

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
MAVELIKKARA**

Present: Sri. Anandhu. J.B, Judicial First Class Magistrate-II

Dated this the 29th day of April 2026

S.T.No. 438/2024

Complainant : Vilasini, aged 56, W/o Sugathan
Anoop bhavanam, Patoor PO
Padanilam, Nooranad Village
(By Adv. Ratheesh C & Vishnu Narayan)

DESCRIPTION OF ACCUSED

Name	Husband's name	Occupation	Residence	Age
Sobha	Saji A K		Mannasseril veedu, Patoor P.O, Padanilam, Nooranad Village	44/24

(By Adv. R.Muraleedharan Pillai)

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
21.05.2024	01.07.2024	23.01.25	23.01.25		23.01.25	13.03.2025
Close of trial	Sentence 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.		
22.04.2026	29.04.2026					

This case having been finally heard on 22.04.2026, 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 offence punishable under Section 138 of the Act.

2. **Case of the complainant, in brief, as revealed from the complaint is as follows:** The complainant and the accused have prior acquaintance. In discharge of the legally enforceable debt, the accused issued a cheque for Rs.99,450/- on 21.5.2024 drawn on Federal Bank, Padanilam branch to the complainant. The complainant presented the cheque for collection at the Canara Bank, Pattoor branch. However, the cheque was returned unpaid stating the reason 'funds insufficient' as per cheque return memo dated 23.05.2024. On 29.05.2024, the complainant issued a registered lawyer notice to the accused demanding the cheque amount. The accused received the notice on 30.5.2024. The accused did not repay amount. Hence, according to the complainant, the accused has committed the offence punishable under Section 138 of the N.I. Act. Hence, the complaint.

3. On taking cognizance of offence punishable under section 138 of the Act against the accused, complaint was taken on file as ST 438/2024 and summons was issued to the accused. On 23.01.2025, 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. Particulars of offence were read over and explained to the accused for which he pleaded not guilty. PW1 and PW2 were examined from the side of the complainant and Exts.P1 to P5 were marked through PW1. Ext.X1 was marked through PW2. 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. The accused raised her defence during the examination u/s 313 CrPC.

4. The defense raised by the accused when examined section 313 of CrPC is as follows. The accused claims to be innocent. There is no transaction between the complainant and the accused. The son of the complainant is a person who lends money and is a person conducting financial establishment. During 2019, the husband of the accused has borrowed a sum of Rs. 40,000/- from the son of the complainant. While so, a blank signed cheque of Canara bank was issued to him as security. The husband of the accused has paid the amount to the son of the complainant. Since the husband of the accused was not ready to pay the exorbitant interest demanded by the son of the complainant, the son of the complainant did not return the cheque to the husband of the accused. The complainant has misused that cheque to institute this complainant against the accused.

5. Exts. D1 and D2 were marked from the side of the accused. Heard both learned counsel and perused the records.

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

1. Whether the complainant 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 21.05.2024, which was presented at Canara Bank, Pattoor branch. Ext. P1 cheque was dishonoured vide Ext. P2 cheque return memorandum dated 23.05.2024. Complainant issued Ext.P3 copy of registered lawyer notice dated 29.05.2024. Ext.P4 postal receipt would show that the lawyer notice was issued on 29.05.2024. Accused received the lawyer notice on 30.05.2024 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 30.05.2024. Complainant filed this complaint on 01.07.2024, 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 No.2 & 3:** The case of the complainant is that he is acquainted with the accused and has credited some amount to her. In discharge of the legally enforceable debt towards the complainant, the accused has issued Exhibit P1 cheque. The complainant has presented the cheque at Canara Bank, Pattoor branch. It was dishonoured for the reason 'Funds Insufficient' as per Exhibit P2 dishonour memo. The complainant has issued Exhibit P3 lawyer notice intimating the factum of dishonour of the cheque and demanding the money under it. Even after receiving the legal notice, the accused did not repay the amount. 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 of PW1. The complainant was examined as PW1. She has reiterated the complaint averments in the affidavit in lieu of

examination-in-chief. It is stated that the accused has issued Exhibit P1 cheque towards a legally enforceable debt. PW1 was vehemently cross-examined by the learned counsel for the accused. At the outset, the accused is not denying the signature seen in Exhibit P1. The defence case raised by the accused is that Exhibit P1 was a cheque issued by the husband of the accused when he borrowed a sum of ₹ 40,000 from the son of the complainant during 2019. It is contented that that cheque was misused by the complainant to institute this complaint. This defence case was suggested to PW1 during the cross-examination. Hence, from the cross-examination of PW1 itself, the accused is impliedly admitting the issuance of Exhibit P1 cheque.

