IN THE COURT OF SPECIAL JUDICIAL FIRST CLASS MAGISTRATE, (MARAD CASES), KOZHIKODE

Present:- Sri K S Akshay Mohan, Special Judicial First Class Magistrate (Marad Cases), Kozhikode

Dated this the 30th day of May, 2026

ST No. 185 of 2021 & ST No. 812 of 2022

ST No. 185 of 2021

Complainant		Haridasan Gopalan, aged 74 years, S/o Gopalan, "Sreelakam", Krishnanagar Colony, Modern Bazar, Kolathara, Kozhikode-673 655 (By Adv. D Mohandas)
Accused		Shynesh C K, aged 43 years, S/o Narayanan,"Sheejas", Kappicherri Vayalil, Post Kakkad-Kannur-670 005 (By Adv. P O Radhakrishnan)
Offence		U/s. 138 of Negotiable Instruments Act, 1881
Plea		Not Guilty
Finding		Guilty
Sentence/Order		The accused is found guilty and is convicted u/s 255(2) of CrPC for the offence punishable under S.138 of NI Act. The accused is sentenced to pay a fine of Rs.15,18,000/- (Rupees Fifteen Lakhs and Eighteen Thousand only) for the offence punishable u/s. 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for three months. Fine, if realized, shall be paid to the complainant under section 357(1)(b) CrPC, as compensation.

Description of the accused					
Sl. No	Name	Father's/ Husband's name	Occupation	Residence	Age
1.	Shynesh C K.	Narayanan	-	"Sheejas", Kappicherri Vyalail, Post Kakkad-Kannur-670 005	43

Date of											
Occurrence	Compliant	Apprehension/ surrender	Release on bail	commitment	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Service of copy of judgment	Explanation of delay	Period of detention
17.06.2020	24.08.2020	03.01.2022	03.01.2022	-	30.06.2025	30.06.2025	11.02.2025	30.05.2026	30.05.2026	No delay	Nil

ST No. 812 of 2022

Complainant		Haridasan Gopalan, aged 74 years, S/o Gopalan, "Sreelakam", Krishnanagar Colony, Modern Bazar, Kolathara, Kozhikode-673 655 (By Adv. D Mohandas)
Accused		Shynesh C K, aged 43 years, S/o Narayanan, "Sheejas", Kappicherri Vayalil, Post Kakkad-Kannur-670 005 (By Adv. Sidharth P.K)
Offence		U/s. 138 of Negotiable Instruments Act, 1881
Plea		Not Guilty
Finding		Guilty
Sentence/Order		The accused is found guilty and convicted u/s 255(2) of CrPC for the offence punishable under

		S.138 of NI Act. The accused is sentenced to pay a fine of Rs.15,03,000/- (Rupees Fifteen Lakhs and Three Thousand only) for the offence punishable u/s. 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for three months. Fine, if realized, shall be paid to the complainant under section 357(1)(b) CrPC, as compensation.

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Date of											
Occurrence	Compliant	Apprehension/ surrender	Release on bail	commitment	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Service of copy of judgment	Explanation of delay	Period of detention
13.07.2020	07.10.2020	03.01.2022	03.01.2022	-	30.06.2025	30.06.2025	11.02.2026	30.05.2026	30.05.2026	No delay	Nil

These cases having been heard finally on the 26th day of May, 2026, this court on this the 30th day of May, 2026 passed the following:-

COMMON JUDGMENT

These complaints have been filed alleging commission of offence punishable under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as “NI Act” for brevity and convenience).

