

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I,
VATAKARA**

**Present:- Smt. Ali Fathima.N.S.
Judicial First Class Magistrate –I, Vatakara**

Dated this the 29th day of April, 2026

ST No. 84/2022

Complainant	:	1.	VEECOS, The Vatakara Taluk Education Department Teaching and Non Teaching Employees Welfare Co-Op.Society, Ontham Over bridge Vatakara. Represented by The Secretary, Sreejisha.C.N, W/o. Saju.K.K, Aged 38/22, Karthikappally Kandiyil House, Kuningad P.O, Kunhallur amsom desom, Pin. 673 503 (By Adv. E. Subhash)
Accused	:	1.	Pookunhikoya, S/o. Attakoya Thangal, Aged. 53/22, Ramlas, Chombala, Near Kunhippalli Mosque, Vatakara, Pin - 673 308. (By Adv. A. K. Vijayan)
Offence	:		U/S.138 of Negotiable Instruments Act, 1881.
Plea	:		Not Guilty.
Finding	:		Guilty.

Sentence/order	:		The accused is sentenced to undergo simple imprisonment till the rising of court and to pay a fine of Rs.4,41,500 /- (Rupees Four lakh forty one thousand five hundred only) to the complainant u/S.138 of Negotiable Instrument Act, in default of payment of fine, the accused shall undergo simple imprisonment for a period of one month for the offence u/S.138 of the Negotiable Instrument Act, 1881. The fine amount if realised shall be paid to the complainant towards compensation u/S.357(1)(b) of Cr.PC.
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Description of the accused

Sl No.	Name	Father's name	Calling	Residence	Taluk	Age
1.	Pookkunhikoya	Attakoyathangal	...	Ramlas, Chombala	Vatakara	53/22

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence/Order	Explanation of delay
16.8.21	2.3.22	11.09.24	11.09.24	14.10.24	28.04.26	29.04.26	nil

This case having been finally heard on 28.04.26 and stood over for consideration and delivered judgment on 29.04.26

JUDGMENT

This is a complaint filed by the complainant against the accused alleging offence punishable under section 138 of the Negotiable Instrument Act, 1881.

2. The case of the complainant is as follows: The complaint is filed through the Secretary of the complainant society. The accused availed a loan for an amount of Rs.2,00,000/- (Rupees Two Lakh only) from the Complainant society on 11.8.2016 for interest at the rate of Rs. 13% per annum. When the accused failed to pay the installment amount, the society demanded the accused for repaying the debt. The accused issued a post dated cheque dated 16.8.2021, bearing number 081318, for an amount of Rs.3,10,000/- drawn on State Bank of India, Mahe branch, to settle the debt. The cheque was sent for collection through Kozhikode District Co-operative Bank, Vadakara branch, and was returned on 12.11.2021 with the reason "FUNDS INSUFFICIENT". The firm sent a registered notice to the accused through an advocate on 10.12.2021 asking him to settle within 15 days. The notice was served to the accused and the accused has a sent reply notice to the firm with false averments. Till date, the amount due as per the cheque hasn't been settled and the accused, knowingly and with intent to deceive the firm, issued a cheque without sufficient funds in his account. Thus, the accused committed the offence under section 138 of the Negotiable Instrument Act. Hence, this complaint was filed.

3. On due process, the accused appeared before the court and he was enlarged on bail. He was furnished with copies of relevant documents. Particulars of the offence under section 138 of the Negotiable Instrument Act, 1881 were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. Hence the case was posted for the evidence of the complainant.

4. On the side of complainant, PW1 was examined and Exhibits P1 to P13 were marked. After closing the complainant's evidence, the accused was examined u/s.313(1)(b) of the CrPC. He denied all the incriminating circumstances against him in the case. From the side of Defence, no evidence was adduced.

5. Heard both sides.

6. The points arose for consideration are:-

- i. Whether the prosecution has proved that the accused executed and issued Ext.P5 cheque in favour of the complainant in discharge of a legally enforceable debt or liability?
- ii. Whether the prosecution has proved that Ext.P5 cheque was dishonoured for want of fund in the account maintained by the accused?

- iii. Whether the prosecution has proved that the complainant had complied with all legal formalities under the Negotiable Instruments Act?
- iv. Whether the prosecution has proved that the accused committed the offence under Section 138 of the Negotiable Instrument Act?
- v. If the accused is found guilty and convicted, what should be the proper sentence?

