IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
MATTANNUR
Present:- Smt.Shahina.N.V,
Judicial First Class Magistrate
Dated this the 06th day of May 2026 / 16th day of Vaishaka 1948

<u>STC.No.894/2021</u>

Complainant	:	V.K.Sameera, W/o.Habeeb Pallichal Valappil, V.K.House, Irikkur Amsom Desom, P.O.Irikkur, Ayippuzha, Taliparamba Taluk, Kannur. Within the limits of the Irikkur Police station. *(Represented by Adv.K.Pramod & Adv.K.A.Philip)*
	V.	
Accused	:	Muhammed Abdul Nazeer @ Nazeer. K.P, S/o.Muhammedkunhi, Kurikkalakath Parammal House, Puthiyatheru, P.O.Chirakkal, Kannur. Within the limits of the Valapattanam Police Station. *(Represented by Adv.P.V.Abdulkhader)*
Offence	:	Under Section 138 of Negotiable Instruments Act.
Pleading	:	Not guilty
Finding	:	Guilty
Sentence or Order	:	The accused is convicted under Section 255(2) of Cr.P.C for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and is sentenced to pay a fine of

₹1,50,000/- (Rupees one lakh and fifty thousand only), being twice the cheque amount of ₹75,000/- (Rupees seventy-five thousand only). In default of payment of the fine, the accused shall undergo simple imprisonment for three months. If the fine amount is paid or realized, it shall be paid to the complainant as compensation under Section 357(1)(b) of Cr.PC.

Description of accused.					
Sl. No.	Name	Fathers name	Occupation	Residence	Age
1.	Muhammed Abdul Nazeer @ Nazeer.K.P	Muhammedkunhi	- -	Puthiyatheru	35/12

Date of:

1.	Offence	:	24-10-2012
2.	Complaint	:	03-11-2012
3.	Apprehension	:	- -
4.	Release on bail	:	08-11-2021
5.	Commitment	:	- -
6.	Commencement of trial	:	20-07-2013 (in original case)
7.	Commencement of evidence	:	02-09-2014
8.	Close of trial	:	04-05-2026
9.	Sentence or order	:	06-05-2026
10.	Service of copy of judgment or finding on the accused	:	- -
11.	Explanation of the 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 the 04th day of May 2026, the court on 06th day of May 2026 delivered the following.

JUDGMENT

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. This case was originally taken on the file of the Judicial First Class Magistrate Court-II, Kannur, as STC No. 4770/2012. Subsequently, as per the order dated 16-07-2016 in STC No. 4770/2012 of the Hon’ble Judicial First Class Magistrate Court-II, Kannur, the case was transferred to this Court and was renumbered as STC No. 519/2016. Thereafter, despite taking coercive steps, the accused could not be secured, and the case was transferred to the long-pending register as LPC No. 18/2020. Subsequently, on 08-11-2021, the accused surrendered before the Court, and accordingly, LPC No. 18/2020 was refiled as STC No. 894/2021, which is the present case.

3. The averments in the complaint, in brief, are as follows:-The husband of the complainant and the accused were known to each other. On 02-11-2011, the accused approached the complainant’s husband and requested him

to arrange an amount of ₹75,000/- for a period of 15 days, stating that he was in urgent need of money for settling a Visa transaction. As the complainant's husband did not have the required amount with him, the complainant herself paid ₹75,000/- to the accused. While accepting the money, the accused agreed to repay the amount on or before 30-11-2011. However, the accused failed to return the amount within the stipulated time. On demand, and in discharge of the said liability, the accused signed and issued a cheque bearing No. 1344 of Puthiyatheru Urban Co-operative Society Ltd., Puthiyatheru Branch, dated 15-08-2012. The cheque was presented for collection through the Pattanur Service Co-operative Bank Ltd., Ayippuzha Branch, but it was returned unpaid by the bank, along with a dishonour memo dated 24-08-2012, stating the reason "Funds Insufficient". Thereafter, on 22-09-2012, the complainant issued a registered lawyer's notice to the accused, intimating the dishonour of the cheque and demanding payment of the cheque amount. On 09-10-2012, the notice was returned unserved with the endorsement "addressee left India", and hence it is deemed to have been duly served on the accused. Therefore, the accused is alleged to have committed an 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 P5 were marked. The accused was examined under Section 313(1)(b) Cr.P.C. through counsel and denied all the incriminating circumstances appearing against him in evidence. The accused contended that no amount was received from the complainant and that a blank cheque issued earlier to the complainant's husband in connection with a visa transaction was misused to institute the present complaint.

