IN THE COURT OF III ADDITIONAL SESSIONS JUDGE, THRISSUR
PRESENT: SRI. JAYAKRISHNAN.G.P., III ADDITIONAL SESSIONS JUDGE, THRISSUR

Saturday, the 6th day of June, 2026/16th Jaishta 1948 SE

CRIMINAL APPEAL No: 69/2020
(C.C. 18/2018 of the Judicial First Class Magistrate Court No.II, Chavakkad)

Appellant:-	Ramla, Aged 39 Yrs., W/o Sudheer, Rayamarakkar Veettil House, Residing at Nalamkallu, Edakkzhiyoor Village, Chavakkad Taluk.

(By Adv. Pratheesh P Varghese)

Respondents: 1. E.V. Ismail, Aged 42 Yrs., S/o E.V. Khader, Eracham Veettil, P.O. Edakkazhiyoor, Thrissur – 680615.

2. State Rep by Public Prosecutor, Thrissur.

(R2-by Addl. Public Prosecutor)

The Sentence and law under which it was imposed in the lower court:-	The accused is sentenced to undergo simple imprisonment till rising of the court and to pay a fine of Rs. 2,00,000/- (Rupees Two lakh only) U/S. 138 of N.I. Act. In default of fine, the accused shall undergo simple imprisonment for a period of three months. If the fine amount is realized , the same shall be paid to the complainant as compensation U/s . 357(1)(b) Cr.P.C.
Whether confirmed, modified or reversed	Crl. Appeal is Dismissed

and if modified the
modification :-

Date of or on which

Presentation	:	05/03/2020
Filing	:	05/03/2020
Notice issued by court to appear Bail bond if appellant has been let out on bail	:	06/03/2020
Appellant ordered to appear	:	09/10/2025
Hearing	:	23/05/2026
Order	:	06/06/2026

This appeal is coming on this day for hearing, the court delivered the following:-

JUDGMENT

This is a criminal appeal preferred under Section 374 of the Code of Criminal Procedure.

2. The appellant is the accused in a private complaint instituted for the commission of the offence under Section 138 of the Negotiable Instrument Act. The appellant was convicted and by the learned Judicial First Class Magistrate Court. II, Chavakkad and sentenced him to undergo simple imprisonment till raising of the court and fine of Rs 2,00,000/- with default sentence of three months simple imprisonment by virtue of Judgment dated 20.02.2020. Having been aggrieved by the conviction and sentence, the accused has preferred this appeal.

3. The case of the complainant in brief as follows: The accused has borrowed a sum of Rs 1,25,000/- from complainant on 10.08.2015 and on the same day itself an agreement was executed between them. By virtue of this agreement the accused has promised to pay Rs 75,000/- from the profit of the laboratory together with Rs. 1,25,000/- borrowed from the complainant. In discharge of this liability, the accused has executed a cheque for Rs 2,00,000/- to be drawn on 13.04.2016 from his account maintained at HDFC Bank, Chavakkad. Though the complainant has submitted the cheque for encashment, it was returned for the reason 'funds insufficient' on 02.04.2016. The complainant has issued notice, which the accused has accepted on 25.04.2016. However the amount was not returned by the accused. Hence complainant has preferred the complaint before the trial court.

4. The complaint was originally filed before the learned Judicial First Class Magistrate Court - I , Chavakkad, where it was taken on file as CC 1929 of 2016. Later on the complaint was transferred to the Judicial First Class Magistrate Court - II, Chavakkad, where it was refiled as CC 18 of 2018. After complying formalities, the particulars of offence were read over and explained, to which the accused has pleaded not guilty and demanded for trial. On behalf of the complainant PW1 was examined and Exts. P1 to P6 documents were marked. On completion of the evidence from complaint's side, the accused was questioned under section 313(1)(b) of the Code of Criminal Procedure and elicited his explanation in respect of the incriminating circumstances. Thereafter

the case was adjoined for defence evidence. However there is no evidence, either oral or documentary from the side of the accused.

5. The points arise for consideration are the following;

1. Whether the accused has issued Ext P1 cheque in discharge of the liability of Rs 2,00,000/- ?
2. Whether the complainant has the financial status to advance Rs 1,25,000/- to the accused?
3. Whether the conviction and sentence entered into by the trial court needs to be interfered or modified?
4. Finding.

6. Heard both sides.

Point Nos 1 to 3

7. The complainant has testified before the trial court as PW1. He deposed that on 10.08.2015 the accused has borrowed Rs 1,25,000/- for the purpose of Bismi Laboratory, wherein the accused is an employee. The undertaking was that the accused will return the amount borrowed together with a sum of Rs 75,000/- from the profit of the business of the laboratory. There was another undertaking that once this amount is discharged, the complainant will detach himself from the business of this laboratory. According to PW1, on the same day itself the parties had executed Ext P6 agreement and the accused has issued Ext P1 cheque in discharge of the liability of Rs 2,00,000/- to be drawn on 13.04.2016. The cheque was submitted for encashment, but dishonoured for want of funds by virtue of Ext P2 memo. The complainant has demanded to

clear the arrears by virtue of Ext P3 notice on 24.04.2016. Though accused has accepted the notice, the amount was not returned. The postal receipt and acknowledgment card are marked as Exts. P4 and Ext P5. Hence the complaint was filed before the trial court on 20.05.2016. Going by the dates in Ext P1 cheque, Ext P2 dishonour memo, Ext P3 notice, Exts P4 and Ext P5 postal articles, this court has satisfied that the complainant has complied with every statutory formalities to institute the complaint.

