

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS
IRINJALAKUDA**

Present : **Smt. Deepa Mohanan, Judicial First Class Magistrate.**
Dated this, Friday, the 12th day of June, 2026/ 22nd Jyeshtham 1948
S.E.

C.C. 2117/2016

Complainant : M/s. Aarton Paints India Pvt.Ltd.
Mattathukunnu - Rep. by Managing Director,
P.D. Jose, S/o Devassy, Parekkattil House,
Mangattukara, Ankamali village, Ernakulam.

(By Adv. M.K. Roy)

Accused : Gafoor I.T., aged 50/14, Lerikkal house,
Puthiyapurayil, Azhiyoor, Vadakara, Kanoor,
Proprietor, G.K. Trade Links, Pilakool,
Thalassery Kannoor.

(Rep. By Adv. A.A. Biju)

Offence : U/ss. 138 of Negotiable Instruments Act.

Plea : Not Guilty.

Finding : Accused is found not guilty of offence
punishable under section 138 of Negotiable
Instruments Act.

Sentence or : Accused is acquitted under sections 255(1) of
Order Cr.PC.

Description of the Accused

Sl. No.	Name and Rank of the accused	Father's Name	Occupation	Residence	Age
1.	A1- Gafoor I.T.	-	-	Vadakara	50/14

Dates on which

Occurrence	Complaint	Apprehension/ Appearance	Release on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or Order	Period of Detention undergone during investigation, inquiry or trial for the purpose of section 428 of Cr.P.C.
29-03-14	28-11-14	18-01-24	18-01-24	18-01-24	02-08-25	09-06-26	12-06-26	-

This case having been finally heard on 09/06/2026 and the Court on 12/06/2026 delivered the following:-

J U D G M E N T

1. This is a complaint filed U/s. 142 of the Negotiable Instruments Act alleging offence punishable U/s. 138 of the Negotiable Instruments Act, 1881.

2. The averments in the complaint are as follows:

The complainant is a business firm engaged in the business of production and sale of paint items. It is represented by its managing partner. The accused is engaged in the business of paints and hardware and had purchased paint items worth Rs.1,42,681/-. The said amount is due to the complainant. When the complainant demanded the amount, the accused issued cheque numbered 009477 for an amount of ₹ 1,42,681/-. When the complainant presented the cheque for encashment it was dishonoured for the reason 'funds

insufficient'. Complainant issued notice demanding the cheque amount but the accused did not repay the amount and has committed the offence under section 138 of NI Act.

3. On issuing summons the accused entered appearance. He is represented by a counsel of his choice. He was released on bail. Particulars of offences were read over and explained. He pleaded not guilty.

4. Complainant was examined as PW1 and Exhibits P1 to P4 were marked on behalf of the complainant. Thereafter the accused was examined under section 313(1)(b) of CrPC. He denied all the incriminating evidence against him and claimed innocence. DW1 was examined on behalf of the defence and Exhibit D1 was marked on their side.

5. After hearing both sides, the following points were raised for determination:

- 1) ***Has the complainant proved that he had complied with all the legal formalities required under the Act?***

- 2) ***Has the complainant proved that the accused issued Exhibit P1 cheque in discharge of a legally enforceable debt?***
- 3) ***Did the accused rebut the presumption?***
- 4) ***Sentence or order?***

SUBMISSION

6. Learned counsel for the complainant submitted argument note placing the following arguments.

- 1) The purchase of paint from the complainant is admitted by the accused.
- 2) When the amount was demanded the cheque was issued by the accused and the signature in the cheque is not disputed.
- 3) The execution of the cheque is proved.
- 4) The presumptions are attracted.
- 5) The evidence of PW1 is consistent and reliable.
- 6) The case set up by the defence that, damaged articles were

furnished by the complainant, is not proved by the accused.

7) The oral and documentary evidence produced by the complainant has sufficiently proved the case.

8) The accused is liable to pay the cheque amount.

7. Learned defence counsel submitted the following arguments:

- 1) There were no business dealings between the complainant and the accused.
- 2) There are no documentary evidence produced in support of the claim.
- 3) The cheque was alleged to be given after the lapse of 2 years but the delay is not explained.
- 4) The complainant did not issue any proper legal notice to the accused.
- 5) The evidence of PW1 is not consistent.
- 6) The accused is not liable to pay any amount to the complainant and is entitled to be acquitted.