7. Point No. (i): The complainant firm was represented by the Secretary of the firm before court. From the side of complainant, she was examined as PW1. She filed Affidavit in lieu of chief reiterating the contentions in the complaint. Ext.P1 is the copy of loan application dated 25.7.2016. Ext.P2 is the copy of bond executed by the accused dated 11.8.2016. Ext.P3 is the withdrawal form dated 11.8.2016. Ext.P4 is the Ledger. Ext. P5 is the cheque dated 16.8.2021. Ext.P6 is the cheque return memo dated 12.11.2021. Ext.P7 is the intimation from Kozhikode District Co-operative bank dated 16.11.2021. Ext. P8 is the lawyer notice dated 10.12.2021. Ext.P9 is the unclaimed returned registered cover. Ext.P10 is the Appointment letter and Ext.P11 is the declaration for the appointment of PW1 in the institution. Ext.P12 is the authorisation letter issued by Board of Directors of VEECOS society and Ext. P13 is the Loan outstanding statement with section 65B certificate.

8. During his cross examination, PW1 deposed before the court that she was appointed as Secretary in the year of 2014 and that she was authorized by the Board to institute the complaint before court. She submitted that the accused had issued a cheque after the demand from the institution. She denied to the suggestion that the cheque issued by the accused while taking loan, was misused by the complainant by filing the case and that no outstanding amount as claimed by the complainant was existing in the account of the accused. She testified that the cheque was issued on 16.08.2021. She did not know the reason why the legal notice was returned stating unclaimed and that she denied to the suggestion that no proper notice was served in the case.

9. The Learned counsel for the complainant would argue that the accused had defaulted in paying installments and hence Ext.P5 cheque was issued by the accused to the institution. However, the said cheque was dishonoured due to insufficient fund and hence the accused committed offence punishable u/s. 138 of NI Act. The accused neither repaid the amount nor issued any reply notice in the case. The Learned counsel further contended that all the statutory requirements under the Act has been complied and the ingredients of statutory notice also complied. The accused has no probable defence in the case and no evidence produced to show the accused paid entire amount to the complainant firm.

10. The Learned counsel for the accused contended that there is no legally enforceable debt in this case and the entire amount was paid to the complainant institution. He contended that the total amount paid by the accused was suppressed in the case and the complainant failed to prove the actual outstanding amount in this case. Hence the counsel submitted that the accused is entitled to an order of acquittal from the court.

11. It has come out in evidence that the accused hasn't denied executing Ext.P5 cheque and the transaction with the complainant firm was also not denied by the accused. The complainant's case is that Ext.P5 cheque was issued to discharge a legally enforceable debt and in order to prove the fact that the accused committed default in payment to the complainant institution, Ext.P4 ledger was produced. However, the said document was not proved according to the statutory mandate and hence this court is not inclined to rely upon the same. Ext.P3 withdrawal statement would show that an amount of Rs. 2,00,000/- was given to the accused by the institution. The defence raised by the accused was that Ext.P5 cheque was issued by the accused as a security to the complainant firm without filling any entries and the accused paid installment amounts. The issuance of cheque as a security was admitted by the accused in the instant case. At this juncture, the decision of Hon'ble Apex court in **2024 KHC 6417- Sri Dattatraya v. Sharanappa** has to be referred, wherein it was held that *the proceedings under S.138 can be initiated even if cheque was originally issued*

as security and was subsequently dishonoured owing to insufficient funds. Failure to honour the concerned cheque is per se deemed as a commission of an offence under S.138. Thus, it is apparent that even if a cheque is issued as a security, S.138 can be invoked when dishonoured. Thus, from the available records, it is seen that the initial burden of proof was discharged by the complainant and the statutory presumptions under section 118 and 139 of NI Act thus comes into play.

12. It is settled principle of law that to discharge burden, accused must either adduce documentary evidence or substantiate defence through oral evidence or cross examination. Whether the accused raised any probable defence to discharge the burden of proof had to be ascertained in the case. In the decision of Hon'ble Apex court in 2024 KHC 8090- Ramesh K. v. K. Kothandaraman, it was held that even if a blank cheque leaf is voluntarily signed and handed over by accused towards some payment would attract the presumption under S.139; in absence of any cogent evidence to show that cheque was not issued in discharge of debt, presumption would hold good.

