

**IN THE COURT OF THE II ADDITIONAL SESSIONS JUDGE, THRISSUR**

**Present:-**

**Smt. JAYA PRABHU, ADDITIONAL SESSIONS JUDGE II.**

Thursday, the 7<sup>th</sup> day of May 2026/ 17<sup>th</sup> Vaisagham 1948 SE

**Crl.Appeal. No-84/2023**

(ST 1828/2015 Judicial First Class Magistrate Court ,Chavakkad )

**Appellant/:** 1. Silabu .M.K, Aged 45 years, S/o Kuttappan, Mepparambil  
Accused House, PO Vatanappilly , Vatanappilly Village, Chavakkad  
Taluk, Thrissur-680 614  
By Adv. P.V Shine

**Respondent/-:** 1. Vatanappilly Chitties Pvt .Ltd, Vatanappilly Village,  
**Complainant** Chavakkad Taluk, Rep.by Chairman Jose, Aged 53 Years,  
S/o Poulose, Neelankkavil House, Karamukku Village,  
Thrissur Taluk.  
By Adv.Saji Francis

2. State of Kerala , Rep. By Public Prosecutor, Thrissur

The sentence and  
law under which  
it was imposed  
in the Lower  
Court

The accused is sentenced to undergo simple imprisonment for a day till rising of court and shall pay a fine of Rs. 14742/-(Rupees fourteen thousand seven hundred forty two only) under section 138 of Negotiable Instruments Act. In default of payment of fine , the accused shall undergo simple imprisonment for a further period of three months . If the fine amount is realized , it shall be paid to the complainant as compensation under section 357(1)(b) of the code of criminal Procedure

whether The appeal is dismissed  
 confirmed,  
 modified or not

DATE OF OR ON WHICH

Presentation	: 24.03.2023
Filing	: 24.03.2023
Notice issued by court to appear	: 27.03.2026
Bail bond if appellants has been let out on bail	: 14.06.2019
Appellant ordered to appear	: 19.12.2025
Hearing	: 28.04.2026
Judgment	07.05.2026

This Crl. Appeal coming on for hearing before me, upon perusing the petition of appeal and the records of the evidence and proceedings and upon duly considering the same after hearing both sides, I do adjudge and pass the following:-

**JUDGMENT**

The appellants is the convicted accused in ST 1828/2015 on the file of Judicial First Class Magistrate Court I, Chavakkad who was convicted and sentenced in the prosecution for the offence under 138 of Negotiable Instruments Act as per judgment dated 28.02.2023. For convenience, the parties are herein after referred in this judgment as their status before the trial court.

2. The case of the complainant in brief is as follows:- The complainant is a Private Limited Company engaged in Chitty business and is represented by its

Chairman. The accused was subscribed chitty conducted by the complainant as FM 27 for a monthly sum of Rs.750/- as per ticket no 293. The accused received the chitty amount .Thereafter paid some installments and later defaulted the same. When the complainant demanded payment of amount due in the said chitty ,the accused in discharge of the said liability, has issued cheque bearing no 954984 dated 29.12.2014 for an amount of Rs.14,742/- drawn on South Indian Bank, Vatanappally Branch. When the complainant presented the said cheque for collection through Federal Bank, Vatanappally Branch, it was returned as dishonoured due to the reason “insufficient funds ”. Thus the complainant caused to issue lawyer notice dated 28.01.2015 to the accused intimating the factum of dishonour of cheque and demanding him to pay the amount covered by said cheque. In spite of receipt of the said notice, neither the accused send any reply notice nor paid the amount covered by said cheque. Thus the accused has committed offence punishable under section 138 of NI Act. Hence the complaint is filed.

3. Cognizance of the offence was taken by Judicial Magistrate Court I , Chavakkad and the case was taken on file as ST 58/2020. The trial court has issued process to the accused. On appearance of the accused, copies of all relevant documents relied upon by the prosecution were furnished to him and he was released on bail. The accused was defended by a counsel appointed by him. Thereafter the particulars of offence was read over and explained to the accused and he pleaded not guilty and claim to be tried.

