

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

Present: Smt. Aminakutty P.M.,Judicial First Class Magistrate -II

Dated, this the 24<sup>th</sup> day of March, 2026.

**S T No. 1676 of 2023**

Complainant : Anna Priya George,  
Kokoth House, Thathampally P O, Alapuzha.  
Present residing at Udayathinvathil,  
Panangad P O, Eranakulam  
(By Adv. Sri .C K Sajeev)

Accused : T A Basheer, aged 55 yrs. , Thaivalappil House,  
Chalingad Road, Near Chalingad Masjid,  
Chalingad P O, Moonupeedika,  
Kaippamangalam, Thrissur .  
(By Adv. Sri. S Radhakrishnan)

Offence : Punishable u/s 138 of N I Act

Plea : guilty

Finding : found guilty

Sentence or order : The accused is found guilty of the offence punishable u/s.138 of Negotiable Instruments Act and convicted thereunder and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs. 17,30000/- (Rupees Seventeen lakhs thirty thousand only), u/s.255(2) of Cr.P.C. and in case of default of payment of fine, the accused shall undergo Simple imprisonment for three months. The amount of fine on realisation shall be awarded as compensation to the complainant u/s. 357(1)(b) of Cr.P.C.

**DESCRIPTION OF THE ACCUSED**

Sl.No	Name of Police Station & crime No.	Name	Father's name	Calling	Residence	Age
1	Cmp 2417/23	T A Basheer,	-	-	Thaivalappil House, Chalingad Road, Near Chalingad Masjid, Chalingad P O, Moonupeedika, Kaippamangalam, Thrissur .	55//23

## Date of

Occurrence	Complaint	Appearance of accused	Released on bail	Commencement of trial
24.02.2023 to 09.03.2023	01.09.2023	11.10.2023	11.10.2023	09.05.2024
Close of trial		Sentence or order		Explanation for delay
17.03.2026		24.03.2026		--

This case coming on this day for consideration, the court passed the following:

**JUDGMENT**

1. This is a complaint filed by the complainant alleging offence punishable u/s 138 of Negotiable Instrument Act (hereinafter in short as N I Act).

2. Case of the complainant in brief, is as, follows:- The complainant's husband is engaged in the business of exporting marine products under the name and style *ELTE Marine Seafood Exporting*. The accused, who is a close friend of the complainant's husband, borrowed a total sum of ₹17,30,000 from the complainant. The payments were made on various dates between 24.02.2023 and 09.03.2023. It

was agreed that the accused would repay the said amount in the first week of July 2023. Towards discharge of this liability, the accused executed and issued Cheque No. 121015 dated 03.07.2023 for ₹17,30,000, drawn on Canara Bank, Kaipamangalam Branch. The cheque was issued at the complainant's residence on 09.03.2023 in the presence of her husband and other witnesses. The complainant presented the cheque for collection through ICICI Bank Ltd., Aroor Branch. However, the cheque was dishonoured with the endorsement "*funds insufficient*" and returned along with the memo stating the reason. Following the dishonour, the complainant issued a lawyer's notice to the accused on 12.07.2023, intimating the dishonour and demanding repayment of the amount. The notice was duly accepted by the accused on 14.07.2023, but he failed to comply with the demand.

3. After being satisfied that a prima facie case under Section 138 of the Negotiable Instruments Act was made out, cognizance of the offence was taken on the basis of the affidavit filed along with the complaint. Upon issuance of summons, the accused appeared before the court. Copies of the complaint and other relevant records were furnished to him. The particulars of the offence under Section 138 of the Negotiable Instruments Act were read over and explained to the accused, to which he pleaded not guilty. To prove the case, the complainant examined PW1 and PW2, and Exhibits P1 to P10 were marked. After the closure of the complainant's evidence, the accused was examined under Section 313(1)(b) of the Criminal Procedure Code. He

denied all the incriminating circumstances brought out in the evidence against him. He stated that he had business transactions with the husband of the Complainant . He executed and transferred a blank cheque to the husband of the Complainant on 21.3.2020. He further asserted that the Complainant is not known to him. There after the accused was called upon to enter upon his defence . From the side of the defence, DW1 was examined.

