

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -I,
PERUMBAVOOR**

Present: Smt. Nimisha Arun, Judicial 1st Class Magistrate-I, Perumbavoor.

Tuesday the 9th day of June, 2026/ 19th Jyaishta 1948

COMMON JUDGMENT IN ST 534/21 AND ST 535/21

ST No. 534/21

Complainant	:	Ibrahim, S/o Pareeth, Njattukala House, Nooleli Kara, Asamannoor P.O
Accused	:	(By Adv. Jimmy P.Antony) Anoop, S/o Sugathan, Edappattu House, Panichayam Kara, Asamannoor.
Offence	:	(By Adv. Surendran N.G) U/s 138 of Negotiable Instruments Act 1881
Plea	:	Not Guilty
Finding	:	Guilty
Sentence or order	:	The accused is convicted u/s.255(2) of Cr.P.C for the offence u/s.138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment till rising of the court and to pay a fine of ₹/- 13,81,699/- (₹10,00,000/- with interest of ₹/- 3,81,699) . In default of payment of fine, accused shall undergo simple imprisonment for six months for offence punishable u/s.138 of the N.I Act. In the event of recovery of fine, the same shall be paid to the Complainant u/s.357(1)(b) of Cr.P.C.

DESCRIPTION OF ACCUSED

Name	Father's name	Calling	Residence	Age
Anoop	Sugathan	-	Edappattu House, Panichayam Kara, Asamannoor.	-

DATE OF

Offence	Complaint	Appearance of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order
21.02.20	29.04.20	24.02.23	24.02.23	24.02.23	06.06.26	09.06.26

Accused stands trial for the offence punishable u/s.138 of the Negotiable

Instruments Act, 1881 (hereinafter referred in short as 'N.I. Act').

2. **The Complainant's case in brief is as follows:-** The accused executed a cheque for ₹10,00,000/- in his favour towards the discharge of the amount owed to the complainant with respect to a property transaction. On presentation, the cheque got dishonoured for the reason "Funds insufficient". Despite the receipt of the demand notice, the accused failed to pay the cheque amount till this date. Hence this complaint.

3. On taking cognizance summons was issued to the accused along with the copy of the complaint as per Sec.204(3) Cr.P.C. The accused entered appearance and was released on bail. The accused was represented by a lawyer of his choice. Particulars of offence punishable u/s.138 of N.I Act, read over and explained to the accused, as per Sec. 251 of Cr.PC to which he pleaded not guilty and claimed to be tried.

4. The following points arose for consideration and decision:-

1. Whether the accused has executed and issued Ext.P1 Cheque in favour of the Complainant in discharge of a debt?
2. Whether the Complainant has complied with all the statutory formalities mandated by NI Act?
3. Whether the accused has committed the offence punishable u/s.138 of N.I Act?
4. Sentence or order?

ST No. 535/21

Complainant	:	Ibrahim, S/o Pareeth, Njattukala House, Nooleli Kara, Asamannoor P.O
Accused	:	(By Adv. Jimmy P.Antony) Anoop, S/o Sugathan, Edappattu House, Panichayam Kara, Asamannoor.
Offence Plea Finding	:	(By Adv. Surendran N.G) U/s 138 of Negotiable Instruments Act 1881 Not Guilty Guilty
Sentence or order	:	The accused is convicted u/s.255(2) of Cr.P.C for the offence u/s.138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment till rising of the court and to pay a fine of ₹/-14,19,868/- (₹11,00,000/- with interest of ₹/-4,19,868/-) . In default of payment of fine, accused shall undergo simple imprisonment for six months for offence punishable u/s.138 of the N.I Act. In the event of recovery of fine, the same shall be paid to the Complainant u/s. 357(1)(b) of Cr.P.C.

DESCRIPTION OF ACCUSED

Name	Father's name	Calling	Residence	Age
Anoop	Sugathan	-	Edappattu House, Panichayam Kara, Asamannoor.	-

DATE OF

Offence	Complaint	Appearance of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order
20.02.20	29.04.20	17.11.22	17.11.22	17.11.22	06.06.26	09.06.26

Accused stands trial for the offence punishable u/s.138 of the Negotiable

Instruments Act, 1881 (hereinafter referred in short as 'N.I. Act').

5. The Complainant's case in brief is as follows:- The accused executed a cheques for ₹11,00,000/- in his favour towards the discharge of the amount owed to the complainant with respect to a property transaction. On presentation, the cheque got dishonoured for the reason "Funds insufficient". Despite the receipt of the

demand notice, the accused failed to pay the cheque amount till this date. Hence this complaint.

