

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST
CLASS, ERATTUPETTA**

Present:- Sri. Krishna Prabhan. R,
Judicial Magistrate of the First Class, Erattupetta

Monday, 6th day of April, 2026 /16th day of Chaithra, 1948

ST 2525/2023

Complainant	:	Muhammed Nasim V A, Aged 41 S/o. Abdul Latheef, Valiyaveettil Erattupetta
		(By Adv. P Biju)
Accused	:	Ansa Asad, Aged about 30 D/o. Asad, Kunnumpurath (H) Pachalloor, Thiruvananthapuram PIN 695027
		(By Adv. Sreejith.S)
Offence	:	Punishable u/s. 138 of N.I. Act.
Plea	:	Not guilty
Finding	:	Guilty
Sentence or order	:	Accused is sentenced to pay a fine of Rs. 28,00,000/- (Rupees Twenty Eight Lakhs only). In default of payment of fine, she has to undergo simple imprisonment for a period of three months. Fine amount if realised, shall be given by way of compensation to the complainant under section 357(1)(b) of Cr.P.C.

Description of Accused

Name	Age	Father's name	Calling	Residence	Taluk
Ansa Asad	30	<u>Asad</u>	-	Thiruvananthapuram	-

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order
19/05/23	03/08/23	16/01/24	16/01/24	16/01/24	06/04/26	06/04/26

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 accused had committed the offence punishable under section 138 of N.I. Act.
2. **The case of the complainant in brief is as follows :**

The complainant is a friend of the husband of the accused, and the complainant and the accused, who is a doctor, are also well acquainted with each other. In the course of their relationship, the accused approached the complainant seeking financial assistance for the purpose of developing her clinic. Relying on the trust and friendship between them, the complainant advanced a total sum of ₹23,00,000 to the accused as a loan. Out of the said amount, ₹1,90,000 on 10.11.2021, ₹50,000 on 22.11.2021, and ₹10,000 on 23.11.2021 were transferred from the complainant's account with ICICI Bank, Erattupetta Branch, to the account of the accused. Further, ₹90,000 on 11.11.2021 and ₹1,20,000 on 16.11.2021 were transferred from another

account of the complainant to the account of the accused. The remaining amount was paid by the complainant directly to the accused, namely ₹5,00,000 on 25.11.2021, ₹5,00,000 on 27.11.2021, ₹3,40,000 on 29.11.2021, and ₹5,00,000 on 30.11.2021. Thus, the complainant paid a total sum of ₹23,00,000 to the accused. The accused assured the complainant that the entire amount would be repaid within a period of one and a half years. In discharge of the said liability, the accused issued Ext.P1 cheque dated 19.05.2023 in favour of the complainant and assured him that the cheque would be honoured upon presentation. Believing the representation made by the accused, the complainant presented the cheque for collection through his bank, ICICI Bank, Erattupetta Branch. However, the cheque was dishonoured due to insufficiency of funds in the account of the accused. Thereafter, on 05.07.2023, the complainant issued a lawyer's notice to the accused demanding repayment of the said amount. Though the accused received the notice, she failed to repay the amount within the stipulated time. Hence, this 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 she pleaded not guilty. After that the case was posted for the evidence of the complainant. From the side of the complainant, PW1 to PW3 were examined. Exts.P1 to P10 were marked.
4. After the closure of the evidence of the complainant, accused was examined u/s.313(1)(b) Cr.P.C. At the time of examination under Section 313 of the Code of Criminal Procedure, the accused stated that the complainant is a

friend of her husband and that there existed certain financial transactions between them. According to her, as per the instructions of the complainant, her husband used to transfer money to the account of the complainant's wife, and similarly, the complainant used to transfer money to the account of the accused on behalf of her husband. The accused further stated that she became aware of the loss of her cheque leaves only upon receiving the notice in connection with this case. She also submitted that she has been suffering from health issues and is unable to attend work without the assistance of her parents. At present, she is working at Thiruvananthapuram, and she had worked at Ernakulam only for a period of three months. She denied having conducted any clinic at Ernakulam. The accused contended that the present case has been falsely instituted against her. She further denied the handwriting and signature appearing on Exhibit P1. From the side of defence, DW1 to DW4 were examined and Exts. D1 to D7 were marked.

