

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I,
KAYAMKULAM

Present:- Smt. Aiswaryarani, Judicial First Class Magistrate
Dated this the 26th day of March, 2026.

ST. No. 1150/2020

Complainant : Sasidharan, Aged 70 years, S/o. Sreedharan, Aged 70 years, residing at Kottuvalliyil Amritham, Cheravally, Kayamkulam - 690502
(By Adv. Teena Mary Thomas and KT Thomas)

Accused : Baby Samyuktha, Saubhagyam, Muthinithazhe Veedu, Kappil East, Krishnapuram Village, Kayamkulam - 690533
(By Adv. George Varghese)

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

Plea : Not guilty

Finding : Not guilty

Sentence or Order : Accused is found not guilty of the offence u/s 138 of the Negotiable Instruments Act 1881 and she is acquitted u/s 255(1) of Cr.P.C.

DESCRIPTION OF ACCUSED					
SL No	Name	Fathers/Husbands name	Occupation	Residence	Age
1	Baby Samyuktha		-	Muthinithazhe Veedu, Kappil East, Krishnapuram Village, Kayamkulam - 690533	

DATE OF						
Offence	Complaint	Apprehension	Release on bail	Commencement Date of Trial	Close of Trial	Sentence or Order
18.11.20	18.11.20	13.06.22	13.06.22	13.06.22	23.03.26	26.03.26

The case having been finally heard on 23.03.26, the court on 26.03.2026 delivered the following: -

J U D G M E N T

The complaint is filed alleging an offence punishable under Section 138 of the Negotiable Instruments Act 1881

2. The complainant's case in brief is as follows: The complainant worked in the Sultanate of Oman for 41 years, returned to Kerala in March 2017, and is presently engaged in his family business, M/s Sridhar Book Stall, Kayamkulam. The accused is the wife of Adv. N. Raveendranath, a close friend of the complainant for over fifty years, who had acted as his agent during his tenure in Oman. Between 2008 and 2010, the complainant transferred approximately Rs. 2,62,000/- to the accused's SBT account at Kayamkulam Branch, on her request, towards debts incurred in purchasing a property and constructing a house thereon. The complainant also stood as surety for the accused on 03.01.2019 in CC 160/2019 before JFMC-II, Kayamkulam which was filed against her under the Negotiable Instruments Act by Dr. Thomas P. Samuel, the vendor of her property. On 19.08.2020, the accused represented to the complainant that she had won a KSFE chitty prize of Rs. 10 lakhs collectible on 19.09.2020 and urgently required Rs. 2,00,000/- to settle the said case, promising to repay the entire outstanding debt on that date. Believing her, the complainant paid Rs. 2,00,000/- in cash to the accused, who in turn issued Cheque No. 132406

drawn on her State Bank of India, Kayamkulam Branch, for Rs. 5,50,000/-, post-dated to 19.09.2020, in discharge of the legally enforceable liability. When presented on 30.09.2020, the cheque was dishonoured on 01.10.2020 for insufficient funds. A legal notice demanding payment was issued by registered post on 27.10.2020. However, though the accused received the notice on 02.11.2020, the accused neither paid the amount nor responded within the stipulated fifteen days. Hence, the accused has committed an offence punishable under Section 142 read with Section 138 of the Negotiable Instruments Act 1881.

3. On perusal of the complaint, affidavit and supporting documents cognizance was taken after being satisfied that a prima facie case is established. Process was issued, and on the appearance of the accused, she was enlarged on bail. She was furnished with copies of prosecution records. Particulars of the offence under Section 138 of the Negotiable Instruments Act 1881 was read over and explained to her in Malayalam. She pleaded not guilty and claimed to be tried.

