

**IN THE COURT OF THE JUDICIAL FIRST CLASS  
MAGISTRATE-II, NEDUMANGAD.**

**Present:-** Akshaya.P.R., Judicial First-Class Magistrate-II,  
Nedumangad

Wednesday, 30th day of July, 2025/ 8<sup>th</sup> Sravana, 1947.

**ST 2210/2014**

Complainant	:	Surendran, S/o. Damodaran, S.S. Mandiram, Bharathannoor P.O. Nedumangad.  <i>By Advocate Sri. A.S. Sujithkumar</i>
Accused	:	Hashim. M, Murshid Restaurant and Chicken corner, Pangod P.O. Nedumangad.  Advocate Sri. V.A. Baburaj
Charge	:	Offences punishable U/s. 138 of Negotiable Instruments Act
Plea	:	Not guilty
Finding	:	Guilty
Sentence	:	The Accused is sentenced to undergo imprisonment till the raising and shall also to pay a fine of Rs. 5, 50, 000/- (Rupees Five Lakhs Fifty Thousand Only) and in default to pay the fine amount, to undergo simple imprisonment for a term of three months. On recovery of the fine amount, the same is directed to be paid to the Complainant, as compensation under S. 357(1) of Cr. PC.

**Description of accused**

Sl. No.	Name of the Police Station and the Crime No. of the offence	Name	Father's name	Occupation	Residence	Age
1	2	3	4	5	6	7
1	Not applicable	Hashim	Abdul Majeed	coolie	Kallara	50.

**DATE OF**

occurrence	Report of complaint	Apprehension of accused	Released on bail	Commitment	Commencement of trial
8	9	10	11	12	13
26.9.2013	26.11.2013	23.2.2019	27.7.2015	Nil	23.7.2016
Commencement of evidence	Close of trial	Sentence or order	Service of copy of judgment or finding on accused	Expln. for delay and remarks	Period of detention
13(A)	14	15	16	17	18
23.2.2019	26.7.2025	30.7.2025	30.7.2025	No delay	Nil

This case having been finally heard on 26.7.2025 and the court on 30.7.2025 delivered the following:

**J U D G M E N T**

1. The instant complaint was filed u/s 190 of Code of Criminal Procedure, 1973 (herein after referred as CrPC) alleging the offence punishable u/s 138 of Negotiable Instrument Act, 1881 (herein after referred as the NI Act).

2. The crux of the allegations in the complaint are as follows:

The case of the complainant is that the accused owe an amount of Rs. 3,00,000/- to the complainant. In pursuance of the said transaction, on 26/09/2013, the accused had issued a cheque bearing no. 095301, drawn on his account with Indian Overseas Bank, Bharathanoor branch for a like amount on assurance that the cheque will be honoured when

presented for encashment. The complainant presented the cheque for encashment through his account with Indian Overseas Bank Bharathanoor branch and the same was returned unpaid with remark "Fund insufficient". Hence the complainant has issued notice to the accused demanding payment of the amount mentioned in the cheque. The notice was delivered to the accused but he has not sent any reply or repaid the amount. Owing to these reasons, the Accused is liable for the offence punishable u/s 138 of the NI Act and hence the complaint is filed.

4. On receiving the summons, the accused appeared before the court. After serving the copies of relevant records, the Particulars of Accusation was read over and explained to the accused. To which he pleaded not guilty and claimed to be tried. Therefore, the case was posted for the Complainant's evidence. From the side of the complainant, PW1 was examined. The documents produced from his side were marked as Ext P1 to P5(a).

5. After the completion of the evidence for the Complainant, the accused was questioned under section 313 (1) (b) of CrPC. The Accused was given opportunity to explain the circumstances appearing in evidence against him. He denied all incriminating circumstances appearing in evidence against him. Then the case was posted for defence evidence. No witness was examined and Ext D1 to Ext D3 were marked through PW1.

6. Heard the learned counsel representing the complainant and the accused.

7. In view of the materials on record, the following points are formulated for consideration:

1. Did the Accused commit an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881?
2. What is the order or punishment if any to be awarded?

