

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

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

Tuesday, the 28<sup>th</sup> day of April, 2026 / 6<sup>th</sup> day of Vaishakh, 1948.

**CC 3258 / 2016 and CC 3259 / 2016**

Complainant : A.B.Kareem, Business, 54 years, S/o.Beerankutty,  
Rankath Veetil House, Thozhiyoor Post, Pookodu  
Village, Chavakkad Taluk, Thrissur District.  
*By Adv. Sri. P.P.Harris, Thrissur.*

Accused : Noushad, 41 years, S/o.Saleem, Pokkakkillath  
House, P.O.Kechery, Thrissur District  
Porkulam P.O., Thrissur District,  
*By Adv Sri. C.S. Prathapan, Kunnamkulam.*

Offence : U/s. 138 of Negotiable Instruments Act

Plea : Not guilty

Finding : Not guilty

Sentence or order : The accused is acquitted u/s.255(1) of Cr.P.C.

Description of the accused

No	Name	Father's Name	Occupation	Residence	Age
1	Noushad	Saleem	..	Eranelloor	41

Dates on which

Offence	Complaint	Apprehen- sion	Release on bail	Commence- ment of trial	Closure of trial	Order
16.05.2016	20.07.2016	8.5.2018	8.5.2018	21.6.2019	28.4.2026	28.4.2026

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

### COMMON JUDGMENT

These cases are arising out of private complaints filed alleging offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the complainant in CC 3258/2016, in brief, is as follows. The accused, for discharging the debt of ₹ 60,00,000 towards the complainant, issued a cheque of HDFC Bank Ltd., Thrissur branch, for an amount of ₹ 60,00,000 in favour of the complainant. The complainant presented the cheque before Corporation Bank, Njamanengad branch, for encashment. The cheque is returned for the reason '*Account closed*'. The complainant issued a lawyer's notice to the accused, demanding payment of the amount covered by the cheque. The accused has not made any payment. Hence, the accused is said to have committed offences punishable under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant in CC 3259/2016, in brief, is as follows: The accused for discharging the debt of ₹ 88,50,697 towards the complainant issued a cheque of HDFC Bank Ltd., Thrissur branch for an amount of ₹ 88,50,697 in favour of the complainant. The complainant presented the cheque before Corporation Bank, Njamanengad branch for encashment. The cheque is returned for the reason '*account closed*'. The complainant issued a lawyer's notice to the accused, demanding payment of the amount covered by the cheque. The accused has not made any payment. Hence, the accused is said to have committed an offence punishable under Section 138 of the Negotiable Instruments Act.

4. As per order in CrI.M.P. No. 5899/2019 dated 7.12.2019 joint trial was allowed in the above mentioned cases. On appearance, the accused was served with all relevant records relied on by the prosecution. Particulars of offence under section 138 of Negotiable Instruments Act were read over and explained to the accused to which she pleaded not guilty. From the side of the complainant three witnesses were examined as PW1 to PW3 and exhibits P1 to P24 were marked. After closing the complainant's evidence, the accused was examined under section 313 (1) (b) of Cr.P.C. From the side of defence, three witnesses were examined as DW1 to DW3 and Exhibits D1 to D7 were marked.

5. Heard both sides.

6. 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?

7. **Point No. 1**: The complainant was examined as prosecution witness No.1 (PW1) and Exhibits P1 to P24 were marked through him. He has filed affidavit in lieu of examination in chief reiterating the contentions of his complaints. PW1 deposed in tune with the version in the complaints. According to PW1, the accused and himself are relatives and while he was in Qatar the accused had borrowed money ( Qatar Riyals 11,60,910) from him on various occasions for the period from January, 2011 to December, 2014 for business purpose. When he demanded back the amount the accused issued three cheques (1) cheque dated 16.3.2016 of Qatar Barva Bank, for Rs.3,00,000/-,

(2) cheque dated 16.5.2016 of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.88,50,697/- and cheque dated 16.06.2016 of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.60,00,000/-. PW1 presented the first cheque of Rs.3,00,000/- before Qatar Barva Bank, Main Branch and the same was dishonoured and he was sent to jail at Qatar.

