IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II, MANANTHAVADY

Present : -Smt. Ambili.S
(Judicial First Class Magistrate-II, Mananthavady)

Saturday, this the 27th day of April 2024
(7th day of Chaithra, 1945)

S.T.C- 183/2015

Complainant	-	K.C Abraham, Aged 57 years, S/o Chacko, Kandamkulangara (H), Puthussery (P.O), Kanjirangadu Village, Mananthavady Taluk. (By Adv.Sri. Shebin George)
Accused	-	P.P. Joseph, Aged 55 years, S/o Paily, Parambath(H), Puthussery (P.O), Kanjirangadu Village, Mananthavady Taluk (By Adv.Sri. Biju Mathew. K)
Offence	-	U/s 138 of The Negotiable Instruments Act 1881.
Plea	-	'Not guilty'
Finding	-	Guilty
Sentence or order	-	The accused is convicted under S.255(2) of Cr.P.C for the offence punishable u/s 138 of Negotiable Instruments Act 1881 and sentenced to undergo simple imprisonment for three months and to pay a fine of ₹ 1,47,200 (One lakh Forty Seven Thousand and Two Hundred only). In default of payment of fine, the accused shall undergo simple imprisonment for three months. If the fine amount is realized, the same shall be paid to the complainant as compensation u/s 357(1)(b) of Cr.P.C.

Statement under rule 132 of Criminal Rules of Practice

1. Serial Number - S.T.C. 183/2015
2. Name of complainant - K.C. Abraham

DESCRIPTION OF ACCUSED

Sl. No	Name	Father's name	Occupation	Residence	Age
	P.P. Joseph	Paily	Coolie	Parambath	55

Date of							
Offence	Report or complaint	Apprehension of accused	Released on bail	Commen-cement of trial	Close of trial	Sentence or order	Explana-tion of delay and remarks
05.12.2014	03.02.2015	21.12.2015	21.12.2015	21.12.2015	23.04.2024	27.04.2024	-

J U D G M E N T

This is a case based on a complaint filed by the complainant, against the accused, alleging commission of offence punishable under section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred as 'The Act').

2. **The complainant's case in brief are as follows:** - The accused had borrowed Rs. 80,000/- from the complainant. To discharge the said liability, the accused has executed and issued a cheque bearing No. 799111 dated 03.12.2014 of State Bank of India, Mananthavady Branch. On presentation of the said cheque for collection at the Mananthavady Branch of State Bank of India, the same was dishonoured on 05.12.2014 for want of sufficient funds in the account of the accused The complainant had issued a lawyer notice on 18.12.2014 asking him to repay the money, the same was received by the accused on 22.12.2014. The accused neither replied nor returned the amount to the complainant so far. Hence this complaint alleging offence punishable u/s 138 of the Negotiable Instruments Act is filed.

3. Upon taking the case on file, the summons was issued to the accused u/s 204(3) of Cr. P.C, accompanied by a copy of the complaint. The accused appeared and was released on bail. The particulars of the offence were read over and explained to him. He pleaded not guilty to the offence.

4. Thereupon, the complainant himself was examined as PW1 and Ext. P1 to Ext. P4 were marked. After the complainant's evidence closed, the accused was examined under section 313 (1) (b) Cr. P.C. He denied all the incriminating circumstances appearing in evidence and maintained his plea of innocence. The accused filed statement contenting that he is not having any financial transaction with the complainant and hence did not issue any cheque. He had obtained Rs. 30,000/- from the complainant by pledging his property and they entered into an agreement on 08.10.2013. The accused issued a blank cheque at that time and which is produced and marked as Ext. P1. Though the accused subsequently repaid the amount as per the agreement, the complainant failed to return the cheque, which was handed over at the time of the said transaction. The complainant misused the said cheque and filed this complaint. Ext. D1 was marked from the side of defence.

5. Heard both sides and perused the records.

6. In the facts, evidence and circumstances of this case, the following points arouse for consideration:-

(1) Has the complainant complied with the legal formalities for the maintainability of the complaint?

(2) Has the accused executed and issued Ext.P1 cheque to the complainant? If so, is it in discharge of a legally enforceable existing debt or liability?

(3) Has the accused committed the offence punishable u/s 138 of The negotiable Instruments Act, 1881?

(4) If, so what is the order or sentence?

