IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE I. SULTHAN BATHERY

Present:- Smt. Safeena C.C,
Judicial First Class Magistrate-I,
Sulthan Bathery.

Saturday 30th day of May 2026
9th day of Jyaishta, 1948

ST 974/2018

Complainant	:	N.V. Agencies, Cement Dealer, Mysoor-Pulpally road junction, Kottakunnu, S.Bathery. Rep by Managing Partner, Lali N Baby, aged 55 yrs, W/o N.V. Baby, Nirappath House, Kottakunnu, S.Bathery. (By Adv. M.P Paulose)
Accused	:	Raju Mathew, Kocharakkal House, Unnukal Post, Kothamangalam. (By Adv. K.M. Manoj)
Charge	:	U/s 138 of Negotiable Instruments Act
Plea	:	Not guilty
Finding	:	Not guilty
Sentence or order	:	Accused acquitted u/s 255(1) Cr.P.C.

STATEMENT UNDER RULE 132 OF CRIMINAL RULES OF PRACTICE

Serial Number	:	ST 974/2018
Name of the Complainant	:	N.V. Agencies, Cement Dealer, Rep by Managing Partner, Lali N Baby.

DESCRIPTION OF THE ACCUSED

Name of accused	Age	Father's Name	Calling	Residence	Taluk
Raju Mathew	50	Mathew	Contractor	Kutttamangalam	Kothamangalam

Date of							
Offence	Report or complaint	Apprehension of accused	Release on Bail	Commencement of trial	Close of trial	Sentence or order	Explanation of delay
16.8.18	26.9.18	22.2.19	22.2.19	22.2.19	22.5.26	30.5.26	No delay

This case having been heard finally heard and the court passed the following:-

JUDGMENT

This case is instituted on a complaint filed against the accused alleging an offence punishable under S. 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

02. The complainant's case in brief is as follows: - The complainant is a firm having its registered office at Sulthan Bathery Kottakunnu, engaged in the business of cement trading. The complainant averred that the accused, a PWD contractor, had purchased cement from the complainant's company for the construction of a Guest House at Sulthan Bathery for a total amount of ₹3,71,900/- (Rupees Three Lakh Seventy-One Thousand Nine Hundred only). When the complainant demanded payment, the accused, on 15.07.2018, issued a cheque drawn on the State Bank of India, Chennai Branch, for ₹3,71,900/-. The said cheque No. 502734 was presented for encashment, but it was returned unpaid on 30.07.2018 with a memo stating "insufficient funds." Thereafter, on 13.08.2018, the complainant issued a lawyer's notice to be sent to the accused demanding payment. Although the accused received the notice on 16.08.2018, he neither repaid the amount nor sent any reply. Hence the accused is alleged to have committed an offence punishable under S. 138 of the Act.

03. On appearance of the accused, he was granted bail. Particulars of offence under S. 138 of the Act were read over and explained to the accused to which he pleaded not guilty. He claimed to be tried.

04. Evidence in this case was recorded by my learned predecessor in office. From the side of the complainant, PW1 was examined and Exts. P1 to P8 were marked. Upon perusal of the records, it is found that the complainant did not file a separate proof affidavit specifically in lieu of the examination-in-chief at the time of evidence. The Court, however, considered the affidavit filed along with the complaint on 02.08.2018 and the additional affidavit filed on 27.10.2022, prior to the chief examination, as constituting the examination-in-chief. Accordingly, the complainant's chief-examination was recorded relying on these earlier affidavits. On closing the evidence of the complainant, the accused was examined under S. 313(1)(b) Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him.

05. No evidence has been adduced from the side of the accused. Heard the learned counsel for the complainant and the learned counsel for the accused.

06. The following points arise for determination in this case:

i. Is the Managing partner the duly authorized person to conduct the case?
ii. Are the procedural formalities necessary to institute a case under S. 138 of the Act complied with?
iii. Has the accused executed and issued Ext. P1 cheque to the complainant in discharge of a legally enforceable debt?
iv. Did the accused commit an offence punishable under S.138 of the Act?
v. What shall be the sentence or order?

<u>Point No.i</u>

07. In this matter, the question arises whether the Managing partner is competent and duly authorized to file and prosecute the complaint on behalf of the partnership firm. The complaint is instituted in the name of the partnership firm, and the cheque involved is also drawn in the firm's name; however, the complainant has not produced the partnership deed or any other document to demonstrate that the Managing partner has the authority

to act on behalf of the firm in legal proceedings. Authorization is a fundamental requirement in cases filed in the name of a firm, and in the absence of clear documentary proof, the Court cannot assume that the Managing partner has the legal standing to initiate proceedings. The absence of such material evidence raises serious doubts about the maintainability of the complaint, as only a duly authorized person can represent the firm in civil or criminal matters. In cases involving partnership firms, the authority of any individual to act on behalf of the firm must be established through relevant records, such as the partnership deed or a firm resolution granting the power to file legal proceedings. Since no such evidence has been produced, the Court has no basis to accept that the Managing partner is authorized to conduct the case. In light of these observations, on the issue of authorization, there is no material before the Court to substantiate the claim that the Managing partner is competent to prosecute the complaint; accordingly, Point No. i is found against the complainant.

