

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -II
KOTHAMANGALAM**

Present: Sri. Haridasan E.N., Judicial First Class Magistrate

Dated this, the 27th day of October, 2025

**CMP 2143/25 in
ST 1028/2020**

- Complainant : Shino Paulson, aged 37 years, S/o Paulson,
Achadan house, Athirappilly village,
Chalakkudy taluk
By Adv.T.G. Ullaskumar)
- Respondent : M/s. KLM Nidhi Ltd,
KLM towers, college road,
Kothamangalam represented by it's Power
of Attorney holder Abdul Latheef, Kunjattu
house, Pallarimangalam
[By Adv. Paul varghese]
- offence : u/s. 138 of Negotiable Instruments Act

ORDER

This is an application filed by the accused seeking permission to file proof affidavit in lieu of chief examination by the defence witnesses.

2. Copy given to the counsel for the complainant.
3. Heard both sides.
4. Learned counsel for the petitioner/accused submitted that as per section 145(2) of the Negotiable Instruments Act, on the application of the

prosecution or the accused, court may summon and examine any person giving evidence on affidavit as to the facts contained therein. Hence the application is to be allowed.

5. Learned counsel for the respondent/complainant submitted that the defence witness may not be allowed to adduce evidence in chief examination by way of filing proof affidavit. He further submitted that it would be wrong to equate the defence evidence with complainant's evidence and to extend the same option to the accused as well.

6. Complaint in this case, alleging the offence punishable u/s.138 of the Negotiable Instruments Act, has been filed on 14.06.2018 and the accuse surrendered before this court, and he was enlarged on bail on 20.12.2023. Complainant was examined as PW1 on 22.04.2025 and the complainant's evidence was closed. After questioning the accused u/s.313(1)(b) Cr.P.C, this case has been posted for Defence Evidence, from 30.06.2025. While so, learned counsel for the accused filed the above CMP on 04.10.2025.

7. After elaborate discussions and comparisons between section 145(1) and 145(2) of the Negotiable Instruments Act, Hon'ble Supreme Court in **Mandvi Co-operative Bank Ltd Vs. Nimesh B, Thakore** (reported in 2010(3) SCC 83) and Hon'ble High Court of Kerala in **Tomy T.J Vs. State of Kerala and another** (reported in 2017(2) KHC 841) held that the

right available to a complainant to adduce evidence by affidavit in lieu of chief examination is not available to an accused in view of the specific provisions engrafted in section 145(1) of Negotiable Instruments Act.

In view of the discussions and findings in the above referred judgments of Hon'ble Supreme Court and Hon'ble High Court, this petition deserves no merits and the same is liable to be dismissed.

In the result, this application stands dismissed.

(Dictated to the Confidential Asst., transcribed by her, corrected and pronounced by me in open Court, this the 27th day of October, 2025)

Sd/-

Judicial First Class Magistrate -II
Kothamangalam