

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

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

Dated this the, 30<sup>th</sup> day of April, 2026  
10<sup>th</sup> day of Vaishakha, 1948

**ST No.2857/2018**

Complainant : Ajeesh K, S/o Kuncheira, Chittamthara (H),  
Mithrakkari P.O, Muttar Village, Kuttanadu Taluk.  
(By Adv.P S Arun)

Accused : Biju Thomas, Panuthusseril (H), I E Nagar,  
Kurisummoodu P.O, Changanacherry.  
(By Adv.P S Navas)

Charge : Offence punishable u/s.138 of Negotiable  
Instrument Act.

Plea : Not guilty

Finding : Not guilty

Sentence or order : Accused is acquitted u/s.255(1) of Cr.P.C. His bail  
bond stands discharged and he is set at liberty.

**Description of Accused**

Sl. No.	Name	Age	Father's Name	Occupation	Residence	
1	Biju Thomas	---	---	---	Panuthusseril	
<b><u>Date of</u></b>						
Occurrence	Report or Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or Order
23.10.2018	04.12.18	16.10.22	16.10.22	20.10.22	27.04.26	30.04.26

This case having been finally heard on 27.04.2026 and posted for judgment to 30.04.2026 and the court on the same day delivered the following:-

### **J U D G M E N T**

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:- On 16.07.2016 the accused borrowed 3 lakhs of rupees from the complainant for the purpose of purchasing a tipper lorry and in discharge of the said liability, he executed a cheque drawn on the account maintained by the accused with the Federal Bank Ltd, Kurisummoodu Branch. When the complainant presented the cheque for encashment through the State Bank of India SB College Branch, it was dishonoured for the reason of insufficient funds in the account of the accused. The complainant issued a lawyer's notice to the accused demanding the cheque amount. The accused replied to the notice, which contains false claims. The accused has not repaid the amount covered by the cheque and thereby committed the offence punishable under section 138 of the NI Act. In the above circumstances, this complaint came to be 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. PW2 is also examined and Exts.X1, X1(a) and X1(b) 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. DW1 and DW2 were examined from the side of the accused and Exts.D1, D1(a) 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.3,00,000/-(Rupees Three 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 substantiate his contentions, the complainant

himself is examined as PW1. He filed affidavit in lieu of chief examination reiterating the averments in the complaint. His case is that the accused borrowed rupees 3 lakh from him for purchasing a Tipper Lorry and issued Ext.P1 cheque in discharge of the said liability. When he presented the cheque, it was dishonoured. Ext.P2 is the cheque return memo. The complainant issued Ext.P5 advocate notice within the statutory period. Ext.P3 is the postal receipt. The accused received the notice as revealed from Ext.P4 acknowledgement card. Thus, the complainant has complied with all the statutory requirements to file a valid complaint under section 138 of NI Act. Point number 1 is answered accordingly

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. The learned defence counsel argued that the accused had repaid a total amount of rupees one lakh to the complainant and therefore his claim for the

entire cheque amount is illegal. Learned defence counsel examined DW2, Manager Federal Bank, Kurisummoodu Branch. He produced Ext.D2 series bank account statement of the accused for the period from 12.12.2016 till 04.04.2017. DW2 deposed that on 03.02.2017 the accused transferred an amount of Rs.50,000/- to the bank account of the complainant. Again on 02.03.2017, he transferred Rs.50,000/- to the account of the complainant. The learned Counsel for the complainant has not cross examined DW2 and thus his evidence remains unchallenged. DW1, Muttar Branch Manager produced Ext.D1 bank account statement of the complainant. He deposed that as per the statement an amount of Rs.50,000/- was credited to the account of the complainant from the account of the accused. On 02.03.2017 also an amount of Rs.50,000/- was credited in the account of the complainant from the account of the accused. Thus, it is clear that in the year 2017, the complainant had received rupees one lakh from the accused. Learned counsel for the complainant argued that there were many transactions between the accused and the complainant during the relevant period and there is no evidence to prove that the one lakh rupees was paid towards discharge of the liability incurred due to Ext.P1 cheque. In the cross-examination, PW1 deposed that the accused borrowed money in the month of July 2016. The Ext.P1 cheque was issued on 28.06.2018. He further deposed that after borrowing the amount there were transactions with the accused, but he categorically stated that there were no financial transactions with the accused during this period. At another point during cross-examination, he reiterated that he had no bank transactions with the accused either before or after the issuance of the Ext.P1 cheque. However, this

assertion is contradicted by the evidence of DW1 and DW2. The accused transferred Rupees One Lakh to his bank account in the year 2017. Hence the contention of PW1 that he had no financial transactions with the accused after issuance of Ext P1 cheque is wrong. Consequently, the argument put forth by the learned counsel for the complainant, claiming that rupees one lakh was transferred in relation to other transactions, is not substantiated. In the decision *Dani Kutty Philip v. John Kutty J* (2026 KER 27586) relied on by the learned defence Counsel, the Honourable High Court of Kerala observed that:

*11. Thus the law emerges is that, when a part of the sum covered by the cheque is paid during the period between the date on which the cheque is drawn and its encashment upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque. Further, when a part, or the whole of the sum represented in a cheque is paid by the drawer, the same must be endorsed on the cheque as prescribed under Section 56 of the NI Act. Then the endorsed cheque could be used to negotiate the balance, if any. On dishonour of cheque, which was presented for getting the balance amount, excluding the amount endorsed as paid, then the offence under Section 138 of the NI Act would be attracted. However, when part payment(s) is/are made and the endorsement mandated under Section 56 of the NI Act failed to be recorded, presenting the cheque for the whole sum, of which a part payment has already been paid, does not represent the legally enforceable debt; thus no offence under the NI Act would lie in case of dishonour of such a cheque. The rationale is that, in order to attract an offence under Section 138 of the NI Act, the dishonoured cheque must represent*

*a legally enforceable debt’.*

12. In this case, the accused had made part payments, but the complainant, without acknowledging and without disclosing the part payment made by the accused, claimed the entire cheque amount, which is not legally sustainable.

13. Since the accused has made a probable defence, the complainant cannot rely on the presumptions drawn in favour of him. Since the presumptions in this case stand rebutted, the burden shifts back to the complainant to prove, by cogent and independent evidence, that the cheque was indeed issued in discharge of a legally enforceable debt. In the cross-examination, PW1 deposed that he had 5 years of acquaintance with the accused at the time of lending the amount and he has not received any documents as security from the accused. His version is not convincing, as his cross-examination revealed that he has no knowledge regarding the personal details of the accused. He has no knowledge regarding the family of the accused, nor does he know even the house name of the accused. So, it is not believable that PW1 lent rupees 3 lakh to the accused on the basis of a mere acquaintance and that too without obtaining any document from him as security. Further, the accused had replied to the Ext.P5 notice but that reply is not produced before the Court which also raises doubt. PW1 has examined PW2 Bank Manager to prove that he had withdrawn money from his bank account. PW2 deposed that on 16.07.2016, PW1 had withdrawn Rs.1,75,000/- from his account. But PW1 has not produced any convincing evidence to prove that he lent rupees 3 lakh to the accused. In the examination under section 313 Cr.P.C, the accused took the stand

that he had borrowed rupees 1.5 lakh from the complainant and he repaid rupees one Lakh. According to him, this case is filed by filling up the cheque obtained from him during that time. His version appears more probable considering the fact that he had remitted one lakh rupees to the bank account of the complainant. Therefore, it can be concluded that the complainant failed to prove his case beyond a reasonable doubt and the accused deserves acquittal.

In the result the accused is found not guilty of the offence punishable under section 138 of Negotiable Instrument Act and he is acquitted u/s.255(1) of Cr.P.C. His bail bond stands discharged and he is set at liberty.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court, this the 30<sup>th</sup> day of April, 2026)*

Judicial First Class Magistrate-I  
Changanacherry

### **APPENDIX**

#### **Witnesses examined for the Prosecution:-**

PW1	- Sri.Ajeesh K	27.09.2025
PW2	- Joseph Petal	12.12.2025

#### **Exhibits marked for the Prosecution:-**

P1	- Cheque marked through PW1	27.09.2025
P2	- Cheque return memo marked through PW1	27.09.2025
P3	- Postal receipt marked through PW1	27.09.2025
P4	- Acknowledgement card marked through PW1	27.09.2025
P5	- Advocate notice marked through PW1	27.09.2025
X1	- Statement marked through PW2	12.12.2025
X1(a)	- Certificate marked through PW2	12.12.2025

X1(b) - Certificate marked through PW2

12.12.2025

**Witness examined for the defence :-**

DW1 - Sri.Joseph Petal 24.01.2026

DW2 - Sri.Arun S 07.12.2026

**Exhibits marked for the defence :-**

D1 - Account statement marked through DW1 24.01.2026

D1(a) - Certificate marked through DW1 24.01.2026

D2 series - Account statement marked through DW2 07.02.2026

**Material Objects Marked:-**

Nil

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