7. **Point No 1:** In order to maintain a complaint under section 138 of Negotiable Instruments Act, 1881, the complainant must satisfy certain legal pre-requisites. The mandates of Sections 138 and 142 of the Negotiable Instruments Act, 1881, should be complied with for the maintainability of the complaint. Hence the complainant should prove that he has complied with each one of the steps contemplated u/s 138 of Negotiable Instrument Act, 1881 before initiating the prosecution. Ext P1 is the cheque, allegedly issued by the accused in favour of the complainant. Ext P1 cheque is of State Bank of India, Mananthavady Branch, dated 03.12.2014 and was returned by the bank due to insufficiency of funds. Ext P2 is the dishonour memo dated 05.12.2014 issued from State Bank of India, Mananthavady Branch. The cheque was presented within the statutory limits. On 18.12.2014 a lawyer notice was issued to the accused to call for payment of money within 15 days of receipt of lawyer notice. Ext P4 is the copy of the lawyer notice and its postal receipt. The accused accepted the notice on 22.12.2014. Thus, the complainant has complied with all statutory requirements to initiate criminal proceedings under this Act. Hence this point answered in favour of the complainant.

8. **Point No.2 and 3**: For the sake of convenience and brevity both these points can be considered together. Complainant was examined as PW1. PW1 deposed that the accused was his friend. He further stated that the accused approached him on the first of November 2014 and borrowed Rs. 80,000/- agreeing to repay the same within one month. Thereafter the accused on 3-12-2014, executed and issued a cheque bearing No. 799111 of State Bank of India, Mananthavady Branch dated 03.12.2014 towards the discharge of the said liability. The cheque was produced by the complainant and which was marked as Ext.P1. On presentation of the said cheque before the State Bank of India, Mananthavady Branch, the same was dishonoured on 05.12.2014 for want of sufficient funds in the account of the accused with Ext.P2 cheque return memo.

9. The counsel for the accused argued that the allegation of the complainant is false. During the cross examination of PW1, he was confronted with an agreement executed between the complainant, the accused and the children of the accused dated 8-10-2013. PW1 admitted the agreement and the same was marked as Ext.D1. The learned counsel for the accused argued that the accused had borrowed Rs.30,000/- from the complainant by executing Ext.D1 agreement for hypothecating 1 acre property jointly owned by himself and his children. According to the accused Ext.P1 cheque was handed over to the complainant as security for the repayment of the money borrowed as per Ext.D1 agreement. The counsel for the accused argued that the complainant had not given Ext.P1 cheque back to the accused though he had discharged the liability under Ext.D1 agreement. Learned counsel for the accused

pointed out that the receipt of the amount due under Ext.D1 agreement was acknowledged by the complainant on the reverse side of the page No.3 of Ext.D1 agreement. In the statement filed in answer to 313 examination also the same contention was taken by the accused. Thus, the defence of the accused as revealed from 313 examination and the cross examination of PW1 is that his cheque was issued in connection with the financial transaction as per Ext.D1 agreement as a security in order to cover the amount due to the complainant. The defence put forward by the accused during the cross examination of PW1 was that the amount due under Ext.D1 agreement was duly discharged by the accused. The contention of the accused is that the cheque was not issued for the purpose alleged in the complaint. It is to be noted that the accused did not deny his signature on Ext.P1 cheque. His case is that he did not owe any amount to the complainant and the Ext.P1 cheque was not issued for discharging any liability to the complainant. At this juncture, it is apposite to cite the judgment rendered by the Hon'ble Apex Court in **Rangappa Vs Sri Mohan [2010(2) KLT 682],** wherein the court manifested that "*Once the cheque relates to the account of the accused and when he accepts and admits his signature on the said cheque, the initial presumption under sec 139 and 118 of the Act has to be raised by the court in favour of the complainant*." In the statement filed in answer to 313 questioning the accused stated that Ext.P1 cheque was handed over by him to the complainant in connection with the transaction as per Ext.D1 agreement. However, the accused did not adduce any evidence to prove the said contention.

10. The counsel for the accused argued that the transaction out of which the alleged liability arose was not proved by the complainant. The counsel for the accused pointed out that the complainant has no clear case about the lending of

money. The learned counsel pointed out that the PW1, the complainant could not say anything about the details of transactions, though questions about the same was put to him during cross examination. The counsel for the accused argued that the complainant could not prove the original transaction as he could not produce materials before the court regarding the original transaction out of which the liability alleged to have been arisen. It was pointed out that no document with respect to the business transaction between the complainant and the accused was produced by the complainant. The counsel for the complainant submitted that the case of the complainant is proved by the unchallenged testimony of PW1. PW1 specifically deposed about the liability of the accused and issuance of cheque by the accused. Learned counsel further submitted that the execution of Ext.P1 was proved by the unchallenged testimony of PW1. The counsel further submitted that since the execution of the cheque is proved, the burden is on the accused to rebut the presumptions under s.118 and s.139 of NI Act. The counsel for the complainant further submitted that the accused has not adduced any evidence to rebut the presumptions available in favour of the complainant.

