

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, KUNNAMKULAM.**

Present:- Sri. Jayanthan L., Judicial I Class Magistrate.

Monday, the 23<sup>rd</sup> day of March, 2026 / 2<sup>nd</sup> day of Chaithram, 1948.

**S T 1298 / 2014**

Complainant : N.R.Unnikrishnan, 43 years, Mechanic,  
S/o.Ravunny, Nediyaedath House,  
Perumbilavu Desom, Thalappilly Taluk,  
Thrissur District.  
*By Adv. Sri.Sudheesh V. Nair, Kunnamkulam.*

Accused : K.K.Sukesh, S/o.Kunjimon, Kuzhiyam Kunnath  
House, Ayinoor desom, Pazhanji Village,  
Thalappilly Taluk, Thrissur District.  
*By Adv Sri. C.B.Rajeev, Kunnamkulam.*

Offence : U/s. 138 of Negotiable Instruments Act

Plea : Not guilty

Finding : Guilty

Sentence or order : The accused is convicted u/s.255(2) of Cr.P.C and she is sentenced to undergo S.I for four months and since the cheque is of the year 2013, the accused is sentenced to pay compensation of Rs.1,24,000/-. In default of payment of compensation, the accused shall undergo S.I. for one month. If the amount is realized, it shall be paid to the complainant as compensation u/s.357(1) (b) Cr.P.C.

Description of the accused

No	Name	Father's Name	Occupation	Residence	Age
1	Sukesh	Kunjimon	..	Pazhanji	39

Dates on which

Offence	Complaint	Apprehension	Release on bail	Commencement of trial	Closure of trial	Order
5.3.2013	9.7.2013	12.12.2024	12.12.2024	7.1.2025	23.3.2026	23.3.2026

This case coming on to this day's proceedings, the court passed the following:-

## JUDGMENT

This is case arising out of private complaint filed alleging offence punishable under section 138 of the Negotiable Instruments Act.

2. The averments in the complaint is as follows:- The accused and the complainant are friends. The accused borrowed an amount of ₹ 62,000 from the complainant. For the discharge of the said liability, accused issued a cheque in favour of the complainant for an amount of ₹ 62,000. The cheque belongs to Canara Bank, Kunnamkulam branch. The complainant presented the cheque before the bank, where he is maintaining the account. It is returned for the reason '*funds insufficient*'. The complainant issued notice to the accused, demanding the payment of the amount covered by the cheque, but, the complainant has not repaid the amount till date. Hence, the accused is said to have committed offence punishable under Section 138 of Negotiable Instruments Act.

3. On appearance, the accused was served with all relevant records relied on by the prosecution. Particulars of offence u/s 138 of N.I Act were read over and explained to the accused to which he pleaded not guilty. From the side of the complainant, the complainant himself was examined as PW1 and exhibits P1 to P6 were marked. On the closure of prosecution evidence, accused was examined u/s. 313 (1) (b) of Cr.P.C. No evidence was adduced on the side of the accused.

4. Heard both sides.

5. Following points arise for consideration :-

1. Whether the accused has committed the offence punishable u/s.138 of the Negotiable Instruments Act as alleged?

2. If found guilty, what is the quantum of sentence?

6. **Point No. 1:** The complainant was examined as prosecution witness No.1 (PW1) and Exhibits P1 to P6 were marked through him. He has filed affidavit in lieu of examination in chief reiterating the contentions of his complaint. The PW1 deposed in tune with the version in the complaint. According to PW1, both the accused and himself have acquaintance with each other. PW1 submitted that the accused borrowed a sum of Rs.62,000/- for his domestic purposes. When the complainant on 5.3.2013, demanded the amount back, the accused came to his house and executed and issued a cheque of Canara Bank, Kunnankulam Branch for Rs.62000/- The complainant presented the cheque before State Bank of Travancore, Perumbilavu Branch for collection, but, the cheque is returned for the reason stating '*funds insufficient*' with cheque return memo issued dated 21.03.2013. Then the complainant sent lawyer's notice dated 2.4.2013 to the accused intimating the dishonour of the cheque and demanding the amount covered by the cheque. According to the complainant, the accused received the notice on 9.4.2013, but, he neither sent any reply notice nor repaid the cheque amount to the complainant. The complainant submitted that the accused failed to repay the amount till date.

7. The cheque bearing No.971466 for an amount of ₹62,000/- dated 5.3.2013 of Canara Bank, Kunnankulam Branch is marked as Exhibit P1. The cheque return memo of Canara Bank, Kunnankulam Branch is marked as Exhibit P2. The cheque return memo dated 21.03.2013 issued by the State Bank of Travancore, Perumbilavu Branch is marked as Exhibit P3. The copy of lawyer's notice dated 1.4.2013 is marked as Exhibit P4. The postal receipt

dated 2.4.2013 is marked as Exhibit P5. The acknowledgment card dated 9.4.2013 is marked as Exhibit P6.