10. The issuance of Exhibit P1 cheque is admitted by the accused. The signature in Exhibit P1 is also denied by the accused. On perusing the cross-examination of PW1, it can be seen that no serious challenges are made with respect to the issuance of Exhibit P1 cheque or about the signature seen in it. There is nothing before this Court to doubt the oral evidence of PW1 with respect to the execution of Exhibit P1 cheque. Hence, considering the oral evidence of PW1, the execution of Exhibit P1 cheque is proved. 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.

11. 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 she has no financial transactions with the complainant. It is conducted that the accused has seen the complainant only before this court. The accused has raised a specific defence. It is conducted that the son of the complainant is a financier and during 2019 the husband of the accused has borrowed a sum of ₹ 40,000 him. While so, the husband of the accused has issued a signed blank cheque towards its security. According to the accused, her husband has repaid the amount borrowed

from the son of the complainant. It is conducted that the son of the complainant has demanded exorbitant interest, which was denied by the husband. Due to that, the cheque issued by the husband of the accused was not returned to him. Thereafter, that cheque was misused by the complainant, made entries in it, and filed this case. According to the accused, the transactions alleged by the complainant in the complaint and in the affidavit in lieu of examination in chief is false.

14. To rebut the presumptions raised under Section 118(a) and 139 of the Act, and as well as to attract the innocence of the accused, the learned counsel for the accused raises several arguments. As stated above, the defense case of the accused is that the cheque was issued by the husband of the accused to the son of the complainant, who is a financier, when he has borrowed a sum of ₹ 40,000 during 2019. To establish this defence, the learned counsel for the accused pointed out several admissions made by the PW1 during her cross-examination. During the first portion of the cross-examination of PW1, she admitted that Sajan is her son and Pinky is her daughter-in-law. She specifically admits that Sajan is a financier conducting the financial institutions. It is specifically admitted that her son has financial institutions having branches at Nooranad and Pattoor. Further, it is admitted that the name of the financial institution of her son which is having a branch at Nooranad is named 'Krithi Finance'. When a specific question was asked as to whether Mr. Sajan and Pinky has the business of lending money to the public on interest, PW1 answered that she do not know such a thing.

From the admissions of PW1 itself, it is clear that the son of the complainant is a financier and is conducting business by the name Krithi Finance.

15. The learned counsel for the accused further relies on Exhibit D1 and Exhibit D2 to further establish the defense. Exhibit D1 is the copy of the legal notice received by the accused. Exhibit D2 is its postal cover. Exhibit D1 is the original of Exhibit P3. Exhibit P3 is produced by the complainant along with the complaint, being the copy of the legal notice sent by the complainant to the accused. Both Exhibit P3 and Exhibit D1 are issued by advocate Vithu M. Unnithan. Even though the contents of both legal notices are one and the same, there exists a pertinent difference in the first paragraph of the notices. In Exhibit P3 notice, it is stated as 'Under the instruction from my client, Smt. Vilasini L, Anoop Bhavanam, Pattoor PO, Nooranadu, Alapuzha, Pin 690529, I am issuing this notice to you'. Whereas in Exhibit D1, the first paragraph is stated as 'Under the instruction from my client Smt. Vilasini L. Managing Director, Krithi Finance, Para Junction, Nooranadu (license number 32040391871) I am issuing this notice to you'. On perusing Exhibit D1, it is seen that even though the name is mentioned as that of the complainant, her capacity is mentioned as the managing director of Krithi Finance. The complainant do not have an explanation as to how such a difference occurred in Exhibit P3 produced by the complainant, which is supposed to be the copy of Exhibit D1. From Exhibit D1, it can be concluded that the legal notice issued by the

complainant to the accused is Exhibit D1. There is nothing before this court to think otherwise. Considering Exhibit D1, it is seen that the lawyer notice sent by the complainant in this case was under the capacity of the managing director of Krithi Finance.

16. From the above discussion, it can be seen that the PW1 herself would admit that her son is a financier and is conducting financial institution by the name Krithi Finance. Exhibit D1 would establish this aspect. In Ext.D1, the complainant herself is stated to be the Managing Director of Krithi Finance. Therefore, the defense case raised by the accused that the son of the complainant is a financier is established before this court. Moreover, it is seen that there is every chance that the son of the complainant has lent money to the husband of the accused. From the above discussion, it is seen that the defence raised by the accused is probable one.