4. Upon hearing both sides and on perusal of the evidence, the following points arise for consideration:-

1. Whether the accused had issued Ext.P1, cheque towards the discharge of a legally enforceable debt or liability as alleged?
2. Whether the complainant has complied with all the requirements to constitute an offence punishable under section 138 of the Negotiable Instruments Act 1881?
3. Sentence or order?

**5. Point No.1:-** This is a complaint filed under section 138 of the NI Act alleging the dishonour of Ext P 1 cheque issued by the accused to the Complainant towards the discharge of legally enforceable debt or liability. The complainant, examined as PW1, deposed in support of the allegations made in the complaint during her examination-in-chief. From the side of the complainant, PWs 1 to 4 were examined and Exhibits P1 to P7 were marked. PW1 stated that in the

course of business transactions with her husband, the accused borrowed a total sum of ₹17,30,000 between 24.02.2023 and 09.03.2023. Towards discharge of this liability, the accused issued Exhibit P1 cheque drawn on Canara Bank, Kaippamangalam Branch. When the cheque was presented for collection through ICICI Bank, Aroor Branch, it was dishonoured and returned with Exhibit P2 memo citing the reason “funds insufficient.” Following the dishonour, the complainant caused to issue Exhibit P3 lawyer notice to the accused, the postal receipt of which was produced as Exhibit P4, and the acknowledgment card evidencing receipt of the notice by the accused was marked as Exhibit P5. Despite receipt of the notice, the accused failed to repay the amount. Exhibit P6 is the Statement of Account, and Exhibit P7 is the Certificate issued by the Bank under Section 63(4) of the *Bharatiya Sakshya Adhinyam( BSA)* .

6. During cross-examination, PW1 deposed that she has been engaged in the seafood export business along with her husband. She stated that on 24.02.2023 and 09.03.2023, the accused received amounts from her and her husband in installments, totaling ₹7,13,000. She further affirmed that she is an income tax payee and that the account from which the payments were made is not a joint account but stands solely in her name. PW1 explained that the accused was a friend of her husband, with whom both she and her husband maintained business relations. Acting upon her husband’s instructions, she advanced the said amount to the accused from

her account. It was agreed by the accused that the amount would be repaid by 06.07.2023, and in that regard, the accused handed over the cheque to her. She presented the cheque for collection at ICICI Bank, Aroor Branch, but it was returned unpaid due to insufficiency of funds.

7. PW2, the husband of the complainant, deposed that the accused, being his friend, borrowed a total sum of ₹17,30,000 in four instalments between 24.02.2023 and 09.03.2023. It was agreed that the accused would repay the amount by 03.07.2023, and towards such repayment he issued a cheque in the name of PW2's wife. The cheque was presented for collection before the bank, but it was dishonoured with the endorsement "funds insufficient." Thereafter, a lawyer's notice was issued to the accused, but no reply was received, and hence the complaint was filed. PW2 identified Exhibit P1 cheque during his deposition.

8. During cross-examination, PW2 stated that he had not received any summons from the court. He confirmed that he has been conducting seafood export business under the name *ELTE Marine* along with his wife, and that he had also engaged in joint business ventures with the accused. He denied the allegations raised by the accused, who contended that Exhibit P1 cheque was issued only as security in the course of their joint business. PW2 clarified that Exhibit P1 cheque was issued at their residence at Ernakulam.

9. PW3, the Manager of ICICI Bank, Aroor Branch, deposed that Exhibit P1 cheque was presented for collection by the complainant. The cheque was forwarded to Canara Bank, Kaippamangalam Branch, for encashment, but it was returned with the endorsement “*funds insufficient.*” Consequently, the cheque along with the return memo was handed back to the account holder. He admitted Exhibit P2 memo and confirmed that the seal affixed therein belonged to the Aroor Branch. During cross-examination, however, he clarified that Exhibit P2 memo also bore the seal of ICICI Bank, Cochin Branch. He explained that the memo was sent through courier to their office and contained the counter seal of the Aroor Branch. He further clarified that clearing memos are usually issued from the Cochin Office, which functions as the clearing hub. Thus, the cheque was not sent directly to Canara Bank by the Aroor Branch, but routed through the Cochin clearing hub