8. Exhibit P1 cheque executed by the accused in favour of the complainant prove that the accused executed the cheque in favour of the complainant for discharging a valid debt or liability. The dishonour of cheque is proved by exhibits P2 and P3 cheque return memos dated 14.03.2013 and 21.03.2013. The demand of the said amount is proved through exhibit P3 copy of legal notice dated 1.4.2013 and postal receipt dated 2.4.2013 proves that the said demand notice is properly despatched. The complainant prima facie established the execution of exhibit P1 cheque. The complaint is seen filed on 9.7.2013. The accused filed petition for condoning the delay for filing the complaint and the same was allowed by this Court. Hence the mandatory presumptions under Section 139 of Negotiable Instruments has been drawn in favour of the complainant.

9. The accused was examined u/s.313 of Cr.P.C. He denied all the incriminating circumstances appeared in the evidence against him. The accused submitted that he is innocent of the offences alleged against him and this is a false case filed against him.

10. The learned counsel for the accused argued that the complainant has not proved their case and hence the accused is to be acquitted in this case. On the other hand, the learned counsel for the complainant argued that exhibits P1 to P6 documents were marked from their side showing that they had complied with all the statutory requirements for attracting offence under section 138 of Negotiable Instruments Act. According to him, there was no evidence from the part of the defence to prove their

version and hence the accused is to be convicted.

11. Complainant is examined as PW1. Complainant deposed in tune with the complainant version. Complainant is cross-examined. During cross-examination, the complainant admits that he had filed two cases for realizing the amount and this is the third case. Complainant deposed that the cheque is executed by the accused at his presence and it is signed before him. Complainant admits that he did not know whether the date of borrowal of the amount is noted at the complaint or affidavit. The complainant further deposes that the cheque is written using pen having the same ink. He also denied the suggestion that the cheque is fabricated.

12. On perusal of cross-examination of complainant, it is clear that the complainant is not discredited in material particulars. The testimony of complainant is not shaken by cross-examination. No defence evidence is adduced from the side of the accused to disprove the case of the complainant. Hence, it can be concluded that the presumption which had arisen in favour of the complainant under Section 139 of Negotiable Instruments Act remains un rebutted. Hence the accused is liable to be convicted. Hence, it can be concluded that accused has committed the offence punishable u/s.138 of the Negotiable Instruments Act and hence this point is found in favour of the complainant.

13. **Point No.2:-** Therefore, from all these available evidences adduced, arguments advanced and from the above discussions made and from the findings thereon, this court is of the opinion that the accused is found guilty under section 138 of Negotiable Instruments Act and is convicted. Since the alleged transaction and issuance of cheque were in the year 2013 the mere finding with an order to pay the cheque

amount will not be an adequate compensation.

14. In the result, the accused is found guilty and convicted under section 255(2) of Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and is sentenced to undergo simple imprisonment for four months and since the cheque is of the year 2013, the accused is sentenced to pay compensation of Rs.1,24,000/-. In default of payment of compensation, the accused shall undergo simple imprisonment for one month. If the amount is realized, it shall be paid to the complainant as compensation under section 357(1) (b) Cr.P.C.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 23<sup>rd</sup> day of March, 2026)

sd/-  
Judicial First Class Magistrate,  
Kunnamkulam.

Witness examined for the complainant:-

PW1	N.R.Unnikrishan, 56 years, S/o.Ravunny, Nediyedath House, Perumbilavu Desom	Complainant
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Exhibits marked for the complainant:-

Ext.P1 / PW1	The cheque bearing No.971466 for an amount of ₹62,000/- of Canara Bank, Kunnamkulam Branch dated 5.3.2013.
Ext.P2/PW1	The cheque return memo of Canara Bank, Kunnamkulam Branch dated 14.03.2013.
Ext.P3/PW1	The cheque return memo issued by the State Bank of Travancore, Perumbilavu Branch dated 21.03.2013.
Ext.P4/PW1	The copy of lawyer's notice dated 1.4.2013.
Ext.P5/PW1	The postal receipt dated 2.4.2013.
Ext.P6/PW1	The acknowledgment card dated 9.4.2013.

Witness examined for the defence :- Nil

Exhibits marked for the defence :- Nil

sd/-

Judicial First Class Magistrate,  
Kunnamkulam.

//True copy//

Judicial First Class Magistrate,  
Kunnamkulam.