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 March, 2026

ST CASE No. 802/2021

Complainant : Mumthaj M, aged 30 years, W/o Shajahan, Fathima manzil, Maruthampallam, Nallepilly, Chittur.
(By: Sri. John John, Advocate)

Accused : Mohammed Riyas, aged 34 years, S/o Moideenbasha, Chanthapettayil, Nalleppilly, Chittur.
(By: R. Sivaraman, Advocate)

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

Plea : Not Guilty

Finding : Not Guilty

Sentence/order : Accused is found not guilty for the offence punishable under Section 138 of The Negotiable Instruments Act and he is acquitted under Section 255(1) of The Code of Criminal Procedure, 1973. His bail bond shall stands cancelled and he is set at liberty forthwith.

DESCRIPTION OF ACCUSED

Name	age	Father's name	..	Calling	Residence
Mohammed Riyas	34	Moideenbasha	..	..	Nalleppilly

DATE OF

Occurrence	Complaint	Apprehension	Released on bail	Commencement of trial	Close of trial	Sentence or Order
24.09.21	06.11.21	..	06.11.24	..	25.03.26	30.03.26

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 family friends and known to each other for the last so many years. The accused borrowed an amount of Rs. 1,00,000/- from the complainant on 07.01.2019 for his urgent business requirements promising to repay the amount on demand with 10 interest per annum and executed a demand promissory note to the said amount on the same day. The accused used to pay interest to the complainant as promised. Again on 29.04.2019 the accused borrowed an amount of Rs. 3,00,000/- from the complainant and on the same day executed a demand promissory note for Rs. 4,00,000/- and the complainant returned the earlier promissory note executed by the accused on 07.01.2019. The accused promised the complainant that he will repay the amount with 10 percent interest per annum. The accused used to pay interest every month as agreed. In the month of September 2021 as the complainant was in need of money she demanded the accused to repay the borrowed amount on 24.09.2021. At that time the accused came to the house of the complainant and signed, executed and handed over a cheque bearing no. 202584, dated 24.09.2021 for Rs. 4,00,000/- drawn on the South Indian Bank, Nallepilly Branch to the complainant towards the discharge of the liability. The complainant accepted the cheque in lieu of payment of cash and returned the promissory note executed by the accused. At the time of issuing the cheque the complainant was made to believe that sufficient funds are available in his account to

honour the cheque and the complainant will get the amount on presentment of the cheque. The complainant believed the words of the accused and accepted the cheque on 24.09.2021. He sent the cheque through State Bank of India, Chittur Branch for collection on 28.09.2021, but the cheque was dishonoured on 29.09.2021 with the reason ‘drawer’s signature differs’ and the complainant received the information on 29.09.2021. sufficient funds was not available in the account maintained by the accused at the time when the cheque came up for collection. The complainant issued a lawyer notice by registered post with acknowledgment to the accused in his correct address on 06.10.2021 and it was served on him on 09.10.2021. Though the accused received the notice he has neither repaid the amount nor sent any reply. At the time of issuing the cheque the accused made believe the complainant that there are sufficient funds in his account to honour the cheque and the complainant will get the amount on presentment of the cheque. But the cheque was dishonoured for the reasons ‘drawer’s signature differs’. But actually insufficiency of the funds in the account of the accused was the reason for dishonour of the cheque. As the accused has not given back the amount after 15 days of receipt of notice the complainant has filed the present complaint.

4. After perusing the complaint, the complaint was taken on file as ST

802/2021 under Section 138 of The Negotiable Instruments Act, 1881. Summons was issued to the accused. The accused appeared through counsel and he 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 he pleaded not guilty and claimed to be tried.

5. To prove the case of the complainant, the complainant was examined as PW1 and the Manager of State Bank of India, Nattukal Branch was examined as PW2 and Ext. P1 to P6 were marked. Ext. P1 is the cheque bearing no. 202584. The cheque return memo was marked as Ext. P2. Ext. P3 is the copy of lawyer notice , Ext. P4 is the postal receipt Ext. P5 is the acknowledgment card. The account statement of complainant and it was marked through PW2 as Ext. P6.