17. The learned counsel for the accused raises another argument that the complainant has no financial capacity to lend this much amount to the accused. During the cross-examination of PW1, the financial capacity of the complainant was vehemently challenged by the learned counsel for the accused. During the cross-examination of PW1, various questions challenging the financial capacity of the complainant were put to her. PW1 has admitted that she is a homemaker and often do tailoring. She stated that she has conducted poultry farm and chicken shop. She had 3,000 chickens in her farm. Further, she admitted that now she has no chickens in her farm. She stated that she started

chicken farm by availing loan from co-operative society by mortgaging her property. Further, she specifically admitted that she stopped the farm since it led to financial loss. Further she stated that she has gained up to ₹ 50,000 when the farm was in profit. Thereafter, she specifically admitted that she stopped the farm since she incurred financial loss. Further, it is stated that now she is living depending on her children. On the later stage of the cross-examination, PW1 has stated that she gave the amount to the accused from the income from the chicken farm.

18. From the cross-examination of PW1, it is seen that the complainant was having a poultry farm which she stopped since it fell to financial loss. She stated that she lent the money to the accused using the income from the chicken farm. She has specifically admitted that the chicken farm was stopped by her since it has culminated in financial loss. She also admitted that now she is living with the help of her children. Therefore, from the cross examination of PW1 itself, it is seen that the complainant has no sufficient financial capacity.

19. Hon'ble Apex Court in of **Tedhi Singh v. Narayan Dass Mahant [(2022) 6 SCC 735]**, it was held that the complainant need not demonstrate financial capacity unless the accused sets up a case questioning the complainant's capacity in reply to the statutory notice. It was further observed that the accused could establish such a case by producing independent materials, pointing to materials produced by the complainant, or through cross-examination of the complainant's

witnesses. Hon'ble High Court in **Sunitha v. Sheela Antony & others [2020 (3) KHC 138]** has held as follows;

The complainant has no obligation, in all cases under S.138 of the Act, to prove his financial capacity. But, when the case of the complainant is that he lent money to the accused by cash and that the accused issued the cheque in discharge of the liability, and if the accused challenges the financial capacity of the complainant to advance the money, despite the presumption under S.139 of the Act, the complainant has the obligation to prove his financial capacity or the source of the money allegedly lent by him to the accused. The complainant has no initial burden to prove his financial capacity or the source of the money. The obligation in that regard would arise only when his capacity or capability to advance the money is challenged by the accused.

Hon'ble Apex Court in **Basalingappa v Mudibasappa [2019 (2) KHC 481]** has held that when the financial capacity of the complainant is questioned, it is incumbent on the complainant to have explained his financial capacity. From the above decisions, it is settled that when the financial capacity of the complainant is seriously challenged by the accused, it is incumbent on the complainant to establish the financial capacity. Here, PW1 herself would admit that her business of chicken was closed due to financial loss and now she is now living depending on

her children. Therefore, it is to be concluded that the complainant has failed to establish her financial capacity.

20. 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."

21. From the above discussion, it is seen that the defence case raised by the accused is probablised by the cross examination of PW1 and by Ext.D1. The defense case that Ext.P1 was issued to the son of the complainant when the husband of the accused borrowed Rs.40,000/- during 2019 and was misused by the complainant, is probable. The discrepancy in Ext.D1 and Ext.P3 is not explained by the complainant. It casts a doubt upon the veracity of the evidence of the complainant. From the above discussion, it can be safely concluded that the accused has succeeded in rebutting the presumptions raised u/ss 118(a) and 139 of the Act, by raising a probable defence. 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.

22. **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 29th day of April 2026).

Judicial First Class Magistrate-II,
Mavelikara.

APPENDIX:

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

PW1	Vilasini	Complainant
PW2	Radhu krishnan	Bank official

B. Defence witness: Nil**C. Court witness: Nil****II. List of prosecution/Defence/ Court Exhibits****A. Complainant Exhibits:**

1.	Ext.P1/PW1	Cheque no. 135858 dated 21.05.2024
2.	Ext.P2/PW1	Cheque return memo dated 23.5.2024
3.	Ext.P3/PW1	Legal notice
4.	Ext.P4/PW1	Postal receipt
5.	Ext.P5/PW1	AD card dated 14.2.2017

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

Judicial First Class Magistrate-II.
Mavelikara.