

**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 13th day of April, 2026

ST No. 648/2023

Complainant	:	1.	Padmanabhan, S/o. Kelappan, Aged. 73/23, Chemmeri house, Post Muttungal West, Vatakara Taluk, Kozhikode, Pin – 673 106. (By Adv. Dineshan K.P, & Adv. Rathish O Onthammal)
Accused	:	1.	Pookkunhikoya, Aged.56/23, S/o. Attakoyathangal, Ramlas, Chombala Post, Kunhippally, Vatakara taluk, Kozhikode. (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.1,61,000/- (Rupees One lakh sixty-one thousand 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.

Description of the accused

Sl No.	Name	Father's name	Calling	Residence	Taluk	Age
1.	Pookkunhikoya	Attakoyathangal	...	Ramlas, Chombala(p)	Vatakara	56/23

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence/Order	Explanation of delay
14.3.23	26.6.23	11.9.24	11.9.24	24.1.25	10.4.26	13.4.26	nil

This case having been finally heard on 10.4.26 and stood over for consideration and delivered judgment on 13.4.26

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 complainant alleges that the complainant was running a Blossom English School at Vatakara and he was the manager of the said institution. The Accused was his friend and the complainant handed over an amount of Rs.1,26,000/- through the bank account of complainant and his wife, for getting a fitness certificate for the said institution. When the accused failed to get fitness certificate, the complainant demanded the amount given to him and the accused issued two cheques bearing number 081335 and 081334, for an amount of Rs.50,000/- and Rs. 66,000/- respectively, drawn on State Bank of India, Mahe branch in the name of complainant's wife and complainant

respectively. The accused undertook to repay the sum of ₹10,000 in cash. The Complainant presented the cheques for collection on 16.2.2022 as per the request of accused and the same were dishonoured due to insufficiency of funds in the account of the accused. The accused subsequently issued two cheques bearing numbers 031041 and 031043 for an amount of Rs.63,000/- each. The said cheques were presented for collection on 14.3.2023 in Canara Bank, Chorode Branch. However, those cheques were returned due to insufficiency of funds. In spite of issuance of statutory notice, the accused failed to pay the cheque amount to the complainant and the said notice was returned unclaimed. The accused failed to send the reply notice as well. The accused, knowingly and with intent to deceive the complainant, 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 examination of the witnesses.

4. On the side of complainant, PW1 was examined. Ext. P1 to P12 were marked. After closing the complainant's evidence, the accused was examined u/S.

313(1)(b) of the Cr.PC. He denied all the incriminating circumstances against him. 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.P1 and Ext.P2 cheques in favour of the complainant in discharge of a legally enforceable debt or liability?
- ii. Whether the prosecution has proved that Ext.P1 and Ext.P2 cheques were 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): PW1 is the complainant in the case and for the purpose of Examination in lieu of chief, he filed affidavit reiterating the averments in the complaint. Ext.P1 is the original cheque bearing number 031043 dated 14.3.2023. Ext.P2 is the original cheque bearing number 031041 dated 14.3.2023. Ext.P3 is

the return memo dated 25.4.2023. Ext.P4 is the return memo dated 15.4.2023, Ext.P5 is the copy of the lawyer notice sent, Ext.P6 is returned notice. Ext.P7 is the original cheque bearing number 081334 dated 10.12.2021. Ext.P8 is the original cheque bearing number 081335 dated 10.12.2021. Ext.P9 is the return memo dated 17.2.2022. Ext.P10 is the appointment as Manager letter dated 20.11.2015. Ext.P11 is the notice from Assistant Executive Engineer dated 5.6.2023. Ext.P12 is the Fitness certificate.

8. PW1 would say that the institution was unaided and he was the owner of the said school. He stated that the he knows accused from 6 years ago and the accused was a teacher in another school. He testified that the application for the fitness certificate would be submitted by the school manager. He admitted that no intermediary is permitted for applying for a fitness certificate, yet he approached the accused to act as one. He denied to the suggestion that the accused is not liable to pay the cheque amount as there is not legally enforceable debt in the case.

9. The Learned counsel for the complainant argued that all formalities under the Act were complied with and Ext.P1 and Ext.P2 cheques were issued to discharge the liability towards the debt. The accused neither sent a reply notice nor produced evidence to disprove the cheque's execution. No defence evidence was adduced to show that the said cheques were not supported by consideration and hence the case of the complainant is proved.

10. The Learned counsel for the accused contended the case of the complainant is not believable and there is no legally enforceable debt in the case. The Learned counsel for the accused submitted that the accused deserves the benefit of doubt, emphasizing the complainant's failure to establish a clear connection between the accused and the transaction.

11. In the instant case, the most significant question emerging for consideration is whether the complainant has proved due execution of Ext. P1 and Ext.P2 cheques and also the transaction relating to the issue of those cheques. The accused has no case that he did not execute the said cheques neither did he deny the execution of the same. It is a settled principle of law that failure to honour the concerned cheque is per se deemed as a commission of an offence under S.138. 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 drawer of cheque. In this case, no evidence was presented by the accused to show the cheque wasn't issued for a debt or liability, and the complainant's evidence remained intact despite cross-examination. The issuance of cheque in the name of the complainant's wife, do not materially affect the core facts: the cheque was

dishonoured, proper notice was given, and the accused failed to make payment within the statutory period. Thus, the initial burden discharged by the complainant. The statutory presumptions under section 118 and 139 of NI Act thus comes into play and the same have not been rebutted by the accused. Thus, Point No. (i) is answered in favour of the prosecution.