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 him to personally explain the incriminating circumstances appearing in evidence against him. He denied all the incriminating circumstances appearing in evidence against him and he further filed statement in which he stated that there is no financial transaction with the complainant as alleged in the complaint. There is no legally enforceable debt. The signature in the cheque which was produced by the complainant does not belongs to him. She was the guarantor of his vehicle bearing

no. KL 70 E 8581 Tata Tiago. At that time a cheque which was given to the transaction of the vehicle was misused by the complainant and after filling up the cheque details has filed a false case. 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 Ext. P2 to P6 it will go to show that the complainant has duly performed the prerequisites 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, cheque was returned for the reason of “drawer’s

signature differs" and the complaint is filed by the payee of the cheque who is the complainant. Hence I find that the complaint is maintainable and hence this point is found in favour of the complainant.

10. **In Laxmi Dyechem Vs State of Gujarat and Others reported in (2012) 13 Scc** 375 our Hon'ble Supreme Court held that the expression 'the amount of money'………………….. 'is insufficient' appearing in Section 138 of The Negotiable Instruments Act is a genus and dishonour for reasons such as account closed, payment stopped, refer to the drawer are only specious of that genus and so an offence under Section 138 of The Negotiable Instruments Act will be attracted, if the cheque was dishonoured for the above said reasons also.

11. <u>Point no. 2 to 4</u>: As the matter to be discussed in these points are interrelated these points are considered together for the sake of convenience. The learned counsel for the complainant argued that that accused borrowed an amount of Rs. 1,00,000/- on 07.01.2019 and Rs. 3,00,000/- on 29.01.2019 and for that amount executed a pronote. When she demanded back the amount he issued Ext. P1 cheque when sent for collection was returned for the reasons 'drawer's signature differs'. After that the complainant issued a lawyer notice and the accused received the notice but there is no reply for the notice. In cross examination the specific contention of defence is that she is not having the capacity to lend this much

amount. But Ext. P6 which is the account statement of PW1. Which was proved through PW1 will prove that on 07.01.2019 she had withdrawn Rs. 1,20,000/- and on 29.04.2019 she had withdrawn Rs. 3,00,000/- from her account and so he contented that the allegation that the complainant is not having the capacity to lend this much amount is disproved through Ext. P6. Even though the cheque is returned for the reasons 'drawer's signature differs', the accused will have to prove that there was sufficient funds in his account but he failed to prove that aspect. So he contented that the presumptions are available to the complainant and hence the complainant proved the case against the accused beyond reasonable doubt and hence the accused is liable to be convicted.

12. The learned counsel for the accused argued that in Ext. P3 Para No. 2 it is stated that **My client was in need of money in the month of September 2021 and my client demanded you to repay the borrowed amount on 24.09.2021. You came to my client's huse and signed, executed and handed over a cheque bearing no. 202584 dated 29.09.2021 for Rs. 4,00,000/- drawn on The South Indian Bank, Nalleppilly Branch towards discharge of the liability.**

the averment is that my client was in need of money in the month of September, 2021 and my client demanded you to repay the borrowed amount on 24.09.2021. He contented that the cheque issued dated is 29.09.2021 but Ext. P1 is dated

24.09.2021. As per Section 138(b) of the NI Act an offence under Section 138 is attracted only when the cheque was returned unpaid from a banker and notice was issued to the accused informing about the dishonour of cheque. So he contented that the notice should specifically contain the details of the cheque and there should be a demand of that amount in the notice. In Ext. P3 the notice is not clear and the cheque is dated 24.09.2021. But as per the notice the cheque is dated 29.09.2021. It is not correct. In cross examination PW1 admitted that a car loan is there. So liability is admitted. In cross examination she further deposed that apart from the pronote for Rs. 4,00,000/- no other pronote was given. But in the complaint she has got a specific contention that at the time of advancing Rs. 1,00,000/- the accused has issued a pronote for Rs. 1,00,000/-. So he contented that the complainant failed to prove the ingredients of the offence against the accused.

