IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE OF TALIPARAMBA

Present: Sri.Anuraj.M.V.,
Judicial First Class Magistrate

Dated this the 28th day of April, 2026 / 8th day of Vaisakha 1948

STC 7399/2016

Complainant	:	Azeez.C.K., S/o Savan, aged 46/16, Mendenkandi (H), P.O.Muyyam, Mundapalam, Taliparamba. (By Adv. Jojo Thomas)
Accused	:	Ganeshan (By Adv. T.P.Lakshmananl)
Offence	:	U/s. 138 of Negotiable Instrument Act
Plea	:	Not guilty
Finding	:	Guilty
Sentence/Order	:	Accused is sentenced to pay fine of Rs. 16,00,000/- (Sixteen lakh rupees only) for the offence U/s. 138 of Negotiable Instrument Act in default of payment of fine, the accused shall undergo simple imprisonment for six months. The fine so recovered shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.

Description of accused

Sl. No 1	Name 2	Father's Name 3	Residence 4	Occupation 5	Age 6
1	Ganeshan	Karunakaran Nambiar	Taliyil veedu, P.O.Kankol, Tattarna	---------	47/26

Date of :-

Occurrence	Complaint	Apprehension of appearance	Released on bail	Commencement of trial	Close of trial	Sentence /Order	Explanation of delay
28-05-16	08-06-16	31-01-26	31-01-26	27-02-26	25-04-26	28-04-26	

JUDGMENT

The complainant has filed a complaint against the accused u/s.190 (1) (a) of the Code of Criminal Procedure and Section 142 of the Negotiable Instruments Act, alleging the commission of an offence punishable u/s.138 of the Negotiable Instruments Act.

2. The case of the complainant, in brief, is as follows: The complainant is a businessman engaged in the timber business in partnership. The accused is also a businessman conducting a similar line of business in a proprietary capacity. The complainant and the accused have been known to each other for a considerable period.

3. It is the case of the complainant that, when the accused was in urgent need of money, he approached the complainant and requested a sum of ₹8,00,000/-. The complainant agreed to advance the said amount, and accordingly, on 18.01.2016, the accused borrowed ₹8,00,000/- from the complainant, undertaking to repay the same within one month.

4. Thereafter, towards discharge of the said legally enforceable debt, the accused issued a cheque dated 23.02.2016 bearing No. 108518, drawn on his account maintained with ICICI Bank, Payyannur Branch.

5. When the said cheque was presented for encashment through the comp lainant's banker, namely, Kannur District Co-operative Bank Ltd., Taliparamba Branch, the same was dishonoured for the reason "funds insufficient." Thereafter, the complainant caused to issue a statutory notice dated 05.05.2016 under clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, informing the accused about the dishonour of the cheque and calling upon him to pay the cheque amount within 15 days from the date of receipt of the notice.

6. The said notice was returned unclaimed, and the complainant received the returned cover on 13.05.2016. Despite the issuance of the statutory notice, the accused failed to repay the amount within the stipulated time.

7. Hence, according to the complainant, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

8. When the accused appeared before the Court, copies of relevant records were served on him. The accused has been released on bail. A counsel of his own choice represents the accused. The particulars of the offence were read over and explained to the accused, who pleaded not guilty. Afterwards, PW1 witness was examined, and Exts.P1 to P5 documents were marked on the complainant's side. After closing the complainant's evidence, the accused was examined u/s.313 (1) (b) of the Code of Criminal Procedure. The accused denied all the incriminating circumstances brought against him in the evidence adduced by the complainant. No evidence was adduced on the side of the defence.

9. Based on the evidence mentioned above on record and hearing both sides, the following points were raised for consideration: -

(i) Does the complainant comply with all legal formalities before filing the complaint under section 138 of the Negotiable Instruments Act?

(ii) Was the Ext.P1 cheque executed and issued by the accused as contended?

(iii) Has the accused committed the offence punishable u/s.138 of the Negotiable Instruments Act?

(iv) What is the proper order of the sentence, if any?

10. **Point No.1**: The case of the complainant is that both the complainant and the accused are known to each other and are engaged in the same line of business, namely timber trade. On the basis of their prior acquaintance, the accused borrowed a sum of ₹8,00,000/- from the complainant on 18.01.2016, undertaking to repay the same within one month. Towards discharge of the said legally enforceable debt, the accused issued a cheque in favour of the complainant.

