,510/-. The learned counsel for the accused seriously challenged the competency of PW1 to depose on behalf of the complainant company and further contended that PW1 had no direct knowledge regarding the material transaction in question. It is true that a company can be represented by its authorised employee or other authorised person in a prosecution under Section 138 of the Negotiable Instruments Act. In *Sree Gokulam Chit and Finance Co. (P) Ltd. v. P.R. Balakrishnan*, 2024 KHC 7129, it has been held that in a complaint relating to dishonour of cheque issued in favour of a company, the company would be the de jure complainant and its employee or

authorised representative can act as the de facto complainant. Therefore, merely because PW1 is an employee representative, his evidence cannot be discarded in limine.

24. However, as clarified by the Hon'ble Apex Court in *TRL Krosaki Refractories Ltd. v. SMS Asia Pvt. Ltd.*, 2022 (2) KHC 157, though an authorised employee may represent the complainant company, if it is demonstrated during trial that such person had no knowledge of the transaction and was not competent to speak about the same, it would be open to the accused to challenge the evidentiary value of such testimony. Therefore, the real question is not merely one of authority, but whether PW1 possessed sufficient and direct knowledge of the alleged settlement, the computation of liability and the execution of the cheque.

25. On a careful reading of the evidence, I find that PW1 has spoken only on the strength of office records. His testimony does not show that he had personally participated in the alleged settlement by which the liability was fixed at ₹1,01,510/-. There is also nothing to show that he herself prepared the statement of accounts or personally verified the figures reflected in the ledger extracts. In fact, the tenor of his evidence shows that he merely repeated the pleaded case of the complainant that the accused approached the company and settled the account for ₹1,01,510/-. Such evidence, in the absence of direct personal knowledge, is insufficient to conclusively establish the exact liability.

26. At this juncture, it is relevant to refer to the dictum in *Narayanan A.C. v. State of Maharashtra*, 2013 (3) KHC 885, wherein the Hon'ble Apex Court held that a power of attorney holder can depose on behalf of the complainant only if such person has witnessed the transaction as an agent of the payee or otherwise possesses due

knowledge regarding the transaction. Likewise, in *Pathrose v. V.K. Jeevalan*, 2017 (2) KHC 297, it has been held that when the power of attorney holder neither witnessed nor had personal knowledge of the transaction in question, such person is incompetent to depose regarding the same. In the present case, the evidence of PW1 does not inspire confidence to hold that he had direct knowledge of the alleged settlement transaction or of the actual execution of Ext.P1 cheque. The weakness in the oral testimony of PW1 assumes greater significance when examined along with the documentary evidence produced by the complainant. Ext.P8 and Ext.P9 no doubt show that the accused had subscribed in two chitties. Ext.P11 would also probabalise that the accused had received the prized amount of ₹80,000/- in one of the chitties. But the crucial question is not the existence of earlier transactions; the crucial question is whether the complainant has proved that on the date of Ext.P1 cheque, a legally enforceable liability of ₹1,01,510/- was actually due from the accused. On this vital aspect, the oral testimony of PW1 is not corroborated by the records.

27. In this backdrop I feel it appropriate to paste the following dictum for getting more insight into the forensic principles surrounding this case. In ***Johnson Skaria v State of Kerala, 2006 KHC 192***, it is summarised as

i) The burden is always on the prosecution to prove the offence against an indictee in all prosecutions and a prosecution under S.138 of the NI Act is no exception to that general rule.

iv) S.139 of the NI Act does not at all permit the Courts to draw any presumption of guilt against the accused and there is no burden on any accused to disprove the case of the prosecution or to prove his innocence.”

28. In summation of all what are said above, I am of the view that

the Ext. P1 cannot be held to be executed by the Accused in favour of the Complainant for discharging a legally enforceable debt. Point No. 2 is found against the Complainant.

29. **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.

30. **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 21st day of April 2026.

Sd/-

Judicial First Class Magistrate-I,
Cherthala.

APPENDIX

List of Prosecution/Defence/Court Witnesses

PW1	Salim kumar
PW2	Jaya rajesh
PW3	T Devarajan

Exhibits for complainant

Sl. No	Exhibit Number	Description
1	P1	Cheque dated 09.12.2013 marked through PW1 on 09.10.2023

Sl. No	Exhibit Number	Description
2	P2	Dishonour memo dated 14.12.2013 marked through PW1 on 09.10.2023
3	P3	Intimation memo dated 21.12.2013 marked through PW1 on 09.10.2023
4	P4	Legal notice 01.01.2014 marked through PW1 on 09.10.2023
5	P5	Postal receipt 01.01/2014 marked through PW1 on 09.10.2023
6	P6	Acknowledgment card 10.01.2014 marked through PW1 on 09.10.2023
7	P8	Chitty Agreement (₹1,00,000/- chitty) 25.04.2012 marked through PW1 on 09.10.2023
8	P9	Chitty Agreement (₹2,00,000/- chitty) dated 27.10.12 marked through PW1 on 09.10.2023
9	P10	Payment receipt dated 25.04.12 marked through PW1 on 09.10.2023
10	P11	Disbursement Receipt dated 27.10.12 marked through PW1 on 09.10.2023
11	P12	Ledger (₹2,00,000/- chitty) dated 21.08.24 marked through PW1 on 09.10.2023
12	P13	Ledger (₹1,00,000/- chitty) dated 12.08.2024 marked through PW1 on 09.10.2023
13	P14	Copy of power of Attorney marked through PW1 on 09.10.2023

Defence witness: Nil

Defence exhibit: Nil

Sd/-

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

// True copy //

Judicial Magistrate of the First Class-I,
Cherthala.