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. 369/2024

From what Court the appeal is preferred	:	Judicial First Class Magistrate Court, Payyoli.
Number of Case in that Court	:	ST 2430/2020
Number of the Appeal	:	Crl. Appeal No.369/2024.
Name and description of the appellants	:	Govindan. M, aged 41 years, S/o. Krishnankutty, Malayil House, Maniyur Post, Palayadunada, Koyilandy, Kozhikode.
Name and description of respondents	:1.	Sree Gokulam Chits & Finance Co.(P), Ltd., Gokulam Towers, No.66, Arcot Road, Chennai. Rep. by Assistant Manager, C. V. Sivadasan, Sree Gokulam Chits & Finance Co.(P)Ltd. Salma Mall, Near Bus Stand Payyoli.
	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 found guilty of the offence punishable u/s.138 of NI Act and he iw convicted u/s.255(2) of Cr.P.C. 1) Accused is sentenced to undergo simple imprisonment till rising of the court for the offence punishable u/s.138 of NI Act. 2) Accused is to pay a fine of Rs. 70,250/- (Rupees seventy thousand two hundred and fifty only). If the amount of fine is realised, the same shall be paid to the complainant as compensation u/s 357(1)(b) of the Cr.P.C. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 1 month.
Whether confirmed, modified or reversed and if modified the modification	:	Appeal is allowed in part, by confirming the conviction passed by the trial court in ST No.2430/2020 of Judicial First Class Magistrate Court, Payyoli and modifying the sentence as follows : 1) Imprisonment till rising of court is hereby set aside.

2) Accused is sentenced to pay fine of Rs.56,563/- (Fifty six thousand five hundred and sixty three only) and in default of payment of fine he shall undergo simple imprisonment for one month.

3) Remaining portion of the sentence regarding payment of compensation in the impugned judgment is hereby sustained.

4) Accused is directed to appear before the trial court on 28.04.2026 to pay the fine amount. If the fine is not deposited within the stipulated time, trial court is at liberty to take steps for the due execution of 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)
31.09.24	31.09.24	--	25.11.24	24.09.24	--	16.03.26	27.03.26

This appeal coming on 16th 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. Anil. G** 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 preferred by the appellant who was the accused in ST 2430/2020 before the Judicial First Class Magistrate court, Payyoli 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 in the complaint before the trial court. For easy appraisal of the matter,

the case of the complainant is summarized below. Complainant is a limited company engaged in the business of chits and finance having its corporate office at Chennai. Complainant company is one of its branch offices at Payyoli. Said branch is represented by its Assistant Manager, who has personal knowledge about the alleged transaction. Accused was a subscriber to the chitty bearing number G2E/2301/DGL/12 with the complainant for a sala of ₹ 1,00,000/-. The chitty was commenced on 26.05.2018 and the same was for a period of 20 months which terminated on 26.12.2019. On 05.01.2019, the said chitty was priced to the accused and he received ₹76,400/- as prize money after executing agreement for due repayment of the amount. But he committed default in repayment. Subsequently on persistent demands, accused came to the complainant's office and issued cheque No. 015022 dated 03.09.2020 drawn on Kozhikode District Co-operative Bank, Maniyur Branch for ₹ 56,800/- in favour of the complainant for the discharge of the said liability. The cheque was executed in the presence of the Manager and the complainant herein. When the complainant presented the cheque for collection through Punjab National Bank, Meladi branch, the same was dishonored with the endorsement ‘funds insufficient’ on 09.09.2020. Thereafter, complainant sent legal notice to the accused on 09.10.2020 demanding repayment of the amount covered by the cheque within 15 days of receipt of the notice. Though the accused received notice on 12.10.2020, he never turned up either to discharge his liability or to send any reply. Hence after complying with the formalities, complainant had filed the complaint which was taken on file as ST No.2430/2020.

3. Cognizance of the offence was taken and the accused appeared in obedience to the summons. He faced the trial and after trial, the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, convicted him thereunder, and sentenced him to

undergo simple imprisonment till rising of the court and to pay fine of ₹ 70,250/- with a default sentence of simple imprisonment for 1 month. Fine amount, if realized, is ordered to be given to the complainant as compensation. Aggrieved by the above conviction and sentence, accused has preferred the present appeal on the following grounds.

1. The judgment passed by the trial Court is against law, facts, evidence and circumstances of the case.

2. Trial court has purely based on the oral testimony of PW1 and PW2 to convict the accused.

3. Trial Court has then failed to take note of the fact that PW1 and PW2 are the interested witnesses and hence their evidence was not trustworthy.