13. PW1 filed proof affidavit in lieu of examination in chief which is in tune with the complaint. PW1 deposed in cross examination that she is having an income of Rs. 30,000/- per month. She is doing tailor job. The biggest transaction that was done through her account is the transaction of Rs. 3,00,000/-. She denied the suggestion that she is not having the capacity to lend Rs. 4,00,000/-. She further deposed that it will be proved through her account that she had given Rs. 4,00,000/- as the accused promised that he will give bank interest. The interest will come

around Rs. 1,00,000/-. As a security the accused has given promissory note. She had collected pronote for Rs. 4,00,000/-. She has not collected any other pronote in connection with this case. The cheque was returned for the reason that the signature in the cheque is not matching and it was returned on 28.09.2021. He had gone to State Bank of India the cheque was that of South Indian Bank. She had gone directly to South Indian Bank in connection with this case. She asked as to whether there is any amount in the account at South Indian Bank. The cheque was returned for the reason that the signature in the cheque is not matching . She knows that there was no amount in the account at the time of issuing lawyer notice on 06.10.2021. No reason is there for not stating about that in the lawyer notice. On 24.09.2021 the cheque was given to her. At that time the date was not written in the cheque but she has not examined in the cheque. Her name was there. She does not know as to who has written her name in the cheque. The accused has signed in the cheque in her presence. The signature in the cheque and promissory note are one and the same. The transaction in this case took place from her house. Thereafter Rs. 3,00,000/- was given and it was given on separate date. She is having an account at State Bank of India. She is a person who transact through bank frequently. When the accused asked the amount she took the amount from the bank and had given it to the accused. Rs. 1,00,000/- and Rs. 3,00,000/- was given to the accused after taking the amount from the bank. She is having a vehicle bearing no. KL 70 Ex 8581 Tata Tiago and it was obtained on loan for which the accused was the guarantor. As she has not repaid the amount a notice was issued to her from the finance. A case is filed by her brother as complainant. She denied the suggestion that her bother and the accused has brought chappel from Bangalore and had conducted business at Nallepilly. She denied the suggestion that the accused has not borrowed the amount as alleged in the complaint and for discharging that debt he has not executed a cheque. He is ready to produce the bank account for proving the financial transaction. She denied the suggestion that she had not given any amount to the accused as loan. She denied the suggestion that the signature and handwriting in Ext. P1 does not belong to the accused. She denied the suggestion that the accused is not having the liability to repay the amount as stated in the complaint. She denied the suggestion that the accused has not given a cheque as stated in the complaint.

14. PW2 deposed that she is the manager of State Bank of India Nattukal Branch. As directed by this court she is producing the account statement of account no. 67095169038 from 01.01.2019 to 30.04.2019 and through her the account statement was marked as Ext. P6. That account pertains to one Mumthaz and in that account on 07.01.2019 there was a withdrawal of Rs. 1,20,000/-. It is a cash withdrawal. On

29.04.2019 there is a cash withdrawal of Rs. 3,00,000/- from that account. She further deposed that transactions are there in the account.

15. In cross examination she deposed that Ext. P6 is a savings bank account. The two withdrawals are made by Mumthaz. She is working as Manager for the past 2 years. As per Ext. P6 the largest amount which was withdrawn is Rs. 3,00,000/- . She denied the suggestion that Ext. P6 is not a document which is prepared as per law.

16. In this case the specific case of complainant is that she had given Rs. 1,00,000/- initially and at that time itself the accused has executed a pronote and thereafter the accused again borrowed an amount of Rs. 3,00,000/- from PW1 and at that time he had executed another pronote for Rs. 4,00,000/- and at that time the pronote for Rs. 1,00,000/- which was executed earlier was given back to PW1. When PW1 was in need of money he asked to repay the amount. At that time the accused has executed Ext. P1 cheque when sent for collection was returned for the reasons 'drawer's signature differs' and after issuing lawyer notice as the accused has not repaid the amount the accused committed the offence.