8. PW1 presented the cheque dated 16.06.2016 bearing No.222990 of of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.60,00,000/- before Corporation Bank, Njamanengad Branch, but, the same was returned stating the reason "*Account Closed*" along with cheque return memo dated 21.06.2016. For obtaining the amount covered by that cheque the accused filed CC 3258/2016 before this court.

9. PW1 presented the cheque dated 16.05.2016 bearing No.222989 of of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.88,50, 697/- before Corporation Bank, Njamanengad Branch, but, the same was returned stating the reason "*Account Closed*" along with cheque return memo dated 21.06.2016. For obtaining the amount covered by that cheque the accused filed CC 3259/2016 before this court.

10. The original cheque in (CC 3258/2016) bearing number 222990 of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.60,00,000/- is marked as Exhibit P1. The cheque return memo of Corporation Bank Njamanengad Branch dated 21.6.2016 is marked as Exhibit P2. The copy of the lawyer's notice dated 29.6.2016 is marked as Exhibit P3. The postal receipts dated 29.06.2016 are marked as Exhibit P4 series. The unclaimed notice dated 1.7.2016 is marked as Exhibit P5. The unclaimed notice which

was sent to the address of accused abroad is marked as Ext.P6. The original cheque in (CC 3259/2016 bearing number bearing number 222989 of HDFC Bank Limited Global Centre, M.G.Road, Thrissur Branch for Rs.88,50,697/- is marked as Exhibit P7. The cheque return memo receipt of Corporation Bank Njamanengad Branch is marked as Exhibit P8. The cheque return memo of Corporation Bank Njamanengad Branch dated 14.06.2016 is marked as Exhibit P9. The copy of the lawyer's notice dated 29.6.2016 is marked as Exhibit P10. The postal receipts dated 21.06.2016 are marked as Exhibit P11 series. The unclaimed notice which was sent to the accused in his native address is marked as Exhibit P12. The unclaimed notice which was sent to the address of accused abroad is marked as Exhibit P13. Certified copy of complaint in CC 1995/2018 of this Court is marked as Exhibit P14. Certified copy of application for further investigation of the case CC 1995/2018 is marked as Exhibit P15. Certified copy of seizure mahazar in crime 1215/2017 of Kunnamkulam Police Station is marked as Exhibit P16. Certified copy of computerized account statement along with connected documents maintained at HDFC Bank Global Centre, M.G Road, Thrissur Branch are marked as Exhibit P17 series. Certified copy of Final Report is marked as Exhibit P18. Certified copy of petition for correcting the cheque numbers mentioned in the affidavit is marked as Exhibit P19. Certified copy of the counter filed by the accused in the above case is marked as Exhibit P20. Certified copy of the order in CMP 3479/2022 in CC 1995/2018 dated 2.6.2023 of this court is marked as Exhibit P21. Certified copy of the petition filed by the complainant under section 173(8) of Cr.P.C dated 16.12.2022 is marked as Exhibit P22. Certified copy of counter filed by the accused in the above petition is marked

as Exhibit P23. Certified copy of the order in CMP 3512/2022 in CC 1995/2018 dated 2.6.2023 of this Court is marked as Exhibit P24.

11. The accused was examined under section 313 of Cr.P.C. He denied all the incriminating circumstances appeared in the evidence against him and submitted that he is innocent of the allegations charged against him. The accused submitted that both complainant and himself are close relatives and they were residing at Doha and Qatar. According to the accused, during 2012 while the complainant was coming to native place, he had handed over Exhibit P7 cheque and other fourteen cheques along with the complainant for delivering the same to the father of the accused for his daily needs. Thereafter, dispute occurred between the accused and the complainant in connection with business transactions. Due to this enmity the complainant had not handed over the above cheques to the father of the accused and with out the consent of the accused he filed these cases falsely. According to the accused, the other thirteen cheques are with the complainant and for misusing the above cheques the accused filed criminal case CC 1995/2018 which is pending before this court. The accused submitted that he had not borrowed any amount from the complainant and hence, he prayed for the acquittal.

