

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,  
MATTANNUR

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

Dated this the 16<sup>th</sup> day of March 2026 / 25<sup>th</sup> day of Phalguna 1947

**STC.No.343/2016**

Complainant : Vidosh.P, S/o.Purushothaman, Vijith Nivas,  
Keezhallor Amsom, Palayod Desom,  
P.O.Keezalloor, Thalassery Taluk, Kannur  
District. Within the limits of Mattannur Police  
station.  
*(Represented by Adv.K.K.Rajesh)*

V.

Accused : Pushpaja.K.V, W/o.Balakrishnan, Abhishek  
Nivas, P.O.Nirmalagiri, Thalassery Taluk,  
Kuthuparamba Via, Kannur District. Within the  
limits of Kuthuparamba Police station.  
*(Represented by Adv.Binu Kulamakkatu.K.S &  
Adv.K.Sathyan)*

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.	Pushpaja.K.V	Raman	--	Mangattidam	47/17

Date of:

1. Offence : 22-06-2016
2. Complaint : 21-07-2016
3. Apprehension : --
4. Release on bail : 09-01-2017
5. Commencement of trial : 09-01-2017
6. Close of trial : 13-03-2026
7. Sentence or order : 16-03-2026
8. Explanation of delay : --

This case having been finally heard on this the 13<sup>th</sup> day of March 2026 the court on 16<sup>th</sup> day of March 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 and the accused are known to each other. The accused borrowed

an amount of ₹7,75,000/- from the complainant for her daughter's marriage, with a promise to repay the same within three months on demand. However, the accused failed to return the amount within the stipulated time. On demand, in discharge of the said liability, the accused signed and issued a cheque bearing No.080751 dated 28-04-2016, drawn on Federal Bank, Kuthuparamba Branch. The cheque was presented for collection through SBT, Mattannur Branch. However, the cheque was returned unpaid by the bank along with a memorandum dated 12-05-2016 stating the reason "Funds Insufficient". Following this, on 01-06-2016, the complainant sent a registered lawyer's notice to the accused, intimating the dishonour of the cheque and demanding payment of the amount. Although the accused received the notice, she neither replied to it nor made the payment. Therefore, the accused is alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, this complaint.

3. On the appearance of the accused before the court, she was enlarged on bail. After ensuring that the accused had received a copy of the records of the complaint, the particulars of the offence punishable under Section 138 of the Negotiable Instruments Act were read over and explained to her, to which she pleaded not guilty and claimed to be tried.

4. From the side of the complainant, PW1 was examined and Exhibits P1 to P5 were marked. On closure of the complainant's evidence, the accused was examined under Section 313(1)(b) of the Code of Criminal Procedure. She denied all the incriminating circumstances appearing against her in the evidence.

5. From the side of defence, the accused was examined as DW1 and Exhibit D1 was marked.

6. Exhibit C1 was marked under Section 293 of the Code of Criminal Procedure.

7. Heard both sides and perused the records.

8. The points that arise for consideration are: -

*1. Whether the complainant has 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, the complainant himself stepped into the witness box and was examined as PW1. In lieu of examination-in-chief, PW1 filed a proof affidavit reiterating the averments contained in the complaint. From the complaint and the deposition of PW1, it is evident that the date of Exhibit P1 cheque is 28-04-2016. Thereafter, Exhibit P1 cheque was presented before the bank within the statutory period of three months, and the same was dishonoured for the reason “Funds Insufficient”, as evidenced by the Exhibit P2 dishonour memorandum dated 12-05-2016. Thereafter, PW1 caused to issue Exhibit P3 lawyer notice dated 01-06-2016 to the accused demanding payment of the cheque amount, as evidenced by Exhibit P4 postal receipt. The said notice was received by the accused on 07-06-2016, and Exhibit P5 acknowledgment card evidences the same. However, the accused did not repay the amount. Consequently, this complaint was filed by the payee of Exhibit P1 cheque, i.e., the complainant, on 21-07-2016, which is within the period of limitation. 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 circumstances, it is found that the complainant has complied with all the statutory requirements before instituting the complaint. Hence, Point No.1 is answered in favour of the complainant.