4. From the side of the complainant, witness PW1 was examined and documents Exts. P1 to P4 were identified and marked. The defence got Ext. D1 marked through PW1. After the complainant's evidence was closed, all the circumstances found against the accused were put to her in the examination under Section 313(1)(b) of the Code of Criminal Procedure, 1973 and she denied them all. The defence of the accused is that Ext. P1 cheque was handed over to the complainant merely as security at the time he stood as surety for her in CC 160/2019, on the express condition that it would be returned to her upon disposal of the said case. According to the accused, the complainant, in breach of the said condition, failed to return the cheque and instead misused it by presenting it for collection and filing the present complaint against her.

5. From the side of the defence, witnesses DW1 and DW2 were examined and documentary evidence Ext. D1(a) to D3 was tendered in evidence and marked. At this outset, it is clarified that Ext. D1(a) to D1(g) were marked without notice of the marking of Ext. D1. Hence, Ext. D1 undertaking and Exts. D1(a) to D1(g) receipts are separate and distinct documents.

6. Heard both sides and analysed the records.

7. The following points arise for determination:

1. *Whether the complainant has complied with the legal formalities for the maintainability of the complaint?*

2. *Whether the accused executed and issued Ext. P1 cheque to the complainant in the discharge of a legally enforceable existing debt or liability?*

3. *Whether the presumption under Section 139 of the Negotiable Instruments Act, 1881 is rebutted?*

4. *What is the order?*

8. **Point No. 1:** The date of Ext. P1 cheque is 19.09.2020. The fact that the cheque was presented in the drawee bank within six months from the date of the cheque is clear from the evidence of PW1, who has deposed that the cheque was presented on 30.09.2020 and was dishonoured on 01.10.2020 for insufficient funds. Though the cheque return memo was tendered in evidence, it could not be marked as only a copy was produced without laying the necessary foundation for adducing secondary evidence, and the complainant took no steps to get the same marked. However, the oral evidence of PW1 on this aspect stands uncontroverted in cross-examination, and significantly, the defence does not dispute the dishonour. Nor does the defence have a case that there were sufficient funds in the account at the relevant time. Hence, the non-production of the cheque return memo is not fatal to the complainant's case, as the dishonour itself remains an undisputed fact.

Ext. P2 statutory notice was issued by the complainant on 27.10.2020, as evident from it and Ext. P4 postal receipt dated the same. Ext. P3 acknowledgement card would show that the accused received the notice on 02.11.2020. From the above, it is proved that the statutory notice was served on the accused. The cause of action in this case arose on 18.11.2020, being the date of expiry of the fifteen-day period from the date of receipt of the statutory notice by the accused on 02.11.2020, during which she failed to make payment of the cheque amount. Section 142(1)(b) of the Negotiable Instruments Act, 1881 mandates that the complaint be filed within one month of the date on which the cause of action arises. The word "month" as used in the Act is to be reckoned according to the British calendar, as defined under Section 3(35) of the General Clauses Act, 1897, and in computing the said period, the first day is to be excluded and the last day is to be included, as per Section 9 of the General Clauses Act, 1897. Accordingly, one month from 18.11.2020 expires on 18.12.2020. The complaint in this case was filed on 18.12.2020, which falls within the prescribed period of limitation. Hence, the complaint is within time and is not barred by limitation.

9. From the above it is proved that statutory notice was served on the accused. Further accused has no case that notice was not received by him. That apart, the accused does not have a case that the complaint is not maintainable on any such ground. Therefore, the complainant has duly complied with the prerequisites contemplated in Sections 138 and 142 of the Negotiable Instruments Act to maintain the complaint legally. This point is found in favour of the complainant.

10. **Point Nos. 2 and 3:** These points are considered together for the sake of convenience and brevity and to avoid repetition of facts.

11. The case of the complainant, as supported by the oral evidence of PW1, does not establish that Ext. P1 cheque was signed by the accused, or that it was handed over to the complainant by the accused herself. In

cross-examination, PW1 has admitted that the cheque was brought and handed over to him by the husband of the accused and that he did not witness the accused signing or filling in the cheque. The complainant also does not have a case that the accused had entrusted her husband to hand over the cheque on her behalf. Thus, the execution and handing over of Ext. P1 by the accused is not strictly proved by the complainant.