13. Apparently, the signature in the cheque was not disputed by the accused and thus there exists strong prima facie case in favour of the complainant. No evidence was adduced by the accused to substantiate his contention as to the non- existence of liability and no evidence was adduced to show that the accused paid entire amount to the complainant institution. In the

decision of Hon'ble High court of Kerala in 2021 1 KLT 787- Raju M. Thomas v. State of Kerala and Another, it was held that it is the duty of the accused before the court by adducing evidence to show that the cheque was not supported by consideration and that there was no debt or liability to be discharged as alleged.

14. During cross-examination of PW1, the accused attempted to challenge the enforceability of the debt by suggesting that there was no outstanding amount payable to the complainant institution. It must be seen that the evidence was re-opened at the stage of final hearing as per the order in CMP No.1/2026 and the Learned counsel for the complainant filed a petition to receive Ext.P12 and Ext. P13 documents in evidence. The Learned counsel for the accused submitted no objection in receiving the said documents in evidence and hence those documents were marked. Furthermore, Ext.P13 would show the outstanding amount as per the audit list between 16.1.2013 and 4.8.2021. The accused neither challenged the said document nor contended that he paid any amount after the said date. Thus, the contention of the accused stating the outstanding amount was not proved in the case cannot be sustained. From the available records, it is clear that the accused had executed Ext.P5 cheque and the accused has no case that he has not signed the said document. Given that Ext. P5 cheque was dated 16.8.2021, it's evident that the cheque was presented within three months from the date it was drawn. The law holds the drawer of a

cheque liable regardless of the underlying transaction's nature. The act of accused of issuing the cheque creates a legal presumption under Section 139 of the Negotiable Instruments Act that he had knowledge of insufficient funds. As per the decision of Hon'ble Supreme Court in *AIR 2019 SC 2446- Bir Singh v. Mukesh Kumar*, the onus of proving that cheque was not in discharge of any debt or other liability is on the accused, the drawer of cheque. Notably, no evidence was presented by the accused to show the cheque wasn't issued for legally enforceable debt and the complainant's evidence remained intact despite cross-examination. Thus Point No. (i) is answered in favour of the prosecution.

15. Point nos: (ii) to (iv): For the sake of brevity and convenience, these points are considered together. It is pertinent to note that the accused did not produce any evidence to show the said cheque was not issued to the complainant institution. Further he did not deny the transaction and no evidence produced to show entire amount paid towards the debt. Though the accused had raised contention that he did not receive Ext. P8 notice, it is seen that the said notice was returned with endorsement "unclaimed". Hence, the said service of notice was considered as deemed service. In the instant case, Ext.P5 cheque was returned with the endorsement "Fund Insufficient". In such circumstances it can be noted that the cheque was issued with the knowledge that he did not have sufficient fund in the account.

16. Another contention raised by the defence side was no legally enforceable debt in this case. The Hon'ble Supreme Court in **Rangappa v. Sri Mohan reported in AIR 2010 SC 1898**, held that the presumption mandated by section 139 includes the existence of legally enforceable debt or liability. It is a rebuttable presumption and it is open to the accused to raise a defence wherein existence of a legally enforceable debt or liability can be contested. The counsel contended that the accused has already paid amount and there is no outstanding liability. However, it is to be seen that the date mentioned in Ext.P5 cheque was 16.8.2021. The amount mentioned in the said cheque was Rs.3,10,000/-. The accused has no case that the said cheque was fabricated and no expert opinion sought in this case. He does not dispute his signature in the said cheque. It is apparent that the accused has no case he paid any amount after the execution of Ext.P5 cheque and no piece of evidence adduced to show that he had paid entire amount to the firm. Moreover, in this case available prosecution evidence is found credible, trustworthy and reliable. Hence the presumption does arise in favour of the complainant. Per contra, the defence side failed to prove the non-existence of legally enforceable debt even by preponderance of probabilities.

