IN THE COURT OF SESSION, KOZHIKODE DIVISION

Present:- Sri.N. R KRISHNAKUMAR, Ist Additional Sessions Judge

Wednesday, the 25th day of March, 2026.

Criminal Appeal No. 95/2024

From what court the appeal is preferred	JFCM-I, Kozhikode.
Number of the case in that court	CC 249/2018
Number of the appeal	Crl.A. 95/2024
Name and description of the appellant/ Petitioner.	Muhammed Jasarudeen, aged 27 years, S/o. Kunhammed, Kizhakke Elluparambil, Avadukka, Changarath, Perambra, Kerala.
Name of the respondents/ Complainant.	1. Muhammed Jasim T.M., aged 26 years, S/o. Aboobaker, Thaikkandi Meethal, Naripatta P.O., Kallachi. 2. State represented by Public Prosecutor, Kozhikode.
The sentence and law under which it was imposed in the lower court	In the result, The accused is convicted u/s.255(2) of the Code of Criminal Procedure and sentenced to undergo simple imprisonment till rising of the court and to pay fine of Rs. 10,66,100/- (Rupees Ten Lakh Sixty Six Thousand One Hundred only) (including Rs. 3,66,100/- awarded as interest @ 9% per annum rounded off from the date of filing of complaint (14.03.2018) till date of judgment) under section. 138 of Negotiable Instruments Act, 1881. In default for the payment of fine, the accused shall undergo simple imprisonment for a period of six months. The fine amount, if realized shall be paid as compensation to PW1 u/s. 357(1) (b), Cr. P.C
Whether confirmed, modified or reversed and if modified, the modification	Confirmed

Date of-

Presen-tation	Filing	Issuance of notice to respond-ents	Appellant ordered to appear	Respond-ent ordered to appear	Released on execution of bail bond	Final hearing	Judgment
18.03.24	18.03.24	25.02.25	07.04.25	07.04.25	13.12.22	17.03.26	25.03.26

This appeal coming on 17th day of March, 2026 for final hearing before me upon perusing the memorandum of appeal and records of evidence and upon hearing the arguments of Sri. Peethambaran P – Chief Defence Counsel for Appellant and Sri. Rajesh Kumar, Advocate for R1 and Sri. N. Shamsudheen, the Addl. Public Prosecutor on behalf of state and I do adjudge and pass the following:

No oral and documentary evidence on either side.

J U D G M E N T

This is an appeal preferred u/s 374 of Cr.P.C by the accused in CC.249/2018 of Judicial First Class Magistrate Court-I, Kozhikode against the order of conviction made by that Court in the said case u/s 138 of N.I. Act.

2. The parties will be referred to as complainant and accused in this judgment in relation to their respective position as such in the complaint before the trial court.

3. The case of the complainant in brief, is as follows:- The complainant and accused were friends and were working abroad. While so, the accused obtained a total amount of Rs.9,00,000/- from the complainant on different occasion for his business purpose. For discharging the said liability the accused drawn and issued two post dated cheques for Rs.2,00,000/- and Rs.7,00,000/- respectively dated 22-12-17, and 31-1-2018 drawn on SBI, Kuttiyadi branch. Accused further issued a written receipt in stamp

paper acknowledging the liability and issuance of cheques. When the complainant presented the cheques for encashment, the cheque for Rs.2,00,000/- was honoured. But the other cheque for Rs.7,00,000/- was dishonoured for the reasons of insufficiency of funds in the account of the accused. The complainant received the cheque and dishonour memo from the bank on 31-01-2018. Then on 14-02-2018 the complainant issued a registered lawyer notice to the accused intimating the dishonour of the cheque and demanding the amount covered by the cheque dated 31-01-2018. Although intimation of the notice was served to the accused, he did not claim the notice. He has not paid the amount covered by the cheque also so far. Hence the complaint.

4. After enquiry, the complaint was taken on file by the trial court and summons was issued to the accused. When the accused appeared before the trial court, he was served with copies of all relevant records. He pleaded not guilty when the substance of accusation was read over to him. Thereafter, the complainant was examined as PW1. Exts.P1 to P5 are the documents marked.

5. After closing the evidence of the complainant, the accused was questioned u/s 313 Cr.P.C. He denied all the incriminating circumstances put to him and stated the following**:-** PW1 was his room mate while they were in Qatar. He had repaid the entire amount which he received from PW1 at Qatar itself. He is not liable to pay any other amount to PW1. The present case is filed by misusing his cheque.

6. When the case was posted for defence evidence, the accused has got himself examined as DW1. Then after hearing the parties and considering the materials on record, the learned Magistrate found the accused guilty u/s.138 of N.I. Act and sentenced him to undergo imprisonment till rising of the court and to pay fine of ₹10,66,100/- which includes interest @ 9% from the

date of complaint till the date of order and in default to undergo imprisonment for 6 months.

7. Feeling aggrieved by the conviction and sentence passed by the trial court, the accused has preferred the present appeal on various grounds. The appeal was originally filed before the Principal Sessions Court, Kozhikode. After admitting the appeal and issuing notice to the respondent, the case has been made over to this court for trial and disposal.

