IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II,

(FOREST OFFENCES), MANJERI.

Present: - Smt. Noorunnisa. P, LL.M.

Judicial First Class Magistrate, Manjeri.

Dated this the 15th day of June, 2026.

(Dated this the 25th day of Jyeshta 1948)

S.T. CASE No. 252/2022

Complainant	:	P Vinod Krishnan (no more), S/o Balakrishnan Nair, Palamkunnath House, Vadakkumuri, Irumbuzhi P O, Ernad Taluk, Malappuram District, represented by P Vishnuraj, aged 22 years, S/o P Vinod Krishnan, Palamkunnath House, Irumbuzhi P O, Ernad Taluk, Malappuram District. **(By. Sri. K P Vijaya Rajan,Advocate, Manjeri)**
Accused	:	Pramod, aged 37 years, S/o Parangodan, Moonnampadiyan House, Vallikkapatta P O, Perinthalmanna Taluk, Malappuram District. **(By. Smt. P K Valsala, Advocate, Manjeri)**

Offence : U/s. 138 of Negotiable Instruments Act, 1881

Plea : Not guilty

Finding : Not guilty

Sentence or order : The accused is acquitted under section 255(1) of Cr. P.C of the offence punishable under section 138 of Negotiable Instruments Act, 1881. His bail bond shall stand cancelled and he is set at liberty.

Description of accused

Name	age	Father's name	Calling	Residence
Pramod	37	Parangodan	---	Vallikkapatta

Relevant Dates

Offence	Report or complaint	Apprehension	Release on bail	Commencement of trial	Commencement of Evidence	Close of trial	Sentence or order
28.02.13	08.05.13	---	29.12.22	04.05.23	11.02.26	09.06.26	15.06.26

This case having been finally heard today on the 15th day of June, 2026 the court, the same day delivered the following:-

<u>J U D G M E N T</u>

1. This is a complaint filed by the complainant u/s 142 of the Negotiable Instruments Act alleging offence punishable u/s 138 of the Negotiable Instruments Act, 1881.

2. **<u>The complainant's case in brief</u>:** The complainant and the accused

were acquainted with each other. The complainant was informed by the accused that, if an amount of ₹2,00,000/- (Rupees Two Lakhs Only) was paid, the accused would secure a distributorship/agency of Nirapara products for him. Believing the representations made by the accused, the complainant paid an amount of ₹2,00,000/- (Rupees Two Lakhs Only) in cash to the accused at Manjeri on 01.01.2013. However, despite the lapse of the stipulated period, the accused failed to secure the promised agency or otherwise comply with the terms of the arrangement. Thereafter, the complainant repeatedly demanded the return of the amount paid, the accused issued Cheque No. 987272 dated 28.02.2013, drawn on ICICI Bank, Manjeri Branch, in favour of the complainant. The complainant presented the said cheque for encashment through Malappuram District Co-operative Bank, Manjeri Branch. However, the cheque was dishonoured and returned unpaid on 09.03.2013 with the endorsement “Account is inoperative” by debiting ₹113/- from the complainant account.” Thereafter, the complainant caused issuance of a statutory notice dated 03.04.2013 under Section 138 of the Negotiable Instruments Act, 1881, demanding payment of the cheque amount within 15 days. Though intimation of the statutory notice was duly served on the accused, he failed to receive the same. Consequently, the notice was returned on 15.04.2013 as "unclaimed." Hence, the complaint.

3. This complaint was initially filed before the Honourable Chief Judicial Magistrate Court, Manjeri. Upon taking cognizance, the case was taken

on file as ST 120/2013 and subsequently transferred to this court. Upon receipt of the records, the case was renumbered as ST 113/2013 in the files of this court. Upon the appearance of the accused, he was granted bail. Thereafter ST 113/2013 transferred to Long Pending register as LP No. 67/2016. On 29.12.2022 the accused surrendered and bail was granted. Subsequently, the particulars of the offence were read over and explained to the accused, to which he pleaded not guilty.

