IN THE COURT OF SESSION, KOZHIKODE DIVISION
Present:- Smt. Bindhukumari. V. S, Sessions Judge
Friday, the 27th day of March, 2026/ 06th day of Chaithram, 1948

Criminal Appeal No. 152/2024

From what Court the appeal is preferred	:	Judicial First Class Magistrate Court, Koyilandy.
Number of Case in that Court	:	ST 934/2020
Number of the Appeal	:	Crl. Appeal No.152/2024.
Name and description of the appellants	:	Shamna, aged 31 years, W/o. Jasik, Nalam Kandathil House, Kuruvangad P.O, Koyilandy Taluk, Kozhikode District.
Name and description of respondents	:1.	Sree Gokulam Chits & Finance Co.(pvt), Ltd.,Koyilandy Branch, Rep. by the authorised person and Assistant Manager, Sree Gokulam Mr. Sivadasan, S/o. Late Mr. Govindan Nambiar, aged 56 years, Assistant Manager, Sree Gokulam Chits & Finance Co.(pvt) Ltd., “Sree Gokulam Towers”, No.66 Arcot Road, Chennai.
	2.	State of Kerala. Rep. by Public Prosecutor, Kozhikode.
The sentence and law under which it was imposed in the lower court	:	The accused is sentenced to pay fine of Rs. 3,90,900/-(Three lakhs ninety thousand and nine hundred rupees only). In default of payment of the fine, the accused shall undergo simple imprisonment for three(3) months. The fine amount, when realized shall be paid to the complainant as compensation.
Whether confirmed, modified or reversed and if modified the modification	:	The appeal is hereby dismissed confirming the conviction and sentence passed by the trial Court. Accused is given 30 days time to deposit the fine amount before the trial Court. Hence he shall appear before the trial court on 28.04.2026 to deposit the fine amount. If the fine is not deposited within the stipulated time, the trial Court is at liberty to take steps to execute the sentence in accordance with law.

Date of

Presentation	Filing	Issuance of notice to the appellant	Appear-ance of respondent	Appellant ordered to appear	Release on execution of bail bond	Final Hearing	Judgment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
03.05.24	03.05.24	--	--	06.05.24	--	26.03.26	27.03.26

This appeal coming on 26th day of March 2026 for final hearing for orders before me upon perusing the memorandum of appeal and records of evidence and proceedings and upon hearing the arguments of **Sri. A. Vinod Kumar,** advocate for the appellant and of **Sri. A. G. Raghunathan** advocate for respondent and of **Public Prosecutor** on behalf of State and I do adjudge and pass the following.

J U D G M E N T

This is an appeal filed by the accused in ST No.934/2020 of Judicial First Class Magistrate Court, Koyilandy against the judgment of conviction and sentence passed against him for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. For brevity and clarity, parties are hereinafter referred to as they figured before the trial court. For easy appraisal of the matter, facts of the case are summarized below:

Complainant is a company engaged in chitty business. One Mr.Jasik who is the husband of the accused was a subscriber to two chits with the complainant bearing Nos.G2G/0125/CLT/20 for a sala of Rs.3 lakhs and chitty No.G2H/8527/KDM/14 for a sala of Rs.5 lakhs. The chits were commenced respectively on 24.03.2017 and 27.11.2017. The subscriber prized the chits respectively on 27.07.2017 and 03.04.2018 for Rs.2,23,875/- and Rs.3,73,125/- respectively. At the time of availing the price money the subscriber as well as the accused who is the wife of the subscriber had jointly executed agreement with the complainant for the due payment of the balance chit amount. But they have failed in repaying the amount. After persistent demands, accused who was the surety to both the chits turned up to the complainant's office and issued a cheque bearing No.688864 dated 21.10.2020 drawn on Canara Bank, Koyilandy branch for Rs.3,26,900/- in favour of the complainant for the discharge of the balance amount due in respect of both the above chits. When the complainant had presented the cheque for collection through Kerala Gramian Bank, Koyilandy branch, the same was dishonoured with the endorsement 'funds insufficient' on 26.10.2020. Thereafter, the complainant issued lawyer's notice to the accused on 16.11.2020, calling upon her to pay the amount covered by the cheque. Though the accused accepted the notice, she did not turn up to discharge the liability. Hence, after complying with all legal formalities, complainant has preferred the complaint under Section 138 of the Negotiable Instruments Act.