11. The learned counsel for the complainant contended that all statutory requirements contemplated under Section 138 of the Negotiable Instruments Act have been duly complied with. It is submitted that the accused issued Ext.P1 cheque towards discharge of a legally enforceable debt. When the cheque was presented through the complainant's banker, it was dishonoured for the reason "funds insufficient," as evidenced by Ext.P2 cheque return memo dated 08.04.2016. Thereafter, the complainant issued a statutory notice dated 05.05.2016 under clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the notice.

12. It is further contended that the said notice was deliberately left unclaimed by the accused, and the returned cover was received by the complainant on 13.05.2016.

13. Emphasizing the above aspects, the learned counsel for the complainant argued that the complainant has strictly complied with all mandatory statutory requirements, and that the complaint has been filed within the prescribed limitation period. Hence, it is contended that the offence under Section 138 of the Negotiable Instruments Act is clearly made out.

14. Per contra, the learned counsel for the accused contended that the complainant has not complied with the statutory formalities required under law. However, no substantial or specific defence has been advanced to rebut the case of the complainant. It is trite law that issuance of a written demand notice under clause (b) of the proviso to Section 138 of the Negotiable Instruments Act is a condition precedent for maintaining a complaint under the said provision.

15. In the present case, it is not in dispute that the notice sent by the complainant was returned with the endorsement “unclaimed.”

16. On perusal of the reverse side of the returned postal cover, it is evident that intimation was given to the accused by the postal authorities on 06.05.2016 and 07.05.2016. Therefore, the question that arises for consideration is whether there is valid service of notice as contemplated under clause (b) of the proviso to Section 138 of the Negotiable Instruments Act.

17. In this context, reference may be made to Section 27 of the General Clauses Act, which embodies the principle of deemed service.

When a notice is properly addressed, prepaid, and sent by registered post, a presumption of due service arises, unless the contrary is proved. In cases where the notice is returned as "unclaimed," courts have consistently held that such endorsement amounts to deemed service of notice.

18. The Honourable High Court also considered and interpreted the provisions u/s. 27 of General Clauses Act. Section 27 of General Clauses Act 1897 reads as follows:- **Meaning of service by post. Where any Central Act or Regulation made after the commencement of this act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.**

19. It is also imperative to note that section 138(e) deals with giving a notice in writing. So, the complainant must give a notice regarding the factum of dishonour of the cheque. In **C.C.Alavi Haji vs Palapetty Muhammed and another 2007(6) SCC 555)** the Honourable Apex court considered the same point and it has been held that **the context envisaged in section 138 of the Act invites a liberal**

interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provisions is made by the legislature. The word in Clause (b) of the proviso to section 138 of the Act shows that the payee has the statutory obligation to make a demand by giving notice. The thrust in the clause is on the need to make a demand. It is only the mode for making such demands that the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched, his part is over, and the next depends on what the sendee does.

20. In **Cherian Kurian.K. cs P.K.Radhakrishnan and another (2018(2) KHC 689)** it has been held by the Honourable High court that **so long as the complainant can prove that he had sent a notice in the correct address of the accused and the return of such registered article with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station" or "unclaimed" will give rise to the position that it will only have to be treated as due service of notice.** In **Abdul Hameed.M.K. vs State of Kerala and another (2020(1) KHC 835)** the Honourable High court has considered the issue regarding the return of notice it has been held that **in view of the presumption under section 27 of the General Clauses Act, when it is stated in the complaint that notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that inspite of the return of the notice**

unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the addressee proves the contrary, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. When the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of the proviso to section 138 of the Act stands complied with.

21. In the present case, the address of the accused shown in the postal cover is identical to the address furnished in the complaint. There is no discrepancy between the two. It is also pertinent to note that summons issued by this Court to the very same address initially remained unserved, and thereafter, the process was effected by affixture through the Sub Inspector of Peringome Police Station at that address. Subsequently, the case was transferred to the long pending register, and the accused has now entered appearance before this Court and was released on bail.

22. Significantly, the learned counsel for the accused has no case that the address shown in the statutory notice or in the complaint is incorrect or does not belong to the accused. In such circumstances, it can safely be concluded that the complainant had issued the statutory notice to the correct address of the accused.

23. In this context, it is the duty of the complainant to establish that the notice was sent to the correct address. Once it is shown that the

notice was properly addressed, prepaid, and dispatched, the presumption under Section 27 of the General Clauses Act would operate. In cases where the notice is returned as "unclaimed," the law is well settled that such endorsement amounts to deemed service.

24. Therefore, in the absence of any rebuttal from the side of the accused, this Court is of the considered view that the complainant has duly complied with all the mandatory statutory requirements prior to instituting the complaint.

