IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE –CHITTUR

Present: Sri. Sivadas S

Judicial First Class Magistrate ,Chittur.

Dated this the 30th day of April, 2026

ST CASE No. 662/2020

Complainant : Byrojineesa, aged 57/20 years, W/o Kamal, Kamal Manzil Padikkal Padam, Pudunagaram, Palakkad.
(By: Sri. S. Ramesh, Advocate)

Accused : Sajana, D/o Ramakrishnan, Perumkalath House, Peruvembu, Palakkad.
(By: Rakhi N, Advocate)

Offence : Punishable under S. 138 of Negotiable Instruments Act.

Plea : Not Guilty

Finding : Guilty

Sentence/order : Accused is convicted under Section 255(2) of The Code of Criminal Procedure, 1973 and sentenced to undergo imprisonment for till rising of the court and to pay fine of ₹.1,50,000/- (Rupees One lakh fifty thousand only) and if the fine is remitted it shall be paid to the complainant as compensation under Section 357(1)(b) of The Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of The Negotiable Instruments Act, in default simple imprisonment for 2 months.

DESCRIPTION OF ACCUSED

Name	age	Father's name	..	Calling	Residence
Sajana	..	Ramakrishnan	..	..	Peruvembu

DATE OF

Occurrence	Complaint	Apprehension	Released on bail	Commencement of trial	Close of trial	Sentence or Order
12.02.20	29.09.20	..	16.03.24	16.03.24	17.04.26	30.04.26

JUDGMENT

This is a private complaint alleging commission of offence punishable under Section 138 of The Negotiable Instruments Act, 1881.

2. The allegations in the complaint in brief are as follows.

3. The complainant and accused are acquainted with each other for several years and are also friends. Out of that relationship the accused approached the complainant on 14.05.2019 and asked to lend an amount of Rs. 1,50,000/- for her son’s medical treatment and she had given that amount to the accused. At the time of borrowing that amount the accused promised that she will repay the amount within 6 months. After 6 months she requested 3 months more time to repay the amount. Thereafter on 12.02.2020 the accused came to the complainant’s house and have signed, executed and issued a cheque bearing no. 869007 dated 12.02.2020 for Rs. 1,50,000/- drawn on State Bank of India, Koduvayur from her account bearing number 20286160593 in the presence of the complainant, towards discharge of the said debt, promising that there are sufficient funds in her account to honour the cheque. The complainant send the cheque for collection through Punjab National Bank, Kakkayur branch but it was returned for the reason ‘insufficient funds’. Thereafter a lawyer notice dated 25.02.2020 was caused to the accused demanding the cheque amount. The said notice was received by the accused on 27.02.2020. After the receipt of notice the accused has neither sent any reply nor paid the cheque amount. As she has not repaid the cheque amount after receipt of notice this complainant was filed.

4. After perusing the complaint, the complaint was taken on file as ST 662/2020 under Section 138 of The Negotiable Instruments Act, 1881. Summons was issued to the accused. The accused appeared through counsel and she was

enlarged on bail. Particulars of offence was read over and explained to the accused under Section 138 of The Negotiable Instruments Act, 1881 to which she pleaded not guilty and claimed to be tried.

5. To prove the case of the complainant, the complainant was examined as PW1 and Ext. P1 to P5 were marked. PW1 is the complainant in this case and through her the cheque bearing no. 869007 of State Bank of India, Koduvayur was marked as Ext. P1. Cheque return memo was marked as Ext. P2. Lawyer notice was marked as Ext. P3, postal receipt was marked as Ext. P4 and acknowledgment card was marked as Ext. P5.

6. After the prosecution evidence was over, the accused was questioned under Section 313 (1) (b) of The Code of Criminal Procedure, 1973 in order to enable her to personally explain the incriminating circumstances appearing in evidence against her. She denied all the incriminating circumstances appearing in evidence against her and she further stated that she has nothing to say. Thereafter the case was posted for defence evidence. Even though sufficient opportunity was given for defence, no evidence was adduced on the side of the defence.

7. Heard both sides.

8. The following points arise for determination and consideration:

1) Is the complaint filed after complying all the statutory requirements?

2)Did the accused executed and issued Ext.P1 cheque to PW1 for discharging a legally enforceable debt?

3)Did the accused committed an offence under Section 138 of NI Act?

4)What offence if any committed by the accused? If so, what should be the proper sentence?

9. Point no. 1: On a perusal of P1 to P5 it will go to show that the complainant has duly performed the pre-requisites contemplated in Sections 138 and 142 of The Negotiable Instruments Act, 1881 for the maintainability of the complaint. The cheque was presented in time, the statutory notice was issued in time, complaint was filed in time as per the order of Hon'ble Supreme Court during Covid Pandemic, cheque was returned for the reason of "insufficient funds" and the complaint is filed by the payee of the cheque. Hence I find that the complaint is maintainable and hence this point is found in favour of the complainant.