4. The original complainant died on 29.10.2023. As per order in CMP No. 964/2024 the elder son of the complainant was permitted to continue the prosecution and he was examined as PW1 and filed an affidavit in lieu of examination-in-chief. During the course of the complainant's evidence, Exts. P1 to P6 were marked. Upon closure of the complainant's evidence, the accused was examined under Section 313(1) of the Code of Criminal Procedure, 1973, and all incriminating circumstances appearing in evidence against him were duly put to him. The accused denied all the allegations levelled against him and stated that he had borrowed an amount of ₹30,000/- on interest and had subsequently repaid the entire amount along with interest. He further stated that the cheque which he had issued as security at the time of availing the loan was subsequently misused. The accused also stated that he had seen Vishnu for the first time in court and that he had never visited his house. On the side of the defence, one witness was examined as DW1.

5. Heard both sides and perused the records.

6. The points that arise for consideration are as follows.

I. Has the complainant complied with all the legal formalities prior to the filing of this complaint?

II. Has the Ext.P1 cheque been issued by the accused to the complainant?

III. If so, is it in discharge of a legally enforceable debt or liability?

IV. Has the accused committed the offence punishable U/s 138 of the Negotiable Instruments Act, 1881?

V. What is the order or sentence, if any, to be passed?

7. **<u>Point No.I:-</u>** To sustain a complaint under Section 138 of the Negotiable Instruments Act, 1881, the complainant is required to satisfy the statutory preconditions prescribed under Sections 138 and 142 of the said Act. Compliance with each of the mandatory requirements contemplated under Section 138 is a sine qua non for the maintainability of the complaint and the initiation of prosecution thereunder. In the present case, Exhibit P1 is the cheque allegedly issued by the accused in favour of the complainant. The said cheque, drawn on ICICI Bank, Manjeri Branch, is stated to have been issued on 28.02.2013 for an amount of ₹2,00,000/- (Rupees Two Lakhs only). Upon presentation, the cheque was dishonoured on 09.03.2013 by Malappuram District Co-operative Bank, Manjeri Branch, with the endorsement “Account is inoperative.” The dishonour

memos marked as Exhibit P2 and Exhibit P3. The complainant further asserts that a lawyer's notice dated 03.04.2013 was issued to the accused demanding payment of the cheque amount, which was unclaimed by the accused. Exhibit P4 comprises the copy of the said notice, Exhibit P5 is the Postal receipt and Exhibit P6 is the Returned registered notice. The accused has no case that the dishonour of the cheque was on a ground falling outside the ambit of Section 138 of the Negotiable Instruments Act, nor is it the case of the accused that the statutory notice contemplated under Section 138(b) was not received. Consequently, there is no contention that any of the statutory requirements prescribed under Section 138 of the Negotiable Instruments Act have not been complied with. In view of the foregoing discussion, this court holds that the complainant has duly complied with all the statutory requirements necessary to initiate proceedings under the Negotiable Instruments Act, 1881. Accordingly, this point is found in favour of the complainant.

8. **<u>Point No II and III:-</u>** For the sake of convenience and brevity, both these points are considered together. The specific case of the complainant is that the accused had borrowed an amount of ₹2,00,000/- (Rupees Two Lakhs only) from him at Manjeri. According to the complainant, towards discharge of the said liability, the accused issued Ext.P1 cheque for ₹2,00,000/- (Rupees Two Lakhs only). When Ext.P1 was presented for collection, it was dishonoured and returned unpaid for insufficiency of funds in the account of the accused. Thereafter, after

complying with the statutory requirements, the present complaint was instituted. The defence of the accused is one of total denial of the transaction alleged in the complaint. According to the accused, he had never promised agency of Nirapara and had not received 200,000/- (Rupees Two Lakhs only) as claimed in the complainant and had not issued Ext.P1 cheque in discharge of any such transaction. The specific defence set up is that there had been an earlier transaction between the parties and that the liability arising therefrom had already been discharged in full. It is contended that the complainant subsequently misused a blank signed cheque which had been obtained as a security in connection with the earlier transaction and instituted the present prosecution. To establish the case of the complainant, the son of the original complainant was examined as PW1. He filed a proof affidavit in lieu of chief examination and Exts.P1 to P6 were marked through him. PW1 was subjected to extensive cross-examination by the learned counsel for the accused. In support of the defence, one witness was examined as DW1.

