

**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. 148/2023

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 Laison 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
29.05.2019	17.07.2019	Not Arrested	22.01.2023	31.01.2025	24.04.2026	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 its authorized Power of Attorney Holder. The accused was the distributor of the complainant company for the area Adimaly to Perumbavoor and he used to purchase goods on credit basis from the complainant. The accused purchased goods on credit for a total amount of Rs.1,78,585/- and towards part payment of the due amount, the accused executed and issued a cheque dated 11.04.2019 bearing no.638633 drawn on Adimaly Branch of Canara Bank for an amount of Rs.44,230/- in favour of the complainant company. The complainant presented the cheque for encashment through Federal Bank, Kottayam Samcranthy Branch. It was returned for the reason 'funds insufficient'. The complainant issued a lawyer's notice on 13.05.2019 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 complaint.

3. Originally this complaint was filed before Hon'ble Judicial First Class Magistrate-I, Ettumanoor and it was taken on file as ST No. 183/2023. The accused appeared before the court. He was enlarged on bail. The particulars of the offence punishable under section 138 of the Act were read over and explained to the accused. He pleaded not guilty. It was made over to this court as per the order of Hon'ble Chief Judicial Magistrate. It was taken on file as ST.148/2023. 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 P8 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.P2 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.P2 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 nos. 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. The accused had executed Ext.P2 cheque for Rs.44,230/- 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 and no amount is due to the complainant from him.

8. The Power of Attorney Holder of the complainant company was examined as PW1. Ext.P1 is the Power of Attorney. He would

depose that the accused was the distributor of the complainant company and there would be agreement to appoint a person as the distributor of the company. He would also depose that he did not know whether the distributor would sign, stating that he had received the consignment. He further deposed that he did not know whether accused was the distributor of the complainant company. He denied the suggestion that the accused had given three blank cheque leaves when he agreed to purchase seed items from the complainant company. He also denied that since they tried to give the accused curry powder and other items that were about to expire, he did not purchase the items and thereafter the cheque given by the accused was misused. It can be seen that PW1 was recalled as per order in CMP no.678/25 and Ext.P7 certified true copy of resolution and Ext.P8 ledger and tax invoices were also marked.

9. The learned counsel for the complainant submitted that the accused has admitted his signature on Ext.P2 cheque. Ext. P8 would show that the accused purchased goods from the complainant and amount is due from the accused. The counsel relied on the judgment of the Hon'ble Apex Court in **C.C Alavi Haji v. Papapetty Muhammed & Anr. (2007 (3) KLJ 81)**. The learned counsel for the accused disputed Ext.P8 stating that the

tax invoices do not contain the delivery time, delivery date. It was further submitted that Ext. P8 cannot be relied upon. Ext.P8 and Ext.P9 were not produced along with the complaint or the proof affidavit. The counsel further contended that no document was produced to prove that the accused was the distributor of the complainant company. Hence, it is prayed to acquit the accused.

10. So, firstly it has to be considered whether the complainant has discharged the initial burden. It is contended by the complainant that the accused was their distributor. It is revealed from the evidence of PW1 that there would be agreement to appoint a person as the distributor of the company. It is pertinent to note that PW1 has not produced any agreement to show that the accused was distributor of their company. It is fatal to the complainant's case. A perusal of Ext.P8 would show that the columns of delivery time, delivery date, mode of transport and vehicle number are blank. Even though the evidence of PW1 would show that the items were given to the accused on credit basis, Ext.P8 would not go to show the same. A perusal of Ext.P8 would not show that consignment was delivered to the accused. It is also fatal to the complainant's case. It can be seen from Ext.P8 that MRP of items are shown as zero. The complainant has not given any explanation for the same. Hence, it is clear that Ext.P8

cannot be relied upon. Moreover, the evidence of PW1 would show that he was not able to answer many questions put to him during cross examination. It would reveal that he has no direct knowledge about the alleged transaction between the complainant and the accused.

11. It is true that the accused has not disputed his signature on Ext.P2 cheque. However, the complaint, proof affidavit or the evidence of PW1 would not show that the accused signed on Ext.P2 cheque in his presence and handed over the same to him. It is only averred in the complaint and proof affidavit that the accused executed and issued a cheque bearing no.638633. It would go to show that complainant has not proved the execution of Ext.P2 cheque.

12. The accused was examined as DW1. The case of the accused is that the accused agreed to purchase seed items from the complainant company and had given three signed blank cheques as security. Since the complainant tried to give curry powder and other items which were about to expire, he did not purchase the goods. Thereafter the blank cheque given by him was presented for encashment. It is already observed that Ext.P8 cannot be relied upon. Hence, the defence version cannot be relied upon.

13. It is also contended by the accused that he did not receive Ext.P4 notice. It is contended that the address shown in Ext.P4 notice is not his address. The accused relied on Ext.D1 copy of Aadhar card to prove the same. The learned counsel for the complainant submitted that the address shown in Ext.P4 notice and the address shown in CMP 658/2025 filed by the accused are same. Hence, notice was served on correct address. The evidence of DW1 is to effect that he did not receive Ext.P4 notice. Even though the accused contended that the address shown in Ext.P4 is not in address is not correct, he has not given any explanation as why such address was also shown in the petition filed by him. Hence, the above contention is liable to be rejected.

14. It has come out in evidence that the complainant has not discharged the initial burden. He failed to prove the execution and issuance of Ext.P2 cheque. The evidence on record would not show that Ext.P2 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.P2 cheque is dated 11.04.2019. The complainant presented the cheque for encashment through Federal Bank, Sankranthy Branch. The cheque was returned stating reason 'fund insufficient' as per Ext.P3 memo dated

16.04.2019. It can be seen that Ext.P4 office copy of lawyer notice dated 13.05.2019 was issued to the accused informing about the dishonour of cheque and directing to pay the cheque amount. Ext. P5 is the postal receipt dated 14.05.2019. Ext.P6 is the acknowledgement card. Thereafter complaint was filed along with CMP 6159/19 for condoning the delay of 13 days in filing the complaint and it was allowed. Hence, it is clear that statutory requirements under section 138 NI Act are complied with.

16. Point no.4: - In the light of discussion on point nos.1 and 2, it is found that the complainant has 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 : 23.12.2024 Power of attorney.
P2 : 11.04.2019 Cheque No: 636633 for ₹44,230/- drawn on
Canera Bank, Adimali Branch.
P3 : 16.04.2019 Cheque return memo
P4 : 13.05.2019 Office copy of lawyer's notice
P5 : 14.05.2019 Postal Receipt
P6 : - A/D card
P7 : 01.10.2015 Certified true copy of Resolution
P8 : 31.01.2025 Ledger & Tax invoice.

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