

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
MATTANNUR

Present:- Smt.Shahina.N.V,
Judicial First Class Magistrate

Dated this the 17th day of March 2026 / 26th day of Phalguna 1947

STC.No.298/2020

- Complainant : Niravath Jubily Chits India Pvt.Ltd,
Main Branch, 2nd Floor, Thulasi Malabar
Paradise, New bus stand, Iritty. Represented by
its Power of Attorney Holder Sibi.M.G.
Within the limits of Iritty Police station
(Represented by Adv.Joshy Jose)
- V.
- Accused : K.P.Chandrappan, S/o.Prabhakaran, Kuttungal
House, Mavullakari, Perumparamba, P.O.Iritty,
Kannur. Within the limits of Iritty Police station
(Represented by Adv.T.A.Justine)
- Offence : Under Section 138 of Negotiable Instruments
Act.
- Pleading : Not guilty
- Finding : Guilty
- Sentence or Order : Accused is convicted under Section 255(2) of
the Code of Criminal Procedure for the offence
punishable under Section 138 of the Negotiable
Instruments Act, 1881, and is sentenced to
undergo simple imprisonment till the rising of
the court and to pay a fine of ₹1,01,189/-

(Rupees one lakh one thousand one hundred and eighty-nine only). In default of payment of the fine, the accused shall undergo simple imprisonment for a period of three months. If the fine amount is paid or realised, the same shall be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure.

Description of accused.					
Sl. No.	Name	Fathers name	Occupation	Residence	Age
1.	Chandrappan.K. P	Prabhakaran	- -	Payam	63/22

Date of:

1.	Offence	:	28-01-2020
2.	Complaint	:	27-02-2020
3.	Apprehension	:	- -
4.	Release on bail	:	24-09-2022
5.	Commitment	:	- -
6.	Commencement of trial	:	19-12-2022
7.	Commencement of evidence	:	05-08-2024
8.	Close of trial	:	17-03-2026
9.	Sentence or order	:	17-03-2026
10.	Service of copy of judgment or finding on accused	:	- -
11.	Explanation of delay	:	No delay
12.	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.PC.	:	- -

This case having been finally heard on this the 17th day of March 2026 the court on the same day delivered the following.

J U D G M E N T

1. This is a case instituted on a complaint under Section 190(1)(a) of the Code of Criminal Procedure, 1973, read with Section 142 of the Negotiable Instruments Act, 1881, alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The averments in the complaint, in brief, are as follows:- The complainant is a private limited company engaged in conducting chitties. The accused stood as guarantor for one Mr.Sanoop.K, who was the prized subscriber in respect of Chit No.70/16 with Chittal No.6, having a sala value of ₹10,00,000/-, conducted by the complainant company. The said Sanoop K. bid the chitty and received the prize amount of ₹6,00,000/- (Rupees six lakhs only) from the complainant's branch on 30-07-2016. At that time, both the said Sanoop K. and the accused, as guarantor, undertook to repay the said amount to the complainant. However, they defaulted in repayment of the chitty amount. Subsequently, the accused approached the complainant for discharge of the liability due under instalments Nos. 37 to 42 and, in that regard, executed and issued a cheque bearing No.909052 dated 07-12-2019, drawn on Kannur District Co-operative Bank, Iritty Evening Branch, for an amount of ₹1,01,189/- (Rupees one lakh one thousand one hundred and eighty-nine

only), from the account maintained by the accused. At the time of execution of the cheque, the accused instructed the complainant to present the same for encashment on or after 07-12-2019.

3. The said cheque was presented for collection through Punjab National Bank, Iritty Branch, but the same was returned unpaid along with a dishonour memorandum dated 16-12-2019, stating the reason as “Funds Insufficient.” Thereafter, on 11-01-2020, the complainant issued a statutory demand notice to the accused intimating the dishonour of the cheque and demanding payment of the cheque amount. The said notice was returned by the postal authorities on 13-01-2020 with the endorsement “refused.” A notice so refused is deemed to have been duly served on the accused. Despite such service, the accused failed to make payment of the cheque amount. Hence, it is alleged that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

4. On the appearance of the accused before the court, he was enlarged on bail. After ensuring the receipt of a copy of the records of the complaint by accused, particulars of the offence under Section 138 of the Negotiable Instrument Act were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5. From the side of the complainant, PW1 was examined, and Exbts.P1 to P13 were marked. On closure of the complainant's evidence, the accused was examined under Section 313 (1) (b) of the Cr.P.C. He denied all the incriminating circumstances appearing against him in evidence.

6. The defence did not adduce any evidence.

7. Heard both sides and perused the records.

8. The points that arise for consideration are:-

1. Whether the complainant complied with all the statutory formalities before filing the complaint?

2. Whether the accused executed Exbt. P1 cheque in favour of the complainant to discharge the legally enforceable debt as alleged by the complainant?

