

**IN THE COURT OF SESSION, KOZHIKODE DIVISION**

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

**Friday, the 24<sup>th</sup> day of April, 2026**

**Criminal Appeal No. 294/2024**

From which Court the appeal is preferred	: The Court of Judicial First Class Magistrate, Payyoli.
Number of the case in that Court	: ST 05/2022
Number of the Appeal	: Criminal Appeal No. 294/2024
Name and description of the appellant	: Nobi. E.K, aged 42 years, S/o. Late. Kittan, Ithikkunnummal House, Chembra, Koyilandy Taluk. Kozhikode District – 673577. (Peruvannamuzhi Police Station Limits) <b>(By Adv. Youseph.M)</b>
Name and description of the respondents	: 1. Soopi, aged 62 years, S/o. Moideen, Eravath House, Avala. P.O, Meppayyur, Koyilandy Taluk, Kozhikode District, Pin – 673524. (Meppayyur Police Station Limits)  <b>(By Adv. Silpa Eledath)</b> <b>(By. Sanooj. Anand)</b>  2. State of Kerala Rep. 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 is convicted U/s. 255 (2) of Cr.P.C.

							<p>1 Accused is sentenced to undergo simple imprisonment till rising of the court for the offence punishable under section 138 of NI Act.</p> <p>2. Accused is to pay a fine of Rs. 8,25,467 (Rupees eight lakhs twenty five thousand four hundred and sixty seven 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 3 months.</p>
Whether confirmed, modified or reversed and if modified the modification	1)	Confirmed					
<b>Date of or on which</b>							
Presentati on	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)	
31-07-24	02-08-24	-	-	-	18-04-26	24-04-26	

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 appeal is filed by the accused in S.T 5/2022 on the file of the court of the Judicial Magistrate of First Class, Payyoli against the judgment dated 24-06-2024 convicting and sentencing him for the offence punishable under S.138 of the Negotiable Instruments Act.

2. S.T.5/2019 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 of the complainant, in brief, is as follows: The complainant and accused were friend. The accused bought 660 cubic of jackfruit timber at the rate of Rs.1050/- per cubic and as the accused was not having the entire amount with him, he handed over a cheque bearing No.204638 for Rs.6,93,000/- dated 12-04-2021 drawn on State Bank of India, Chakkittappara branch to the complainant. The accused made to believe the complainant that the said cheque would be honoured on presentation. On presentation of the cheque before Canara Bank, Cheruvannur branch, the same was returned with memo dated 20-04-2021 for the reason “funds insufficient”. Thereafter, the complainant caused a lawyer notice dated 07-05-2021 to the accused informing the dishonour of the cheque and demanding payment of the cheque amount. Though the said notice was received by the accused, he has neither repaid the amount nor sent any reply.

4. The complaint was filed before the Judicial First Class Magistrate, Payyoli on 17-09-2021. The case was taken on file of that court as S.T 05/2022. In response to the notice issued by the learned Magistrate, the accused appeared before the trial court. On his application, he was granted

bail on 04-05-2023. When particulars of offence punishable u/s 138 of N.I Act were framed, read over and explained to him, he pleaded not guilty and claimed to be tried.

5. On the side of the complainant, PW1 and PW2 were examined and Extt.P1 to P5 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.

6. After completing the trial and hearing both sides, the learned Magistrate has delivered judgment on 24-06-2024 convicting the accused for the offence punishable u/s 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment till rising of court and to pay a fine of Rs.8,25,467/-. Aggrieved by the same, the accused has preferred this appeal. The appeal was presented before the Sessions Court, Kozhikode on 31-07-2024 together with a delay petition under S.5 of the Limitation Act. That Court has made over the appeal along with the delay petition to this court for trial and disposal, issuing notice to the respondent in the delay petition. The respondents appeared before this Court. This court has allowed the delay petition by way of order in CMP No. 1556/24 and heard and admitted the appeal.

7. 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.

8. The points for consideration are:

1. Whether the accused has issued Ext.P1 cheque to the complainant in discharge of a legally enforceable

liability?

2. Whether the accused has committed offence punishable u/s 138 of the Negotiable Instruments Act?
3. Whether the trial court has properly appreciated the facts and evidence to enter into a finding that the accused is guilty for offence punishable u/s 138 of the N.I.Act?
4. Is there any error, illegality or impropriety in the findings or order of the trial Court for this court to interfere with?
5. What is the order to be passed in this appeal?

