

IN THE COURT OF SESSION, KOZHIKODE DIVISION

**Present:- Sri. C. Suresh Kumar, Special Additional Sessions Judge
(Marad Cases), Kozhikode**

Saturday, the 23rd day of May, 2026

Criminal Appeal No. 266/2025

From which Court the appeal is preferred	: The Court of Judicial First Class Magistrate XI, Kozhikode
Number of the case in that Court	: ST 2/2021
Number of the Appeal	: Criminal Appeal No. 266/2025
Name and description of the appellant	: Muhammed Hussain, S/o Ali, Aged 45 Years, Poovakodan House, Kunnappally P.O, Perinthalmanna, Malappuram District, PIN - 679322 (Adv. A.J. Prajeesh)
Name and description of the respondents	: 1. M/s Ideal Publications Trust PO Box Number – 1708, Silver Hills, Calicut- 673012, Rep. By Advertisement and Legal Manager, Mohammed Hisham A.P, Aged 41 Years, S/o Late Abdurahiman, Ariyaparambath House, Mavoor P.O, Kozhikode (Adv. Ameen Hassan) 2. State of Kerala, Rep. By Public Prosecutor, Kozhikode.
The sentence and law under which it was imposed in the lower court.	: Accused is convicted and sentenced under S. 255(2) Cr.P.C. to undergo imprisonment till rising of court and to pay a fine of Rs. 4,12,500/- for an offence U/s. 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for a period of three months. If the fine amount is realized, the same shall be

						paid to the complainant as compensation U/s. 357(1)(b) Cr.P.C.
Whether confirmed, modified or reversed and if modified the modification	:					The appeal is dismissed confirming the judgment of the Judicial First Class Magistrate – XI, Kozhikode in ST 2/2021 dated 23.06.2025 and the findings into all the conviction and sentence passed therein.
Date of or on which						
Presentatio n	Filing	Notice issued by court to appear	Bail bond if appellant has been let out on bail	Appellant ordered to appear	Hearing	Order
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.07.2025	26.07.25	26.07.25		30.08.25	14.05.26	23.05.2026

This appeal coming on for hearing before me, upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same, after hearing the counsel for the appellant and respondents, I do adjudge and pass the following:

J U D G M E N T

This criminal appeal is preferred under Section 374(3) of the Code of Criminal Procedure, 1973, challenging the judgment of conviction and sentence passed by the Learned Judicial First Class Magistrate-XI, Kozhikode, in S.T.02/2021.

2. S.T.02/2021 was a case which was taken cognizance by the learned Magistrate for the offence u/s 138 of Negotiable Instruments Act, on a complaint filed by the first respondent herein against the appellant.

3. The case in the complaint in brief is as follows:

The Accused approached the complainant to publish a commercial advertisement for his business venture, "SCOT TMT STEEL BARS", in the New Year issue of *Madhyamam Kudumbam Magazine*. The Accused executed a Release Order, acting upon which the Complainant published the advertisement on 01.01.2021 in all Kerala and all Gulf Editions. An Advertisement Bill dated 21.01.2021 for an amount of Rs. 3,00,000/- (inclusive of GST) was raised. Towards the discharge of this legally enforceable liability, the Accused signed and issued a cheque bearing No. 366746 dated 05.04.2021 drawn on M/s. Federal Bank for Rs. 3,00,000/- at the Complainant's headquarters in Kozhikode. Upon presentation through the Complainant's banker (Federal Bank Ltd., Nadakkavu Branch), the cheque was returned dishonoured on 02.06.2021 for the reason "Funds Insufficient". The Complainant issued a statutory legal notice on 17.06.2021, which was served on the Accused on 21.06.2021. The Accused sent a reply notice on 28.06.2021 denying all liabilities. He failed to pay

the amount covered by the cheque within the statutory period.

4. On the side of the complainant, PW1 was examined and Extt.P1 to P10 documents were marked. Thereafter, the accused was questioned u/s 313 Cr.P.C. He denied all incriminating circumstances brought out in evidence against him. There is no oral or documentary evidence on the defence side.

5. After completing the trial and hearing both sides, the learned Magistrate has delivered judgment on 23-06-2025 convicting the accused for the offence punishable u/s 138 of Negotiable Instruments Act and sentenced him to undergo imprisonment till rising of court and to pay a fine of Rs.4,12,500/- and in default of payment of fine to undergo simple imprisonment for a period of three months. If the fine amount if realised, is ordered to be paid to the complainant as compensation u/s 357(1)(b) Cr.P.C. Aggrieved by the same, the accused has preferred this appeal. The appeal was presented before the Sessions Court, Kozhikode on 18-7-2025. That Court has admitted the appeal, issued notices to respondents and called for trial court records and made over the appeal to this court for disposal . Respondents appeared through counsel.