8. On getting notice, the 1st respondent/complainant appeared through Advocate. Initially, the appellant represented through the advocate who filed the appeal. Subsequently, the Advocate for the appellant remained absent and there was no representation also on the side of the appellant. Then notice was issued directly to the appellant. But he could not be traced out. Then letter was addressed to legal service authority to depute a lawyer to represent the appellant. Accordingly, Adv. Peethambaran, the Chief Defence Counsel has filed memo of appearance for the appellant.

9. Heard the advocates for both the parties.

10. Now the points that arise for consideration are:-

1) Whether the accused had issued Ext.P2 cheque to the complainant in discharge of any legally recoverable debt or liability?

2) Whether the accused has committed an offence punishable u/s 138 of N.I Act?

3) Whether the order of conviction and sentence impugned require any interference or modification?

4) Relief and costs?

11. **Point Nos.1 and 2:-** As stated above, to prove his case, the complainant has got himself examined as PW1. He

reiterated his case which is pleaded in the complaint. He would depose before the court that while he and the accused were at Qatar, the accused had borrowed a total amount of Rs.9,00,000/- from him on various occasions. For discharging that liability, the accused had drawn and issued two cheques of SBI, Kuttiyadi branch dated 28-12-2017 and 31-01-2018 for Rs.2,00,000/- and Rs.7,00,000/- respectively. The accused further executed a receipt in stamp paper acknowledging the liability of Rs.9,00,000/- and issuance of the above two cheques for discharging the liability. The said receipt was marked as Ext.P1. PW1 further deposed that he encashed the cheque dated 28-12-2017 for Rs.2,00,000/-. But when he presented the other cheque for Rs.7,00,000/- for encashment, the banker's dishonoured it for the reason of insufficiency of funds in the account of the accused. The cheque for Rs.7,00,000/ was marked as Ext.P2 and the dishonour memo dated 31-01-2018 was marked as Ext.P3. Thereafter, he issued Ext.P4 lawyer notice to the accused on 14-02-2018. Despite of intimation the accused did not receive the notice. Hence the postal authorities returned the notice as unclaimed. Ext.P5 is the returned notice. In cross examination, it was suggested to PW1 that the accused had borrowed only Rs.2,00,000/- from him and while advancing that amount he obtained his blank signed cheque as security. It was further suggested that although Rs.2,00,000/- was repaid, the cheque which was given as security was not returned and now misused to file this case. PW1 has specifically denied the above case suggested to him.

12. As stated above, on the side of the accused, the accused has got himself examined as DW1. He would depose before the court that he has been doing wholesale vegetable business at Qatar. PW1 is also doing the same business there.

He and PW1 were room mates there. He had kept signed blank cheque in the room for sending it to his mother at native place through his friends visiting native place. But PW1, who was his room mate, somehow managed to obtain his signed blank cheque. With respect to the stealing of cheque he had filed a complaint with Qatar police. Now the said cheque is misused by PW1.

13. I have examined the evidence available in this case and contention of the parties. Admittedly, the initial burden to prove the execution of the cheque is on the complainant. In the case on hand, the complainant has satisfactorily discharged his burden by examining himself as PW1. He further produced Ext.P1 receipt, execution of which is not disputed by the accused, to support his claim. The relevant portion of Ext.P1 reads as follows: "ഞാൻ നിങ്ങളോട് വിദേശത്തുനിന്നും പലതവണയായി കൈപ്പറ്റിയ ഒമ്പതുലക്ഷം രൂപ നിങ്ങൾക്ക് തിരിച്ച് തരുന്നതിലേക്കായി എനിക്ക് അക്കൗണ്ട് ഉള്ള സ്റ്റേറ്റ് ബാങ്ക് ഓഫ് ഇന്ത്യ കുറ്റിയാടി ശാഖയുടെ 2,00,000/- രൂപക്കുള്ള 28-12-2017 തീയതി വെച്ച 524147 നമ്പർ ചെക്കും 7,00,000/- രൂപക്കുള്ള 31-1-2018 തീയതിവെച്ച 524148 നമ്പർ ചെക്കും ഇന്നേദിവസം നിങ്ങൾക്ക് നൽകിയിരിക്കുന്നു". Ext.P1 was marked through PW1. No question was asked in the cross examination of PW1 challenging the genuineness of Ext.P1. The accused further admitted the issuance of cheque for Rs.2,00,000/- to PW1 and encashment of it by him. Ext.P2 is the remaining cheque for Rs.7,00,000/-. The accused has admitted his signature in Ext.P2 also. Though he disputed the issuance of ExtP2 as claimed by PW1, he has no consistency as to how Ext.P2 cheque happened to be in the possession of PW1. As stated above, it was suggested to PW1 that the signed cheque was obtained by him as a security while advancing Rs.2,00,000/- to accused. But when examined as DW1, the accused developed a new case and claimed that while he and PW1 were room

