

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II
KODUNGALLUR**

**Present :- Smt. Karthika.K.
Judicial First Class Magistrate- II
Thursday the 16th day of April,2026/26th Chaithram 1948**

S.T.75/2024

Complainant		Jayanandan, aged 61,S/o Velayudhan, Irattu House, Edavilangu P.O., Edavilangu village, Kodungallur Taluk(Kodungallur police station)		
		<i>(By Adv.V.S.Sirajudheen)</i>		
Accused		Faisal Kuttikkatt Abdulla @ Fasal Vadakkekattil, aged 48, S/o Abdulla, Kuttikkatt House, P.O. Pathazhakkad, Panangad village, Kodungallur Taluk,PIN 680 668. (Mathilakam police station)		
		<i>(By Adv.VM.Mohiyudheen</i>		
Charge		Offence punishable U/s.138 of Negotiable Instruments Act		
Plea		Not guilty		
Finding		Guilty		
Sentence/Order		The accused is found guilty of the offence u/s 138 of Negotiable Instrument Act and he is convicted u/s 278(2) of BNSS and sentenced to undergo simple imprisonment till rising of court and to pay fine of Rs.1,00,000/-(One Lakh). If the fine amount is realised it shall be given to the complainant as compensation u/s 395 (1)(b) of Cr.PC. In default of payment of fine the accused shall undergo simple imprisonment for 3 months.		
DESCRIPTION OF THE ACCUSED				
Name	Father's Name	Occupation	Residence	Age
Faisal Kuttikkatt Abdulla @ Fasal Vadakkekattil,	Abdulla	-	Pathazhakkad	48

DATE OF							
Offence	Complaint	Apprehensi on	Release on Bail	Commence- ment of trial	Close of trial	Sentence/ order	Explanatio n for delay
26.3.24	4.5.24	17.9.25	17.9.25	4.2.26	4.4.2026	16.4.2026	No delay

This case having been finally heard on and stood over for consideration to this day, the court delivered the following:

JUDGMENT

Complaint filed under section 142 of the Negotiable Instruments Act (hereinafter referred as "the N.I. Act") alleging the offence punishable under section 138 of the N.I. Act.

2. **Complainant's case in brief is as follows:-** The complainant and accused are of close acquaintance. On the basis of this acquaintance the accused borrowed an amount of Rs.1,00,000/- (One Lakh) from the complainant on 20.2.2024. When the complainant demanded that amount the accused issued a cheque bearing No.093866 dated 25.3.2024 of South Indian Bank Ltd.,Panangad P.O., S.N.Puram Branch to the complainant at the house of the complainant. At the time of issuing the cheque the accused had promised that there would be sufficient amount to honour the cheque amount. When the complainant presented the cheque for collection through the account maintained by him at Indian Overseas Bank, Kodungallur Branch the cheque was dishonoured stating reason "Funds Insufficient" vide memo dated 26.3.2024. After dishonour of the above said

cheque the complainant issued a lawyer notice dated 28.3.2024 to the accused demanding him to pay the cheque amount within 15 days from the date of receipt of notice. The notice was accepted by the accused. But the accused did not sent a reply notice nor did he pay the amount till this date. Hence this complaint.

3. Initially the complaint was filed before the Judicial First Class Magistrate -I, Kodungallur and was taken on file as S.T.1215/2024. Subsequently the case was transferred to this court as per order No.A2-532(2)/2025 dated 23.1.2025 of Honourable Chief Judicial Magistrate, Thrissur and was refiled as ST 75/2024. On appearance, the accused was released on bail. Plea was read over and explained to the accused u/s 251 of Code of Criminal Procedure for the offence punishable under section 138 of the N.I Act to which the accused pleaded not guilty and claimed to be tried.

4. From the side of complainant, PW1 was examined and Exts.P1 to P5 documents were marked. Since there was incriminating circumstances against the accused, the accused was examined u/s. 313(1)(b) of Cr.P.C. The accused denied all the incriminating circumstances that came up against him and maintained a plea of innocence. No oral or documentary evidence was adduced from the side of the accused.

5. Heard both sides. Perused records.

6. The following points that arise for consideration:

- (i) Whether the accused had executed Ext.P1 cheque in favour of the complainant as alleged?
- (ii) Has the accused succeeded in rebutting the presumption U/s.118(a) and 139 of Negotiable Instruments Act?
- (iii) Has the accused committed the offence punishable U/s.138 of Negotiable Instruments Act?
- (iv) If found guilty what is the order as to sentence?