6. The defence didn't 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 the Negotiable Instruments Act,1881?

4.Sentence or order?

9. **Point No.1:** To prove the case of the complainant, she was examined as PW1. In lieu of examination-in-chief, the complainant filed a proof affidavit reiterating the averments in the complaint. From the complaint and the deposition of PW1, it is evident that the date of Ext.P1 cheque is 15-08-2012. Thereafter, the cheque was presented to the bank within 3 months, and it was dishonoured for "insufficient funds", along with a dishonour memorandum dated 24-08-2012. Then, the PW1 sent Exhibit P3 lawyer notice dated 22-09-2012 to the accused to call upon him to pay the cheque amount, as evident from Exhibit P4 postal receipt. The lawyer notice was returned unserved with the endorsement "addressee left India", as evidenced by Ext.P5, and is therefore deemed to have been duly served on the accused. But the accused never repaid the amount. As a result, this complaint was filed by the payee of the Exbt.P1 cheque, i.e. the complainant, on 03-11-2012, 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.

10. **Point No.2:** The learned counsel for the complainant argued that the oral testimony of PW1, coupled with Exhibits P1 to P5, sufficiently establishes the complainant's case.

11. PW1 was cross-examined in detail. During cross-examination, PW1 deposed that she knew the accused, that she had studied up to 10^{th} standard, and that she was engaged in tailoring work at home. Though she was unable to state her exact income, she deposed that she owned a house and landed property, including cashew trees, and maintained bank accounts in three banks, with a deposit of more than ₹10,000/- in one of them. PW1 further stated that the accused approached her on 02-11-2011 seeking money, and that the accused used to visit her house as he was acquainted with her husband. Her husband and the accused had known each other for several years. She also admitted that her husband did not witness the handing over of money; only she and her children were present. Her husband was, however, in the locality at the relevant time.

12. PW1 further stated that the money given to the accused constituted funds kept aside for the purpose of her house, money received from her

brothers, and money raised by pledging her gold. She stated that she obtained ₹25,000/- from pledging gold at the Pattanur Service Cooperative Bank, though she did not remember the date of the pledge. PW1 also stated that she received some amount from her brother Ayoob and other brothers, though she could not recollect the exact amount or the names of all the brothers who contributed. She admitted that Abdul Rahman, Moideenkuty, Kadhar, Tajudheen and Musthafa are her brothers, but she could not state how much money she received from each of them. She stated that the accused filled up the cheque in her presence. Her evidence also shows that she could not recall the exact date on which the accused came to collect the money.

13. The defence contention is that the accused never issued any cheque to the complainant. According to him, he and the complainant's husband were friends and were working together in Qatar, and that the cheque given by him to the complainant's husband in connection with arranging a visa had been misused by the complainant to file a false case. However, PW1 denied these suggestions during cross-examination.

14. Upon analysing evidence in this case, it is evident that the accused and the complainant's husband were acquainted with each other. Exhibit P1 cheque admittedly bears the signature of the accused, and its dishonour for

insufficiency of funds is not disputed. The accused has also not disputed that the cheque was drawn on his account. . In such circumstances, the execution of Exhibit P1 cheque by the accused stands admitted. Consequently, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act come into operation.