10. **Point No.2:** According to the complainant, Exhibit P1 cheque was issued by the accused in discharge of her legally enforceable debt towards him, and the accused had signed the cheque in his presence and in the presence of his parents.

11. On analysing the evidence on record, it is evident that the accused has no case that the signature appearing on Exhibit P1 cheque is not hers. The accused has also not disputed that the cheque was drawn on her 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.

12. 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”.*

13. 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.

14. 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.

15. PW1 was cross-examined in detail. The evidence of PW1 reveals that the accused is not his relative and that she resides at Nirmalagiri, whereas his residence is at Palayod, and that there is a distance of about 10 to 15

kilometres between their houses. According to PW1, he had given the money to the accused on the basis of an acquaintance and that he had visited the house of the accused three or four times. However, he stated that he does not know the names of the parents of the accused. He further deposed that the house of the accused is situated near Moonnapadika–Manganattidam Road. PW1 also stated that his relative (Aappan) is conducting a tailoring shop and that the accused used to visit the said tailoring shop for stitching purposes and that they became acquainted in that manner. PW1 further stated that the said relative was aware of the transaction between him and the accused and that he had also demanded repayment of the amount from the accused. According to PW1, the cheque was issued by the accused only after he repeatedly demanded repayment of the amount and after he had visited the house of the accused four times for the said purpose.

16. PW1 deposed that the accused had borrowed ₹7,75,000/- from him on 14-08-2014 at his residence and issued Exhibit P1 cheque on 28-04-2016 at his residence. He further stated that the cheque was issued in his presence and in the presence of his parents. However, the evidence of PW1 reveals that the said date of borrowing and the issuance of the cheque are not mentioned either in the complaint, in the lawyer's notice, or in the proof

affidavit filed by him.

17. PW1 further deposed that there are no documents to show that he had lent money to the accused. He also stated that he has no documentary evidence to show that he had ₹7,75,000/- in his possession at the relevant time. However, he stated that he has four or five bank accounts and that the amount involved in this case would not be reflected in any of those accounts. The evidence of PW1 further reveals that he is not an income tax assessee and that he could not produce any document to show his income. However, he stated that he is running a shop.

18. PW1 further deposed that the cheque was handed over by the accused after two years. He also stated that though the money was borrowed for a period of three months, he did not initiate any legal action against the accused after the expiry of the said period and that the first legal action initiated against the accused was the issuance of Exhibit P3 lawyer notice.

19. The case of the accused is that an agreement was executed between the complainant and the accused at Kootuparamba Police Station regarding a sum of ₹30,000/- allegedly due to the complainant, and as per the said agreement, the complainant had agreed to return the cheque and stamp papers belonging to the accused. However, even after the accused repaid the

amount of ₹30,000/-, the complainant failed to return the cheque and thereafter misused the same and filed the present complaint. Therefore, the complainant is not entitled to claim any amount from the accused. Though these suggestions were put to PW1 during cross-examination, PW1 denied all those suggestions.

20. To prove the defence case, the accused herself stepped into the witness box under Section 315 of the Code of Criminal Procedure. Initially, the accused had filed a proof affidavit instead of giving oral evidence. Thereafter, the accused filed CMP No.2897/2025 seeking to reopen the defence evidence and to permit her to adduce oral evidence on the ground that, by oversight, a proof affidavit had been filed instead of giving oral evidence before the court. After hearing both sides, the said petition was allowed, and the accused was permitted to adduce oral evidence afresh in accordance with Section 315 of the Code of Criminal Procedure. In this regard, reliance was placed on ***Kalladikkattil Mohammed Jamal v. State of Kerala & Another: 2017 (4) KHC 272***, wherein the Hon'ble Court held that, “ *An accused cannot be permitted to adduce evidence by filing proof affidavit in lieu of his examination-in-chief.*” It is further held that “ *the decision taken by the Court in entertaining the proof affidavit of the accused in lieu of his chief*

