IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVARA

Present :- Sri.Binu P

Civil Judge(Junior Division), Chavara.

Friday, 5th day of June, 2026

15th Jyaishta, 1948(S.E)

ST842.2019

Complainant	:	Devadasan Nair, S/o Kochappan Pillai, Indeevaram, Panmana Manayil, Panmana PO, Chavara, represented by the Power of Attorney holder, Rejani, W/o Devadasan Nair, Indeevaram, Panmana Manayil, Panmana PO, Chavara. (By Adv.A.Ranjith)
Accused	:	1.Harikrishnan, S/o Radhakrishnan (Adv. S.Jayaprakash)
Charge	:	U/ss. 138 Negotiable Instruments Act
Plea	:	Not Guilty
Finding	:	Not Guilty
Sentence/Order	:	The accused is found not guilty and he is acquitted under section 255(1) of CrPC for the offence punishable under section 138 of the Negotiable Instruments Act. He is set at liberty. His bail bond stands discharged.

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Period of detention undergone during investigation of trial for the purpose of Section 428 Cr.P.C
24.08.19	23.09.19	04.06.22	04.06.22	23.11.24	09.05.25	01.06.26	05.06.26	---

Description of accused

Name	Father's name	Residence	Taluk
Harikrishnan	Radhakrishnan	Campus Tutotials, Chavara PO, Chavara	Karunagappally

This case is coming on 01.06.2026 for hearing today, the court passed the following:-

J U D G M E N T

This is a case instituted upon a complaint filed by the above-named complainant under Section 138 of the Negotiable Instruments Act.

2. The case of the complaint in short is as follows: The complainant has a close acquaintance with the accused. Due to the said acquaintance, on 05.06.2016, the first and the second accused approached the complainant and borrowed Rs. 10,00,000/- (Rupees Ten lakhs). While receiving the said amount, the first accused was drawn and issued a post-dated cheque bearing number 989603 dated 10.05.2019, drawn on State Bank of India, Chavara branch, for Rs.10,00,000/-. The complainant presented the cheque for collection in his bank, but the same was dishonoured with the memo stating that “funds insufficient”. Thereafter, the complainant issued statutory legal notices to the accused on 07/08/2019 and 08/08/2019 demanding payment of the cheque amount. The said notices were duly served on the accused on 08/08/2019 and 09/08/2019. However, despite receipt of the notices, the accused failed to comply with the demand and did not pay the cheque amount within the prescribed period. Hence, the complaint.

3. The accused appeared on summons, and he was released on bail. Copies of relevant prosecution records were furnished to him. Particulars of offence punishable u/s. 138 of the Negotiable Instruments Act was read over and explained to him. He pleaded not guilty.

4. PW1 and PW2 are examined. Exts. P1 to P7 documents were marked on the side of the complainant. On the closure of the complainant's evidence, the accused was questioned u/s. 313 (1) (b) Cr.P.C. He denied the case of the complainant. On behalf of the defence, DW1 was examined and Ext. D1 document marked. Both sides have been heard.

5. The points that arise for consideration are:-

(1) Whether the Ext.P1 cheque was issued by the accused in the discharge of a legally enforceable debt to the complainant by the accused and thereby committed an offence punishable under section 138 of the NI Act?
(2) Whether the complaint is properly instituted after complying with all the statutory requirements?
(3) What is the sentence or order to be passed?

6. **<u>Point Nos. 1</u>** : The case of the complainant is that the accused borrowed an amount of Rs.10,00,000/-(Rupees Ten lakhs) on 05.06.2016 and issued a post-dated check bearing number 989603 dated 10.05.2019. The said check was presented for encashment on 24.07.2019, dishonoured for the reason of “ funds insufficient ”. Thereafter, a legal notice was issued.

7. The original complainant in this case is no more. His wife was permitted to continue the prosecution pursuant to the order in CMP No. 629/2023 dated 19/08/2023.

8. The original complaint is filed against the present accused and his wife as accused numbers 1 and 2. As per the order dated 25.9. 2024, accused no.2 was discharged.