12. **Point Nos. (ii) to (iv):** For the sake of brevity and convenience, these points are considered together. A careful examination of the materials produced in the case reveals that the accused has failed to place any significant material on record to discredit the evidence of the complainant. The sole contention raised by the accused in the case was the non-existence of legally enforceable debt in the 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. Though the accused has contended that it is the bounden duty of the manager of the school to apply for fitness certificate and no intermediary can apply for the same, the said contention lose its significance considering the fact the accused did not deny his friendship with the complainant. There is no written rule that a third party cannot apply for fitness certificate for the institution. If a person is authorised by someone who is in charge of the institution, an application for fitness certificate can be submitted even by a

stranger. The accused had no case that he was not authorised by the complainant for applying the same. Furthermore, the accused failed to send a reply notice to refute the allegations. 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.

13. A probable case has to exist in favour of the accused in order to rebut the presumptions that arise in favour of the complainant and in the instant case, no sufficient evidence was brought out either during the time of cross examination or at the time of defence evidence. Though the defence raised questions with respect to issuing cheque in the name of the complainant's wife, it must be seen that as per Ext.P10, both the complainant and his wife were the managers of the said institution. Furthermore, the non-examination of the wife of the complainant is not material in the case considering the fact that the evidence of PW1 itself is found credible. It is well settled that the standard of proof which is required from the accused to rebut the statutory presumption under S.118 and S.139 of the N.I Act is preponderance of probabilities and that the accused is not required to prove his case beyond reasonable doubt. Apparently, the law does not insist the presence of a witness for the transaction. A transaction in between two persons in the absence of any other person and without support of any other person and without support of any other documents based on a cheque alone would be sufficient to prove the

transaction when the evidence available would establish that there were transaction and the execution of cheque. In this case, no evidence adduced either by way of defence evidence or by way of cross examination of PW1, to show that the complainant is not a holder in due course. No explanation has been sufficiently offered as to how the complainant came into possession of the cheque other than through the transaction alleged in the present case. 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 drawer of cheque.

14. It is pertinent to note that the accused did not produce any evidence to show Exts. P1 and P2 cheques were not issued to the complainant. In this case Ext.P1 and Ext.P2 cheques were returned with the endorsement that the "Fund Insufficient". In such circumstances it can be noted that the cheques were issued with the knowledge that he did not have sufficient fund in the account. In *Beena v. Muniyappan- AIR 2001 SC 2895*, the Hon'ble Supreme Court has held that it is for the accused to prove that the cheque was not issued towards a debt or liability. He has to lead credible evidence for rebuttal of this presumption. Mere denial of averments will not suffice to shift. The said position was reiterated in the *Hon'ble Apex court decision in Vijay vs Laxman, reported in 2013 (3) SCC 86*. The obligation of the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility

of the non - existence of the presumed fact. In this case, Ext.P1 and Ext.P2 would show that the cheques dated 14.3.2023 were presented to the Bank within the period of three months from the date on which it was drawn. Exts. P3 and P4 would show that the cheques were returned with the endorsement 'Funds Insufficient'. Evidently the cheques were returned due to want of fund. Ext.P5 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 and payment within the statutory period, the instant complaint was filed on 26.6.2023 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.

15. On the basis of the oral and documentary evidence, the complainant could prove beyond reasonable doubt that Ext.P1 and Ext.P2 cheques were executed and issued by the accused in favour of the complainant in discharge of a legally enforceable debt, the said cheques were 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.

16. **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.

17. 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, cheques amount is ₹1,26,000/- (Rs.63,000/- each) and the date of cheques are 14.3.2023. This court is of the view that interest of 9% per annum from the date of cheques (14.3.2023) till the date of judgment, ie. on 13.4.2026, is also to be granted in addition to the cheques amount. The total interest amounts to Rs.35,014/- (Rupees Thirty five thousand and fourteen only) and the total sum would come around Rs.1,61,014/- (Rupees One lakh sixty one thousand and fourteen only). Thus, this Court is inclined to fix a fine amount of Rs.1,61,000/- (Rupees One lakh sixty-one thousand 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.

18. In the result, the accused is sentenced to undergo simple imprisonment till the rising of court and to pay a fine of Rs.1,61,000/- (Rupees One lakh sixty-one thousand 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 13th 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	Padmanabhan, S/o. Kelappan	Complainant

Exhibits marked for the Complainant

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
P1	Cheque bearing number 031043 dated 14.3.23 of The Kozhikode District Co-operative Bank Ltd.	PW1
P2	Cheque bearing number 031041 dated 14.3.23 of The Kozhikode District Co-operative Bank Ltd.	PW1
P3	Return memo from the bank dated 25.4.23	PW1
P4	Return memo from the bank dated 15.4.23	PW1
P5	Copy of the lawyer notice dated 8.5.23	PW1
P6	Unclaimed return notice	PW1
P7	Cheque bearing number 081334 dated 10.12.21 of State Bank of India, Mahe branch	PW1

P8	Cheque bearing number 081335 dated 10.12.21 of State Bank of India, Mahe branch	PW1
P9	Return memo from the bank dated 17.2.22	PW1
P10	Appointment of Manager at Blossoms English School dated 20.11.2015	PW1
P11	School Fitness supervision charge	PW1
P12	School Fitness certificate	PW1

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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Vatakara