3. Whether the accused is liable for the offence punishable under Section 138 of Negotiable Instruments Act,1881?

4. Sentence or Order?

9. **Point No.1:** The complaint was initially filed by Mr. Sibi M.G., the Power of Attorney holder of the complainant company, as per Exhibit P11 Power of Attorney and Exhibit P10 Resolution. Subsequently, Mr. Thankachan K.S. was substituted as the Power of Attorney holder as per Exhibit P13 Power

of Attorney and Exhibit P12 Resolution. To prove the case of the complainant, Mr. Thankachan K.S. was examined as PW1. In lieu of examination in chief, the complainant filed a proof affidavit, deposing to all the things stated in the complaint.

10. From the complaint as well as the evidence of PW1, it is evident that Exhibit P1 cheque is dated 07-12-2019. The cheque was presented within its validity period and was dishonoured for the reason “Funds Insufficient” as evidenced by the Exhibit P2 dishonour memorandum dated 16-12-2019. Thereafter, the complainant issued Exhibit P3 statutory notice dated 11-01-2020, calling upon the accused to pay the cheque amount, as evidenced by Exhibit P4 postal receipt. The notice was returned with the endorsement “refused” on 13-01-2020. A notice so refused is deemed to have been duly served on the accused. The complaint was filed on 27-02-2020 within the prescribed period of limitation. It is also pertinent to note that the accused has not raised any contention regarding the maintainability of the complaint. Therefore, it is found that the complainant has complied with all the statutory requirements under Section 138 of the Negotiable Instruments Act. Accordingly, Point No.1 is answered in favour of the complainant.

11. Point No.2: The complainant contended that the oral testimony of

PW1, coupled with Exbt.P1 to P13, sufficiently established the complainant's case. PW1 was subjected to detailed cross-examination by the learned counsel for the accused.

12. During cross-examination, PW1 stated that at the time of the incident relating to the case, he was working in the complainant institution. He stated that the chitty involved in this case was registered in the Registrar's Office under the Chit Funds Act. According to him, the chitty commenced on 10-06-2016, but later he stated that it started on 25-06-2016 and the chitty period ended on 25-10-2020. He further deposed that the chitty subscriber had taken the prize amount and that a total sum of ₹5,87,000/- has been paid so far, which includes the amount paid after the institution of the case. According to PW1, a sum of ₹3,25,000/- is still due towards the chitty and the balance amount remains payable from the 37th installment onwards.

13. PW1 further deposed that the accused had issued the cheque in the year 2019 on the 19th day of a month, though he does not remember the month. According to him, the cheque was handed over at the office, and the accused had signed the cheque in his presence. He also stated that at that time, the son of the accused, Sanoop, was present along with the accused. He further deposed that the cheque was brought already filled up with the amount and that

the cheque amount was ₹1,01,289/-.

14. PW1 also stated that he does not remember whether any notice regarding the arrears was sent to the accused. According to him, the accused persons were informed when they came to the office, and they were also contacted over the phone. He stated that they had called Sanoop over the phone and informed him one day prior to the date of the cheque. When asked whether the accused was informed, PW1 stated that Sanoop had attended the phone call, though the accused was at home.

15. PW1 further deposed that at the time of disbursement of the chitty amount, stamp paper and agreement had been obtained, and receipts had also been issued for the chitty amount received. He also stated that notice had been sent to the chitty subscriber for recovery of the arrears and that they had contacted him over the phone. PW1 admitted that another case bearing ST No.3531/2022 is pending before this court against Sanoop for recovery of the chitty arrears relating to the same transaction. PW1 further deposed that Sanoop is the chitty subscriber and that the accused in this case is the father of Sanoop.

16. According to the defence, the accused had not issued any cheque and had no legally enforceable liability towards the complainant. It was further suggested that Sanoop had given the cheque of the accused without his

knowledge or consent at the time of joining the chitty, and that the complainant had misused the cheque and filed this false case against the father in order to exert pressure on Sanoop to recover the amount. However, PW1 denied the said suggestions.

17. In re-examination, PW1 stated that he does not exactly remember the date on which the cheque was issued. He further stated that the chitty was for a period of 50 months and that there was no extension of the chitty period. No further questions were asked.

18. On an analysis of the evidence of PW1, it is evident that PW1 has consistently deposed that Exhibit P1 cheque was issued by the accused in discharge of his liability towards the complainant. Exhibits P6 to P9 documents substantiate the underlying transaction between the accused and the complainant institution as alleged. Significantly, the accused has not raised any contention disputing the signature appearing on Exhibit P1 cheque or the execution of the connected documents. Thus, the execution of Exhibit P1 cheque stands either admitted or, at any rate, not specifically denied. The non-dispute of the signature assumes crucial importance in proceedings under Section 138 of the Negotiable Instruments Act.