11. In the matter at hand, the oral and documentary evidence put forth by the complainant before the court is fully corroborated with each other. It can be safely held that the complainant has initially discharged the burden casted upon him to establish the ingredients of sec 138 of the Act so as to nail the guilt of the accused. On a conspectus of the evidence of the complainant, this court finds that the factum of execution is fully established. Once the factum of execution is established, the presumptions under sec 139 and 118 of the Act begins to run in favour of the complainant. Now the ball lies in the court of the accused to rebut the said presumption.

12. The contention of the accused is that his cheque was issued in connection with the transaction under Ext.D1 agreement as a security for the amount of Rs.30,000/- which was borrowed by the accused. The defence put forward by the accused during the cross examination of PW1 was that the amount due under Ext.D1 agreement was duly discharged by the accused. During 313 Cr.P.C examination, the accused stated that Ext.P1 cheque was not issued for the purpose alleged in the complaint. It is to be noted that the handing over of Ext.D1 cheque as security for the repayment was not mentioned in Ext.D1 agreement. It is evident from Ext.D1 agreement that the property measuring 1 acre in extent was hypothecated for receiving an amount of Rs.30,000. It is hard to believe that Ext.P1 cheque was also handed over to the complainant as security for the repayment when the liability was already secured by the hypothecation of the property. It is also to be noted that the amount due under the Ext.D1 agreement was repaid by the accused on 11-08-2017 which is well after the filing of the above complaint. The fact that the accused did not obtain the cheque back from the complainant after the discharge of the liability itself is sufficient to arouse suspicion about the genuineness of the case put forward by the defence. No details are given as to time, place, etc. with respect to the issuance of Ext.P1 cheque. Such an evasive statement cannot be treated as substitute for reasonable explanations. It is for the accused to prove his defence. In the case of **Bhaskaran Nair v. Abdul Karim reported in 2006(4) KLT 48,** Hon'ble High Court of Kerala held as follows: "*The defence that a signed blank cheque was handed over by an account holder is inherently a suspicious one and must be approached with great care and caution. If the laudable commercial morality which the legislature wants to usher in by introduction of S.138 NI Act in the statute book were to prevail among the polity such an irresponsible, casual and indifferent approach by account holders deserves to be discouraged. No account holder is expected to deal with*

the cheques in such casual, careless, irresponsible and indifferent manner. Such a defence may still be impossible in a prosecution under S.138 of NI Act. But the burden must certainly rest heavily on the shoulders of such an indictee who wants to attribute such an irresponsible conduct to himself to claim absolution from culpable liability". It means that the burden is on the accused to prove that his signed cheque was given to the complainant in connection with some liability, which was already discharged by him.

13. On perusal of the evidence tendered before this court, it is clear that the accused has not disputed the signature on the cheque. As the signature in the cheque is admitted by the accused, the presumption envisaged in S118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. S.139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the said presumption. It is true that the accused can rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. Applying the proposition of law in the facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under S.139 that the cheque was issued in discharge of debt or liability. In such a circumstance, the burden shifts on the accused to disprove the case of the complainant. The question to be looked into is as to whether any probable defence was raised by the accused. The learned counsel for the accused produced the judgment of Hon'ble High Court of Kerala in **Rahiya v. Jasna & Anr** reported in **ILR 2024(2) Ker.81**, where it was held by the Hon'ble High Court that the rebuttal does not have to be conclusively established, but such evidence must be adduced before the court in support of the defence

that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of responsibility being that of a prudent man. The counsel for the accused argued that the accused could discharge his initial burden of proof showing that the existence of consideration was doubtful and it is the duty of the complainant to prove the original transaction now. The defence of the accused as disclosed by 313 statement as well as by the suggestion put during cross examination is that Ext.P1 cheque was handed over by him in connection with another transaction and the liability in respect of which Ext.P1 cheque was issued was already discharged by him. The accused did not choose to examine himself or any witness in this regard. Ext.D1 though show that the liability of an amount of Rs.30,000/- was discharged by the accused, it does not show whether Ext.P1 cheque was handed over by the accused in respect of the said liability. The case put forth by the accused does not satisfy the requirement of rebuttal even if tested on the touchstone of preponderance of probability. The accused had not placed any material to prove that Ext.P1 cheque was issued and handed over in respect of the liability covered under Ext.D1 agreement. Therefore, in the present facts, it cannot be held that the presumption which had arisen in favour of the complainant had been successfully rebutted by the accused herein.

