

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II,
ETTUMANOOR**

**Present: Miss. Annu Mary Jose, Judicial First Class
Magistrate-II**

Tuesday, the 28th day of April, 2026
08th Vaishagham 1948

S.T No. 113/2023

Complainant : Devon Foods Ltd, V/732, Industrial Estate,
Kottakkupuram P.O, Ettumanoor, represented by its
authorised Power of Attorney of the Managing Director
of the company Liaison Officer
Sri. Rajan K K, aged about 64 years,
S/o. K.V Narayanan, Kunnathu House,
Kaipuzha P.O, Kottayam District.

By : Adv. Roy George

Accused : Suneesh Sukumaran,
Eenthumkal House, Mukkadam P.O,
Konnathady, Parathodu, Idukki - 685 562.
(Konnathady West Police Station)

By : Adv. E.M Suresh

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

Plea : Not Guilty

Finding : Not Guilty

Sentence or order : The accused is found not guilty of the offence punishable
u/s 138 NI Act. He is acquitted u/s 255(1) Cr.P.C. His bail
bond stands cancelled and he is set at liberty.

Description of the Accused

| Sl. No. | Name | Father's Name | Occupation | Residence | Age |
|---------|-------------------|---------------|------------|--------------------------------------|------|
| 1. | Suneesh Sukumaran | | | Eenthumkal House Mukkada P.O, Idukki | |

| Date of occurrence | Date of Complaint | Apprehension | Release on bail | Commencement of trial | Close of trial | Sentence or Order |
|--------------------|-------------------|--------------|-----------------|-----------------------|----------------|-------------------|
| 24.05.2019 | 24.10.2019 | Not Arrested | 22.04.2024 | 10.09.2024 | 25.04.2026 | 28.04.2026 |

JUDGMENT

This complaint is filed under section 142 of the Negotiable Instruments Act alleging commission of the offence punishable under section 138 of the Act (Hereinafter referred to as Act.)

2. The averments in the complaint in brief are as follows:- The complainant is a Public Limited Company Registered under the Indian Companies Act. The complainant company is represented by authorized Power of Attorney Holder. The accused is the distributor of the complainant company for the area Adimaly to Perumbavur and towards the part payment of total amount of Rs. 1,78,585/-, the accused executed and issued a cheque dated 03.03.2019 bearing no.638630 drawn on Adimaly Branch of Canara Bank for an amount of Rs.49,620/-. The complainant presented the cheque for encashment through Oriental Bank of Commerce, Ettumanoor Branch. It was returned for the reason 'funds insufficient' as per memo dated 18.3.2019. The cheque and the memo were returned to the complainant on 11.4.2019. The complainant issued a lawyer's notice on 08.05.2019 informing about the dishonour of cheque and directing the accused to repay the amount. Even though the accused received the notice on 20.05.2019, he did not pay the amount. Hence this complainant.

3. Originally this complaint was filed before Hon'ble Judicial First Class Magistrate-I, Ettumanoor and it was taken on file as ST No. 278/2022. It was made over to this court as per the order of Hon'ble Chief Judicial Magistrate. It was taken on file as ST.113/2023. The accused appeared before the court. He was enlarged on bail. Particulars of the offence punishable under section 138 of the Act were read over and explained to the accused. He pleaded not guilty. He was represented by a counsel of his choice.

4. On the side of the complainant, the Power of Attorney holder of the complainant was examined as PW1. Ext.P1 to P9 were marked. After the closure of the complainant's evidence, the accused was examined under section 313 Cr.PC with respect to the incriminating circumstances brought out in evidence against him. He denied all the incriminating circumstances brought out in evidence against him. DW1 was examined and Ext.D1 was marked from the side of the defence.

5. Heard both sides.

6. The points that arise for determination are:

- (1) Whether Ext.P3 cheque was issued by the accused in discharge of a legally enforceable debt?

- (2) Whether the complainant has proved the execution and issuance of Ext.P3 cheque?
- (3) Whether statutory requirements under section 138 of the Act are complied with?
- (4) Whether the accused has committed the offence punishable under section 138 of the Act? If found guilty, what is the order as to sentence?

7. Point No.1 and 2:- These points are considered together since the facts and evidence to be discussed are interconnected. The specific case of the complainant is that the accused was the distributor of the complainant company for the area Adimali to Perumbavoor and an amount of Rs.1,78,585/- is due from the accused. He had executed Ext.P3 cheque for Rs.49,620/- towards part payment. The said cheque was dishonoured due to the reason funds insufficient and thereafter the above complaint was filed after complying with the legal formalities. The accused would contend that he was not the distributor of the complainant company.