*examination cannot be said to be a judicial order. Such an order can only be a proceeding of the Court, which has to be treated as non est and ultra vires, and therefore the same can be reviewed.”*

21. Reliance was also placed on ***Mandvi Co-operative Bank Ltd. v. Nimesh B. Thakore: 2010 (1) KLT 321 (SC): 2010 ICO 161***, wherein the Hon'ble Apex Court has clearly and categorically held *that the right available to a complainant to adduce evidence by affidavit in lieu of chief examination is not available to an accused in view of the specific provision engrafted in Section 145(1) of the Negotiable Instruments Act.*

22. Accordingly, the accused was examined as DW1. DW1 deposed that on 25-11-2014, an agreement was executed between her and the complainant. The said Agreement dated 25-11-2014 was marked as Exhibit D1. DW1 further deposed that the said agreement contains the signatures of herself, the complainant, and the witnesses.

23. DW1 further stated that as per the terms of Exhibit D1 agreement, she had to pay a balance amount of ₹30,000/- to the complainant and that it was agreed that upon repayment of the said amount, the cheque and stamp paper belonging to her would be returned by the complainant. Another condition in the agreement was that the said amount of ₹30,000/- had to be

paid within two months. According to DW1, she had repaid the said amount within the stipulated period. However, the complainant did not return the cheque and the stamp paper.

24. DW1 further deposed that the said amount was paid at her residence. She also stated that at the time of repayment, the complainant had not brought the cheque and stamp paper, stating that the same would be returned later. However, the complainant did not return the same thereafter.

25. DW1 further stated that she does not owe any amount to the complainant at present and that no transaction for ₹7,75,000/- as alleged in the complaint had ever taken place between her and the complainant. According to DW1, the complainant has falsely instituted the present complaint against her. She also stated that the said agreement was prepared at Kootuparamba.

26. During cross-examination, DW1 stated that the agreement was written at a vegetable shop at Kootuparamba by a police officer who had accompanied her, along with the complainant from the police station. However, she stated that she does not remember the name of the police officer or the name of the shop, as the incident had occurred in the year 2014.

27. DW1 further deposed that as per the agreement, the balance amount of ₹30,000/- had to be paid within two months and that she paid the

said amount to the complainant at her residence in the presence of her daughter's husband and other family members. According to DW1, at the time of repayment, she had demanded the return of the cheque and stamp paper, but the complainant had not brought them and assured that they would be returned later.

28. DW1 also stated that the said amount of ₹30,000/- was not withdrawn from her bank account but was given by the father of her daughter's husband. She admitted that she had not lodged any complaint before the police regarding the non-return of the cheque and stamp paper.

29. DW1 further deposed that she resides with her children and that her husband is abroad. She also stated that she had received the lawyer's notice prior to the filing of the case, but did not send any reply to the same. Though it was suggested that she still owes the cheque amount to the complainant and that her defence is false, DW1 denied the same. She also stated that she is willing to examine her relatives who had allegedly witnessed the payment of ₹30,000/-.

30. Though the defence set up a case relying on Exhibit D1 agreement, the complainant disputed the signature appearing in Exhibit D1 and filed a petition to send the said document for expert examination along with

the admitted signatures of the complainant. The said petition was allowed as per the order of this Court in CMP No.1273/2023 dated 27-04-2023. Thereafter, the expert's report was received before the court. Subsequently, the complainant filed a petition under Section 294 of the Code of Criminal Procedure to mark the expert report. After hearing both sides, the court marked the expert report under Section 293 of the Code of Criminal Procedure as Exhibit C1, as per the order of this Court in CMP No.1214/2025 dated 30-08-2025.

31. Exhibit C1, the report issued by the Scientific Expert of the State Forensic Science Laboratory, reveals that similarities were noted between the signature contained in Exhibit D1 and the admitted signatures of the complainant, indicating that they were written by one and the same person. However, admittedly, the complainant did not take any steps to summon the Scientific Expert from the State Forensic Science Laboratory who issued Exhibit C1 for examination before the court.

