

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHAVAKKAD
Present: Smt. Saarika Sathyan V., Judicial First Class Magistrate,
Dated this, Wednesday the 29th day of April, 2026/ 9th Vaisakha, 1948

CC 970/2019

- Complainant : Ragesh, 50/19, Ponnarassery House, Puthanpalli P.O., Thrissur.
(By Adv. A. Sujith)
- Accused : Vincent, 48/19, S/o. Ouseph, Alappat House, Kottekkad P.O., Thrissur.
(By Adv. K.P. Backer)
- 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 ₹ 4,00,000/- (Rupees Four 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 six months. If the fine amount is realized, it shall be paid to the complainant as compensation under Section 357(1)(b) of Cr.P.C.

Description of the Accused:

Sl. No.	Name and Rank	Father's Name	Occupation	Residence	Age
1	Vincent	Ouseph	-	Kottekkad	48/19

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.
14/06/19	08/08/19	17/05/22	17/05/22	20/04/23	03/11/23	27/04/26	29/04/26	-

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 and the accused were acquainted with each other and were doing their own business. On the basis of that acquaintance, accused had borrowed an amount of Rs. 2,00,000/- from the complainant for his business purpose during May 2013. When the complainant demanded the amount, accused issued a cheque bearing No.476169 dated 07/06/2019 of South Indian Bank, Viyyur Branch, for Rs. 2,00,000/-. When the complainant presented the cheque for collection at Canara Bank, Guruvayoor Branch, where the complainant maintains his account, it was dishonored for the reason "Funds Insufficient" with memo dated 14/06/2019. The complainant had sent a registered lawyer notice dated 26/06/2019 to the accused, intimating the dishonor of cheque and demanding the cheque amount. The accused received the notice. But, 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 970/2019. 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 313 of Crpc. The accused denied all the incriminating circumstances brought against him in evidence.
6. On the side of the accused, DW1 was examined . No documents were marked.
7. The points that would arise for determination are as follows:-
 - I. *Whether the accused had executed Ext.P1 cheque to the complainant for discharging his legal debt or liability?*
 - II. *Whether Ext.P1 cheque was 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 cheque in discharge of the liability towards the complainant. When the said cheque was 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 defence taken by accused is that accused was running a jewellery. Complainant's wife had deposited some amount in the jewellery and accused had given

Ext. P1 cheque as a security for the said amount. Even after repayment of the said amount complainant had not returned the cheque. Complainant had obtained the cheque from his wife and has filed false case against accused.

11. To prove the contentions of accused he had examined complainant's wife as DW1. On going through the deposition of DW1 it is revealed that she had denied the contentions of accused stating that she has not made any deposit to accused's jewellery. She denied the contention that the cheque was issued to her as security. Therefore, it found that the defence taken by accused has not been proved through DW1. No other document or evidence has been brought from the side of accused to prove his contentions.

12. 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."

13. In the case herein accused had not denied his signature in Ext. P1. Therefore, the burden of proving the contentions raised by accused is on him. It is also pertinent to note that the case put forward by the complainant and which was adduced in evidence stands affirmed in the absence of evidence to rebut the same from the side of the accused. In order to prove the contention raised by the accused, the evidence adduced from the side of accused as already stated above is not sufficient. 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".

14. 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.

15. 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.”

16. 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.

17. On analysing the entire evidence on record it is satisfied that accused had failed to rebut the presumption atleast 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.

18. On the otherhand while going through the entire evidence on record it is satisfied that the case of complainant is more probable.

19. 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.

20. 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 cheque . PW1 has deposed as regards the execution of cheque 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 the cheque therefore stands proved.

21. From the discussions already 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

22. PW1 stated that Ext.P1 was dishonoured due to the reason “ *insufficient fund*”. Ext.P2 is in support of that. No contra evidence has been adduced to disprove the same. Hence it is found that Ext.P1 cheque was 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

23. PW1 has stated that, statutory notice of demand was issued to the accused. The same was served to the accused which is revealed from Ext. P5. 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

24. In the light of the discussions on point Nos.I to III, it is found that Ext.P1 cheque

was drawn and issued by the accused in discharge of a legally enforceable debt, but it was 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

25. 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 255 (2) of Crpc. 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.

26. Considering the facts and circumstances of the case, sentence of fine is essential to meet the ends of Justice. The Ext. P1 is dated 07/06/2019 for Rs 200000/-. More than 5 years have passed since execution of Ext. P1. 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 cheque.

27. In the result, the accused is sentenced to pay a fine of ₹ 4,00,000/- (Rupees Four 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 six months. If the fine amount is realized, it shall be paid to the complainant as compensation under Section 357(1)(b) of Cr.P.C.

(Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 29th day of April, 2026).

Sd/-

Judicial Magistrate of 1st Class, Chavakkad.

APPENDIX**Complainant witnesses:**

PW1	Ragesh	Complainant.
-----	--------	--------------

Defence witnesses :

Nil

Court witnesses:

Nil

Complainant Exhibits:

1	Ext.P1/PW1	Cheque bearing No. 476169, for Rs. 2,00,000/-, dated 07/06/2019 of South Indian Bank, Viyyur Branch.
2	Ext.P2/PW1	Cheque return memo, dated 14/06/2019 of Canara Bank, Guruvayoor Branch.
3	Ext.P3/PW1	Copy of lawyer notice, dated 26/06/2019.
4	Ext.P4/PW1	Postal receipt, dated 26/06/2019.
5	Ext.P5/PW1	Acknowledgment Card.
6	Ext.P6/PW1	Reply notice, dated 19/07/2019.

Defence Exhibits:

Nil

Court Exhibits:

Nil

Material objects:

Nil.

Sd/-

Judicial Magistrate of 1st Class, Chavakkad.

/True Copy /

Judicial Magistrate of 1st Class, Chavakkad.