

TABULAR STATEMENT

1. Serial. No.		: CC No. 149/2017		
2. Name of the complainant		: Kanhangad Rubbers Limited		
Description of the accused		:		
3.Name	4.Father's/ Husband's Name	5.Occupation	6.Residence	7.Age
Arjunan.K	Kannan	-	Kallar	39
8. Offence	:	u/s. 138 of Negotiable Instruments Act.		
9. Complaint	:	20.01.2017		
10. Appearance	:			
11. Release on bail	:	16.08.2018		
12. Commitment	:			
13. Commencement of trial	:	16.08.2018		
13(a) Commencement of evidence	:			
14. Close of trial	:	11.06.2026		
15. Sentence or order	:	16.06.2026		
16. Service of a copy of judgment or finding on the accused	:	16.06.2026		
17. Period of Detention during inquiry and trial	:			
18. Explanation for delay	:	No sitting		

Judicial First Class Magistrate I,
Hosdurg

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE – I,
HOSDURG**

Present: Sri. Abdul Rasik.C, Judicial First Class Magistrate-I, Hosdurg

Dated this the 16th day of June, 2026/ 26th day of Jyaishta, 1947

CC 149/2017

Complainant	:	Kanhangad Rubbers Ltd, Besto Centre, Behind Municipal Bus Stand, Kanhangad.P.O, Rep. by Ratheesh Kumar.K.P, Aged 53 years, Valsalyam, Kuttiladukkam, Edakkad, Kannur (District) (Within the limits of Hosdurg P.S) (Represented by Adv. Akshara.K.V, Hosdurg)
Accused	:	Arjunan.K, Aged 39 years, S/o Kannan, Oclavil House, Kallar, Rajapuram.P.O, Kasaragod (District) (Within the limits of Rajapuram P.S) (Represented by Adv. K.P.Ajaykumar, Hosdurg)
Offence	:	U/s. 138 of Negotiable Instruments Act, 1881.
Plea	:	Not Guilty
Finding	:	Guilty
Sentence or order	:	The accused is sentenced to pay fine of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) for the offence under Sec.138 of the NI Act, 1881. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of 3 months (Three Months). If the fine amount of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) is realized, the fine amount shall be given to the complainant as compensation under Sec. 357 (1) (b) of the Code of Criminal Procedure.

J U D G M E N T

This proceedings is initiated on the basis of a complaint filed by Kanhangad Rubbers Ltd., represented by Mr. Ratheesh Kumar.K.P against the accused alleging the commission of the

offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (Hereinafter the NI Act).

2. **Brief facts as per the complaint:-** The above complainant and accused known to each other for last several years. The above accused was working as depot-in charge of Kanhangad branch of Kanhangad Rubbers Ltd., Besto Centre, Kanhangad. The complainant and accused entered into an agreement dated 01.04.2016 to settle their entire claims. As per the terms of agreement, the accused agreed to pay total sum of Rs.15,00,000/- (Fifteen Lakhs Rupees only) into five installments. The above accused paid first installment directly and issued 4 cheques bearing number 105773 for an amount of Rs.2,50,000/- (Two Lakhs Fifty Thousand Rupees only), 105774 for an amount of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only), 105775 for an amount of Rs.5,00,000/- (Five Lakhs Rupees only) and 105776 for an amount of Rs.3,00,000/- (Three Lakhs Rupees only) drawn on Corporation Bank, Malakkallu branch, to the complainant.

3. Upon receiving the said cheques, the complainant deposited

a cheque bearing No. 105774 for an amount of Rs. 3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) in Federal bank, Kanhangad branch. However, the cheque came to be returned with a memo dated 25.11.2016 which stated that 'funds insufficient'. Aggrieved thereby, on behalf of the complainant, a legal notice was issued to the accused on 10.11.2016. According to the legal notice, the accused was to pay the cheque amount of Rs.3,75,000/- (Three Lakhs Seventy Five Rupees only) within a period of 15 days of receiving the notice, failing which the offence punishable u/s. 138 of the NI Act was liable to be attracted. The accused received the said notice and sent a reply notice containing false allegations. He has not repaid the amount so far. Thus, the accused has committed the offence punishable u/s. 138 of the NI Act. Hence, the complainant.

