

**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

Monday, 16<sup>th</sup> day of March, 2026 / 25<sup>th</sup> day of Phalguna, 1947**S.T. 4430/2016**

- Complainant : Sambu Prasad, aged 61yrs,  
S/o Dhamodharan, Mecheril House,  
Pakalomattam P.O, Kuravilangadu.  
**(By Adv. Sajikumar M**
- Accused : Sahadevakumar K.P, aged 68 yrs,  
Njodiyapallil Pariyarath House, Vakathanam P.O,  
Vakathanam Village, Kottayam.  
**( By Adv: Usha Menon)**
- 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 sentence to undergo simple imprisonment for 6 months and to pay fine of Rs.1,00,000/- (Rupees One 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    |
|-------------------|-----|---------------|---------|-----------------------------|----------|
| Sahadevakumar K.P | 68  | -             | -       | Njodiyapallil<br>Pariyarath | Kottayam |

**Dates of**

| Occurrence | Complaint | Apprehension | Release on bail | Commencement of trial | Close of trial | Sentence or order |
|------------|-----------|--------------|-----------------|-----------------------|----------------|-------------------|
| 23.5.2013  | 21.6.2013 | 24.2.18      | 24.2.18         | 24.2.18               | 11.3.26        | 16.3.26           |

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, in order to repay the borrowed amount, the accused, issued Ext.P1 cheque bearing No.017679 dated 01/03/2013 of Federal Bank Ltd, Vakathanam Branch, for Rs.1,00,000/- in favour of the complainant at office 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, Kuravilangadu branch for collection, which was dishonoured citing the reason “funds insufficient” in the account of the accused. After that on 06/05/2013, the complainant had sent a lawyers notice to the accused, which was not accepted by him and returned on 10/05/2013. 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 P8 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. From

the side of defence DW1 was examined and Ext.D1 and D2 were marked. .

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. Case of the complainant is that accused, had borrowed ₹ 1,00,000 from him and in order to return the said amount, he has issued Exhibit P1 cheque. The version of the accused is that the accused and the complainant had real estate business. During that time, complainant received two blank cheques from him. Accused contented that signature and writings in Exhibit P1 are not that of him.

8. PW1, who is the complainant in this case, he filed a proof affidavit in lieu of examination in chief, which is in tune with the averments in the complaint. According to PW1, accused borrowed ₹ 1,00,000 from him for which he issued Exhibit P1cheque, made him believe that on presentation it before the bank he can obtain money. Even though he presented it before the bank, it was returned with a reason “funds insufficient” in the account of the accused. Testimony of PW1 shows that himself and accused are doing real

estate business.

9. PW2 was the Federal Bank Manager, Vakathanam branch and his evidence is that 16930100012426 account is in the name of accused. He identified Exhibit P1 to Exhibit P3 and he stated that address mentioned in Exhibit P8 is Njodiyapallil Pariyarath House, Vakathanam P.O and it is the address of the accused. He stated that account is opened by producing address proof of the customer. From this evidence, it is clear that the account maintaining bank is that of accused. Account opening form is given only based on ID proof, which clearly shows that accused opened account by producing his ID proof.

10. The accused was examined as DW1 . In the chief examination, he admitted that he and the complainant had a real estate business and at that time he handed over two blank cheques. In the cross-examination, he stated that based on confidence, he gave blank cheque. He produced two envelopes sent to him, which is marked as D1 and D2. In Ext.P6: notice is returned with a reason not known. Ext. D1 and D2 shows that there was a redirection towards addressee from postal authority.

11. On going through the evidence adduced in this case accused only denied signature and writings. But he admitted that he granted two cheques to the complainant. From the oral as well as documentary evidence, it is understood that, except the bare denial, nothing brought to rebut the presumption in favour of the complainant. Even though PW1 was subject to cross-examination, nothing made out to disbelieve his testimony.

12. On going through evidence adduced in this case, it can be seen that except the bare denial, nothing brought to rebut the presumption in favour of the complaint. Even though PW1 was subjected to cross-examination, nothing made out to disbelieve his testimony regarding the execution of Exhibit P1. Accused could not

discredit the evidence built up by the side of the complainant regarding the transaction. Signature in Exhibit P1 cheque remains undisputed.

13. Exhibit P4 shows that a lawyer's notice has been issued to the accused. On analyzing entire evidence, 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. There is no evidence produced by the accused to dispute the signature in the cheque. The signature in Exhibit P1 cheque remains undisputed. Hence, Point number 1 and 2 are found in favour of the complainant.

**14. 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. Exts.P5 and P6 prove that a lawyer’s notice has been sent to the accused and he did not accepted it. Moreover, one of the contentions raised by the accused is that the notice sent by the complainant is not received by him because the address shown in the notice is not that of him. from the evidence of accused, it is understood that he received process from the court as per redirection. He produced two envelopes sent to him, which is marked as D1 and D2. Ext.P6: notice is returned with a reason not known. Ext. D1 and D2 shows that there was a redirection towards addressee from postal authority. Complainant contented that re-direction by the postal authority is possible only when addressee informed his present address to the postal authority. This

contention is not rebutted by the accused. Hence, the contention of the complainant is considered as more probable than accused version. The aforesaid points are also found in favour of the complainant.

15. **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 sentence to undergo simple imprisonment for 6 months and to pay fine of Rs.1,00,000/- (Rupees One 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 16<sup>th</sup> day of March, 2026.

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

**APPENDIX**

Witnesses examined for the complainant:-

PW1 : Sambhu Prasad

PW2 : Bindhiya Balachandran

Exhibits marked for the complainant:-

P1 Cheque dated 01/03/2013 proved by PW1

P2 Cheque dishonoured Memo dated 18/4/13 proved by PW1

P3 Cheque return Memo dated 18/4/13 proved by PW1

P4 Copy of Lawyer's notice dated 03/05/2013 proved by PW1

P5 Postal Receipt dated 06/5/13 proved by PW1

P6 Return of notice proved by PW1

P7 Page of Cheque issue register proved by PW2

P8 Account opening form proved by PW2

Witnesses examined for the accused:-

DW1: Sahadevakumar

Exhibits marked for the accused:-

D1 : Envelop proved by DW1

D2 :Envelop proved by DW1

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

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