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 NI Act are 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. The learned counsel for the accused contended that an offence under Section 138 of the Negotiable Instruments Act is attracted only when the cheque is drawn on a “banker” as defined under Section 3 of the Act. It was argued that Ext.P1, being drawn on Puthiyatheru Urban Co-operative Society, does not fall within the definition of “bank” under Section 3 of the NI Act or Section 7 of the Banking Regulation Act. Reliance was placed on ***Prabhakaran P.V. V Jeena. P.P: 2025 (4) KLT 490.***

19. It was further argued that the initial burden lies on the complainant

to establish the transaction and execution of the cheque. The complainant, being a lady, had not proved her financial capacity at the relevant time. The defence also reiterated that the cheque given to the complainant's husband was misused. It was also argued that the complainant had not stated her source of income in the complaint. Hence, an acquittal was sought. The counsel further relied on ***Koranil Yusaf v V.A Firoz: 2025 KHC(Online) 1120*** and ***Yahiya P. v. State of Kerala: 2024 (1) KLT 676.***

20. Per contra, the learned counsel for the complainant submitted that Puthiyatheru Urban Co-operative Society is a "banker" within the meaning of Section 3 of the NI Act. It was argued that if Ext.P1 were not a negotiable instrument within the ambit of the Act, it would not have been processed and dishonoured by the institution. Reliance was placed on ***Upendra Kumar v. Don Finance Corporation, Mangalore: AIR 2009 Kar. 184*** and ***Clara Dominic V. Tomy Eapen 2026(3) KHC 64***. It was also contended that failure to prove financial capacity with mathematical precision is not fatal in the absence of a probable defence.

21. In ***Prabhakaran P.V. V Jeena. P.P: 2025 (4) KLT 490,*** the Hon'ble High Court of Kerala has held that 'Cheques drawn on a non-existent bank are invalid, and dishonour of such cheques does not result in liability

under Section 138 of the Negotiable Instruments Act.'

22. The Karnataka High Court, in ***Upendra Kumar v. Don Finance Corporation, Mangalore: 2009 KHC 5514,*** has held that 'the expression "banker" under Section 3 of the N.I. Act is of wide amplitude and is not confined to entities governed strictly by the Banking Regulation Act. The definition is inclusive in nature and extends to any person or institution acting as a banker. It was further held that co- operative societies carrying on banking business, notwithstanding the absence of a profit motive or formal licensing under the Regulation Act, would fall within the ambit of a "banker" for the purposes of the N.I. Act. Consequently, instruments drawn on such institutions, including withdrawal slips operating as payment mandates, cannot be excluded from the sweep of the Act merely on technical nomenclature.'

23. Further, in ***Clara Dominic v. Tomy Eapen (supra),*** the Hon'ble High Court of Kerala has held that 'substance of the transaction and or no its form or nomenclature is determinate an instrument operating is mandate for payment drawn on an account maintain with an institution carrying on banking function false within the ambit of the act. Thus, instruments drawn on cooperative societies carrying on banking business, including withdrawal slip operating as payment mandates cannot be excluded from the sweep of the act."

It was further held that ‘cooperative societies engaged in banking can qualify as 'bankers' under the N.I. Act.’

24. In view of the above legal position, this Court finds that Ext.P1, though drawn on a co-operative society, qualifies as a cheque within the meaning of Section 6 of the Negotiable Instruments Act, as the institution concerned is shown to be carrying on banking functions and the instrument was processed and returned for insufficiency of funds. The decision in ***Prabhakaran P.V. v. Jeena P.P.: 2025 (4) KLT 490*****,** relied on by the defence, is distinguishable on facts. In the said case, the cheque was drawn on a non-existent bank, and therefore it was held that the instrument would not attract liability under Section 138 of the NI Act. In the present case, Ext.P1 is drawn on an existing co-operative society conducting banking transactions, and the cheque was dishonoured for “funds insufficient”. Hence, the ratio in *Prabhakaran* has no application to the facts of this case. Accordingly, the contention of the accused is not sustainable.