**8. Point No. 1:**

The Complainant in this case has mounted the witness box and was examined as PW1. He deposed in tune with his petition averments. According to PW1, the accused owe an amount of Rs.3,00,000/-. To discharge the debt occurred out of the transaction between them, he issued the cheque marked as Ext P1. But when the cheque was presented for collection, the same was dishonoured stating the reason “Fund Insufficient”. The accused had not repaid the amount even on demand from the complainant. These triggered the filing of the application under section Section 138 of the Negotiable Instrument Act,1881 (hereinafter referred as NI Act,1881). In the light of the facts averred, the relevant provisions of the NI Act,1881 are extracted below for better understanding.

**Section 138:** *Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—*

(a) *the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

(b) *the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) *the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

*Explanation. For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.*

**Section 139.** *Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*

9. Further, the Honourable Apex Court in *Gimpex Pvt. Ltd. (M/s.) v. Manoj Goel* ILR 2021 (4) Ker. 467 held the condition pre-requisites needed to attract an offence under Section 138 of the NI Act, 1881.

*“25. The ingredients of the offence under S.138 are:*

*(i) The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;*

*(ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability;*

*(iii) Presentation of the cheque to the bank;*

*(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account;*

*(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and*

*(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.”*

*(Emphasis supplied)*

10. These being the basic forensic principle we have to keep in mind while dealing with the case at hand, let us look in detail in to the factual facets to determine whether the accused had committed an offence as alleged by the complainant. When the complainant was examined as PW1, he had clearly deposed in tune with the allegations in the complaint especially regarding the transaction between the parties, as well as the issuance of the cheque.

11. Then during the cross- examination, the learned counsel for the accused had claimed that the accused had discharged the debt partially and therefore the case averred is false. In order to support the disputation, Ext D1 to D3 were marked from the side of the accused through PW1. But this was specifically refuted by PW1 stating that that the accused had apart from the transactions mentioned, owe an amount of 2,50,000/- and 50,000/- and for which he has issued Ext P1.

12. At this point, it shall also be noted that the accused herein has not even disputed the signature or execution of the cheque during the cross examination. But only contented that no transaction as alleged in the complaint actually exist between the parties as alleged in the complaint and the cheque was obtained on coercion from the accused. But the accused had admittedly preferred no complaint against this alleged fact.

13. Whatever be, in the given circumstances, when the signature and execution of the cheque is not categorically denied by the accused, I believe it as the bounden duty of the accused to show under what circumstances the cheque was issued to the complainant and how the complainant became the holder in due course of the cheque. This was so held by the honourable Supreme court of India in ***Bhupesh Rathod v. Dayashankar Prasad Chaurasia and Anr.*** AIR 2021 SC 5726 as follows:

*“17. We must say at the inception that the respondent not having disputed his signatures on the cheques, it was for the respondent to show in what circumstances the cheques had been issued, i.e., why was it not a cheque issued in due course. The words of S.139 of the NI Act are quite clear that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque of the nature referred to in S.138 for the discharge, in whole or in part, of any debt or other liability. The respondent has not set up a case that the nature of transaction was of the nature which fell beyond the scope of S.138. Other than taking a technical objection, really nothing has been said on the substantive aspect.”*

(Emphasis supplied)

14. Here, in the facts, no such a satisfactory explanation seen offered by the defence as to how the cheque of the accused came in the hands of the complainant. Further Ext P4 notice do not reveal that the cheque was obtained under coercion. Rather it was mentioned that even on returning the amount, the complainant had not returned the cheque. Thus, the accused had not raised a consistent contention as to how the cheque reached the hands of the complainant.

15. When the case was considered for hearing, the major refutations raised by the learned counsel for the accused were, firstly that the debt

alleged herein is not a legally enforceable one. Secondly that the date of transaction is not clearly mentioned in the complaint. Then finally that Ext P4 notice was not issued as a reply to the statutory notice.

16. Coming to the first contention, according to the counsel the complainant has not produced the license of the lending money or to conducting the chitty business. Hence the debt is not legally enforceable one. But as the issuance of cheque remaining not proved, the burden is on the accused to prove the contention. Reliance placed on the decision of the Honourable High court of Kerala in *Parameswaran v. State of Kerala*, 2024 (6) KHC 27.