4. After taking cognizance of the offence punishable u/s 138 of NI Act, the case was taken on file as CC 149/2017 and a summons was issued to the accused. The accused appeared and was enlarged on bail. He was represented by the counsel. When the particulars of the offence under S. 138 of the NI Act were

stated and explained to the accused, he pleaded '*not guilty*' and claimed to be tried.

5. When the case was posted for trial, the Managing Director of the complainant, Mr. Pavithran Nambiar, mounted on the witness box and got examined as PW1 and Exts. P1 to P8 were tendered in evidence. Ext. P1, P3 to P8 were marked. Exhibit P2 was rejected in evidence being photocopy. PW2 and PW3 were also marked from the side of the complainant. Ext. P9 and P10 series were marked.

6. After the witnesses for prosecution have been examined, the accused was examined under Sec. 313 (1) (b) of Cr.P.C. He denied circumstances appearing in the evidence against him. Thereafter, he was called on for his defence. No oral evidence is adduced. Ext.D1 is marked from the side of the accused through PW1.

7. Heard both sides. Perused entire records.

8. On the facts, evidence and circumstance of this case, the following points arise for consideration:-

- 1) *Was Exbt. P3, cheque executed and issued by the accused to the complainant in discharge of a legally enforceable debt?*
- 2) *Was Exbt. P3, cheque returned unpaid for want of sufficient funds in the account of the accused?*

- 3) Did the complainant comply with all the statutory formalities before filing the complaint?*
- 4) Is the accused guilty of the offence punishable under Sec. 138 of the NI Act?*
- 5) If convicted, what is the proper order as to sentence?*

9. **Point No. 1** :- The case of the complainant is that the accused was indebted to the company for an amount of Rs.3,75,000/- (Three Lakh Seventy Five Thousand Rupees only). To discharge the said liability, he executed four cheques in favour of the complainant. The learned counsel for the complainant submitted that the oral evidence of PW1 and Exts. P1 to Ext. P10 are sufficient to prove the case of the complainant. As far as the offence u/s. 138 is concerned, the initial burden to prove the case is on the shoulders of the complainant. If the complainant discharges her initial burden, then only the onus will shift to the accused. Therefore, what is to be looked into is whether the complainant has discharged her initial duty.

10. The manager of the complainant was examined as PW1. He testified that the accused is indebted to the complainant for an amount of Rs.3,75,000/- (Three Lakh Seventy Five Thousand Rupees only). He deposed that the accused issued to the

complainant Ext. P3, cheque in discharge of the said legal debt. He further testified that when the said cheque was presented for collection, the same was returned unpaid vide Ext. P4, memorandum stating the reason "funds insufficient". Thereafter, complainant issued Ext. P5, statutory notice to the accused demanding payment of the amount covered by the cheque. The accused did not pay the amount so far. PW1 was cross-examined in depth and detail. Nothing is brought about in his cross-examination to disbelieve PW1. On going through his oral testimony, it is evident that the accused has not taken any initiative to shake the veracity of Ext. P3, cheque. The signature in it is not disputed or denied by the accused. No specific question was asked to PW1 in this regard. PW2 has also deposed that accused had signed in Ext.P3 in his presence. In the instant case, Ext. P3, cheque bears the signature of the accused and the same is drawn on the account maintained by him. He has no case that Ext. P3, cheque is not his cheque. The oral testimony of PW1 and PW2 coupled with Ext. P3 is sufficient to come into a conclusion that PW1 has succeeded in proving that Ext. P3, cheque was

executed and issued by the accused for the discharge of a legally enforceable debt.

11. It is the settled proposition of the law that once execution of the cheque is proved, then the presumptions under sections 118 and 139 would definitely arise. In a recent decision of our Hon'ble High Court of Kerala in ***Beena Kuruvila v. M/s. Standard Chartered Bank [2024 KHC OnLine 983]***, it was held that:

“in view of the express provision of S.139 of NI Act, a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in S.138, for the discharge of any debt or other liability unless the contrary is proved that there was no legally enforceable debt or liability. The presumption under S.139 of NI Act is a rebuttable presumption. It is the duty of the accused to rebut the presumption.”