8. The Power of Attorney Holder of the complainant was examined as PW1. Ext.P1 is the certified true copy of resolution authorizing him to represent the company. Ext.P2 is the certified

copy of Power of Attorney. The learned counsel for the accused contended that the last page of Ext.P2 would show that it was signed at Ernakulam whereas a perusal of Ext.P2 would show that it was executed and signed before the Notary at Ettumanoor. It is contended by the defence counsel that Ext.P2 is not a valid power of attorney. A perusal of Ext.P2 would show that PW1 was authorized to appear before civil or criminal court filed from 01.10.2015. He was also authorized to give applications regarding the conduct of cases under section 138 Negotiable Instruments Act. The evidence of PW1 would also go to show the same. The accused has no case that it is a fabricated document. Hence, it cannot be said that Ext.P2 is not a valid power of attorney. The accused also disputed Ext.P1 stating that Ext.P1 does not bear the company seal. It is true that Ext.P1 does not bear the company seal. Even then, a perusal of Ext.P1 would show that the Managing Director and Director signed on Ext.P1. It would also show that PW1 was authorized to look after the legal affairs of the company. So, the above contention is also liable to be rejected.

9. Now it is to be considered whether the complainant has discharged the initial burden. The evidence of PW1 would show that no document was produced to show the appointment of accused as the distributor of the complainant company. He would

also depose that rate of items shown in Ext.P8 series as one paisa might to be occurred due to some mistake. Ext.P8 would not show that the accused had received the consignment. He further deposed that the delivery date, time, mode of transport are also left blank in Ext.P8 series. The learned counsel for the complainant submitted that Ext.P8 series and P9 would show that the accused had purchased items from the complainant company and an amount of Rs.1,78,585/- is due to the complainant. The accused admitted the signature on Ext.P3 cheque and he is liable to be convicted. The counsel for the complainant relied on the judgment of the Hon'ble Apex court in **Rangappa v. Mohanan (2010 KHC 4325)**. Per contra, the learned counsel for the accused submitted that Ext.P8 series and P9 cannot be relied upon to prove that the accused received the consignment. It is to be noted that the columns such as delivery time, delivery date, transport, vehicle number, mode of transport are left blank in Ext.P8 series. It is revealed from the evidence of PW1 that Ext.P8 series would not show that the consignment was delivered to the accused. Since Ext.P8 series would not show that the consignment was delivered to the accused, the authorized signatory who signed Ext.P8 series ought to have been examined in the case. The evidence of PW1 would show that the General

Manager is the authorized signatory and he has the responsibility with regard to Ext.P8 series tax invoice. It is pertinent to note that the authorized signatory was not examined and explanation was not given as to why the above columns are left blank. It strikes at the root of the complainant's case.

10. It is the case of the accused that he was not the distributor of the complainant company. The evidence of PW1 would show that he did not remember whether there would be documents with regard to the appointment of the distributor. The evidence of PW1 would also reveal that it is not clear from Ext.P8 series that the alleged transaction is cash or credit basis. Moreover, Ext.P8 series are also silent about that. Even the rates of some items are shown as one paisa in Ext.P8 series. So, Ext.P8 series would not prove that the consignment was delivered to the accused. It is true that the accused admitted his signature on Ext.P3 cheque. However, there is no averment in the complaint or proof affidavit that Ext.P3 cheque was signed in the presence of PW1 and delivered the same to him. So, it would go to show that the complainant failed to prove the execution of Ext.P3 cheque.

11. The case of the accused is that he agreed to purchase the seed items from the complainant company and three signed blank cheque were given as security. Since the complainant attempted

to sell items which were about to expire, the accused did not take the items. Thereafter the above complaint was filed by misusing the above cheque. It is already observed that Ext.P8 series cannot be relied upon. Hence, the above defence version cannot be ruled out.