8. **POINT No.1**: In the complaint it is pleaded that, the accused had issued Exhibit P1 cheque towards an amount of

₹ 1,42,681/- which is due to the complainant. Exhibit P1 is dated 26.03.2014. When the cheque was presented for encashment, it was dishonoured for the reason funds insufficient. Exhibit P2 is the dishonour memo. It is dated 31.03.2014. Thus, the cheque was presented within 3 months from the date of its maturity. Complainant issued notice dated 24.04.2014 demanding the amount. Exhibit P3 is the notice.

9. One of the claims, specifically set up by the defence is that, the complainant did not issue any demand notice to the accused. It is to be noted that, except the oral evidence of PW1 the postal receipt or any other documents were not produced to show the issuance of the notice to the accused. When PW1 was cross examined a specific question was put to him that, is there any reason for not producing the postal receipt showing the issuance of notice to the accused, he answered in negative affirming that there is no reason. Thus, the complainant did not even offer any plausible explanation for not producing the postal receipt for showing the issuance of notice to the accused. Exhibit P4 acknowledgment card dated 26.04.2014 was produced to show the receipt of notice by the accused. But Exhibit P4 would not automatically prove the issuance of notice by the complainant, as it would show only the receipt of

some kind of consignment issued by the complainant through the postal department. What was the consignment, whether it was the alleged notice or any other thing, proving the same is completely upon the shoulders of the complainant. But the complainant did not take any steps to prove the said fact. Hence the conclusion arrived at is that, the complainant has failed to prove the fact of issuance of the demand notice to the accused. Which in effect negatives the arousal of the cause of action under section 138(b) of the Act. Thus, it is found that the complainant had failed to comply with all the procedural formalities for filing the complaint. The first point is found in favour of the accused and against the complainant.

10. **POINTS NO. 2, 3 and 4:-** The complainant filed proof affidavit in tune with the averments in the complaint and he was examined as PW1. In the proof affidavit it is stated that the accused had purchased paint items from the complainant and did not pay the purchase amount to the tune of Rs. 1,42,681/- and issued Exhibit P1 cheque to discharge the said debt. When cross examined PW1 stated that all the transactions of the complainant are being carried out through bank. The details regarding uncleared transactions are kept permanently and are available in the

company. It is further stated that, the transactions in the case on hand had been occurred from September 2011 to June 2012 and the documents showing the transactions are available at the company. But for the reason best known to the complainant there is no piece of paper available to show the transactions. Which shows that, the complainant has failed to discharge the initial burden casts upon them. Hence the presumptions are not attracted. In that scenario there is no question arises as to rebuttal of the presumptions. The points no.2 and 3 are found against the complainant and in favour of the accused and against the complainant.

RESULT

11. The accused is not found guilty of the offence punishable under section 138 of Negotiable Instruments Act. He is acquitted under section 255(1) of CrPC of the said offence. He is set at liberty and discharged from the bail bond.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this, the 12th day of June, 2026.)

Sd/-
Deepa Mohanan
Judicial First Class Magistrate
Irinjalakuda

A P P E N D I X

List of Witnesses examined

Complainant Witness :

<u>Complainant Witness No.</u>	<u>Name of Witness</u>	<u>Description</u>
PW1	P.D. Jose	Complainant

Defence Witness :

<u>Defence Witness No.</u>	<u>Name of Witness</u>	<u>Description</u>
DW1	Gafoor	Accused

Court Witness : Nil

List of Exhibits marked

Prosecution Exhibits:

<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by / Attested by</u>
P1	Cheque bearing No. 009477, dated 26-03-2014.	PW1
P2	Cheque Dishonour memo, dated 28-03-2014.	PW1
P3	Copy of lawyer notice, dated 24-04-2014.	PW1
P4	Postal acknowledgment card	PW1

Defence Exhibits :

<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by / Attested by</u>
D1 series	Counterfoils of pay in slips (9 Nos.)	PW1

Court Exhibits : Nil

Material Objects : Nil

sd/-
Judicial First Class Magistrate
Irinjalakuda