

**IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST  
CLASS-II, NADAPURAM.**

Present: Sri. Yadukrishnan B.,  
Judicial First Class Magistrate-II, Nadapuram.

Monday, the 25<sup>th</sup> day of April, 2026  
5<sup>th</sup> day of Vaishakha 1948

**S.T. No. 7/2024 and S.T. 9/2024.**

Complainant : Ashraf S/o Ammed, aged 52 years, Marutheri  
House, Cheekkonnummal West (PO), Kakkattil  
Via, Vatakara Taluk, Kozhikode District,  
Kerala State PIN:-673507

**(By Adv. Lathesh V. )**

Accused : 1 Mohammed Sawad V., aged 38  
S/o Andruchi Ballase Mohammed,  
Proprietor of M/S BE A MAN, Residing at  
No:69, 3rd cross road, Behind Sidarth school,  
Vijaya Nagar 1<sup>st</sup> Stage Hassan. Bangalore,  
PIN:-573201.

2 Mohammed Sawad V. B. M. Unied,  
Shop No.:360, 1st floor, Alankar Plaza,  
Mejistic, Bangalore, Karnataka State,  
PIN:-560009. (Upparpet Police Station Limit)

3 M/S BE A MAN, Proprietor,  
Mohammed Swad, 05, Royal Shelter 3<sup>rd</sup> Phase  
Devera, Chikkanahalli, Bangalore,  
Urban, Karnataka, PIN:560076.

**(By Adv. P. Suresh Babu)**

Offence : U/s.138 of The Negotiable Instruments Act, 1881.

Plea : Not guilty

Finding : Guilty

Sentence or order : ***Under ST 7/2024 the accused is sentenced to undergo Simple Imprisonment till rising of the court and to pay a fine of ₹ 20,00,000/- (Rupees Twenty Lakhs Only) U/s. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of six months. If the amount of fine is realized, the same shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.***

***Under ST 9/2024 the accused is sentenced to undergo Simple Imprisonment till rising of the court and to pay a fine of ₹ 20,00,000/- (Rupees Twenty Lakhs Only) U/s. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of six months. If the amount of fine is realized, the same shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.***

**Description of accused**

Sl.No.	Name of accused	Father's Name	Occupation	Residence	Age
1	Mohammed Sawad V.	Andruchi Ballase Mohammed	Proprietor of M/S BE A MAN.	Residing at No:69, 3rd cross road, Behind Sidarth school, Vijaya Nagar 1 <sup>st</sup> Stage Hassan. Bangalore, PIN:- 573201.	38
2	Mohammed Sawad V.B.M. Unied			Shop No.:360, 1st floor, Alankar Plaza, Mejistic, Bangalore, Karnataka State, PIN:-560009. (Upparpet Police Station Limit)	
3	M/S BE A MAN Proprietor, Mohammed Swad,			05, Royal Shelter 3 <sup>rd</sup> Phase Devera, Chikkanahalli, Bangalore, Urban, Karnataka, PIN:560076.	

**Date of:-**

Offence	Complaint	Apprehension	Released on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Explanation of delay
13.05.21	02.08.21	08.11.23	08.11.23	08.11.23	24.03.25	23.04.26	25.04.26	No delay

**APPENDIX****Witness examined for complainant:-**

- PW1 - 24.03.2025 - Asharaf S/o Ammad.
- PW2 - 09.12.2025 - Sriju T. P., S/o Sreedharan T. P.
- PW3 - 24.03.2026 - Anjana B., D/o Balakrishnan Nair.

**Exhibits marked for complainant:-**

P1	03.05.2021	Cheque No. 000011 for ₹5,00,000/- of HDFC Bank Bilekhalli Branch Bangalore proved through PW1.
P2	03.05.2021	Cheque No. 000014 for ₹5,00,000/- of HDFC Bank Bilekhalli Branch Bangalore proved through PW1.
P3	13.05.2021	Dishonor Memo issued by Kerala Gramin Bank, Narippatta Branch of cheque No. 000011 is proved through PW1.
P4	13.05.2021	Dishonor Memo issued by Kerala Gramin Bank, Narippatta Branch of cheque No. 000014 is proved through PW1.
P5	08.06.2021	True Copy of Lawyer Notice proved through PW1.
P6	09.06.2021	Postal Receipts (3 Nos.) proved through PW1.
P7	15.06.2021	Returned Notice proved through PW1.
P8	18.06.2021	Returned Notice proved through PW1.
P9	22.06.2021	Acknowledgment Card proved through PW1.
P10	03.08.2021	Cheque No. 000015 for ₹5,00,000/- of HDFC Bank Bilekhalli Branch Bangalore proved through PW1.