4. On the side of complainant PW1 was examined and Ext.P1 to P12 were marked. After closing the evidence of complainant the accused was questioned

under section 313(1)(b) CrPC and he denied all incriminating circumstances brought out against her on record and pleaded innocence. He submitted that he had repaid the amount due to the complainant. On the side of accused no evidence adduced.

5. After hearing both sides and on appreciating the evidence on record as per judgment dated 28.02.2023 the trial court found the accused guilty of offence punishable under Section 138 of NI Act and convicted and sentenced him to undergo the simple imprisonment till rising of the court and to pay Rs.14,742/- u/s 138 of NI Act .In default of payment of fine ,undergo simple imprisonment for a further period of three months. If the fine amount is realized,it shall be paid to the complainant as compensation u/s 357(1)(b)CrPC. Aggrieved by the same,this appeal is filed.

6. In the appeal memorandum it is contended that the trial court failed to properly appreciate the evidence.Ext.P9 document is with respect to Kuri no. FM 293(A).The trial court ought to have found that the Ext.P6 to P12 are fabricated by the complainant. The cheque has no consideration and there is no legally enforceable debt due to the complainant.

7. Heard both sides.

8. The following points are raised for consideration in the appeal:-

1. Whether the ingredients of offence punishable under Section 138 of NI Act are satisfied in this case ?
2. Whether the trial court went wrong in finding that Ext.P1 cheque was issued in discharge of a legally enforceable debt or liability?

3. Whether there is any sufficient ground to interfere with the impugned judgment of the trial court?

9. Points no 1 and 2 : For the sake of brevity and convenience is points are considered together. P1 is the cheque bearing no 954984 dated 29.12.2014 for an amount of Rs 14,742/- drawn on South Indian Bank, Vatanappally Branch When the complainant presented the said cheque in South Indian Bank, Vadanappilly Branch for collection,it was returned as dishonoured due to the reason “insufficient funds ”. Ext. P2 is the cheque dishonour memo. On receipt of the disnonoured cheque along with the memo, the complainant caused to issue Ext.P3 lawyer notice to the accused intimating the factum of dishonour of cheque and demanding him to pay the amount covered by the same.Ext.P4 and P5 are the postal receipt and acknowledgment card. Inspite of receipt of the said notice, neither the accused send any reply notice nor paid the amount covered by said cheque. From Ext.P1 to P5 it can be seen that the statutory formalities as contemplated under Section 138 of Negotiable Instrument Act are complied within the time frame as stipulated.

10. Learned counsel for the appellant argued that the cheque has no consideration. The complainant failed to prove the execution of cheque and thus the findings of the trial court is not correct.Ext.P9 document is with respect to Kuri no FM 293(A).The trial court ought to have found that the Ext.P8 to P12 are fabricated by the complainant. Hence the appeal is liable to be allowed. Learned counsel for the respondent on the other hand contended that the evidence of PW1 shows that he proved that the accused has issued cheque for a legally enforceable debt and the transaction between the parties is proved through the evidence of PW1.Ext.P9 document is with respect to chitty no.FM 293 and the (A) in the same

the class of chitty. Ext.P6, P8 to 12 shows the chitty transaction between the complainant and accused. Thus there is absolutely nothing to interfere with the judgment passed by the trial court and the appeal is liable to be dismissed.

11. The Negotiable instrument Act raises some presumption in favour of the complainant under Section 118 and 139 of the said Act. The said presumptions are rebuttable presumptions. These presumptions are available only if the execution of the cheque is admitted by the accused or if it is proved by the complainant that the cheque is drawn by the accused. Whether the presumptions are rebutted or not would depend upon the facts and circumstances of the case.