9. **Point No.1 to 4:** These points are answered together to avoid the risk of repetition of facts and evidence and for brevity. The complainant is examined as PW1. In his affidavit in lieu of chief examination, he has sworn that the accused who was his friend purchased 660 cubic timbers from him at the rate of 1050 per cubic and, since the accused was not having money with him, he issued Ext.P1 cheque dated 12.04.2021 for Rs.6,93,000/- assuring him that the cheque would be paid on presentation on the date of the cheque. He has testified that when he presented the cheque before Canara Bank, Cheruvannur branch, the bank has returned the cheque unpaid on 20.04.2021 for the reason 'fund insufficient' together with Ext.P2 memo and thereafter, he caused to issue Ext.P3 lawyer notice to the accused on 07.05.2021 demanding the amount covered by the cheque. The accused, in spite of accepting the notice on 14.05.2021, did not pay the amount or sent a reply.

10. A cheque payable either to holder or to bearer is a negotiable

instrument as defined u/s 13 of Negotiable Instruments Act. Section 118 of Negotiable Instruments Act draws certain presumptions as to negotiable instruments. The section runs thus:

*“ 118. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:-*

*(a) of consideration: —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

*(b) as to date: —that every negotiable instrument bearing a date was made or drawn on such date;*

*(c) as to time of acceptance: —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

*(d) as to time of transfer: —that every transfer of a negotiable instrument was made before its maturity;*

*(e) as to order of indorsements: —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;*

*(f) as to stamp: — that a lost promissory note, bill of exchange or cheque was duly stamped;*

*(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner,*

*or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”*

11. The accused in this case has not specifically denied the execution of Ext.P1 cheque. The oral testimony of PW1 and the documents marked as Ext.P1 and Ext.P2 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'.*

12. The complainant having adduced evidence about the transaction and the advancing of the amount to the accused and the circumstances under which he got the possession of the cheque and the accused having admitted the signature in the cheque, the law presumes that the accused had issued the said cheque for the discharge of a debt. The question is whether the accused has succeeded in rebutting the presumption either by proving that the case of the complainant is false or by showing that the case advanced by him is more probable than that of the complainant.

13. The defence taken by the accused is that the cheque was not issued towards discharge of any legally enforceable debt or liability. According to the accused, the cheque was given as a security in connection with a transaction wherein a friend of the accused namely, Babu of Kayanna Bazar had borrowed money from the complainant. PW1 denied this suggestion during cross-examination. PW1 has deposed that he does not know the friend of the accused named Babu. Except this suggestion made during the cross examination of PW1, there was no attempt on the part of the accused to prove any such transaction between the complainant and a person by name Babu or issuance of cheque by the accused as a security for the same.

14. In the case on hand, no evidence has been adduced by the accused to prove that the cheque in question was one issued to the complainant by him as a security for a transaction between his friend and the complainant. No circumstances are brought on record to make the case of misuse of cheque

probable. The defence side has miserably failed to advance a believable story and to adduce evidence to prove such a defence or to bring out facts and circumstances to suspect the case of the complainant. The presumptions under S.118 and 139 of Negotiable Instruments Act in favour of the complainant stand not rebutted. Over and above the presumptions, the complainant has even succeeded in proving the transaction, the existence of a legally enforceable debt and the issuance of the cheque by way of substantial evidence.

15. The learned Counsel for the appellant would argue that the complainant failed to prove that the complainant was a timber merchant and sold timbers to the accused by producing documents or any other evidence. It is argued that the oral evidence of PW1 during cross examination that he does not have any GST registration in his name, that he was doing the business in partnership with another and that he does not have any NOC in his own name to store timbers would show that the complainant had no licence or permit to do business in timbers. It is deposed by PW1 during cross examination that he had issued a bill and pass to transport timbers to the accused at the time of sale of timbers. He has testified that the timbers sold to the accused were brought by him from Valparai, Tamilnadu. The complainant has produced and marked Ext.P6 and P7, two e-Way bills dated 29.1.2020 to show that Jack timbers had been transported from Valparai to Palliyath Saw Mill, Palliyath, Velam, Calicut. Extt.P6 and P7 were marked subject to further proof and no further steps were taken by the complainant to prove the same. PW1 would say that he is one among the three partners of the Saw Mill. According to him one Sameer is the Managing Partner of the firm. The learned Counsel for the appellant would argue that the complainant has not proved that he was a

partner to the firm and that he had any authority to sell the timbers brought by the firm. He would argue that even if it is admitted for a moment that the accused had issued a cheque for the purchase of timbers from the firm, the complaint should have been filed by the Managing Director of the firm or by any authorised person. The cheque in this case is in the name of the complainant and not in the name of the firm or in the name of the complainant for and on behalf of the firm. The case of the complainant is that he had sold timbers to the accused and the accused had issued cheque to him. The case of PW1 during cross examination that he had issued bill and transport pass to the accused at the time of sale of timbers is not denied or challenged by the accused. When the cheque is seen issued in the name of the complainant and the complainant has given evidence that he had sold the timbers to the accused and the accused had issued the cheque towards the payment of the price of timbers so sold, all other contentions of the learned defence counsel with respect to the partnership firm and the authority of the complainant in filing the complaint etc. are irrelevant. Those are matters relevant between the partners when there is a dispute among them. The defence side does not have a case that the accused had some dealings with the firm and that the cheque was issued to the firm in connection with such a transaction. His case is that he had issued the cheque to the complainant as a security when his friend borrowed an amount from the complainant. The accused has not sent a reply to Ext. P3 lawyer notice or advanced any contention during his questioning under S.313 Cr.PC detailing the specific transaction and the manner in which Ext.P1 cheque which belonged to him and carrying his signature had reached in the hands of the complainant. When there is no specific case about the circumstance under which the cheque came into the possession of the complainant, the only option for the Court is to