10. Point No. 2 and 3: The learned counsel for the complainant argued that the complainant and accused are known to each other. The accused borrowed the amount for her son's treatment and when demanded back has issued Ext. P1 cheque when sent for collection was returned for the reason 'funds insufficient' and after sending lawyer notice as she has not repaid the amount. She has preferred the complaint. The learned counsel for the complainant argued that initially the defence case is that there is no legally enforceable debt. Thereafter the case of defence is that Rs. 50,000/- was borrowed by the accused. He contented that he complied all the necessary legal formalities and so the presumptions are available to the complainant. He argued that as the complaint was filed after Covid Pandemic. So the limitation is not applicable in this case as the Hon'ble Supreme Court has

directed to condone the limitation during that period. So he contented that the complainant proved the case against accused beyond reasonable doubt and hence the accused is liable to be convicted.

11. The learned counsel for the accused filed argument notes in which she contented that during cross examination PW1 admitted that she does not know the illness of the accused's son or the hospital where the treatment was undertaken . She argued that the alleged transaction is a cash transaction without any documentary proof. No loan agreement, receipts or written acknowledgment was executed. No independent witnesses were present at the time of alleged payment. The amount was allegedly paid solely based on acquaintance and friendship. No document evidencing the loan is produced. No bank transaction is shown. There is no material produced to establish the complainant's financial capacity to lend Rs. 1,50,000/-. The alleged purpose that is medical emergency is unsupported by any medical records. So he argued that the very foundation of complainant's case remains unproved. The existence of legally enforceable debt is not a matter of presumptions and must be proved by the complainant

12. It is settled principle that in order to attract Section 138 of NI Act there must be a legally enforceable debt or liability as on the date of issuance of cheque. In this case no documents evidencing the loan is produced. No bank transaction is shown. No materials are produced to establish complainant's financial capacity to advance Rs. 1,50,000/-. Even the alleged purpose of medical emergency is not supported by any medical records. So the very foundation of the complaint is unproved. The

existence of legally recoverable debt is not a matter of presumption and must be proved by the complainant. The defence case is clear, consistent and probable. The accused has borrowed only Rs. 50,000/- on interest. The entire principal amount was repaid. The dispute is only with respect to interest. The cheque in question was issued as security not towards the discharge of any existing liability. The complainant has misused the security cheque. When a cheque is issued as security and not in discharge of a legally enforceable debt, Section 138 of NI Act is not attracted. So the presumptions stands effectively rebutted and the accused is entitled for an acquittal.

13. PW1 filed proof affidavit in lieu of examination in chief which is in tune with the complaint. In cross examination she deposed that she knows the accused past 5 years. On 14.03.2019 the accused borrowed the amount directly. The son of the accused and her son are friends. She borrowed the amount stating that her son is ill. She has not stated the disease of her son. She told her that he is so serious. She had given the amount as cash. The accused borrowed the amount in the morning. So she asked her son. At that time her son told her that as her child is ill he told her to give the amount. The accused told her that her son was admitted at Nenmmara Hospital. The accused came alone for borrowing the amount. At the time of giving the amount she alone was there at her house. The amount which was withdrawn from the bank and the amount which was set apart for maintenance of her house was given to the accused. She worked as live stock inspector at veterinary department. She retired on 30.04.2019. Accused told her that she will

give that the amount after 6 months when she demanded back the amount after 6 months she had not given the amount. After 3 months when she again demanded back the amount she had not given the amount. On 12.02.2020 she came to her house and had given the cheque from her house. She had signed the cheque. The writings were already there. She is not having any other cases in any other court apart from this case. She denied the suggestion that she used to give money for interest for so many persons at Kanjikode. She denied the suggestion that she had given the amount to the accused for interest at the rate of Rs. 5,000/- per month. She had not collected any documents at the time of giving the amount. She denied the suggestion that she had written an amount in the cheque and had sent it for collection. She denied the suggestion that the accused had given the amount with interest. She denied the suggestion that the accused is not having the liability to give back the amount as stated in the cheque. She denied the suggestion that the son of the accused is not having any disease or he has not undergone any treatment. She denied the suggestion that the accused has not borrowed any amount as stated in the complaint.

14. In this case the specific case of complainant is that the accused borrowed an amount for her son’s treatment and when demanded back has issued Ext. P1 cheque when sent for collection was returned for the reason ‘funds insufficient’ and after sending lawyer notice as she has not repaid the amount this case was filed. The definite case of defence is that the alleged transaction is a transaction without any documents. No loan agreement, receipt or written acknowledgment was executed.

There is no independent witness. No document evidencing the loan is produced. No bank transaction is shown, no material produced to establish the complainant's financial capacity. So the complainant failed to prove her case.

