

IN THE COURT OF SESSION, KOZHIKODE DIVISION

Present:-Sri. Saidalavi.P., II Addl. Sessions Judge

Tuesday, the 31st day of March, 206(10th Chaithram, 1948)

Criminal Appeal No. 129/2025

From which court the appeal is preferred	Judicial First Class Magistrate - V, Kozhikode
Number of the case in that court	ST 2402/2020
Number of the appeal	Criminal Appeal No. 129/2025
Name and description of the appellant	Dhanya Sudheesh, aged 27 years, W/o. Sudheesh.V.V., Viyyamveetil House, Valiyaparamba, BTR Estate, Beypore (PO), Beypore Amsom, Desom, Kozhikode Taluk, Kozhikode District – 673 015
Name of the respondents	1. Prabhakaran, aged 58 years, S/o. Ganapathi, Puthanveetil House, Thampi Valappu, West Mahe, Beypore Amsom, Desom, North Beypore (PO), Kozhikode Taluk, Kozhikode District. 2. State Rep.by Public Prosecutor, Kozhikode
The sentence and law under which it was imposed in the lower court	In the result, the accused is found guilty of the offence punishable under section 138 of the Negotiable Instruments Act, 1881, and convicted for the above said offence under section 255(2) Cr.PC. The convict is sentenced to undergo imprisonment till rising of the court and to pay a fine of Rs. 14,35,000/-(Rupees Fourteen Lakh and Thirty Five Thousand Only). In default payment of the fine the convict shall undergo simple imprisonment for three months. The entire fine amount if realized shall be paid to the complainant as compensation u/s. 357(1) (b) Cr.PC.
Whether confirmed, modified or reversed and if modified, the modification	Confirmed

Date of

Presentation	:	16.04.2025
Filing	:	21.04.2025
Issuance of notice to the	:	28.05.2025

respondent		
Appearance of the respondent	:	18.06.2025
Appellant ordered to appear	:	18.06.2025
Release on execution of bail bond	:	---
Final hearing	:	18.03.2026
Date of Judgment	:	31.03.2026

This appeal coming on 18th 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.V.Satheesan, Advocate for appellant and Sri.D.Mohandas, Advocate for R1, Sri. Mithran.T.K., Additional Public prosecutor for R2 and I do adjudge and pass the following:

J U D G M E N T

Appellant is the accused in ST 2402/2020, the offence alleged against the appellant/accused (hereinafter referred to as "the accused") is punishable u/s 138 of The Negotiable Instruments Act. After considering the evidence on record and the rival contentions of the parties, the trial court convicted the accused of the offence punishable u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") and various sentences were imposed. Aggrieved by the conviction and sentence passed by the trial court the accused approached this court by way of an appeal u/s 415 of the Bharatiya Nagarik Suraksha Sanhitha, 2023.

2. The case of the complainant, in brief, is that the complainant and the accused have known each other. The facts being so, the accused availed a loan of Rs. 10,00,000/- from the complainant on 04-02-2019 for the maintenance work of her house and for the marriage expenses of her brother. At the time of borrowing, the accused promised that the amount would be repaid within a period of one year. When the accused failed to repay the amount as promised, despite repeated demands, the accused, on 26-05-2020, executed and issued Ext. P1 cheque to discharge the liability

of Rs. 10,00,000/-. Upon presentation of the cheque for encashment, it was dishonoured with the remarks "funds insufficient" and "drawer's signature incomplete." Thereafter, the complainant sent a lawyer's demand notice to the accused, which was received by her on 26-06-2020. Instead of discharging the liability, the accused sent a reply notice with untenable contentions. Hence, the accused has committed the aforesaid offences.

3. To prove the case of complainant, PW1 and PW2 were examined and Exts.P1 to P7 were marked. No evidence was adduced on the side of accused.

4. Heard both sides.

5. The case of the complainant is that the accused is liable to pay a sum of Rs. 10,00,000/- to the complainant. To discharge this liability, the accused executed and issued Ext. P1 cheque. Upon presentation of the cheque for encashment, it was dishonoured with the remarks "funds insufficient" and "drawer's signature incomplete." Thereafter, a demand lawyer's notice was issued to the accused. Although it was received by her, the liability was not discharged; instead, she sent a false reply. To prove the case of the complainant, he himself was examined as PW1, and Exts. P1 to P7 were marked. Ext. P1 is the cheque; Ext. P2 is the cheque return memo; Ext. P3 is the copy of the demand lawyer's notice sent to the accused; Ext. P4 is the postal receipt; Ext. P5 is the acknowledgment card; Ext. P6 is the reply notice; and Ext. P7 is the certificate issued under Section 2(8)(b) read with Section 2A of the Bankers' Books Evidence Act. At the time of examination, PW1 deposed in tune with the averments in the complaint. Apart from that, an employee of Federal Bank Ltd., Beypore Branch, was examined as PW2. As stated earlier, to probabalise the case of the accused, no independent evidence was adduced apart from the cross-examination of PW1 and PW2.

