

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE II, MAVELIKARA

Present: Anandhu J B, Judicial First Class Magistrate

ST 703/19

Monday, 30th March 2026

Complainant : Shanavas Khan, Aged 46/19, S/o Meeran Rawther,
Vazhavila Veettil, Chunakkara Village, Mavelikara.
(*Adv.S. Sudheerkhan*)

DESCRIPTION OF ACCUSED

| Name | Father's name | Occupation | Residence | Age |
|-------|------------------|------------|--|-----|
| Jiyas | Thangal Kunju | | Nadheela Veedu, Edoppallikotta, Panmana P.O, Kollam. | |

(Adv.Saran Sivan)

Offences : U/s 138 of the Negotiable Instruments Act, 1881.

Plea : Not guilty

Finding : Guilty

Sentence/Order : Accused is found guilty of the offence punishable u/s. 138 of the Negotiable Instruments Act and he is convicted for the said offence u/s.255(2) of the Code of Criminal Procedure. The accused is sentenced to imprisonment till the rising of the court and also to pay a fine of Rs. 1,50,000/- (Rupees One lakh fifty thousand only). In default of payment of the fine amount, the accused shall undergo simple imprisonment for a term of one month. If the fine amount is paid or realized, the same is directed to be paid to the complainant as compensation under section 357(1) (b) of Cr.P.C.

Dates of:

| Occurrence | Complaint | Appearance | Release on bail | Commitment | Commencement of trial | Commencement of evidence |
|----------------|-------------------|--|----------------------|---|-----------------------|--------------------------|
| 30.05.19 | 15.07.19 | 01.09.22 | 01.09.22 | | 13.03.23 | 20.07.24 |
| Close of trial | Sentence or order | Service of copy of judgment or finding on accused. | Explanation of delay | Period of detention undergone during investigation, inquiry or trial for the purpose of s.428 CrPC. | | |
| 04.03.26 | 30.03.26 | 30.03.26 | Absence of accused | | | |

This case having been finally heard on today, the court on the same day passed the following:

J U D G M E N T

1. This is a case instituted on a complaint filed under Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'), alleging the commission of an offence punishable under Section 138 of the Act.

2. **The case of the complainant, in brief, is as follows:** The complainant and the accused are friends. On 19.04.2019, the accused approached the complainant at his house and requested a sum of ₹1,00,000/- as a loan. On 24.04.2019, the complainant lent the said amount to the accused. In discharge of the said liability, the accused issued a post-dated cheque bearing No. 014787 dated 09.05.2019 drawn on Bank of Baroda in favour of the complainant. Thereafter, on 18.05.2019, the complainant presented the said cheque for encashment through his bank, Alappuzha District Co-operative Bank, Charumood Branch. However, the cheque was

dishonoured for the reason “funds insufficient” as evidenced by the bank return memo dated 30.05.2019. Subsequently, the complainant issued a lawyer notice dated 07.06.2019 to the accused informing him about the dishonour of the cheque and demanding payment of the cheque amount. The accused received the said notice but failed to repay the amount within the stipulated time. Thus, the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, this complaint.

3. On taking cognizance of offence punishable under section 138 of the Act against the accused, complaint was taken on file and summons was issued to the accused. On 13.03.2023 the accused has surrendered before this court and was enlarged on bail. Copy of the complaint and other relevant documents were provided to the accused and the same day particulars of offence were read over and explained to the accused for which he pleaded not guilty.

4. The complainant was examined as PW1 and the Bank Manager was examined as PW2. Exts. P1 to P5 and X1 were marked. On closing the complainant’s evidence, the accused was examined under Section 313(1)(b) of the Code of Criminal Procedure, 1973. He denied all the incriminating circumstances appeared in evidence and maintained plea of innocence. Accused was examined as DW1.

5. Heard both learned counsels and perused the documents.

6. After hearing both sides and perusing the records, following points have come up for determination;

1. *Whether the complainant has complied with all the legal formalities for initiating proceedings against the accused for the offence punishable under Section 138 of the N.I Act?*
2. *Whether Ext.P1 cheque was issued/executed by the accused as alleged?*
3. *Can presumptions under Sections 118(a) and 139 of the N.I. Act, be drawn in favour of the complainant? If so,*
4. *Has the accused succeeded in rebutting the presumption under Sections 118(a) and 139 of the N.I. Act?*
5. *Is the accused guilty of offence punishable under Section 138 of the N.I Act?*
6. *In the event of conviction what is the proper sentence to be imposed?*