Point no ii to iv

08. For the sake of convenience, points Nos. II to IV are considered together. The case of the complainant is that Ext. P1 cheque was presented through Sulthan Bathery Branch on 30.07.2018 and the same was returned unpaid as per Ext. P2 bank memo for the reason "funds insufficient". Pursuant thereto, the complainant caused issuance of Ext. P3 lawyer notice demanding payment, which was duly served on the accused as evidenced by Ext. P4 postal receipt and Ext. P5 acknowledgment card dated 16.08.2018. The statutory demand having been made within the prescribed time, and the complaint having been filed on 26.09.2018, the procedural requirements under Section 138 of the Negotiable Instruments Act, including presentation of cheque within validity and issuance of statutory notice within time, appear to have been complied with. However, though Ext. P1 cheque is admittedly issued by the accused in favour of the complainant, namely N.V. Agencies, and the dishonour due to insufficiency of funds is prima facie established, such proof by itself is not sufficient to sustain the prosecution when the very

maintainability of the complaint is under challenge on the ground that the complainant has not established due authority to represent the partnership firm. In the absence of proof of authorization or a valid resolution empowering the person who instituted the complaint to act on behalf of the firm, the complaint suffers from a foundational defect of locus standi, and consequently, the Court is precluded from proceeding into the substantive question whether the cheque was issued in discharge of a legally enforceable debt or whether the ingredients of Section 138 are ultimately satisfied. Therefore, despite procedural compliance and prima facie proof of dishonour, the complaint is not maintainable for want of proper authorization. Hence point no ii to iv are found against the complainant.

Point No. (v): -

09. In view of the discussion on the foregoing points, it is observed that the complaint is not maintainable due to the lack of authorization of the complainant to file the case on behalf of the partnership firm. Consequently, the accused is not found guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and is acquitted of the said offence under Section 255(1) of the Cr.P.C. Accordingly, the accused is acquitted of the offence, and the bail granted to the accused is cancelled.

(Pronounced by me in open court this the 30th day of May, 2026)

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE-I

A P P E N D I X

Witness examined for Prosecution:-

PW1 : Lali N Baby

Exhibits marked for Prosecution:-

Ext.P1	15.07.2018	Cheque No. 502734
Ext.P2	30.07.2018	Cheque return memo
Ext.P3	13.08.2018	Copy of lawyer notice.
Ext.P4	13.08.2018	Postal receipt

Ext.P5	16.08.2018	Postal acknowledgement card
Ext.P6 series	---	Sales vouchers (3 in numbers)
Ext.P7	---	Outstanding statement
Ext.P8	11.09.2018	Reply notice.

Witness Examined for Defence	:	NIL
Exhibits Marked for Defence	:	NIL
Material Object marked:	:	NIL

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE-I

//True copy//

JUDICIAL FIRST CLASS MAGISTRATE-I
SULTHAN BATHERY

CALENDAR AND JUDGEMENT

District of Wayanad Calendar of cases tried by the Judicial First Class Magistrate-I of Sulthan Bathery

Date of							
Offence	Report or complaint	Apprehension of accused	Release on Bail	Commencement of trial	Close of trial	Sentence or order	Explanation of delay and remarks
16.8.18	26.9.18	22.2.19	22.2.19	22.2.19	22.5.26	30.5.26	No delay

Judgement in ST 974/2018 in the file of the Magistrate of Judicial First class Magistrate I, Sulthan Bathery

Complainant: Laly N Baby

Name of accused	Age	Father's Name	Caste or religion	Calling	Residence	Taluk
Raju Mathew	50	Mathew	Christian	Contractor	Kutttamangalam	Kothamangalam

Offence : U/s 138 of the Negotiable Instruments Act.

Finding : Not Guilty

Sentence or order: Accused acquitted u/s 255(1) Cr.P.C

Judicial First Class Magistrate- I
Sulthan Bathery

DOCKET

Date of Receipt: From

Remarks of the District Magistrate...........The Judicial First Class Magistrate- I

Date of Despatch... Sulthan Bathery

Reply of the ....Magistrate To

The Chief Judicial Magistrate,
Kalpetta

Date of despatch: The District Magistrate

Through The Sub divisional Magistrate

(of ....)

Case No . ST 974/2018

Date of Judgement: 30.05.2026

Date of Despatch : 1.6.2026