<u>IN THE COURT OF THE SESSIONS DIVISION, PALAKKAD.</u>
Present:- Sri.Kenneth George, Additional Sessions Judge No. IV

<u>Tuesday the 28th day of April, 2026</u>
(15th day of Vaishaka, 1948 S.E.)

<u>Criminal Revision Petition No.55/2025.</u>

<u>Revision Petitioner/ Complainant:</u>
Avaran.K., Aged 60 Years, S/o.Moideen,
Kolakkadan House, Mukkannam, Mannarkkad, Palakkad -678 582.
By Advocate: Smt. Haseena.K.A.

-Vs-

<u>Respondents/ Accused:</u>

1. State of Kerala, Rep by Government Pleader and
   Public Prosecutor, Palakkad.
2. Jaffar.C., Aged 45 Years, S/o.Mummy, Chettiyamparambil Veedu,
   Kappuparambu, Thiruvizhamkunnu (P.O), Mannarkkad,
   Palakkad – 678 601.

By Advocates: Addl. Public Prosecutor for State.
Adv.N.Rajesh and Sarath Jose for R2.

This Criminal Revision Petition is filed against the order of the Judicial First Class Magistrate, Mannarkkad, dated 03-06-2025 and **made in CMP Nos. 115/2023 and 116/2023.**

This Criminal Revision Petition having been heard on 21.04.2026 and this court on 28-04-2026 passed the following:-

<u>ORDER</u>

This is a Revision petition filed under Section 438 of Bharatiya Nagarik Suraksha Sanhita 2023. Revision petition is filed aggrieved by order dated 03.06.2025 in CMP No. 116/2023 of the Court of Judicial First Class Magistrate, Mannarkkad. The revision petitioner is the complainant in the trial Court.

2. The case of the revision petitioner in nutshell is as follows. The complaint was filed under Section 142 of the Negotiable Instruments Act, 1881,

alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act. It is alleged that the accused borrowed an amount of ₹3,47,000/- on 12.05.2022 and issued cheque dated 21.09.2022 drawn on UCO Bank, Mannarkkad branch. When the cheque was presented for encashment, the drawee bank returned the cheque with the endorsement "drawer's signature differs". Even though complainant issued lawyer notice dated 12.10.2022, the accused received the notice, but without any reply or payment. The action of the accused amounts to offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate allowed CMP 115/2023 and condoned delay of 40 days. The case was thereafter posted for inquiry on 03.06.2025. The original counsel entrusted the file to another counsel, who omitted to represent the matter on that day. The non-representation for the complainant and non-taking steps to examine the bank manager are not intentional. Hence, the petitioner prayed to set aside the dismissal order and restore the complaint on file.

3. The application is opposed by learned Additional Public Prosecutor and Counsel appearing for the second respondent. It is contended that the petitioner was given sufficient opportunity to prove the case and further that no prima facie materials made out to attract offence under Section 138 of the Negotiable Instruments Act.

4. The points that arise for determination are:

1. Whether the revision petition as framed is maintainable?
2. Whether petitioner is entitled to relief as prayed for?
3. Order?

5. **<u>Point number 1 & 2:-</u>** As dismissal is under Section 203 of Cr.P.C, the bar under Section 438 (2) of BNSS 2023 has no application. Regarding question whether prosecution under Section 138 of the Negotiable Instruments Act is maintainable against the accused, when the cheque in question is bounced due to signature differs, the learned counsel for the revision petitioner brought to my notice the decision in **Laxmi Dyechem v. State of Gujarat and others, 2012 (4) KHC**

826 (SC). Para – 15 of the decision is extracted for reference:-

> *"The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money..... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. <u>A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf.</u> Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which*

the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the Trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

6. So the complainant is entitled to prove that accused is the author of putting signature in the disputed cheque or the signature in the cheque was put under the direction of the accused.

7. The order passed by learned Magistrate shows that, three chances were given for conducting inquiry regarding insufficient funds in drawer's account at the time of dishonour of cheque. The case was posted to 03.03.2025 as enquiry last chance. Then it was adjourned to 03.06.2025. On that day, there was no representation for the complainant, resulting in dismissal of the complaint. So the trial Court rightly dismissed the petition under Section 203 for not taking steps on time. The petitioner is entitled to prove that the cheque was returned for the reason insufficient funds and also that the author of putting signature is by the accused or his representative. An opportunity should be given to the revision petitioner to prove his case. The points are answered in favour of petitioner.

8. **Point number 3:** In the result, the petition is allowed as follows:

1. Order dated 03/06/2025 in Crl.M.P 116/2023 is set aside.
2. The revision petitioner is directed to appear before trial court on 22/05/2026.
3. The revision petitioner shall take all necessary steps under Section 202 Cr.P.C (225 of BNSS) as per law without delay.
4. No order for costs.

Dictated to the Confidential Assistant, typed and transcribed by him, corrected and pronounced by me in open court on this the 28th day of April, 2026.

-sd/

Additional Sessions Judge -IV,
Palakkad.

Typed By: Sainabi.

Compared By: Aswathy Asokan.

//True Copy//

Fair/Copy/ ORDER IN

IN CRIMINAL R.P. No. 55/2025

Dated : 28th April, 2026