ST No.185 of 2021

1. **The allegations in the complaint in brief are as follows:-** The complainant and the accused are known to each other. The complainant had availed a loan of Rs.50,00,000/- (Rupees Fifty Lakhs Only) from the Kannur Service Cooperative Bank, after Mortgaging his property and the said entire amount was borrowed by the accused as loan from the complainant. Later, when the accused failed to pay back the amount to the complainant in spite of all efforts of the complainant, after mediation it was decided that the accused would pay a sum of Rs.40,00,000/- (Rupees Forty lakhs only) to the complainant as per agreement dated 15/01/2020. Towards the discharge of the said debt, the accused executed and issued four cheques to the complainant drawn on the United Bank of India, Kannur Branch. Accordingly, the complainant, as instructed by the accused, presented one of the cheque, bearing No.736539 dated 30/03/2020 for an amount of Rs 10,00,000/- (Rupees Ten Lakhs only) for collection through the complainant's bank, Union Bank of India, Petta Feroke Branch, Calicut. But the said cheque was returned by the complainant’s bank on 26/06/2020, with a memo dated 17/06/2020 stating reason "funds insufficient". Thereafter, the complainant sent a registered notice dated 16/07/2020 to the accused calling upon him for the payment of said amount covered by

the cheque within 15 days from the date of the receipt of the notice. The same was not accepted by the accused even though intimation of arrival of registered notice was given by the postal authorities to him on 18/07/2020, thus the accused willfully evaded the receipt of registered notice and later it was received by the complainant’s counsel on 21/07/2020 with an endorsement. The accused has so far not paid the amount covered by the cheque. Thus, the accused committed offence punishable u/s. 138 of NI Act.

2. Initially, this case was taken on file as ST No. 1245 of 2020 by the Special Judicial First Class Magistrate (NI Act cases), Kozhikode. As per order No. C1-737/21 dt 22/02/2021 of Hon’ble Chief Judicial Magistrate, Kozhikode, the case was transferred to this court. Thereafter, the accused entered into appearance and was enlarged on bail. Particulars of offence under section 138 of NI Act were read over and explained to accused. Accused pleaded not guilty and claimed to be tried.

3. In order to prove the allegations, the complainant examined PW1 who was the wife and power of attorney holder of the complainant. Ext P1 to P13 were marked. The accused was examined under section 313(1)(b) of the Code of Criminal Procedure Code (hereinafter referred to as ‘CrPC’ for the sake of brevity) to answer the incriminating circumstances appearing in evidence against him and he denied all

incriminating circumstances appearing in evidence against him. No documentary or oral evidence was adduced from the side of accused.

ST No.812 of 2022

4. **The allegations in the complaint in brief are as follows:-** The complainant and the accused are known to each other. The complainant had availed a loan of Rs.50,00,000/- (Rupees Fifty Lakhs Only) from the Kannur Service Cooperative Bank, after Mortgaging his property and the said entire amount was borrowed by the accused as loan from the complainant. Later, when the accused failed to pay back the amount to the complainant in spite of all efforts of the complainant, after mediation it was decided that the accused would pay a sum of Rs.40,00,000/- (Rupees Forty lakhs only) to the complainant as per agreement dated 15/01/2020. Towards the discharge of the said debt, the accused executed and issued four cheques to the complainant drawn on the United Bank of India, Kannur Branch. Accordingly, the complainant, as instructed by the accused, presented one of the cheque, bearing No.736540 dated 30/06/2020 for an amount of Rs 10,00,000/- (Rupees Ten Lakhs only) for collection through the complainant's bank, Union Bank of India, Petta Feroke Branch, Calicut. But the said cheque was returned by the complainant’s bank on 17/07/2020, with a memo dated 13/07/2020 stating reason "funds insufficient". Thereafter, the complainant sent a registered notice dated 07/08/2020 to the

accused calling upon him for the payment of said amount covered by the cheque within 15 days from the date of the receipt of the notice. The same was not accepted by the accused even though intimation of arrival of registered notice was given by the postal authorities to him on 10/08/2020 thus the accused willfully evaded the receipt of registered notice and later it was received by the complainant's counsel on 21/08/2020 with an endorsement. The accused has so far not paid the amount covered by the cheque. Thus, the accused committed offence punishable u/s. 138 of NI Act.

