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

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

Wednesday, 25th day of March,2026/ 4th Chaithra,1948

CC1415/2016

Complainant	:	Remakumari, D/o.Santhamma, Ushuas,Manikyapuram,Puthukulangara.P.O.Nedumangad. By Advocate Sri. SY Mohan KumarKiran
Accused	:	Anshad, S/o.Abdul Jabbar, Kuzhivilakathu Kadayilveedu, Near Government hospital,Nedumangad.P.O. Adv.Sri. SK Renju Bhaskar
Charge	:	Offences punishable U/s. 138 of Negotiable Instruments Act
Plea	:	Not guilty
Finding	:	Not guilty
Sentence	:	The Accused is found not guilty of the offence under section 138 of the NI Act and is accordingly acquitted u/s.255(1) Cr.P.C. The bail bond executed by the accused is hereby cancelled and he is set at liberty.

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	Ansahd	AbdulJabbar	business	Nedumangad	32

DATE OF

occurrence	Report of complaint	Apprehension of accused	Released on bail	Commitment	Commencement of trial
8	9	10	11	12	13
14.6.2016	7.7.2016	17.3.2018	11.9.2017	Nil	17.3.2018
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
23.11.2019	19.3.2026	25.3.2026	25.3.2026	No delay	Nil

This case having been finally heard on 19.3.2026 and the court on 25.3.2026 delivered the following:

JUDGMENT

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 herein as well as the complainant were friends. Then the accused borrowed an amount of Rs.5,00,000/-(Rupees Five lakhs only) from the complainant. In order to discharge the debt, the accused had executed and issued a cheque bearing no.902307 in favour of the complainant drawn on State Bank of India, Thiruvananthapruam branch. When the Complainant presented the cheque for encashment to Syndicate bank, Nedumangad branch the same was dishonoured stating 'funds insufficient". Hence the complainant has issued a notice to the accused demanding payment of the amount mentioned in the cheque. The notice was delivered to the accused but he has not 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. The accused appeared before the court. After serving the copy of relevant records, the Particulars of accusation for the offence was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. Then, the case was posted for Complainant's evidence. She was examined as PW1. Ext P1 to P5 were marked. However PW1 has not appeared thereafter and the evidence was accordingly closed. DW1 and 2 were examined from the side of defence and the document produced by DW2 was examined as Ext X1 to X3.

5. After closing 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 evidence was adduced from the side of the accused.

6. Heard the learned counsel representing the accused.

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

1. Whether the complainant is successful in establishing the offence alleged against the accused under Sec. 138 of the Negotiable Instruments Act, 1881?

2. What is the appropriate sentence to be awarded, if the Accused is found guilty?

8. Point No. 1 and 2:

The cause in which triggered the filing of the complaint is that the accused owe an amount of Rs.5,00,000/- and in discharge of the debt, 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. 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. 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 and the evidence on board to determine whether the accused had committed an offence as alleged by the complainant. Going by the case put forward by the complainant, it is her definite case that the accused had borrowed an amount of ₹5,00,000 from her and, in discharge of the said legally enforceable debt, issued a cheque in her favour. PW1, the complainant, was examined and she deposed in tune with the averments contained in the complaint, reiterating that the accused had borrowed the said amount and had issued the cheque towards repayment of the same.

10.In the case on hand, after the evidence on the side of the complainant was closed, she failed to appear before this Court despite repeated issuance of notices. Accordingly the counsel has submitted no instruction for the complainant. Thereafter, the accused entered the witness box as DW1 and categorically deposed that he had never borrowed any amount from the complainant and had never issued any cheque in her favour. He further asserted that he does not maintain any bank account as alleged in the complaint. This specific contention raised by the accused defenitely strikes at the very root of the complainant’s case.

11.In order to substantiate the said contention, the defence examined the Branch Manager of the State Bank of Travancore, from where the cheque in question was allegedly issued. Through the said witness, Exhibits X1 to X3 were marked. The Branch Manager, being a competent and independent witness, specifically deposed before the Court that the cheque in question had in fact been issued by the bank to one Mr. Anwar, residing at Shanimma Manzil, Chekkekonam, Alikode, who is the son of one Mr. Ahmad Kannu.

12.A careful perusal of Exhibits X1 to X3 series clearly reveals that the account details and identity of the said Anwar are entirely different from those of the accused arrayed in the present case. There is absolutely no material on record to connect the accused with the said account or with the issuance of the cheque in question.

13.Further, a comparison of the signatures assumes considerable importance in the present case. The signature found in Exhibit P1 cheque is seen to be similar to the signatures available in Exhibits X1 to X3. However, the said signatures are entirely different and distinct from the signatures appearing in Exhibit P3 acknowledgment card, the vakalath filed on behalf of the accused, as well as the bail bond executed by him before this Court. This material discrepancy in signatures probabilises the defence case that the cheque does not belong to the accused. Thus, the evidence adduced from the side of the defence, particularly the testimony of the Branch Manager supported by documentary evidence, successfully discredits the version put forward by the complainant.

14. In such circumstances, this Court is of the considered view that the complainant has failed to establish the essential ingredients of the offence under Section 138 of the NI Act, viz the issuance of the cheque by the accused and the existence of a legally enforceable debt.

15.Accordingly, it can be conclusively held that the the complainant has failed to prove her case with sufficient materials and the benefit shall be extended to the accused. Accordingly the accused shall be acquitted and shall be set at liberty.

In the result, the Accused is found not guilty of the offence punishable under S. 138 of the Negotiable Instruments Act and he is acquitted u/s. under S. 255(1) of the Code of Criminal Procedure. 1978.Bail bond executed by the accused is hereby cancelled. Accused is set at liberty.

Dictated to the confidential assistant ,transcribed and typed by her, corrected and pronounced by me in the open court this the 25th day of March, 2026.

Sd/-

Judicial First-Class Magistrate-II,

Nedumangad.

APPENDIX

Witnesses for the complainant :

PW1	Remakumari	Complainant

Exhibits for the complainant :

Sl.No.	Exhibit Number	Description
1	P1	Cheque proved by PW1 on 23.11.2019
2	P2	Memo proved by proved by PW1 on 23.11.2019
3	P3	Lawyers notice dated,21.6.2016 proved by PW1 on 23.11.2019
4	P4	Postal receipt proved by PW1 on 23.11.2019

5	P5	Acknowledgment proved by PW1 on 23.11.2019

Witnesses for defence:

DW1	Anshad	Accused
DW2	Abhilash	Bank manager

Exhibits produced by third party:

Sl.No.	Exhibit Number	Description
1	X1	Account opening form proved by DW2 on 13.3.2026
2	X2	Specimen signature attested form proved by DW2 on 13.3.2026
3	X3	Photocopy of Cheque proved by DW2 on 13.3.2026

Material objects marked: NIL

Sd/-

Judicial First-Class Magistrate-II,

Nedumangad

(True copy)

Judicial First-Class Magistrate-II,

Nedumangad