

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

Wednesday, 18th day of March, 2026 / 27th day of Phalguna, 1947**JOINT TRIAL IN ST.4819/2017, ST.4820/2017 & ST.4821/2017**

Complainant : Jomon Augustine, aged 53 yrs, S/o Augusthy, Parakkudiyil House, Kurianadu P.O, Monippally Village, Meenachil Taluk.
(By Adv. Roy George)

Accused : Jobin T Jose, Aged 36 Yrs, S/o Jose, Thottuchalil House, Mutholi P.O, Puliyanloor Village, Meenachil Taluk.
(By Adv: S Ahees)

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

Plea : Not guilty

Finding : Guilty

Sentence or order : In ST. 4819/17, 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 6 months and to pay fine of Rs.1,15,000/- (Rupees One Lakh fifteen thousand 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.

In ST. 4820/17, 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 6 months and to pay fine of Rs.50,000/- (Rupees Fifty thousand 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.

: In ST. 4821/17, 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 6 months and to pay fine of Rs.1,50,000/- (Rupees One Lakh fifty thousand 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. Substantive sentences shall run concurrently.

Description of Accused

| Name | Age | Father's name | Calling | Residence | Taluk |
|--------------|-----|---------------|---------|--------------|-----------|
| Jobin T Jose | 36 | Jose | - | Thottuchalil | Meenachil |

Dates of

| Occurrence | Complaint | Apprehension | Release on bail | Commencement of trial | Close of trial | Sentence or order |
|-----------------------|-----------------------|--------------|-----------------|-----------------------|----------------|-------------------|
| ST.4819/17-25/02/2017 | ST.4819/17-25/03/2017 | | | | | |
| ST.4820/17-25/02/2017 | ST.4820/17-25/03/2017 | 7.7.2018 | 7.7.2018 | 22.6.2019 | 16.3.2026 | 18.3.2026 |
| St.4821/17-25/02/2017 | St.4821/17-25/03/2017 | | | | | |

These cases having been finally heard on this day, the Court delivered the following:-

J U D G M E N T

ST.4819/2017

- 1. The case of the complainant in brief is as follows:-** Case of the complainant is that he is a businessman doing sale of vehicles. On 07.11.2014 he purchased a car bearing registration number KL-4AB-5848 for ₹ 4,35,000 from the accused. On the very same day, he handed over RC particulars and insurance book to the complainant. A crime was registered as Crime No. 22/2015 at North Police Station Alappuzha based on the complaint of prior owner of the said vehicle against the accused and other persons under Section 406, 468, 471, 420 and 34IPC. Based on that crime, the said vehicle was taken to custody by the police and he came to know that the accused thereby cheated him. Complainant made a complaint before Thalayolaprambu police station and the accused agreed to give the amount as installment. Up on the mediation of one Mr. Noby Thomas, accused agreed to repay ₹ 3,15,000 in which he issued three cheques as installments. In order to repay the amount, accused issued Ext.P2 cheque bearing No.618861 dated 30/12/2016 for Rs.1,15,000/- of SBT Anthinadu Branch in favour of the complainant. The complainant produced this cheque before the ICICI bank, Kuravilangadu branch, but it was returned with reason insufficiency of funds in the account of the accused. After that on 08/02/2017, the complainant had sent a lawyers notice to the accused, which was accepted by the accused on 10/02/2017. Accused didn't made any reply to the notice. However, the accused did not turn up. Hence the complaint.