12. However, the accused, in her statement under Section 313 of the Code of Criminal Procedure, has stated that Ext. P1 cheque was handed over to the complainant as security when the complainant stood as surety for her in CC 160/2019, on the condition that it would be returned upon disposal of the said case, and that the complainant misused the same by presenting it for collection and filing the present complaint. This amounts to a clear admission on the part of the accused that Ext. P1 cheque was issued and handed over to the complainant.

13. The Hon'ble High Court of Madhya Pradesh in *Kaptan Singh Thakur v. M/s. Betwa Developers Ltd., Bhopal, 2006 KHC 2466*, has held that:

"Apart from this the word "issue" cannot be construed in a narrower and it should be interpreted in comprehensive manner. In section 140 of the Act also, where the legislature has disallowed certain type of the defence to be taken in the prosecution under Section 138, has clearly used the words "that he issued the cheque". Thus the word "issued" is comprehensive enough and would also include signature on the cheque."

14. In view of the above, the word "issued" as employed in the Negotiable Instruments Act is wide enough to encompass not only the physical handing over of the cheque but also the act of signing it. The accused, in her statement under Section 313 of the Code of Criminal Procedure, has categorically admitted that Ext. P1 cheque was issued to the complainant as security when he stood as surety for her in CC

160/2019. This admission necessarily implies that the accused had signed Ext. P1 and handed it over. Hence, in view of the said admission of the accused, the execution and handing over of Ext. P1 cheque by the accused stands proved.

11. Once the execution of the cheque is established, the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881, is automatically attracted. Section 139 mandates that it shall be presumed, unless the contrary is proved, that the holder of the cheque received the cheque for the discharge, in whole or in part, of any debt or other legally enforceable liability. Consequently, the burden shifts to the accused to rebut this presumption by adducing cogent and convincing evidence.

12. The defence of the accused, as discernible from the suggestions put to PW1 during cross-examination and from the statement given under Section 313 of the Code of Criminal Procedure, is that Ext. P1 cheque was handed over to the complainant as security when he stood as surety for the accused in CC 160/2019, on the condition that it would be returned upon disposal of the said case, and that the complainant, in breach of the said condition, misused the cheque by presenting it for collection and filing the present complaint.

13. In support of this defence, the accused has produced Ext. D1, an undertaking dated 03.01.2019, which records that the complainant received cheque No. 132406 drawn on SBI, Kayamkulam Branch, from the accused as security for standing surety for her in CC 160/2019, and that the said cheque would be returned to her upon disposal of the case. When confronted with Ext. D1 during cross-examination, PW1 admitted without any hesitation that the signature thereon is his. However, PW1 sought to explain away the document by stating that he had been made to sign a blank paper in 2009 for the purpose of obtaining municipal permission, and that the contents were subsequently fabricated. This

explanation does not inspire confidence. PW1 admits that he never made any complaint or raised any grievance regarding the alleged misuse of his blank signed paper. When specifically asked why he did not lodge any complaint, PW1's answer was that he did not feel the need to do so as the accused's husband was his friend and he did not think he would be trapped in such a manner. This explanation is wholly unsatisfactory. If a person genuinely believes that his blank signature has been misused to fabricate a document against his interests, the natural and expected response would be to immediately bring it to the notice of the authorities. The failure to do so renders the explanation offered by PW1 highly improbable. Furthermore, no effort was made by the complainant at any stage of the trial to discredit Ext. D1. In the absence of any such effort, the document must be taken at face value, and the admission of the signature by PW1 only strengthens its evidentiary value. It is therefore reasonable to conclude that Ext. D1 records the circumstances under which Ext. P1 cheque came to be handed over to the complainant.