17. Even otherwise the contention raised by the accused will not make the debt unenforceable. The forensic principle regarding this as well as the contention raised by the accused regarding the obtaining of cheque on coercion was well settled and is reiterated and elucidated by the Honourable High Court of Kerala by citing the earlier precedents of the court in *Priyamvada K v. M Rahufina*, 2024 KER 1162 : 2024 (1) KHC 245 as follows:

15. *Be that as it may, from the rival contentions and the aforementioned circumstances, what could be concluded is that, if at all a chit was conducted by the petitioner, it was without any licence. The contention of the learned counsel for the petitioner is that, if so, any money paid by the 1st respondent towards such an illegal chit transaction cannot be a valid consideration for Ext.P1 cheque. It is accordingly*

submitted that the burden to rebut the presumption under S.139 of the N.I. Act was rebutted by the petitioner.

16. In **A. N. Nadarajan v. K. G. Nadarajan, - 1999 (2) KLT 512**, this Court held that a cheque issued for payment of money due in a chit transaction, which has been conducted in violation of the Kerala Chitties Act, 1975 would not be an illegal transaction or against public policy and therefore a prosecution on the basis of such a cheque is legal. I do not find any reason to deviate from the said view. **When the money is due under a chit transaction and the foreman issues a cheque for the payment of such a debt, the fact that the chit was conducted without permission shall not be a reason to hold that the debt is not legally enforceable.** Therefore, the contention of the petitioner in that regard cannot be countenanced.

17. In **Dr. Jyothi Prasad Bhat v. K. Sundara Rajan and Another, - 2013 (3) KHC 141**, the accused in a prosecution for an offence under S.138 of the N.I. Act raised the contention that the cheque was obtained by the complainant by force and coercion. The accused, however, did not adduce any evidence to prove the allegations of force and coercion. This Court held that as long as the accused fails to prove his allegation that the execution of the cheque is shrouded by vitiating factors like threat or coercion, the presumption regarding consideration cannot be avoided. Here, the petitioner did not adduce any evidence to prove her allegation that Ext.P1 was obtained from her under threat and coercion. From the evidence tendered by the prosecution, no circumstance sufficient to probabalise the case of the petitioner is made out as well. In these circumstances, it can only be held that the courts below rightly had rejected the plea of the petitioner that Ext.P1 cheque is vitiated by threat and coercion.

(Emphasis supplied)

18. In the case at hand, no record is brought before the court to hold that the complainant has conducted illegal money transactions than the submission mentioned afore and the documents marked as Ext D1 to D3.

On a bare reading of the precedents cited afore, it is clear that a debt cannot be termed as illegal as the complainant has not produced license to conduct chitty transaction. Even otherwise, as mentioned earlier, though Ext D1 to D3 are produced, those are silent pertaining the nature of transaction between the parties. On the other hand, the accused had admitted the money transactions between the parties and the issuance of the cheque. Therefore, it is clear that the transaction cannot be held illegal solely for the contention raised by the accused.

19. Then regarding the contention that Ext P4 reply notice was not issued intending as a reply notice to Ext P3. I believe the contents of the notice itself will speak against this argument. Also, the same seen issued by the very same counsel who is conducting the case for the accused. In Ext P4, though the amount mentioned is Rupees two lakhs, the transaction between the parties remains admitted.

20. Finally, pertaining the non- mentioning of the date of transaction in the complaint as well as Ext P3 notice. The complaint filed in this case clearly mentions the date on which the cheque was issued. Also has produced sufficient records to prove that Ext P1 was dishonoured for want of money in the account kept by the accused and that the complainant has demanded the money from the accused. Here the cause of action emanates from the dishonour of the cheque and on the subsequent non payment of

the amount by the accused on demand by the complainant. In order to satisfy the statutory provision, these much are only necessary. There is no hard and fast rule in the statute that the complainant shall specifically contain each and every date on which money was handed over.

21. Therefore, as the issuance of cheque and the signature on it is not consistently disputed and also as the accused has failed to establish that the debt alleged is not legally recoverable one, I believe no further survey need to be conducted to hold that the essentials under section 138 of the NI Act is fulfilled here to attract the presumption under section 139. Thus, now as it is trite, duty is casted upon the accused to rebut the presumption to hold that the cheque was not issued in discharge of a liability or its part. As the accused is expected to rebut the shall presumption enshrined under section 139 NI Act, these stray disputations, in my opinion, are incapable to make any difference to the case of the complainant and I believe those lacks force to rebut the presumption.