4. Trial Court ought to have rejected Exhibit P1 and Exhibit P2 documents as the same were not produced as per law.

5. Trial court ought to have found that since the accused has denied execution of Exhibit P3 cheque, it was the duty of PW1 to prove the same. But though the execution of the cheque was not proved by PW1, trial Court found the accused guilty which is not sustainable in law.

6. Trial Court ought to have found that accused had paid ₹ 11,000/- after filing the complaint and hence balance amount is less than the cheque amount.

7. Trial Court ought to have found that Exhibit P9 is not accompanied by statements of accounts and the same is also not proved under Section 65B of the Evidence Act.

8. Trial court ought to have found that there is no legally enforceable debt between the parties.

9. Trial Court ought to have found on the basis of the evidence that PW1 has misused the cheque issued by the accused.

10. Trial Court ought to have found that case of the defence is more probable and reliable than the case of the complainant.

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

4. Respondent appeared and contested the appeal.

5. From the above averments, the following points would arise for consideration :-

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

2) The order ?

6. Heard both sides and perused the entire trial court records.

7. **Point No.1:-** Evidence before the trial Court consists of oral testimony of PW1, PW2 and DW1 and Exhibit P1 to Exhibit P10 and Exhibit D1. PW1 is the present Manager of the complainant company and PW2 was working at the establishment as Assistant Manager at the time of alleged transaction. Before analysing the evidence, the main contentions of the accused are worth mentioning. Those are

1) Accused has issued Exhibit P3 cheque not for the discharge of any debt or liability, but only as a security at the time when he received the prize money from the complainant.

2. PW1 is not an authorized person to depose for and on behalf of the complainant.

3. The entire transactions and details of the transactions were not revealed in the complaint.

Bearing in mind the above-main contention, the evidence adduced before the trial Court is scanned in detail to see whether Exhibit P3 cheque was issued for the discharge of any legally enforceable debt or liability. Admittedly, complainant is a private limited company engaged in the business of chits and finance. Accused was a subscriber to the chit with the complainant as Chit No. G2E/2301/DGL/12 for a value of ₹ 1,00,000/- and the same was commenced on 26.05.2018. The period of the chit was 20 months. On 05.01.2019, he has prized the chit and received ₹76,400/- being the prize money. According to the complainant though at the time of receiving the prize money, accused and his sureties have executed Exhibit P10 agreement for the due repayment of the balance installments, they failed to remit the installments. Hence on persistent demands, the accused turned up to the office and issued Exhibit P3 cheque for the discharge of the balance amount. According to PW1, as on the date of issuing the cheque, the principal outstanding balance in the chit transaction was ₹50,750/-. As per Exhibit P10, accused has agreed to pay interest at the rate of 18% per annum if he commits default in paying the monthly installments. Thus as per Exhibit P10, the interest amount would come to ₹ 6,088/-. Thus including the principal and interest, the accused has issued cheque for ₹ 56,800/- is the case of the complainant. Though at the time of cross-examination of PW1 several questions were put to him by the learned counsel for the accused that the complainant's institution is not entitled to realise interest at the rate of 18% per annum under the Money Lenders Act and at the time of argument such a contention was put forward, learned Magistrate has rejected the above contention duly holding that in view of Exhibit P10 agreement, complainant is entitled to recover interest at the rate of 18% per annum as the same was agreed by the accused. The learned Magistrate has

rightly rejected the plea of the accused in that regard and held that ruling cited by the learned counsel in **Basheer M.H Vs. Wheels Auto Finance Kaloor and Another reported in 2017(3) KHC 3** and the dictum laid down in that case is applicable only in cases of money transactions under Money Lenders Act. In view of Exhibit P10, I am also inclined to find that the accused is liable to pay interest at the rate of 18% per annum.

8. Next point is to be considered is whether PW1 has got authority to represent the complainant company. When examined PW1 would depose that he was duly authorized by the complainant company as per Exhibit P1 and Exhibit P2 documents. PW1 is the Assistant Manager of the complainant company who is duly authorized by Exhibit P1 and Exhibit P2 to conduct cases for and on behalf of the complainant company and also to depose for the company. Though no such authorization regarding the particular case is given by the specific documents, the above documents would show that PW1 has the general authority to represent the complainant company in all the cases instituted by the company and further to sign and depose before the various courts in all the cases. It is true that the complaint was filed by Sivadasan, who is no more. There is no mandate of law that the person who had filed the complaint under Section 138 of the Negotiable Instruments Act for and on behalf of the company should prosecute the case till the disposal of the case and to depose as witness in that case. The Hon'ble Apex Court in **Bhupesh Rathod Vs. Dayasankar Prasad Chaurasia reported in 2021(4) KLJ 834** held that there is no mandate that the particular person whose statement was taken on oath alone can continue to represent the company till the end of the proceedings. Since PW1 was given full authority to prosecute and to depose before the court, as per Exhibit P2, I find that PW1 has every authority to conduct the case. Therefore, contention of the accused that PW1 lacks authority to prosecute the case and to depose for and on behalf of the company

is also found unsustainable. The findings of the trial court in that regard is therefore found not liable to be interfered with.