ST.4820/2017

2. Case of the complainant is that he is a businessman doing sale of vehicles. On 07.11.2014 he purchased a car bearing registration number KL-4AB-5848 for ₹ 4,35,000 from the accused. On the very same day, he handed over RC particulars and insurance book to the complainant. A crime was registered as Crime No. 22/2015 at North Police Station Alappuzha based on the complaint of prior owner of the said vehicle against the accused and other persons under Section 406, 468, 471, 420 and 34IPC. Based on that crime, the said vehicle was taken to custody by the police and he came to know that the accused thereby cheated him. Complainant made a complaint before Thalayolaprambu police station and the accused agreed to give the amount as installment. Up on the mediation of one Mr. Noby Thomas, accused agreed to repay ₹ 3,15,000 in which he issued three cheques as installments. In order to repay the amount, accused issued Ext.P3 cheque bearing No.618859 dated 15/10/2016 for Rs.50,000/- of SBT Anthinadu Branch in favour of the complainant. The complainant produced this cheque before the ICICI bank, Kuravilangadu branch, but it was returned with reason insufficiency of funds in the account of the accused. After that on 08/02/2017, the complainant had sent a lawyers notice to the accused, which was accepted by the accused on 10/02/2017. Accused didn't made any reply to the notice. However, the accused did not turn up. Hence the complaint.

ST.4821/2017

3. Case of the complainant is that he is a businessman doing sale of vehicles. On 07.11.2014 he purchased a car bearing registration number KL-4AB-5848 for ₹ 4,35,000 from the accused. On the very same day, he handed over RC particulars and

insurance book to the complainant. A crime was registered as Crime No. 22/2015 at North Police Station Alappuzha based on the complaint of prior owner of the said vehicle against the accused and other persons under Section 406, 468, 471, 420 and 34IPC. Based on that crime, the said vehicle was taken to custody by the police and he came to know that the accused thereby cheated him. Complainant made a complaint before Thalayolaprambu police station and the accused agreed to give the amount as installment. Up on the mediation of one Mr. Noby Thomas, accused agreed to repay ₹ 3,15,000 in which he issued three cheques as installments. In order to repay the amount, accused issued Ext.P4 cheque bearing No.618860 dated 25/11/2016 for Rs.1,50,000/- of SBT Anthinadu Branch in favour of the complainant. The complainant produced this cheque before the ICICI bank, Kuravilangadu branch, but it was returned with reason insufficiency of funds in the account of the accused. After that on 08/02/2017, the complainant had sent a lawyers notice to the accused, which was accepted by the accused on 10/02/2017. Accused didn't made any reply to the notice. However, the accused did not turn up. Hence the complaint.

4. 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 in the three cases After that the case was posted for the evidence of the complainant. PW1 was examined, Exts.P1 to P4(d) were marked.
5. 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 was marked.

6. I heard both sides.

7. The following points arise for determination:-

- (i) Was Ext. P2, P3 and P4 were executed by the accused ?
- (ii) Were P2, P3 and P4 executed in discharge of any debt or legally enforceable liability ?
- (iii) Were the cheques 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 ?

8. Points Nos. 1 and 2:- For the brevity of discussion, point nos.1 & 2 are considering together.

9. ST. 4819/17, ST.4820/17 & ST.4821/27 were jointly tried in accordance with the order passed in C.M.P. No.2554/2021. The complainant, examined as PW1, filed proof affidavit in lieu of chief examination, which is consistent with the averments made in his complaints.

10. Case of the complainant is that he is a businessman doing sale of vehicles. On 07.11.2014 he purchased a car bearing registration number KL-4AB-5848 for ₹ 4,35,000 From the accused. On the very same day, he handed over RC particulars and insurance book to the complainant. A crime was registered as Crime No. 22/2015 at North Police Station Alappuzha based on the complaint of prior owner of the said vehicle against the accused and other Persons under Section 406, 468, 471, 420 and 34IPC. Based on the crime, the said vehicle was taken to custody by the police and he came to know that the

accused thereby cheated him.

11. Complainant made a complaint before Thalayolaparambu police station and the accused agreed to give the amount as installment. On the mediation of one Mr. Noby Thomas, accused agreed to repay ₹ 3,15,000 in which he issued three cheques agreed to repay as three installments. The complainant produced these cheques before the bank, but it were returned with reason insufficiency. Notice was issued to the accused, but he didn't made any reply to the notice. On the basis of joint trial application, in the present case, joint trial is ordered and evidence is adduced in three cases together.

