

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I, PALA**Present:- Smt: Shermin S.S.,**

Judicial Magistrate of the First Class-I, Pala

Thursday the 26th day of March, 2026/ 5th Chaithra 1948**S.T. 816/2017**

Complainant : Ullas K.S, aged 50 yrs, S/o Sreedharan,
Kattiyaniyel House, Kadaplamattam P.O, Andoor
Kara, Kadaplamattam Village, Meenachil Taluk.

(By Adv. P.R Thankachan)

Accused : Reni George, S/o George, Moozhayil House,
Mutholi P.O, Puliyanloor village,
Meenachil Taluk.

(By Adv: Adv: T.C Thomas & Adv:Joby Thomas)

Offence : Punishable u/s 138 of N.I. Act.

Plea : Not guilty

Finding : Guilty

Sentence or order : Accused is found guilty of the offence u/s 138 of Negotiable Instruments Act and he is convicted u/s 255(2) CrPC and sentenced to undergo simple imprisonment for 1 year and to pay fine of Rs.5,00,000/- (Rupees Five Lakh only). In default of payment of fine, he has to undergo simple imprisonment for a period of one month more. The fine amount if realized, shall be paid to the complainant towards compensation u/s.357(1)(b) of Cr.P.C.

Description of Accused

Name	Age	Father's name	Calling	Residence	Taluk
Reni George	-	George	-	Moozhayil	Meenachil

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order
13.1.2017	28.1.2017	6.5.2017	6.5.2017	18.11.2017	24.3.2026	26.3.2026

This case having been finally heard on this day, the Court delivered the following:-

J U D G M E N T

1. This is a complaint filed u/s.190 of Cr.P.C, alleging that the accused had committed the offence punishable under section 138 of N.I. Act.
2. **The case of the complainant in brief is as follows:-** Case of the complainant is that, complainant and accused are friends. On 10/11/2015, accused had borrowed ₹ 5,00,000 from him and in order to return the aforesaid amount he executed Exhibit P1 cheque bearing No.172955 dated 24/11/2016 of Canara Bank, Pala Branch, for Rs.5,00,000/- in favour of the complainant. The accused made the complainant believe that he can obtain money by presenting it before the bank. After that, complainant had presented Ext.P1 cheque before Federal Bank Ltd, Kadaplamattam branch for collection, which was dishonoured citing the reason “funds insufficient” in the account of the accused. On 09/12/2016, the aforesaid cheque return from the bank with memo. After that on 26/12/2016, the complainant had sent a lawyers notice to the accused, which was accepted by him and acknowledgment card returned on 29/12/2016. However, the accused did not turn up. Hence the complaint.
3. On appearance of the accused, copies of prosecution records were furnished and particulars of offence punishable u/s.138 of the Negotiable Instruments Act have been read over to accused to which he pleaded not guilty and claimed to be tried. After that the case was posted for the evidence of the complainant. PW1 and PW2 were examined, Exts.P1 to P6 were marked.
4. After the closure of the evidence of the complainant, accused was examined u/s.313 (1)(b) Cr.P.C. He denied the incriminating circumstances levelled against him. Even

though sufficient opportunities had given, no evidence adduced from the side of defence.

5. I heard both sides.

6. The following points arise for determination:-

- (i) Was Ext. P1 executed by the accused ?
- (ii) Was it executed in discharge of any debt or legally enforceable liability ?
- (iii) Was it dishonoured due to insufficiency of funds ?
- (iv) Whether the statutory requirements u/s.138 &142 of the N.I. Act have been complied with?
- (v) In the event of conviction, what is the sentence to be awarded upon the convicted accused ?

7. Points Nos. 1 and 2:- For the brevity of discussion, point nos.1 & 2 are considering together. The case of the complainant is that the accused had borrowed ₹ 5,00,000 from him and in order to return the aforesaid amount he executed Exhibit P1 cheque. The version of the accused is that, the complainant was a subcontractor of a construction company. In order to provide materials in the site, compliant demanded his pick-up jeep in which he was the driver and he provided materials as per demand. While providing costly materials, if there may happen any loss from his side, to adjust that loss, complainant received a signed cheque and a signed stamp paper value of Rs.100 from him. Thereafter, the complainant failed to give rent for 2 months and his salary as driver. So he stopped his service. Accused demanded to return the said cheque and stamped paper. But complainant refused to give him that documents for which he made complaint before Kidangoor police

station. Since an advocate's notice is received, the police refused to register crime against the complainant.

8. PW1 who is the complainant, filed proof affidavit in lieu of examination in chief which is in tune with the averments of the complaint. According to complainant, on 10.11.2015, accused borrowed ₹ 5,00,000 from him as loan and issued Exhibit P1 cheque. He made him believe that he can obtain money by presenting it before the bank. Even though he presented it before the bank, it was returned due to insufficiency of fund in the account of the accused. The complainant version is that at the time of granting money, his wife and his friend, one Mr. Steny was present. After filing complaint, Steny was no more. The testimony of PW1 shows that himself and the accused know each other. Complaint was working as BSNL Civil Contractor. Deposition of PW1 is that accused issued Exhibit P1 cheque at his house. Accused admitted that complainant received a signed cheque from him in another transaction.