9. Next point for consideration is regarding the execution and issuance of Exhibit P3 cheque by the accused in favour of the complainant. PW1 would depose that for the balance amount due in the alleged chit transaction, accused has issued Exhibit P3 cheque which includes the principal balance amount along with interest at the rate of 18% per annum. He would further depose that he also witnessed the execution and issuance of Exhibit P3 cheque by the accused. PW2 the Assistant Manager of the complainant company at the time of execution of Exhibit P3 cheque by the accused has also deposed that he also witnessed the execution of the cheque by the accused. At this point it is pertinent to mention that accused is not disputing his signature in Exhibit P3. He also does not have a case that Exhibit P3 cheque was not issued by him. His definite defence version is that at the time when he received the prize money in the chitty, complainant has obtained two blank signed cheque leaves belonging to him, two blank cheque leaves each belonging to the sureties and two signed blank stamp papers also. Thus it is crystal clear that Exhibit P3 cheque was issued by the accused. Moreover, accused has no case that except the signature in Exhibit P3, no other entries were filed by him. He is not disputing the handwriting in Exhibit P3. Thus from the oral and documentary evidence, complainant has succeeded in proving that Exhibit P3 cheque was issued by the accused for the discharge of legally enforceable debt owned by him towards the complainant. Thus, the presumptions under Sections 118 and 139 of the Negotiable Instruments Act also 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 has come 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. Obviously, those presumptions are rebuttable presumptions and hence, the accused is at liberty to adduce evidence to rebut those presumptions. Now this court has to consider whether the accused has succeeded to rebut the presumptions available in favour of the complainant. In order to rebut the presumptions, DW1 was examined and Ext.D1 was marked. DW1 is the sister of the accused who stood as one of the sureties in Ext.P10 agreement. She would depose that at the time when the prize money was received by her brother complainant has obtained his two signed blank cheque leaves, her two signed blank cheque leaves, two other cheque leaves of the second surety in Ext.P10 and also obtained signed blank stamp papers. She for and on behalf of the accused deposed that complainant has misused one of the cheque leaves thus issued by the accused. Except the above evidence , no other evidence is forthcoming from the part of the accused to rebut the presumptions. Obviously, the solitary oral testimony of DW1 without any corroboration is not a substitute for proof. At this point, it is further pertinent to mention the subsequent conduct of the accused after issuing Ext.P3 cheque. Accused has a case that after the filing of the complaint he has effected part payment of the debt by two installments. His version is that when he received Ext.P5 notice he turned up to the complainant’s office and enquired with the matter. Then the matter was settled and he promised to repay the money by

installments which was further accepted by the complainant. Thus, by two installments he had effected a total payment of Rs.11,000/- of which the first installment of Rs.5,000/- was paid on 02.01.2021. when the above defence version was put to PW1 he would admit deposit of Rs.11,000/- by the accused by two installments after the filing of the complaint. But he would deny the further case of the accused that complainant had promised the accused that it will not file any complaint under Section 138 of the Negotiable Instruments Act. This part payment effected by the accused would clearly shows that he is admitting the liability towards the complainant. This further confirms the case of the complainant that the accused has issued Ext.P3 cheque for the discharge of debt of Rs.56,800/- due towards the complainant.

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. It is found from the earlier paragraph that the accused could not rebut presumption in favour of the complainant. It is further pertinent to mention the discussion made in the earlier paragraph as to the admission of the liability by the accused and part payment effected by him after the institution of the complaint. 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.56,800/- which is due from him towards PW1 is found not liable to be interferred with.