12. PW1 is the complainant. He filed proof affidavit in lieu of examination-in-chief, which is in tune with the averments in the complaints. According to PW1, after transferring his vehicle, and based on the compromise arrived between accused and the complainant at the Thalayolaparambu police station, accused agreed to pay ₹ 3,15,000 for which he issued Exhibit P2, P3, P4 cheques. He made it and believed that he can obtain the money by presenting it before the bank. Even though he presented it before the bank, it were returned due to insufficient of fund in the account of the accused. The testimony of PW1 shows that he himself and accused are doing business of vehicle. PW1 deposed that accused gave three cheques with different dates. On presentment these three cheques, returned due to insufficiency of funds in the account of accused. The testimony of PW1 shows that himself and accused are doing vehicle transfer business. In the deposition he stated that he received vehicle from accused by clearing finances. From the evidence it is clear that the accused denied the execution of these three cheques.

13. DW1 was examined from the side of defence, who was the DYSP, DCRB and 45th witness in Alappuzha North Cr.22/2015. His evidence is that he recorded the statement of PW1. Charge in that crime is marked as Ext.D1 subject to objection. Jomon was accused in that case. Thereafter, Jomon filed complaint before SP. Jomon made a statement before him that on 07/11/2014, Rs.3,20,000/-, ie, as price of car is handed over to one Aslam. Further investigation was done by witness no.48. From analyzing the deposition of DW1, nothing is made out regarding the present transaction.

14. On going through the evidence adduced in this case, it can be seen that except the bare denial, nothing brought to rebut presumption in favour of the complainant. Even though, PW1 was thoroughly cross examined, nothing made out to disbelieve his testimony regarding the execution of Ext.P2, P3 and P4. The accused could not discredit the evidence adduced by the complainant. The signature in Ext.P2, P3 & P4 remains undisputed. Hence, point no. 1 & 2 found in favour of the complainant.

15. Point Nos. 3 & 4:- From the testimony of PW1, it can be seen that Ext P2, P3 & P4 cheques were 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.P2,P3 & P4 were 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.P2(b), P2(c), P2(d), P3(b), P3(c), P3(d), P4(b), P4(c) and P4(d) prove that a lawyer’s notice has been sent to the accused and he accepted it. The aforesaid points are also found in favour of the complainant.

16. **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, in ST.4819/17, 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 6 months and to pay fine of Rs.1,15,000/- (Rupees One Lakh fifteen thousand 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.

In ST. 4820/17, 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 6 months and to pay fine of Rs.50,000/- (Rupees Fifty thousand 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.

In ST. 4821/17, 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 6 months and to pay fine of Rs.1,50,000/- (Rupees One Lakh fifty thousand 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. Substantive sentences shall run concurrently.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in the open Court on this day, the 18th day of March, 2026.

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

APPENDIX

Witnesses examined for the complainant:-

PW1 : Jomon Augustine

Exhibits marked for the complainant:-

- P1 Certified copy of FIR proved by PW1
- P2 Cheque No.618861 proved by PW1
- P2(a) Cheque return Memo proved by PW1
- P2(b) Copy of Lawyer's notice proved by PW1
- P2(c) Postal Receipt dated 06/5/13 proved by PW1
- P2(d) Track consignment letter
- P3 Cheque No.618859 proved by PW1
- P3(a) Cheque return Memo proved by PW1

- P3(b) Copy of Lawyer's notice proved by PW1
- P3(c) Postal Receipt dated 06/5/13 proved by PW1
- P3(d) Track consignment letter
- P4 Cheque No.618860 proved by PW1
- P4(a) Cheque return Memo proved by PW1
- P4(b) Copy of Lawyer's notice proved by PW1
- P4(c) Postal Receipt dated 06/5/13 proved by PW1
- P4(d) Track consignment letter

Witnesses examined for the accused:-

DW1: Subhash

Exhibits marked for the accused:-

D1 : Copy of charge sheet proved by DW1

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