

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

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

Monday, the 13<sup>th</sup> day of April, 2026 / 23<sup>rd</sup> day of Chaithram, 1948.**C C 2740 / 2017**

- Complainant : P.S.Viswambaran, 66 years, S/o.Sankarankutty,  
Ponnemppara House, P.O.Puranatukara,  
Thrissur District, Thrissur Taluk.  
Peramangalam Police Station.  
*By Adv. Sri. Habeebulla K., Kunnamkulam.*
- Accused : Chandran, 52 years, S/o.Late Kunjambu,  
Panakkal House, Madikkay P.O., Kasaragod district,  
Neeleswaram Police Station.  
*By Adv Sri. Rajeev, C.B. 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.20,00,000/-. 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	Chandran	Kunjambu	Business	Madikkai	61

**Dates on which**

Offence	Complaint	Apprehension	Release on bail	Commence-ment of trial	Closure of trial	Order
10.11.2013	12.02.2014	7.3.2023	7.3.2023	7.3.2023	13.4.2026	13.4.2026

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 complainant states that the complainant and the accused are friends. The complainant received a cheque for rupees 10,00,000 from the accused towards repayment of the debt of rupees 10,00,000. The complainant presented the cheque at the Adat Farmers Service Cooperative Bank, Mutuvara branch. The cheque got dishonoured due to insufficient funds. The complainant issued a demand notice to the accused, reminding him of the repayment of the above amount. The accused has not made any repayment to the complainant, and the accused is said to have committed an offence punishable under section 138 of the 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, two witnesses were examined as PW1 and PW2 and exhibits P1 to P5 were marked. On the closure of prosecution evidence, accused was examined u/s. 313 (1) (b) of Cr.P.C. From the side of defence, the accused himself was examined as DW1 and Exhibit D1 was marked.

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 P5 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.10,00,000/- and when the complainant demanded the amount back, the accused issued a cheque bearing No.260656 of Canara Bank, Neeleswaram Branch for Rs.10,00,000/- dated 10.11.2013. The complainant presented the cheque before Adat Farmers Service Co-Operative Bank, Muthuvara Branch for collection, but, the cheque is returned for the reason stating '*funds insufficient*' with cheque return memo issued dated 28.11.2013. Then the complainant sent lawyer's notice dated 27.12.2013 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 4.1.2014 and he sent a reply notice stating false contentions. The complainant submitted that the accused failed to repay the amount till date.

7. The cheque bearing No.260656 of Canara Bank, Neeleswaram Branch for Rs.10,00,000/- dated 10.11.2013 is marked as Exhibit P1. The cheque return memo of Canara Bank, Neeleswaram Branch dated 28.11.2013 is marked as Exhibit P2. The copy of lawyer's notice dated 27.12.2013 is marked as Exhibit P3. The postal receipt dated 27.12.2013 is marked as Exhibit P4. The acknowledgment card dated 4.1.2014 is marked as Exhibit P5.

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 cheque return memo dated 28.11.2013. The demand of the said amount is proved through exhibit P3 copy of legal notice dated 27.12.2013 and postal receipt dated 27.12.2013 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 12.2.2014 which is within the statutory period. Hence, the mandatory presumptions under section 139 of Negotiable Instruments Act has been drawn in favour of the complainant.

9. The complainant filed the chief affidavit in tune with the complaint averments. The complainant is cross-examined. During cross-examination, the complainant deposes that the amount is given to the accused at the worksite. The complainant states that the cheque is signed by the accused in front of him. Regarding the source of funds, the complainant deposed that he had deposited the amount of land sale at the bank. The case of the accused is that he has not delivered a cheque to the complainant, and he does not have any legally enforceable debt towards the complainant. During cross-examination, there is no serious challenge to the execution of the cheque made out by the accused. The story of the complainant is not materially contradicted. There is nothing brought out in cross-examination to disbelieve or distrust the story of the complainants.

10. PW2 is a witness produced from the side of the complainant to depose about the delivery of debt amount.. PW2 deposes that he is a Mason. He went to work at the house of the son-in-law of the complainant. He saw the complainant delivering an amount to the accused. It

is deposed that an amount of ₹ 10,00,000 was given by Vishwambaram to the accused.

11. PW2, during cross-examination, deposes that the amount given to the accused by the complainant comprises notes of denomination of ₹ 1,000. There are 10 bundles of notes. Each bundle comprises ₹ 1,000. There is a contradiction when the total amount of debt given by the complainant to the accused, when considered with the version of PW2 as to the 10 bundles of notes having denominations of ₹ 1,000 is considered and according to PW2, one bundle comprises ₹ 10,000. Where calculated, according to the version of PW2, the amount given would only be ₹ 1,00,000. However, during the chief examination, PW2 states that an amount of ₹ 10,00,000 was given by the complainant to the accused. The contradiction which exists is not material to the case of the complainant, since the essential requirements to constitute an offence under Section 138 of the Negotiable Instruments Act are made out.

12. 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 has no direct knowledge about about the complainant and the witness examined in this case. He submitted that, he is innocent of the offence alleged against him.

13. The accused is examined as DW1. DW1 admits that the signature on the cheque belongs to him. However, the writings are not made by him. According to him, Mr Anil Kumar was his roommate at the Gulf. DW1 was put up in jail, and from jail he went straight to India. He has not given any cheque to the complainant, and the case is constituted for cheating him. According to DW1, when he was put in jail, the key to his room was with Anil Kumar, and his cheque was present in his suitcase. DW1 is cross-examined. He admitted his signature on the cheque. From the evidence of DW1, it is seen that the accused is having a defence that he had

not delivered the Exhibit P1 cheque to the complainant. Instead, the cheque was taken out of his room when he was put in jail. However, the fact of the accused's story is not proved. No documents are adduced to show that he was put up in jail as alleged. Hence, the basis of the story is not proven.

14. 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 P5 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.

15. The presumption which had initially arisen in favour of the complainant under Section 139 of the Negotiable Instruments Act has not been disproved by the accused either through cross-examination or through adducing of defence evidence. 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.

16. **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.

17. 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.20,00,000/-. 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 13<sup>th</sup> day of April, 2026)

sd/-  
Judicial First Class Magistrate,  
Kunnamkulam.

Witness examined for the complainant:-

PW1	Viswambaran, 75 years, S/o.Sankarnakutty, Puranatukara, Thrissur.	Complainant
PW2	Babu, 53 years, S/o.Madhavan, Aaloor, Kunnamkulam	Complainant witness

Exhibits marked for the complainant:-

Ext.P1 / PW1	The cheque bearing No.260656 of Canara Bank, Neeleswaram Branch for Rs.10,00,000/- dated 10.11.2013.
Ext.P2/PW1	The cheque return memo of Canara Bank, Neeleswaram Branch dated 28.11.2013.
Ext.P3/PW1	The copy of lawyer's notice dated 27.12.2013.
Ext.P4/PW1	The postal receipt dated 27.12.2013.
Ext.P5/PW1	The acknowledgment card dated 4.1.2014.

Witness examined for the defence :-

DW1	Chandran, 62 years, S/o.Kunhambu, Madikkai	Accused
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Exhibits marked for the defence :-

Ext.D1 / DW1	Passport of the accused
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sd/-

Judicial First Class Magistrate,  
Kunnamkulam.

//True copy//

Judicial First Class Magistrate,  
Kunnamkulam.