9. To substantiate the complainant's case, the wife of the original complainant is examined as PW1. Exhibits P1 to P7 were marked. Exhibit P1 is the original cheque for Rs.10,00,000/- dated 10.05.2019. Exhibit P2 is the cheque returned memo dated 25/07/2019 marked subject to proof. Exhibit P3 is the legal notice dated 07.08.19. Exhibit P4 is the postal receipt, Exhibit P5 is the acknowledgement card, Exhibit P6 is the authorisation letter issued by the Sub Treasury Officer dated 09/01/2026, and Exhibit P7 is the statement of account of Devadasan Nair on the treasury account number 1158.

10. The learned counsel for the complainant argued that the complainant has proved the execution of Ext.P1 cheque. The accused has no dispute with respect to the signature in Ext.P1. All the legal formalities have been complied with. The issuance of Ext.P1 cheque has been proved by the oral evidence of PW1. He submitted that there is nothing to disbelieve the version of the PW1. The learned counsel argued that the presumption mandated by S.139 of N.I Act includes the existence of legally enforceable

debt or liability and that presumption is available to the complainant and that has not been successfully rebutted by the accused. The mere suggestion on behalf of the accused is not sufficient to rebut the legal presumption available to the complainant. Hence, pray for the conviction of the accused.

11. The major defence of the accused is that there was no financial transaction between the complainant and the accused. It is also contended that while Radhakrishnan was working as a peon in Campus Tutorial, he had stolen the signed cheque kept by the accused and, by making use of the said cheque, the present case was caused to be instituted.

12. The learned counsel for the accused submitted that the complainat has no sourse to advance the amount, the accused denied the transaction and the issuance of Exhibit P1 cheque. It is also submitted that the execution of the cheque as alleged in the complainant has not been admitted by the accused. Hence, there is no legal presumption available to the complainant. It is argued that Exhibit P1 cheque is not supported by consideration. In Exhibit P3 and in Exhibit D1, there are two transactions mentioned, which are contrary to the case of the complainant, and the evidence adduced by PW1 is also against the case of the complainant. It is also submitted that the complainant failed to prove the alleged transactions and issuance and execution of Exhibit P1. The learned counsel also submitted

that the accused has successfully rebutted the legal presumption. Hence, prays for the acquittal of the accused.

13. The first major argument of the learned counsel for the accused is that the complaint has no sourse of funds to advance the amount to the accused as alleged. During cross-examination, PW1 was specifically questioned regarding the financial capacity to advance the alleged amount of Rs.1000000/.In response, PW1 admitted that she had not produced any document before the court to establish their financial capacity, though she stated that she could produce such documents. Despite such admission, no document was subsequently produced to prove the financial capacity to advance the amount allegedly lent to the accused.

14. As per the dictum laid down in ***Basalingappa V Mudibasappa 2019 (2) KHC 451***, it is held that “the financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity”.

15. In this case, the complainant has failed to satisfactorily prove the sourse of funds and also his financial capacity to advance the alleged loan amount. The complainant has not adduced any cogent evidence to substantiate the financial capacity to advance Rs.1000000/- on 5.6.2016 The transaction covered under Ext.D1 correspondence to Ext.P7state of amount cannot be considered for proving the financial capacity because the complainant specifically submitted that transaction in Ext. D1 is a different

transaction. In the above circumstances, this court is of the considered view that the complainant has failed to prove financial capacity.

16. In this case, the accused has denied the transaction as well as the execution and handing over of the cheque. At this juncture, the question to be considered is whether there is any legally enforceable debt or liability and whether Ext.P1 was executed and issued towards the discharg of the legally enforceable debt or liability.

17. PW1, who is the wife of the original complainant, filed affidavit reiterating the same allegation in the complaint. PW1 specifically testified that the accused borrowed Rs.10,00,000/- on 05.06.16 from her husband and issued a postdated cheque dated 10.05.19. In cross-examination, she testified that she had no knowledge with respect to the case before 2022. She also deposed that the amount was given by cheque and the amount was encashed by the accused on 13.06.2016, 27.06.2016. PW1 also testified that the amount was demanded on 5.06.2016, the cheque was given not on that date, but after 3 years.