6. On taking cognizance summons was issued to the accused along with the copy of the complaint as per Sec.204(3) Cr.P.C. The accused entered appearance and was released on bail. The accused was represented by a lawyer of his choice. Particulars of offence punishable u/s.138 of N.I Act, read over and explained to the accused, as per Sec. 251 of Cr.PC to which he pleaded not guilty and claimed to be tried.

7. . The following points arose for consideration and decision:-

1. Whether the accused has executed and issued Ext.P2 Cheque in favour of the Complainant in discharge of a debt?
2. Whether the Complainant has complied with all the statutory formalities mandated by NI Act?
3. Whether the accused has committed the offence punishable u/s.138 of N.I Act?
4. Sentence or order?

8. The above cases were heard finally on 06.06.2026, and the court passed the following on today.

9. ST 534/21 and ST 535/21 were taken for joint trial as per the order dated 02.12.2023 in CMP 3054/23 and ST 534/21 is taken as the leading case.

10. On the side of the Complainant, PW1 and PW2 were examined and Exts.P1 to P12(b) were marked viz, Ext.P1 Original Cheque No.471188 (₹10,00,000/-) dated 30.01.2020, Ext.P2 Original cheque No.471189 (₹11,00,000/-), Ext.P3 Cheque dishonour memo dated 20.02.2020, Ext.P4 Cheque dishonour memo dated 21.02.2020, Ext.P5 Sale agreement dated 15.05.2019, Ext.P6 Copy of lawyer's notice dated 07.03.20, Ext.P7 Copy of lawyer's notice dated 07.03.2020, Ext.P8 Postal receipt dated 07.03.20, Ext.P9 Postal receipt dated 07.03.2020, Ext.P10 Postal acknowledgment card, Ext.P11 Postal acknowledgment card, Ext.P12 Reply notice dated 10.06.2020, Ext.P12(a) Relevant portion in Ext.P12, and Ext.P12(b) Relevant portion in Ext.P12.

11. On the closure of Complainant's evidence, the accused was examined u/s.313(1)(b) of BNSS. He denied all the incriminating circumstances brought out in the complainant's evidence.

12. Thereafter the accused was called upon to enter upon his defence and to adduce evidence as per Sec. 243(1) of CrP.C. The accused himself was examined as DW1.

13. **Point No.1 in ST 534/21 and ST 535/21:-** The specific case of the complainant is that the accused executed two Cheques for ₹10,00,000/- and ₹11,00,000/- respectively in his favour towards the discharge of the amount owed to the complainant. On presentation, the cheques got dishonoured for the reason "Funds

insufficient”. Despite the receipt of the demand notice, the accused failed to pay the cheque amounts till this date.

14. PW1, the complainant gave evidence in line with the averments in the complaint by way of proof of evidence in lieu of examination in chief. According to him, he had entered an agreement for sale with the accused to purchase 8.09 ares of property of the accused in Re-survey No. 336/2/2 of Ashamannur Village for a sale consideration of ₹ 25,00,000/-. Towards the advance amount he had paid, ₹ 20,00,000/- to the accused. However the accused failed to execute the sale deed within 6 months as agreed between the parties. Nevertheless in the presence of the witnesses to the agreement, the accused agreed to repay the advance amount along with 12% interest. Thereafter he agreed to pay a total sum of ₹ 21,00,000/- within 30.01.2020 and executed Ext. P1 and P2 cheques dated 30.1.2020 for ₹ 10,00,000/- and ₹ 11,00,000/- each by assuring that there would be sufficient amount in his account to honour the cheques.

15. On presentation Exhibit P1 and Exhibit P2 cheques got dishonored for the reason funds insufficient vide Exhibit P3 and P4 memos dated 20.02.2020 and 21.02.2020 respectively. He had produced the sale agreement dated 15.05.2019 as Exhibit P5. Thereafter he sent a lawyer notice to the accused, intimating the dishonour of the cheques and demanding the amounts in the same within 15 days of receipt of notice. The said notices dated 07.03.2020 are produced and marked as Exhibit P6 and Exhibit P7 respectively. Exhibit P8 and Exhibit P9 are the postal receipts for the same. Though the accused received the said notice on 11.03.2020 vide

Exhibit P10 and P11 AD cards, he failed to pay the cheque amount so far, but sent Exhibit P12 reply notice raising untenable contentions. Hence, the accused has committed offence punishable under Section 138 of the Negotiable Instruments Act. PW2, Mr. Ibrahim, the one of the witnesses to Exhibit P5 agreement also deposed in tune with PW1.