8. According to the appellant/accused, the execution of the Ext P1 cheque and the borrowal of the amount thereunder have not been established by the complainant. However it is seen from the evidence that the accused has not denied the issuance of Ext. P1 cheque, which includes its execution and delivery. Rather to say the accused has admitted his signature and the writings in Ext P1 cheque before its delivery to the complainant. The Hon'ble Supreme Court in ***Vasanthakumar T Vs Vijayakumar [2015 KHC 4332]*** has held thus. " *Therefore, in the present case since the cheque as well as the signature has been accepted by the accused/respondent, the presumption under S. 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability".* Recently in ***APS Forex Services Private limited Vs Sakti International Fasion Linkers and others [2020 (1) KHC 957]*** the Hon'ble Supreme Court held thus. *"As observed above, S. 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally*

enforceable debt or liability and thereafter it its for the accused to rebut such presumption by leading evidence".

9. Hence in the nature of the defence put forward by the accused and by taking into account the consistent form of evidence adduced by the complainant, the court holds that in discharge of the liability of Rs 2,00,000/- the accused has issued Ext P1 cheque in favour of the complainant. Moreover Ext P6 agreement has also supported the oral assertion of PW1 that Ext P1 cheque is supported by valid consideration. While addressing arguments, the learned counsel for the appellant has contended that by practicing coercion Ext P1 cheque and three blank papers signed by the accused were procured by the brother-in-law of the complainant and thereby this complaint was instituted. However there is no evidence or attending circumstance in support of this allegation. Suppose such an incident had taken place, most probably there would have been a police complaint by the accused before the local police station. However no such complaint alleging coercion has ever instituted by the accused either against the complainant or his brother-in-law. So court finds that even the defence of coercion advanced by the accused as an alternative plea is not sustainable.

10. At the time of arguments the learned lawyer for the appellant has contended that the complainant has no sufficient funds at any time to advance a huge amount like Rs 2,00,000/- to the accused. The present transaction had taken place in 2015. The accused has conceded during cross-examination that till 2012 the complainant has been working abroad and thereafter he is earning by

running an auto rickshaw. Other than that during cross-examination, the learned defence lawyer has conceded that a sum of Rs 1,20,000/- has borrowed from the complainant. Moreover the accused has voluntarily conceded in 313 examination that she has borrowed 1,50,000/- from the complainant. All these evidence and the attending circumstances point to the reality that the complaint had the financial stability to advance a sum of Rs 1,25,000/- to the accused.

11. It is true that the complainant has not produced his account statement etc. to convince this court further about his financial stability. It is not required also, as it was held by the Hon'ble High Court in ***Adam Veettil Mohemmed Saleem Madani Vs Perinkattil Kamal Sherif [2025 (4) KHC 230]*** that *"When large cash amounts are claimed to have been advanced, plaintiff must prove sourse of funds and circumstances of payments through reliable evidence, and failure to do so renders the claim unsubstantiated."* Here, the amount involved is only a sum of Rs 2,00,000/- and that too the amount paid by the complainant is only Rs 1,25,000/- to the accused. So court finds that following the above dictum, the failure of the complainant to produce his passbook or statement of account is not prejudicial to his financial stability to advance Rs 1,25,000/- to the accused.

12. Based on the evidence adduced by the complainant, the court finds that the accused has issued the cheque in discharge of the liability of Rs 2,00,000/-. The financial stability of the complainant has also been successfully established. So the onus has shifted on the accused to rebut the presumption under section 139

of the Negotiable Instruments Act. The Hon'ble High Court in ***Jose Vs Jose [2025 (7) KHC 124]*** has held thus. *"While dealing with the presumptions under section 139 of the Act an accused has two options. The first option is by proving that the debt/liability does not exist ie by leading defence evidence and conclusively establishing with certainty that the cheque was not issued in discharge of a debt/liability. The second option to prove the non existence of debt/liability by a preponderance of probabilities, referring to the particular circumstance of the case".* So far as this case is concerned no such effort was there from the accused to deal with the presumption under section 139 of the Negotiable Instruments Act. Hence court finds that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. Points answered against the appellant /accused.

Point No.4

13. After having consideration of the evidence, attending circumstances, applicability of presumption and the failure of the accused to offer even satisfactory answers to the evidences against him, the court has concluded that the appellant/accused has committed the offence under Section 138 of the Negotiable Instruments Act. The trial court has rightly convicted the accused and passed the order of sentence which is obviously in par with the offence

committed. Taking into account the tenure of sentence the court further finds that there is nothing to interfere or modify the sentence imposed on the accused.

14. In the result, this appeal against conviction stands dismissed. The conviction and sentence entered by learned Judicial First Class Magistrate Court-II, Chavakad in CC 18 of 2018 against the accused are confirmed. The bail granted to the accused is cancelled. The accused is directed to surrender before the trial court forthwith. Consign forthwith every records to execute the sentence against the accused.

(Dictated to the confidential assistant, typewritten by him, corrected by me and pronounced in open court on this the 06th day of June, 2026)

JAYAKRISHNAN.G.P
III ADDL.SESSIONS JUDGE,
THRISSUR

APPENDIX: NIL

JAYAKRISHNAN.G.P
III ADDL.SESSIONS JUDGE,
THRISSUR

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