

<b>IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE KUTHUPARAMBA</b>	
Present:- Sri Pradheep K U Judicial First Class Magistrate, Kuthuparamba	
Dated this the 16 <sup>th</sup> day of March, 2026 ( 21 <sup>st</sup> day of Phalguna, 1947 S.E)	
<b><u>STC 460/2021</u></b>	
Complainant	: R P Prakash, S/o Achuthan, Aged 66/21, R P House, Kandamkunnu Amsom, Neerveli Desom, (PO) Neerveli, Kannur.  (By Adv. C C Sunilkumar)
Accused	: Saji P K, S/o Souda, Aged 45/21, Ruby House, Palapparamba, Thokkilangadi, (PO) Nirmalagiri, Kannur.  (By Adv. Binny M )
Offence	: U/s. 138 of the Negotiable Instruments Act
Pleading	: Not Guilty
Finding	: Guilty
Sentence or Order	: The accused is found guilty U/s. 255(2) Cr.PC for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881. The accused is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 1,40,500/- (Rupees One Lakh Forty Thousand and Five Hundred only), and in case of default of payment of fine, to undergo simple imprisonment for a period of three months for the offence U/s. 138 of the Negotiable Instruments Act, 1881. The fine amount, if realised, shall be paid to Complainant/PW1 as compensation U/s. 357(1) (b) of Cr.PC.

DESCRIPTION OF ACCUSED

Sl. No	Name	Father's Name	Occupation	Residence	Age
1.	Saji P K	Souda	Nil	Thokkilangadi	45/19

RELEVANT DATES

Occurrence	Complaint	Apprehension	Released on bail	Commencement of trial	Close of trial	Sentence or order
14-09-21	12-10-21	08-12-22	08-12-22	24-06-23	10-03-26	16-03-26

This case was finally heard on 10-03-2026, stood over for consideration to this day, and this court delivered the following:

J U D G M E N T

This case is instituted based on the complaint filed by the complainant alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act against the accused.

2. **The complainant's case, in brief, is as follows:-** The complainant and the accused are known to each other. The complainant is a retired teacher. In July 2021, the accused approached the complainant and requested financial assistance of Rs. 1,00,000/- for the purpose of the higher education of his daughter. It was agreed that the amount would be repaid within two months. Accordingly, on 14.07.2021, the complainant lent an amount of Rs. 1,00,000/- to the accused. The accused received the said amount from the house of the complainant. However, the accused did not repay the amount within the promised time. On 14.09.2021, when the complainant demanded repayment, the accused, instead of making payment, issued a cheque for Rs. 1,00,000/- drawn on his account maintained with the State Bank of India, Kuthuparamba Branch, bearing cheque No. 342436 dated

14.09.2021, and handed it over to the complainant, assuring that the same would be honoured on presentation. However, when the said cheque was presented for collection through the complainant's bank, it was returned unpaid with the endorsement "Funds Insufficient". Thereafter, the complainant caused a registered lawyer notice to be issued to the accused demanding payment of the cheque amount. Though the accused received the said notice, he neither sent any reply nor paid the amount covered by the cheque. Hence, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. This case was duly registered on the file of this court, and a summons was issued to the accused. In response thereto, the accused entered appearance before this court and was enlarged on bail. He was represented by a counsel of his own choice. He was served with a copy of the complaint.

4. Thereafter, upon hearing both sides and on perusal of the materials available on record, the learned predecessor in office read over and explained to the accused, in Malayalam, the particulars of the offence punishable under Section 138 of the Negotiable Instruments Act. The accused pleaded not guilty and claimed to be tried. Accordingly, the case was posted for the complainant's evidence.

5. On the side of the complainant, the complainant himself was examined as PW1 and Exhibits P1 to P5 were marked in evidence. Upon closure of the complainant's evidence, the accused was examined under Section 313(1)(b) of the Code of Criminal Procedure. The accused denied all the incriminating circumstances appearing in the evidence when the same were put to his notice. Thereafter, the accused was called upon to enter upon his defence and to adduce evidence, if any. Though the defence side had initially filed a witness list, the learned defence counsel later filed a memo giving up the examination of defence

witnesses. In fact, no oral or documentary evidence was adduced on the side of the defence.

6. Heard both sides and perused the records.
7. The following points arise for consideration in this case:
  1. Has the complainant complied with the mandatory statutory formalities before filing the complaint?
  2. Whether Ext. P1 cheque was issued by the accused in discharge of a legally enforceable debt or liability?
  3. Whether the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, as alleged?
  4. If so, what sentence or order is to be passed?