10. PW4 deposed that he is employed as staff at *ELTE Marine Products*, Chandiroor. He identified the accused, who had visited their office on several occasions and was known to him as a friend of his employer. PW4 stated that he was introduced to the accused by the owner and came to know that the accused had borrowed money from his employer’s wife. Towards discharge of that liability, the accused issued a cheque. PW4 further testified that he had witnessed the execution of Exhibit P1 cheque on 09.03.2023 by the accused for payment of ₹17,30,000, dated 03.07.2023, at the complainant’s residence. He identified Exhibit P1 cheque and

stated that he later came to know it was returned unpaid. During cross-examination, PW4 deposed that the transaction was carried out at Cochin. He stated that he did not take leave during March 2023 and that his duty hours were from 10 a.m. to 5 p.m. He acknowledged that there existed business transactions between the accused and the complainant.

11. PW5, the Manager of ICICI Bank, Aroor Branch, deposed that Exhibit P1 cheque was presented for collection by the complainant and was forwarded to Canara Bank, Kaippamangalam Branch, for encashment. The cheque was returned unpaid with the endorsement “funds insufficient,” and both the cheque and the return memo were handed back to the account holder. He admitted Exhibit P2 memo and confirmed that the seal affixed therein belonged to the Aroor Branch. During cross-examination, PW5 clarified that Exhibit P2 memo also contained the seal of ICICI Bank, Cochin Branch, and that it had been sent through courier to their office, bearing the counter-seal of the Aroor Branch. He explained that clearing memos are usually issued from the Cochin Office, which functions as the clearing hub, and therefore the cheque was not sent directly to Canara Bank by the Aroor Branch but routed through the Cochin hub.

12. DW1 was examined from the side of the accused. He deposed that the complainant and the accused were known to him and familiar to each other. He stated that he had witnessed the transaction of Exhibit P1 cheque between the

husband of the complainant and the accused in March 2020. He identified Exhibit P1 cheque and confirmed that there were business dealings between them. DW1 introduced himself as the driver of the accused and affirmed that he had been working in that capacity for the last ten years. He clarified that he was unaware of the cash dealings or business transactions of the accused and did not witness any cheque being handed over to another person by the accused. However, he claimed that during his service he had identified the transaction relating to Exhibit P1 cheque, which, according to him, was handed over at the premises of ELTE Company at Aroor on 21.03.2020, during the period of the Corona pandemic. He stated that he was seated in the car and saw the accused taking the cheque from the vehicle, and later, while waiting outside the office, he observed that a cheque was handed over inside the office. He admitted that he did not see in whose name the cheque was issued, but subsequently clarified that Exhibit P1 cheque was in the name of the complainant. He reiterated that he had only witnessed the handing over of the cheque.

13. In the present case, the transaction of Exhibit P1 cheque and its execution are admitted. The only controversy is with respect to the person to whom the cheque was issued. According to the accused, Exhibit P1 cheque was handed over to the husband of the complainant in the course of their joint business dealings. The complainant, on the other hand, asserts that there were business transactions between the accused and her husband, in which she was also a co-owner, as the seafood export

business was conducted in the name of *ELTE Marine* at Aroor. It is her case that the accused borrowed a sum of ₹17,30,000 from her, which was advanced from her account as directed by her husband Premal Thomas, who was a close friend of the accused. Towards discharge of this liability, Exhibit P1 cheque was issued, but when presented it was dishonoured with Exhibit P2 memo endorsing “funds insufficient.” Even though Exhibit P3 legal notice was served upon the accused and duly received, no reply was issued and no payment was made, leading to the filing of the present complaint.

14. The defence version, as spoken through DW1, is that the cheque transaction occurred in the year 2020 at the office of ELTE Company at Aroor. DW1, who introduced himself as the driver of the accused for the past ten years, claimed that he witnessed the accused writing the cheque and handing it over to the husband of the complainant. At first he stated that he saw the accused handing over the cheque directly, later he said he was waiting outside while the execution took place inside the office, and thereafter he claimed to have read Exhibit P1 cheque and found it issued in the name of the complainant. Ultimately, DW1 clarified that he only saw the handing over of the cheque but was unaware of the business transactions between the complainant and her husband.