3. Accused appeared and faced the trial. After trial, accused was found guilty by the trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act. She was convicted thereunder and sentenced to pay fine of ₹ 3,90,900/- with a default sentence of simple imprisonment for 3 months. The fine amount, if realised, was ordered to be given to the complainant as compensation. Aggrieved by the above judgment of conviction and sentence, present appeal was preferred on the following grounds.

1. The judgment of conviction and sentence passed by the trial court is wrong and contrary to law, facts, and evidence.

2. Trial Court ought to have found that complainant had failed to prove execution of Exhibit P3 cheque by the accused.

3. Trial court ought to have held that Exhibit P3 cheque was issued not for any legally enforceable debt or liability.

4. Trial court ought to have found that Exhibit P3 is a blank cheque issued without writing any amount and name.

5. Trial Court ought to have found that no notice was issued to the accused informing her of the alleged liability. Complainant has failed to prove the statutory notice allegedly given to the accused.

6. Trial Court ought to have considered the fact that the complaint lacks necessary details regarding the monthly installment, number of installments and the total amount covered by the installments in the Complaint.

7. No independent witnesses were examined to prove the alleged transactions between the complainant and the accused. Trial court ought to have found that there was no transaction between the accused and the complainant and hence ought to have found that Exhibit P3 cheque was issued not towards the discharge of any debt or liability.

8. Trial court ought to have found that there was no liability for this accused to pay any amount towards the complainant.

9. Trial court ought to have found that the alleged chits conducted by the complainant is an illegal one and on the basis of the illegal chit transaction, it was not entitled to recover any amount.

10. Findings of the trial court that the accused failed to rebut the presumptions in favour of PW1 is wrong, as the burden to rebut the presumptions will shift to the accused only when complainant has succeeded in proving execution of Exhibit P3 cheque. Since here execution of Exhibit P3 cheque was not proved, complainant was not entitled for any presumption and as such there was no burden on the part of the accused to rebut those presumptions.

On the above grounds, the appellant/accused prays to allow the appeal to set aside the impugned judgment of conviction and sentence and then to acquit her of the offence punishable under Section 138 of the Negotiable Instruments Act.

4. From the above averments, the following points would arose for consideration:

1) Whether the judgment of conviction and sentence passed by the trial Court liable to be interfered with in any manner ?

2) The order.

5. Heard both sides and perused the trial court records.

6. **Point No.1**:- Evidence before the trial Court consists of oral testimony of PW1, who is the authorized agent of the complainant company, and Exhibit P1 to Exhibit P11. Defence adduced no oral or documentary evidence. Before analyzing the evidence, the main contentions of the accused are worth mentioning. Accused would contend that she was not duly informed of her liability as per Exhibit P3 cheque by giving a legal notice. Her second contention is that since she has no transaction with the complainant, she is not liable to pay any amount to the complainant. The third contention is that she never issued Exhibit P3 cheque for the discharge of any debt or liability towards the complainant. Last contention is that PW1 has failed to prove the alleged transactions narrated in the complaint by producing sufficient documents. In view of the above contentions the evidence adduced before the trial court is analyzed to see whether any of the above contentions are sustainable.

7. PW1 is the authorized agent of the complainant company, who has adduced evidence before the court. Though it is contented that PW1 has no

