

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,  
MATTANNUR

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

Dated this the 05<sup>th</sup> day of June 2026 / 15<sup>th</sup> day of Jyaishta 1948

**STC.No.1115/2021**

Complainant : Sree Gokulam Chit and Finance Company (P)  
Ltd, Iritty Branch. Represented by its Power of  
Attorney Holder, Rajani, W/o.C.V.Rajeev  
Kumar, Legal Clerk, Fathimath Shamsheena  
Complex, New Busstand, Iritty, Kannur Dist.  
(Represented by Adv.P.V.Dinesh Babu)

V.

Accused : Seenath.A.K, W/o.Sidheek.K.K, Arayakool  
House, Vilakkode.P.O, Iritty, Kannur District.  
Within the limits of Iritty Police Station.  
(Represented by Adv.A.M.Ajayakumar)

Offence : Under Section 138 of Negotiable Instruments  
Act.

Pleading : Not guilty

Finding : Not guilty

Sentence or Order : Accused is acquitted under Section 255(1)  
Cr.PC.

Description of accused.

Sl. No.	Name	Fathers name	Occupation	Residence	Age
1.	Seenath.A.K	Muhammed	- -	Vilakkode	36/24

Date of:

1.	Offence	:	17-12-2021
2.	Complaint	:	20-12-2021
3.	Apprehension	:	--
4.	Release on bail	:	30-01-2023
5.	Commitment	:	--
6.	Commencement of trial	:	20-05-2024
7.	Commencement of evidence	:	30-09-2024
8.	Close of trial	:	01-06-2026
9.	Sentence or order	:	05-06-2026
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 01<sup>st</sup> day of June 2026 the court on 05<sup>th</sup> day of June 2026 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 company incorporated and registered under the Indian Companies Act. The accused stood as guarantor for one Muhammed Rafi A.K., who was the prized subscriber in Chit No. G2G/1791/TNR/02, having a sala value of ₹3,00,000/-, conducted by the complainant company. Mr. Muhammed Rafi A.K. bid the chitty and received the prize amount of ₹2,23,200/- from the complainant's branch on 20.09.2019. At the time of receiving the prize amount, Mr. Muhammed Rafi A.K. and the accused, who stood as his guarantor, undertook to repay the said amount to the complainant. However, they committed default in repayment of the chitty liability. Subsequently, the accused approached the complainant for discharge of the said liability and, towards the repayment thereof, executed and issued Cheque No.10337641 dated 02.11.2021 for ₹1,34,103/- (Rupees One Lakh Thirty-Four Thousand One Hundred and Three only), drawn on Federal Bank, Iritty Branch, from the account maintained by the accused. At the time of execution and issuance of the cheque, the accused instructed the complainant to present the cheque for encashment through its banker on or after 02.11.2021 and to realize the amount covered thereunder. The said cheque was presented for collection through the Federal Bank, Iritty Branch. However, the cheque was dishonoured and returned unpaid by the drawee bank vide cheque return memorandum dated

05.11.2021 with the endorsement "Funds Insufficient." Thereafter, the complainant caused a statutory demand notice dated 25.11.2021 to the accused by registered post, intimating the dishonour of the cheque and demanding payment of the cheque amount. The said notice was duly received by the accused on 02.12.2021. Despite receipt of the notice, the accused neither sent any reply nor paid the amount covered by the cheque within the stipulated period. Hence, according to the complainant, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

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

4. From the side of the complainant, PW1 was examined, and Exbts.P1 to P10 were marked.

5. On closure of the complainant's evidence, the accused was examined under Section 313 (1) (b) of the Cr.P.C. She denied all the incriminating circumstances appearing against her in evidence. The accused has also filed a statement under Section 313 Cr.P.C., contending that the

cheque in question was issued as a security cheque at the time of disbursement of the chitty amount and that the entire liability had already been discharged. According to her, the complainant failed to return the cheque and had filed the complaint on the basis of a miscalculation of accounts. She denied having any legally enforceable liability towards the complainant and contended that the case had been falsely instituted against her.

6. From the side of defence DW1 was examined and Exbt.D1 and D2 were marked.

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 the Negotiable Instruments Act,1881?*

4. *Sentence or Order?*

9. **Point No.1:** This complaint has been filed by Rajani P.M., the

Power of Attorney Holder of the complainant company, on the strength of Exhibit P6 Power of Attorney and Exhibit P7 Resolution. To substantiate the case of the complainant, Rajani P.M. was examined as PW1. In lieu of examination in chief, PW1 filed a proof affidavit reiterating the averments contained in the complaint.