14. The contention raised by the learned counsel for the accused is that original cause of action was not proved as no documents relating to the alleged business transaction was produced by the complainant. It was also pointed out by the learned counsel for the accused that the complainant, while examined as PW1 could not say any details about the original transaction. It is true that no documents in connection with the original transaction was produced by the complainant. It is to be noted that the accused did not deny his signature on Ext.P1 cheque. No probable case has been put forward in support of the contention of handing over of Ext.P1 cheque. Execution and handing over of Ext.P1 cheque

was admitted by the accused. There is no dispute as to signature in Ext.P1 cheque. The accused could not advance any cogent and plausible explanation and placed evidence on record to convince the court that the amount covered by Ext. P1 cheque was already discharged by him and the defence upraised by him is not reliable and probable. It is to be noted that the accused has not taken any legal action against the complainant for the alleged misuse of cheque till this date. Accused has not given any explanation why he has not taken any legal action against them. Hence, I am of the view that the contentions raised by the accused is only to escape from the liability. Therefore, I am of the view that the defence put forward by the accused is not a probable one and it is not sufficient to rebut the presumption available in favour of the complainant.

15. Honourable Supreme Court in **Bhir Singh V. Mukesh Kumar (2019) 4 SCC 197)** held that if a signed blank cheque is voluntarily handed over to a payee towards some payment, the payee may fill up the amount and other particulars. This, in itself, would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. It is immaterial that the cheque may have been filled up by any person other than the drawer, if the cheque is duly singed by the drawer. Therefore, the defense of the accused that the cheque in question was a blank and the contents of the cheque were filled by the complainant without knowledge of the accused is not sustainable.

16. Another contention raised by the counsel for the accused is that the source of Rs.80,000/- is not stated by the complainant. PW1 specifically deposed that the accused borrowed an amount of Rs. 80,000 from him. During cross-examination, PW1 deposed that he had earned the said amount from the sale of pepper. The

complainant has no initial burden to prove his financial capacity or the source of the money. It is to be noted that the accused did not present any evidence proving that the complainant lacked the financial ability to invest the fund. The accused should rebut the contention of the complainant by producing cogent evidence before the court and mere denial is not enough. It is well settled that once presumption under S.139 is drawn, the complainant does not need to provide evidence of the source of funds until the accused has discharged his burden.

17. On appreciating the evidence before the court in the light of the contention of the counsel for the accused I am of the view that the contention raised by the accused is not sustainable. On appreciating the evidence before the court, it would reveal that the complainant succeeded to prove that the accused had signed and issued Ext.P1 cheque in favour of the complainant. Once execution is proved the court has to raise the mandatory presumption u/s 139 of the Negotiable Instruments Act that the cheque was issued to discharge legally enforceable debt or liability. Of course it is a rebuttable presumption. Once the execution is proved the accused has to rebut the presumption by adducing evidence or relying the inconsistent evidence of the prosecution. Of course, the standard of proof is only a preponderance of probability. Mere denial of liability would not help the accused to rebut the presumption. In the case of **Kumar Exports v. Sharma Carpets** reported in **2009 (1) KLT 197**, Hon'ble Apex Court held that bare denial of the passing of the consideration and existence of debt would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To

disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non – existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that it did not exist.

18. The accused has miserably failed to put forward any reasonable and probable defence. On the other hand, the complainant successfully proved the signature, execution and issuance of the Ext.P1 cheque by the accused, and its dishonor for want of sufficient fund in his account whereby the presumptions under S.118 and 139 of Negotiable Instruments Act has come into play. After considering the materials on record, this court is of the firm opinion that the defence side could not raise a probable and plausible version to outweigh the case of the prosecution. Since the accused failed to put forward any reasonable or probable defence, the presumptions in favour of the complainant stands unrebutted. It follows that the accused issued Ext.P1 cheque for discharging legally enforceable debt. Thus Point No.2 is answered in favour of the complainant.

19. Ext.P3 notice was sent in time by the complainant. Bouncing due to insufficiency of funds is proved by Ext.P2. The accused has no case that he had sufficient funds in his account to honour the cheque or that it was bounced on any other grounds. Thus, in my view, the complainant has well proved the case on fact including the transaction, making of the instrument, bouncing due to insufficiency of funds and failure to make payment on demand. Ext.P3 is the copy of the legal notice

sent to the accused intimating him the dishonor of the cheque and demanding the payment. Ext P4 is the acknowledgment card, which shows the receipt of notice by the accused. Ext.P3and P3(a) will prove that the complainant had given notice demanding the cheque amount within one month from the date of return of the cheque unpaid.