mates at Qatar, PW1 somehow managed to obtain his signed blank cheque from the room and now it is misused. The inconsistency of defence case goes a long way to probabilise the evidence of PW1 as regard to the transaction and execution of the cheque. If that be the case, definitely presumption u/s 139of NI Act comes into play. Under Section 139 of N.I. Act, the court has to presume until the contrary is proved that the drawer of the cheque issued the same in discharge of a debt or liability. Such a presumption is available even in the case of a blank signed cheque. The said position is covered by the decision of Supreme Court in "**Bir Singh v. Mukesh Kumar reported in (2019) 4 SCC 197**'. There the Hon'ble Apex Court has held the following. *"Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumptions U/s 139 of N.I. Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt".* This decision was later considered by three judge bench of the Supreme Court in **Kalamani Tex and Another v. Balasubrahmanian.P** reported in **ILR 2021 (1) Kerala 855** and approved it. In that case also, the accused persons therein denied their liability and claimed that blank cheque was issued to help the complainant in some debt recovery proceedings. The trial Magistrate acquitted the accused on the finding that the complainant therein had failed to establish the existence of legally enforceable liability on the date of issuance the cheque. However the High Court reversed the finding of trial Magistrate and held that the accused by admitting the signature in the cheque and also in the deed of undertaking has acknowledged the liability to the complainant. Accordingly the accused was convicted and sentenced to undergo imprisonment. The Accused then approached the Apex

Court with SLP. But the Apex Court endorsed the view taken by the High Court and held that once the accused had admitted his signature on the cheque and the deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial court fell in error when it called upon the complainant to explain the circumstances under which the accused were liable to pay. Of course, the presumption under section 118 and 139 of N.I. Act are rebuttable in nature. But the accused is expected to adduce probable evidence to rebut the presumption. A bare denial of passing of consideration would not aid the case of accused. The supreme Court in **Sri Dattatraya v. Sharanappa** reported in **2024 KHC 6417** has held that proceedings under 138 NI Act can be initiated even if the cheque was originally issued as a security and was subsequently dishonored owing to insufficiency of funds. By placing reliance on **Bir Singh's** case, the Hon'ble Supreme Court has further held that *if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption u/s 139 of NI Act, even if there is no admission to the effect of execution of entire contents in the cheque*.

14. In the case on hand, as referred above, complainant who was examined as PW1 has given evidence as regard to the transaction and execution of cheques including Ext.P2. There is nothing to discredit the testimony of PW1. As such the evidence of PW1 is sufficient to discharge his initial onus to prove the execution of the cheque. So, the question is whether the accused is able to rebut the statutory presumption. As mentioned above, the accused even could not set up a consistent case. The case suggested to PW1 and case deposed by DW1 are mutually contradictory making the case of the defence

improbable. Although it is claimed by DW1 that he filed a complaint before Qatar Police, he did not produce any evidence to support that claim. On the other hand, he himself has admitted that PW1 is still working at Qatar. If a serious complaint like stealing of cheque was filed before Qatar police, there is no likelihood of PW1 in continuing in Qatar without any prosecution. Admittedly the accused has not filed any complaint before Kerala Police even after the filing of complaint using his cheque. Apart from the interested and inconsistent oral evidence of the accused himself as DW1, there is nothing to rebut the statutory presumption mentioned above. If that be the case, in view of Se.118 & 139 of NI Act, it has to be held that Ext.P2 is supported by valid consideration and the accused has issued it in discharge of the liability as claimed by the complainant.

15. The complaint has produced adequate documents to prove that he made due demand of the amount when the cheque was dishonoured and he filed the complainant within the statutory period. Since the complainant has complied with all the legal formalities to maintain a complaint for an offence punishable u/s 138 of NI Act, I have no hesitation to conclude that the accused has committed an offence punishable u/s 138 of N.I. Act. Thus, I find these points accordingly against the accused.

16. **<u>Point No.3:</u>**- As stated above, trial court sentenced the accused to undergo imprisonment till rising of the court and to pay fine of ₹10,66,100/- and in default to undergo imprisonment for a period of 6 months. It is to be noted that the punishment provided u/s 138 of N.I Act is imprisonment of a term which may extent to two years and fine which may extent to twice the amount of cheque or with both. In the present case,

the trial court has only imposed imprisonment till rising of the court and fine of the cheque amount with interest @ 9% with a default sentence of 6 months. Having regard to the punishment provided under the statute, the sentence awarded by the trial court cannot said to be excessive. Therefore the conviction and sentence ordered by the trial Court are only to be confirmed and hence I do so.

17. **Point No.4**:- In the result, the appeal fails and the same is dismissed. Conviction and sentence ordered by the trial court are upheld and confirmed. The accused shall surrender before the trial court within one month of this order and in case of his failure to do so, the trial Court shall take steps to execute the sentence.

(Dictated to the Confidential Assistant, typed by him directly on computer corrected by me and pronounced in open court on this the 25th day of March, 2026).

Sd/-
ADDITIONAL SESSIONS JUDGE -I

No oral and documentary evidence

Sd/-

ADDITIONAL SESSIONS JUDGE -I

Fair/Copy of Judgment in
Crl.A. 95/2024
Dated: 25.03.2026