10. From the complaint and the deposition of the PW1, it is evident that Exhibit P1 cheque is dated 02.11.2021. The cheque was presented for encashment within its period of validity, but was dishonoured for the reason "Funds Insufficient" as evidenced by Exhibit P2 dishonour memorandum dated 05.11.2021. Thereafter, the complainant caused the issuance of Exhibit P3 statutory notice dated 25.11.2021 demanding payment of the cheque amount, which was sent through registered post as evidenced by Exhibit P4 postal receipt. The notice was received by the accused on 02.12.2021, which is borne out by Exhibit P5 acknowledgement card. Despite receipt of the notice, the accused failed to make payment of the cheque amount within the statutory period. As a result, this complaint was filed on 20-12-2021, which is within the time limit. It is also pertinent to note that the accused has not raised any contention disputing the maintainability of the complaint. In view of the above, it is proved that the complainant has filed this complaint after complying with

all statutory formalities. Hence, Point No.1 is found in favour of the complainant.

11. **Point No.2:** The complainant contended that the oral testimony of PW1, coupled with Exbt.P1 to P10, sufficiently established the complainant's case.

12. According to the complainant, the accused stood as guarantor for Muhammed Rafi A.K., the prized subscriber of Chit No. G2G/1791/TNR/02 having a sala value of ₹3,00,000/-. The subscriber bid the chit and received the prize amount of ₹2,23,200/- from the complainant company on 20.09.2019. Exhibit P10 receipt dated 20.09.2019 corroborates the disbursement of the said prize amount to the subscriber. Subsequently, the subscriber committed default in payment of the instalments.

13. According to PW1, after the subscriber defaulted in payment of the instalments, a sum of ₹1,17,700/- remained due towards the chit liability and, together with interest of ₹16,403/- calculated up to 29.10.2021, the total outstanding amount came to ₹1,34,103/-, which is the amount covered by Exhibit P1 cheque. The said version of PW1 is corroborated by Exhibit P8.

14. Further, the accused has never disputed her signature in Ext.P1

cheque and has no case that Ext.P1 cheque was not drawn on an account maintained by her. It is also pertinent to note that, despite receipt of the statutory notice, the accused did not send any reply notice disputing the transaction or the liability alleged by the complainant. More importantly, the execution of Exhibit P1 cheque and the signature therein remain undisputed.

15. 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”*.

16. 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.

17. 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.

18. PW1 was cross-examined at length. During cross-examination, he deposed that the complainant company was entitled to realize an amount covered by Exhibit P1. He further stated that the accused had remitted an amount of ₹45,500/- after the institution of the complaint and prior to 13.06.2023, and that the said fact had been disclosed in the proof affidavit. According to PW1, after deducting the said amount, the balance amount alone remained due from the accused. He clarified that the said repayment was not reflected in Exhibit P8 statement of accounts since Exhibit P8 had been prepared and produced along with the complaint before the subsequent repayment was made. PW1 also admitted that the exact date of such repayment

was not mentioned in the affidavit.

19. PW1 further deposed that dividend is granted only to regular subscribers. According to him, the initial monthly instalment in the chit involved in this case was ₹15,000/-, which was later reduced to ₹12,000/- and would vary depending upon the auction. He admitted that Exhibit P8 showed a payment of ₹34,100/- by the subscriber as the first instalment, though the instalment payable for that month was only ₹15,000/-. He further stated that the chit was auctioned on 20.09.2019 and that the successful bidder received the prize amount on the same date.

20. PW1 specifically stated that the accused was only a guarantor in the chit transaction and not the subscriber. He also deposed that the subscriber had paid ₹1,38,300/- up to 29.01.2021 and had received dividend on eight occasions. According to him, after accounting for the dividends received, the subscriber had effectively repaid ₹82,300/- to the company. PW1 further stated that as per Exhibit P8, the outstanding balance as on 28.02.2021 was ₹1,39,200/-. Though the chit period ended on 29.01.2021 and the cheque was issued only on 02.11.2021, he asserted that the cheque amount represented the outstanding liability together with default interest accrued for the intervening period. He also maintained that there was no error in the calculation reflected

in Exhibit P8 and denied the suggestion that the complainant company was not entitled to charge interest at the rate claimed.