18. The evidence of the PW1 also runs counter to the averments in the complaint and the contentions in the Exhibit P3 notice. In the complaint and in Exhibit P3 notice, it is specifically stated that on 5.6.2016, the accused issued a postdated cheque, but in the cross-examination of PW1, categorically stated that the cheque was issued not on 5.6.2016. The same

was issued after three years. In the original complaint and in the Exhibit P3 notice, the complainant has no case that the amount was given through cheque.

19. Even during the course of arguments, the learned counsel for the complainant contended that the transaction was not a cash transaction and the amount was paid through a treasury cheque. Significantly, neither the complaint nor the statutory notice contains any averments that the amount was advanced by cheque. Even in the examination in chief, PW1 did not state that the amount was paid by cheque.No particulars regarding the alleged cheque transaction,such as the cheque number or the date on which the cheque was encashed , have been pleaded or proved. If, in fact, the transaction was a cheque transaction and not a cash transaction, the material particulars thereof ought to have been specifically pleaded and established .The version that the amount was paid through a cheque surfaced only during cross examination and appears to be a subsequent improvement .

20. ***Honourable High Court of Kerala in Joshy PG v Jose Varghese and another reported in 2019 (4)KHC753*** held that “the absence of averments in the complaint as to the details of the transactions between the complainant and the accused affects the credibility of evidence subsequently adduced by the complainant regarding any such transaction.”

21. ***The Honourble High Court of Kerala in Basheer v Usman Koya reported in 2021(2)KHC504*** held that “non production of documents to prove consideration would affect the case of the complainant.”

22. The earlier counsel of the complainant in this case was examined as DW1. Exhibit D1 was marked through DW1. Exhibit D1 is the legal notice dated 5.11.2019 issued by Adv. V. Harirajan Pillai, as per the direction of the original complainant. DW1 testified that the transactions stated in the Exhibit P3 notice and the D1 are different, and the transaction mentioned in the Exhibit D1 notice and the transaction in this case have no connection.

23. Going by Exhibit D1, it shows that the accused and his wife jointly borrowed a sum of Rs.2,00,000/- from the original complainant on 13-03-2016. Thereafter, on 27-06-2016, again borrowed an amount of Rs.8,00,000/- by cheque. Subsequently, on 29-06-2016, the accused and his wife jointly executed a share agreement in favour of the complainant in respect of the Educational institution known as Campus, which was being conducted by the accused. As per the terms of the agreement, the accused assured the complainant that a monthly profit share at the ratio of Rs.2000/- for every one lakh will be paid on or before the 15th day of every month. But no amount has been paid to the complainant towards profit share. On 31.08.19, the accused issued a cheque drawn on his account maintained at SBI Chavara branch towards discharge of the liability. The said cheque was

presented by the complainant and was dishonoured with the enforcement "insufficient funds".

24. Another circumstance that creates serious doubt regarding the complainant's case is that the advancement of 10 lakh rupees to the accused on 13.06.2016 and 27.06.16, few days after the alleged transaction in this case on 05.06.2016. No satisfactory explanation has been offered as to the necessary circumstances for advancing such a huge amount repeatedly within a short period. The evidence adduced does not inspire confidence regarding the genuineness of the alleged transaction. It is difficult to accept that a prudent person would part with another substantial amount of Rs.10,00,000/- within a few days of the earlier transaction. Particularly when no convincing evidence regarding the terms of the transaction, repayment arrangements or supporting records has been produced. The circumstances assume significance in the light of inconsistency in the evidence of PW1 and the defence materials brought on record. The improbability of the complainant's version renders the existence of the alleged legally enforceable debt highly doubtful. Exhibit P7, the statement of account of the original complainant showing the encashment of Rs.2,20,000/- on 13.06.2016 and Rs.8,00,000/- on 27.06.2016. The complainant specifically took the view that the said transactions are not connected with the present case, which is an independent transaction involved in the case.

25. Based on the above discussion and in the absence of specific averments, satisfactory evidence and supporting records regarding the alleged mode of payment, the complainant has failed to prove the advancement of the alleged loan amount on 05.06.2016.