5. Initially, this case was taken on file as ST No. 1362 of 2020 by the Special Judicial First Class Magistrate (NI Act cases), Kozhikode. Therein, the accused entered into appearance and was enlarged on bail. Particulars of offence under section 138 of NI Act were read over and explained to accused. Accused pleaded not guilty and claimed to be tried. Thereafter, as per order No. C1-737/21 dt 09/03/2022 of Hon'ble Chief Judicial Magistrate, Kozhikode, the case was transferred to this court.

6. In order to prove the allegations, the complainant examined PW1 who was the wife and power of attorney holder of the complainant. Ext P1 to P7 were marked. The accused was examined under section 313(1)(b) of the Code of Criminal Procedure Code (hereinafter referred to as 'CrPC' for the sake of brevity) to answer the incriminating

circumstances appearing in evidence against him and he denied all incriminating circumstances appearing in evidence against him. No documentary or oral evidence was adduced from the side of accused.

7. As per order in CMP no. 557 of 2025, this court ordered the above two cases to be jointly tried.

8. Heard both sides and perused the records.

9. **<u>On considering the materials on record and the rival contentions, the following points arose for consideration:-</u>**

i. Whether the complainant had complied all statutory requirements for a successful prosecution under section 138 of NI Act?

ii. Whether Ext P1 and Ext P9 cheques were drawn, executed and issued by the accused in discharge of legally enforceable debt or liability?

iii. Whether the accused had committed the offence punishable under section 138 of NI Act?

iv. What is the order as to sentence?

10. **<u>Point No. (i)</u>** :- Ext P1 is the cheque dt. 30/03/2020 and Ext P2 is the return memo dt. 17/06/2020 stating that the cheque was returned for the reason “Funds Insufficient”. Ext P3 is the copy of lawyer notice dt. 16/07/2020 which was sent as per Ext P4 postal receipt dt. 16/07/2020, demanding payment of amount covered by Ext P1 cheque within 15 days on receipt of notice. Ext P3 lawyer notice was sent within the statutory period. The address of the accused mentioned in Ext P3 notice and

complaint are same. Ext P5 is the returned cover with endorsement ‘refused’ dt. 18/07/2020. Ext P5 returned cover was received back on 21/07/2020. Hence, the same is deemed to have been served and the accused has not disputed the same. Hence, the conditions stipulated u/s 138 proviso (b) of NI Act are complied with. The accused does not have a case that the accused paid this cheque amount within 15 days on receipt of the notice. The complaint pertaining to Ext P1 cheque has been filed on 24/08/2020 which is within 30 days from the date on which the cause of action arises as mandated u/s 142 (1)(b) of NI Act.

11. Ext P9 is the cheque dt. 30/06/2020 and Ext P10 is the return memo dt. 13/07/2020 stating that the cheque was returned for the reason “Funds Insufficient”. Ext P11 is the copy of lawyer notice dt. 07/08/2020 which was sent as per Ext P12 postal receipt dt. 07/08/2020, demanding payment of amount covered by Ext P9 cheque within 15 days on receipt of notice. Ext P11 lawyer notice was sent within the statutory period. The address of the accused mentioned in Ext P11 notice and complaint are same. Ext P13 is the returned cover with endorsement ‘intimation’ dt. 10/08/2020 and also with endorsement unclaimed. Ext P13 returned cover was received back on 21/08/2020. Hence, the same is deemed to have been served and the accused has not disputed the same. Hence, the conditions stipulated u/s 138 proviso (b) of NI Act are complied with. The accused does not have a case that the accused paid this cheque amount within 15 days on receipt of

the notice. As held by the Hon’ble High Court of Kerala in ***Chacko v. Joseph*** (reported in 2003 KHC 363), in identifying the date on which presumption of due service ought to be drawn, the Hon’ble High Court held that it was the date of knowledge of the complainant that the notice has not been served which is crucial. It is to be noted that the complaint pertaining to Ext P9 cheque has been filed on 07/10/2020. It has not been filed within 30 days from the date on which the cause of action arises as mandated u/s 142 (1)(b) of NI Act. However, as per the dictum laid down by the Hon’ble Supreme Court in ***In Re: Cognizance for Extension of Limitation*** (reported in 2021 (5) KHC 508), the period from 15/03/2020 till 02/10/2021 shall stand excluded in computing the periods prescribed under any laws. Hence the complaint pertaining to Ext P9 cheque has been filed within the prescribed period.