14. Furthermore, the defence version gains further credence from Ext. D3, the judgment in ST 160/2019, marked through DW3, the complainant in ST 160/2019. Ext. D3 establishes that the accused was acquitted under Section 257 of the Code of Criminal Procedure on 22.11.2022. As per the defence version, corroborated by Ext. D1, the cheque was handed over to the complainant as security for standing surety in CC 160/2019, on the condition that it would be returned upon disposal of the said case. The present complaint was filed on 18.12.2020, and Ext. D3 shows that ST 160/2019 was disposed of only on 22.11.2022, nearly two years after the institution of this case. This chronology is telling.

15. The complainant's case is that the sum of Rs. 2,00,000/- was paid in cash to the accused on 19.08.2020 specifically to enable her to settle ST 160/2019, and that Ext. P1 cheque was issued in discharge of the

total legally enforceable debt due to him. If this version were true, it would mean that the accused received the money for the express purpose of settling ST 160/2019 but allowed the case to remain pending for over two years thereafter. This is neither reasonable nor consistent with ordinary human conduct. If a person receives money specifically to settle a pending criminal case, the natural and expected course of action would be to utilise the same and secure a disposal of the case at the earliest. The prolonged pendency of ST 160/2019 even after the alleged payment is a circumstance that militates against the complainant's version and renders it improbable.

16. On the other hand, the fact that the present complaint came to be instituted on 18.12.2020, at a point in time when ST 160/2019 was very much pending and had not yet been disposed of, is entirely consistent with the defence version that the complainant was in possession of Ext. P1 cheque as security and had not returned it as agreed upon the disposal of the case. The pendency of ST 160/2019 on the date of institution of this complaint thus serves as a significant circumstance that probalilises the defence version and lends credibility to the accused's claim that Ext. P1 cheque was misused by the complainant in breach of the understanding recorded in Ext. D1.

17. In the light of the above, the defence version is probalilised by the evidence on record. The presumption under Section 139 of the Negotiable Instruments Act stands rebutted, as the accused has established, on a preponderance of probabilities, that Ext. P1 cheque was not issued in discharge of any legally enforceable debt or liability. Consequently, no consideration and no legally enforceable debt or liability stands proved in this case. These points are answered accordingly.

20. **Point No. 4**: In the result, the accused is found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act

1881, and she is acquitted of the said offence under Section 255(2) of the Code of Criminal Procedure, 1973. The accused is set at liberty, and her sureties are discharged.

(Dictated to CA, typed by her, corrected and pronounced by me in the open court on this the 26th day of March, 2026)

Sd/-
Judicial First Class Magistrate-I

APPENDIX**Witnesses For Complainant:**

Complainant Witness No.	Name Of Witness	Description
PW1	Sasidharan	Complainant

Exhibits For Complainant:

Exhibit No.	Description Of the Exhibit	Proved By/Attested By
P1	Cheque dated 19.09.2020	PW1
P2	Letter dated 27.10.20	PW1
P3	Acknowledgement dated Nil	PW1
P4	Postal Receipt dated 27.10.20	PW1

Witnesses For Defence:

Defence Witness No.	Name Of Witness	Description
DW1	Vinod	To prove the payment of money sent by the complainant to the accused for the construction of the complainant's house.
DW2	Thomas Samuel	To prove the disposal of ST 160/2019 and OS 33/2018.

Exhibits For Defence:

Exhibit No.	Description Of the Exhibit	Proved By/Attested By
D1	Letter dated 03.01.19	PW1
D1(a)	Receipt dated 23.10.2009	DW1
D1(b)	Receipt dated 05.11.2009	DW1
D1(c)	Receipt dated 24.11.2009	DW1
D1(d)	Receipt dated 09.03.2010	DW1
D1(e)	Receipt dated 05.05.2010r	DW1
D1(f)	Receipt dated 10.07.2010	DW1
D1(g)	Receipt dated 10.07.2010	DW1
D2	Certified copy of Order in OS 33/2018 of Sub Court, Mavelikkara dated 03.08.18	DW2
D3	Certified Copy of Judgment in CC 160/2019 of JFCM II Kayamkualm dated 22.11.2022	DW2

Sd/-

Judicial First Class Magistrate-I