IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, CHANGANACHERRY

Present:- Sri.Anil Kumar. T.S, Judicial I Class Magistrate.

Dated this the, 30th day of May, 2026
09th day of Jyaistha, 1948

ST No.6624/2022

Complainant	:	K K Devaki, Aged 79, W/o Pavithran, Vadakkethottathil House, Chingavanam P.O, Kottayam Taluk. *(By Adv.Boban T Theckel)*
Accused	:	Kalidasan C, Aged 40, S/o V Chithran, Chithira Bhavan, Municipal Quarters, Vayaskarkunnu P.O, Kottayam Taluk. *(By Adv.Rayin K R)*
Charge	:	Offence punishable u/s.138 of Negotiable Instrument Act.
Plea	:	Not guilty
Finding	:	Guilty
Sentence or order	:	The accused is found guilty of the offence punishable under Section 138 of N.I Act and he is convicted under section 255(2) of the Code of Criminal Procedure, 1973. He is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.2,75,000/- (Rupees Two Lakh Seventy Five Thousand only). If the fine amount is realized, the same shall be paid to PW1 as compensation under Section 357(1)(b) of the

Code of Criminal Procedure, 1973. In default of payment of fine, the accused shall undergo simple imprisonment for a period of three months.

Description of Accused

Sl. No.	Name	Age	Father's Name	Occupation	Residence
1	Kalidasan C	40	V Chithran	---	Chithira Bhavan

Date of

Occurrence	Report or Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or Order
15.09.22	15.10.22	12.04.24	12.04.24	12.04.24	26.05.26	30.05.26

This case having been finally heard on 26.05.2026 and posted for judgment to 30.05.2026 and the court on the same day delivered the following:-

JUDGMENT

This is a case instituted upon a complaint filed u/s.142 of Negotiable Instrument Act (in short NI Act) against the accused alleging offence punishable u/s.138 NI Act.

2) The case of the complainant in brief, is as follows:- The accused is a family friend of the complainant. On 19.02.2022, the accused came to the house of the complainant, borrowed Rs.2,50,000/- and in discharge of the said liability, issued a cheque drawn on the account maintained by the accused with the State

Bank of India, Kottayam Town Branch. When the said cheque was presented for encashment, it was dishonoured for the reason ‘Funds Insufficient’ in the account of the accused. The complainant issued a legal notice to the accused demanding the amount covered by the cheque. The accused received the notice, but he neither responded to the notice nor repaid the cheque amount. Hence, this complaint is filed.

3) On appearance, the accused was served with all relevant records relied on by the complainant. The accused was enlarged on bail. Particulars of offence u/s.138 of N.I Act was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4) In evidence, the complainant is examined as PW1 and Exts. P1 to P5 marked. After closing the prosecution evidence, the accused was examined under Section 313 (1) (b) of the Code of Criminal Procedure, 1973. He denied all the incriminating circumstances appearing in evidence against her. The accused is examined as DW1 and Exts. D1 and D2 marked.

5) Heard both sides.

6) The points for determination are: -

i) Whether the complainant has complied with the statutory requirements for preferring a valid complaint u/s.138 of N.I Act?

ii) Whether the accused had executed Ext.P1 cheque to the complainant in discharge of a legally enforceable debt of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) and the same was dishonoured for the reason funds insufficient in the account of the accused?

iii) Whether presumptions under Sections 118 and 139 N.I Act can be drawn in favour of the complainant?

iv) If so, whether the accused has succeeded in rebutting the presumptions drawn in favour of the complainant?

v) If the accused is found guilty what should be the order as to sentence?

7) Heard both sides.