7. **Point No.1:** Ext.P1 is the cheque dated 09.05.2019, which was presented at Alapuzha District Co-operative Bank Ltd, Charumood branch. Ext. P1 cheque was dishonoured vide Ext. P2 cheque return memorandum dated 30.05.2019. Complainant issued Ext.P3 copy of registered lawyer notice dated 07.06.2019. Ext.P4 postal receipt would show that the lawyer notice was issued on 07.06.2019. Accused received the lawyer notice on 11.06.2019 which is evident from Ext.P5 acknowledgment card. On perusing Ext.P1 and P2, it is evident that the cheque has been presented before the bank within 3 months from the date of execution of the cheque. Complainant has issued Ext.P3 copy of lawyer notice within 30 days from

the date of Ext.P2 dishonour memo. Therefore, complainant has complied with the period stipulated under section 138 of the Act. Ext. P3 lawyer notice was received by the accused on 11.06.2019. Complainant filed this complaint on 15.07.2019, which is within the period stipulated under Section 142 (1)(c) of the Act. Therefore, from the above discussion, it is clear that the complainant has complied with all the stipulations mandated under sections 138 and 142 of Negotiable Instruments Act. Hence point No.1 is found in favour of the complainant.

8. **Point Nos. 2 & 3:** The case of the complainant is that he is closely acquainted with the accused and is his friend. The accused, for meeting his financial urgencies, has requested an amount of ₹ 1,00,000 on 19.04.2019 at the house of the complainant. Considering the friendship with the accused, on 24.04.2019, the complainant has lent a sum of ₹ 1,00,000 to the accused. The accused has issued Exhibit P1 cheque towards such payment. The accused has requested to present the cheque only after 09.05.2019. Accordingly, the complainant has presented the cheque for collection on 18.05.2019 at Alapuzha District Cooperative Bank, at Charumood branch. Since there was no sufficient funds, Exhibit P1 cheque was returned as per Exhibit P2 dishonour memo. Exhibit P3 lawyer notice was issued by the complainant to the accused, intimating the fact of dishonouring of the cheque and demanding the money under it. Exhibit P3 lawyer notice was received by the accused. Even after receiving such notice, he did not repay the amount nor has replied to the same. Hence, according to the complainant, the accused has committed the offence punishable under Section 138 of the Act.

9. To prove the execution of Exhibit P1, the complainant relies on the oral evidence adduced by PW1. The complainant was examined as PW1. He has reiterated the complaint averments in the affidavit in lieu of examination-in-chief. It is deposed that Exhibit P1 was executed by the accused towards a legally enforceable debt. At the outset, the accused is not specifically denying the signature seen in Exhibit P1. Even though PW1 was vehemently cross-examined, nothing that would challenge the signature seen in Exhibit P1 is made out from the cross-examination. During the cross-examination, PW1 has reiterated that Exhibit P1 cheque was signed by the accused before him and issued to him.

10. The defence case of the accused is that the accused was partner with the complainant for cattle feed business. It is contented that the cheque of the accused was obtained by the complainant and was misused for instituting this complaint. Apart from raising such a defence, no such questions challenging the signature in Exhibit P1 is made to PW1. The accused was examined before this court as DW1. During the examination-in-chief of DW1, it is deposed that the accused has issued two cheques to the complainant with respect to the cattle feed business. It is contented that such cheque was misused by the accused to institute this case. From the evidence adduced by DW1 itself, it is clear that the issuance of Exhibit P1 cheque is admitted by the accused. The signature is also not challenged before this court. Therefore, considering the oral evidence adduced by PW1, this court can safely conclude that Exhibit P1 is a case cheque executed by the accused in favour of the complainant.

11. Hon'ble High Court of Kerala in **Jyothi Prasad Bhat (Dr.) v. K. Sundara**

Rajan and Another [2013 (3) KHC 141] has held as follows;

The evidence of the complainant, where it is found to be credible and trustworthy, is sufficient to conclude that the cheque was duly executed by the maker towards discharge of a debt or liability towards her. Whether corroboration to her evidence on that disputed question is required or not has to be looked into with reference to the facts proved and not solely on the basis that a defence raised challenging the execution.

In **Bir Singh v. Mukesh Kumar [AIR 2019 SC 2446]**, the Hon'ble Supreme Court has held that “*A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer.*” In **Uttam Ram v. Devinder Singh Hudan and Another [2019 (5) KHC 179]** Hon'ble Supreme Court 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.*”

12. Reiterating the aforesaid principles, a three Judge Bench of the Hon'ble Supreme Court in **M/s Kalamani Tex and another v. P.Balasubramanian [(2021)**

5 SCC 283] held that once the signature of an accused on the cheque is established, the 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. A similar view was taken by the Hon'ble Supreme Court in **Rajesh Jain v. Ajay Singh [2023 (6) KHC 391 (SC)]** also. It was held that "*Section 139 of the N.I. Act requires that the Court 'shall presume' the fact stated therein, and hence it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase 'unless the contrary is proved'*". Since the signature in Exhibit P1 is admitted, considering the oral evidence of PW1, the execution of Ext.P1 is proved. Since the execution of Ext.P1 is proved, the presumptions u/ss 118(a) and 139 of the Act are raised in favour of the complainant. Hence, points 2 and 3 are found accordingly, in favour of the complainant.