In ***Priyamvada.K v. M.Rahufina (2024 KHC 8)***, the Hon'ble Kerala High Court has enumerated the available options to the accused to rebut the presumptions in favour of PW1 as follows:

“8. The Apex Court in Basalingappa v. Mudibasappa, 2019 (5) SCC 418 encapsulated the principles of law governing presumption under S.118(a) and S.139 of the N.I. Act and how the presumption can be rebutted. It was held, “23. We having noticed the ratio laid down by this Court in above cases on S.118(a) and S.139, we now summarise the principles enumerated by this Court in

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."*

12. Therefore, the next question that arises for consideration is whether the accused has succeeded in rebutting the statutory presumption available in favour of PW1. The defence set up by the accused is that, while he was working in the complainant company, certain signed cheques were obtained from him through police intervention and that one among those cheques was subsequently misused by the complainant for instituting the present complaint. However, except putting suggestions to the

prosecution witnesses during cross-examination, the accused has not adduced any evidence to substantiate the said contention. It is an admitted fact that the accused was an employee of the complainant company. According to the complainant, the liability of the accused is evidenced by Ext. P7 agreement. To prove the execution of Ext. P7, the complainant examined PW2 and PW3 as attesting witnesses. Both PW2 and PW3 categorically deposed that the accused had executed Ext. P7, agreement. Though they were subjected to cross-examination, nothing was elicited to discredit their testimony. Their evidence regarding the execution of Ext. P7 remains unshaken. Thus, the evidence on record clearly establishes the execution of Ext. P7 and the liability of the accused towards the complainant company. Furthermore, Ext. D1 evidences liability of the accused towards the company. On the other hand, the accused has failed to offer any convincing explanation as to how Ext. P3, cheque came into the possession of the complainant. No material has been produced to probabalise the defence version that the cheque was obtained under coercion.

13. In nutshell, the defence put forth by the accused is not

probable and believable. Thus, this court is of the opinion that the accused has failed to rebut the presumption in favour of PW1. Therefore, it is to be concluded that the accused must have issued Ext. P3, cheque to PW1 in discharge of legally enforceable debt. The complainant has succeeded in proving that Exbt. P3, cheque was drawn, executed and delivered by the accused in discharge of a legally enforceable liability. Hence, this point is answered in favour of the complainant.

14. **Point No. 2** :- The oral evidence of PW1 and Ext. P4, memorandum are sufficient to prove that the complainant had presented Ext. P3, cheque for encashment and the cheque was returned by the bank for the reason 'funds insufficient'. The accused has no case that there was sufficient amount in his account on the date of presentation of Ext. P3, cheque. In view of Ext.P4, memorandum, it is evident that Ext. P3, cheque was dishonoured for insufficiency of funds in the account of the accused. Thus, this point is found in favour of the complainant.

15. **Point No. 3** :- PW1 deposed that the complainant had complied with all statutory formalities prior to the institution of

the complaint. Ext. P3, cheque is drawn on 31.08.2016. As per Ext. P4, the date of return of Ext. P3, is on 25.11.2016. Hence, the cheque is presented within stipulated time. Ext. P5 is the office copy of the lawyer notice to the accused sent by the complainant demanding the payment of the cheque amount. It is dated on 10.12.2016. Ext. P6 is the reply notice which was dated 29.12.2016. The accused has received statutory notice on 16.12.2016 as evidenced from the acknowledgment card. The cause of action for filing a complaint arises after 15 days from the date of receipt of the statutory notice. As per section 142 of the Act, the complaint is to be made within one month of the date on which the cause of action arises. The petition is seen filed on 20.01.2017. Therefore, it is evident that the complainant has made this complaint after complying with all statutory formalities. Thus, the point is found in favour of the complainant.

16. **Points No. 4 and 5** :- Based on the findings of this court on points No. 1 to 3, the accused is found guilty for the offence punishable under Sec. 138 of the NI Act and he is convicted thereunder.

17. The scheme of the NI Act is to compensate the payee or holder in due course on successful prosecution of the offender for the loss or injury he has suffered. It is not expedient to release a person convicted of the offence under S.138 of the NI Act on probation under the benevolent provisions of the Probation of Offenders Act. Hence, the same was not invoked by this Court. Considering the facts and circumstances of the case and the amount involved, this Court is of the opinion that the imposition of the fine amount with default sentence would meet the ends of justice.