8) **Point no.1:-** To prove the case, the complainant herself is examined as PW1. She filed affidavit in lieu of chief examination reiterating the averments in the complaint. According to her, the accused came to her home and borrowed Rs.2,50,000/- on 19.02.2022 and issued Ext.P1 cheque dated 19.08.2022. When she presented the Ext.P1 cheque through the SBI Chingavanam Branch, it was dishonoured for the reason of insufficient funds. Ext.P2 is the dishonour memo dated 22.08.2022. On 26.08.2022, the complainant issued Ext.P3 Advocate Notice to the accused. Ext.P4 is the postal receipt. The accused received the Ext.P3 notice, but he has not paid the cheque amount. Hence, she filed the complaint within the time limit. Thus the complainant has complied with all the statutory requirements to file the complaint under Section 138 of NI Act. Point number 1 is answered in favour of the complainant.

9) **Point nos.2 to 4:-** The learned defence counsel argued that the complainant has not proved execution of Ext.P1 cheque. In this case, the accused has not disputed his signature in Ext.P1 Cheque. The Apex Court in M/s.Kalamani

Tex and another v. P. Balasubramanian [2021 (2) KHC 517] held that once the signature of an accused on the cheque is established, the 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon her. In *Rajesh Jain v. Ajay Singh ILR 2023 (4) Kerala 822 Hon'ble Apex court held that mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.* In the case at hand, since the signature in Ext.P1 is not disputed, the complainant is entitled to presumptions under Section 118 and 139 of the NI Act. Both create presumptions in favour of the complainant. Section 118 (a) of the Negotiable Instruments Act, 1881 is as follows:- *"Until the contrary is proved, the following presumptions shall be made: (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration."*

10) Section 139 of the Negotiable Instruments Act, 1881 is as follows: *"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt, or other liability."*

11) The above presumptions are rebuttable in nature. In order to rebut the presumption, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused

must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has to the option to ask the Court to consider the non-existence of debt debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. In other words, the accused is left with two options. The first option -of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish 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 by referring to the particular circumstances of the case (Rajesh Jain V. Ajay Singh (*ILR 2023 (4) Kerala 822)*

12) In order to rebut the presumptions drawn in favour of the complainant, the accused himself is examined as DW1. He deposed that he does not know the complainant and he has no financial transaction with the complainant. The specific case of the complainant is that the accused is an employee at Kottayam Municipality and she, who is a resident at the Kottayam Municipality, used to visit the municipal office for obtaining sanction for house construction. DW1 also admitted that he is working as a peon at Kottayam Municipality. So, there is nothing to disbelieve that the complainant met the accused at Kottayam Municipality and got acquainted with him.

13) In the cross-examination, PW1 deposed that, except for the accused, she has not lent money to any other persons. The accused produced Ext.D1, a complaint filed by her under Section 138 of the NI Act before Judicial First Class Magistrate III, Kottayam, against one Jomon John, who was also an

employee at Kottayam Municipality. Ext.D2 is the complaint filed under section 138 of NI Act by the complainant against Ranjitha, staff, Krishibhavan, Kottayam. Drawing attention to Exts. D1 and D2, learned defence counsel argued that the complainant is not speaking the truth and she cannot be believed. In the latter phase of the cross-examination, the complainant admitted that she had filed cases against Ranjitha and Jomon John. It is true her earlier statement is false, but that alone is not a ground to discard the entire evidence of the complainant, as the principle of '*falsus in uno, falsus in omnibus'* is not applicable to our courts. Except the above discrepancy, the learned defence counsel has not pointed out any improbability in the evidence of PW1.

14) Learned defence Counsel argued that the complainant has not proved her financial capacity to advance Rs.2,50,000/- to the accused. She was thoroughly questioned regarding her sources of income in the cross examination. The complainant stated that she had conducted the business of selling cement and iron bars. But she has not produced any evidence to show that she had been running any business nor could she remember the name of the shop. In this case the accused has received the Ext.P3 legal notice but he has not responded to it. The Honourable Supreme Court in ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735*** has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced herein below: -"*10. ... The proceedings under S.138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is*

set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross - examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence." (emphasis supplied)

15) In the case at hand, by producing Exts.D1 and D2, the accused attempted to impress upon the court that the complainant is a money lender. In the cross examination DW1 also deposed that the accused is a money lender and the Chingavanam Police had registered case against the complainant under *Operation Kubera*. By contending so, the accused has practically admitted that the accused has sufficient means to advance money. Therefore, the contention of the learned defence counsel that the complainant has no financial capacity to advance the cheque amount is not sound.