15. In this case the defence counsel during cross examination has got a suggestion that PW1 used to give money for interest for so many persons at Kanjikode and her another suggestion is that she had given amount to the accused for interest at the rate of Rs. 5,000/- per month. So she has admitted that the complainant is having the capacity to lend money and she further admitted that she had borrowed Rs. 50,000/- on interest and the entire amount is repaid and there is only dispute with regard to the interest. She also admitted the signature in Ext. P1 cheque and that the cheque belongs to her. She has not disputed the signature in Ext. P1. According to her the complainant has misused the cheque which was issued a security. It is true that PW1 deposed in cross examination that she does not know the disease of the son of the accused. According to her the amount which was withdrawn from the bank and the amount which was set apart from maintenance was given to the complainant. It is true that in this case the complainant has not produced any document to prove that she had given the amount.

16. The argument of the learned counsel for the accused that there is no document produced to prove that the complainant is having the capacity to lend this much amount is incorrect. The cheque which was issued in this case and marked as Ext. P1 will prove that the cheque was issued in discharge of a legally enforceable

debt. In this case the complainant has got a case that the accused issued the cheque in discharge of a liability.

17. In this case the accused has pleaded discharge. So it is her duty to prove that she has discharged her liability. According to her she has borrowed Rs. 50,000/- and it was given back but she has not produced any document to prove the discharge. She has not disputed in signature in Ext. P1 cheque.

18. In Rajesh jain Vs Ajay Singh reported in 2023(6)KHC 391 it was held by our Honble Supreme Court that once a presumption under Section 139 was given effect to court should proceed on the premise that the cheque was issued in discharge of a debt or liability. Then the entire focus would shift on the case set up by the accused. The nature of enquiry would then be to see whether the accused has discharged his onus or rebutted the presumption. If he failed to do so court can straight away proceed to convict him subject to the satisfaction of the other ingredients of Section 138. It was held in the decision 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. So merely because in cross examination PW1 deposed that he does not know the illness of the son of the accused is not at all relevant as the accused will have to rebut the presumption. Further she has failed to prove discharge also.

19. In ***Bir Singh V.s Mukesh Kumar*** reported in 2019 AIR SC 2446 it is held by our Hon'ble Supreme Court that presumption under section 139 mandates that unless the contrary is proved it is to presumed that the holder of a cheque received

the cheque of the nature referred to in section 138 of the Act for the discharge in whole or in part of any debt or other liability. The onus to rebut the presumption under section 139 of The Act that the cheque has been issued in discharge of any debt or other liability is on the accused who is the drawer of the cheque. It is further held in the decision that if a blank cheque voluntarily presented to a payee towards some payment the payee may fill up the amount and other particulars which itself will not invalidate the cheque. The onus would still be on the accused to prove that the cheque was issued not in discharge of a debt or liability.

20. The next point that has to be looked into in this case is whether the accused has rebutted the presumption. In ***Kishan Rao V.s Shankargouda*** reported in AIR 2018 SAR 880 our Hon'ble Supreme Court has held that under section 139 of The Act the presumption is infavour of the holder of the cheque. Mere denial regarding the existence of debt shall not serve any purpose. The accused will have to adduce evidence to rebut the presumption under section 139 of The Act. It is true that the accused has to rebut the presumption by preponderance of probability. The presumption as stipulated under the act is one that the accused must prove the contra to the satisfaction of a prudent man.

21. The defence has failed to rebut the presumption by preponderance of probabilities. So after evaluating the evidence in this case and the probabilities of the case it will prove that the accused has not acted to the standards of a prudent man. The accused failed to prove her case by preponderance of probabilities. As the complainant proved that the cheque was issued to her by the accused, I find that

the complainant proved the case against accused beyond reasonable doubt. Hence the accused is found guilty for the offence punishable under Sect. 138 of NI Act. I find that this is not a fit case to invoke the the benevolent Provisions of The Probation of Offenders Act. According to me the accused deserves punishment.

In the result,

Accused is convicted under Section 255(2) of The Code of Criminal Procedure, 1973 and sentenced to undergo imprisonment for till rising of the court and to pay fine of ₹.1,50,000/- (Rupees One lakh fifty thousand only) and if the fine is remitted it shall be paid to the complainant as compensation under Section 357(1)(b) of The Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of The Negotiable Instruments Act, in default simple imprisonment for 2 months.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 30th day of April, 2026)

Sd/-
Judicial First Class Magistrate,
Chittur.

APPENDIX

WITNESSES EXAMINED FOR THE PROSECUTION.

Prosecution witness no.	Name of witness	Description
1.	Byrojineesa	Defacto complainant

EXHIBITS MARKED BY THE PROSECUTION:

Ext. no.	Description of the Exhibit	Proved by/Attested by
1	Cheque	PW1

2.	Memo	PW1
3.	Notice	PW1
4	Postal receipt	PW1
5.	AD card	PW1

WITNESSES EXAMINED FOR THE DEFENCE : NIL

EXHIBITS MARKED BY THE DEFENCE: NIL

MATERIAL OBJECTS MARKED : NIL

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE,
CHITTUR.

-true copy -

JUDICIAL FIRST CLASS MAGISTRATE,
CHITTUR.