13. **Point No.4:** The case of the accused is that there exists no transaction as alleged by the complainant. The defence case raised by the accused is that the accused and the complainant were partners in a cattle feed business, and the Exhibit P1 cheque was obtained by the complainant on that basis. This defence was suggested by the accused to PW1 and also stated by him during his examination as DW1. When accused was examined as DW1, he stated that as part of the business partnership with the complainant, he has issued two cheques to the complainant and it was misused by him for instituting this case. It is also contented that there

existed certain disputes between the complainant and the accused, which led to the misusing of the cheques.

14. To establish the defence and to attract the innocence of the accused, the learned counsel for the accused raises several arguments. One of the major arguments raised by the learned counsel for the accused is that the complainant has failed to prove that the cheque was dishonored as alleged in the complaint. According to the learned counsel for the accused, there is no dishonouring of Exhibit P1 cheque, and hence offense u/s 138 of the Act is not attracted. Further, it is argued that the complainant has failed to prove that Exhibit P1 cheque was dishonoured. The learned counsel for the accused relies on the documents adduced by the complainant to establish this argument. Exhibit P2 is the dishonour memo. It was issued by the Alappuzha District Co-operative Bank, Charumood Branch. It is pointed out by the learned counsel for the accused that the reason for dishonouring of the cheque is not mentioned in it. In Exhibit P2, it is seen that Cheque No. 14787 was presented before that bank on 18.05.2019 for an amount of ₹ 1,00,000. It was dishonoured on 30.05.2019. Even though it is stated that the reason for the dishonouring of the cheque is mentioned in the overleaf, there is no such specification to that effect in the overleaf of Exhibit P2.

15. PW2 was examined by the complainant to establish the dishonouring of Exhibit P1 cheque. PW2 is the manager of the Bank of India, Panmana branch. Exhibit X1 was produced by PW1. Exhibit X1 is a statement of account from 15.05.2019 to 31.05.2019 of Mr. Jiyas, the accused herein. In Exhibit X1, there exist

three entries for the date 17.05.2019. First entry is the inward entry of Cheque No. 14787. Second entry is with respect to the returning of the Cheque No. 14787 for the reason funds insufficient. Third entry is also an inward entry. The learned counsel for the accused would point out that, as per Exhibit X1, the Cheque No. 14787 was presented before the bank on 17.05.2019. In the complaint filed by the complainant, the date of presenting of Exhibit P1 cheque is stated as 18.05.2019. It is pointed out by the learned counsel for the accused that the same aspect is mentioned in the affidavit in lieu of examination in chief, in the fourth paragraph. In the fourth paragraph of the affidavit in lieu of examination in chief, it is stated that the cheque was presented on 18.05.2019. Admittedly, Exhibit X1 is not tallying with either the complaint or the affidavit in lieu examination-in-chief.

16. The number of Exhibit P1 cheque is 14787. In Exhibit X1, the number of the cheque presented on 17.05.2019 is mentioned. It is same as that of Exhibit P1 cheque. Admittedly, Exhibit P1 cheque belongs to the accused. The accused do not have a case that the complainant is in possession of any other cheque belongs to the accused with the same number. Therefore, on perusing Exhibit X1, it is clear that the cheque bearing number 14787, which is Ext.P1 was presented on 17.05.2019. Therefore, what is stated in the complaint, as well as in affidavit in lieu of examination-in-chief, are clerical errors.

17. The question is whether such clerical mistakes are fatal to the case of the complainant. It is evident from Exhibit X1 that Exhibit P1 cheque was presented on 17.05.2019 and was dishonored for the reason funds insufficient. PW2 also testified

this matter. The facts that Exhibit P1 cheque was presented at the Alappuzha District Cooperative Bank and its dishonouring on 17.05.2019 are proved before this Court. The only aspect is with respect to the mentioning of the date in the complaint and in the affidavit in lieu of examination-in-chief as 18.05.2019. As stated above, the accused does not have a case that he has issued a cheque to the complainant bearing number 14787. Therefore, from Exhibit X1 and from the evidence of PW2, it is clear that Exhibit P1 cheque was dishonoured on 17.05.2019. As stated above, execution of Exhibit X1 is already proved before this court. Therefore, on a complete reading of the evidence adduced by PW1, PW2 and Exhibit X1, it can be concluded that Exhibit P1 cheque was dishonoured for the reason funds insufficient on 17.05.2019. The clerical mistake in the complaint and in the affidavit of examination-in-chief does not disprove the case of the complaint that Exhibit P1 was executed by the accused in favour of the complainant for a legally enforceable debt, and it was dishonoured for the reason funds insufficient. Hence, the contention of the accused that there is no dishonouring of Exhibit P1 is not tenable.