21. PW1 further deposed that Exhibit P7 is the resolution passed by the Board of Directors of the complainant company. He stated that the company had eleven Directors and one Managing Director. Though Exhibit P7 was signed only by a director and no separate document evidencing authorization of that Director was produced, PW1 maintained that the Director was duly authorized by the Managing Director. He further stated that Exhibit P6 Power of Attorney was executed subsequent to Exhibit P7. PW1 denied the suggestion that the persons who executed Exhibits P6 and P7 lacked authority to do so.

22. PW1 also deposed that the subscriber had repaid a total amount of ₹1,82,300/-, including dividends and the subsequent payment of ₹45,500/-. According to him, the prize amount disbursed under the chit was ₹2,23,200/-, and the commission retained by the company was ₹15,000/-, which is reflected in Exhibit P10.

23. PW1 further stated that Exhibit P9 is a genuine document and that the amount shown therein represents the amount payable by the subscriber at

the time of auctioning the chit. He also stated that the subscriber had remitted ₹34,100/- on 29.04.2019, the date of commencement of the chit, and that the chit was successfully bid in the ninth month.

24. PW1 further deposed that he could ascertain whether any amount was due at the time of bidding only after verifying the daily ledger extract. He also stated that the monthly auction of the chit was ordinarily conducted on the 29<sup>th</sup> day of every month.

25. The defence suggested that the complainant company had disbursed only ₹2,17,400/- to the subscriber instead of ₹2,23,200/- and that the balance amount remained payable by the complainant to the subscriber. It was further suggested that Exhibit P1 cheque had been obtained as a security cheque at the time of bidding the chit and that the same was subsequently misused for filing the present complaint. The defence also contended that no amount was due to the complainant either at the time of bidding the chit or thereafter. However, PW1 categorically denied all these suggestions.

26. The defence also disputed the authority of the persons who executed Exhibits P6 and P7 and contended that no amount was due either from the subscriber or from the accused to the complainant company.

27. To substantiate the defence case, the accused filed CMP No.3866/2025 seeking production of documents and permission to examine two witnesses, namely the Manager and the Managing Director of Sri Gokulam Chits and Finance. After hearing both sides, the said petition was partly allowed. Accordingly, the Manager of Sri Gokulam Chits and Finance was examined as DW1 and Exhibits D1 and D2 were marked through him.

28. DW1 deposed that, at the relevant time when the chit transaction in question was conducted, he was working at Kannur. On being shown Exhibit P8, he stated that the chit number mentioned therein is G2G1791/TNR/02 and that a sanction had been granted for conducting the said chit. According to him, the first instalment was paid on 29.04.2019, and the chit commenced on that date. He further stated that, being a 20-month chit, it ought to have terminated on 29.11.2020, whereas Exhibit P8 shows that the 20<sup>th</sup> instalment was paid only on 29.01.2021. He also deposed that, excluding the first instalment, the subscriber had received dividends on eight occasions and that dividends are ordinarily not granted to defaulting subscribers. According to him, the subscriber had paid approximately ₹1,20,000/- towards the chit and had remitted ₹34,100/- as the first instalment.

29. DW1 further deposed that, as per the daily ledger extract relating

to the chit transaction, the amount due to the company was only ₹72,200/-, whereas the present complaint was filed for ₹1,34,103/-. He also stated that a further amount of ₹45,500/- had been paid after institution of the complaint and that such payment was made during the period from 07.04.2021 to 13.06.2023.

30. He produced a copy of the chit agreement, which was marked as Exhibit D1, and stated that the agreement was entered into between the foreman and the subscriber. According to him, Vijayalakshmi was shown as the foreman in Exhibit D1, and the chit commenced on 26.04.2019, with permission having been granted to conduct the first auction on 29.04.2019. He also stated that the subscriber, Muhammed Rafi A.K., was enrolled as subscriber No.2 in the said chit. Exhibit D2, Form III Endorsement of Registration, was also marked through him.

31. DW1 denied the suggestions that the documents produced by him related to a different chit transaction or that the subscriber in the present case had not joined the chit covered by Exhibits D1 and D2. He also denied the suggestion that the accused or the subscriber had fully discharged the liability under the chit transaction.