8. **Point No. 1:** The complainant was examined as PW1. He filed an affidavit in lieu of examination-in-chief, reiterating his case. The procedural formalities for filing this complaint are to be reckoned from the date of Ext.P1 cheque, which is dated 14-09-2021. The cheque was presented for payment on the same day and was returned unpaid as per Ext.P2 Cheque return memo dated 14-09-2021, issued by SBI, Kuthuparamba Branch. The complainant thereafter issued Ext.P3, a lawyer's notice dated 17-09-2021, demanding payment of the cheque amount. Ext.P4 is the postal receipt, and Ext.P5 is the postal acknowledgement card. It is evident that the statutory notice was served on the accused on 23-09-2021. This complaint was filed before the court on 12-10-2021. No challenge was made during the trial disputing the procedural compliance. It is apparent that the complainant has complied with all procedural requirements before filing the complaint and that it was filed within the time limit as per the law. Thus, this point is answered in favour of the complainant.

9. **Point Nos. 2 and 3:-** The learned counsel for the complainant argued

that the complainant has reiterated the entire version in his affidavit in lieu of examination-in-chief. Though the learned defence counsel has subjected PW1 to a detailed and lengthy cross-examination, nothing has been brought out to discredit the version of the complainant. It is submitted that the evidence of PW1 clearly establishes that the accused issued the cheque in discharge of a legally enforceable debt or liability and that the cheque was dishonoured on presentation. Despite receipt of the statutory demand notice, the accused failed to pay the cheque amount. Hence, according to the learned counsel for the complainant, all the ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act are proved. It is further contended that statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the complainant, and the accused has failed to rebut the same. Therefore, the learned counsel for the complainant prayed for the conviction of the accused.

10. On the other hand, the learned defence counsel argued that the transaction alleged by the complainant is an unlawful money-lending transaction. It is contended that the amount mentioned in Exhibit P1 cheque is not due for payment. According to the defence, the transaction between the parties was only for an amount of Rs. 50,000/- and the same was already repaid by paying Rs. 60,000/-, including interest. It is further contended that during the course of an earlier financial transaction, a cheque was obtained by the complainant, and the said cheque has been misused to file the present complaint. It is also pointed out that there is a correction appearing on the cheque, which creates a serious doubt regarding the genuineness of the cheque. According to the learned defence counsel, the statutory presumption has been successfully rebutted through the cross-examination of PW1, and once the presumption stands rebutted, the burden

shifts to the complainant to prove the transaction independently. It is further contended that illegal money lending transactions cannot be encouraged by courts of law. On these grounds, the learned defence counsel prayed for acquitting the accused. The learned defence counsel has also filed written argument notes reiterating the above contentions and has relied upon certain decisions of the Hon'ble Apex Court regarding rebuttal of statutory presumptions.

11. The specific case of the complainant is that the accused, who was well known to him, approached him seeking financial assistance of Rs. 1,00,000/- for meeting the higher educational expenses of his daughter. It was agreed that the said amount would be repaid within two months. Acting upon the said request, the complainant lent an amount of Rs. 1,00,000/- to the accused. In discharge of the said liability, the accused issued Exhibit P1 cheque, which on presentation was dishonoured for insufficiency of funds. Thereafter, the complainant issued a statutory notice demanding payment, but the accused failed to pay the amount covered by the cheque.

12. The complainant has reiterated the entire version in the affidavit filed in lieu of examination-in-chief. He has narrated the entire transaction in detail. Regarding the source of funds, the complainant has stated that he is a retired teacher receiving a pension and that he is also earning income from agricultural activities. According to him, he had sufficient funds with him, and out of such funds, he lent the amount to the accused, considering the request made for meeting the higher educational requirements of the daughter of the accused.

13. This court has carefully gone through the cross-examination of PW1 conducted by the learned defence counsel. PW1 has consistently maintained his version regarding the lending of Rs. 1,00,000/- to the accused. During cross-examination, he was questioned about his financial capacity, and he reiterated that

he had sufficient funds and capacity to lend the said amount. There are no materials on record to disbelieve the version of PW1 regarding his financial capacity to lend Rs. 1,00,000/-.

14. The specific defence raised is that the accused had earlier borrowed only Rs. 50,000/- from the complainant. If that be so, the defence itself admits the lending capacity of the complainant at least to the extent of Rs. 50,000/-. Once such lending capacity is admitted, the contention that the complainant had no capacity to lend Rs. 1,00,000/- cannot be accepted, as there is no significant difference in these amounts. Thus, the said defence contention does not merit consideration.