P11	03.08.2021	Cheque No. 000016 for ₹5,00,000/- of HDFC Bank Bilekhalli Branch Bangalore proved through PW1.
P12	07.08.2021	Dishonor Memo issued by Kerala Gramin Bank, Narippatta Branch of cheque No. 000015 is proved through PW1.
P13	07.08.2021	Dishonor Memo issued by Kerala Gramin Bank, Narippatta Branch of cheque No. 000016 is proved through PW1.
P14	13.08.2021	True Copy of Lawyer Notice proved through PW1.
P15	13.08.2021	Postal Receipts (3 Nos.) proved through PW1.
P16	19.08.2021	Returned Notice proved through PW1.
P17	18.08.2021	Returned Notice proved through PW1.
P18	18.08.2021	Returned Notice proved through PW1.
P19	06.09.2016	Sale agreement proved through PW1.
P20	25.02.2016	Sale agreement proved through PW1.

**Exhibits marked for Court:-**

X1	-	01.05.2021 to 26.07.2021	-	Account Extracts of M/s BE A MAN
X2	-	13.05.2021	-	Dishonor Memo of cheque No. 000011
X2 (a)	-	13.05.2021	-	Dishonor Memo of cheque No. 000014
X3	-	Nil.	-	True Copy of the Ledger Extract.

**Witnesses examined for defence: Nil.**

**Exhibits marked for defence: Nil.**

**Witness examined for Court: Nil.**

sd/-

**Judicial Magistrate of First Class-II,  
Nadapuram**

This case having been come to this day's proceedings, the Court on the same day delivered the following:-

### **J U D G M E N T**

This is a private complaint filed u/s. 190 (1) (c) of the Criminal Procedure Code r/w Section 138 and 142 of the Negotiable Instruments Act, 1881. There are two cheque cases on the basis of one transaction. Both the cases are decided on a single judgment and joint trial is ordered in both cases as per CMP 1355/2025. The evidence in both cases are taken in S.T. 7/2024. ST 7/2024 is considered as the leading case.

2. **The cases of the complainant in brief are as follows:-** The complainant and the accused are friends and are known to each other. The accused borrowed an amount of Rs. 20,00,000/- from the complainant and failed to repay the said amount within a time. When the complainant approached the accused for the amount the accused executed 4 cheques. Out of which 2 cheques numbered as 000011, 000014 of HDFC Bank, Bilkehalli Branch dated 03.05.2021 respectively for an amount Rs.5,00,000/- each in ST 7/2024 and the other 2 cheques numbered as 000015 and 000016 dated 03.08.2021 respectively for an amount of Rs.5,00,000/- each in ST 9/2024, thus, totalling for an amount of Rs.20,00,000/- in both cases. Those cheques are the disputed cheques in ST 7/2024 and ST 9/2024. Those 4 cheques were presented by the complainant before the Kerala Gramin

Bank, Narippatta Branch and was returned for the reasons “Payment Stopped by Drawer” dated 13.05.2021 and 07.08.2021 respectively. The complainant thereafter, caused to issue lawyer notice to the accused in both cases intimating the default. However, the accused neither paid the amount nor given any reply. Hence, the accused thereby committed the offence under S.138 of the NI Act.

3. Having satisfied that the complaints, supporting affidavits and documents have made out a prima facie case U/s. 138 of NI Act, my learned predecessor in office took cognizance U/s. 190(1) (a) Cr.P.C r/w Sec. 142 of NI Act and issued summons to the accused U/s.204 Cr.P.C.

4. The accused appeared on process and he was enlarged on bail U/s. 436 Cr.P.C in both cases. Thereafter, having furnished the copy of the complaint, the particulars of offense were stated to the accused U/s. 251 Cr.P.C and he was asked whether he pleads guilty or has any defence to make and in response thereto the accused pleaded not guilty.

