

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE - I
NEYYATTINKARA**

Present: Smt.Sumitha.M.S,

Judicial First Class Magistrate-I

Thursday, 19th March 2026 / 28th Phalguna 1947

CC.1847/2015

Complainant/Prosecution : Devarajan, aged 64 years, S/o.Bhaskaran Nadar, Deva Bhavan, Pattiyakkala Kizhakkarikathu Veedu, Venpakal, Neyyattinkara.

(By Adv.Sri.G.Muraleedharan)

Accused Shibu Shanmugham, aged 47 years Shantha Nivas, Mulloor.P.O., Mulloor, Thiruvananthapuram.

(By Adv.Sri.K.Anil Kumar)

Offence : U/s. 138 of the Negotiable Instrument Act.
Plea : Not Guilty
Finding : Not Guilty
Order : The accused is acquitted u/s.255(1) of the Code of Criminal Procedure for the offence punishable u/s.138 of the Negotiable Instruments Act.

DESCRIPTION OF ACCUSED

Name of accused	Father's Name	Age	Village	Taluk
Shibu Shanmugham	Shanmugham Asari	47	Vizhinjam	Neyyattinkara

DATES OF

Occurrence	Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or Order	Explanation for the delay
30.2.2013	06.9.2013	03.5.2023	03.5.2023	11.7.2023	19.03.2026	19.03.2026	Nil

This case has been finally heard on 19/03/2026 and this court pass the following on the same day.

JUDGMENT

This is a case instituted on a complaint under Sec.142 of the Negotiable Instruments Act.

2. The complainant's case is briefly stated below:-

The accused had borrowed Rs.3,00,000/- (Rupees Three Lakhs Only) from the complainant and in discharge of the legal liability the accused issued a cheque bearing No.001561 dated 30.05.2013 for Rs.3,00,000/- (Rupees Three Lakhs Only) drawn on the Central Bank of India, All Saints College Branch, Thiruvananthapuram. On presentation for collection before the State Bank of Travancore, Nellimmodu Branch, the said cheque was dishonoured for the reason "insufficiency of funds" on 02.07.2013 and was returned with dishonour memo. Statutory notice of demand was issued to the accused on 31.07.2013. The accused accepted the notice on 10.08.2013. The accused refused to make payment. Thus, the accused was alleged to have committed the offence punishable under Sec.138 of the Negotiable Instruments Act.

3. After taking cognizance of offence, process was issued. On appearance of the accused, copies of relevant prosecution records were furnished to him. He was enlarged on bail. He was represented by a Counsel. Particulars of offence were read over and explained to him, to which he pleaded not guilty. The case was then proceeded for trial.

4. On the complainant's side, the complainant himself was examined as PW1 and marked Exts.P1 to P6. The accused was questioned under Section 313 (1) (b) of the Code of Criminal Procedure. He denied all incriminating circumstances brought out in evidence and further stated that he had not issued any cheque in favour of the complainant. No evidence was adduced from the side of the accused.

5. Heard the Learned Counsels for the complainant and the accused.

6. The points that arise for consideration were:-

- (i) Whether Ext.P1 cheque was drawn and issued by the accused in discharge of a legally enforceable debt?
- (ii) Whether Ext.P1 cheque was dishonoured due to insufficiency of funds?
- (iii) Whether the complainant has complied with all the statutory requirements?
- (iv) Whether the accused has committed an offence u/s.138 of N.I. Act?
- (v) Whether the accused is guilty under section 138 of the N.I. Act?
- (vi) What is the Sentence/order, if any, to be passed?

7. Point No (i):- PW1 was the complainant who filed affidavit in lieu of examination in chief. He deposed that the accused borrowed Rs.3,00,000/- (Rupees Three Lakhs Only) from him on 30.02.2013 on a promise that its repayment would be done within 3 months. On expiry of 3 months, ie., on 30.05.2013, he demanded the repayment of the debt and then the accused issued a cheque dated 30.05.2013 drawn on Central Bank of India, All Saints College Branch, Thiruvananthapuram for the said liability. The amount was borrowed at the house of PW1. The cheque bearing No.001561 dated 30.05.2013 was marked as Ext.P1. On presentation for collection before the State Bank of Travancore, Nellimoodu Branch, wherein the complainant maintains his account, Ext.P1 was dishonoured for the reason "funds insufficient" on 02.07.2013. Ext.P2 was the dishonour memo dated 02.07.2013 received from State Bank of Travancore, Nellimoodu Branch. PW1 personally intimated about the dishonour of the cheque to the accused. Ext.P3 was the statutory demand notice dated 31.07.2013 issued by PW1 through his Counsel. On 10.08.2013 the notice was accepted by the accused. Ext.P4 was the postal receipt of sending Ext.P3 notice. Ext.P5 was the acknowledgment card to prove the acceptance of notice by the accused. PW1 deposed that even after receiving Ext.P3, the accused had failed to repay the amount as per Ext.P1.