12. On the basis of the above discussion, it can be seen that all the legal requirements are seen complied with to institute the above complaints. Hence, point no. (i) is answered in favour of the complainant.

13. **Point No. (ii):-** The complainant is the husband of PW1. She filed affidavit in lieu of her examination in chief reiterating the allegations in the complaint. She added that the complainant had filed OS No. 78 of 2022 before the Hon’ble Sub Court, Kannur as against Ext P1 cheque and the same was decreed on 14/02/2024 by the Hon’ble Sub court, Kannur.

14. It is to be noted that as per the Ext P6 agreement, the accused had admitted

the liability of Rs. 40,00,000/- and accordingly he issued and handed over 4 cheques including Ext P1 and Ext P9 cheques. Thus, it has been admitted by the accused that the cheques were executed, issued and handed over to the complainant.

15. The Hon’ble Supreme Court in ***Kalamani Tex (M/s.) and Another v. P. Balasubramanian*** (reported in 2021 **(2)** KHC 517) has held that the Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Once the signatures have been admitted in the cheque, the court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The Hon’ble Supreme Court in ***Rajesh Jain v. Ajay Singh*** (reported in 2023 (6) KHC 391) held that mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.

16. Here, the accused has admitted Ext P1 and Ext P9 cheques as per Ext P6 agreement. Also, he admitted during recording of his statement u/s 313(1)(b) CrPC that 4 cheques were forcefully taken hold of by the complainant. Moreover, in this context it is also pertinent to note that the accused has not sent any reply to Ext P1 and Ext P9 lawyer notices. As held by the Hon’ble Kerala High Court in ***Vijayakumar v. M.T. Vijayan and anr.***

(reported in 2010 (4) KHC 582), upon receipt of lawyer notice from the complainant, the accused has miserably failed to make use of the first and best opportunity to set forth his defence. Also, as held by the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar*** (reported in 2025 6 KHC 250), when a statutory notice is not replied, it leads to an inference that there is merit in the version of the complainant. Hence, by admitting Ext P1 and Ext P9 cheques and also considering the fact that no reply has been sent to the lawyer notices, presumption u/s 139 NI Act is drawn in favour of the complainant that the cheque has been received in favour of a debt or liability due from the accused.

17. Striving to rebut the presumption drawn against the accused, the learned counsel for the accused filed written argument notes and contended that the cheques in question were not issued towards any legally enforceable debt or liability but was misused by the complainant. The accused stood as mediator in the transaction wherein the complainant availed loan of ₹50,00,000 from Kannur Town Service Co-operative Bank and he had no direct financial liability towards the complainant. The loan availed by the complainant was used for the construction of his daughter's house. The accused helped in the financial transactions between the complainant and Rajeevan of Vijila traders in which ₹50,00,000/- was transferred in various stages for business purposes. The accused had transferred his 6.5 cents of land to the complainant as security with an oral assurance that it would be

returned upon settlement. The 4 cheques issued by the accused were merely for security purposes and not towards any legally enforceable debt.

18. It is noteworthy that the accused has not adduced any evidence on his side to prove that the cheques were issued as security and there existed no legally enforceable debt. However, in ***Basalingappa v. Mudibasappa*** (reported in 2019 (2) KHC 451), it was held by the Hon'ble Supreme Court that it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant inorder to raise a probable defence. It was also held that it is not necessary for the accused to come in the witness box in support of his defence. Hence, applying the above referred dictum, the accused can also rely on the evidence of PW1 to set out a probable defence.

