

IN THE COURT OF THE II ADDITIONAL SESSIONS JUDGE, THRISSUR

Present:-

Smt. JAYA PRABHU, ADDITIONAL SESSIONS JUDGE II.

Thursday, the 30th day of April 2026/ 10th Vaisagham 1948 SE

Crl.Appeal. No-228/2022

(ST.1704/2017 - Judicial First Class Magistrate Court , Chavakkad)

Appellant/ Yusuf Mekkoth, Aged 50 Years, S/o Mekkoth Pakku,
Accused Mekkoth House, Naduvannur PO, Naduvannur Village,
Balussery Taluk, Kozhikode District, Kerala – 673 614
By Adv. Sanil Kunjachan

Respondents/ 1. State of Kerala , Rep. By Public Prosecutor, Thrissur

Complainant:-

2. C.M Ameer , Aged 65 Years, S/o.Moidutty, Chakkara
House, Manathala P O, Chavakkad, Thrissur , Kerala
By Adv.Asoken Therlli

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

The accused is sentenced to pay a fine of Rs 5,50,000/-
(Rupees five lakhs fifty Thousand only) under section 138
of Negotiable Instruments Act . In default of payment of
fine , the accused shall undergo simple imprisonment for a
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 confirmed,
modified or not

The appeal is dismissed

DATE OF OR ON WHICH

Presentation : 19.10.2022

Filing : 20.10.2022

Notice issued by court to appear : 25.10.2022

Bail bond if appellant has been : 03.11.2018

let out on bail

Appellant ordered to appear :
Hearing : 25.04.2026
Judgment 30.04.2026

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 Appellant is the convicted accused in ST 1704/2017 on the file of Judicial First Class Magistrate Court Chavakkad who was convicted and sentenced in the prosecution for the offence under 138 of NI Act as per judgment dated 27.08.2022. 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 and accused are close friends. The accused borrowed an amount of Rs.5,50,000/- from the complainant for his business purpose agreeing to repay the same within two months. The accused failed to pay the said amount in time. After repeated demands, the accused issued two cheques in discharge of the said liability. The cheque bearing no 211482 for an amount of Rs.4,50,000 and cheque bearing no 211483 for an amount of Rs1,00,000 drawn on Canara Bank, Raigarh Branch were issued by the accused. When the complainant presented the said cheque in Catholic Syrian Bank Ltd No 682, Chavakkad Branch and sent it for collection, it was returned as dishonoured due to the reason "funds insufficient". Thus the complainant issued lawyer notice dated 18.04.2017 to the accused intimating the dishonour of the cheques and

demanding payment of amount covered by the same .The notice was returned as unclaimed. Till date the accused has not paid the amount covered by said cheque. Thus the accused has committed offence punishable under section 138 of NI Act .Hence the complaint.

3. Cognizance of the offence was taken by Judicial First Class Magistrate Chavakkad and case taken on file as ST.1704/2017. On appearance of the accused, copies of all relevant documents relied upon by the prosecution was 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 to PW3 were examined and Ext.P1 to P10(a) 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 him on record. He contended that complainant and himself were working at Gulf. The complainant,himself and 10-40 others together had jointly run a steel company named as Mekko Steel at Raigarh in Chattisgarh. The complainant was a share holder in the said company and the company was in loss and there was debt due to the bank and it resulted in proceedings before the Debt Recovery Tribunal, Jabalpur. The accused has no personal transaction with the complainant. On the side of accused no defence was evidence adduced.

5. After hearing both sides and on appreciation of the evidence as per judgment dated 27.08.2017 the trial court found the accused guilty of offence punishable under

Section 138 of NI Act and convicted and sentenced him to pay a fine of Rs.5,50,000/- for the offence punishable u/s 138 of NI Act . In default of payment of the fine he shall undergo simple imprisonment for a period of three months .If the fine amount if realized, it shall be given to complainant as compensation under section 357(1)(b) of CrPC. Aggrieved by the same, this appeal is filed.

6. In the appeal memorandum it is contended that the trial court failed to mark the document produced from the side of accused on the ground that the same are photocopies and failed to give opportunity to adduce evidence. The trial court ought to have found that there is no legally enforceable liability towards complainant. The trial court failed to appreciate the evidence on record and failed to consider the contradictions and omissions in the evidence of PW1. Hence the appeal is liable to be allowed.