8. In cross examination, PW1 testified that he was engaged in driving and as a land broker during the time of transaction in the case. Further, he had an Ambassador Car then, eventhough he was deprived of any taxi permit. He admitted that including the instant case, 3 cases u/s.138 of the Negotiable Instruments Act, is pending before various Courts, arraying him as the complainant. When the Learned Counsel for the accused specifically asked, PW1 replied that in his bank account in the State Bank of Travancore, the present State Bank of India, there was more than Rs.10,000/- (Rupees Ten

Thousand Only) balance then and expressed his willingness to produce the bank account on demand of this Court. According to him, the accused was a carpenter residing adjacent to him and was in the habit of receiving money from him on credit but he expressed his unawareness regarding the necessity of the accused in receiving Rs.3,00,000/- (Rupees Three Lakhs Only) from him. Further, the accused made demand for the sum immediately before 3 days of actual payment of the sum that he had only 2 Lakhs rupees with him on the date of demand by the accused and it was only after arranging Rs.1,00,000/- from his brother in law, one Rajan, he could procure the amount. PW1 further testified that he was in the habit of keeping money both as cash and in the bank account and the aforementioned Rs.2,00,000/- was kept with him as cash in order to meet contingencies, if any occur. He expressed his inability to recollect whether an amount of Rs.1,00,000/- was borrowed from the aforementioned Rajan for the purpose of advancing sum to the accused. PW1 added that the money transaction was witnessed by his wife and no security was received from the accused during the time of money transaction and it was on the expiry of 3 months after the money transaction, Ext.P1 cheque was issued, which was also only witnessed by his wife. Further, it was when he demanded back the amount, the accused had handed over the already filled cheque to him by putting signature in his presence. He expressed his unawareness as to whether the ink in which the signature was put and the entries in the cheque were made was one and the same and expressed his inability to recollect the colour of the cheque and inks in which the entries were made. He denied the suggestion made by the Learned Counsel for the accused that he had no financial ability to pay the sum as stated in the complaint and there was no transaction between him and the accused. Further, denied the suggestion made by the Learned Counsel for the accused that he had misused the blank cheque given by the accused herein to one Santhosh for securing a debt of Rs.30,000/- (Rupees Thirty Thousand Only) and the case

is a fabricated one.

9. Thus, from the evidence adduced and the arguments of the Learned Counsel for the accused, this Court is of the opinion that the defence has no case that the accused had not executed or signed Ext.P1 cheque, except the contention that the accused had no financial transaction with the complainant and the cheque issued by the accused to secure his debt of Rs. 30,000/- (Rupees Thirty Thousand Only) towards one Santhosh was misused by the complainant against the accused. In Ext.P6 reply notice also the accused denied financial transaction between him and the complainant as alleged. As the case is under section 138 of the Negotiable Instruments Act, the presumptions u/s.118 and 139 of the Act is available to the complainant. But it is pertinent to note that the presumption is a rebuttable one. As against the defence raised by the Learned Counsel for the accused that Ext.P1 lacks consideration that there is no legally enforceable debt in existence as on the date of drawing the cheque, PW1 in his evidence testified that the accused borrowed Rs.3,00,000/- (Rupees Three Lakhs Only) from him on 30.02.2013 on a promise that its repayment would be done within 3 months and on expiry of the said 3 months, ie., on 30.05.2013, he demanded the repayment of the amount and then the accused issued Ext.P1 cheque. The point is that as per the version of the complainant, the money transaction between him and the accused was happened on 30.2.2013, which is not a date in the calendar that the day 30th February is an impossibility. The complaint was silent as to the date of money transaction and the same was only revealed from the evidence of the complainant, PW1. The mention of such a date in the evidence of PW1, the sole evidence from the part of the complainant, cannot be termed as a typing mistake that the same was confirmed by PW1 by stating that he had waited exact 3 months from the date of money transaction and it was only on 30.05.2013, he demanded back the amount and the accused issued Ext.P1 cheque bearing the date, 30.05.2013. Thus, the transaction alleged to have made on an impossible

date cannot be termed as a legally enforceable debt.