15. The learned counsel for the complainant contended that the issuance and execution of the cheques in question are not disputed by the accused.

Furthermore, no reply was issued in response to the statutory legal notice. It was argued that the accused has failed to present a consistent and probable defence, and there is no concrete evidence on record to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act. The learned counsel for the complainant contended that there was no effective cross-examination with respect to the transaction of the amount or the manner in which the payments were effected. It was further argued that the accused failed to issue any reply to the statutory lawyer notice served upon him, which, as laid down in *Sanjabji Tari v. Kishore S. Borcar* [2025 (6) KHC 250], gives rise to a presumption that the cheque was issued towards discharge of liability and strengthens the complainant's version. Counsel also pointed out that PW3 had clearly deposed that there exists a centralized system of clearance, and that cheques presented for collection through any branch are processed and returned by the head office at Ernakulam. In the present case, Exhibit P2 memo bears the seal of the Aroor Branch, thereby corroborating the complainant's case. The Hon'ble Supreme Court in *Sanjabji Tari v. Kishore S. Borcar* held that once the execution of a cheque is admitted, a presumption under Section 118 of the Negotiable Instruments Act arises that the cheque was drawn for consideration, and a further presumption under Section 139 arises that the holder of the cheque received it in discharge of a legally enforceable debt or liability. It was also observed that when a statutory notice issued under Section 138 is not replied to, it has to be presumed that

the cheque was issued towards discharge of liability, and failure to reply to such notice leads to an inference that there is merit in the complainant's version.

16. The learned counsel for the accused argued that the complaint lacks clarity . It was pointed out that the number of instalments in which the alleged loan was advanced to the accused is not mentioned, nor is it specifically stated how much amount was handed over on each date. It was further contended that while the complainant's residence is at Ernakulam and the office is at Aroor, there is no explanation as to how PW3, an employee at the office, reached Ernakulam to witness the transaction. Counsel also submitted that the dishonour memo does not bear the proper seal of the bank, and that the seal appearing is of the Ernakulam branch, thereby raising questions of jurisdiction. It was argued that no independent document has been produced to prove the alleged transaction of ₹17,30,000, as no bank statement or return has been filed. Counsel emphasized that the complaint does not disclose whether the amount was paid through bank transfer or in cash. The learned counsel for the accused placed reliance on the decision of the Hon'ble High Court in *Jose v. Jose* reported in 2025 (6) KLT 197. In the said case, the Court held that while dealing with the presumption under Section 139 of the Negotiable Instruments Act, an accused has two distinct options. The first option is to rebut the presumption by proving that no debt or liability existed, which can be done by leading defence evidence and conclusively establishing with certainty that the cheque was not issued

in discharge of any legally enforceable debt or liability. The second option available to the accused is to rebut the presumption by showing, on a preponderance of probabilities, that the debt or liability did not exist, by referring to the particular circumstances of the case.

17. Admittedly, there existed business transactions between the complainant and the accused, and the handing over of the cheque in question, Ext P1 is also not disputed. However, the accused contended that the cheque was issued merely as security to the husband of the Complainant during the joint business transactions with him. The case of the Complainant that she has been conducting joint business with her husband. In *Sunil Todi & Others v. State of Gujarat & Another* [2022 (1) KHC 35], the Hon'ble Supreme Court held that there is no inflexible rule that precludes the drawee of a cheque issued as security from presenting it for payment in accordance with the terms of the contract. The determining factor is whether a legally enforceable debt or liability has arisen. Further, in *Thottathil Lakshmanan v. Kundathil Sobhana* [2023 KHC 869], it was held that if a cheque is issued as security and the debt is not repaid in any other form before the due date, and there is no agreement between the parties to defer repayment, the cheque matures for presentation. Upon dishonour, the consequences under Section 138 and other provisions of the Negotiable Instruments Act would follow.