25. Accordingly, this point is found in favour of the complainant.

26. **Point no. 2**:- In order to prove the case, the complainant examined himself as PW1 and marked Exts.P1 to P5. The nature and contents of these documents have already been discussed in the preceding paragraphs. The consistent case of the complainant is that he is engaged in timber business and that the accused, who is also engaged in a similar line of business, was well known to him for a considerable period. On the strength of such prior acquaintance, the accused borrowed a sum of ₹8,00,000/- on 18.01.2016, undertaking to repay the same within a period of one month. According to the complainant, towards discharge of the said legally enforceable debt, the accused executed Ext.P1 cheque in his favour.

27. The learned counsel for the complainant contended that the due execution of Ext.P1 cheque has been clearly established through the

cogent and reliable testimony of PW1, and that the cheque was issued in discharge of a legally enforceable liability.

28. Per contra, the learned counsel for the accused contended that the complaint is not maintainable and that Ext.P1 cheque was not issued in discharge of any legally enforceable debt. It is submitted that the cheque was issued as a security in connection with certain prior business transactions between the parties, and that the same has been misused by the complainant. However, during the course of arguments, it was fairly conceded that the accused and the complainant had prior acquaintance and business dealings.

29. Significantly, the accused has no case that the signature appearing on Ext.P1 cheque does not belong to him. On the contrary, the signature has been admitted. In such circumstances, the core question that arises for consideration is whether the admitted signature on the cheque would give rise to a presumption of due execution and liability.

30. The law on this aspect is well settled. The Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar*** **(2019 (1) KHC 774) and** ***Kalamani Tex v. P. Balasubramanian*** **(2021 (2) KHC 517)** has categorically held that once the signature on the cheque is admitted, the presumption under Sections 118 and 139 of the Negotiable Instruments Act comes into play, and the Court is bound to presume that the cheque was issued in discharge of a legally enforceable debt or liability, unless the contrary is proved.

In the present case, in view of the categorical admission of the signature by the accused, the presumption as contemplated under law squarely operates in favour of the complainant.

31. It is true that when execution of a cheque is specifically denied, the complainant has to prove the same by adducing convincing evidence. However, in the present case, there is no such denial. On the other hand, the evidence of PW1 regarding the transaction and execution of the cheque remains consistent and unshaken.

32. In ***Jyothi Prasad Batt v. K. Sundara Rajan*** **(2013 (3) KHC 141) and** ***Seenath v. T. Jaison*** **(2011 (4) KHC 820),** it has been held that once the evidence of the complainant is found to be credible and trustworthy, the Court can accept the same even in the absence of independent corroboration. A mere suggestion or bald denial by the accused is not sufficient to discredit the complainant's version.

33. In the case on hand, the testimony of PW1 inspires confidence and there is nothing on record to disbelieve his version regarding the execution of the cheque. The statement of the accused under Section 313 also does not contain any specific denial regarding the signature in Ext.P1.

34. Further, in ***Murugan v. Bojan*** **(2018 KHC 3601),** it has been held that once a cheque is signed and issued in favour of the holder, a statutory presumption arises that it has been issued in discharge of a legally enforceable liability.

35. In ***Basalingappa v. Mudibasappa*** **(2019 (2) KHC 451)**, it has been reiterated that once execution is admitted, the burden shifts upon the accused to rebut the presumption by adducing probable evidence.

36. In the present case, the accused has failed to discharge this burden. The plea that the cheque was issued as security remains a mere suggestion, unsupported by any evidence. No material has been placed on record to probabilise the defence version.

37. In the light of the above discussion, and applying the principles laid down in the decisions cited supra, this Court is of the considered view that the complainant has successfully established that Ext.P1 cheque was executed by the accused and that the same was issued in discharge of a legally enforceable debt.

38. Accordingly, this point is answered in favour of the complainant.

39. **Point no. 3: .** It is a settled position of law that once the complainant discharges the initial burden of proving the execution of the cheque, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act arise in his favour. Thereafter, the burden shifts to the accused to rebut the said presumptions. The standard of proof required for such rebuttal is not proof beyond reasonable doubt, but only that of preponderance of probabilities. It is equally well settled that, for the purpose of rebuttal, the accused is not bound to adduce direct or positive evidence and may rely upon the materials brought out in the

cross-examination of the complainant or the inherent improbabilities in the prosecution case.

40. In the present case, as already found, the execution of Ext.P1 cheque stands proved, especially in view of the admitted signature of the accused. The question that arises for consideration is whether the accused has succeeded in rebutting the statutory presumptions operating against him.