5. Thereupon, the prosecution evidence was recorded U/s.254 Cr.P.C. The complainant was examined as PW1. The complainant filed proof affidavit in lieu of examination in chief. The documents were marked as Exts.P1 to P20. The Deputy Manager, HDFC Bank, Nadapuram was summoned and examined as PW2. One document was marked through him as Ext.X1. Bank Manager, Narippatta Branch was summoned and examined as PW3. Two documents were marked through the witness as X2 and X3. As already stated this is a joint trial and evidence in both cases are adduced in ST 7/2024.

6. Thereafter the accused was questioned under section 313 Cr.P.C. The accused denied all the incriminating circumstances, brought out in evidence in trial pleading innocence. The accused filed statement under Sec.313 (5) of Cr.P.C in both cases.

7. From the defence side there is no oral as well as documentary evidences adduced.

8. **The points that arise for determination are:-**

- (1) Whether the statutory formalities observed before filing the complaints?
- (2) Did the accused issued Ext. P1, P2, P10 and P11 cheques to the complainant in discharge of a legally enforceable debt or liability?
- (3) Whether the Ext. P1, P2, P10 and P11 cheques were dishonored for want of sufficient funds?
- (4) Whether the accused committed the offence punishable u/s.138 of the N.I. Act?
- (5) If so, what is the sentence or order to be imposed?

9. Heard both sides.

10. **Point No. 1:-** The complainant has filed this complaint cases claiming that he had duly complied with all the legal formalities required for the prosecution mandated under the provision of Sec.138 and Sec.142 of NI Act. In order to enable the complainant to effectively prosecute an accused U/s. 138 of N.I. Act, the cheque in question must be one issued from the bank account maintained by the accused and the same should be returned unpaid for want of sufficient funds. The cheque should be a valid cheque ie, it should have presented for encashment within three

months from the date of execution or its validity. That apart, the complainant has to issue a registered legal notice to the accused setting out the factum of dishonor as well as demanding the cheque amount within 30 days from the date of intimation of the dishonor of the cheque in question. After due compliance of the notice as aforesaid, the complainant has to wait for 15 days for repayment from the date of receipt of the notice by the accused and when the accused failed to discharge the liability, on elapse of the aforesaid 15 days, the complainant has to file the complaint within one month therefrom. All the more, this court must have territorial jurisdiction over the local area where the payee's bank or the drawee bank, as the case may be, situate subject to the mode of presentation of the cheque for payment as empowered U/s.142(2) of the NI Act.

11. In the case on hand, in order to prove the aforesaid condition precedents, the complainant got marked Ext P1 to P20 documents. Ext.P1 to P20 documents are not challenged by the accused at any ground. In fact, the counsel for the accused has admitted that the complainant has complied all the legal formalities in instituting the complaint. Hence, the institution of both the complaint cases are free from any legal infirmities.

12. The subject matter of cheques were sent for collection through the bank account of the payee/complainant and so the jurisdictional court would be the one contemplated U/s. 142(2) (a) of NI Act. The payee's bank is the Kerala Gramin Bank, Narippatta Branch which is located well within the local jurisdiction of the court where the complaint was lodged. As upheld in ***Narayanan K.M. and another V. State of Kerala and another (2017 KHC 842)***, the banker's slip need no formal proof since the production of the same would get the presumption U/s.146 of NI Act unless and until such fact shown thereby is disproved. The disputed Exts.P1, P2, P10 and P11 cheques bearing Nos. 000011, 000014, 000015 and 000016 dated 03.05.2021 and 03.08.2021 were presented for encashment and returned unpaid for the reasons 'Funds insufficient' on 13.05.2021 and 07.08.2021 respectively. As per

Ext. P3, P4, P12 and P13 the date of return is on the above said dates. So, the cheques are well within the period of validity.

13. Obviously, the service of statutory notice as shown above is not seen challenged from the side of defence on any ground. Both the complaints were lodged on 02.08.2021 and 24.09.2021 and are verified on very same date. Thus, the complaint cases were lodged well within one month on expiry of the prescribed period for repayment of the cheques amount. Thus, it can be rightly held that the complaint cases does not suffer any institutional defects so as to defeat the prosecution thereon U/s. 138 of the Negotiable Instruments Act. Accordingly, the point No.1 is found in favour of the complainant.

