

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,  
PATTAMBI**

Present:-Smt. Neema Noor Mohamed, Judicial Magistrate of First Class.  
Wednesday, this the 6<sup>th</sup> day of May, 2026/ 16<sup>th</sup> day of Vaisakha, 1948 S.E.

**Calendar Case No. 649/2016.**

M.P. Moideen, aged 60/16 years, S/o. Hamza, Mundanpallath House, Paruthur P.O, Pattambi Taluk, Palakkad ( By. Adv. Sri. Surjith Kottayil)	Complainant
Manoj George, aged 45/16 years, S/o. George, Chemmanampallil House, Meemutty P.O, Kozhikkode. ( By Adv. Smt. V.K. Smitha.)	Accused
Offence	Punishable under section 138 of Negotiable Instruments Act.
Plea	Not guilty
Finding	Not guilty
Sentence or order	The accused is found not guilty of the offence punishable under section 138 of the Negotiable Instruments Act and he is acquitted under section 255(1) Cr.P.C. The bail bond executed by the accused stands cancelled and he is set at liberty forthwith.

**DATE OF**

Offence	Complaint	Apprehension	Release on Bail	Comment of Trial	Close of Trial	Order	Explanation for delay
13/05/16	04/06/16	14/03/17	14/03/17	24/05/24	30/04/26	04/05/26	No delay

**DESCRIPTION OF ACCUSED**

Name	Father's Name	Age	Residence	Taluk
Manoj George	George	45/16	Meemutty	Kozhikkode

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

This is a case arising out of a private complaint filed by the complainant against the accused alleging commission of offence punishable under section 138 of the Negotiable Instruments Act.

2. The complainant's case in brief is as follows: The accused had borrowed a sum of ₹3,00,000/- from complainant, and in discharge of the said liability, the accused issued a cheque bearing No. 580324 dated 05/04/2016, drawn on HDFC Bank. The said cheque, when presented for encashment, was dishonoured with the endorsement "account closed." Thereafter, the complainant issued a statutory demand notice to the accused through registered post. Though the notice was duly received, the accused neither repaid the amount nor sent any reply. Thus the accused alleged to have committed the offence punishable under section 138 NI Act.

3. On appearance of the accused, he was released on bail. Accused was represented by a counsel of his choice. The copies of the complaint and documents were furnished to him. The particulars of the offence were read over and explained to the accused, to which he pleaded not guilty.

4. From the side of complainant, PW1 was examined and Exts. P1, P3 series (3 in numbers) were marked among which Ext. P1 is the cheque in dispute. After closing the evidence of the complainant, the accused was examined under section 313(1)(b) of Cr.P.C for enabling the accused personally to explain any circumstances appearing in the evidence against him. The accused denied all the incriminating circumstances brought out in evidence against him.

5. The accused was then called upon to enter upon her defence and produce his evidence. DW1 was examined from the side of defence.

6. Heard both sides at length.

7. Following points arise for consideration.

1. *Whether the accused has executed Ext.P1 cheque in favour of the complainant in discharge of any legally recoverable debt?*
2. *Whether the accused has committed the offence punishable u/s.138 of the Negotiable Instruments Act as alleged?*
3. *Sentence or order?*

8. **Point No. 1 and 2:-** PW1, the complainant filed proof affidavit in lieu of examination-in-chief adhering in exactitude with the pleadings in the complaint. Exts. P1 to P3 series (3 in numbers) were marked. Exhibit P1 is the cheque bearing No. 580324 for ₹3,00,000/- drawn from the ICICI Bank, Perinthalmanna branch dated 05/04/2016. Exhibit P2 is the cheque return memo issued by the IDBI Bank, Pattambi branch dated 12/04/2016. Exhibit P3 series are the copy of lawyer notice sent to accused dated 22/04/2016 along with its Postal receipt and acknowledgment card.

9. PW1 was duly cross-examined and deposed that he resides at Palathara, while the accused resides at Perinthalmanna. He stated that he does not presently know the exact address of the accused, though he was aware of it at the time of instituting the complaint. He further stated that the complaint was filed against one Manoj George, whom he knew as residing at Perinthalmanna, and that he does not know any other person by that name. When the complaint was shown to him, PW1 identified his signature. The address mentioned in the complaint

was read over to him, wherein the accused is shown as residing at Meenmutty Post, Kozhikode, within the jurisdiction of Kozhikode Police Station. PW1 further deposed that the transaction with the accused took place in the year 2016 and that he had known the accused for about two years prior to the transaction, as the accused used to visit his shop situated within the jurisdiction of Thrithala Police Station. According to PW1, the accused was engaged in the business of supplying fertilizers, which was how he became acquainted with him. PW1 stated that he was running a home appliances shop and had also been conducting a finance business under the name “MPM Finance,” which he had operated for about ten years and closed during the year 2020–2021. He claimed that he possessed the necessary licence and registration for running the said finance business and that he had been paying income tax during the relevant period. However, he stated that he does not recollect his annual income for the year 2016 or 2020. PW1 further deposed that he does not remember the exact date or month on which the amount was advanced to the accused. He stated that the amount of ₹3,00,000/- was given for the business purposes of the accused, without any stipulation as to interest, and that it was to be repaid within two months. He also stated that the accused had assured repayment at his convenience. He further deposed that the amount was not given immediately upon request but was advanced approximately one week thereafter. However, he stated that he does not recollect how he arranged the funds for the said transaction. He admitted that no documents were executed at the time of