15. The main defence contention is that only Rs. 50,000/- was borrowed, and the said amount was already repaid by paying Rs. 60,000/-, including interest, and that at the time of the earlier transaction, a blank cheque was obtained by the complainant, which has now been misused to file this complaint. If that were the case of the accused, it was incumbent upon him to establish the said defence by adducing evidence or by bringing on record materials sufficient to create a probable defence on the standard of preponderance of probabilities.

16. It is pertinent to note that the accused has received Ext. P3 lawyer notice issued by PW1, as evident from Ext. P5 AD Card. However, did not send any reply to the statutory notice disputing the claim of the complainant. Further, the accused has not, at least, entered the witness box to depose in support of his defence. Moreover, if the accused had a definite case that the cheque was misused by the complainant by inserting false particulars, he could have initiated appropriate legal proceedings against the complainant for such misuse, including forgery. However, no such steps have been taken by the accused to date. These are the normal reactions expected from an ordinary, prudent person if such a situation

had actually occurred. In the absence of any such steps or supporting materials, this Court finds no merit in the defence contention that the cheque was misused from an earlier transaction. Hence, the said contention is liable to be rejected.

17. Another circumstance pointed out by the learned defence counsel is the presence of a minor correction in Exhibit P1 cheque. The said correction has been satisfactorily explained by PW1 during cross-examination. Moreover, the correction is seen as authenticated by the drawer of the cheque. Therefore, this Court does not find any discrepancy or suspicious circumstance arising out of the said correction so as to disbelieve the case of the complainant.

18. One of the important aspects to be noted in this case is that the accused has not disputed his signature on Ext.P1 cheque. No suggestion was made during the trial that the signature appearing on the cheque does not belong to him. When the signature on the cheque is admitted, the execution of the cheque also stands admitted. In such circumstances, the statutory presumptions under the Negotiable Instruments Act would arise in favour of the complainant. On a careful consideration of the examination-in-chief and cross-examination of PW1, this Court finds that the testimony of PW1 is cogent, consistent and inspires confidence. The defence has not succeeded in discrediting his testimony. Further, the defence has also failed to rebut the statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act.

19. One of the contentions raised by the accused during the trial is that what was actually handed over to the complainant was only a blank cheque. However, the legal position on this issue is well settled. Even if a blank cheque is issued as security, the holder of that cheque is legally entitled to fill up the cheque for the amount of liability and present it for encashment. When a person voluntarily issues a signed blank cheque to another, it carries with it the implied

authority for the holder to complete the cheque at the appropriate stage with the necessary particulars regarding the liability and to present it before the bank. If such a cheque is dishonoured, the drawer cannot escape from liability merely on the ground that it was originally issued as a blank cheque. Reliance is placed on ***Moideen Vs. Johny 2006 KHC 1055 and Sree Gokulam Chit and Finance Co. (P) Ltd. Vs. P.R. Balakrishnan, 2024 KHC 7129***, which affirms this principle.

20. The complainant has established the factual basis for raising the presumptions under S.118(a) and S.139 of the Negotiable Instruments Act, 1881. Therefore, it is obligatory for the court to raise the presumption under S.139 of the Negotiable Instruments Act, 1881. It is a presumption of law that the holder of the cheque received the cheque for the discharge of a debt or liability.

21. In ***Maruti Udyog Ltd. V. Narender and others (1999) 1 SCC 113***, the Apex Court held that in view of the express provision of S.139 of NI Act, 1881, a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in S.138, for the discharge of any debt or other liability unless the contrary is proved that there was no legally enforceable debt or liability.

22. In ***Hiten P.Dalal v. Bratindranath Banerjee (2001) 6 SCC 16***, the Apex Court held that both S.138 and S.139 of the NI Act, 1881 require that the Court shall presume the liability of the drawer of the cheque for the amounts for which the cheques are drawn.

23. In ***Kalamani Tex and Anr Vs Balasubramanian P 2021 (2) KHC 517***, it is observed by the Honourable Supreme Court that the statute mandates that once the signature of an accused on the cheque/ negotiable instrument is established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him.