41. A careful scrutiny of the cross-examination of PW1 would reveal that there is no serious challenge with respect to the financial capacity of the complainant to advance the amount. The accused has not disputed that the complainant was in a position to lend ₹8,00,000/-. The only defence suggested is that the cheque was issued in connection with certain business transactions as a security and that the same has been misused by the complainant.

42. Even if such a defence is taken at face value, the conduct of the accused assumes significance. According to the complainant, the cheque was issued in the year 2016. Despite having knowledge of the alleged misuse of the cheque and the pendency of the proceedings, the accused has not taken any steps to initiate action against the complainant. No complaint has been lodged, nor has any legal proceedings been initiated alleging misuse of the cheque. The silence on the part of the accused for a considerable period remains unexplained.

43. If the accused had a genuine case that the cheque was not issued in discharge of a legally enforceable debt, but was misused, it was incumbent upon him to take appropriate steps at the earliest point of time. The failure to do so casts serious doubt on the defence set up by him.

44. It is true that certain suggestions have been put to PW1 in cross-examination regarding misuse of the cheque. However, such bald suggestions, in the absence of any supporting material, are wholly insufficient to rebut the statutory presumption. The evidence of PW1 regarding the transaction and execution of the cheque remains consistent and unshaken.

45. In ***Hiten P. Dalal v. Bratindranath Banerjee*** **(AIR 2001 SC 3817)**, the Hon'ble Supreme Court has held that the presumption under the Negotiable Instruments Act is a mandatory presumption, and the burden on the accused is not discharged by a mere plausible explanation; the explanation must be supported by cogent evidence and must be acceptable to the Court.

46. In the case on hand, the accused has failed to establish a probable defence so as to rebut the presumption arising in favour of the complainant. The plea that the cheque was issued as security remains unsubstantiated. No material has been placed on record to probabilise the said defence or to create a dent in the case of the complainant.

47. In the light of the above discussion, this Court finds that the complainant has successfully proved that Ext.P1 cheque was issued by the

accused in discharge of a legally enforceable debt, and that the accused has failed to rebut the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act.

48. Accordingly, this point is answered in favour of the complainant.

49. **Point no. 4:** In view of the discussions on point no. (i) to (iii), the accused is found guilty of an offence punishable under section 138 of the Negotiable Instrument Act, and he is convicted u/s. 255(2) Cr.PC for the offence punishable under section 138 of the Negotiable Instrument Act. Considering the nature of the offence and the law on the point, this court is of the view that this is not a fit case to invoke any of the benevolent provisions of the Probation of Offenders Act. So, the accused is liable to be punished.

50. The Honourable apex court in the case of **Vijayan v. Baby reported in 2011 (4) KHC 276 held as follows: 'The Courts 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. Direction to pay compensation by way of restitution regarding the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest**

thereon at a reasonable rate.' This was again reiterated by the Honourable High Court of Kerala in the case of Jacob K. M. v. State of Kerala and Another report in 2020 (1) KHC 291 decided that 'In the instant case, the cheque is dated 05/04/2010. More than nine years is now over. Interest at the rate of 9% on the cheque amount of Rs.5,00,000/-, for a period of nine years, would come to Rs.4,05,000/-. Then the total amount would come to Rs.9,05,000/-. However, taking a lenient view, I find that it is proper to set aside the substantive sentence of imprisonment imposed on the petitioner by the courts below and to impose a sentence of fine of Rs.7,50,000/- on him and award that amount as compensation to the complainant. Here, the cheque amount is Rs. 8,00,000/- and the interest on that amount at the rate of 9 percent from the date of cheque till today would come to Rs. 7,33,413/-. The complainant also might have incurred expenses for conducting this case through counsel. Hence, accused is sentenced to pay fine of Rs. 16,00,000/- (Sixteen lakh rupees only) for the offence U/s. 138 of Negotiable Instrument Act in default of payment of fine, the accused shall undergo simple imprisonment for six months. The fine so recovered shall be paid to the complainant as compensation U/s. 357(1) Cr.PC.

(Dictated to the confidential assistant, transcribed and typed by her corrected and pronounced by me in open court, on this, the 28th day of April 2026).

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE,
TALIPARAMBA

APPENDIX

Witnesses examined for prosecution:

PW1 : Azeez.C.K.

Exhibits marked for prosecution:-

Ext.P1 : Cheque dated 23.02.2016

Ext.P2 : Cheque return memo dated 08.04.2016

Ext.P3 : Copy of lawyer notice dated 05.05.2016

Ext.P4 : Postal receipt dated 05.05.2016

Ext.P5 : Unclaimed returned notice dated 13.05.2016

Witnesses examined for defence:-

Nil

Exhibits marked for defence:-

Nil

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE,
TALIPARAMABA

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