17. In this case, Exts. P10, P11 and P12 would show that the complainant has authority to file the complaint on behalf of the complainant institution. Ext. P5 cheque dated 16.8.2021 was presented to the Bank within the period of three

months from the date on which it was drawn. Ext.P6 would show that the cheque was returned with the endorsement 'Funds Insufficient'. Ext.P8 would show that the complainant made a demand for the cheque amount within 30 days from the date of receipt of information regarding the return of cheque as "Fund Insufficient". Since the accused failed to effect payment within the statutory period, the instant complaint was filed on 2.3.2022 which is within the prescribed period mentioned under the act. Thus, the complainant has complied with all the legal formalities as contemplated under the Negotiable Instrument Act, 1881.

18. On the basis of the oral and documentary evidence, the complainant could prove beyond reasonable doubt that Ext.P5 cheque was executed and issued by the accused in favour of the complainant in discharge of a legally enforceable debt, the said cheque was dishonoured by the bank due to the reason 'Fund Insufficient', the accused failed to repay the amount covered by the cheque within the statutory period and the complainant has complied with all the legal formalities. Thus point Nos. (ii) to (iv) are found in favour of the complainant.

19. Point No. (v) : In the light of the findings in point Nos. (i) to (iv), the accused is found guilty of the offence punishable u/S.138 of the Negotiable Instrument Act and the accused is convicted thereunder.

20. Considering the nature of the offence, this court is not inclined to invoke the benevolent provisions of the Probation of Offenders Act in favour of the accused. At the same time, considering the nature of the offence and the facts and circumstances in this case, this court is inclined to impose a lesser punishment to the accused. In the present case, cheque amount is Rs.3,10,000/- and the date of cheque is 16.8.2021. This court is of the view that interest of 9% per annum from 16.8.2021 till the date of judgment, ie. on 29.04.2026, is also to be granted in addition to the cheque amount. The total interest amounts to Rs.1,31,321/- (Rupees one lakh thirty one thousand three hundred and twenty one only) and the total sum would come around Rs.4,41,321/- (Rupees Four lakh forty one thousand three hundred and twenty one only) Thus, this court is inclined to fix a fine amount of Rs. 4,41,500/- (Rupees Four lakh forty one thousand five hundred only) to be paid to the complainant. Considering the facts of this case, this Court is of the view that a sentence of imprisonment till rising of the Court will suffice in addition to the order directing to pay fine amount.

21. In the result, the accused is sentenced to undergo simple imprisonment till the rising of Court and to pay a fine of Rs. 4,41,500 /- (Rupees Four lakh forty one thousand five hundred only) to the Complainant u/s.138 of Negotiable Instrument Act, in default of payment of fine, the accused shall undergo simple imprisonment for a period of one month for the offence u/S.138

of the Negotiable Instrument Act, 1881. The fine amount if realised shall be paid to the complainant towards compensation u/S. 357(1)(b) of Cr.PC.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on this the 29th day of April, 2026)

sd/-
Judicial First Class Magistrate – I,
Vatakara

APPENDIX

Witnesses examined for the Complainant

Prosecution Witness No.	Names of Witness	Description
PW1	Sreejisha.C.N, W/o. Saju.K.K	Complainant

Exhibits marked for the Complainant

Exhibit No.	Description of the Exhibit	Proved by/Attested by
P1	Certified copy of loan application dated 25.7.2016.	PW1
P2	Certified copy of bond executed by the accused dated 11.8.2016.	PW1
P3	Withdrawal form of VEECOS, dated 11.8.2016	PW1
P4	Computer printout of ledger extract maintained by the complainant society	PW1
P5	Cheque for Rs. 3,10,000/- bearing no. 081318, dated 16.08.2021, of State Bank of India, Mahe Branch.	PW1

P6	Cheque return memo dated 12.11.2021	PW1
P7	Intimation from Kozhikode District Co-operative bank dated 16.11.2021.	PW1
P8	Copy of lawyer notice dated 10.12.21	PW1
P9	Unclaimed returned registered cover	PW1
P10	Appointment letter of PW1 at VEECOS, Vatakara	by PW1 with the consent of other side
P11	The declaration for the appointment of PW1 in the VEECOS society.	“
P12	The authorisation letter issued by Board of Directors of VEECOS society.	“
P13	The Loan outstanding statement with Section 65B certificate.	“

Witnesses examined by the defence

Nil

Exhibits marked by the defence

Nil

sd/-

Judicial First Class Magistrate - I
Vatakara

//True copy//

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