

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

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

**Wednesday, the 13<sup>th</sup> day of May, 2026**

**Criminal Appeal No. 495/2024**

From which Court the appeal is preferred	: The Court of Judicial First Class Magistrate – I, Perambra
Number of the case in that Court	: ST 121/2019
Number of the Appeal	: Criminal Appeal No. 495/2024
Name and description of the appellant	: Ismayil N.K, Aged 53 Years, S/o Kunhammed Musliyar, Manankandy House, Kayanna Bazar P.O, Perambra, Kozhikode (Perambra Police Station) <b>(By Adv. Nipun Kumar )</b>
Name and description of the respondents	: 1. Seenath, W/o Majeed, Aged 45 Years, Thaniyath House, P.O Chenoli, Nochad Village. 2. State Rep. By Public Prosecutor, Kozhikode. <b>(By Adv. Rajeevan Mallissery)</b>
The sentence and law under which it was imposed in the lower court.	: He is convicted under S. 255(2) Code of Criminal Procedure in respect of the said offence. Accused is sentenced to undergo simple imprisonment till rising of the court and directed to pay a sum of Rs. 4,60,550/- as fine for the offence punishable under section 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for a further period of 3 months. The fine mount, if realized shall be paid to the complainant as compensation under section 357 (1)(b) of the Cr.P.C.

Whether confirmed, modified or reversed and if modified the modification		The appeal is dismissed confirming the judgment of the Judicial Magistrate of First Class – I, Perambra in ST 121/2019 dated 16.11.2024 and the findings entered in to and the conviction and sentence passed therein.				
<b>Date of or on which</b>						
Presentation	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)
13.12.2024	17.12.24	17.12.24		20.01.25	02.05.26	13.05.2026

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 appeal is directed against the judgment of conviction and sentence passed by the trial court in S.T.121/2019 dated 16-11-2024 passed by the Judicial First Class Magistrate,-I, Perambra.

2. S.T.121/2019 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 facts, in brief, are as follows: The complainant and the accused were friends. On 01.10.2018, the accused approached the complainant seeking a loan of Rs.3,00,000/-. Pursuant thereto, on 06.10.2018, the complainant advanced a sum of Rs.3,00,000/- to the accused on the assurance that the amount would be repaid within a period of two months. On the very same day, the accused executed and issued a cheque dated 06.12.2018 for the said amount, drawn on Federal Bank, Mottanthara Branch, in the presence of Smt. Indu, a friend of the complainant. Subsequently, when the complainant presented the cheque for encashment through her bank account on 06.12.2018, the cheque was dishonoured and returned unpaid with an endorsement stating “Funds Insufficient.” Thereafter, on 11.01.2019, the complainant caused to be issued a statutory notice by registered post to the accused, informing him of the dishonour of the cheque and demanding repayment of the cheque amount within fifteen days from the date of receipt of the notice. Although the accused received the notice on 15.01.2019, he neither sent any reply nor repaid the amount demanded.

4. The complaint was filed before the Judicial First Class Magistrate,-I, Perambra on 22-02-2019. The case was taken on file of that court as S.T 121/2019. 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 13-12-2023. 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 was examined and Extt.P1 to P6 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 16-11-2024 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 sum of Rs.4,60,550/- as fine to be paid as compensation and in default of payment of fine, to undergo simple imprisonment for a further period of 3 months. Aggrieved by the same, the accused has preferred this appeal. The appeal was presented before the Sessions Court, Kozhikode on 13-12-2024. 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 on 17-12-2024. Respondents

appeared through counsel.

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 following points arise for determination:

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. It is deposed by her that the accused who was his family friend borrowed an amount of Rs.3,00,000/- from her promising to repay it by 6.12.2018 and executed and issued Ext.P1 cheque

dated 6.12.2018. She would swear that the cheque, on presentation before State Bank of India, Perambra branch for collection, was dishonoured for the reason funds insufficient and that despite issuance of statutory notice through her lawyer, the accused did not pay the amount. Ext.P2 memo shows that the cheque was returned for the reason of insufficiency of funds in the account. Ext.P3 and P5 show that the complainant had issued statutory notice to the accused on 10.1.2019 and the accused received the same on 15.1.2019.

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 presumption 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. There is a further presumption under the Section 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 case, as suggested to PW1 during cross examination, is that the husband of the complainant had got possession of a cheque from the accused for the purpose of purchasing a jeep and the said cheque has been misused to file the complaint. Even though, PW1

has admitted that her husband had purchased a jeep in the year 2018, she has denied the case that the accused had given a cheque to him for the said purpose. Such an admission by itself is insufficient to rebut the statutory presumption. In *Kumar Exports v. Sharma Carpets*, 2009 KHC 219, the Apex Court held that mere denial or suggestion is not sufficient and the accused must bring on record probable evidence. Similarly, in *Bir Singh v. Mukesh Kumar*, 2019 (1) KHC 774, it is held that even if a cheque is issued blank, the presumption still operates unless rebutted.

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's husband. No circumstances are brought on record to probalilise the case of misuse of the cheque. 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 unrebutted. 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 complainant has succeeded in proving that the accused had

borrowed the amount from the complainant and has issued the cheque in discharge of amount so due from the accused to the complainant. The complainant has presented the cheque within its period of limitation, 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.

16. In the light of the facts, evidence and reasons 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. There is nothing to find that the trial court has committed any error, illegality or impropriety in the findings or order. 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.3,00,000/-. The amount of compensation imposed by the trial Court in the judgment is Rs.4,60,550/- which is not unreasonable. 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.

17. 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-I, Perambra in S.T.121/2019 dated, 16-11-2024 and the findings entered in to and the conviction and sentence passed therein.

(Dictated to the Adalath AI software, typed and formatted by the Confidential Assistant, corrected and pronounced by me in open court on this the 13th day of May, 2026).

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

**Fair/Copy of Judgment in  
Criminal Appeal No:495/2024**

**Dated: 13.05.2026.**