

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE II, MAVELIKARA
Present: Anandhu J B, Judicial First Class Magistrate
Calendar Case No. 459 of 2023, 27th February 2026

Complainant : Muhammad Haneefa, Aged 72/23 Years,
 S/o Maitheenpicha Rawther, Darual Safar, Kunnam Veedu,
 Mekkum Muri, Thamarakulam Village, Mavelikara Taluk.
 (Adv. Mujeeb Rehman)

DESCRIPTION OF ACCUSED

| Name | Father's name | Occupation | Residence | Age |
|-----------|---------------|------------|---|-------|
| Sreekanth | | | Chennatt House, Near Palliyarakavu Temple, Kavalam Junction, Kavalam Village, Kuttanad Taluk. | 40/23 |

(Adv.M. Vinayan)

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

Plea : Not guilty

Finding : Not guilty

Sentence/Order : Accused is acquitted u/s 255(1) of CrPC.

Dates of:

| Occurrence | Complaint | Appearance | Release on bail | Commitment | Commencement of trial | Commencement of evidence |
|----------------|-------------------|------------|--|----------------------|---|--------------------------|
| 19.09.23 | 04.11.23 | 21.01.25 | 21.01.25 | | 21.01.25 | 10.04.2025 |
| 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. | |
| 05.02.25 | 28.03.25 | | | | | |

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

JUDGMENT

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 is acquainted with the accused. Accused used to buy agricultural crops from the complainant. The accused has promised to pay ₹ 3,00,000 towards its payment on 01.09.2023. On 01.08.2023, the accused has issued a cheque bearing number 062922 dated 01.09.2023 for an amount of ₹ 3,00,000/- from his account held at Federal Bank, Perunna branch. He represented that there is sufficient amount to honour the cheque. The complainant has presented the cheque at State Bank of India, Thamarakkulam branch, and it was dishonoured for the reason 'funds insufficient' on 19.09.2023. The complainant has issued a lawyer notice, intimating the factum of dishonouring a cheque and demanding the money under it. The accused received the notice on 27.09.2023. He did not repay the amount nor replied to the notice. Hence, according to the complainant, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

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 21.01.2025, 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 itself, particulars of offence were read over and explained to the accused for which he pleaded not guilty.

4. The complainant was examined as PW1. Exts. P1 to P5 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 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 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 01.09.2023, which was presented at State Bank of India, Thamarakkulam branch. Ext. P1 cheque was dishonoured vide Ext. P2 cheque return memorandum dated 19.09.2023. Complainant issued Ext.P3 copy of registered lawyer notice dated 27.09.2023. Ext.P4 postal receipt would show that the lawyer notice was issued on 27.09.2023. Accused received the lawyer notice on 04.10.2023 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 04.10.2023. Complainant filed this complaint on 04.11.2023, which is within the period stipulated under Section 142 (1)(b) 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 acquainted with the accused. According to the complainant, the accused has purchased different agricultural crops from him and a sum of ₹ 3,00,000 was due towards the payment. Towards such payment of ₹ 3,00,000, the accused has issued Exhibit P1 cheque from the account he maintained in his Federal Bank, Perunna branch. The complainant has presented Exhibit P1 for encashment. It was dishonoured as per Exhibit P2 dishonour memo for the reason 'funds insufficient'. Complainant has issued Exhibit P3 lawyer notice demanding the money under Exhibit P1 and intimating the fact of dishonouring of the cheque. It was received by the accused, which is evident from Exhibit P5 acknowledgment card. Even though Exhibit P3 lawyer notice was received by the accused, he did not repay the amount nor has replied to the notice. 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 his oral evidence. The complainant was examined as PW1. He has reiterated his complaint averments in the affidavit in lieu of examination-in-chief. It is stated that Exhibit P1 was executed by the accused towards a legally enforceable debt. It is stated in the affidavit in lieu of examination-in-chief that the accused has signed and executed the cheque at the house of the complainant. PW1 was cross examined vehemently by the learned counsel for the accused. At the outset, the accused did not seriously challenge the signature seen in Exhibit P1. Even though a question was put to PW1 with respect to the difference of signature seen in Exhibit P1 and Exhibit P2, he denied any difference. The mere suggestion to that effect is not sufficient to doubt the signature seen in Exhibit P1. Pertinently, the defence case of the accused is that

Exhibit P1 was a cheque which she issued to one Mr. Suresh after only signing it and the same was obtained by the complainant to falsely institute this case. Hence, from the suggestions with respect to the defence case of the accused itself, it is clear that the signature in Exhibit P1 belongs to the accused. Therefore, the fact that the signature seen in Exhibit P1 belongs to the accused stands proved.