9. Accused contented that accused gave a signed cheque to complainant for another transaction and complainant used that cheque fraudulently. But he did not produced any evidence to substantiate this contention. In **Kalamani Tex [M/s] and another v P. Balasubramanian** reported in **2021[2] KHC 517** the Hon'ble Apex Court has held that once signature of an accused on cheque is established, then reverse onus clauses become operative. In such a situation, obligation shifts upon accused to discharge the presumption imposed upon him. No evidence is produced by the accused to rebut this presumption.

10. On going through the evidence produced in this case, it can be seen that except the bare denial, nothing proved to reverse the presumption in favour of the complainant. Wife of PW1 was examined as PW2. Her version is also in tune with PW1 and complaint. Even though PW1 and PW2 were subjected to cross-examination, nothing made out to disbelieve their testimony regarding execution of P1 cheque, it can be seen that Exhibit P1 was executed by the accused. The accused could not discredit the evidence built up by the side of the complainant. The Signature of Exhibit P1 remains undisputed. Accused raised a contention that complainant was a subcontractor of a construction company and in order to provide materials in the site, complainant demanded his pickup jeep in which he was the driver and he provided materials as per the demand of the complainant. While providing costly materials, if there may happen any loss from the side of the accused, to adjust that loss, complainant received a signed cheque and a signed stamp paper of value ₹ 100 from the accused. Thereafter the complainant failed to give rent for 2 months. He stopped delivery. So accused demanded to return that signed cheque and stamp paper. But complainant refused to give him those documents for which he made complaint before Kidangoor Police Station. Even though such a contention is raised by the accused, no document is produced to prove or to substantiate this contention. Hence, signature and exhibit P1 should remain undisputed. Point nos. 1 and 2 are found in favour of the complainant.

11. Point Nos. 3 & 4:- From the testimony of PW1, it can be seen that Ext P1 cheque was dishonoured citing the reason “ insufficiency of funds” and the accused has knowledge about it. In the cross examination, PW1 stated that the reason for return the Ext.P1 was

insufficiency of fund. But the accused have no such case that he had sufficient fund in his account. No evidence was adduced to show that accused have sufficient fund in his account. Exhibit P4 shows that a lawyer's notice has been issued to the accused on 26/12/2016. Exts.P5 and P6 prove that a lawyer's notice has been sent to the accused and which was accepted by the accused on 29/12/2016. No serious disputes raised regarding that aspect. No reply notice is sent by the accused. Hence, it can be seen that all the legal formalities were complied by the complainant. The aforesaid points are also found in favour of the complainant.

12. Point No.5: In the light of the abovesaid findings, it is found that the accused had committed an offence punishable u/s 138 of N.I Act and he is convicted thereunder. In **Nalinakshan M. V. v. M. Rameshan** and Another reported in **2009 (1) KHC 561**, Hon'ble High Court of Kerala held that *it is not expedient to release a person convicted of an offence under section 138 of the NI Act on probation under section 4(1) of the Probation of Offenders Act*. Hence the benevolent provisions of P.O. Act cannot be invoked in this case.

In the result, accused is found guilty of the offence u/s 138 of Negotiable Instruments Act and he is convicted u/s 255(2) CrPC and sentenced to undergo simple imprisonment for 1 year and to pay fine of Rs.5,00,000/- (Rupees Five Lakh only). In default of payment of fine, he has to undergo simple imprisonment for a period of one month more. The fine amount if realized, shall be paid to the complainant towards compensation u/s.357(1)(b) of Cr.P.C.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in the open Court on this day, the 26th day of March, 2026.

**JUDICIAL MAGISTRATE OF THE FIRST CLASS-I
PALA**

APPENDIX

Witnesses examined for the complainant:-

PW1 : Ullas

PW2 : Anu

Exhibits marked for the complainant:-

P1 Cheque dated 24/11/2016 proved by PW1

P2 Cheque dishonoured Memo dated 06/12/2016 proved by PW1

P3 Cheque return Memo dated 09/12/2016 proved by PW1

P4 Copy of Lawyer's notice dated 26/12/2016 proved by PW1

P5 Postal Receipt dated 26/12/2016 proved by PW1

P6 AD card proved by PW1

Witnesses examined for the accused:- NIL

Exhibits marked for the accused:-NIL

**JUDICIAL MAGISTRATE OF THE FIRST CLASS-I,
PALA**

//True copy//

**JUDICIAL MAGISTRATE OF THE FIRST CLASS-1,
PALA**