

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHAVAKKAD

Present: Smt. Saarika Sathyan V., Judicial First Class Magistrate,

Dated this, Friday the 5th day of June, 2026/ 15th Jyeshtha, 1948.

CC 12/2020

Complainant : P.V. Dasan, 54/19, S/o. Paranthan Velayudhan, Kundaliyur Desom, Engandiyur Amsam, Chavakkad Taluk.

(By Adv. T.B. Chandrababu)

Accused : Preman A.K., 49/19, S/o. Kumaran, Aari House, Engandiyur P.O.

(By Adv. Abdul Samad K.H.)

Offence : U/s. 138 of the Negotiable Instruments Act.

Plea : Not guilty.

Finding : The accused is found guilty for the offence punishable u/s. 138 of the Negotiable Instruments Act.

Sentence or Order : The accused is sentenced to pay a fine of ₹ 300000/- (Rupees Three lakh only) under Section 138 of Negotiable Instruments Act. In default of payment of fine, the accused shall undergo simple imprisonment for a period of two months. If the fine amount is realized, it shall be paid to the complainant as compensation under Section 395(1)(b) of BNSS.

Description of the Accused:

| Sl. No. | Name and Rank | Father's Name | Occupation | Residence | Age |
|---------|---------------|---------------|------------|------------|-------|
| 1 | Preman A.K. | Kumaran | - | Engandiyur | 49/19 |

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. |
|------------|-----------|-----------------------------|--------------------|--------------------------|-----------------------------|-------------------|----------------------|--|
| 02/11/19 | 20/12/19 | 23/05/23 | 23/05/23 | 05/02/24 | 28/11/25 | 30/05/26 | 05/06/26 | - |

The case coming on to this day's proceedings, the court delivered the following:-

J U D G M E N T

This case is instituted upon a private complaint for the prosecution of offence under Section 138 of the Negotiable Instruments Act.

2. The averments in the complaint are as follows :- The complainant is conducting an institution named Arabian Chits at Engandiyur and on 01/01/2010, the accused joined a chitty with sala of Rs. 1,50,000/-. The accused auctioned the chitty and obtained the money and failed to pay the monthly installments. Thereafter, the institution informed him and the accused came to the office and issued a cheque. When the cheque was sent for collection, it was dishonoured and the complainant filed a complaint before this court. As per the request of the accused, the complainant withdrew the case. Thereafter, accused came to the office of the complainant and issued a cheque bearing No.184651 for Rs. 75,000/- and another cheque bearing No. 184631 for Rs. 75,000/- dated 02/11/2019 of Engandiyur Farmers Service Co-operative Bank Limited, Kundaliyur Main Branch. When the complainant presented the cheques for collection at The Federal Bank Limited, Pokkulangara Branch, where the complainant company maintains its account, it was dishonored for the reason "Funds Insufficient" with memo dated 02/11/2019. The complainant had sent a registered lawyer notice dated 04/11/2019 to the accused, intimating the dishonor of cheque and demanding the cheque amount. The accused received the notice on 11/11/2019. Accused did not pay the cheque amount till the date. Hence, the accused has committed the

offence punishable u/s. 138 of Negotiable Instruments Act.

3. The case was taken on file as CC 12/2020. Accused was enlarged on bail. Thereafter copies of all relevant prosecution records were furnished to him. Accused is represented by a lawyer of his choice. Particulars of offence for offence punishable under section 138 of the Negotiable Instruments Act was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. The case then proceeded for trial.

4. On the side of the complainant, PW1 was examined and Exts. P1 to P6 were marked.

5. On closing of the complainant's evidence, the accused was questioned under section 351 of BNSS. The accused denied all the incriminating circumstances brought against him in evidence.

6. On the side of the accused, no witness was examined and no documents were marked.

7. The points that would arise for determination are as follows:-

- I. *Whether the accused had executed Exts.P1 & P2 cheques to the complainant for discharging his legal debt or liability?*
- II. *Whether Exts.P1 & P2 cheques were dishonoured due to the reason "Funds Insufficient"?*
- III. *Whether the complainant has complied with the statutory requirements?*
- IV. *Whether the accused had committed an offence punishable under Section 138 of the Negotiable Instruments Act ?*
- V. *If so, what is the order as to sentence ?*

Point No. I

8. The definite case of the complainant is that accused issued Ext.P1 & P2 cheques in discharge of the liability towards the complainant. When the said cheques were presented for collection, that was dishonoured for the reason "*Funds Insufficient*". Even though complainant had issued lawyer notice to the accused demanding the amount and intimating the dishonour of cheque, accused did not repay the amount till the date.

9. The complainant was examined as PW1. He filed affidavit in lieu of examination in chief with the same contentions as stated in the complaint.