17. The specific contention of the accused is that the lawyer notice itself is not correct and she is not having the capacity to lend this much amount. In this case I have gone through the lawyer notice. The purpose of the notice is to inform the

accused. In the notice it is stated that the cheque bearing no. 202584 dated 29.09.2021 for Rs. 4,00,000/- was returned. In Para no. 2 and Para No. 3 of Ext. P3 notice it is seen that the date of cheque is stated as 29.09.2021 instead of 24.09.2021. Further as per the averment in the complaint the specific case of complainant is that when she demanded back the amount the accused came to the house of PW1 and had signed, executed and handed over a cheque bearing no. 202584 dated 24.09.2021 for Rs. 4,00,000/-. But in Ext. P3 notice the date of cheque is shown as 29.09.2021 which is not correct. As per the notice it is seen that the accused has issued a post dated cheque on 24.09.2021 but as per complaint it will see that he has issued a cheque dated 24.09.2021 itself . As per Section 138 B of the Negotiable Instruments Act a notice in writing should contain the details in order to inform the accused about the factum of dishonour and there should be a demand of the amount covered in the cheque. In this case as per Ext. P3 the cheque date is shown as 29.09.2021 instead of 24.09.2021 but there is a demand to pay Rs. 4,00,000/- covered by the cheque so the question is whether the date in Ext. P3 notice is fatal. It is true that on going through Ext. P3 notice a person will came to understand that the cheque is dated 29.09.2021 but actually Ext. P1 is dated 24.09.2021. As per Ext. P3 notice the factum of dishonour is not clearly informed to the accused. Only if the factum of dishonour is clearly informed to the accused then only it can be termed as a legal notice. But in this notice the date of cheque is incorrect. So the notice cannot be termed to be a notice issued for the dishonour of Ext. P1.

18. Ext. P6 which is proved through PW2 will prove that she had withdrawan the amount of Rs. 1,20,000/- on 07.01.2019 and also she had withdrawn Rs. 3,00,000/- on 29.04.2019. But it will not prove that the very same amount was given to the accused. Ext. P6 will prove that she had withdrawn the amount. If she has to give the amount to the accused what prevented her from transferring the amount to the account of the accused instead of withdrawing it and giving it. Further in this case even though the cheque was returned for the reasons ‘drawer’s signature differs’ . The complainant has not taken any steps to prove that the accused himself has issued the cheque apart from the averment in the complaint. But as per the decision of Hon’ble Supreme Court in Laxmi Dyechem Vs State of Gujarat and Others reported in (2012) 13 Scc 375 it was held by our Hon’ble Supreme Court that if the cheque was returned for any other reason that also will attract an offence punishable under Section 138 of The Negotiable Instruments Act. Merely because the cheque returned for the reasons ‘drawer’s signature differs’ the burden of the accused will not be let off. He will have to prove that there was sufficient amount in his account as on that date. In this case the accused has not adduced any

evidence nor has produced any documents to prove that he was having sufficient amount in his account at the date of dishonour of the cheque. Merely because the cheque was returned for the reasons ‘drawer’s signature differs’ is not a ground to believe that there was sufficient funds in the account of the accused.

19. In cross examination PW1 deposed that she has not collected any other pronote in connection with this case. But actually as per the definite case of complainant her specific case is that she had collected a pronote for Rs. 1,00,000/- and it was given back at the time of giving the pronote for Rs. 4,00,000/-. She deposed during cross examination that on 24.09.2021 the cheque was given to her. At that time the date of not written in Ext. P1. She further deposed that she has not examined about that.

20. 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.

21. 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. But in this case as I have already found that Ext. P3 notice is not proper as the date of cheque in Ext. P3 notice is different from Ext. P1 and from the complaint and affidavit filed before this court so Ext. P3 notice cannot be termed as a proper notice. If there is no proper notice then the offence under Section 138 of The NI Act will not be attracted. So I hold that as there is no proper notice the offence alleged against the accused is not established by the complainant and hence these points are found against the complainant.

22.Point No.4: In the light of my findings in Point Nos.1 to 3, Point No.4 does not arise for consideration as the prosecution failed to prove guilt of the accused beyond reasonable doubt.

- In the result,

1. Accused is found not guilty for the offence punishable under Section 138 of The Negotiable Instruments Act and he is acquitted under Section 255(1) of The Code of Criminal Procedure, 1973.
2. His bail bond shall 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 on this the 30th day of March, 2026)

Sd/-
Judicial First Class Magistrate,
Chittur.

APPENDIX

WITNESSES EXAMINED FOR THE PROSECUTION.

Prosecution witness no.	Name of witness	Description
1.	Mumthaj	Defacto complainant
2.	Priya	Other witness

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	Receipt	PW2
5.	AD Card	PW2
6.	Account statement	PW2

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.