16. It is to be noted that the accused has not disputed his signature in Exhibit P1 cheque. The Hon'ble Supreme Court of India has held in *Bir Singh v. Mukesh Kumar* (2019(4) SCC 197) that "A meaningful reading of the provisions of the Negotiable Instruments Act including in particular Section 20, Section 87 and Section 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 the 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. It was further held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption u/s.139, in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt." Upon relying on the dictum relied on in the judgment supra, it can be held that in this particular case on hand, the Complainant successfully proved the execution of Ext.P1 and P2 cheques by the accused. Thereby the presumption u/s.139 & 118 can be drawn in favour of the Complainant.

17. Now, the question is whether the accused rebutted the presumption under Section 118 and 139 of the Negotiable Instruments Act. The specific defence put forward by the accused is that he had borrowed an amount of ₹ 5,00,000/- from the complainant by executing Exhibit P5 agreement as a security and thereafter executed 2 blank signed cheques as security. Despite the receipt of the entire amount from the accused the complainant has misused the same and filed this case. It is to be noted that DW1, the accused, also deposed in tune with his defence. However, on perusal of Ext. P12 reply notice it is found that the accused had admitted the execution of Ext. P1 and P2 for Rs. 10 lakh and 11lakh respectively as security. During cross-examination DW1 admitted the same and it was marked as Ext.P12(a). He also admitted that the cheques were given in the presence of Ibrahim and Mujeeb upon the assurance that the complainant would not misuse the same. The said admission in Ext P12 is also marked as Ext.P12(b). Thereby the evidence of DW1 that Ext. P1 and P2 were signed blank cheques at time of issuance is found not at all believable.

18. It is to be noted that the accused has admitted the receipt of money and execution of Exhibit P1 and Exhibit P2 cheque. The only dispute is with regard to the nature of transaction and the amount which received from the complainant. According to the accused he had borrowed ₹ 5,00,000/-. If the accused had borrowed only ₹ 5,00,000/- the evidence of DW1 that he had executed Exhibit P1 and Exhibit P2 cheques for ₹ 10,00,000/- and ₹ 11,00,000/- respectively towards the security of Rs. 5lakh is found not at all probable as no prudent man would have executed several cheques for a higher amount than the actual debt.

19. On the other hand, the evidence of PW1 and PW2 are found consistent and Exhibit P5 agreement also corroborates the evidence of PW1 and PW2. No contradictions were brought out in the evidence of PW1 and PW2 with regard to the consideration for Exhibit P1 and P2 cheque and the transaction between the parties. It is true that in the complaint it is stated that the accused agreed to pay ₹ 1,00,000/- as interest. PW1 denied the same during the cross examination and deposed that said the ₹ 1,00,000/- was paid towards the compensation. In the evidence of PW1 and PW2 there is a discrepancy regarding the purpose for which the accused had agreed to give additional ₹ 1,00,000/- as stated in the complaint. However, on analysing the entire evidence, it would show that the accused has received ₹ 20,00,000/- and agreed to pay ₹ 21,00,000/- and the same might have been towards the compensation for the loss of interest and the discrepancy the evidence of PW1 and PW2 with regard to the purpose of said ₹ 1,00,000/- is found not fatal to the prosecution case.

20. On analysing the entire evidence, it is found that the complainant has successfully proved the execution of Exhibit P1 and Exhibit P2 cheques and its consideration. On the other hand, the accused has miserably failed to rebut the presumption under Section 139 and 118 of the Negotiable Instruments Act. Accordingly, the complainant has successfully proved the execution of Exhibit P1 and Exhibit P2 cheques. Accordingly, point number 1 is found in favour of the complainant.

21. Learned counsel for the accused submitted that though the complainant gave evidence towards both the cases in which this Court has allowed joint trial

petition, nothing has been stated by the complainant in his proof affidavit regarding both the cases. He has not deposed that he is giving evidence in ST 535/21 as well. It is to be noted that admittedly both the cases were allowed to be tried jointly. The complainant has adduced evidence in both the cases by way of proof affidavit. All the documents in both the cases are mentioned in the proof affidavit and the transactions were also stated. It is true that he has not specifically mentioned the number of each case in the proof affidavit and the fact that evidence is adduced in both. However during cross-examination he has answered all the questions with regard to ST No. 535/2021 and 534/2021. Thereby the contention of the accused that the Complainant has failed to mention the details of both the cases in his proof affidavit is found not fatal to the prosecution but only a mere omission.

