

IN THE COURT OF THE II ADDITIONAL SESSIONS JUDGE, THRISSUR

Present:-

Smt. JAYA PRABHU, ADDITIONAL SESSIONS JUDGE II.

Monday, the 16th day of March 2026/ 25th Phalguna 1947 SE

Crl.Appeal. No-286/2023

(CC 61/2018 of The Court of Judicial Magistrate of First Class –II, Chavakkad)

Appellant: 1 Raji M.V, Aged 52 Years, D/o Vasu,
Ayinippully House, Puthanbally PO, Pin- 680103,
Guruvayoor Via, Iringapram Village, Chavakkad Taluk,
Thrissur District.
(Guruvayoor Police Station Limit)
By Adv.Jayakrishnan T.K

Respondent:- 1. Haneefa K, Aged 42 Years, S/o Kunjumoithunni,
Mankedath House, Kottapady, Thrissur District -
680 101(Guruvayoor Temple Police Station Limit)
By Adv.K.D Vinoj
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 found guilty of the offence punishable
under section 138 of the NI Act, and she is convicted
under section 255(2) of heCr.P.C for the said offence.
The accused is sentenced to pay a fine of Rs.6,00,000/-
(Six Lakhs Rupees Only) for the offence punishable
under section 138 of N.I Act. In default of the payment

of fine, the accused shall undergo simple imprisonment for a period of six months .If the fine amount is paid or realized, the same shall be given to the complainant as compensation under section 357(1)(b) of the Cr.P.C .

whether
confirmed,
modified or not

CrI. Appeal is allowed in part

DATE OF OR ON WHICH

| | | |
|--|---|------------|
| Presentation | : | 18.11.2023 |
| Filing | : | 17.11.2023 |
| Notice issued by court to appear | : | 21.11.2023 |
| Bail bond if appellant has been let out on bail | : | |
| Appellant ordered to appear | : | |
| Hearing | : | 23.02.2026 |
| Judgment | | 16.03.2026 |

This CrI. 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 CC 61/2018 on the file of Judicial First Class Magistrate Court II Chavakkad, who was convicted and sentenced in the prosecution for the offence under 138 of NI Act as per judgment dated 26.10.2023. 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 and accused are friends. The accused borrowed an amount of Rs.3,00,000/- from the complainant on 01.12.2015 for the purpose of purchasing a property and in discharge of the said liability the accused issued cheque for Rs.3,00,000/- dated 21.03.2016 drawn on Corporation Bank ,Guruvayur Branch. When the complainant presented the said cheque in District Cooperative Bank ,Guruvayur Branch and sent it for collection,it was returned as dishonoured due to the reason “account closed”. Thus the complainant issued lawyer notice dated 16.04.2016 to the accused intimating the dishonour of the cheque and demanding payment of amount covered by the same. On receipt of the said notice the accused send a reply notice stating false contentions. 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 I ,Chavakkad and the case was taken on file as CC61/2018 and made over to Judicial First Class Magistrate II ,Chavakkad .The trial court has issued process to the accused. 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 she pleaded not guilty and claim to be tried.

4. On the side of complainant ,PW1 was examined and Ext.P1 to P76 were marked. After closing the evidence of complainant the accused questioned under section 313(1)(b) CrPC and she denied all incriminating circumstances brought out against her on record. The accused filed statement under section 313(5) of CrPC and

contended that she has no acquaintance with the accused .On the other hand she has borrowed borrowed amount from one Baby Vazhapilly and he obtained 6 blank cheques,3 blank stamp papers, 5 white papers and 10 revenue stamp affixed white papers signed by her as security for the said transaction and when the said transaction was closed she demanded him to return the said documents but he stated that it was misplaced. Thus she issued lawyer notice to Baby demanding return of the said documents and thereafter filed OS 1057/2016 for a mandatory injunction directing him to return the said documents. After filing of the said case, the Baby with the help of the complainant and by misusing the cheque no 581744 filed this false case against her .Moreover the accused has filed MP 4699/2019 against the Baby and the complainant herein. Thus the complaint is liable to be dismissed. No defence evidence adduced form the side of accused.

5. After hearing both sides and on appreciation of the evidence as per judgment dated 26.10.2023 the trial court found the accused guilty of offence punishable under Section 138 of NI Act and sentenced her to pay a fine of Rs6,00,000/- In default of payment of the fine, she shall undergo simple imprisonment for a period of 6 months. If fine amount is realised it shall be given to complainant as compensation under section 357(1) of CrPC. Aggrieved by the same,this appeal is filed.