10. The learned counsel for the accused points out an admission of PW1 to establish that Exhibit P1 was not executed by the accused in favour of the complainant. During the last part of the cross-examination, a question that who has signed and written the entries in Exhibit P1, was put to him. He answered that he do not know who has signed and written the entries in Exhibit P1. Learned counsel for the accused would argue that the complainant could not mention the person who has written the entries in Exhibit P1 since it was not executed by the accused in favour of the complainant. In the examination-in-chief, the complainant did not have a case that the accused has written all the entries in Exhibit P1 and thereafter issued it to him. It is stated in the affidavit in lieu of examination-in-chief that the accused has signed and issued Exhibit P1 to the complainant at his house. For the mere fact that the complainant do not know as to who has written the entries in Exhibit P1 is not sufficient to doubt its execution. It is settled in law that even a signed blank cheque would attract offence punishable under Section 138 of the Act.

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.

12. 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 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 accused would contend that there is no such transaction as alleged by the complainant and he has not executed any cheque towards any payment to the complainant. The defence of the accused was raised by him in the examination under Section 313 CrPC. When the accused was examined under section 313 CrPC, it is stated that he does not know the complainant and he has no transaction with him. It is stated that the accused has issued a signed blank cheque to one Mr. Suresh to purchase turmeric from him. Mr. Suresh has not given the turmeric nor has returned the cheque. To probabilise the defence of the accused and to establish that the complainant has no transactions with the accused, the learned counsel for the accused raises several arguments.

12. To probabilise the defence raised by the accused, the learned counsel for the accused relies on the cross-examination of PW1. As stated above, PW1 was vehemently cross-examined. The learned counsel for the accused points out several admissions from the cross examination of PW1, which according to him would probabilise and substantiate the defence case. During the cross-examination of PW1, he categorically admits that he is acquainted with one Mr. Suresh of Mannar. Further, it is stated that Mr. Suresh is a person who got patent in turmeric farming. He categorically admits that Mr. Suresh is his close friend. Further, the learned counsel for the accused has put a question to PW1 as to the reason why he provided turmeric to the accused for huge amount, without any security. PW1 answered that he gave the materials to accused without any security, considering his close relationship with Mr. Suresh.

13. The learned counsel for the accused has suggested the defence case to PW1 during the cross-examination. It is specifically asked that the cheque given by the accused to Mr. Suresh was obtained by the complainant and presented for encashment after putting the name, address, and date in it. Even though PW1 denied that suggestion, in an earlier point of cross-examination, PW1 has admitted that there exists difference in handwriting between the signature and other writings in Exhibit P1. Such an admission was made by PW1 when he was confronted with Exhibit P1. Therefore, from the cross-examination of PW1 itself, he admits that there exists a difference between the handwriting of the signature when compared with other writings in Exhibit P1 cheque. Further, PW1 has admitted that she is unaware as to who has written the name, date, and amount in Exhibit P1 cheque.

14. Further, the learned counsel for the accused would contend that the complainant has not explained the original transaction with the accused. He has argued that the complainant has failed to plead and prove the original transaction with the accused. The learned counsel for the accused has put specific questions with respect to the original transaction between the complainant and the accused. Only during the cross-examination of PW1, he has stated that the accused has purchased turmeric saplings from the complainant. Further, during the cross-examination, PW1 stated that the accused has purchased one load of turmeric saplings from the complainant on 27.01.2019. It is stated that on that day, 5,360 kilograms of saplings were given to the accused. Thereafter on 10.01.2020, 200 kilograms of turmeric saplings was given to the accused. Further, 440 kilograms of turmeric was also given to the accused. Admittedly, these aspects are not mentioned in the complaint nor in the examination in chief.