18. The Honourable Supreme Court in **Basalingappa v. Mudibasappa [(2019) 5 SCC 418]** summarised the principles of law governing presumptions under Sections 118(a) and 139 of the NI Act in the following manner:

(i) Once the execution of cheque is admitted S.139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under S.139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of

proof for rebutting the presumption is that of preponderance of probabilities.

(iii) 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.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, S.139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.”

19. The defence raised by the accused is that he was having business partnership with the complainant with respect to cattle field business, and Exhibit P1 cheque was issued in connection with the same. It is contented that Exhibit P1 was misused by the complainant, since there existed certain disputes with the complainant with respect to the quality of the cattle feed. As stated above, this defence was raised by the accused during the examination under Section 313 CrPC and as well as while he was examined as DW1.

20. Even though the accused, when examined as DW1, has reiterated this defence before this court, he did not depose as to the details of such business transaction with the complainant. Neither he did not specify about the circumstances under which the cheque was given to the complainant. No details as to when and the circumstance under which the cheque went into the hands of the

complainant was mentioned by DW1. When he was examined as DW1, he only vaguely stated that there existed business transactions with the complainant and the cheque was given to the complainant as part of the business transaction. Further, he deposed that he did not demand the cheque back since there existed disputes with the complainant. The evidence adduced by the accused is not sufficient to create a probable defense. The story put forward by the accused as to the issuance of the cheque to the complainant is not probable. Hence, it is not sufficient to rebut the presumptions raised in favour of the complainant. Accused failed to rebut the presumption by raising a probable defence. Hence, it is concluded that the accused has failed to rebut the presumptions u/ss 118(a) and 139 of the Act. Therefore, point no.4 is found in favour of the complainant.

21. **Point No.5 & 6:** The complainant has successfully proved the execution of Exts.P1. The presumptions u/s 118(a) and 139 of the Act are drawn in favour of the complainant. Accused has failed to rebut the presumption by raising a probable defence. Hence, it is seen that the accused has committed the offence punishable u/s 138 of the Act, 1881. Considering the nature of the case, and the fact that huge financial transactions are involved, the benevolent provisions of Probation of Offenders Act is not invoked in favour of the accused. With respect to the sentence to be imposed in an offense u/s 138 of the Act, Hon'ble High court of Kerala in **Jacob K.M v. State of Kerala and another [2020(1) KHC 291]** has held as follows:

“33. Coming to the question of sentence, it is to be noted that the gravity of an offence under Section 138 of the Act cannot be equated with an offence under the Indian Penal Code or other criminal offences. 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.”

In the result, the accused is found guilty of the offence punishable u/s. 138 of the Negotiable Instruments Act and he is convicted for the said offence u/s.255(2) of the Code of Criminal Procedure. The accused is sentenced to imprisonment till the rising of the court and also to pay a fine of Rs. 1,50,000/- (Rupees One lakh fifty thousand only). In default of payment of the fine amount, the accused shall undergo simple imprisonment for a term of one month. If the fine amount is paid or realized, the same is directed to be paid to the complainant as compensation under section 357(1) (b) of Cr.P.C.

(Dictated to the confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on the 30th day of March, 2026).

Sd/-

Judicial First Class Magistrate-II,
Mavelikara.

APPENDIX

1. List of complainant/Defence/Court witnesses

A. Complainant witnesses.

| | | |
|-----|-----------------|--------------------------------------|
| PW1 | Shanavas Khan | Complainant |
| PW2 | Nithin Chandran | Branch Manager Bank of India Panmana |

B. Defence witnesses:

| | | |
|-----|---------|---------|
| DW1 | Jiyas.T | Accused |
|-----|---------|---------|

II. List of Complainant/Defence/ Court Exhibits**Complainant's exhibits:**

| | | |
|---|------------|---|
| 1 | Ext.P1/PW1 | Original Cheque, dated 09.05.2019. |
| 2 | Ext.P2/PW1 | Cheque return memorandum dated 30.05.2019 |
| 3 | Ext.P3/PW1 | Legal notice dtd 07.06.2019 |
| 4 | Ext.P4/PW1 | Postal receipt dtd 07.06.2019 |
| 5 | Ext.P5/PW1 | Acknowledgement Card |

B. Court Exhibits:

| | | |
|----|------------|--|
| 1. | Ext.XI/PW2 | Statement of Account from 15-05-19 to 31-05-19 |
|----|------------|--|

C. Defence Exhibits:- Nil**D. Material Objects: Nil**

Sd/-

Judicial First Class Magistrate-II,
Mavelikara

-----True Copy-----

Judicial First Class Magistrate-II,
Mavelikara