26. Another aspect is to be considered with respect to the execution and issuance of Ext.P1. The case of the complainant is that the accused issued a post-dated cheque on 05.06.16. In the complaint, said in Ext.P3 notice, and in the proof affidavit of Pw1, it is specifically stated that the accused issued a post-dated cheque on the date of the advancement of the amount.

27. The specific defence set up by the accused is that there was no financial transaction between the complainant and the accused. According to the accused, Radhakrishnan, who was working as a peon in Campus Tutorial, had stolen the signed cheque, which was misused, and the present complaint was instituted.

28. ***In Moidu P. M. v. K. M. Abdulla 2023 KHC 807,*** **"**In Bhaskaran Nair v. Mohanan [2009 (2) KLT 897], this Court held that when execution is denied, the burden is on the complainant to prove that the instrument was duly executed by the maker. Here, even from the date of reply notice, the definite case of the revision petitioner was that he had no financial transaction at all with the complainant and the cheque relied on by him was

one of the cheques lost from his possession. Even then, the complainant did not take any steps to prove the transaction between them, by which Rs.96,000/- became due to him from the revision petitioner. The decision Bhaskaran Nair's case cited (Supra) further says that where the materials produced disclose of suspicious circumstances surrounding the transaction and if no satisfactory explanation is tendered by the holder of the instrument to that effect, no conviction is legally permissible solely banking upon the statutory presumptions. A court is expected to examine whether the transaction covered by the cheque is genuine and bona fide. Here, the 1st respondent / complainant failed to prove a genuine transaction leading to the issuance of Ext.P1 cheque."

29. The evidence of PW1 shows that she had no direct knowledge with respect to the transaction.Pw1 in cross-examination testified that the cheque was issued after 3 years, which is against the case of the complainant In this juncture it is apposite to refer to the decision rendered by the ***Honourble High Court of Kerala in Santhi C. v. Mary Sherly and Another Reported in 2011 (3) KLT 273***: It is stated that "The fact that accused has 'drawn' the cheque, as stated above can be proved by any known method recognised by law. The mere production of a cheque or marking the same as an exhibit in a case however, will not prove that that the cheque is 'drawn' by the accused. The factum of drawing or execution of cheque has to be proved

by evidence of person or persons who can vouchsafe for the truth of the facts in issue. It can be proved by direct or circumstantial evidence, which is admissible in law. Like any other document, mere production and marking of cheque may only prove that a cheque which contains an order in writing and a signature has come into existence. But, it will not further prove that it is created, drawn or executed by accused. Ordinarily, execution of a document is established by proving the handwriting and signature in the document, under S.67 of the Evidence Act. It is primarily proved by examining the person who executed or Created the document by writing and signing in the same. When such examination is not possible, execution can be proved by examining a person who saw the document being written and signed. In the absence of direct evidence relating to the writing and signature in the document, execution may be proved by examining a person who is qualified and competent to express his opinion as to the handwriting and signature, by acquaintance or otherwise." In this case, the complainant has not taken any steps to prove the execution of Ext.P1 by examining any independent witness. The evidence of PW1 is inconsistent with respect to the execution and issuance of the Ext.P1 The complainant has miserably failed to prove the execution and issuance of the cheque as alleged by the complainant.

30. The learned counsel for the complainant submitted that the signature in Ext.P1 is not disputed. No reply notice was sent by the accused.

No complaint has been preferred by the accused with respect to the loss of the cheque; hence, presumption under sections 118 and 139 of the Negotiable Instruments Act is available to the complainant. The learned counsel for the complainant specifically argued that the transaction mentioned in Exhibit D1 is different from the transaction involved in this case.

31. ***Basalingappa v. Mudibasappa 2019 (2) KHC 451*** it is held that "We having noticed the ratio laid down by this Court in above cases on S.118(a) and S.139, we now summarise the principles enumerated by this Court in following manner:(i) Once the execution of cheque is admitted S.139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.(ii) The presumption under S.139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of prepond erance of probabilities.(iii) To rebut the presumption, 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 in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. (iv) That it is not necessary for the accused to come in the witness box in support of his defence, S.139 imposed an evidentiary burden and not a persuasive burden. (v) It is not necessary for

the accused to come in the witness box to support his defence."

