

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHAVAKKAD**

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

**Dated this, Thursday the 30<sup>th</sup> day of April, 2026/ 10<sup>th</sup> Vaisakha, 1948**

**CC 1331/2019**

Complainant : Mohanan, 54/19, S/o. Pallath Bavu, Nattika Beach Desom,  
Nattika Village, Chavakkad Taluk.

**(By Adv. C. Rajagopalan)**

Accused : Jinesh, 35/19, S/o. Ramachandran, Peroth House,  
Anthikkad P.O.

**(By Adv. Johnson T. Thomas)**

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 ₹ 8,00,000/-  
(Rupees Eight lakhs 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	Jinesh	Ramachandran	-	Anthikkad	35/19

**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.
07/10/19	27/11/19	03/02/25	03/02/25	05/02/25	31/10/25	29/04/26	30/04/26	-

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. On the basis of that acquaintance, accused had borrowed Rs. 4,00,000/- from the complainant for his business purpose. Accused had promised to return the amount within 8 months but accused failed to keep his promise. Thereafter when complainant demanded the amount, accused had issued a cheque bearing No.000002 dated 04/10/2019 of HDFC Bank Limited, ATPAR Branch, for Rs. 4,00,000/- to the complainant. When the complainant presented the cheque for collection at State Bank of India, Vadanappilly Branch, where the complainant maintains his account, it was dishonored for the reason "Account Closed" with memo dated 07/10/2019. The complainant had sent a registered lawyer notice dated 23/11/2019 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 1331/2019. The accused was enlarged on bail. Thereafter copies of all relevant prosecution records were furnished to him. The 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 examined under section 313 of Crpc. The accused denied all the incriminating circumstances brought against him in evidence.
6. On the side of the accused, no witnesses were examined and 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 "Account Closed"?*
  - 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 the 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 "Account Closed". 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 in cross examination of PW1 is that he has no acquaintance with the complainant. The complainant has given false case against accused on the instigation of accused's sister. In the reply notice accused had contented that his sister had borrowed some amount from one Mohanan and that matter was compromised at the police station. When accused's sister had asked for the return of Ext. P1 cheque which she had given to that Mohanan he stated that he had borrowed the amount from this complainant and that the cheque is with him. It was also contended that accused's sister had given complaint with regard to this at the police station.

11. It is pertinent to note that to prove these contentions accused has not produced any documents and has not examined any witness. It is found that the defence taken by accused in the reply notice and at the time of cross examination of PW1 are contradictory. There is no evidence on record to substantiate 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. As already stated accused has not adduced any evidence to rebut the presumption or to substantiate his contentions. 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 “ *Account closed*”. Ext.P2 is in support of that. During arguments the learned counsel for accused stated that since cheque was not issued to a duly maintained account there is no liability under section 138 of N.I Act. He stated that the account was closed prior to 04/10/2019. In support of his contention the learned counsel for the accused cited the judgment of Hon’ble High Court in Moidu P.M vs K.M . Adbulla (2023 KHC 807) and argued that since the account was closed prior to 04/10/2019 he has no liability.

23. While going through the decision cited above it is found that the Hon’ble High Court had acquitted the accused in that case on other grounds like lack of evidence as to execution of cheque etc.. In the case herein it is found that execution of cheque stands proved.

24. In the case cited above the hon’ble High Court has held that –  
‘But a Division Bench of this Court in Vathsan v. Japahari [2003 KHC 1219] declared the law that ‘where cheques have been issued against an account, which has been closed

prior to the date of drawal of the cheque, it shall also come within the fold of S.138 of the NI Act, to attract criminal liability' and the dictum in Joseph's case and Japahari's case cited (Supra) was found no more good law. Following the dictum in Vathsan's case cited (Supra), a Single Bench of this Court in Salim v. Thomas [2004 KHC 125] held that even if a cheque was drawn against an account which has been closed prior to the drawal of the cheque, it comes within the fold of S.138 of the NI Act. Once a person issues a cheque drawn on an account, which he was maintaining with the Bank, he cannot take up a defence that he did not have a subsisting account, on the date of drawal of the cheque, as it will undoubtedly defeat the intent behind S.140 of the NI Act. It was further held that, cheque issued after the date of closure of the account, also falls within the sweep of S.138 of the NI Act, and the expression, an account maintained by him takes in, an account that was maintained by him and also an account that is maintained by him. Otherwise a mischievous account holder if he retains a cheque leaf even after closure of the account to defraud an honest payee, will get out of the net cast by S.138 of the NI Act.'

25. Therefore, it is evident that a cheque dishonored for the reason “ account closed” will attract an offence under section 138 of NI Act. No contra evidence has been adduced to disprove the same. This point is found in favour of the complainant.

### **Point No.III**

26. 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**

27. 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 “*account closed*”. 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**

28. 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 Cr.P.C. 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.

29. Considering the facts and circumstances of the case, sentence of fine is essential to meet the ends of Justice. The Ext. P1 is dated 04/10/2019 for Rs 400000/-. More than 6 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.

30. In the result, the accused is sentenced to pay a fine of ₹ 8,00,000/- (Rupees Eight lakhs 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 30<sup>th</sup> day of April, 2026).*

Sd/-

Judicial Magistrate of 1<sup>st</sup> Class, Chavakkad.

**APPENDIX****Complainant witnesses:**

PW1	Mohanan	Complainant.
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**Defence witnesses :**

Nil

**Court witnesses:**

Nil

**Complainant Exhibits:**

1	Ext.P1/PW1	Cheque bearing No. 000002 for Rs. 4,00,000/- dated 04/10/2019 of HDFC Bank Limited, ATPAR Branch.
2	Ext.P2/PW1	Cheque return memo, dated 07/10/2019 from State Bank of India, Vadanappilly Branch.
3	Ext.P3/PW1	Copy of lawyer notice, dated 23/10/2019.
4	Ext.P4/PW1	Postal receipt, dated 23/10/2019.
5	Ext.P5/PW1	Acknowledgment Card.
6	Ext.P6/PW1	Reply notice, dated 04/11/2019.

**Defence Exhibits:**

Nil

**Court Exhibits:**

Nil

**Material objects:**

Nil.

Sd/-

Judicial Magistrate of 1<sup>st</sup> Class, Chavakkad.

/True Copy /

Judicial Magistrate of 1<sup>st</sup> Class, Chavakkad.