19. In *Sadasivan v. Satheesan, Anr (2024 (1) KLT 405)*, the Hon'ble

High Court of Kerala held that

“When the initial liability is discharged, both the complainant and the accused will stand governed by both the Sections 118 and 139 of the Negotiable Instruments Act on compliance of the mandate under Section 138 of the Act. The corollary is that on discharge of the initial burden to prove the due execution of the cheque in question, or when the execution is admitted, no further burden can be cast upon the complainant either to prove the consideration or any other factor which can be drawn based on the presumption under Section 139 of the Act on compliance of the mandate under Section 138 of the Act and under Section 118 of the Act. Then it is upon the accused to rebut the presumption, for which the accused can rely on the absence of consideration to the cheque in question, the non-existence of the original transaction and the non-existence of any liability or debt, for which the cheque in question was issued”.

20. At the outset, it can be concluded that the complainant has succeeded in proving the execution of the Ext.P1 cheque and, thereby, is entitled to draw statutory presumptions under Sections 118 and 139 of the N.I. Act. Thus, the presumptions available under Sections 118 and 139 of the N. I

Act are, therefore, drawn in favour of the complainant.

21. Then the option available to the accused is only to rebut the presumption. It is well settled that the onus is on the accused to raise a probable defence, and the standard of proof for rebutting the presumption is based on the preponderance of probabilities.

22. In the instant case, though PW1 was subjected to detailed cross-examination, nothing material was elicited to probabilise the defence version. The suggestion that the cheque was misused or issued without the knowledge of the accused remains a mere allegation. No evidence, either oral or documentary, has been adduced by the accused to substantiate such a defence. Mere suggestions put to PW1 in cross-examination, without supporting material, do not constitute proof and are wholly insufficient to rebut the statutory presumptions.

23. The Hon'ble Supreme Court in ***Bir Sing v. Mukesh Kumar reported in 2019 (2) KLJ 205*** has held that

“Even a blank cheque leaf voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a

debt.”

24. In view of the above discussion and upon consideration of the entire matters on record, the Court is of the considered view that the accused has failed to raise any reasonable doubt on the case of the complainant. Therefore, the presumption drawn in favour of the complainant remains unchallenged; thereby, the complainant has proved his case beyond a reasonable doubt. Accordingly, Point No.2 is answered in favour of the complainant.

25. **Point Nos.3 & 4:** In the light of the foregoing discussions and in view of the findings on Point Nos.1 and 2, this Court finds that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. Accordingly, Point No.3 is also found in favour of the complainant. Therefore, the accused is found guilty and is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act under Section 255(2) of the Code of Criminal Procedure.

26. Considering the nature of the offence and the facts and circumstances of the case, this Court finds that it is not a fit case to invoke the provisions of the Probation of Offenders Act, 1958.

27. The Honourable High Court of Kerala, ***in K.M Jacob v. State of***

Kerala and another 2020(1) KHC 291, held that “the gravity of an offence under Section 138 of the Negotiable Instruments Act, 1881 cannot be equated with an offence under the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881 is almost in the nature of a civil wrong which has been given criminal overtones. Substantive Sentence of imprisonment shall not be imposed in such cases except in exceptional circumstances”.

28. Considering the facts and circumstances of the case, the Court is of the view that imposing the following sentence would meet the ends of justice.

In the result,

The accused is convicted under Section 255(2) of the Code of Criminal Procedure for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and is sentenced to undergo simple imprisonment till the rising of the court and to pay a fine of ₹1,01,189/- (Rupees one lakh one thousand one hundred and eighty-nine only)

In default of payment of the fine, the accused shall undergo simple imprisonment for a period of three months.

If the fine amount is paid or realised, the same shall be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure.

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in open court, this the 17th day of March 2026).

Sd/-
Judicial First Class Magistrate,
Mattannur.

APPENDIX

WITNESSES EXAMINED FOR PROSECUTION:

PW1: Thankachan

EXHIBITS MARKED FOR PROSECUTION:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.P1:	07-12-2019	Cheque No.909052	PW1
Ext.P2:	16-12-2019	Cheque returned memo	PW1
Ext.P3:	11-01-2020	Copy of lawyer notice	PW1
Ext.P4:	11-01-2020	Postal receipt (computerized copy)	PW1
Ext.P5:	13-01-2020	Returned notice with AD card	PW1
Ext.P6:	29-06-2016	Chit covenant	PW1
Ext.P7:	27-07-2016	Repayment agreement	PW1

Ext.P8:	27-07-2016	Payment receipt	PW1
Ext.P9:	07-12-2019	Outstanding report	PW1
Ext.P10:	16-08-2017	Resolution	PW1
Ext.P11:	06-09-2017	Certified copy of Power of attorney	PW1
Ext.P12:	21-03-2022	Resolution	PW1
Ext.P13:	23-05-2022	Certified copy of Power of attorney	PW1

WITNESSES EXAMINED FOR DEFENCE: Nil

EXHIBITS MARKED FOR DEFENCE:

EXHIBITS MARKED FOR COURT: Nil

MOS.MARKED: Nil

Sd/-
Judicial First Class Magistrate,
Mattannur

-/True copy/-

Judicial First Class Magistrate,
Mattannur

/vt