12. From the side of the defence three witnesses were examined as DW1 to DW3 and they were cross examined at length.

13. The complainant, during evidence filed, joint affidavit in tune with the complainant's averments. The complainant is cross-examined at length. The pertinent contention of the learned counsel for the complainant is that the complainant complied with all the necessary formalities to make out an offence under Section 138 of the Negotiable

Instruments Act. It is argued that the presumption under Section 139 of the Negotiable Instruments Act arises in favour of the complainant. The learned counsel for the accused, on the other hand, submits that the complainant has not made out a case in his favour since the complainant failed to prove the execution and delivery of the cheque. The learned counsel for the accused argued that the date and proper place where the cheque is executed delivered is not proved by the complainant. Hence, the initial presumption which had arisen in favour of the complainant under Section 139 of the Negotiable Instruments Act stands rebutted, and hence the accused is entitled to be acquitted.

14. Now it is pertinent to consider the contention of the accused with regard to the execution and delivery of the cheque. Perused the complaint. It is seen that no specific date is mentioned for the delivery of the cheque. The place of delivery of the cheque is also not stated in the complaint. Perused the chief affidavit. It is stated in the chief affidavit that in April 2015, the complainant was present in Qatar. When he decided to end his business there and to go to his native place, he demanded the repayment of the debt of an amount of 11,60,910 Qatar Riyals from the accused. According to the chief affidavit, the accused issued three cheques amounting to ₹ 60,00,000 in favour of the complainant during the first week of April 2015. Now, it is clear that according to the chief affidavit filed by the complainant, the delivery of the cheque took place at Qatar during the first week of April 2015. During cross-examination, the complainant stated that he came to India on 20.04.2015. Hence, it is clear that the execution of the cheque during the first week of April, as stated by the complainant, is in Qatar. In other words, the delivery of the cheque happened in Qatar. The complainant further stated during cross-examination that the cheque was delivered at his house after reaching

India. It is also deposed that it may be witnessed by his children. It is also deposed that the cheque was signed in his presence. It is further deposed during cross-examination by the complainant that the cheque was issued after 1 year from 2015.

15. On a combined evaluation of the Chief Affidavit and cross-examination of the complainant, it emerges that three different versions arises regarding the delivery of the cheque. The complainant in the Chief Affidavit states that the cheque was issued when he was present in Qatar, during the first week of April 2015. Further, during cross-examination at one part, he states that the cheque was issued after his arrival in India at his house in the presence of his children. Further, it is also stated by him that the cheque was issued after 1 year of his arrival in 2015. Hence, the date and place of delivery of the cheque are contradictory, when the chief examination of the complainant is compared with his cross-examination. Hence, it can be concluded that there is no consistent case from the part of the complainant with regard to the date and place of delivery of the cheque. Hence, the date and place of delivery of the cheque has not been proved by the complainant. Hence, the complainant failed to prove the date and place of delivery of the cheque. Further, the complainant is having different contradictory versions regarding the place and delivery of the cheque and this contradiction at this vital aspect is fatal to the case of the complainant. Since the complainant failed to prove the date and place of delivery of the cheque, the complainant also has a contradictory version with regard to the date and place of delivery of the cheque. This would seriously affect the credit worthiness and reliability of the evidence of the complainant, and this is sufficient to rebut the presumption which had initially arisen in favour of the complainant. I am of the view that this aspect alone is sufficient to hold that the evidence of the complainant is not reliable. Hence, the discussion of

other aspects raised from the side of the complainant and the accused are unnecessary since the above discussions would point to the fact that the testimony of the complainant is unreliable. Hence, the presumption which had arisen in favour of the Complainant under Section 139 of the Negotiable Instruments Act is rebutted. Hence, the accused is liable to be acquitted and this point is found against the complainant.

16. **Point No.2** :- From the evidences adduced and from the discussions above made this court is of the opinion that the accused is found not guilty for the offences alleged. In the result, the accused is acquitted u/s.255 (1) of Cr.P.C for the offence punishable u/s.138 of the Negotiable Instruments Act. His bail bond stands cancelled and he is set at liberty.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court on this the 28<sup>th</sup> day of April, 2026)

Judicial First Class Magistrate, Kunnankulam.