14. **Points No. 2 to 4:-** All the points are considered together for the sake of convenience. The complainant was examined as PW1. The complainant has deposed in tune with what which he has stated in the complaint as per his proof affidavit. There are 4 cheques involved in this case for an amount of Rs.20,00,000/-. The disputed cheques are of Rs.5,00,000/- each. The statutory formalities with respect to the institution of the complaint cases is free from any defect. The moot question to be decided is whether the disputed cheques are issued on the discharge of a legally enforceable debt or liability. The complainant was examined as PW1 and was subjected to a lengthy cross examination with regard to the transaction in issue. The complainant has categorically stated his relationship with the accused and the way in which he has paid the amount to the accused. The complainant also deposed how the cheques came into his hands. The complainant further states that the signature in the cheques are not denied and hence the execution of Ext.P1, P2, P10 and P11 are proved before this court. The main defence raised by the accused is that the cheques were taken from his custody by one Mr. Yasar and has been presented it for payment. The other defence is that the accused has not received any statutory notice with respect to the default. Thus, according to accused since he has not received the notice the offence under Sec.138

will not lie. The 3<sup>rd</sup> defence is that the cheques were not presented before the bank for collection and there is no seal of the payee bank. According to counsel for accused the complainant has played fraud and manipulated the documents by playing fraud on the court. The 4<sup>th</sup> defence is that the complainant is not having any financial stability or source to pay or to give an amount of Rs.20,00,000/- to the accused. Thus, according to accused the cheques were not issued in discharge of a legally enforceable debt or liability. Thus, the accused pleads that he is innocent and may be acquitted. Regarding the 1<sup>st</sup> defence raised by the accused stating that one Mr. Yasar took the 4 cheques and presented it for payment, to that aspect no evidence has been brought out by the accused before this court. The accused has not preferred any complaint before the Police or before the Bank regarding the aforesaid statement. The said Yasar was not summoned to prove such an incident. Therefore, the said defence lacks probability. In fact, the accused has stated 2 different cases as to the misuse of the cheques. At first the accused stated that it is Mr.Yasar took the cheques and presented for payment. Later, the version was changed and it has stated that the complainant took the cheques and presented for payment. Thus, there is no specific case from the side of the accused as to the version with respect to the misuse of the cheques. The 2<sup>nd</sup> defence is that the accused has not received the statutory notice with respect to the default amount. Ext.P7, P8 and P9 are the returned notice and AD card with respect to ST 7/2024. Ext.P16, P17 and P18 are the returned notices with respect to ST 9/2024. This court has gone through the notices. As per Ext.P7 it is found that the addressee is left. As per Ext.P8 it is further stated that the addressee is left and the notice is returned. Whereas, Ext.P9 AD card shows that the notice has been served to the accused on 22.06.2021 as per the address shown in the cause title with regard to 2<sup>nd</sup> accused. As per Ext.P9 the notice has been received and has been signed by the accused. As per Ext.P7 and P8 the notice was sent to the office address which got returned as addressee left whereas as per Ext.P9 the notice was served in the house address of the accused. However, in ST 9/2024 the notice is returned as unclaimed and the address shown is insufficient. Since the addressee is left when the notice was served

it is under a presumption that it is a deemed service. There is no case for the accused that the address shown is not correct. If that be so, the accused can take steps to prove the same by examining the Post Master. It is not done in this case. As per Ext. P9 it is found that the notice has been served to the accused in the address shown in the cause title. Therefore, it cannot be said that the accused has not received the notice as per the provisions of the Act. As per the 313 statement the accused has raised a contention that he is staying at a different address. The accused has not proved it before this court by cogent evidence and by stepping into the box. Therefore, the statement of the accused that he has not received the notice is not true. In fact, the complainant has managed to take all the reliable steps to issue the notice to the accused. The other thing is that the accused has no case that he is not the proprietor of company name BE A MAN as per the cause title. It is admitted by the accused even in his 313 statement. Thus, as per the documents produced by the complainant it can be rightly said that the statutory notice has been rightly served upon to the accused and has not managed to send a reply to the complainant. Regarding the 3<sup>rd</sup> defence this court has gone through the dishonor memos. As per the dishonor memos there is no ambiguity as raised by the counsel for the accused stating that the cheques were not presented for payment before the payee bank. As per the dishonor memos the cheques were presented before the payee bank by the complainant as per the dates prescribed in the memos and all the cheques were returned for the reasons "Payment Stopped by Drawer". Therefore, there is no ambiguity with respect to that. Regarding the 4<sup>th</sup> defence as to the financial capacity of the complainant, the complainant has vehemently stated as to how he has obtained this much amount and for proving the same he has produced Ext.P19 and P20 documents which are the sale agreements with respect to the selling of his property. Thus, the complainant has set up a probable case to establish his case before this court. Furthermore, 2 Bank Managers were examined to establish the nature of transaction and execution of the cheques. PW2 is the Deputy Manager, HDFC Bank, Nadapuram Branch. He has categorically deposed that there is an account of BE A MAN in Vijaya Bank, Bilekhalli branch. The Account