5. Heard both sides.

6. The following points arise for determination:-

(i)	Was Ext. P1 executed by the accused ?
(ii)	Was Ext. P1 executed in discharge of any debt or legally enforceable liability ?
(iii)	Was the cheque 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. (i) and (ii):-** For the sake of convenience, these points are taken up together for determination.
8. The case of the complainant is that the accused, who is a friend of the complainant, had borrowed a total sum of ₹23,00,000 on various occasions for the purpose of developing her clinic. The complainant has specifically deposed regarding the dates and mode of such transactions. In discharge of the said liability, the accused issued Exhibit P1 cheque, which was subsequently dishonoured. PW1, the complainant, has filed a proof affidavit in lieu of examination-in-chief, and the same is in consonance with the averments contained in the complaint. According to PW1, the accused is a family friend, and on account of such relationship, she had borrowed the aforesaid amount as a loan. Out of the total sum of ₹23,00,000, ₹1,90,000 on 10.11.2021, ₹50,000 on 22.11.2021, and ₹10,000 on 23.11.2021 were transferred from the complainant's account with ICICI Bank, Erattupetta Branch, to the account of the accused. Further, ₹90,000 on 11.11.2021 and ₹1,20,000 on 16.11.2021 were transferred from his account with Axis Bank to the account of the accused. The remaining amounts were paid directly by the complainant to the accused, namely ₹5,00,000 on 25.11.2021, ₹5,00,000 on 27.11.2021, ₹3,40,000 on 29.11.2021, and ₹5,00,000 on 30.11.2021. According to the complainant, the accused assured him that the entire amount would be repaid within a period of one and a half years. PW1 further deposed that he had mobilised the said funds through chitty transactions and from his business income, and had also set apart certain funds intended for the construction of his house for the purpose of advancing the loan to the accused.
9. The version of the accused is that, though she is acquainted with the

complainant, she had never borrowed such a huge sum from him. According to her, the present complaint has been instituted with the ulterior motive of extorting money from her. She has specifically denied the signature appearing on Exhibit P1, contending that the same is not of her. It is further alleged that the complainant, by misusing his association with the husband of the accused, might have obtained possession of her cheque and misused the same. The accused further contended that she is a medical professional who has been diagnosed with bipolar mood disorder and is presently undergoing treatment. Owing to her medical condition, she is incapacitated and unable to effectively pursue her profession or engage in gainful employment. In such circumstances, it is highly improbable that she would undertake a financial liability of ₹23,00,000 for the purpose of starting a new business venture. It is also the case of the accused that there existed independent financial transactions between the complainant and her husband, which have been deliberately suppressed by the complainant. According to her, the complainant and her husband were involved in joint investments, and there was a regular flow of funds between them. In this context, it is pointed out that the husband of the accused had transferred a sum of ₹2,88,675 to the account of the complainant's wife. On the basis of these circumstances, the learned counsel for the accused argued that the accused has succeeded in establishing, on a preponderance of probabilities, that the cheque in question was not issued in discharge of any legally enforceable debt or liability.

10. At the time of cross examination, PW1 deposed that he is doing electronics business at Erattupetta town and is currently reconstructing his old house. He became acquainted with the accused through her husband, and has

known the accused for about eight years. The accused is a doctor and he has not seen the accused since 30-11-2021, though he met her husband once thereafter. The accused had approached him requesting money in multiple installments for the expansion of her clinic. She had initially requested ₹1,90,000 on 10-11-2021. In total, she requested ₹25,00,000, out of which he paid ₹23,00,000. The payments were made in installments as per the accused's request. Between 25-11-2021 and 30-11-2021, the accused came to his house on alternate days to collect the money. Some amounts were also transferred through his bank account. The money given was originally set aside for his house construction, but he lent it due to his close relationship with the accused. No interest was demanded, and the accused had assured repayment within one and a half years. At the time of borrowing, the accused was working on daily wages at Ernakulam General Hospital. The accused's husband was employed at Infopark and was involved in share market activities, in which he himself had invested through him. The cheque issued by the accused was signed in his presence. He admitted that he had not informed the accused before presenting the cheque. He had prior financial dealings with the husband of the accused, which had been fully settled, though he does not recall the exact amount.