10. The only defence taken by accused is that he had given the blank cheque as security towards the kuri transaction in 2010 and even after the repayment of the kuri amount the cheques were not returned . The complainant has misused the said cheques and has filed false case against accused. In support of his contentions he cited the decision of the Hon'ble High Court in Zacharia V. P. v. State of Kerala and Another 2021 (5) KHC 365 where it was held that-

‘The fact that there was an earlier transaction in the year 1995 and that liability had been settled by repayment is a factor which would lend credence to the case of the 2nd respondent / accused that Ext.P1 cheque was one issued as security in the discharge of that liability and such cheque was misused by the appellant / complainant to make it appear that there was a subsequent transaction. ‘

11. In a case under section 138 of Negotiable Instruments Act the paramount point that is to be determined is whether there had been a valid execution of cheque by the accused. In this regard it will be necessary to look at the observation of the Hon'ble Supreme Court of India in *Bir Singh v. Mukesh Kumar MANU/SC/0154/2019 : (2019) 4 SCC 197*, wherein it was held that “Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

12. In the case herein accused had not denied his signatures in Ext. P1 and P2. Therefore, the burden of proving the contentions raised by accused is on him. It is also pertinent to note that the accused had taken a mere defence that the cheques were given as security towards a kuri transaction and even after repayment of the amount it was misused. However, it is found that the defence taken by accused is not supported by any evidence and that accused never took any steps to get back the cheques. While going through the

cross examination of PW1 he had categorically stated that accused had given the cheques for withdrawing the earlier case. Therefore , the decision cited by the learned counsel for the accused is not applicable to this case. In *Uttam Ram v. Devinder Singh* : MANU/SC/1435/2019, it was pointed out that “A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability”.

13. In *Triyambak S. Hegde vs. Sripad*: MANU/SC/0690/2021 : 2021 (5) KHC 563 the Hon’ble Supreme Court has pointed out (vide paras 11 to 13) that when the signature in the cheque is not disputed, a presumption under section 139 NI Act will rise in favour of the holder of the cheque. In the case of a cheque having been signed, the presumption for passing of the consideration would arise as provided under Section 118(a) of N.I. Act. Sections 118(a) and 139 of the NI Act are explicit to the effect that such presumption would remain, until the contrary is proved.

14. Further In *Basalingappa v. Mudibasappa* MANU/SC/0502/2019 : (2019) 5 SCC 418, with respect to sections 118(a) and 139 of the NI Act, it is held as hereunder:

“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption Under Section 139 is a rebuttable presumption and the onus is on the Accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the Accused to rely on evidence led by him or the Accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the Accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the Accused to come in the witness box to support his defence.”

15. Therefore, evidently, it is upon the accused to have rebutted the presumptions that have been raised under sections 139 and 118(a) of the Negotiable Instruments Act. Though the presumptions are rebuttable, as noted in *Raju M. Thomas v. State of Kerala* : 2021 (1) KLT 787, it is the duty of the accused before the court by adducing evidence to show that the cheque was not supported by consideration and that there was no debt or liability to be discharged as alleged. It is necessary on the part of the accused to set up a probable defence for getting the burden of proof shifted to the complainant. It is only once such rebuttable evidence is adduced and accepted by the court, the burden shifts back to the complainant. Once the complainant discharges the burden to prove that the cheque was executed by the accused, the rules of presumptions under Sections 118 and 139 of the N.I. Act are very much available to the complainant and the burden shifts on the accused.

16. On analysing the entire evidence on record it is satisfied that accused had failed to rebut the presumption at least by preponderance of probability which is warranted in the case herein. The decision in *Bir Singh (Supra)* also operates against the accused in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

17. On the other hand while going through the entire evidence on record it is satisfied that the case of complainant is more probable.

18. In *Kamala v. Vidyadharan*, 2007 (3) KLT 861 (SC), the Hon'ble Supreme Court of India has held that standard of proof in discharge of the burden in terms of Section 139 being the preponderance of probability, inference can be drawn not only from the materials brought on record, but also from the reference to the circumstances upon which the accused relies upon. But, in the case at hand, the available circumstances and the evidence are not sufficient to believe the defence version. There is no reason to disbelieve the evidence of PW1, which is sufficient to raise a presumption under Section 139 of the Negotiable Instruments Act.

19. To summarize, it is clear from the above discussions that a presumption under section 139 and 118(a) of the N.I. Act is attracted in this case. In the case at hand, the accused has no case of dispute of his signature in Ext P1 and P2 cheques . PW1 has deposed as regards the execution of cheques by the accused. Though the accused has taken his defence contentions before the court, it is necessary to note that the accused had failed to substantiate his defence. Execution and issuance of cheques therefore stands proved.