32. The learned counsel for the complainant contended that the oral testimony of PW1, coupled with Exhibits P1 to P5, sufficiently established the case of the complainant and proved that the accused had issued Exhibit P1 cheque in discharge of a legally enforceable debt. It was further contended that

the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the complainant and that the accused has failed to rebut the said presumptions.

33. The learned counsel for the accused submitted that the accused had never issued any cheque to the complainant and that there exists no legally enforceable debt towards the complainant. It was further contended that Exhibit D1 agreement indicates that only a transaction of ₹30,000/- existed between the complainant and the accused, and that Exhibit C1 report corroborates that the signature contained in Exhibit D1 belongs to the complainant. It was also argued that the complainant had failed to prove his financial capacity in a cogent manner. According to the defence, though the complainant alleged that he had advanced a huge amount of ₹7,75,000/- to the accused, he admitted that there are no documents to show that he had lent such an amount to the accused.

34. Per contra, the learned counsel for the complainant submitted that Exhibit D1 agreement has no legal validity as it was allegedly executed in the presence of a police officer and the witnesses to the said agreement were not examined before the court. It was further argued that the accused had not filed any complaint before the authorities alleging misuse of the cheque. The

learned counsel also contended that the mere opinion of the expert contained in Exhibit C1 would not by itself prove the contents of the document. It was further submitted that the acquaintance between the complainant and the accused stands proved through the testimony of PW1 and that the failure of the accused to send any reply to the lawyer notice also supports the case of the complainant.

35. Upon considering the entire evidence on record and the submissions made by the learned counsel for the complainant and the accused, it is evident that there is no dispute regarding the signature of the accused in Exhibit P1 cheque, and therefore the statutory presumption arises in favour of the complainant.

36. With regard to the acquaintance between the complainant and the accused, the accused has not denied that she is a tailor and that she used to visit the shop of the complainant's relative for stitching purposes. Thus, the acquaintance between the complainant and the accused stands established through the evidence of PW1.

37. It has also come out in evidence that the accused had not sent any reply to Exhibit P3 lawyer's notice. Instead, the accused set up a defence that the cheque was misused by the complainant. Though there is no clear evidence

explaining how Exhibit P1 cheque came into the possession of the complainant, no satisfactory explanation has been offered in that regard.

38. It was held in *Jacob KM Vs, State of Kerala and Another (2020 1 KHC 291)* ‘the absence of details of transaction between complainant and accused would effect credibility of testimony of complainant or the case set up in defence would depend upon the facts and circumstances of each case.

39. It is true that in cases arising under Section 138 of the Negotiable Instruments Act, the complainant need not narrate each and every detail connected with the transaction in the complaint or lawyer notice. However, when the transaction is denied by the accused, the complainant could have at least incorporated the relevant details in the proof affidavit.

40. In the present case, PW1 deposed that the issuance of the cheque by the accused on 28-04-2016 was witnessed by his parents. However, that the date of issuance of the cheque was not mentioned in the lawyer notice, complaint or in the proof affidavit filed by PW1. The complainant spoke about the date of issuance of the cheque for the first time during cross-examination. Moreover, the complainant did not examine the persons who were allegedly present at the time of the transaction.

41. The important contention raised by the defence relates to the

financial capacity of the complainant. In this regard, reference can be made to the evidence of PW1 during cross-examination, wherein PW1 admitted that he had no documentary evidence to show that he had ₹7,75,000/- in his possession at the relevant time. Further, PW1 stated that he has four or five bank accounts and that the amount involved in this case would not be reflected in any of those accounts. He also stated that he is not an income tax assessee and that he could not produce any document to prove his income. Though PW1 stated that he was running a shop, he did not specify the nature of the business conducted by him. This aspect assumes significance when the complainant alleges that such a substantial amount was advanced to the accused without any supporting document.