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. Ext.P1 and the P2 cheques for an amount of Rs.4,50,000/- and

1,00,000/- respectively dated 31.12.2016 and drawn on Canara Bank, Raigarh Branch were issued by the accused. When the complainant presented the said cheque in Catholic Syrian Bank Ltd No 682, Chavakkad Branch and sent it for collection, it was returned as dishonoured due to the reason "funds insufficient". Ext.P2 and P3 are the cheque return memos of Ext.P1 and P2. On receipt of the dishonoured cheques along with the memos the complainant issued Ext.P5 lawyer notice dated 18.04.2017 to the accused intimating the dishonour of the cheques and demanding payment of amount covered by the same. Ext.P6 is the postal receipt. The notice was returned as unclaimed. Ext.P7 is the unclaimed notice. From Ext.P1 to P7 it can be seen that it is clear 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 execution and passing of consideration of Ext.P1 cheque is not proved by the complainant. There is no personal liability between the complainant and the accused and there is no transaction of issuance cheques between them. 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. Thus all these contentions are made to escape from the liability towards the complainant. Hence 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 complainant shows that the complainant and accused are close friends. The accused borrowed an amount of Rs.5,50,000/- from the complainant for his business purpose agreeing to repay the same within two months. The accused failed to pay the said amount in time .After repeated demands, the accused issued two cheques in discharge of the said liability. The cheque bearing no 211482 for an amount of Rs.4,50,000 and cheque bearing no 211483 for an amount of Rs1,00,000 drawn on Canara Bank ,Raigarh Branch were issued by the accused .The evidence of PW3 and Ext.P10,P10(a) are in support of the evidence of PW1 and it shows the withdrawal of 5 lakhs from the account of accused. The accused has no dispute regarding his signature in Ext.P1.The contention of the accused is that the complainant,himself and 10-40 others together had jointly run a steel company named as Mekko Steel at Raigarh in Chattisgarh. The complainant was a share holder in the said company and the company was in loss and there was debt due to the bank and it resulted in proceedings before the Debt Recovery Tribunal,Jabalpur. The accused has no personal transaction with the complainant. But he has no case that the cheques in dispute were issued to the complainant in relation to the said company. He contended that the complainant is a share holder but he has no explanation how the cheques in dispute were reached in the hands of the complainant. The contention of the accused during cross examination of the PW1

shows that he has no definite case how the cheques in dispute were reached in the hands of the complainant. Thus he failed to rebut the presumptions in favour of the complainant.

13. The contention of the learned counsel for the appellant that the trial court failed to receive the documents produced by him in evidence on the ground that the same are photocopies. Admittedly the documents produced by the accused are photocopies thus the same cannot be received in evidence. It is further contended that the trial court failed to give opportunity to the accused to adduce evidence in this case. On perusal of the proceedings of the trial court it can be seen that sufficient opportunity was given to the accused for adducing defence evidence. Hence there is no merits in the said contentions of the counsel for the appellant.

14. On the other hand the complainant has proved the transaction, execution and the issuance of cheques by the accused towards the legally enforceable debt of accused. The accused has no dispute regarding his signature in Ext.P1. Thus the evidence of PW1 shows that the statutory presumptions are in favour of the complainant.

15. 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."

16. 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."

17. From the above dictum it is clear that when the accused admits his signature in the cheque and its execution is proved by the evidence of the complainant. It is the burden of the accused to rebut the presumption under Section 118 and 113 of NI Act. The facts and circumstances which Ext.P1 and P2 cheque happened to be in the custody of the complainant is not explained by the accused. Though the accused has raised a defence that there is no personal transaction between the accused and the complainant he has no case how the said cheques were reached in the hands of complainant. Thus the defence set up by the accused shows that the the accused has made such a defence with a view to escape from the liability towards PW1. Thus from the evidence of PW1 coupled with Ext P1 to P10 (a)it is proved that accused has issued Ext P1 and P2 cheques for an amount of Rs. 4,50,000/- and 1,00,000/- respectively 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 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.

18. Point no 3: The trial court convicted and sentenced the accused to pay a fine of Rs.5,50,000/- for the offence punishable u/s 138 of NI Act . In default of payment of the fine he shall undergo simple imprisonment for a period of three months. If the fine amount is realized, it shall be given to complainant as compensation under section 357(1)(b) of CrPC. On going through the sentence imposed by the trial court, I find that the sentence imposed by the trial court is proper and there is nothing to interfere with the same. 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 30th day of April, 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

CrI.A.228/2022

Dated: 30.04.2026