12. The oral evidence of PW1 shows that the accused was subscribed chitty conducted by the complainant as FM 27 for a monthly sum of Rs 750/- as per ticket no 293. The accused received the chitty amount. Thereafter paid some instalments and later defaulted the same. When the complainant demanded payment of amount due in the said chitty, the accused in discharge of the said liability, has issued cheque bearing no 954984 dated 29.12.2014 for an amount of Rs.14,742/- drawn on South Indian Bank, Vatanappally Branch. When the complainant presented the said cheque for collection through Federal Bank, Vatanappally Branch, it was returned as dishonoured due to the reason "insufficient funds". To prove the chitty transaction between the complainant and the accused PW1 produced Ext.P6, P8 to P12 documents. Ext.P6 personal ledger of the kuri account of accused from 07.02.2011 to 07.12.2014. The Ext.P8 to 12 are the kuri security application, receipt of kuri amount received by the accused, kuri varyiola, document showing the kuri auction made by the accused and the kuri bond. The defence of the accused is that he has repaid the entire amount in the kuri. The

cheque obtained from him was misused and filed this case. The PW1 has categorically deposed regarding the execution, issuance and handing over of Ext.P1 cheque. Eventhough the PW1 was cross examined thoroughly, nothing was brought out to discredit his evidence regarding the transaction,execution Thus the evidence of PW1 shows that the statutory presumption is in favour of the complainant.

13. In the case of Kalamani Tex (M/s) and Another .v. T. Balasubramanyan reported in 2021(2)KHC 517,the Hon'ble Supreme Court held that "The statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established,then these'reverse onus' clause become operative. In such a situation,the obligation shifts upon the accused to discharge the presumption imposed upon him."

14. In Sumathi Viji.v. Paramount Tech .Fab industries,reported in 2021(2)KHC 658, the Hon'ble Supreme Court held that "There is a mandate of presumption of consideration in terms of the provisions of the Act and the onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of S.138 of the Act."

15. From the above dictum it is clear that when the accused admits his signature in the cheque or its execution is proved by the supporting evidence on the part of the complainant. It is the burden of the accused to rebut the presumption under Section 118 and 113 of NI Act. As said above,the facts and circumstances which Ext.P1 cheque happened to be in the custody of the complainant explained by the accused is unbelievable. Though the accused has raised a defence that he has repaid the entire amount in the kuri transaction there is no documents produced

by him to prove the same. Moreover he has no explanation even after closing the chitty transaction how the cheque in dispute reached in the hands of complainant. If the cheque obtained by the complainant was misused by the complainant even after payment of the the entire amount what prevented him from taking legal action against the complainant for misusing his cheque. Moreover the non issuance of reply notice also raises doubt regarding the defence of the accused. Thus the facts and circumstances of the defence shows that the the accused has made such a defence with a view to escape from the liability towards the complainant. Thus from the evidence of PW1 coupled with Ext P1 to P12 it is proved that accused has issued Ext P1 cheque for an amount of Rs. 14,742/- in discharge of his legally enforceable debt towards the complainant. The complainant has succeeded in proving the transactions, the signature and handing over of the cheque by the accused. There is no sufficient evidence adduced by the accused to rebut the presumptions available under section 118 and 139 of the NI Act. The accused failed to raise a probable defence to rebut the presumption in favour of the complainant. Thus on appreciation of the entire facts and circumstances of the case and materials on record it can be safely concluded that the accused has committed the offence punishable under section 138 of the Negotiable Instruments Act. Thus these points are found accordingly.

16. Point no 3: The trial court convicted and sentenced the accused to undergo the simple imprisonment till rising of the court and to pay Rs.24,742/- u/s 138 of NI Act. In default of payment of fine, undergo simple imprisonment for a period of one month. If the fine amount is realized, it shall be paid to the complainant as compensation u/s 357(1)(b)CrPC. While going through the sentence imposed by the trial court it could be seen that a proper sentence is imposed by the trial court.

Hence, I find no circumstances interfere with the judgment passed by the trial court. Thus the point is answered accordingly

In the result, the appeal is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 7<sup>th</sup> day of May, 2026).

Sd/-  
**JAYA PRABHU**  
**ADDL. SESSIONS JUDGE II**  
**THRISSUR.**

**APPENDIX**  
NIL

Sd/-  
**JAYA PRABHU**  
**ADDL. SESSIONS JUDGE II**  
**THRISSUR.**

/ True Copy /

By Order

Copied by: NEM  
Compared by : SMS

Sheristadar

Judgment in  
Cr1.A.84/2023  
Dated: 07.05.2026