6. In the appeal memorandum it is contended that the trial court ought to have held that the Ext.P1 cheque is not having valid consideration and it was not issued towards any legally enforceable liability towards complainant. The trial court ought to have found that before presentation of the cheque the accused has filed OS 1057/2016 before the Hon'ble Munsiff Court, Chavakkad. The filing of MP

4699/2019 before the Magistrate concerned also was not considered by the trial court. The trial court failed to appreciate the contentions in Ext.P6 reply notice issued by the accused. The CrMP 23(a)/2021 filed by the accused ought to have been allowed by the trial court disallowing the same amounts to shutting down of opportunity of accused to adduce rebuttal evidence .There is no specific reason stated in the judgment for awarding double of the cheque amount. . The trial court failed to consider the contention of the accused that the cheque which was issued as blank signed one to Baby was misused by the complainant and filed this case. There is absolutely no evidence regarding the execution and handing over of the cheque for a legally enforceable debt. The trial court failed to appreciate the evidence and erred in finding that the complainant is entitled to get presumptions under section 118 and 139 of the NI Act. 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 these points are considered together. Ext.P1 is the cheque for an amount of Rs.3,00,000/- dated 21.03.2016 drawn on Corporation Bank , Guruvayur Branch issued in favour of

complainant. When the complainant presented the said cheque in District Co-operative Bank ,Guruvayur Branch and sent it for collection it is dishonoured as “account closed” Ext. P2 is the cheque return memo dated 24.03.2016. Ext P3 is the lawyer notice dated 16.04.2016 issued to the accused and Ext. P5 and P6 are the postal receipt and acknowledgment card. From Ext.P1 to P6 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 execution and passing of consideration of Ext.P1 cheque is not proved by the complainant. There is no liability existing between the complainant and the accused and there is no transaction of issuance cheque between them. The cheque which was issued as blank signed one to Baby along with 5 other cheques, blank signed stamp papers, white papers and revenue affixed papers in relation to the transaction between the accused and said Baby was misused by the complainant and filed this case. 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 he has acquaintance with the accused in real estate business and the accused borrowed an amount of Rs.3,00,000/- from him for purchasing property and in discharge of the said liability issued Ext.P1 cheque for Rs.3,00,000/-. She categorically deposed that the accused has signed and issued Ext.P1 at his residence. The accused has no dispute regarding her signature in Ext.P1. The accused in her reply notice and during examination under sec 313 CrPC contented that Ext.P1 cheque was issued to one Baby in relation to another transaction and she has no transaction with the complainant. Thus she issued lawyer notice to Baby demanding return of the said documents and thereafter filed OS 1057/2016 for a mandatory injunction directing him to return the said documents. After filing of the said case the Baby with the help of the complainant and by misusing the cheque no 581744 filed this false case against her .Moreover the accused has filed MP 4699/2019 against the Baby and the complainant herein. Apart from raising such a contention there is no documents produced from the side of accused to prove the same. Without producing those documents it can only be held that the defence put forward by the accused is not believable one and it is made with a view to escape from the liability covered by the Ext.P1 cheque. On the otherhand the complainant has proved the transaction, execution and the issuance of cheque 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.

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 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. 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 the out of the blank signed cheques handed over to Baby in relation to another transaction the Ext.P1 was given to the complainant and by using the same he filed this false case. The relationship between Baby and complainant was asked during cross examination of PW1 but he categorically denied the same. The accused failed to produce any documents to support her contention. Thus the defence set up by the accused shows that 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 P6 it is proved that accused has issued Ext P1 cheque for an amount of Rs. 3,00,000/- 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 sentenced the accused to undergo to pay Rs.6,00,000/- as compensation under Section 357(1) CrPC . In default of payment of the fine he shall undergo simple imprisonment for a period of three months . In the discussion portion of the judgment the trial court found that simple imprisonment till rising of court and fine of Rs.3,00,000/- would be sufficient to meet the ends of justice. But the trial court has sentenced the accused to undergo to pay Rs.6,00,000/- as compensation under Section 357(1) CrPC . In default of payment of the fine he shall undergo simple imprisonment for a period of three months .Which is the double of the cheque amount and there is no special reason stated for the same .That shows that the sentence imposed by the court is not according to her findings in the discussion portion of the judgment and it is liable to be interfered. Considering the facts and circumstances of the case,I am of the opinion that the sentenced imposed by the trial court can be modified and the fine amount has to be reduced to the cheque amount .Except the said modification the remaining part of the sentence imposed by the trial court is confirmed. Thus the point is answered accordingly

In the result, the appeal is allowed in part as follows:

The accused is sentenced to to pay Rs.3,00,000/- (Rupees Three lakhs only) as compensation under section 357(1) CrPC . In default of payment of the fine, he shall undergo simple imprisonment for a period of six months. If, fine amount is paid or realised, it shall be given to complainant as compensation u/s 357(1)(b) of the CrPC.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 16th day of March, 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
Crl.A.286/2023
Dated: 16.03.2026