18 .In the present case, the accused admitted that there were some business transaction between the Complainant's husband and him. He relied upon the testimony of DW1 to prove it. But DW1 is not a reliable witness since his statements are full of contradictions and inconsistencies. He is the car driver of the accused and is loyal to him. He admits that he is unaware of the business transactions of the accused and his financial dealings . He was outside the office when Ext P 1 cheque was executed.

19. On a perusal of the evidence on record, I am of the considered view that the complainant has succeeded in proving the transaction relating to the issuance of cheque marked as Ext. P1 , as well as the existence of a legally enforceable debt. The accused has admitted the issuance of the cheque, and it is an undisputed fact that the cheque was returned dishonoured due to insufficiency of funds. There is no credible or contra evidence adduced by the accused to dispute the execution of Ext P1 towards the discharge of the liability . Through the testimony of PW1 to PW5 and documentary evidence marked as Exts. P1 to P7, the complainant has clearly established the transaction of Ext P 1 cheque and the liability of the accused.

20. Once these two foundational elements are proved, the complainant is entitled to the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. These presumptions are legal in nature and not merely factual, and the burden lies on the accused to rebut them with cogent and credible evidence. Mere

denial of the complainant's case does not suffice to discharge this burden. In *Rohitbhai Jeevanlal Patel v. State of Gujarat* [2019 (2) KHC 243], wherein it was held that the accused must establish a defence based on the preponderance of probabilities to rebut the presumption. In the present case, the accused has failed to rebut the presumptions available to the complainant under law. Accordingly, I hold that the complainant has succeeded in proving the case beyond reasonable doubt. This point is therefore found in favour of the complainant.

21. Point No.2:- Ext. P 1 cheque bearing No.121015 dated 03.07.2023 and Ext. P2 is the memo dated 05.07.2023 and Ext. P3 is the copy of demand notice dated 12.07.2023. Ext P4 postal receipt shows that the original of Ext.P3 notice was posted on 12.07.2023. Ext.P5 is the Acknowledgment card, which shows that the accused had received Ext P3 notice. The complaint was originally instituted on 01.09.2023 without any delay. It is established by the complainant that he has complied with all the legal formalities required for filing a complaint under the Negotiable Instruments Act. This Point is answered in favour of the complainant

22. Point No.3:- In view of my findings on Point Nos 1 and 2 , It is found that accused is guilty of the offence punishable under section 138 of the Negotiable instruments Act and accordingly he is convicted under section 255(2) of the Criminal Procedure Code. This being an economic offence, the accused is not

entitled for the benefit of any of the benevolent provisions of the Probation of Offenders Act.

23. In the result, the accused is found guilty for the offence punishable u/s.138 of Negotiable Instruments Act and convicted thereunder and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs. 17,30,000/- (Rupees Seventeen lakhs thirty thousand only), u/s.255(2) of Cr.P.C. and in case of default of payment of fine, the accused shall undergo Simple imprisonment for three months. The amount of fine on realisation shall be awarded as compensation to the complainant u/s. 357(1)(b) of Cr.P.C.

Directly dictated to Adalath AI, corrected and pronounced by me in the open court on this the 24<sup>th</sup> day of March ,2026.

Sd/-  
Aminakutty P.M.  
Judicial First Class Magistrate -II  
Cherthala

APPENDIX:

Witnesses examined for complainant:

- PW1 - Anna Priya George
- PW2 - Primol Thomas
- PW3 - Rejeesh P(Manager, Canara Bank)
- PW4 - Sunil Kumar
- PW5 - Jobin Thomas, (Manager, ICICI Bank,Aroor)

Exhibits marked for the complainant :

- P1 - Original cheque No. 121015 dated 103.07.2023 issued by Canara Bank, Kaipamangalam branch
- P2 - Cheque return memo dated 05.07.2023
- P3 - Lawyer notice dated 12.07.2023
- P4 - Postal receipt dated 12.07.2023
- P5 - Acknowledgement card
- P6 - Statement of Account
- P7 - Certificate

Witnesses examined for the defence :

DW1 - Krishnakumar

Exhibits marked for the defence : Nil

Material Objects : Nil

Sd/-  
Aminakutty P.M.  
Judicial First Class Magistrate -II  
Cherthala.

// True copy //

Judicial First Class Magistrate -II  
Cherthala.