authority to represent the company and depose before the court, in order to prove the present case, Exhibit P1 and Exhibit P2 resolutions would prove that PW1 is the authorized representative of the complainant company and he was duly authorized to depose for and on behalf of the company. Hence the contention of the accused that PW1 has no authority to depose before the court as PW1 is found unsustainable. The next contention is regarding the lack of proper materials to prove the complainant's case in the complaint. It is argued by the learned counsel for the complainant that the complaint does not reveal the entire details of the alleged chit transactions and the total amount paid and the total dividend entitled by the subscriber of the chit and hence the real liability could not be ascertained. While considering the above contention, the evidence adduced before the trial court as well as the averments in the complaint are once again gone into in detail. According to the complainant, husband of the accused Mr. Jasik A. P. was a subscriber to two chits with respective salas. ₹ 3,00,000/- and ₹ 5,00,000/-. The first chit was commenced on 24.03.2017 and the second one was commenced on 27.11.2017. Both the chits were for a period of 20 months. The first chit for ₹ 3,00,000/- was priced to him on 27.07.2017 and the priced money was ₹ 2,23,875/-. The second chit was prized on 03.04.2018 and the prized money was ₹ 3,73,125/-/. Both the price amounts were duly received by the subscriber after executing Exhibit P9 and Exhibit P11 agreements. In both the above agreements, PW1 was also a signatory as one of the guaranteers. Though the accused was duly served with Exhibit P5 notice, she did not send any reply notice denying the averments in the notice. But at the time of cross examining PW1, a mere suggestion was put to him by the learned counsel for the accused that the accused did not sign Exhibit P9 and Exhibit P11 agreements. Apart from a mere suggestion of denial of the signature, no steps were taken by the accused to prove that the signature found in Exhibit P9 and Exhibit P11 are not of the accused. No expert examination of the above signatures were done at the instance of the accused. So also after closing the complainant's evidence, the accused was questioned under Section 313(1)(b) Cr.P.C regarding the incriminating evidence against her. Except denying the entire incriminating evidence against her in a general manner, she did not specifically deny her signature in Exhibit P9 and Exhibit P11. No additional statements are also made by her regarding Exhibit P9 and Exhibit P11 agreements. If she has a real grievance that she did not sign in Exhibit P9 and Exhibit P11, she ought to have adduced evidence by mounting in the witness box. Such an effort was also not done. So also, at the time of cross-examination of PW1, attention of PW1 was not invited to the alleged signature of the accused in Exhibit P9 and Exhibit P11 and no further questions were put to him to the effect that the signatures seen in Exhibit P9 and Exhibit P11 are not of her signature. Even in the absence of such a contention, I have gone through and verified the signature of the accused in Exhibit P9 and P11 agreements as well as the signature in Exhibit P3 cheque with her admitted signatures in other various case records. On a comparison of her admitted signatures found in various case records with the signature in Exhibit P3, P9 and P11, it is found that all the signatures tally each other and hence I have no hesitation to hold that the signatures found in Exhibit P3, P9 and P11 are that of the accused herself. Thus, since it is found that Exhibit P9 and Exhibit P11 agreements were duly executed by the accused, as surety to the chit transactions of her husband with the complainant company, I find that accused was having the knowledge regarding the entire details of the chits subscribed by her husband. Moreover, in a case under Section 138 of the Negotiable Instruments Act, based on a cheque issued by the accused for the discharge of the liability towards a particular transaction, complainant is not obliged to disclose each and every details of the alleged transaction which took place between the accused and the complainant ever since the commencement of the said business transaction.

8. The above position was upheld by By the Hon'ble High Court of Kerala in **Devan v. Krishna Menon 2010 (2) KLT 297**. In that report, it is held by the Hon'ble High Court that the complainant is not under any legal liability to establish the original cause of action in meticulous details. The Hon'ble Apex Court in **Chandel D.K. Vs. M/s. Wockhardt Ltd., 2020 KHC 6204** held that in a case under Section 138 of the Negotiable Instruments Act pertaining to a business transaction between the complainant and the accused, the account books or cash books may be relevant in the civil court but may not be so in the criminal case filed under Section 138 of the Negotiable Instruments Act. Therefore, it is found that the absence of meticulous details in the complaint regarding the entire transaction between the complainant and the subscriber to the chit commencing from the date of commencement of the chit transaction is not at all required to be revealed by the complainant in the complaint. Hence, the contention of the accused that the non-revealing of details of the alleged chit transaction in the complaint is not fatal to the complainant and it is further found that the same did not in any way cause prejudice to the accused.

9. Now, the contention of the accused regarding her liability towards the complainant is considered by once again analysing the evidence adduced before the trial court. According to PW1, in order to discharge the liability owed by the accused being the surety of her husband in the alleged chit transaction as agreed vide Exhibit P9 and Exhibit P11 agreements, she has executed Exhibit P3 check leaf to the complainant. PW1 would further depose that the accused came to the complainant's office, signed check leaf and handed over the same to the complainant. The said case was not totally denied by the accused. She would only state that she has no transaction with the