11.PW2 the Assistant Manager of Axis Bank Manarcad Branch had produced the copy of the bank account statement of complainant pertains to the period from 11-11-2021 to 16-11-2021 and that the same has been marked as Exhibit P6. On 11-11-2021, an amount of ₹90,500.90 was transferred from the said account to the account of accused. On 16-11-2021, an amount of ₹1,21,011 was transferred to the account of the accused. These entries have been marked as Exhibits P6(a) and P6(b) respectively. The certified copies

were marked as Ext.P8 series. PW3, the Manager of ICICI Bank Erattupetta Branch produced the copy of the bank account statement of complainant for the dates 10-11-2021, 22-11-2021, and 23-11-2021 and the same have been marked as Exhibit P7 series. He deposed that amounts were transferred from the said account to accused on those dates. ₹70,005 was transferred on 10-11-2021, ₹50,005 on 22-11-2021, and ₹10,005 on 23-11-2021.

12.DW1 is the wife of the complainant. She would say that the husband of the accused had transferred money into her bank account and had informed her about the same over a phone call. She had given an amount of ₹3,00,000 to the husband of the accused for the purpose of conducting business. He had assured her that he would trade with the amount and return both the principal and the profit. She received approximately ₹2,80,000 from him in this manner. Later, he informed her that there was a trading loss, and the transactions were thereafter stopped. DW2, the Branch Manager of Federal Bank Vazhuthacaud Branch had produced Ext.D1, the certified copy of bank account statement of the accused, pertaining to Account No. 13800100359742 maintained at the Federal Bank, Vazhuthacaud Branch. Ext.D1 statement covers the period from 10-11-2021 to 24-11-2021. He had also produced the certified copies of the specimen signatures relating to the said account, marked as Ext.D2 series.

13.DW3, the husband of accused gave evidence that while he was working in a trading company, the complainant had invested money through him and had earned good profits. During the course of such investments, he had demanded cheques from him. On one such occasion, since he did not have a cheque with him, he gave a cheque belonging to his wife. The cheque was blank and did not contain any signature or other details at the time it was

handed over. After some time, the complainant called him and requested that an amount of ₹5,00,000 be transferred to the account of one of his friends named Ismail. The complainant had, at that time, also obtained his wife's account number and informed him that the amount sent to that account should be transferred to Ismail. The complainant transferred ₹5,00,000 to his wife's account on the same day. His wife then immediately transferred the said amount to his account, following which he transferred ₹5,00,000 to Ismail. He asserted that there were no direct financial transactions between his wife and the complainant. His wife is a doctor, and that she had practiced at Ernakulam for about three months, while for the rest of the time she had been at Thiruvananthapuram. She did not have any clinic at Ernakulam. During cross-examination, DW3 stated that he was not aware of any notice sent by the complainant to the accused in this case. He denied the suggestion that his wife's clinic was named "Ansas Family Clinic." He stated that his acquaintance with the complainant's family was only for about five to six months. DW4, the Branch Manager of the IndusInd Bank, Kochi Branch had produced Exhibit D3, the certified copy of the bank account statement of accused, pertaining to Account No. 159995611617 covers the period from 20 July 2021 to 27 October 2021.

14. The learned counsel appearing for the complainant contended that the defence taken by the accused is that she had not received any amount from the complainant. However, the evidence adduced through PW2 reveals that an amount of ₹6,00,000 was transferred to her account. It was further argued that the accused has taken inconsistent and contradictory stands. During cross-examination, a suggestion was put forward that the complainant had somehow managed to obtain Exhibit P1 cheque. In

contrast, during the examination of DW2, the husband of the accused, categorically deposed that he had himself handed over his wife's cheque to the complainant. The accused, in her argument note, contended that she had not executed Exhibit P1 and that there exists no legally enforceable debt in favour of the complainant. According to her, the alleged loan transaction is non-existent and fabricated. She further submitted that she is a medical professional by occupation and has never owned any clinic at Ernakulam or elsewhere. At the relevant time, she was only temporarily employed at a medical facility at Ernakulam. Exhibits D4 to D6 were relied upon to corroborate the testimony of DW3.