6. The defence case projected by the accused is that the complainant is her neighbour and is familiar with her. It is not correct to say that the accused borrowed an amount of Rs. 10,00,000/- from the complainant for the maintenance of her house and for the marriage expenses of her brother. Ext.P1 cheque was not executed or issued by the accused to the complainant, as stated in the complaint. In

fact, a false case has been instituted by the complainant in connection with an agreement executed with her husband. At the time of argument, the learned counsel for the accused submitted that the accused and her husband are not on good terms. Due to this, the husband of the accused, by using her cheque, managed to fabricate a case. Though it is the contention of the accused that she is not on good terms with her husband, no evidence has been adduced to prove this fact. Therefore, I find that there is no foundation for this argument of the accused. At the time of cross-examination, the suggestion put to PW1 was that the cheque of the accused was somehow obtained from her husband and misused to institute a false complaint. To probabilise this case as well, there is no evidence on record apart from the suggestions put to PW1 during cross-examination, which were denied by him.

7. It is the further contention of the accused that the complainant had no financial capacity to lend an amount of Rs. 10,00,000/- to the accused. At the time of examination, PW1 deposed that during the year 2020, he was unemployed and had no income. The amount was paid to the accused on 04-02-2019. He further deposed that Rs. 10,00,000/- was withdrawn from Federal Bank and given to the accused. The amount was paid to the accused three days after its withdrawal from the bank. To prove this contention, an employee of Federal Bank, Beypore Branch, was examined as PW2. At the time of re-examination, PW1 deposed that a loan had been availed from the bank in the name of his wife. Since the accused is his neighbor, the amount was lent to her. During examination, PW2 deposed that Ext. P7 document was issued from his bank. As per this document, on 01-02-2019, Rs. 10,00,000/- was withdrawn from the account, which was maintained by Sridevi P. The case of the complainant is that he paid an amount of Rs. 10,00,000/- to the accused on 04-02-2019, and according to PW1, on 01-02-2019, Rs. 10,00,000/- was withdrawn by his wife from the bank. In view of the testimony of PW1, PW2, and Ext. P7, I find that during the relevant period, PW1 had sufficient funds to lend an amount of Rs. 10,00,000/- to the accused.

8. Yet another contention of the accused is that Ext.P1 cheque was not executed and issued by her to the complainant. Moreover, it was dishonored stating the reason 'funds insufficient' and "drawers' signature incomplete". So according to the accused Section 138 of the Act is not attracted in such circumstances. There is no case to the accused that Ext.P1 cheque was not issued to

her account. As stated earlier her contention is that she is not in good terms with her husband and somehow the accused obtained the cheque of the accused from the husband of complainant and instituted as false case. It has held by The Hon'ble Apex Court in **Ajitsinh Chehuji Rathod v. State of Gujarat (2024(1)KHC 490** that:

“Certified copy of a document issued by a Bank is itself admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof. Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.”

9. It is pertinent to note that no attempt has been made by the accused to prove that the signature contains in Ext.P1 was not put by her. So, the one and only conclusion possible is that Ext.P1 cheque was executed and issued by the accused to discharge a legally enforceable debt. Though the accused has raised multiple defenses at the time of cross examination of PW1, there is no positive evidence on record apart from the suggestions put to PW1 at the time of cross examination, which were denied by him. It has held by the Hon'ble Apex Court in **Kalamani Tex (M/s.) and another v. P.Balasubramanian (2021) (2) KHC 517** that, in order to rebut presumptions under Section 118 and 139 of the Negotiable Instruments Act, a probable defence need to be raised, which must meet standard of preponderance of probabilities and not mere possibility. It has held by the Hon'ble Apex Court in **Rajesh Jain vs. Ajay Sing 2023(6) KHC 391 (SC)** that mere admission of the drawer's signature without admitting the execution of the entire contents in the cheque is sufficient to trigger the presumption u/s 139 of the NI Act.

10. After considering all the facts and circumstances of the case, it is evident that the presumption available under Section 139 of the Negotiable

Instruments Act (NI Act) favors the complainant, and the accused has failed to rebut this presumption. Thus, it is established that the Ext.P1 cheque was indeed executed and issued by the accused to settle a legally enforceable debt. Consequently, there is no valid reason to overturn the conviction rendered by the trial court. Upon reviewing the imposed sentence, it is apparent that the trial court has exercised discretion judiciously, imposing a reasonable sentence. In light of the foregoing, I find no grounds to intervene in the decision made by the trial court.

11. Therefore the appeal is hereby deemed unsuccessful, and consequently, it is dismissed. The case records are to be forwarded to the trial court promptly for further proceedings in accordance with the law.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open court, on this the 31st day of March, 2026)

Sd/-

II Additional Sessions Judge

No oral and documentary evidence on both sides

Sd/-

II Additional Sessions Judge

Typed by:Reena.K.A.

Fair/Copy of Judgment in
Crl.Appeal-129/2025, Dated :31.03.2026