9. In a prosecution under Section 138 of the Negotiable Instruments Act, 1881, the complainant bears the initial burden of establishing that the cheque in question was drawn and issued by the accused towards the discharge, in whole or in part, of a legally enforceable debt or other liability. The learned counsel for the accused contended that the complainant has failed to discharge this foundational burden, particularly in view of the fact that the original complainant

had passed away and the transaction was sought to be proved through PW1, the son of the deceased complainant. In ***Shijosh v. State of Kerala***,**2026 KHC 447,** wherein the Hon'ble High Court of Kerala reiterated that a person deposing on behalf of a complainant must possess direct and personal knowledge of the transaction in question and that, in the absence of such direct knowledge, the complainant would not be entitled to invoke the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act,1881. The first question that therefore arises for consideration is whether PW1 had direct knowledge of the transaction pleaded in the complaint and whether he had personally witnessed the execution and issuance of Ext.P1 cheque. Significantly, in his chief affidavit, PW1 did not state that he had personally witnessed the execution of Ext.P1 cheque or that he possessed direct knowledge regarding the transaction alleged in the complaint. If PW1 indeed had such direct knowledge, the same ought to have been specifically pleaded in his proof affidavit. The absence of any such averment assumes considerable significance. During cross-examination, PW1 claimed that he had been acquainted with the accused for the preceding ten years. The transaction alleged in the complaint pertains to the year 2013. PW1 has stated in his affidavit that he was aged 23 years at the time of his examination in April 2025. If that be so, he would have been approximately eleven years old at the relevant point of time. In such circumstances, this court finds it difficult to accept that PW1 possessed detailed personal knowledge of the transaction as claimed by him. His assertion that he personally witnessed his father advancing money to the accused, demanding repayment, and receiving the cheque in question appears highly improbable and does not inspire confidence. Further, material inconsistencies emerged in the testimony of PW1. While the complaint proceeds on the basis that the amount was advanced to the accused at Manjeri, and the same version was reiterated in the chief affidavit, PW1 deposed during cross-examination that the money was handed over at his residence. At the stage of final arguments, the learned counsel for the complainant attempted to explain this discrepancy by contending that the complainant also maintained a residence at Manjeri and that PW1 might have been referring to the said residence. However, no evidence whatsoever was adduced to substantiate such a contention. Another circumstance which assumes significance is that, during cross-examination, PW1 was confronted with a suggestion that the original complainant was engaged in money-lending activities, that his residence had been searched by the police, and that he had even been arrested in connection therewith. PW1 professed complete ignorance regarding these matters and did not specifically deny the suggestions. Though such suggestions by themselves cannot be treated as proof of the defence case, they nonetheless demonstrate the lack of personal knowledge possessed by PW1 regarding the affairs and transactions of the deceased complainant. Having regard to the above circumstances, this court is of the considered view that the complainant has failed to establish that PW1 possessed direct and personal knowledge of the transaction alleged in the complaint. Consequently, the execution and issuance of Ext.P1 cheque towards the transaction pleaded by the complainant remain unproved. In such circumstances, the complainant cannot claim the benefit of the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act on the basis of the admitted signature of the accused on Ext.P1 cheque.

10. Ordinarily, where an accused sets up a specific plea that the liability arising from an earlier transaction had already been discharged, either through the suggestions put to PW1 during cross-examination or in his statement under Section 313 Cr.P.C., the burden would be upon the accused to substantiate such plea. In such circumstances, the accused would also be required to satisfactorily explain how the signed cheque came into the possession of the complainant. However, the present case stands on a different footing. As already found, PW1 has failed to establish that he possessed direct and personal knowledge regarding the transaction pleaded in the complaint. Consequently, the complainant has failed to discharge the initial burden of proving the execution and issuance of Ext.P1 cheque in connection with the transaction alleged. In the absence of the complainant discharging such foundational burden, the burden did not shift to the accused. Therefore, no adverse inference can be drawn against the accused merely because he failed to independently prove the alleged discharge of liability. Nevertheless, in order to probabilise his defence, the accused examined DW1.