22. **Point number 2 in ST 534/21 and ST 535/21:** PW1 deposed that the Complainant had presented Ext.P1 and Ext.P2 cheques for collection through the IDBI Bank, Perumbavoor branch. Ext.P1 and Ext.P2 cheque got dishonoured for the reason “Funds insufficient” and returned via Ext.P3 and Ext.P4 dishonour memos dated 20.02.2020 and 21.02.2020 respectively. On 07.03.2020 he had issued Ext.P6 and Ext.P7 lawyer’s notice to the accused. Ext.P8 and Ext.P9 are the respective postal receipts, Ext.P10 and Ext.P11 are the respective A/D cards and Ext.P12 is the reply notice for the same. Despite the receipt of the demand notice, the accused failed to pay the cheque amounts till this date. Therefore on 29.04.2020 the complainant had instituted the above complaints. The evidence of PW1 coupled with Exts.P1 to P12 proved the compliance of all the legal formalities u/s.138 of the

Negotiable Instruments Act. Thus point No.2 in ST 534/21 and ST 535/21 are found in favour of the complainant.

23._ **Point No. 3 in ST 534/21 and ST 535/21** :- In the light of the findings in point Nos.1 and 2, I hold that, accused has committed an offence punishable u/s.138 of the Negotiable Instruments Act. Thus, point No.3 in both the cases are also found in favour of the Complainant.

24. **Point No.4 IN ST 534/21** :-In the light of the findings in point Nos.1 to 3, it is only to be held that the accused is found guilty for the offence punishable u/s.138 of the NI Act and he is convicted thereunder. This is a case arising out of a transaction taken place in the year 2020. In the light of the dictum laid down by the Apex Court in **R. Vijayan v.Baby (AIR 2012 SC 528)** and considering the facts and circumstances of the case, I am of the opinion that awarding sentence of simple imprisonment till rising of the court and a direction to pay the cheque amount along with simple interest at a rate of 6% per annum from the date of cheque till the date of judgment as fine with default sentence will meet the ends of justice.

25. In the result, the accused is convicted u/s.255(2) of Cr.P.C for the offence u/s.138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment till rising of the court and to pay a fine of ₹/- 13,81,699/- (₹10,00,000/- with interest of ₹/- 3,81,699) . In default of payment of fine, accused shall undergo simple imprisonment for six months for offence punishable u/s.138 of the N.I Act. In the event of recovery of fine, the same shall be paid to the Complainant u/s.357(1)(b) of Cr.P.C.

26. **Point No.4 IN ST 535/21** :-In the light of the findings in point Nos.1 to 3, it is only to be held that the accused is found guilty for the offence punishable u/s.138 of the NI Act and he is convicted thereunder. This is a case arising out of a transaction taken place in the year 2020. In the light of the dictum laid down by the Apex Court in **R. Vijayan v.Baby (AIR 2012 SC 528)** and considering the facts and circumstances of the case, I am of the opinion that awarding sentence of simple imprisonment till rising of the court and a direction to pay the cheque amount along with simple interest at a rate of 6% per annum from the date of cheque till the date of judgment as fine with default sentence will meet the ends of justice.

27. In the result the accused is convicted u/s.255(2) of Cr.P.C for the offence u/s.138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment till rising of the court and to pay a fine of ₹/-14,19,868/- (₹11,00,000/- with interest of ₹/-4,19,868/-) . In default of payment of fine, accused shall undergo simple imprisonment for six months for offence punishable u/s.138 of the N.I Act. In the event of recovery of fine, the same shall be paid to the Complainant u/s. 357(1)(b) of Cr.P.C.

Dictated to Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the day of 9th day of June, 2026.

sd/-

NIMISHA ARUN

Judicial Magistrate of the First Class-I,
Perumbavoor

APPENDIX

Witness for Complainant:

PW1 : Ibrahim

PW2 : Mujeeb Rahman

Exhibits for Complainant:

Ext.P1 : Original Cheque No.471188 (₹10,00,000/-) dated
30.01.2020

Ext.P2 : Original cheque No.471189 (₹11,00,000/-) dated 30.01.20

Ext.P3 : Cheque dishonour memo dated 20.02.2020

Ext.P4 : Cheque dishonour memo dated 21.02.2020

Ext.P5 : Sale agreement dated 15.05.2019

Ext.P6 : Copy of lawyer's notice dated 07.03.20

Ext.P7 : Copy of lawyer's notice dated 07.03.2020

Ext.P8 : Postal receipt dated 07.03.20

Ext.P9 : Postal receipt dated 07.03.2020

Ext.P10 : Postal acknowledgment card

Ext.P11 : Postal acknowledgment card

Ext.P12 : Reply notice dated 10.06.20

Ext.P12(a) : Relevant portion in Ext.P12

Ext.P12(b) : Relevant portion in Ext.P12.

Witness for the Defence: NIL

DW1 : Anoop

Exhibits for the Defence :

NIL

sd/-

NIMISHA ARUN
Judicial Magistrate of the First Class-I,
Perumbavoor