7. **Point No.i to iii:-** The complainant was examined as PW1. He filed proof affidavit in tune with the complaint filed by him. In his chief examination he reiterated the entire case in his complaint. Exts.P1 to P5 documents were marked through PW1. Ext.P1 is the cheque of Rs.1,00,000/- dated 25.3.2024 bearing No.093866 of South Indian Bank Ltd., S.N.Puram Branch. The name of the accused is written in the right corner of Ext.P1 cheque. It is also seen that the signature was put over the name Faisal Kuttikkatt Abdulla.Ext.P2 is the cheque return memo issued from Indian Overseas Bank, Kodungallur Branch. It is seen that the cheque has been returned on 26.3.2024 for the reason 'Funds Insufficient'. Ext.P3 is the lawyer notice issued by PW1 to the accused. In Ext.P3 lawyer notice PW1 stated that the accused had obtained a loan of Rs.1,00,000/- from PW1 for a period of one month on 20.2.2024. Thereafter in order to pay back the loan amount Ext.P1 cheque issued to PW1. PW1 clearly stated in Ext.P3 notice that the accused had executed Ext.P1 cheque in his presence. But when Ext.P1

cheque was presented to Indian Overseas Bank, Kodungallur Branch wherein PW1 was holding an account that cheque was returned by the accused bank stating the reason 'Funds Insufficient' in the account of the accused to honour the cheque. Therefore PW1 demanded the accused to pay the cheque amount within 15 days from the date of receipt of Ext.P3 notice. Ext.P4 is the postal receipt wherein it is seen that the Ext.P3 notice was issued to the accused. Ext.P5 is the acknowledgment card which shows that the accused received Ext.P3 notice. The accused received the notice on 30.3.2024. But the accused did not issue a reply notice to PW1 after receipt of Ext.P3 notice.

8. During cross examination PW1 stated that he is working as a mechanic in the workshop. The cross examination of the accused is to the effect that PW1's cousin, Ratheesh obtained a loan of Rs.3 ½ lakhs from PW1 and the said Ratheesh went abroad and was doing business at abroad in the partnership with this accused. A mediation talk has been effected among PW1, Ratheesh and accused with respect to the amount payable by Ratheesh to PW1. As a security for the amount payable by Ratheesh the accused issued Ext.P1 cheque to PW1. More over towards the above said liability, the accused had paid Rs.74,500/- as two installment and the remaining amount is only Rs.25,500/-. Therefore as per accused Ext.P1 cheque has no valid consideration and the accused is not liable to pay any amount to PW1.

9. Other than the suggestion of the accused during cross examination that

the accused had issued Ext.P1 cheque as security for repayment of loan by Ratheesh the said fact is not supported by any oral or documentary evidence. If the version of the accused was correct he could have issued a reply notice to PW1 stating all these facts. He could have examined Ratheesh in this case for proving his case. Even though he stated that he paid Rs.74,500/- no evidence was adduced to prove the said payment. It is also not proved that the balance amount to be paid to PW1 is only Rs.25,500/-. The accused has no case that he had never issued a cheque to PW1 or he did not execute Ext.P1 cheque . Since there is no evidence to disprove execution of Ext.P1 cheque. From the available evidence I am satisfied that the execution of Ext.P1 cheque is proved. When the execution of the cheque is proved the presumption u/s 139 and 118(a) of Negotiable Instruments Act lies in favour of PW1. Then the burden of proof shifts to the accused. It is the duty of the accused to prove that there is no legally enforceable debt existing between PW1 and the accused . Once a cheque is executed and handed over by the accused to PW1 there is a presumption that the cheque is handed over for discharging the legally enforceable liability between the parties.

10. In **Ramesh v. Kothandaraman KHC Online 8080** held that “ *even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of the Act and in the absence of any cogent evidence to show that the cheque*

was not issued in discharge of the debt, the presumption would hold good”.

11. In Sri.Dattatraya v. Sharanappa 2024 KHC 6417 held that “*the cheque issued as a security the proceedings under Section 138 can be initiated even if the cheque was originally issued as security and was subsequently dishonoured owing to insufficient funds. The failure to honour the concerned cheque is per se deemed as a commission of an offence under Section 138 of the NI Act 1881.* Therefore, it can only be concluded that the complainant has proved his case from the available oral or documentary evidence. The accused has committed an offence under Section 138 of the Negotiable Instrument Act. Hence points 1 to 3 are answered in favour of the complainant.

12. **Point No.iv:-** From the conclusion arrived at upon the discussions made on point No.1 to 3 it is found that the complainant has been successful in establishing the guilt of the accused beyond reasonable doubt. Hence the accused is found guilty u/s 138 of Negotiable Instrument Act.

The accused is found guilty of the offence u/s 138 of Negotiable Instrument Act and he is convicted u/s 278(2) of BNSS and sentenced to undergo simple imprisonment till rising of court and to pay fine of Rs.1,00,000/-(One Lakh). If the fine amount is realised it shall be given to the complainant as compensation u/s 395 (1)(b) of Cr.PC. In default of payment of fine the accused shall undergo simple imprisonment for 3 months.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 16th day of April 2026.

Sd/-
Judicial I Class Magistrate-II
Kodungallur.

APPENDIX

Complainant Witnesses :-

PW1 – Jayanandan - 4.2.2026.

Exhibits for the Complainant witnesses :-

P1 – Original Cheque No.093866 dated 25.3.2024 of South Indian Bank Ltd., Panangad P.O., S.N.Puram Branch.

P2 – Dishonour memo dated 26.3.2024

P3 – Copy of lawyer notice dated 28.3.2024

P4 – Postal receipt dated 28.3.24

P5 – Acknowledgment card dated 30.3.24

Defence Witnesses:-

NIL

Exhibits for the Defence Witnesses :-

Nil

Id/-
Judicial I Class Magistrate-II
Kodungallur.

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