24. In ***Bir Singh Vs. Mukesh Kumar 2019 (4) SCC 197***, the Apex Court held that a meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduced evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. It was further held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption U/s. 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

25. The Hon'ble High Court of Kerala in ***Parameswaran v. Smitha Suresh, 2024(6) KHC 27***, held that section 139 of the NI Act, 1881, puts the burden on the accused to prove his defence. The accused has to prove his defence on the balance of probabilities and not beyond a reasonable doubt, and he can prove his defence by drawing inferences from the materials already on record, including the complainant's evidence, and also from the circumstances of the case, and also by leading his own evidence. The accused must meet the standard of preponderance of probabilities, similar to a defendant in a civil proceeding and accused has the option to ask the court to consider the non - existence of debt / liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. But the mere denial by the accused is not enough, and the accused has to prove by cogent evidence that there was no debt or liability.

26. The Court is not expected to rely upon mere suggestions made during trial which are not substantiated by evidence. The defence case, as presented, does

not disclose any probability that outweighs the case of the complainant. On the contrary, the complainant's version has remained consistent and firm throughout the trial and has, in fact, proved the guilt of the accused beyond reasonable doubts. The complainant has clearly established the existence of a legally enforceable debt and that the cheque in question was issued in discharge of the same. In the absence of any cogent or credible evidence to show that the cheque was not issued towards an existing liability, this Court holds that the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act stand unrebutted. Consequently, this Court concludes that the complainant has successfully proved that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. These points are, therefore, answered in favour of the complainant.

27. **Point No. 4:** In light of the discussions in Points Nos. 1 to 3, this Court finds that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, the accused is convicted of the said offence.

28. Having considered the facts and circumstances of the case, this Court does not find it expedient to invoke the benevolent provisions of the Probation of Offenders Act, 1958, in favour of the accused.

29. Considering the nature of the offence proved against the accused, this Court is of the view that imposition of a severe sentence of imprisonment is not warranted. However, adequate compensation must be ensured to the complainant. The Hon'ble Supreme Court in *Damodar S. Prabhu v. Sayed Babalal H. AIR 2019 SC 1907* has held that in cases of dishonour of cheques, the compensatory aspect of the remedy should be given priority over the punitive aspect.

30. In *Vijayan V Baby 2011(4) KHC 276* it is held that 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. The Hon'ble Supreme Court in *Kalamani Tex & Another v. P. Balasubramanian (supra)* has also observed that courts may uniformly levy a fine considering interest at the rate of 9% per annum.

31. The present case has been pending since 2021, and the transaction itself dates back to 2021. Thus, the amount borrowed has remained in the hands of the accused for nearly 4 ½ years. The complainant has also incurred costs in connection with this prosecution. Therefore, compensation is to be computed by considering the opportunity cost, equivalent to reasonable interest on the cheque amount.

32. Taking into account the facts and circumstances, this Court is of the view that a sentence of simple imprisonment for one month, coupled with a fine equal to the cheque amount, along with interest at the rate of 9% per annum for a period of 4 ½ years, would meet the ends of justice.

In the result,

- 1). The accused is found guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and he is convicted under Section 255(2) of the Code of Criminal Procedure, 1973.
- 2). The accused is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 1,40,500/- (Rupees One Lakh Forty

Thousand and Five Hundred only) under Section 138 of the Negotiable Instruments Act, 1881.

- 3). In default of payment of the fine, the accused shall undergo simple imprisonment for a further period of three months.
- 4). The fine amount, if realised, shall be paid to the Complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure, 1973.

(Dictated using Adalat AI dictation software, corrected and pronounced by me in open court, this the 16<sup>th</sup> day of March, 2026).

Sd/-  
Judicial First Class Magistrate  
Kuthuparamba

## **APPENDIX**

### **WITNESS EXAMINED FOR THE COMPLAINANT**

<b>Prosecution Witness No.</b>	<b>Name of Witness</b>	<b>Description</b>
PW1	R P Prakash	Complainant

### **EXHIBITS MARKED FOR THE COMPLAINANT**

<b>Exhibit No.</b>	<b>Description of the Exhibit</b>	<b>Proved by/ Attested by</b>
Ext.P1	Cheque dated 14-09-2021	PW1
Ext.P2	Cheque Return Memo dated 14-09-2021	PW1

Ext.P3	Copy of Lawyer Notice dated 17-09-2021	PW1
Ext.P4	Postal Receipt dated 17-09-2021	PW1
Ext.P5	Postal AD Card dated 23-09-2021	PW1

**WITNESS EXAMINED FOR THE DEFENCE**

Nil

**EXHIBITS MARKED FOR THE DEFENCE**

Nil

//True Copy//

Sd/-  
Judicial First Class Magistrate  
Kuthuparamba

Judicial First Class Magistrate  
Kuthuparamba