In the result,

- (i) The accused is sentenced to pay fine of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) for the offence under Sec.138 of the NI Act, 1881. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of 3 months (Three Months).*
- (ii) If the fine amount of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) is realized, the fine amount shall be given to the complainant as compensation under Sec. 357 (1) (b) of the Code of Criminal Procedure.*

(Dictated to the Confidential Assistant typed by her, corrected and pronounced by me in open Court, this the 16th day of June, 2026)

Judicial First Class Magistrate I,
Hosdurg

APPENDIX**WITNESS EXAMINED FOR COMPLAINANT**

- PW1 :** Pavithran Nambiar.M.P, Bank Manager, Federal Bank, Kanhangad branch.
- PW2 :** V.Muhammed Muneer, Aged 62 years, S/o P.Ummer, Kannur Amsom, Kannur Taluk.
- PW3 :** Ratheesh Kumar.K.P, Aged 53 years, Valsalyam, Kuttiladukkam, Edakkad, Kannur (District)

EXHIBITS MARKED FOR COMPLAINANT

<u>Exhibit No.</u>	<u>Date</u>	<u>Description of the Exhibit</u>	<u>Proved by/ Attested by</u>
P1	12.08.2016	Copy of resolution	PW1
P2		Copy of Articles of Association	PW1
P3	31.08.2016	Cheque bearing No. 105774 drawn on Corporation Bank, Malakkallu branch	PW1
P4	25.11.2016	Memo issued by Federal Bank, Kanhangad branch	PW1
P5	10.12.2016	Copy of Lawyer Notice	PW1
P6	29.12.2016	Reply notice	PW1
P7	01.04.2016	Agreement	
P8	Nil	Ledger extract from 01.04.2016 to 31.03.2017	PW1
P9	Nil	Document	PW3
P10	Nil	Minutes book	PW3

WITNESS EXAMINED FOR DEFENCE : Nil

EXHIBITS MARKED FOR DEFENCE:

- D1 :** Lawyer Notice dated 07.12.2015, sent to the accused by the complainant

Sd/-

Judicial First Class Magistrate I,
Hosdurg

//True copy//

Judicial First Class Magistrate I,
Hosdurg

Form No. 761 (CRP)
CALENDAR AND JUDGMENT

District of Kasaragod Calendar of cases tried by the Judicial First Class Magistrate-I of Hosdurg.

Date of							Explanation of delay and remarks
Offence	Report or complaint	Appearance of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order	
31.08.16	20.01.17		16.08.18	16.08.18	11.06.26	16.06.26	

Judgment in Calendar Case No. CC 149/2017 on the file of the Magistrate of Court of Judicial First Magistrate-I, Hosdurg.

Complainant: Kanhangad Rubbers Ltd, Besto Centre, Behind Municipal Bus Stand, Kanhangad.P.O, Rep. by Ratheesh Kumar.K.P, Aged 53 years, Valsalyam, Kuttaladukkam, Edakkad, Kannur (District)

Name of accused	Age	Father's/ Mother's name	Caste or religion	Calling	Residence	Taluk
Arjunan.K	39	Kannan	Hindu		Oclavil House	
Offence	:	U/s.138 of the Negotiable Instruments Act.			Judicial First Class Magistrate-I, Hosdurg	
Finding	:	Guilty				
Sentence	:	The accused is sentenced to pay fine of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) for the offence under Sec.138 of the NI Act, 1881. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of 3 months (Three Months). If the fine amount of Rs.3,75,000/- (Three Lakhs Seventy Five Thousand Rupees only) is realized, the fine amount shall be given to the complainant as compensation under Sec. 357 (1) (b) of the Code of Criminal Procedure.				

DOCKET

Date of Receipt.....

Remarks of the Chief Judicial Magistrate.....

Date of Despatch

" Receipt200.....

Reply of theMagistrate

Date of Despatch

" Receipt200.....

From

The Judicial First Class Magistrate-I,
Hosdurg.

To

The Hon'ble Chief Judicial Magistrate
Kasaragod.

Calendar Case No. CC 149/2017

Date of Judgment: 16.06.2026

Date of Despatch :

Date of Calendar :

Judicial First Class Magistrate-I,
Hosdurg.

Submitted: to the Hon'ble Chief Judicial Magistrate, Kasaragod