15. Eventhough the accused challenged the financial capacity of the complainant in her argument note, not a single question raised regarding that aspect at the time of cross examination of PW1. The core issue that arises for consideration in this case is whether the cheque in question, namely Ext.P1, was executed by the accused and whether it was issued in discharge of a legally enforceable debt. The case of the complainant is that the accused, who was well acquainted with him, had borrowed a total sum of ₹23,00,000/- on various occasions for the purpose of developing her clinic, and in discharge of that liability, she issued Ext.P1 cheque. The complainant has given a detailed account of the transactions, specifying the dates and modes through which the amounts were paid, partly through bank transfers and partly by cash. His testimony as PW1 is consistent with the averments in the complaint and has remained unshaken in material particulars during cross-examination. The oral evidence of PW1 is substantially corroborated by the documentary evidence produced through PW2 and PW3, who are bank officials. Ext.P6 and Ext.P7 series statements clearly establish that

amounts were transferred from the accounts of the complainant during the relevant period to persons connected with the accused. These entries probabalise the version of the complainant that funds were indeed mobilised and disbursed in connection with the accused. The defence has not succeeded in discrediting these documents.

16. The presumption contemplated under S.139 of the N I Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused / drawer of the cheque (honourable Apex Court in **Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197**). The accused has taken a specific contention that she had not borrowed any amount from the complainant and that the cheque in question was not executed by her. She has denied her signature in Ext.P1 and has alleged misuse of the cheque. However, the defence version suffers from material inconsistencies. A mere denial of signature, is insufficient to rebut the statutory presumption, particularly when circumstances indicate that the cheque belonged to the accused. In **Vijayakumar V. v. M. T. Vijayan and Another** reported in **2010 (4) KHC 582** honourable High Court of Kerala has observed that if the drawer wants to cheat the drawee or the payee, the drawer can put his signature in the incomplete form or in a different manner or different signatures and thereby the very object of the amendment can be defeated. On the other hand, if the accused or the drawer has got a true defence that the incomplete signature which contained in the cheque in question was not put by him, it is for him to prove the above fact, especially, when the evidence of the complainant is that the accused issued the cheque after putting his signature. Here in the case at hand, the signature in Ext.P1

was allegedly put in the year 2022 and Ext.D2 series are in the year 2017. Hence the slight difference seen on comparison of signatures are not at all relevant. While the accused denies execution of the cheque, the evidence of DW3, who is her husband, is to the effect that he had handed over a cheque belonging to the accused to the complainant, in a blank form. This version, instead of supporting the defence, probalises the case of the complainant that the cheque leaf originated from the possession of the accused and reached the complainant through known channels. The contradictory stands taken by the accused and her husband create serious doubt regarding the credibility of the defence.

17. In **Jose v. Jose** reported in **2025 (7) KHC 124** honourable High Court of Kerala has held that while dealing with the presumption under S.139 of the Act, an accused has two options. The first option is by proving that the debt / liability does not exist - i.e.; by leading defense evidence and conclusively establishing with certainty that the cheque was not issued in discharge of a debt / liability. The second option is to prove the non - existence of debt / liability by a preponderance of probabilities, referring to the particular circumstances of the case. In view of the above prepositions of law, an accused can rebut the presumption under S.139 of N.I Act by a preponderance of probabilities also. If neither of the above options are satisfied, the Court is bound to accept the case of the complainant on the basis of the presumptions, provided the other legal requirements under the statute are complied with.

18. It is settled position of law that the execution of the cheque is proved or even probalised, the presumption under Section 139 of the Negotiable

Instruments Act comes into operation, whereby it shall be presumed that the cheque was issued in discharge of a legally enforceable debt or liability. The burden then shifts to the accused to rebut the presumption on a preponderance of probabilities. In the present case, the accused has attempted to discharge this burden by contending that there were independent financial transactions between the complainant and her husband, that she had no clinic as alleged, and that she was suffering from medical issues. However, none of these contentions are sufficient to probabalise a defence that would displace the presumption. Even if it is accepted that there were financial dealings between the complainant and the husband of the accused, that circumstance by itself does not negate the possibility of a separate loan transaction between the complainant and the accused. On the contrary, it strengthens the likelihood of financial interactions within the parties. The contention that the accused did not have a clinic is also not decisive, as the borrowing could have been for any purpose, and the complainant's case cannot be rejected solely on that ground. The accused did not respond to the lawyer notice issue to her by the complainant. In **MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234** honourable Apex Court has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