12. The learned defence counsel contended that Ext.P9 would show that Rs.40,000/- was credited to the account of the complainant and the same was not disclosed by the complainant in the complaint. It can be seen from Ext.P9 that Rs.40,000/- was credited to the complainant's account on 29.03.2019. It is pertinent to note that Ext.P3 cheque is dated 03.03.2019. It is not averred in the complaint that the accused had transferred Rs.40,000/- even after issuance of Ext.P3 cheque. It is to be noted that the case of the complainant is that a total amount of Rs.1,78,585/- is due to the complainant. A perusal of Ext.P9 would show that Rs.40,000/- was credited on 29.03.2019 and thereafter also the balance amount due is Rs.1,78,585/-. It would show that Ext.P9 cannot be relied upon. So, this would reveal that the complainant has failed to discharge the initial burden.

13. It is also contended by the accused that he did not receive Ext.P5 notice. It is contended that the address shown in Ext.P5 notice is not his address. The accused relied on Ext.D1 copy of

Aadhar card to prove the same. The evidence of DW1 is to effect that he did not receive Ext.P5 notice. Even though the accused contended that the address shown in Ext.P5 is not his address, the address in Ext.P5 notice, the complaint, summons and in the vakkalath of the accused are same. The accused appeared before the court upon receipt of summons. Hence the averment that Ext.P5 notice was not received by him cannot be relied upon.

14. It has come out in evidence that the complainant failed to prove the execution and issuance of Ext.P3 cheque. The evidence on record would not show that Ext.P3 cheque was issued as a consideration for a legally enforceable debt. Hence, point no.1 and 2 are found against the complainant.

15. Point no.3: - Ext.P3 cheque is dated 03.03.2019. The complainant presented the cheque for encashment through Oriental Bank of Commerce, Ettumanoor Branch. The cheque was returned stating reason as 'fund insufficient' as per Ext.P4 memo dated 18.03.2019. It can be seen that Ext.P5 office copy of lawyer's notice is dated 08.05.2019. The defence counsel submitted that notice has to be issued to the accused intimating about the dishonour of the cheque within 30 days of intimation from the bank regarding dishonour of cheque. Since Ext.P5 copy of lawyer's notice was issued after above the period, the statutory

requirements under section 138 NI Act are not complied with.

16. In this context, it is necessary to consider section 138(b), Section 138(b) read as follows:- *“the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid”*. In the case on hand, Ext.P4 dishonour memo is dated 18.03.2019. So, lawyer’s notice has to be issued to the accused within 30 days of intimation from the bank. In this case, Ext.P5 notice was issued on 08.05.2019 which is beyond the statutory period of 30 days. The case of the complainant is that he received the memo on 11.4.2019. Even though, it is stated in Ext.P4 that ‘received on 11.04.2019’, it does not contain the signature of the Bank Manager or seal of the Bank. Moreover, the complainant has not examined the Bank Manager to prove that dishonour memo was given to the complainant on 11.04.2019. Hence it is clear that the statutory formalities under section 138 are not complied with.

17. Point no.4: - In the light of discussion on point nos.1 to 3, it is found that the complainant failed to prove that the accused committed the offence punishable under section 138 of N.I. Act.

So, the accused is found not guilty of the offence punishable u/s 138 N.I Act. He is acquitted under section 255(1) Cr.P.C. His bail bond stands cancelled and he is set at liberty.

(Dictated to the confidential Assistant, transcribed and typed by her corrected and pronounced by me in open court on 28th April, 2026.)

**Sd/-
Annu Mary Jose
Judicial First Class Magistrate-II**

APPENDIX

Witness examined for complainant:-

PW1 : Rajan K.K

Witness examined for Accused:-

DW1 : Suneesh Sukumaran.

Exhibits marked for complainant:-

| | | |
|--------|--------------|---|
| P1 | : 01.10.2015 | Certified true copy of Resolution |
| P2 | : 23.12.2024 | Power of attorney. |
| P3 | : 03.03.2019 | Cheque No: 636630 for ₹49,620/- drawn on Canera Bank, Adimali Branch. |
| P4 | : 18.03.2019 | Cheque return memo |
| P5 | : 08.05.2019 | Office copy of lawyer's notice |
| P6 | : 08.05.2019 | Postal Receipt |
| P7 | : - | Acknowledgment card |
| P8 | : - | Tax invoices. |
| series | | |
| P9 | : 31.01.2025 | Ledger from 01.04.2018 to 31.03.2019. |

Exhibits marked for the Defence:-

D1 : Copy of Aadhar Card

Exhibits marked through independent witness- Nil

Exhibits marked by court:- Nil

Material objects:- Nil

**Sd/-
Judicial First Class Magistrate-II
Ettumanoor**

//True Copy//

**Sd/-
Judicial First Class Magistrate-II
Ettumanoor**