16) The accused, examined as DW1, deposed that he had handed over his signed cheque to his senior officer Jomon John for the purpose of availing a loan. According to him, they used to stand as mutual sureties for the loan they obtained. However, DW1 has not explained the date on which he handed over the Ext.P1 cheque to Jomon John or any other details pertaining to the circumstances under which he transferred the Ext.P1 cheque to Jomon John. It is also unbelievable that he handed over blank signed cheques to stand as surety drawn on an account with insufficient funds. He has not filed any complaint against Jomon John or the complainant for misusing his signed cheque. In the above circumstances, the contention of DW1 can be considered only as a self-serving one, especially considering the fact that Jomon John is no more now.

17) Further, the accused has not responded to Ext.P3 notice which is also a crucial circumstances against him. In *Rangappa V.Mohan (A.I.R 2010 SC 1898)*, the Honourable Supreme Court observed that "*the very fact that the accused had failed to reply to the statutory notice leads to the inference that there is merit in the complainant's version*. Similarly, Honourable High Court of Kerala in *Jacob K.M V. State of Kerala and Another (2020(1) KHC 291)* observed that absence of any response by the accused to the statutory notice sent to her by the complainant is a crucial circumstance against the accused. The above dictums are squarely applicable in this case. The complainant has a consistent case whereas the accused failed to dislodge the presumptions drawn in favour of the complainant by adducing any evidence or by pointing out any improbability in the case of the complainant. The points are answered in favour of the complainant.

18) **Point No.5**:- In view of the findings on point nos.1 to 4, this court is of the view that the accused has committed the offence punishable under Section 138 of N.I Act and he is convicted there under.

19) Coming to the question of sentence, the decision rendered by the Honourable Apex Court in *Vijayan Vs. Baby (2011(4) KHC276)* is relevant. The Honourable Apex Court held that '*The Courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest rate thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at reasonable rate.*

20) In Damodar S. Prabhu v. Sayed Babalal H. reported in (2010 (2) KLT 587) and also in Kaushalya Devi Massand v. Roopkishore Khore reported in AIR 2011 SC 2566 the Apex Court held that offence u/s 138 of N.I. Act is basically of Civil nature, but criminal colour has been given by incorporating the same in the Negotiable Instruments Act. It is the compensatory aspect of remedy which should be given priority over the punishment aspect with regard to the offence of dishonour of cheque.

21) In the case on hand the complainant has been prosecuting the case since the year 2022.

In the result, the accused is found guilty of the offence punishable under Section 138 of N.I Act and he is convicted under section 255(2) of the Code of Criminal Procedure, 1973. He is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.2,75,000/- (Rupees Two Lakh Seventy Five Thousand only). If the fine amount is realized, the same shall be paid to PW1 as compensation under Section 357(1)(b) of the Code of Criminal Procedure, 1973. In default of payment of fine, the accused shall undergo simple imprisonment for a period of three months.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court, this the 30th day of May, 2026)

Judicial First Class Magistrate-I
Changanacherry

APPENDIX

Witnesses examined for the Prosecution:-

PW1 - Smt.K K Devaki 08.07.2025

Exhibits marked for the Prosecution:-

P1	:	Cheque marked through PW1	08.07.2025
P2	:	Cheque return memo marked through PW1	08.07.2025
P3	:	Legal notice marked through PW1	08.07.2025
P4	:	Postal receipt marked through PW1	08.07.2025
P5	:	Acknowledgment card through PW1	08.07.2025

Witness examined for the defence :-

DW1	:	Sri. Kalidas C	06.05.2026

<u>Exhibits marked for the defence</u> :-

D1	:	Certified copy of complaint in ST 2195/2017	18.04.2026
D2	:	Certified copy of complaint in ST 2195/2017	18.04.2026

Judicial First Class Magistrate -I
Changanacherry