**APPENDIX**

Witnesses examined for the complainant:-

PW1	Kareem, S/o.Beerankutty, Pookkodu	Complainant
PW2	Jomon Antony, S/o.Late K.D. Antony, Arannatukara, Thrissur.	Complainant witness
PW3	Sreenivasan, S/o.C.U.Dharmarajan, Aluva.	Complainant witness

Exhibits marked from the side of the complainant: :-

Ext.P1/PW1	The original cheque in CC 3258/2016 bearing No.222990 of HDFC Bank Thrissur M G Road for Rs.60,00,000/- dated 16.06.2016.
Ext.P2/PW1	The cheque return memo in CC 3259/2016 of Corporation Bank Njamanengad Branch dated 21.6.2016.
Ext.P3/PW1	Copy of the lawyer's notice in CC 3258/2016 dated 29.06.2016.
Ext.P4 series/ PW1	Postal receipts in CC 3258/2016 dated 29.06.2016.
Ext.P5/PW1	Unclaimed registered notice in CC 3258/2016 dated 1.7.2016.
Ext.P6/PW1	Air Mail Return Memo dated 1.7.2016
Ext.P7/PW1	The original cheque in CC 3259/2016 bearing No.222989 of HDFC Bank Thrissur M G Road for Rs.88,50,697/- dated 16.05.2016.
Ext.P8/PW1	Collection receipt dated 4.6.2016.
Ext.P9/PW1	Cheque return memo dated 14.6.2016
Ext.P10/PW1	Lawyer's notice dated 21.6.2016.
Ext.P11 series / PW1	Postal Receipts dated 21.6.2016.
Ext.P12/PW1	Cheque return memo dated 24.6.2016
Ext.P13/PW1	Air Mail Return Memo dated 20.08.2016.
Ext.P14/PW1	Private complaint in CC 1995/2018 dated 11.5.2017
Ext.P15/PW1	Petition filed under section 173(8) of Cr.P.C in CMP 860/2020 in CC 1995/2018 dated 24.12.2019.
Ext.P16/PW1	Seizure mahazar dated 31.01.2020.
Ext.P17/PW1	Bank Account Statement of HDFC Bank, Thrissur M G Road Branch for the period from 12.09.2007 to 30.10.2012.
Ext.P18/PW1	Final Report dated 18.5.2017.
Ext.P19/PW1	Amendment petition in CMP 3479/2022 in CC 1995/2018 dated 13.12.2022.
Ext.P20/PW1	Counter in CMP 3497/2022 in CC 1995/2018 dated 25.03.2023.
Ext.P21/PW1	Order in CMP 3479/2022 in CC 1995/2018 dated 2.6.2023.
Ext.P22/PW1	Petition filed u/s.173(8) of Cr.P.C. in CMP 3512/2022 in CC 1995/2018 dated 16.12.2022,
Ext.P23/PW1	Counter in CMP 3512/2022 in CC 1995/2018 25.03.2023.
Ext.P24/PW1	Order in CMP 3512/2022 in CC 1995/2018 dated 2.6.2023.

Witnesses examined for the defence :-

DW1	Ratheesh Viswanath, 42 years, S/o.Viswanathan, Chavakkad	Defence witness
DW2	Saleem Noushad, 49 years, S/o.Saleem, Eranellur	Defence witness
DW3	Saleem, 71 years, S/o.P.Kunjali, Eranellur	Defence witness

Exhibits marked from the side of the defence :-

Ext.D1/DW1	Certificate letter dated 24.5.2023
Ext.D2/DW3	Paint in OS 32/2017 of Hon'ble Sub Court, Chavakkad dated 25.03.2017
Ext.D3/DW3	Copy of Judgment in OS 32/2017 of Hon'ble Sub Court, Chavakkad dated 15.3.2023.
Ext.D4/DW3	Copy of decree in OS 32/2017 of Hon'ble Sub Court Chavakkad dated 15.3.2023.
Ext.D5/DW3	Copy of complaint in CC 1995/2018 of Judicial First Class Magistrate, Kunnamkulam dated 10.05.2017.
Ext.D6/DW3	Copy of FIR in CC 1995/2018 of Judicial First Class Magistrate, Kunnamkulam dated 18.05.2017
Ext.D7/DW3	Copy of Final Report in CC 1995/2018 of Judicial First Class Magistrate. Kunnamkulam 13.08.2018.

Judicial First Class Magistrate, Kunnamkulam.