19. At the outset, it is to be noted that the claim of accused that he stood as a middleman in the transaction between the complainant and Rajeevan of Vijila traders has not been placed by the accused with any cogent evidence before this court. PW1 stated that she did not know whether there was any agreement entered into between the complainant and Vinodini. Also, PW1 has stated that the complainant has not advanced any amount to Vijila traders. It is pertinent to note that to the suggestion that the amount claimed to be advanced to the accused was in fact the amount advanced to Vinodini of Vijila traders, PW1 stated that she did not know that.

20. Hence, the case of the accused is that there was an agreement entered into

between the complainant and Vinodini and there was a clause that if Vinodini failed to repay the amount, the accused would repay the same having stood as a middleman in the transaction between the complainant and Vinodini. Also, PW1 stated that agreement dt. 14/03/2017 which was entered between the complainant and the accused was revoked and thereafter Ext P6 agreement was entered into. It has also been suggested by the accused that as per the agreement dt. 14/03/2017, if Vinodhini does not repay, the same shall be repaid through monthly instalments of Rs. 40,000/- by the accused. PW1 answered that she did not know that. But PW1 admitted that two instalments of Rs. 40,000/- each were paid by the accused.

21. It is to be noted that PW1 has denied that the complainant advanced money to Vinodini and Rajeevan of Vijila traders and she is unaware of an agreement between them. PW1 also stated that the agreement between the accused and the complainant was revoked and thereby Ext P6 agreement was entered into.

22. Nevertheless, the existence of Ext P6 agreement and evidence of PW1 on this regard remains uncontroverted before this court. As per Ext P6 agreement, the accused has admitted the debt of Rs. 40,00,000/-. Also, presumption has been drawn in favour of the complainant. The defence raised by the accused remains as mere assertions without any cogent evidence. The accused has also failed to bring out the inconsistency in the

case of the complainant to raise a probable defence on his side.

23. No materials have been placed before this court to show that the cheques were issued as security and there existed no legally enforceable debt. No evidence was adduced from the side of the accused on that regard as well. Also, PW1 who had knowledge regarding the transactions of the complainant stood the vigour of cross examination by the accused on this regard. Hence, no materials have been brought out and in the absence of any materials to support the claim of the accused, this court cannot sail with the argument of the learned counsel for the accused that there existed no legally enforceable debt. In fact, the existence of a legally enforceable debt and issuance of Ext P1 and Ext P9 cheques, as discussed above, has been already admitted by the accused as per Ext P6 agreement wherein every detail of the cheques such as the cheque numbers, date and the amount covered have been explicitly mentioned. Though it has been claimed by the accused that the cheques were forcefully taken by the complainant, no material has been adduced to prove the same.

24. Moreover, it is also noteworthy that as per Ext P8, the Hon’ble Sub Court had already found that the complainant was entitled to the amount covered by the Ext P1 cheque, which was also the subject matter therein, from the accused herein.

25. It is to be noted that what is required of the accused striving to rebut the presumption is to raise a probable defence which creates doubt about the

existence of a legally enforceable debt or liability. The accused while rebutting the presumption is only expected to discharge the burden atleast by the inferior standards of preponderance of possibilities and probabilities as held by the Division Bench of the Hon'ble High Court of Kerala in ***Devan S. v. C. Krishna Menon and Another*** (reported in 2010 (2) KHC 861).

26. As per the discussion preceded, this court is of the finding that the accused has failed to raise a probable defence which creates doubt about the existence of a debt or legally enforceable liability. No materials were placed by the accused to raise a probable defence as well.

27. Hence, considering the entire evidence adduced in this case, this court is of the finding that execution of Ext. P1 and P9 cheques are proved and the presumption under section 139 of NI Act gets attracted. Considering the evidence in toto and from the discussion above, this court finds that the accused has not rebutted the presumption. Hence, this court finds that complainant has successfully proved that Ext P1 and P9 cheques were drawn and executed in discharge of legally enforceable debt. This point is answered in favour of the complainant.

28. **Point No. (iii)** - On the basis of findings in point Nos.(i) and (ii), the accused is found guilty for an offence punishable under section 138 of the NI Act and is convicted for the said offence.