complainant. It is true that she never had any direct transaction with the complainant and she never received any money from the complainant. The prized money in the above chits was received by her husband and she stood as a surety for the due payment of the balance installments. Thus, by virtue of Exhibit P9 and Exhibit P11, she is bound to pay the amount to the complainant if the subscriber commits default in paying the amount. She is not denying her signature in Exhibit P3. She also has no case that Exhibit P3 was not signed by her and not issued by her to the complainant. When PW1 was cross examined, except a vague and general suggestion that Exhibit P3 cheque was not issued by the accused to the complainant, no other suggestions were put forward. She is also not denying the signature found in Exhibit P3. Exhibit P4 dishonor memo would also show that Exhibit P3 belongs to the accused and the cheque was dishonored solely for the reason 'funds insufficient'. There is no endorsement to the effect that the signature in Exhibit P3 cheque differs from the specimen signature provided to the bank. Moreover, as already discussed in the earlier paragraph on a comparative analysis of the signature of the accused in Exhibit P3 cheque with her admitted signatures in various case records including her Vakalat and statement under Section 313 (1)(b) Cr.P.C. I find that the signatures tally each other. Thus, from the oral and documentary evidence on record, PW1 has succeeded in establishing that accused has issued Exhibit P3 cheque to the complainant for the discharge of the debt incurred by her husband in the alleged chit transactions. Therefore, presumptions under Section 118 and 139 of the Negotiable Instruments Act stands in favour of the complainant. In **Hiten P. Dalal vs Baratindranath Banerjee reported in 2001 KHC 1310,** it is held that it is obligatory on the court to presume the liability of the drawer for the amount of the cheque in every case where the factual basis for such presumption is established. The above view was further upheld by the Hon'ble Apex Court in its decision in **Rengappa v. Sri Mohan**

reported in 2010 (2) KLT 682, wherein it is held that, presumption referred to in Section 139 of the NI Act is a mandatory presumption and not a general presumption. Thus on analysis of the evidence of PW1 coupled with the above legal prepositions Learned Magistrate came to a finding that Exhibit P3 cheque was issued by the accused for the discharge of the liability as shown in Exhibit P3. In order to came to such a finding, the trial court has rightly relied on the decision of the Hon'ble Apex Court in **Bir Singh Vs. Mukesh Kumar (2019 (1) KLT 598)**. In the above decision, the Hon'ble Apex Court has held that a meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Section 20, 87 and 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 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. If the cheque is otherwise valid, the penal provisions of Section 138 of the NI Act would be attracted.

10. Learned trial court has further relied on the decision of the Hon’ble Apex Court in **Vijay Vs. Laxman (2013 (1) KLT 297** to further find that the presumption under Sections 118 and 139 of the Negotiable Instruments Act could not be rebutted by the accused. Since it is proved that Ext.P3 cheque was issued by the accused presumptions under Section 118 and 139 of the Negotiable Instruments Act came into play. The Hon’ble Apex Court in **Krishna Rao Vs. Shankar Gowda reported in 2018 (3) KHC 684** held that burden is on the accused to rebut the presumption if there is evidence to show that cheque contains signature of the accused. So also In **Devan Vs. Krishna Menon reported in 2010 (2) KLT 397**, our Hon'ble High Court held that once the signature, execution and handing over of the cheque is satisfactorily proved by the evidence by the complainant, presumption under Section 139 of the NI

Act comes into play and the same holds the field until the accused discharges the burden on him at least by the inferior standard of preponderance of probabilities and possibilities as applicable in a civil case. The Hon'ble High Court has again held in **Baskaran and others v. Mohandas and another reported in 2016 (1) KHC 254**, that once complainant has proved transaction as well as issuance of cheque then the burden is on the accused to rebut the presumptions under Section 139 of the Negotiable Instruments Act. Obviously, those presumptions are rebuttable presumptions and hence, the accused is at liberty to adduce evidence to rebut those presumptions. In the present case accused did not put forward any specific case as to the execution of Ext.P3 cheque. Only a blatend denial was made by her as to the execution. Even she did not care to mount in the witness box to reveal her defence version.

11. The Hon'ble Apex Court in **Rangappa v. Sri. Mohan (2010 (11) SCC 441)** held that while adducing rebuttal evidence, a mere possible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. The defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court. Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Negotiable Instruments Act have been met and if so, whether the accused was able to rebut the statutory presumption under Section 139 of the Act.

12. As already discussed, accused did not care to adduce any evidence to rebut the presumptions now in favour of the complainant. Except a general and vague denial as to the liability he did not care to adduce any evidence. So also accused has no definite version as to how Ext.P3 cheque came to the possession of the complainant. Thus on an overall evaluation of the entire facts and circumstances of the case, I find that the findings of the trial court that the accused has issued Ext.P3 cheque for the discharge of a debt of

Rs.3,26,900/- which is due from him towards PW1 is found not liable to be interfered with.