42. In the aforesaid circumstances, the version of the complainant that he lent such a substantial sum of money, without any corroborative evidence, appears highly improbable and lacks credibility. Therefore, this Court is of the opinion that the accused has successfully challenged the financial capacity of the complainant and thereby rebutted the presumption available under Section 139 of the Negotiable Instruments Act. Consequently, the burden shifts back to the complainant to prove that Exhibit P1 cheque was issued by the accused in discharge of a legally enforceable debt independent of the statutory

presumption.

43. It is a settled position of law that when the accused challenges the financial capacity of the complainant, it is incumbent upon the complainant to explain and prove the same by credible evidence. In this regard reliance is placed on ***Basalingappa v. Mudibasappa: 2019 (2) KHC 451 and Tedhi Singh v. Narayan Dass Mahant: 2022 Supreme(SC) 325.***

44. However, in the present case, the complainant failed to adduce any convincing evidence to prove his financial capacity and no effective steps were taken in that regard. Moreover, the complainant has failed to prove the circumstances under which the accused allegedly incurred liability towards him. Neither in the complaint nor in Exhibit P3 lawyer notice were the date of the alleged transaction mentioned. Even in the proof affidavit of PW1, the date of the alleged transaction was not stated. In short, the complainant has failed to establish that Exhibit P1 cheque was issued by the accused in discharge of a legally enforceable debt.

45. In ***Suja Balachandran v. Divya:2024 (7) KHC 394***, hon'ble High Court of Kerala held that

*“The principle that emerges from the above discussion is that the rebuttal does not have to be conclusively established, but such evidence must be*

*adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of responsibility being that of the prudent man.”*

46. In the present case, after analysing the entire evidence and considering the above discussions, this Court concludes that the evidence on record discloses several suspicious circumstances, particularly with respect to the date of the alleged transaction, the absence of contemporaneous documentation, the absence of corroborative witnesses, the inconsistencies brought out during cross-examination of PW1, and the failure of the complainant to establish his financial capacity. The version put forward by the complainant therefore does not inspire confidence and there exists a reasonable possibility that no valid consideration existed for Exhibit P1 cheque. In these circumstances, Exhibit P1 cheque cannot be regarded as having been issued in discharge of a legally enforceable debt. Hence, Point No.2 is answered in favour of the accused.

47. **Point No.3:** In view of the findings on point No.2, the complainant failed to prove that the accused issued Ext.P1 cheque to discharge legally recoverable debt, and thus, it is 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.

48. **Point No.4:** As this Court has already found that the accused has not committed the offence punishable under Section 138 of the Negotiable Instruments Act, the accused is entitled to an order of acquittal.

***In the result,***

***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.***

***The bail bond executed by the accused stands cancelled, and she is set at liberty forthwith.***

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in open court, this the 16<sup>th</sup> day of March 2026).

Sd/-  
Judicial First Class Magistrate,  
Mattannur.

**APPENDIX**

WITNESSES EXAMINED FOR PROSECUTION:

PW1: Vidosh.P

## EXHIBITS MARKED FOR PROSECUTION:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.P1:	28-04-2016	Cheque	PW1
Ext.P2:	12-05-2016	Cheque returned memo	PW1
Ext.P3:	01-06-2016	Copy of lawyer notice	PW1
Ext.P4:	01-06-2016	Postal receipt	PW1
Ext.P5:	07-06-2016	Acknowledgment card	PW1

## WITNESSES EXAMINED FOR DEFENCE:

DW1: Pushpaja

## EXHIBITS MARKED FOR DEFENCE:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.D1:	25-11-2014	Agreement	DW1

## EXHIBITS MARKED FOR COURT:

<u>Document</u>	<u>Date</u>	<u>Description</u>	<u>Marked through</u>
Ext.C1:	22-03-2025	Examination report (State Forensic Science laboratory)	u/S.293 of Cr.PC

MOS.MARKED: Nil

Sd/-  
Judicial First Class Magistrate,  
Mattannur

-/True copy/-

Judicial First Class Magistrate,  
Mattannur

/vt