25. Another contention raised by the accused is that the complainant lacked financial capacity at the time of the transaction. In this regard, PW1 has deposed that she is engaged in tailoring work and that the amount was arranged from her personal savings, proceeds obtained by pledging gold, and

financial assistance from her brothers. Though she was unable to state the exact amounts or dates, her evidence remains consistent and unshaken in cross-examination. Minor discrepancies regarding exact figures or dates do not, by themselves, discredit her version. It is well settled that the complainant is not required to prove her financial capacity with mathematical precision unless the accused raises a probable defence supported by evidence. In the present case, no such probable defence has been established.

26. In ***Yahiya P. v. State of Kerala: 2024 (1) KLT 676,*** the 'Hon'ble High Court of Kerala held that 'The burden of proof shifts to the complainant once the accused discharges the initial burden of proof, and the presumption under Sections 118 and 139 of the N.I Act disappears.'

27. In the instant case, the accused contended that the cheque in question had originally been issued to the complainant's husband in connection with a visa arrangement and was subsequently misused. However, this suggestion was specifically denied by PW1. The accused has not adduced any evidence nor examined any witness in support of this contention. No material has been placed before this Court to establish that any such visa-related transaction had in fact taken place between the accused and the complainant's husband. Further, no complaint has been lodged by the accused alleging

misuse of the cheque. It is well settled that mere suggestions put in cross-examination, without any supporting evidence, do not amount to proof and are insufficient to probabilise the defence. Consequently, the accused has failed to rebut the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act.

28. The Hon'ble Supreme Court in ***Bir Sing v. Mukesh Kumar: 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."*

29. 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 her case beyond a reasonable doubt. Accordingly, Point No.2 is answered in favour of the complainant.

30. **<u>Point No.3 & 4:</u>** In the light of the above discussions and in view of findings on points No.1 & 2, this Court finds that the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act. Hence, Point No.3 is also found in favour of the complainant. Therefore, the accused is convicted of the offence punishable under Section 138 of the Negotiable Instruments Act under Section 255(2) of the Cr.P.C.

31. 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.

32. 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".*

33. In view of the above and considering the facts and circumstances

of the case, particularly the long pendency of the proceedings since 2012 and the nature of the offence under Section 138 of the NI Act, this Court is of the view that imposing a sentence of fine equivalent to twice the cheque amount would meet the ends of justice.

In the result,

The accused is convicted under Section 255(2) of Cr.P.C for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and is sentenced to pay a fine of ₹1,50,000/- (Rupees one lakh and fifty thousand only), being twice the cheque amount of ₹75,000/- (Rupees seventy five thousand only).

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

If the fine amount is paid or realized, it shall be paid to the complainant as compensation under Section 357(1)(b) of Cr.PC.

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in open court, this the 06th day of May 2026).

Sd/-
Judicial First Class Magistrate,
Mattannur.

APPENDIX

WITNESSES EXAMINED FOR PROSECUTION:

PW1: Sameera

EXHIBITS MARKED FOR PROSECUTION:

Document	*Date*	*Description*	*Marked through*
Ext.P1:	15-08-2012	Cheque bearing No.1344	PW1
Ext.P2:	24-08-2012	Cheque returned memo	PW1
Ext.P3:	22-09-2012	Copy of lawyer notice	PW1
Ext.P4:	22-09-2012	Postal receipt	PW1
Ext.P5:	29-09-2012	Returned notice	PW1

WITNESSES EXAMINED FOR DEFENCE: Nil

EXHIBITS MARKED FOR DEFENCE: Nil

EXHIBITS MARKED FOR COURT: Nil

MOS.MARKED: Nil

Sd/-
Judicial First Class Magistrate,
Mattannur

-/True copy/-

Judicial First Class Magistrate,
Mattannur

/vt