13. It is further revealed from the evidence that when Ext.P3 cheque was presented for collection the same was dishonoured with endorsement 'funds insufficient' on 09.09.2020 vide Ext.P4 cheque return memo. Thereafter, complainant has sent Ext.P5 lawyer's notice calling upon the accused to repay the amount covered by Ext.P3 cheque. Ext.P6 is the postal receipt of Ext.P5 notice. Since the acknowledgment due card was not received back by the complainant it has submitted Ext.P7 complaint to Koyilandy Head Post Office. Anyway, accused himself would admit that he received lawyer's notice and he turned up to complainant's office at Payyoli after receiving lawyer's notice and then settled the issue and thereafter effected part payment of the debt. This proved that lawyer's notice was duly received by the accused. But he did not effect any payment prior to the filing of the complaint. Therefore, after complying with all the legal formalities complainant has preferred the complaint. Thus, it is found that the complaint does not suffer from any defect and as such the finding of the trial court that complainant has complied with all the legal formalities in filing the complaint is found not liable to be interfered with

14. The last point to be answered is the 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 undergo imprisonment till rising of court and to pay fine of Rs.70,250/- with a default clause of imprisonment for one month. Fine, if paid is ordered to be given to the complainant as compensation u/s 357(1) of Cr.P.C.

15. At this point, 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, for which purpose I find that the sentence of imprisonment till rising of the court awarded by the trial court can be set aside. In the above line, the sentence passed by the trial court is found liable to be modified.

17. The fine amount imposed by the trial court is Rs.70,250/- when the cheque amount is for Rs.56,800/-. In **Vijayan. R Vs. Baby and Another reported in 2012 (1) SCC 260** Hon'ble High Court 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 amount. In the present case learned Magistrate has also relied on the above decision and found that the complainant was prosecuting the complaint for more than 3 years and hence he was entitled for reasonable interest on the cheque amount. After considering the facts and circumstances of the case and the prevailing rate

of interest, trial court has computed interest @ 6% per annum from the date of Ext.P3 cheque till the date of judgment and thus the fine amount was assessed to be Rs.70,250/-. At this point, it is pertinent to say that though PW1 has admitted that after filing of the complaint complainant received Rs.11,000/- from the accused towards part discharge of the liability as per Ext.P3 cheque the said amount was not deducted by the learned Magistrate from the cheque amount. In the decision in Vijayan's case (cited supra) the Hon'ble High Court held that compensation must reflect the real outstanding liability and not the original cheque amount if payment are made subsequent to the issuance of the cheque. It was further held in **KA Abbas H.S.A Vs. Sabu Joseph and Another (2010 INSC 310)** that when part payment was effected during the course of the proceedings due credit must be given to that and limit the compensation to the balance amount only. The very same view was again held by the Hon'ble High Court of Kerala in **Baskaran Vs Sankaran Vydhyan Balan** and also in **Soman Vs. Gopakumar 2010 (3) KLT 471**. Thus from the above decision it is found that it is the duty of the court to deduct the amount received by the complainant during the course of the proceedings from the cheque amount and then only to fix the compensation amount even if it was by adding any interest. Therefore, in the present case since the learned Magistrate has failed to deduct Rs.11,000/- from the cheque amount while computing the fine amount, I find that said Rs.11,000/- is to be deducted from the cheque amount of Rs.56,800/- then the amount would come to Rs.45,800/-. Since neither the complainant nor the accused furnished the actual date of payment of Rs.11,000/- I am not inclined to make any calculation as to the interest up to which date complainant is entitled for interest for the said Rs.11,000/-. Therefore, I am inclined to deduct only Rs.11,000/- from the cheque amount and calculate the interest for the balance amount only. Thus, while fixing the fine amount interest for

Rs.45,800/- alone can be considered. Thus, the amount would come to Rs.56,563/- and I am inclined to fix the fine amount as Rs.56,563/-. Thus, the findings of the trial court as to the compensation of fine amount is found liable to be interfered with to that extent. Point No.1 is thus answered accordingly.

18. **Point No.2** :- From the above findings in Point No.1, it is found that the appeal is to be allowed partly confirming the conviction and modifying the sentence as found in point No.1 above.

In the result, appeal is allowed in part, by confirming the conviction passed by the trial court in ST No.2430/2020 of Judicial First Class Magistrate Court, Payyoli and modifying the sentence as follows :

1) Imprisonment till rising of court is hereby set aside.

2) Accused is sentenced to pay fine of Rs.56,563/- (Fifty six thousand five hundred and sixty three only) and in default of payment of fine he shall undergo simple imprisonment for one month.

3) Remaining portion of the sentence regarding payment of compensation in the impugned judgment is hereby sustained.

4) Accused is directed to appear before the trial court on 28.04.2026 to pay the fine amount. If the fine is not deposited within the stipulated time, trial court is at liberty to take steps for the due execution of 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. 369/2024

Dated : 27.03.2026

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