22. The decision of the Honourable Supreme Court in ***Rohitbhai Jivanbhai Patel v. State of Gujarat***, AIR 2019 SC 1876 gains relevance at this point. In this case it was made clear by the Honourable Apex Court that a mere denial or mere creation of doubt by the accused cannot be considered to be enough to rebut the presumption as envisaged under Section 139 of the NI Act. In the scheme of the NI Act, mere creation of

doubt is not sufficient.

23. On a clear analysis of the given facts at hand, I am of the opinion that here the accused is not even successful in creating a doubt regarding the non- execution of the Cheque. Additionally, he has not even challenged the execution or signature of the cheque in issue. Considering the facts of the case and in the absence of any contrary evidence to counter-vail the statutory presumption, I believe that the forensic principles afore cited shall be strictly followed and I am duty bound to hold that the protection given to the complainant under the statute remains unimpeded.

24. Thus, from the discussions afore, I am satisfied that the debt is legally recoverable one. Further, it is admitted by the Complainant that when he was intimated as to the dishonour of the Ext. P1 via Ext. P2 Dishonour Memo, he issued Ext. P3 lawyers Notice to the Accused, demanding the payment of the amount covered by Ext. P1 Cheque. To which the accused had given reply notice marked as Ext P4. Despite of the service of statutory notice, the Accused refused to clear the debt. From these facts, it can safely be concluded that all the essential pre-requisites for constituting the offence under S. 138 of the Negotiable Instruments Act are attracted in this case and the accused is not successful in rebutting the presumption enumerated under section 139 of the NI Act. Hence, the

Accused is found guilty of having committed the offence punishable under S. 138 of the Negotiable Instruments Act.

Point No.1 found against the Accused.

**25. Point No.2:**

Ext. P1 Cheque dated 26.09.2013, cover an amount of Rs. 3,00,000/- (Rupees Three lakhs Only). Now about 12 years got lapsed and the Complainant was denied of enjoying not only the money secured by the said cheque, but also its natural incidents like its interest. Further, she was driven to have a legal recourse of this kind. So, the Complainant has to be adequately compensated, by taking into account all these facets.

26. The Honourable Supreme Court has in *Vijayan R. v. Baby and Another*, - 2012 (1) SCC 260, held that in all cases of conviction for an offence under S.138 of the NI Act, the courts shall lean in favour of ordering compensation by imposing fine up to twice the cheque, amount keeping in mind the cheque amount and the interest thereon at the rate of 9% per annum. Considering all these aspects, I find a sentence of fine to the tune of Rs. 5, 50, 000/- (Rupees Five Lakhs Fifty Thousand Only) will meet the ends of justice.

***In the result***, the Accused is found guilty of the offence punishable under S. 138 of the Negotiable Instruments Act and he is convicted for the

said offence under S. 255(2) of the Code of Criminal Procedure. 1978. The Accused is sentenced to undergo imprisonment till the raising and shall also to pay a fine of Rs. 5, 50, 000/- (Rupees Five Lakhs Fifty Thousand Only). In default to pay the fine amount, the accused shall undergo simple imprisonment for a term of three months. On recovery of the fine amount, the same is directed to be paid to the Complainant, as compensation under S. 357(1) of Cr. PC.

*Directly typewritten by me in my personal laptop, corrected and pronounced by me in the open court this the 30<sup>th</sup> day of July, 2025.*

*Sd/-*  
Judicial First-Class Magistrate-II,  
Nedumangad.

### **APPENDIX**

#### **Witnesses for the complainant :**

PW1	Surendran	Complainant
PW2	Manager, IOPB, Bharathannoor branch	Manager

#### **Exhibits for the complainant :**

Sl.No.	Exhibit Number	Description
1	P1	Original cheque dated, 26.9.2013 proved by PW1 on 23.2.2019
2	P2	Dishonour memo dated, 31.10.2013 proved by PW1 on 23.2.2019
3	P3	Copy of Advocate notice
4	P4	Reply notice dated, 30.11.2013 proved by PW1 on 23.2.2019
5	P5	Account Statement dated, 27.10.2023 proved by PW2 on 27.10.2023
5(a)	P5(a)	Account Statement proved by PW2 on 27.10.2023

**Defence Exhibits:**

Sl. No.	Exhibit Number	Description
1	D1	Receipt Card
2	D2	Receipt Card
3	D3	Receipt Card

**Material objects marked: NIL**

Sd/-

Judicial First-Class Magistrate-II,  
Nedumangad

(True copy)

Judicial First-Class Magistrate-II,  
Nedumangad