13. When Ext.P3 cheque was presented for collection the same was dishonoured with the endorsement 'funds insufficient'. Ext.P4 is the cheque return memo dated 26.10.2020. Thereupon complainant had sent Ext.P5 statutory notice to the accused on 16.11.2020, calling upon her to pay the amount covered by Exhibit P3 cheque within 15 days of the receipt of the notice. Exhibit P6 is the postal receipt of the said notice. Accused has received the notice vide Exhibit P7 acknowledgment due card on 17.11.2020. In the appeal memorandum, it is contented that due notice was not given to the accused regarding her liability towards the complainant. But Exhibit P7 acknowledgment due card proves that Exhibit P5 notice was duly received by the accused. She is not having a specific case that she did not receive the statutory notice. She is not disputing her signature in Exhibit P7 acknowledgment due card. On perusal of Exhibit P5 notice, it is further seen that she was duly informed about the execution and issuance of Exhibit P3 cheque, the transaction and liability for which Exhibit P3 was issued and the amount for which the cheque was issued. Therefore, it cannot be said that she was not intimated regarding her liability towards the complainant. Hence, her contention that due notice of her liability was not intimated to her is also found unsustainable. Obviously, she did not effect any payment as required in Exhibit P5 notice. Complainant has therefore Filed the complaint on 29.12.2020 i.e. within the statutory period. Thus it is found that complainant has complied with all the legal formalities in filing the complaint and the complaint further does not suffer from any defect. The findings of the trial court in that regard is therefore found not liable to be interfered with.

14. The last point to be answered is sufficiency or otherwise of the sentence passed against the accused. It is contended that punishment given

to the accused is too harsh and excessive. Accused was sentenced to pay fine of Rs.3,90,900/- with a default clause of simple imprisonment for three months. Fine if paid is ordered to be given to the complainant as compensation u/s 357(1) of Cr.P.C.

15. At this pont, purpose of the legislation as well as the purpose of the enactment of Section 138 of the Negotiable Instruments Act and the object of making the said provision penal is to be considered. The said provision mainly deals with money transaction and the said section was made penal mainly to facilitate repayment of the debt by the defaulters. Hon'ble Apex Court in umpteen number of cases has repeatedly held that the primary object of Section 138 Negotiable Instruments Act is compensatory and punitive element serves to enforce this compensatory aspect.

16. Hon'ble Apex court in **Dashrathbhai Trikambhai Patel V. Hitesh Mahendrabhai Patel (2023 (1) SCC 578** held that courts can prioritize compensation and consider imposition of sentence of fine alone rather than imprisonment. Therefore, the paramount consideration to be attached is for the due payment of the amount. Therefore, further based on the decision of the Hon'ble Apex court in **Somnath Sarkar V Utpal Basu Mallick (AIR 2013 SC 4087)**, I find that instead of putting the accused in jail as a mode of punishment facility is to be made for the easy repayment of the money. The trial Court has duly considered these aspects and fine alone was imposed as sentence and substantive sentence of imprisonment was avoided. Hence, I find that the sentence passed by the trial court by imposing fine alone is not liable to be interfered with.

17. The fine amount imposed is Rs.3,90,900/- when the cheque amount is for Rs.3,26,900/-. In **Vijayan. R Vs. Baby and Another reported in 2012 (1) SCC 260** Hon'ble High Court of Kerala held that while fixing the fine amount award of interest up to 9% per annum from the date of cheque up

to the date of realization as compensation apart from the cheque amount would be legal. The amount of fine imposed by the learned Magistrate did not exceed the cheque amount and 9% interest on that cheque amount. Therefore, the said fine amount is also not found excessive or harsh. Hence, the same is also found not liable to be interfered with or modified. Point No.1 is answered accordingly.

18. **Point No.2**-: From the above findings in point No.1 it is found that the appeal is liable to be dismissed as none of the findings of the trial court is found liable to be interfered with.

In the result, the appeal is hereby dismissed confirming the conviction and sentence passed by the trial Court. Accused is given 30 days time to deposit the fine amount before the trial Court. Hence he shall appear before the trial court on 28.04.2026 to deposit the fine amount. If the fine is not deposited within the stipulated time, the trial Court is at liberty to take steps to execute the sentence in accordance with law.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 27th day of March, 2026)

Sd/-
Sessions Judge

//True copy//

Sr. Superintendent.

typ. by. Naisha. V.V.

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Fair/Copy of judgment in
Crl. Appeal No. 152/2024
Dated : 27.03.2026
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