15. It is settled in law that the complainant is not bound to plead and prove the original transaction with the accused at the first instance. Hon'ble High Court of Kerala in **Jacob K.M v. State of Kerala and anr [2020 (1) KHC 291**, has held as follows;

24. There is no invariable rule that absence of details regarding the original transaction in the complaint would make the evidence given by the complainant unreliable or the case set up by him improbable. Whether absence of such details in the complaint would affect the credibility of the testimony of the complainant or the case set up by him in evidence would depend upon the facts and circumstances of each case. If the accused has raised a probable plea regarding the possession of his cheque with the complainant and when the accused has adduced reliable evidence to prove his plea in that regard, then absence of details regarding the original transaction in the complaint may be a circumstance which enables the accused to rebut the presumption under S.139 of the Act. In a case where the accused could not even raise a probable plea as to how his cheque, which bears his signature, happened to be in the possession of the complainant, and the evidence, if any, adduced by the accused in support of any plea raised, is not reliable and trustworthy, absence of details regarding the original transaction in the complaint will not affect the credibility of the evidence given by the complainant in that regard.

16. As stated above, from the cross-examination of PW1 itself, the close acquaintance with the complainant with Mr. Suresh of Mannar is admitted. PW1 even admitted that he has given this much quantity of agricultural crops to the accused considering the close relationship with Mr. Suresh. Therefore, acquaintance of the complainant with Mr. Suresh is proven before

this court. Further, from the cross-examination of PW1 itself it is evident that he is unaware as to who has put the date, amount, and name in Exhibit P1 cheque. He himself has admitted that there exists difference in handwriting between the signature and other writings in Exhibit P1 cheque. These aspects would probabalise the case of the accused. From the above decision of the Hon'ble High Court of Kerala, even though the complainant is not bound to plead and prove the original transaction between the complainant and the accused at the first instance, when other circumstances of the case draws a conclusion that the defense case of the accused is probable, the question of original transaction would attract importance. As stated in the above decision of the Hon'ble High Court of Kerala, when there is a probable defence for the accused as to the possession of the cheque in the hands of the complainant, the non-explanation of the original transaction has some relevancy.

17. 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.”

Considering the above discussion, it is seen that the accused has a probable defence as to how the Exhibit P1 cheque has come into the hands of the complainant. The defence is probabilised by the cross-examination of the PW1. When that aspect is read along with the fact that the complainant has failed to plead and prove the original transaction prevailing between the complainant and the accused, I am of the opinion that such omission is fatal to the case of the complainant. It is evident from the cross-examination of PW1 that the original transaction was vehemently challenged by the accused in the cross-examination of PW1. Considering these aspects, I am of the opinion that the accused has raised a probable defence as to how the cheque has come into possession of the hands of the complainant. The complainant has failed to establish the original transaction between the accused. The defence raised by the accused is probable and is sufficient to rebut the presumptions raised under Section 118(a) and 139(a) of the Act. Hence, point no.4 is found in favour of the accused. Since point no.4 is found in favour of the accused, point no.5 does not arise for consideration.

In the result, the accused is found not guilty of the offence punishable u/s 138 of the Negotiable Instruments Act and he is acquitted for the said offence u/s.255(1) of the Code of Criminal Procedure. Bail bond is cancelled and accused is set at liberty.

(Dictated to the confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on the 27th day of February, 2026).

Judicial First Class Magistrate-II,
Mavelikara.

APPENDIX

1. List of complainant/Defence/Court witnesses

A. Complainant witnesses.

| | | |
|-----|------------------|-------------|
| PW1 | Muhammad Haneefa | Complainant |
|-----|------------------|-------------|

B. Defence witnesses: Nil

II. List of Complainant/Defence/ Court Exhibits

Complainant's exhibits:

| | | |
|---|------------|---|
| 1 | Ext.P1/PW1 | Original Cheque, dated 01.09.2023. |
| 2 | Ext.P2/PW1 | Cheque return memorandum dated 19.09.2023 |
| 3 | Ext.P3/PW1 | Legal notice dtd 27.09.2023 |
| 4 | Ext.P4/PW1 | Postal receipt dtd 27.09.2023 |
| 5 | Ext.P5/PW1 | Acknowledgement Card dtd 06.10.2023 |

B. Court Exhibits: Nil

C. Defence Exhibits:- Nil

D. Material Objects: Nil

Judicial First Class Magistrate-II,
Mavelikara