advancing the amount. With respect to the cheque, PW1 stated that the accused himself handed over the cheque and that he had not demanded the same. He initially stated that the cheque was given on the same day the amount was advanced, but later added that the cheque was handed over when the accused came to repay the amount. He further stated that he does not know who filled up the particulars in the cheque and that he had not witnessed its execution. PW1 also deposed that he knows one Saji.V.John, who used to visit his shop. He stated that he had no transaction with Saji.V.John and denied any knowledge of having filed a case against Saji.V.John's wife. He further stated that he does not recollect whether Saji.V.John had borrowed an amount of ₹2,00,000/- from him for business purposes. He denied the suggestion that the cheque in question was handed over in connection with a transaction involving Saji.V. John and that the same was misused for filing the present complaint. He also denied the suggestion that no financial transaction took place between him and the accused.

10. On the side of the defence, Saji.V.John was examined as a witness. He deposed that he knows both the complainant and the accused, and that the accused is his neighbour. He stated that he is not aware of any transaction between the complainant and the accused. However, he admitted that he had borrowed an amount of ₹2,00,000/- from the complainant on interest and that, in connection with the said transaction, he had issued a cheque and also created security over his property.

11. It is not in dispute that the cheque bears the signature of the accused

and that it was dishonoured with the endorsement “account closed.” The issuance of the statutory notice and its receipt by the accused are also established. In such circumstances, the presumption under Sections 118 and 139 of the Negotiable Instruments Act operates in favour of the PW1. However, the said presumption is rebuttable, and the accused is only required to establish a probable defence. In the present case, PW1 has asserted that the cheque in question was handed over by the accused at the time when the amount of ₹3,00,000/- was advanced. However, PW1 has admitted in cross-examination that he does not remember the exact date or month of the alleged transaction. He has further deposed that he does not recollect how he mobilised the funds for advancing such an amount. No documentary evidence has been produced to substantiate either the source of funds or the transaction. It is also admitted that no written agreement or contemporaneous record was executed at the time of the alleged loan. PW1 has further stated that he does not know who filled up the particulars in the cheque and that he did not witness its execution. His evidence also reveals uncertainty regarding the address of the accused, as the address stated in the complaint differs from the version given during cross-examination.

12. The defence has put forward a case that the cheque in question did not arise out of any transaction between the complainant and the accused and that it had come into the possession of the complainant in connection with another transaction. In support of this contention, DW1 was examined.

13. DW1 has deposed that he had borrowed an amount of ₹2,00,000/-

from the complainant on interest and that, in connection with the said transaction, he had issued a cheque, his wife had also issued a cheque of accused and he had conditionally conveyed property as security. He further stated that upon repayment of the amount, the property was re-conveyed to him, but the cheques were not returned. He also identified the cheque of the accused as one which had been handed over to PW1 during the course of their transaction.

14. Though DW1 stated that he is not aware of any direct transaction between the complainant and the accused, his evidence renders the defence version probable that the complainant was dealing in money lending transactions involving multiple securities, including cheques of third parties.

15. It is also relevant that PW1 has admitted that he had been conducting a finance business for several years. However, no records relating to such business or accounts have been produced to support the alleged loan transaction with the accused.

16. The cumulative effect of the above circumstances, i.e. the absence of proof regarding the source of funds, lack of documentary evidence, inability of PW1 to recall material particulars of the transaction and the probable defence brought out through the evidence of DW1, creates a reasonable doubt as to the existence of a legally enforceable debt.

17. It is well settled that once the accused has succeeded in rebutting the statutory presumption by raising a probable defence, the burden shifts back to the complainant to prove the transaction. In the present case, the complainant

has failed to discharge that burden.

18. Accordingly, this Court finds that the accused has successfully rebutted the presumption under Section 139 of the Negotiable Instruments Act, and the complainant has failed to establish that the cheque in question was issued in discharge of a legally enforceable debt or liability. Accordingly, the accused is found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and is acquitted under Section 255(1) of the Code of Criminal Procedure. The point is answered against complainant.

19. **Point No. 3** : Accordingly, the benefit of doubt must go to the accused, who therefore stands acquitted. Thus the point is answered accordingly.

In the result,

1. ***The accused is found not guilty of the offence punishable under section 138 of the Negotiable Instruments Act and he is acquitted under section 255(1) Cr.P.C.***
2. ***The bail bond executed by the accused stands cancelled and he is set at liberty forthwith.***

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 6<sup>th</sup> day of May, 2026.

*Sd/-*

Judicial Magistrate of First Class,  
Pattambi.

**APPENDIX**

Witness examined for the prosecution :

PW1 :	Moideen, aged 65 years, S/o. Hamza, Paruthur, Pattambi. (Complainant)
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Witness Examined for the Defence :

DW1 :	Saji.V. John, aged 57 years, S/o. John, Valambur, Perinthalmanna.
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Exhibits marked for prosecution :

P1	05/04/2016	Cheque bearing No. 580324 for ₹ 3,00,000/- drawn from the ICICI Bank, Perinthalmanna branch (PW1)
P2	12/04/2016	cheque return memo issued by the IDBI Bank, Pattambi branch (PW1)
P3	22/04/2016	copy of lawyer notice sent to accused along with Postal receipt and acknowledgment card (PW1)

Exhibits Marked for the Defence : **NIL**

*Sd/-*

Judicial Magistrate of First Class,  
Pattambi.

// True Copy//

Judicial First Class Magistrate,  
Pattambi.