20. The above finding along with the findings in point No.2 will bring home all the necessary ingredients of an offence under section 138 of the Negotiable Instruments Act. It follows that the accused has committed an offence under Section 138 of the Negotiable Instruments Act. Hence point Nos 2 and 3 are answered in favour of the complainant.

21. **Point No. (4)**:- In view of my finding on Point No. 1 to 3, the accused is found guilty of the offence punishable u/s 138 of the N.I. Act.

22. Considering the nature of the offence and facts and circumstances of the case, it is not a fit case to invoke the provisions of the Probation of Offenders Act.

23. In the light of the dictum laid down by the Hon'ble Apex Court in **Vijayan Vs Baby (AIR 2012 SC 528)**, and considering the factual antecedents of this cases, I find it appropriate and reasonable to award a simple interest of 9% per annum as the reasonable quantum of loss sustained by the complainant. In the instant case, the cheque is dated 03.12.2014**,** 9 years and 4 months have elapsed by now. Interest rate at 9% for a period of years and months would arrive at ₹ 67,200/- (Sixty seven Thousand and Two Hundred only). Then the aggregate would come up to ₹ 1,47,200 (One lakh Forty seven Thousand and Two Hundred only).

In the result, the accused is convicted under S.255(2) of Cr.P.C for the offence punishable u/s 138 of Negotiable Instruments Act 1881 and sentenced to undergo simple imprisonment for three months and to pay a fine of ₹ 1,47,200 (One lakh Forty Seven Thousand and Two Hundred only). In default of payment of fine, the accused shall undergo simple imprisonment for three months. If the fine amount is realized, the same shall be paid to the complainant as compensation u/s 357(1)(b) of Cr.P.C.

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in the open Court this the 27th day of April 2024)

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE-II
MANANTHAVADY

<u>A P P E N D I X</u>

<u>Witness examined on the Side of Prosecution-</u>

PW1	:	K.C Abraham

<u>Exhibits marked on the Side of Prosecution:-</u>

P1	:	Cheque bearing No. 799111 of State Bank of India, Mananthavady Branch
P2	:	Cheque return memo dt. 05.12.2014
P3	:	Copy of lawyer notice dt. 18.12.2014 with postal receipt
P3(a)	:	Postal receipt
P4	:	Acknowledgment card.

<u>Material Objects marked on the side of Prosecution</u> NIL

<u>Witness examined on the side of Defence:</u> NIL

<u>Exhibits marked on the Side of defence</u>:-

D1	:	Agreement dated 8-10-2013

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE II
MANANTHAVADY

//True copy//

JUDICIAL FIRST CLASS MAGISTRATE II
MANANTHAVADY

Form No.48 (CPC)

CALENDAR AND JUDGMENT

District of Wayanad Calendar of a cases tried by
the Judicial First Class Magistrate II of Mananthavady

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
05.12.2014	03.02.2015	21.12.2015	21.12.2015	21.12.2015	23.04.2024	27.04.2024	-

Judgment in **ST. 183/2015**

Complainant : K.C. Abraham

Sl. No	Name of accused	Age	Father's name	Caste or religion	Calling	Residence	Taluk
	P.P. Joseph	55	Paily	-	Coolie	Parambath	Mananthavady

Offence - U/s 138 of Negotiable Instruments Act, 1881.

Finding - Guilty.

Sentence or order - The accused is convicted under S.255(2) of Cr.P.C for the offence punishable u/s 138 of Negotiable Instruments Act 1881 and sentenced to undergo simple imprisonment for three months and to pay a fine of ₹ 1,47,200 (One lakh Fortyseven Thousand and Two Hundred only). In default of payment of fine, the accused shall undergo simple imprisonment for three months. If the fine amount is realized, the same shall be paid to the complainant as compensation u/s 357(1)(b) of Cr.P.C.

Judicial First Class Magistrate-II
Mananthavady

DOCKET

Date of Receipt..................
Remarks of the District

Date of Despatch
Date of receipt
Reply of the.................Magistrate
Date of despatch

Remarks of the Sub divisional

From
The J.F.C.M.II. Magistrate of
Mananthavady Magistrate.................
To
The District Magistrate
(Through the Sub Divisional Magistrate)
(of C.J.M, Kalpetta.)

Case No. **STC -183/2015**

Date of Judgment - 27.04.2024
Date of Despatch - 01.05.2024