

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

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

Dated this the, 16th day of March, 2026
25th day of Phalguna, 1947

ST No.7598/2022

- Complainant : Marykutty Joseph, W/o Joseph, Pathinettil chira, Kunnumma West, Kavalam P.O, Alappuzha, Now residing at Pathinettil chira, I E Nagar P.O, Changanacherry, Kottayam.
(By Adv.Antony Varghese)
- Accused : Thomas Joseph (Monichan), S/o Joseph, Pulimoottil (H), Veroor P.O, Vadakkekara, Changanacherry.
(By Adv.K Madhavan Pillai)
- Charge : Offence punishable u/s.138 of Negotiable Instrument Act.
- Plea : Not guilty
- Finding : Guilty
- Sentence or order : 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.2,50,000/- (Rupees Two Lakh Fifty 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	Thomas Joseph	---	Joseph	---	Pulimoottil	
<u>Date of</u>						
Occurrence	Report or Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or Order
17.09.22	11.11.22	30.08.25	30.08.25	28.10.25	10.03.26	16.03.26

This case having been finally heard on 10.03.2026 and posted for judgment to 16.03.2026 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 had received an amount of Rs.2,00,000/- from the complainant as per a deed of mortgage executed in favour of the complainant. Later, the accused had withdrawn the mortgage deed and in discharge of Rs.2,00,000/- received by him, he issued a cheque bearing number 242899 dated 02.08.2022 drawn on the account

maintained by the accused with IDBI Bank Changanacherry Branch. When the complainant presented the cheque through District Co-operative Bank, Changanacherry Branch, it was dishonoured for the reason 'funds insufficient' in the account of the accused. The accused received the notice, but he neither responded to it nor repaid the cheque amount. In the above circumstances, this complaint is filed alleging the offence punishable under section 138 of the NI Act.

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.

4. In evidence, the complainant is examined as PW1 and Exts.P1 to P7 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 him. No defence evidence was adduced.

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.2,00,000/-(Rupees Two Lakh 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. **Point no.1:-** To prove the case the complainant herself is examined as PW1. She filed affidavit in lieu of chief examination elaborating the averments in the complaint. The case of the complainant is that in discharge of a legally enforceable debt of Rs.2,00,000/-, the accused issued Ext.P1 cheque. The complainant presented the cheque through District Co-operative Bank, Changanacherry Branch, but it was dishonoured for the reason 'funds insufficient ' in the account of the accused. Ext.P2 is the cheque dishonour memo and Ext.P3 cheque return intimation. The complainant issued Ext.P4 legal notice to the accused. Ext.P5 is the postal receipt. The learned defence counsel argued that the accused has not received the Ext.P4 notice. The complainant produced Ext.P6 letter issued by the office of the Superintendent of Post Offices, Changanacherry Division stating that the notice was delivered to the accused. Ext.P6 revealed that the accused received the Ext.P4 notice. There was 25 days delay in filing the complaint. As per order in CMP No.5644/2022 dated 20.12.2022, the delay was condoned. Thus, the complainant has complied with the statutory requirements to prefer complaint under section 138 of the Negotiable Instruments Act, 1881. Point no.1 is answered in favour of the complainant.

8. **Point nos.2 to 4:-** The learned defence counsel argued that the

complainant has not proved the 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 him. 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."*

9. 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."*

10. 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)*).

11. In order to rebut the presumptions, the accused has not adduced any independent evidence. Learned defence counsel argued that there was no financial transaction between the accused and the complainant, and therefore the complaint itself is not maintainable. In order to appreciate the above contention, it is pertinent to examine the factual grounds that led to the issuance of Ext.P1 Cheque. The case of the complainant is that she entered into the Ext.P7 agreement on 17.05.2022 with the accused to take on a mortgage the house of the accused for a sum of Rs.5,00,000/-. Her son transferred Rs.2,00,000/- to the accused as an advance. But later she realised that the accused had pledged the house for Rs.38,00,000/- at Vazhappally Co-operative Bank. Since there is a charge over the house, she rescinded from the agreement. In discharge of the liability of Rs.2,00,000/- received as advance, the

accused issued the Ext.P1 cheque to her. Ext.P1 cheque is issued in the name of the complainant. At this juncture, it is necessary to notice section 142 of the NI Act which is reproduced hereunder:

"142.Cognizance of offences-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take Cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to Section 138 :

Provided that the Cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

12. A plain reading of the provision makes it abundantly clear that the Court shall not take cognizance of any offence punishable under section 138 of the Act except upon a complaint, in writing, made by the payee or, as the case may be, the holder in the due course of the cheque. The expression 'payee' is defined under section 7 of the Act which says "the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'payee'". In the case at hand, the complainant is the payee and only she can file the

complaint. In the cross-examination the complainant admitted that her son transferred the amount from his account. Obviously the money was transferred as per the instruction of the complainant and she has signed the mortgage agreement with the accused. Merely because money was transferred from the account of her son, it cannot be said that there were no transactions between the accused and the complainant. Hence, the contention of the learned defence counsel in this regard cannot be accepted. Apart from the above contention, learned defence counsel has not pointed out any improbability in the case of the complainant. The complainant was only briefly cross-examined, and nothing was elicited from her to disbelieve her version. Further, the accused has not responded to the Ext.P4 notice which is also a crucial circumstance against the accused. 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 him 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.

13. **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.

14. 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.*

15. 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.*

16. 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.2,50,000/- (Rupees Two Lakh Fifty 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 16th day of March, 2026)

Judicial First Class Magistrate-1.
Changanacherry

APPENDIX

Witnesses examined for the Prosecution:-

PW1 - Smt.Marykutty Joseph 15.11.2025

Exhibits marked for the Prosecution:-

P1	: Cheque bearing no.242899 marked through PW1	15.11.2025
P2	: Cheque dishonour memo marked through PW1	15.11.2025
P3	: Cheque rerurn intimation marked through PW1	15.11.2025
P4	: Legal notice marked through PW1	15.11.2025
P5	: Postal receipt marked through PW1	15.11.2025
P6	: Letter marked through PW1	15.11.2025
P7	: Agreement marked through PW1	15.11.2025

Witness examined for the defence :-

Nil

Exhibits marked for the defence :-

Nil

Material Objects Marked:-

Nil

Judicial First Class Magistrate -1
Changanacherry