32. On being shown Exhibit P9, DW1 stated that, according to the complainant's records, the subscriber had been paid ₹2,23,200/-. However, he stated that he could not say without verifying the records whether the actual amount received by the subscriber was ₹2,17,400/- as alleged by the defence. He further deposed that the subscriber had bid the chit on 20.09.2019 and that the subscriber had paid about ₹90,000/-, including dividends.

33. DW1 denied the suggestion that the documents produced before the Court were fabricated or that the cheque in question had been misused after having been obtained as security at the time of disbursement of the chit amount. He also denied the suggestion that neither the subscriber nor the accused had any liability towards the complainant company.

34. During cross-examination, DW1 stated that the delay in termination of the chit was due to the disruption caused by the COVID-19 pandemic, during which the chit operations were suspended for about two months. He further stated that the chit agreement had been registered at Chennai and that the chit number and registration certificate were issued by the registering authority. He explained that "TNR" in the chit number refers to T. Nagar. He also admitted that the accused was not the subscriber in the chit and that, as reflected in Exhibit P8, the accused had issued the cheque undertaking

liability as guarantor for the subscriber. He further stated that payments received during the pendency of court proceedings are ordinarily accepted and disclosed before the Court.

35. In re-examination, DW1 stated that if ₹90,000/- had been paid in a chit having a sala value of ₹3,00,000/-, the balance liability would be ₹2,10,000/-. He further deposed that Exhibit P9 reflected a liability in excess of that amount.

36. The learned counsel for the accused challenged the chit number involved in the present case and also questioned the genuineness and correctness of Exhibit P8 statement of accounts. According to him, Exhibit P8 does not truly reflect the actual liability arising out of the chit transaction. It was argued that the amount covered by Exhibit P1 cheque does not have a proper correlation with the alleged outstanding liability. The learned counsel further questioned the authority of the foreman and relied upon Exhibits D1 and D2 to point out discrepancies regarding the identity of the foreman of the chit transaction. It was further contended that the complainant had failed to establish the exact quantum of liability allegedly due from the subscriber and the accused.

37. In support of the arguments, the learned counsel for the accused placed reliance on the decision in ***Shree Gokulam Chit & Finance Company Limited v. C.K. Sadanandan and Another :2025 KER 24570*** and argued that when the complainant fails to satisfactorily establish the underlying liability or when there are material discrepancies in the documents relied upon by the complainant, the statutory presumption under the Negotiable Instruments Act stands effectively rebutted.

38. Upon a perusal of the facts in ***Shree Gokulam Chit & Finance Company Limited v. C.K. Sadanandan and Another (supra)***, it is seen that the controversy in that case was primarily with respect to the chit number. Apart from that, the Power of Attorney Holder examined on behalf of the complainant lacked direct knowledge regarding the transaction, and the accused had specifically denied receipt of the chit amount. More importantly, the complainant had failed to produce any material to establish that the accused had, in fact, bid the chit and received the prize amount.

39. In the instant case, the execution of Exhibit P1 cheque and the signature therein have never been disputed. Unlike the facts in the decision cited supra, the complainant has produced Exhibit P10 receipt evidencing disbursement of the prize amount of ₹2,23,200/- to the subscriber and Exhibit

P9 promissory note executed by the subscriber and the guarantors, including the accused. The complainant has also produced Exhibit P8 statement of accounts showing that an amount of ₹1,34,103/- was due as on 29.10.2021, which exactly tallies with the amount covered by Exhibit P1 cheque.

40. However, the accused disputed the chit number involved in the present case and contended that the subscriber was not a prized subscriber in Chit No.G2G/1791/TNR/02 as alleged in the complaint. According to the defence, the said chit number is not mentioned in Exhibit P10 receipt. It was pointed out that Exhibit P10 refers only to Chit No. G2G/1791/TNR and does not contain the suffix "/02" as shown in the complaint. On the basis of the said discrepancy, it was argued that the complainant has failed to establish that the transaction evidenced by Exhibit P10 pertains to the very same chit transaction alleged in the complaint.

41. Though both PW1 and DW1 deposed that the chit number subscribed by the subscriber in the present case is G2G/1791/TNR/02, the learned counsel for the accused attempted to contend that the suffix “/02” denotes the subscriber number and not the chit number. In support of the said contention, reliance was placed on the foreman and subscribers' list to point out that the subscriber in the alleged chit transaction was shown at Sl. No.2.

Therefore, according to the defence, the chit number could not have been G2G/1791/TNR/02 as alleged by the complainant.