29. **<u>Point No. (iv)</u>** - In ***Damodar. S. Prabhu v. Sayed Babalal*** (reported in AIR 2010 SC 1907) the Hon'ble Supreme Court had held that "with respect to the offence of dishonour of cheques, it is the compensatory aspects of the remedy which should be given priority over the punitive aspect.

30. In ***R. Vijayan v. Baby and anr.*** (reported in AIR (2012) SC 528) the Hon'ble Supreme Court had held that "as the provisions of chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the court should, unless there are special circumstances in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation.

31. The amount covered by Ext P1 cheque is Rs. 10,00,000/- which is dt. 30/03/2020. The accused has not made any payment during the pendency of the case. The complainant and the accused have been litigating over this case since 2020. Considering the aspect that the same is a monetary transaction, I am of the finding that a fine of Rs.15,18,000/- (Interest calculated @ 9% per annum for 69 months) alone will do justice. However, as per decree of Hon'ble Sub Court in OS No.78 of 2020, the complainant has been already awarded the cheque amount with interest. Hence, it is further clarified that any

amount paid in pursuance of decree in OS No.78 of 2020 shall be deducted from the compensation awarded in this case.

32. Also, the amount covered by Ext P9 cheque is Rs. 10,00,000/- which is dt. 30/06/2020. The accused has not made any payment during the pendency of the case. The complainant and the accused have been litigating over this case since 2020. Considering the aspect that the same is a monetary transaction, I am of the finding that a fine of Rs.15,03,000/- (Interest calculated @ 9% per annum for 67 months) alone will do justice.

33. **In the result,**

i. In ST No. 185 of 2021, the accused is found guilty and convicted u/s 255(2) of CrPC for the offence punishable under S.138 of NI Act. The accused is sentenced to pay a fine of Rs.15,18,000/- (Rupees Fifteen Lakhs and Eighteen Thousand only) for the offence punishable u/s. 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for three months. Fine, if realized, shall be paid to the complainant under section 357(1)(b) CrPC, as compensation.

ii. In ST No. 812 of 2022, the accused is found guilty and convicted u/s 255(2) of CrPC for the offence punishable under S.138 of NI Act. The accused is sentenced to pay a fine of Rs.15,03,000/- (Rupees Fifteen

Lakhs and Three Thousand only) for the offence punishable u/s. 138 of NI Act. In default of payment of fine, the accused shall undergo simple imprisonment for three months. Fine, if realized, shall be paid to the complainant under section 357(1)(b) CrPC, as compensation.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 30th day of May, 2026.

Special Judicial First Class Magistrate,
Marad Cases, Kozhikode.

APPENDIX

Witness examined for complainant:

Prosecution Witness No.	Name of Witness	Description
PW1	Usha P V	Power of attorney holder of the Complainant

Exhibits marked for complainant:

Exhibit No.	Description of the Exhibit	Proved by/Attested by
P1	Cheque bearing No.736539 dated 30.03.20	PW1
P2	Cheque return memo dated 17.06.20	-do-
P3	Copy of Lawyer notice dated 16.07.20	-do-
P4	Postal receipt dated 16.07.20	-do-
P5	Returned notice	-do-
P6	Certified copy of agreement dated 15.01.20	-do-
P7	Certified copy of Power of Attorney dated 13.12.23	-do-
P8	Certified copy of Judgment dated 14.02.24 in OS.78/20	-do-
P9	Cheque bearing No.736540 dated	-do-

	30.06.20	
P10	Cheque return memo dated 13.07.20	-do-
P11	Copy of Lawyer notice dated 07.08.20	-do-
P12	Postal receipt dated 07.08.20	-do-
P13	Returned notice	-do-

Witness examined for defence:

Defence Witness No.	**Name of Witness**	**Description**
--NIL--		

Exhibits marked for Defence:

Exhibit No.	**Description of the Exhibit**	**Proved by/Attested by**
--NIL--		

Special Judicial First Class Magistrate,
Marad Cases, Kozhikode.