6. The respondents having appeared and on receiving the trial Court records, this Court has heard the learned Counsel for the appellant and

respondents and perused the records.

7. Points for Consideration

1) Whether the Complainant proved that the cheque (Ext.P4) was issued by the Accused towards the discharge of a legally enforceable debt.

2) Whether the Trial Court erred in law or on facts in convicting the Accused.

8. **The points:** An authorised agent of the complainant Trust is examined as PW1. The evidence of PW1 in his chief examination can be summarized as follows: The Accused requested a commercial advertisement for "SCOT TMT STEEL BARS" in the New Year issue of *Madhyamam Kudumbam Magazine*. Following a signed Release Order, the Complainant published the ad on January 1, 2021, across all Kerala and Gulf editions. An advertisement bill of Rs. 3,00,000/- was raised on January 21, 2021. To settle this debt, the Accused issued Ext.P5 cheque for the bill amount. When presented, the cheque was returned dishonoured on June 2, 2021, due to "Funds Insufficient". The Complainant sent a statutory legal notice on June 17, 2021. The accused received the notice on June 21, 2021. The Accused sent a reply on June 28, 2021, denying liability and failed to pay the amount within the statutory period.

9. The Defence Raised by the accused during cross examination of PW1 and at the time of examination under S.313 Cr.PC is that he was merely a temporary employee at "SCOT TMT" and that management had collected a blank, signed cheque from him as security when he joined. He completely denies approaching the Complainant, signing any release order or issuing a cheque to them. It is alleged that his security cheque was wrongfully handed over to the Complainant by someone and the same is misused.

10. The fact that Ext.P5 is a cheque belonged to him and it contains his signature are not denied. The issuance of the cheque also is admitted. The oral testimony of PW1 and the documents marked as Ext.P5 and Ext.P6 would show that the complainant was in possession of the cheque and he presented the cheque before the bank for collection. When it is proved that the complainant was the holder of the cheque and there is nothing in evidence to prove that he had obtained the cheque by means of fraud or for unlawful consideration, in the light of S.118 of the NI Act, it shall be presumed that the complainant is the holder in due course. Section 139 of Negotiable Instruments Act draws the presumption in favour of the holder of a cheque that unless the contrary is proved, he has received the cheque for the discharge, in whole or in part of any debt

or other liability. In *APS foreign Service Pvt. Ltd vs. Sakthi International Fashion Linkers and others (2020(1) KLJ 815)* the Hon'ble High Court has held that, “*once the accused has admitted the issuance of cheque, which bears his signature, there is a presumption that there exists a legally enforceable debt or liability u/s 139 of N.I.Act.*” In **Hiten P. Dalal v. Bratindranath Banerjee (2001 KHC 1310)**, the honourable Supreme Court has held that *there is no discretion left with the Court, but to draw the statutory conclusion, when the facts required to form the basis of a presumption of law exists.* It is further held in the said judgment that *this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary and that the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.*

11. To successfully rebut the statutory presumptions under Sections 118 and 139 of the NI Act, the Accused needed to provide plausible defence. The accused in this case claimed to be a temporary employee of SCOT TMT. However, he produced no employment letter, salary slip, or termination documents to prove he was ever an employee. He failed to

explain why a commercial enterprise would require a blank *signed* cheque from a lower-level temporary employee. Crucially, if his cheque had been misplaced, lost, or misappropriated by his employer, a reasonably prudent person would have filed a police complaint or issued a Stop Payment instruction to his bank. The Accused took no such steps.

12. Conversely, the Complainant produced corroborating business records. The presence of the Release Order and the actual publication of the advertisement in the *Madhyamam Kudumbam Magazine* establishing the commercial transaction cannot be swept aside by bare denials. The defense raised by the Accused is an afterthought, lacking foundational evidence, logic, or credibility. It falls short of the standard of a probable defense.

13. The Complainant has successfully established all the necessary ingredients under Section 138 of the NI Act: drawing of the cheque, presentation within validity, dishonor due to insufficient funds, issuance of demand notice within time, and the subsequent failure of payment. The Trial Court has correctly analysed both oral and documentary evidence, and this Court does not find any patent illegality, perversity, or error in the findings of the court below. The appeal is, therefore, liable to be dismissed. The points are answered accordingly.

In the result, the appeal is dismissed confirming the judgment of the Judicial First Class Magistrate -XI, Kozhikode in S.T.2/2021 dated 23.06.2025 and the findings entered into and the conviction and sentence passed therein.

(Dictated to the Adalath AI software by me, formatted by the Confidential Assistant and corrected and pronounced by me in open court on this the 23rd day of May, 2026).

**Special Additional Sessions Judge
(Marad Cases), Kozhikode**

**Fair/Copy of Judgment in
Criminal Appeal No:266/2025
Dated: 23.05.2026.**