42. Though a copy of the foreman and subscribers list was produced through DW1 pursuant to the order in CMP No.3866/2025, the complainant did not take any further steps to rebut the defence contention based on the said document by producing the relevant original records or any other materials explaining the discrepancy pointed out regarding the chit number.

43. A further discrepancy is seen in Exhibit P9 promissory note. Though Exhibit P9 was produced as the promissory note executed by the subscriber and the guarantors, including the accused, in connection with the transaction in question, the document does not contain the chit number alleged in the complaint. Further, while Exhibit P10 receipt dated 20-09-2019 evidences disbursement of a prize amount of ₹2,23,200/-, Exhibit P9 dated 20-09-2019 reflects a liability of ₹2,17,400/-. No satisfactory explanation has been offered by the complainant regarding the absence of the chit number in Exhibit P9 or the variation in the amounts reflected in Exhibits P9 and P10.

44. Yet another discrepancy pointed out by the defence relates to the identity of the foreman of the chit transaction. Upon a perusal of Exhibits D1

and D2, it is seen that Vijayalakshmi is referred to as the foreman in Exhibit D1, whereas K.J. Joisy is shown as the foreman in Exhibit D2. Though the complainant contended that the said discrepancy is inconsequential, no convincing explanation has been offered regarding the variation. These circumstances assume significance while appreciating the defence contention regarding the identity of the chit transaction and the exact liability allegedly due from the subscriber and the accused.

45. In view of the above discussion, this Court is of the considered view that the accused has succeeded in creating a probable defence and raising a reasonable doubt regarding the very transaction alleged by the complainant. The discrepancies relating to the chit number, the contents of Exhibits P9 and P10, the absence of the chit number in Exhibit P9, and the failure of the complainant to satisfactorily explain the variations in the documentary evidence and identity of the foreman create serious doubt as to whether the liability covered by Exhibit P1 cheque arose from the transaction alleged in the complaint. Consequently, the complainant has failed to establish the underlying legally enforceable liability beyond the standard required in the facts and circumstances of the present case, and the statutory presumptions stand sufficiently rebutted by the accused. Hence, point No.2 is found in

favour of the accused.

46. **Point No.3:-**In view of findings on point No. 2, this Court found that the accused has not committed an offence punishable under section 138 of the Negotiable Instruments Act. Hence, Point No.3 is also found in favour of the accused.

47. **Point No.4:-** As the court has already found the accused has not committed an offence punishable under section 138 of the NI Act, the court finds that the accused is not guilty of the said offence imputed against her.

***In the result,***

- 1. The accused is acquitted of an offence punishable under Section 138 of the Negotiable Instruments Act,1881, under Section 255(1) of the Cr.P.C,1973.***
- 2. The bail bond executed by the accused stands cancelled, and she is set at liberty.***

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in open court, this the 05<sup>th</sup> day of June 2026).

Sd/-  
Judicial First Class Magistrate,  
Mattannur.

APPENDIX

## WITNESSES EXAMINED FOR PROSECUTION:

PW1: Rajani.P.M

## EXHIBITS MARKED FOR PROSECUTION:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.P1:	02-11-2021	Cheque	PW1
Ext.P2:	05-11-2021	Cheque returned memo	PW1
Ext.P3:	25-11-2021	Copy of lawyer notice	PW1
Ext.P4:	25-11-2021	Postal receipt	PW1
Ext.P5:	02-12-2021	Acknowledgment card	PW1
Ext.P6:	04-01-2021	Certified copy of Power of attorney	PW1
Ext.P7:	04-10-2014	Resolution	PW1
Ext.P8:	- -	Monthly statement of chit	PW1
Ext.P9:	20-09-2019	Promissory note	PW1
Ext.P10:	20-09-2019	Receipt	PW1

## WITNESSES EXAMINED FOR DEFENCE:

DW1: Ragesh.K.O (Manager, Sree Gukulam Chits)

## EXHIBITS MARKED FOR DEFENCE:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.D1:	26-04-2019	Copy of Chit agreement	DW1

Ext.D2: 29-04-2019 Copt of Form III (Endorsement of Registration) DW1

EXHIBITS MARKED FOR COURT: Nil

MOS.MARKED: Nil

Sd/-  
Judicial First Class Magistrate,  
Mattannur

-/True copy/-

Judicial First Class Magistrate,  
Mattannur

/vt