10. It is seen that during cross examination of PW1, the defence challenged his source to advance the alleged amount on the alleged date. PW1 deposed that he was keeping Rs. 2,00,000/- (Rupees Two Lakhs Only) with him, for meeting his contingencies, even during the demand made by the accused three days prior to the original date of transaction, and he had arranged the remaining Rs. 1,00,000/- (Rupees One Lakh Only) from his brother-in-law, one Rajan, and thereafter taken an inconsistent stand by testifying that he was unable to recollect whether the amount was borrowed from the said Rajan for the purpose of advancing money to the accused. Anyhow, PW1 could not satisfactorily explain his financial source or ability in the cross examination.

11. Now the question is whether the accused has rebutted the presumption u/s.139 of Negotiable Instruments Act. In the case at hand, the defence canvassed by the accused is that there is no legally enforceable debt as on the alleged date of drawing of the cheque in between him and the complainant. In the light of the aforementioned discussion, this Court is of the opinion that the accused had shaken the financial capacity of the complainant in advancing the sum as alleged and the date of transaction of the amount, which constituted as the legally enforceable debt in the instant case, was alleged to have made on an impossible date. This Court is of the view that the aforementioned facts are enough to lead to the irresistible conclusion that the presumption available to the complainant u/s.139 of Negotiable Instruments Act stands rebutted. Thus, it can be seen that the case of the accused has more probability than that of the complainant. Therefore, it can be said that there was no legally enforceable debt between the complainant and the accused while executing Ext.P1 cheque. Thus point No.1 is found in favour of the accused.

12. Point No(ii): PW1 further stated that Ext.P1 cheque was dishonoured

due to the reason "funds insufficient" on 02.07.2013. Ext.P2 dishonour memo was in support of it. No contra evidence has been adduced to disprove the same. Hence, it is held that Ext.P1 cheque was dishonoured due to the reason funds insufficient, which is sufficient to attract an offence under Section 138 of the Negotiable Instruments Act. This point is found in favour of the complainant.

13. Point No(iii):- PW1 further stated that statutory notice of demand was issued to the accused on 31.07.2013 and was accepted by the accused on 10.08.2013. Exts.P3 to P5 were in support of that. The complaint was filed on 06-09-2013, which was within the statutory period. So it is evident that the complainant has complied with all the statutory requirements. This point is found in favour of the complainant.

14. Point No (iv):- In the light of the discussions on point Nos. (i) to (iii), this Court could not find that Ext.P1 cheque was drawn and issued by the accused in discharge of a legally enforceable debt. In *M/S Kusum & Ingots & Alloys Ltd., Vs. M/S Pennar Peterson Securities Ltd.*, AIR 2000 SC 954, the Hon'ble Apex Court has held as follows :-

10. On a reading of the provisions of S.138 NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are :-

(i). a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability.

(ii). that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

(iii). that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the

cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

(iv). the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

(v). the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase “debt or other liability” means a legally enforceable debt or other liability.

The same position of law was reiterated by the Hon’ble Apex Court in *Samshad Beegum Vs. B.Mohammed*, (2008) 13 SCC 77, and held that the absence of any one of the ingredients of section 138 of NI Act is fatal to the case. In the instant case, eventhough the complainant established dishonour of Ext.P1 cheque due to the reason funds insufficient in the account of the accused and the accused refused to make payment even after accepting the statutory notice, the primary ingredient u/s.138 of the NI Act, that is, Ext.P1 cheque was issued by the accused for discharging a legally enforceable debt was not brought out. Thus, the accused cannot be made liable for an offence punishable u/s.138 of the Negotiable Instruments Act.

15. Point. No. (v):- In the light of the findings on point Nos. (i) to (iv), the accused is found not guilty of the offence u/s. 138 of the Negotiable Instruments Act. The accused is therefore acquitted of that offence u/s. 255(1) of the Code of Criminal Procedure.

16. Point No. (vi):- The accused is found not guilty of the offence punishable u/s.138 of the Negotiable Instruments Act.

In the result, the accused is acquitted under section 255 (1) of the Code of Criminal Procedure for the offence punishable under section 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 and pronounced by me in open Court on this the 19th day of March 2026].

JUDICIAL FIRST CLASS MAGISTRATE - I,
Neyyattinkara

APPENDIX

Witness for the Complainant

PW1- Devarajan

Exhibits for the complainant

P1 - Cheque dated 30.05.2013. (proved through PW1).

P2 - Dishonour memo dated 02.07.2013 (proved through PW1).

P3 - Notice dated 31.07.2013 (proved through PW1).

P4 - Postal receipt dated nil (proved through PW1).

P5 - Acknowledgment Card dated 16.08.2013 (proved through PW1).

P6 – Reply notice dated 02.01.2014 .

Witnesses for Accused: Nil

Exhibits for accused :- Nil

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