Number is 50200034005346. PW2 has produced the Account extract of BE A MAN from the period 01.05.2021 to 26.07.2021. As per the account extract the balance amount in that account is only for Rs.1/-. On 03.08.2021 also the said balance is of Rs.1/-. The said account extract is produced and marked as Ext.X1. This court has cross checked the account number in X1 and account number which is shown in the disputed cheques. It is revealed that the account numbers belonged to BE A MAN which is represented by the accused Mr.Mohammad Savad. PW2 was not subject to cross examination by the complainant. PW3 is the Bank Manager, Narippatta Branch. The return memos and ledger extracts were produced and marked through PW3. The ledger extracts were got marked as Ext.X3 itself shows that the complainant has presented the cheques and was returned for the reasons "Funds Insufficient and payment stopped by drawer". This is established through X2 memos. There was no serious cross examination with regard to the due execution of the cheques from the side of the counsel for the accused. In fact, the accused has only evasively denied that he has not signed that disputed cheques. However, this court has gone through the signatures in the disputed cheques and the signature of the accused in 313 statement. It is found that both the signatures are having similarity after getting compared. Therefore, the complainant has established the first burden with regard to the due execution of the cheques. Now the burden is always upon the accused to rebut the presumption. The accused has not rebutted the presumption. Hence, from the discussion of the entire evidences the case set up by the complainant seems to be more probable when it is compared with the case set up by the accused. The accused has not mount the box and has not set up a probable defence to attack the case set up by the complainant. Since, the complaint cases got filed in the year 2024, the complainant is entitled to get the interest also. Therefore, the complainant is entitled to get twice the cheques amount as per Sec.138 of the NI Act. The accused is entitled for a conviction. Point found accordingly.

15. On a consideration of the above facts and evidences the court comes to the following conclusions.

1. Exhibit P1, P2, P10 and P11 Cheques are duly executed and handed over by the accused to the complainant for a legally enforceable debt.
2. The Cheques when presented was dishonored due to funds insufficient in the account of the accused.
3. Though Lawyer Notice was issued, the accused did not reply to it.
4. The accused committed the offence punishable under section 138 of the NI Act. Hence the points no 2 to 4 are found accordingly.

16. **Point No.5:-** In view of the findings in point Nos. 1 to 4 the accused is convicted U/s. 255(2) Cr.P.C for the offence punishable U/s. 138 of NI Act. As held in *Nalinakshan M.V. v Rameshan and Another (2009 (1) KHC 561)*, the benevolent provisions of the Probation of Offenders Act have no application in a case U/s. 138 of N.I. Act.

*In the result, under ST 7/2024 the accused is sentenced to undergo Simple Imprisonment till rising of the court and to pay a fine of ₹ 20,00,000/- (Rupees Twenty Lakhs Only) U/s. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of six months. If the amount of fine is realized, the same shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.*

*In the result, under ST 9/2024 the accused is sentenced to undergo Simple Imprisonment till rising of the court and to pay a fine of ₹ 20,00,000/- (Rupees Twenty Lakhs Only) U/s. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of six months. If the amount of fine is realized, the same shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.*

*(Dictated to C.A, typed by him in Office Computer, corrected and pronounced by me in Open Court, on this the 25<sup>th</sup> day of April, 2026).*

sd/-

**Judicial First Class Magistrate -II  
Nadapuram**

*/True Copy/*

Sd/-

**Judicial Magistrate of First Class-II,  
Nadapuram**

***Fair/Copy of Judgment in***

***ST 7/2024 and ST 9/2024***

***Dated: 25.04.2026***