

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

Present: Anandhu J B, Judicial First Class Magistrate

Thursday, 30th day of April 2026

Calendar Case No. 730 of 2020

Complainant : Thulaseedharan, aged 56 yrs,
S/o.Vasudevan, Pallappasseril Veedu,
Kannanakuzhi PO, Charummood, Alappuzha.

DESCRIPTION OF ACCUSED

Name	Father's name	Occupation	Residence	Age
Suresh PS	Sadasivan		Pallathedath Veedu, Thuruthile Idayaranmula PO, Aranmula, PATHANAMTHITTA	

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 pay a fine of Rs. 7,65,000/- (Rupees Seven lakh sixty five 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
29.07.20	22.09.20	31.01.24	31.01.24		31.01.24	27.07.24

Close of trial	Sentence order	or	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.
29.01.2026	30.04.2026			Accused absconded	

This case having been finally heard on 29.01.2026, the court on today 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 accused are closely acquainted. Accused demanded Rs.5,00,000/-from the complainant for his business needs. On 29.07.2020, the complainant has paid the said amount to the accused. Accused promised to repay the amount within one month. Towards the repayment, accused executed a postdated cheque no. 121819 dated 29.07.2020, of SBI Aranmula branch. When the complainant presented the cheque on 30.07.2020 at State Bank of India, Charumood branch, it was dishonoured for the reason 'funds insufficient' as per a memo dated 30.07.2020. Complainant issued a lawyer notice dated 04.8.2020, intimating the factum of dishonour of the cheque and demanding the money under it. The accused deliberately refused to receive

the notice. Accused did not repay the amount. According to the complainant, accused has committed offense punishable u/s 138 of the Act. Hence the complainant.

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 31.01.2024, 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. On 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 a witness was examined as PW2. Exts.P1 to P5 were marked through PW1. 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 did not adduce any defence evidence.

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 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 29.07.2020, which was presented on 30.07.2020 at the State Bank of India, Charumood Branch. The said cheque was dishonoured as evidenced by Ext.P2 cheque return memorandum dated 30.07.2020. The complainant thereafter issued Ext.P3, copy of the registered lawyer notice dated 04.08.2020. Ext.P4 postal receipt would show that the said lawyer notice was sent to the accused. Ext.P5 is the returned postal cover with acknowledgment due card, which shows that the notice was returned unclaimed, indicating that the accused deliberately avoided receipt of the notice. On a perusal of Exts.P1 and P2, it is evident that the cheque was presented before the bank within three months from the date of execution of the cheque. The complainant has issued Ext.P3 lawyer notice within thirty days from the date of dishonour, as evidenced by Ext.P2, thereby complying with the statutory period prescribed under Section 138 of the Negotiable Instruments Act. The complaint was filed on 22.09.2020, which is well 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 mandatory requirements under Sections 138 and 142 of the Negotiable Instruments Act. Hence, Point No.1 is found in favour of the complainant.

8. **Points 2 & 3:** The case of the complainant is that the accused is acquainted with him and he borrowed a sum of ₹ 5,00,000 from him for his business purposes. When the complainant demanded back the amount, the accused issued Exhibit P1 cheque towards its payment. When the complainant has presented the cheque before the bank for encashment, it was dishonoured for the reason funds insufficient vide Exhibit P2 dishonour memo. The complainant has issued Exhibit P3 lawyer notice, which was returned as unclaimed. According to the complainant, the accused did not pay the amount borrowed from him. 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 cheque, the complainant relies on the oral evidence of PW1 and PW2. The complainant himself was examined as PW1. He reiterated the complaint averments in the affidavit in lieu of examination-in-chief. It is stated that Exhibit P1 cheque was issued and executed by the accused when he demanded the amount due to him. At the outset, the accused is not denying the signature in Exhibit P1 cheque. Even the defence case raised by the accused is that the complainant has preferred this complaint, using a signed blank cheque issued by the accused to one Mr. Suresh Koottai. This defence is suggested

by the accused to PW1 when he was cross examined. Therefore, from the cross examination of PW1, it can be seen that the accused is admitting the signature seen in Exhibit P1 cheque.

10. PW2 is another witness examined by the complainant to prove the execution of Exhibit P1 cheque. He deposed that he is acquainted with both the complainant and the accused. He worked along with the complainant at a company in Qatar. He knows the accused as he worked along with him in a company at Gujarat. He further deposed that he is aware of the existence of financial transactions between the complainant and the accused. He deposed that he is aware of the fact that the accused has issued Exhibit P1 cheque to the complainant for the financial transactions between them. He specifically stated that the accused has signed the cheque and issued to the complainant in front of him. He stated that the complainant has paid the amount to the accused, as directed by him. He further stated that there existed financial transactions between the accused and himself.

11. Both PW1 and PW2 were cross-examined vehemently. On going through the cross-examination of PW1 and PW2, there is nothing that would challenge the signature seen in Exhibit P1 cheque. As stated above, the accused is admitting the signature seen in Exhibit P1. On going through the cross-examination of PW1 & 2, there is nothing before this Court to doubt the veracity of the evidence adduced by them with respect to the execution of Exhibit P1.

12. 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.

On perusing the cross examination of PW1 and PW2, there is nothing that challenges the execution of Ext.P1. Therefore, much discussion is not warranted to establish the execution of Ext.P1. Considering the oral evidence adduced by PW1 and PW2, the execution of Ext.P1 is proved.

13. 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.”

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 signatures in Exhibits P1 is admitted, considering the oral evidence of PW1 and PW2, its execution is proved. Since the execution of Exts.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.