believe the case of the complainant in the light of presumptions under Sections 118 and 139 of the NI Act.

16. The learned Counsel for the First Respondent/ Complainant in his Notes of Argument has cited the following decisions of the hon'ble Supreme Court in support of his arguments:

**Vijay v. Laxman and Another, 2013(1) KLD 297:** Once the complainant discharges the initial burden, the onus shifts to the accused to rebut the presumption that the cheque was issued towards a legally enforceable debt;

**Kalamani Tex and Another v. P. Balasubramanian, 2021(2) KHC 517:** Once the signature on the cheque is established, the reverse onus clause becomes operative and the burden shifts upon the accused;

**Bir Singh v. Mukesh Kumar, 2019(1) KLT 598:** Even if the cheque is filled up by another person, liability would still arise if the cheque is signed and issued by the drawer; and

**Krishna Rao v. Shankargouda, 2018(3) KHC 684 :** The burden is on the accused to rebut the presumption if there is evidence to show that the cheque contains the signature of the accused;

The learned Counsel has relied on the following judgments of the Hon'ble High Court of Kerala also in support of his arguments:

**Devan v. Krishna Menon, 2010(2) KLT 397:** It is held therein that once signature, execution and handing over of the cheque are proved, the presumption under S.139 of NI Act comes into play and holds the field until rebutted by the accused at least by the

inferior standard of preponderance of probabilities as applicable in a civil case;

**Bhaskaran and Others v. Mohandas and Another, 2016(1) KHC 254:** it is held that once complainant has proved transaction as well as issuance of cheque, the burden is on the accused to rebut the presumption under section 139 of NI Act.

**Sulochana Devi v. Baburaj, 2016(1) KHC 134:** it is held that mere suggestions in cross-examination cannot substitute evidence.

**Hamza Musliar v. Hamza Khan and Another, 2014(4) KHC 883:** it is held that failure to explain the circumstances under which the cheque reached the complainant would justify drawing adverse inference against the accused; and

**Sadasivan v. Satheesan and Another, 2024(1) KHC 419:** it is held that once execution is admitted, the complainant is not required to prove the original transaction in detail.

17. In the light of the facts, evidence and the statutory provisions and decisions discussed above, this Court finds that the accused has issued Ext.P1 cheque to the complainant in discharge of a legally enforceable liability and the accused has committed offence punishable u/s 138 of the Negotiable Instruments Act. The trial court has properly appreciated the facts and evidence to enter into a finding that the accused is guilty for offence punishable u/s 138 of the N.I.Act. The complainant has presented the cheque within its period of validity, the cheque was returned for the reason fund insufficient, he has issued the lawyer notice to the accused in time and the accused did not pay the cheque amount within 15 days of receipt of the notice

as provided under S.138 of N.I Act. The Complaint was filed within thirty days of the expiry of 15 days of receipt of the notice by the accused which is the period of limitation fixed for filing the complaint. A person who is found to have committed an offence punishable under S.138 of the Negotiable Instruments Act be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. The amount covered by the cheque in the instant case is Rs.6,93,000/-. The amount of compensation imposed by the trial Court in the judgment is only Rs.8,25,467/- which is arrived at by the trial Court by computing interest at 6% per annum on the cheque amount in addition to the cheque amount. There is nothing illegal in the order of imposition of fine. This court does not find anything to interfere with the findings of the trial court or the conviction and sentence passed in the case. The points are answered accordingly against the appellant.

18. **Point No.5:-** In view of the findings on Points 1 to 4, the appeal is liable to be dismissed. The point is answered accordingly.

*In the result*, the appeal is dismissed confirming the judgment of the Judicial Magistrate of First Class, Payyoli in S.T.05/2022 dated 24-06-2024 and the findings entered in to and the conviction and sentence passed therein.

(Dictated to the Adalath AI software, formatted by the Confidential Assistant, corrected and pronounced by me in open court on this the 24<sup>th</sup> day of 2026).

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

Fair/Copy of Judgment in

Criminal Appeal No:294/2024

Dated: 24-04-2026.

Sd/-

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

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**Sheristadar**