19. The plea regarding the medical condition of the accused also does not advance the defence case. There is no convincing evidence to show that the accused was incapacitated to such an extent that she could not have entered into a financial transaction. The said contention appears to be only an

afterthought. Another important aspect is that the accused has, in her argument note, challenged the financial capacity of the complainant to advance such a huge amount. However, it is to be noted that no such suggestion was put to PW1 during cross-examination. The law is well settled that if the financial capacity of the complainant is to be challenged, it must be put to him in cross-examination so as to afford him an opportunity to explain. In the absence of such a challenge at the appropriate stage, the contention raised at a later stage cannot be given due weight. On an overall appreciation of the evidence, I am of the view that the testimony of PW1 is reliable and is supported by documentary evidence. The defence set up by the accused is neither consistent nor probable. The accused has failed to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act even on the standard of preponderance of probabilities. Accordingly, it is found that Ext.P1 cheque was executed by the accused and that it was issued in discharge of a legally enforceable debt. Hence points nos.1 and 2 are found in favour of the complainant.

20. Point Nos. (iii) & (iv)

Now the question is whether the legal formalities were complied or not. From Ext.P2, it can be seen that Ext.P1 was dishonoured citing the reason 'funds insufficient'. It can be seen that Ext. P1 cheque was dishonoured due to insufficiency of funds and the accused has knowledge about it. Exts.P3 to P5 prove that a lawyer's notice has been sent to the accused and he received it. It is seen that all legal formalities were complied by the complainant. The abovesaid points are found in favour of the complainant.

21. Point No.v :-

In the light of the abovesaid findings, it is seen that the accused had

committed an offence punishable u/s.138 of N.I Act and she is convicted thereunder. I am of the view that the benevolent provisions of P.O. Act cannot be invoked in this case.

In the light of the above said findings, the accused is found guilty of the offence u/s.138 of the Negotiable Instruments Act. In **Vijayan R. v. Baby and Another, reported in 2012 (1) SCC 260**, wherein it was held by honourable Apex Court that in all cases of conviction for an offence under S.138 of the N.I.Act, the courts shall lean in favour of ordering compensation by imposing fine upto twice the cheque amount keeping in mind the cheque amount and the interest thereon at the rate of 9% per annum. Hence accused is sentenced to pay a fine of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only). In default of payment of fine, she has to undergo simple imprisonment for a period of three months. Fine amount if realised, shall be given by way of compensation to the complainant under section 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 6th day of April, 2026.

**JUDICIAL MAGISTRATE OF THE FIRST CLASS
ERATTUPETTA**

APPENDIX

Witnesses examined for the complainant:-

PW1	Muhammed Nassim
PW2	Manager, Axis Bank, Manarkadu branch
PW3	Manager, ICICI Bank

Exhibits marked for the complainant:-

P1	Cheque dtd.19/05/23 proved by PW1
P2	Cheque dishonour Memo dtd.04/07/23 proved by PW1
P3	Copy of Lawyer's notice dtd.05/07/23 proved by PW1
P4	Postal receipt dtd 06/07/23 proved by PW1
P5	A/D Card proved by PW1
P6(a)	Account details proved by PW2
P6(b)	Account details proved by PW2
P7series	Account statements Account details proved by PW3
P8series	Account statements Account details proved by PW3
P9series	Account statements Account details proved by PW3
P10	Transaction details proved by PW3

Witnesses examined for the accused:

DW1	Jesna Nazim
DW2	Manager, Federal Bank, Thiruvananthapuram
DW3	Anseer
DW4	Manager, Indusind, Kochi branch

Exhibits marked for the accused:

D1	Account statement proved by DW2
D2	Specimen signature proved by DW2
D3	Account statement proved by DW4

D4	Employment certificate proved by accused
D5	Attendance certificate proved by accused
D6	Employment certificate proved by accused
D7	Certified copy of deposition by complainant in ST 1730/22 proved by accused
Court Exhibits : Nil	

**JUDICIAL MAGISTRATE OF THE FIRST CLASS,
ERATTUPETTA**