20. The other contention raised by the learned counsel for accused is that complainant has no locus standi to file the case. He had not stated in the complaint and in the affidavit that he is the proprietor of the kuri institution. Further it was also contented that since the cheque was issued in the name of firm the complainant cannot file the case. The decision of the Hon'ble Supreme court in *Milind Shripad Chandurkar v. Kalim M. Khan and Another* , **2011 (1) KHC 751** in which it was held that –

“when cheque is drawn in the name of the sole proprietary concern, the proprietor cannot claim to be the payee of the cheque, nor can he be the holder in due course .To maintain a complaint, he has to establish by cogent evidence that the cheques had been issued to him or in his favour or that he is the sole proprietor of the concern . Mere statement in

the affidavit that he is the proprietor, is not sufficient to meet the requirement of law” was cited by the learned counsel for accused.

21. However on perusing Exts P1 and P2 it is found that cheques were issued in the name of the complainant and not the firm. Further the accused had admitted that there existed a kuri transaction in between the complainant and accused and cheques were issued as security . Hence he cannot further deny the said contention that he had not given it to the complainant. Therefore, the said decision is not applicable to the case herein.

22. Therefore, in the light of the discussions made, it can be seen that, the accused has failed to rebut the presumption at least by preponderance of probabilities. Hence, point I is found in favour of the complainant.

Point No.II

23. PW1 stated that Ext.P1 and P2 were dishonoured due to the reason “ *insufficient fund*”. Ext.P3 is in support of that. No contra evidence has been adduced to disprove the same. Hence it is found that Ext.P1 and P2 cheques were dishonored due to the reason “ *insufficient fund*”, which will attract an offence under Section 138 of the Act. This point is found in favour of the complainant.

Point No.III

24. PW1 has stated that, statutory notice of demand was issued to the accused and served to accused. The complaint was found to be filed within the statutory period. So, it is evident that the complainant had complied with all the statutory requirements. This point is found in favour of the complainant.

Point No.IV

25. In the light of the discussions on point Nos.I to III, it is found that Ext.P1 and P2 cheques were drawn and issued by the accused in discharge of a legally enforceable debt, but those were dishonored due to the reason “*insufficient funds*”. Statutory notice was

issued to the accused, but the accused had refused to make payment. Hence, it is held that the accused had committed an offence punishable under Section 138 of the Negotiable Instruments Act. This point is found in favour of the complainant.

Point No.V

26. In the light of the findings on point Nos. I to IV, the accused is found guilty of the offence under Section 138 of Negotiable Instruments Act. The accused is, therefore, convicted for that offence under Section 278 (2) of BNSS. Considering the facts and circumstances of the case, I am not inclined to invoke the benevolent provisions of the Probation of Offenders Act in favour of the accused.

27. Considering the facts and circumstances of the case, sentence of fine is essential to meet the ends of Justice. The Ext. P1 is dated 02/11/2019 for Rs 75000/- and Ext P2 is dated 02/11/2019 for Rs 75000. More than 6 years have passed since execution of Ext. P1 and P2. The complainant was kept away from his money for all these years. Therefore, I am of the opinion that imposition of twice the cheque amount as fine is required to properly compensate the complainant for the loss and difficulty that ensued as a result of the dishonour of cheques.

28. In the result, the accused is sentenced to pay a fine of ₹ 300000/- (Rupees Three lakh only) under Section 138 of Negotiable Instruments Act. In default of payment of fine, the accused shall undergo simple imprisonment for a period of two months. If the fine amount is realized, it shall be paid to the complainant as compensation under Section 395(1)(b) of BNSS.

(Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 5th day of June, 2026).

Sd/-

Judicial Magistrate of 1st Class, Chavakkad.

APPENDIX**Complainant witnesses:**

| | | |
|-----|-------|----------------------|
| PW1 | Dasan | Defacto Complainant. |
|-----|-------|----------------------|

Defence witnesses :

Nil

Court witnesses:

Nil

Complainant Exhibits:

| | | |
|---|------------|--|
| 1 | Ext.P1/PW1 | Cheque bearing No. 184651 dated 02/11/2019 for Rs. 75,000/- of Engandiyur Farmers Service Co-operative Bank Limited, Kundaliyur Main Branch. |
| 2 | Ext.P2/PW1 | Cheque bearing No. 184631 dated 02/11/2019 for Rs. 75,000/- of Engandiyur Farmers Service Co-operative Bank Limited, Kundaliyur Main Branch. |
| 3 | Ext.P3/PW1 | Cheque return memo, received from Engandiyur Farmers Service Co-operative Bank Limited, Kundaliyur Main Branch, dated 02/11/2019. |
| 4 | Ext.P4/PW1 | Copy of lawyer notice, dated 04/11/2019. |
| 5 | Ext.P5/PW1 | Postal Receipt, dated 04/11/2019. |
| 6 | Ext.P6/PW1 | Acknowledgment card dated 11/11/2019. |

Defence Exhibits:

Nil

Court Exhibits:

Nil

Material objects:

Nil.

Sd/-

Judicial Magistrate of 1st Class, Chavakkad.

/True Copy /

Judicial Magistrate of 1st Class, Chavakkad.