11. **Point No.4:** The accused raises a contention that there is no legally enforceable debt between him and the complainant. During the examination of the accused under Section 313 CrPC, he stated that he did

not issue any cheque to the complainant for a legally enforceable debt. The defence of the accused was raised by him during the cross-examination of PW1. It is suggested to PW1 that the case was preferred by the complainant, misusing a signed blank cheque obtained by him from Mr. Suresh Koottayi, to whom the accused has issued that cheque. It is suggested that Mr. Suresh Koottayi has preferred a criminal case against the accused before the Judicial First Class Magistrate-2, Haripad, which was settled by the accused and Mr. Suresh has withdrawn the case. According to the accused, the blank and cheque issued by the accused to Mr. Suresh is misused by the complainant to file this case.

12. One of the major argument raised by the learned counsel for the accused is that the complainant has failed to adduce any evidence to show that business of the accused. The case of the complainant is that the accused has borrowed ₹ 5,00,000 from the complainant for his business purposes. Admittedly, in the examination-in-chief of PW1, nothing is stated about the nature of business being conducted by the accused. Despite such an argument raised by the learned counsel for the accused during the final argument of the case, no such questions were put to PW1 during his cross-examination. It is pertinent to note that the business being conducted by the accused is not relevant in the case, as it is proved by the complainant that Exhibit P1 cheque was issued by the accused for a legally enforceable debt. Since the complainant has the benefit of presumptions under Section 118(a) and 139 of the Act, mere non-mentioning of the

nature of business conducted by the accused is not at all fatal to the complainant.

13. Another argument raised by the learned counsel for the accused is that the accused did not receive the statutory notice. Admittedly, Exhibit P3 notice was returned to the complainant without serving to the accused. On perusing Exhibit P5 returned postal article, it is seen that it was returned since unclaimed by the accused. During the cross-examination of PW1, the accused has raised a defence that he has no such address as mentioned in Exhibit P3 and Exhibit P5. Pertinently, the complainant has filed this complaint, mentioning the address of the accused as same as in Exhibit P3 and Exhibit P5. The summons from this court was sent to the accused in the same address as shown in the complaint and as well as in Exhibit P3 and Exhibit P5. On perusing the proceedings of this court, it is evident that the summons was issued to the accused in that address was served to the accused. The acknowledgment card evidencing the serving of the summons issued from this court is also available in the case records. More importantly, I have perused the vakkalath of the accused. The name and address shown in the vakkalath of the accused is same as that of in the complaint and in Exhibit P3 lawyer notice. Therefore, the argument that the accused did not receive the legal notice and accordingly it is fatal to the case of the complainant is not tenable. The accused has unclaimed Exhibit P3 notice issued to him. Therefore, it is to be concluded that he had sufficient knowledge about the issuance of Exhibit P3 notice and the

subsequent criminal proceedings. Therefore, the above argument raised by the accused is also not tenable.

14. The accused raised another argument that the complainant has failed to prove the transaction with the accused. Admittedly, the complainant did not produce any document to show the existence of transaction between the complainant and the accused. Admittedly, the complainant did not produce any document to show the existence of transaction between the complainant and the accused. Accused, during the cross-examination of PW1, has challenged the existence of financial transaction between the complainant and the accused. It is to be noted that in a prosecution under Section 142 of the Act, alleging offence punishable under Section 138 of the Act, it is not necessary on the part of the complainant to prove the existence of financial transaction. It is settled in law that as far as the accused has failed to rebut the presumption raised under Section 118(a) and 139 of the Act, it is not necessary on the part of the accused to prove the exact financial transaction with the accused. As per s.118(a) and 139 of the Act, it is presumed that the cheque issued to the complainant is for a legally enforceable debt. On perusing the total evidence in hand, it is seen that the accused could not raise anything which is sufficient enough to rebut the presumptions raised in favour of the complainant. Therefore, non-production of documents showing the existence of transaction is not at all fatal to the case of the complainant.

15. In **Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [(1999) 3 SCC 35]**, the Honourable Supreme Court held that the

non-existence of consideration for the cheque can be proved by raising a probable defence and if it is shown that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant/plaintiff. In **Rahiya v. Jasna, Anr [2024 (2) KHC 545]** it was held that “The rebuttal does not have to be conclusively established, but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of responsibility being that of the prudent man.” 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.”

16. From the above discussion, it is seen that the accused has failed to rebut the presumptions u/ss 118(a) and 139 of the Act by raising a probable defence. Hence, accused is liable to be punished u/s 138 of the Act. Point No.4 is found accordingly.

17.**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. 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 pay a fine of Rs. 7,65,000/- (Rupees Seven lakh sixty five 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 April, 2026).

sd/-

Judicial First Class Magistrate-II,
Mavelikara.

APPENDIX

1. List of complainant/Defence/Court witnesses**A. Complainant witnesses.**

PW1	Thulaseedharan	Complainant
PW2	Suresh	Occurrence witness

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

1	Ext.P1/PW1	Cheque no 121819 dated 29.07.2020
2	Ext.P2/PW1	Cheque return memorandum dated 30.07.2020
3	Ext.P3/PW1	Copy of legal notice dtd 04.08.2020
4	Ext.P4/PW1	Postal receipt dtd
5	Ext.P5/PW1	Unclaimed Reg notice with A/D card dated 04.08.2020

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

sd/-

Judicial First Class Magistrate-II,
Mavelikara*true copy*Judicial First Class Magistrate-II,
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