According to DW1, he had introduced the accused to the deceased complainant for availing a loan of ₹30,000/-. Though the nominal amount of the loan was ₹30,000/-, only ₹27,000/- was actually disbursed, and a blank signed cheque leaf along with a signed stamp paper was obtained from the accused as security for the said transaction. It is true that DW1 admittedly had no personal knowledge regarding the subsequent discharge of the liability claimed by the accused. However, his evidence lends support to the defence case insofar as it establishes the existence of an earlier financial transaction between the accused and the original complainant and the circumstances under which a signed blank cheque and stamp paper had come into the possession of the complainant. To that extent, the testimony of DW1 successfully probabilises the defence version and corroborates the accused's contention that the cheque in question did not originate from the transaction pleaded in the complaint. During cross-examination, DW1 admitted that he had appeared before the court at the request of the accused and not pursuant to summons. Nevertheless, he clarified that the accused had not instructed him regarding the contents of his testimony and that he was deposing only to facts within his personal knowledge. DW1 was also aware of material particulars relating to the earlier transaction. He specifically deposed that the cheque obtained from the accused as security pertained to an ICICI Bank account and that the amount was advanced at Manjeri. Significantly, Ext.P1 is also drawn on an ICICI Bank account. The fact that DW1 was aware of these details lends assurance to the credibility of his testimony and supports his claim that he had personal knowledge of the earlier transaction between the accused and the deceased complainant. Although DW1 was subjected to extensive and searching cross-examination and considerable efforts were made to impeach his credibility, nothing substantial could be elicited to discredit his testimony or render his version inherently improbable. It is well settled that an accused in a prosecution under Section 138 of the Negotiable Instruments Act is not required to prove his defence beyond reasonable doubt. It is sufficient if the accused succeeds in raising a probable defence capable of creating doubt regarding the existence of a legally enforceable debt or liability. In the present case, the inconsistencies and contradictions in the testimony of PW1, particularly regarding the place of the transaction and the reliability of his alleged personal knowledge, cast serious doubt on the credibility of the complainant's version. The defence evidence adduced through DW1, coupled with the infirmities in the complainant's evidence, sufficiently probabilises the defence case. Consequently, the complainant is not entitled to invoke the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. The burden therefore reverted to the complainant to independently establish the transaction and prove the existence of a legally enforceable debt or liability. The complainant has failed to discharge that burden. From the foregoing discussion, it is evident that the complainant has failed to prove that the accused drew, executed and issued Ext.P1 cheque in discharge of a legally enforceable debt or liability. Accordingly, the points for determination are answered against the complainant.

11. **<u>Point No IV and V:</u>-** In view of the findings on Point Nos. II and III, this court is of the considered opinion that the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 have not been established. Accordingly, the accused is not found guilty of the offence punishable under section 138 of Negotiable Instruments Act, 1881.

In the result,

The accused is acquitted under section 255(1) of Cr. P.C of the offence punishable under section 138 of Negotiable Instruments Act, 1881. His bail bond shall stand cancelled and he is set at liberty.

(*Dictated to the Confidential Assistant, transcribed and prepared in computer, corrected by me and pronounced in open court on this the* 15th day of June, *2026).*

Sd/-
Judicial First Class Magistrate -II,
(Forest Offences), Manjeri.

APPENDIX

<u>Witness examined for the Complainant</u>:-

Complainant witness number	Name of witness	Description
1	Vishnu Raj P	Son of the complainant

Ext.s marked for the Complainant:-

Exhibit number	Description of the Exhibit	Proved by / Attested by
P1	Cheque No. 987272 dated 28.02.2013.	PW1
P2	Return Memo of ICICI Bank dated 09.03.2013.	PW1
P3	Return Memo of The Malappuram District Co-operative Bank dated 09.03.2013	PW1
P4	Copy of lawyer's notice dated 03.04.2013	PW1
P5	Postal receipt dated 03.04.2013	PW1
P6	Returned registered notice.	PW1

Witnesses examined for the defence:-

Defence witness number	Name of witness	Description
1	Rakesh	Other witness

Ext.s marked for the defence:- Nil.

Sd/-
Judicial First Class Magistrate -II,
(Forest Offences), Manjeri.