32. ***Yahiya P. v. State of Kerala 2024 (1) KHC 339*** it is held that "When the revision petitioner is able to pick holes in the case of the complainant even by preponderance of probabilities, and by relying on the evidence of the complainant himself, the presumption under S.118 and S.139 of the N.I Act will disappear, and then it will be the burden of the complainant to prove his case without the aid of the presumptions"

33. ***Rajaram S/o Sriramulu Naidu (since deceased) through L. Rs. v. Maruthachalam (since deceased) through L. Rs. 2023 (1) KHC 382***. It can thus be seen that this Court has held that once the execution of cheque is admitted, S.139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that the presumption under S.139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. It has further been held that to rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. It has been held that inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

34. The defense has also succeeded in bringing on record material creating a probable defense. Exhibit D1 discloses a transaction different from one projected by the complainant, and it raises serious doubts regarding the nature and origin of alleged liability. The inconsistency in the complainant's evidence, coupled with the defence materials, renders the defence version probable. On an overall appreciation of the evidence, this court is unable to hold that the complainant has satisfactorily proved the execution and issuance of Exhibit P1 cheque. On the very execution of the cheque not proved, the statutory presumption under sections 118 and 139 of the Negotiable Instruments Act does not arise for consideration. Thus, the overall probabilities of the case do not support the complainant's version. The evidence on record is insufficient to establish beyond reasonable doubt that Ext.P1 cheque was issued towards discharge of a legally enforceable debt or liability.Hence, Point No. 1 is found against the complainant.

35. **Point No.2** : Exhibit P1 cheque was dishonoured for the reason ‘insufficient fund’. Exhibit P2 is the cheque return memo which is marked subject to proof for the reason that it does not bear seal. The learned counsel for the accused vehemently argued that Exhibit P2 is not proved. It is submitted that Exhibit P2 was marked subject to proof but the complainant has not taken any steps to prove that Exhibit P2 was issued by the Bank Manager concerned. Considering the circumstances under the Exhibit P2

marked subject to proof, the complainant ought to have taken steps to prove the Exhibit P2 by examining the manager of the bank who issued Exhibit P2. At this juncture, this court takes the view that the complainant failed to prove Exhibit P2. Exhibit P3 is the copy of the lawyer's notice P4 and P5 are the postal receipt and acknowledgement card. The statutory mandates are not properly complied with, and the execution of Exhibit P1 cheque as alleged in the complainant has not been proved, and this is not supported by consideration. Which would lack the cause of action to prosecute under section 138 of the Negotiable Instrument Act. Hence I find the point is found against the complainant.

36. Point No.3 : In view of my findings on point No.1 and 2, accused is found not guilty of the offences punishable under section 138 of Negotiable Instruments Act and he is set at liberty under section 255(I) of CrPC. His bail bond stands discharged.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 5th day of June, 2026.

Sd/-

Judicial Magistrate of 1st Class, Chavara

APPENDIX

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
PW1	Rajani	Occurrence witness
PW2	Jackson C.P	Occurrence witness

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
DW1	Harirajan Pillai	Occurrence witness

C. Court Witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	NIL	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl. No.	Exhibit Number	Description
1	P1	Orginal cheque dated 10.05.2018 marked through PW1 on 09.05.2025.
2	P2	Dishonour memo dated 24.07.2019 marked through PW1 on 09.05.2025.
3	P3	Copy of advocate notice dated 07.08.2019 marked through PW1 on 09.05.2025.
4	P4	Postal receipt dated 08.08.19 marked through PW1 on 09.05.2025.
5	P5	Acknowledgement card dated 10.08.19 marked through PW1 on 09.05.2025.
6	P6	Authorization letter dated 09.01.26 marked through PW2 on 09.01.2026.
7	P7	Account statement from 01.04.2016 to 31.03.2017 marked through PW2 on 09.01.2026.

B. Defence Exhibits

Sl.No.	Exhibit Number	Description

1	D1	Advocate notice dated 05.11.19 marked through DW1 on 24.04.2026.

C. Court Exhibits

Sl.No.	Exhibit Number	Description
	NIL	

D. Material Objects

Sl.No.	Exhibit Number	Description
	NIL	

Sd/-

Judicial Magistrate of 1st Class, Chavara