IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, THALASSERY
Present: Sri. Jankish Narayanan,
Judicial First Class Magistrate
Dated this the 30th day of April, 2024
(10th day of Vaishakha, 1946 S.E)

STC. No. 72/2018

Complainant	:	Abooty Kanoth Changaroth, S/o Bavachi, Dreams, Perumundery, (PO) New Mahe (By Adv. Sapna V C & Bindu M)
Accused	:	Dr. P R Venugopal, S/o Raghavan Nambiar, Mithila, Chettamcoon, Thalassery (Within the limits of Thalassery Police Station) (By Adv. Sri. G P Gopalakrishnan)
Offence	:	U/s 138 of the Negotiable Instruments Act.
Plea	:	Not guilty
Finding	:	Guilty
Sentence / Order	:	The accused is found guilty, convicted and sentenced to pay fine of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) for the offence under Sec. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall suffer Simple Imprisonment for a period of 5 months (Five Months). If realised, the fine amount of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) shall be given to the complainant as compensation

under Sec. 357 (1) of the Code of Criminal Procedure.

J U D G M E N T

This is a case based on a complaint filed by Mr. Abooty, against the accused alleging commission of the offence punishable under Sec. 138 of the Negotiable Instruments Act.

2. **The brief statements of facts are as follows**:- The complainant and the accused are known to each other. The accused borrowed a sum of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) from the complainant. To discharge the said debt, the accused issued a cheque bearing No. 033633, dated 18.11.2017 drawn on his account with the IDBI Bank, Kannur Branch for an amount of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only), to the complainant. When the complainant presented the cheque through the Kerala Gramin Bank, New Mahe Branch for collection, the cheque was returned unpaid by the drawee bank with a memorandum, dated 07.12.2017 stating the reason that 'Funds Insufficient'. Thereupon, the complainant caused to issue notices, dated 18.12.2017 through his lawyer to the accused informing the matter of dishonour of the cheque and demanding payment of the amount covered by the cheque. The accused was served with the notice on 19.12.2017. In spite of receipt of notices, the accused neither sent a reply nor paid the amount covered by the cheque. Therefore, the accused has committed the offence punishable under section 138 of the Negotiable Instruments Act.

3. On appearance of the accused before the Court, he was served with the records of the complainant's case. When the particulars of the offence under S. 138 of the Negotiable Instrument Act were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4. The complainant is examined as PW1. Exbt. P1 to P9 are marked on the side of complainant.

5. On closure of the complainant's evidence, the accused was examined under Sec. 313 (1) (b) of the Cr.P.C. He denied all the incriminating circumstances appearing against him in evidence and maintained his plea of innocence.

6. No oral evidence was adduced on the side of defence.

7. In the facts, evidence and circumstance of this case, the following points are arising for consideration:-

(I) Whether Exbt. P1 cheque was drawn and delivered by the accused to the complainant in discharge of a legally enforceable debt?

(II) Whether Exbt. P1 cheque was bounced for the reason 'Funds Insufficient' in the account of the accused?

(III) Whether the complainant has complied with all the statutory formalities before filing the complaint?

(IV) Whether the accused is guilty of the offence punishable under Sec. 138 of the Negotiable Instruments Act?

(V) If so, what is the order or sentence to be passed to meet the ends of justice?

8. Heard both sides.

9. **<u>Point No. (I)</u>:-** The complainant's case is that an amount of Rs. 14,30,000/- (Rupees Fourteen Lakh Thirty Thousand Only) is due from the accused to him. The complainant is examined as PW1. He testified that the

accused approached him and borrowed a sum of Rs. 14,30,000/- from him with a promise to repay the same within 18 months. He further testified that the accused issued Exbt.P1 cheque to him in discharge of the said debt. When he presented said cheque for collection, the cheque was returned unpaid by the drawee bank with Exbt. P2 memorandum, stating the reason that 'Funds Insufficient'.

10. The learned counsel for the complainant argued that oral evidence of PW1 coupled with Exbt. P1 to Ext. P9 would amply prove the complainant's case. It is further submitted that Exbt. P1 cheque is admittedly bears the signature of the accused and the same is drawn on an account maintained by him. Therefore, in all probabilities the accused must have issued the cheque to the complainant in discharge of a legally enforceable liability.

11. The learned counsel for the accused contended that the complainant has miserably failed to prove the offence against the accused beyond reasonable doubt. There is a serious doubt on the existence of debt and about the transaction. The learned counsel for the accused further argued that a signed blank cheque can only be treated as a 'cheque leaf' and the issuance of a blank signed cheque league will not amount to admission of execution of cheque.

12. The defence case is that the accused had no transaction with the complainant. The accused did not issue Exbt. P1 cheque to the complainant. The complainant obtained a signed blank cheque leaf of the accused from his friend, Nalinakshan and manipulated the same as Exbt. P1. During the examination U/s. 313 Cr.P.C, the accused submitted that he has no acquaintance with the complainant.

13. PW1 testified that the accused borrowed a sum of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) from him on 07.11.2013 with a promise to repay the same within 18 months, for the development of his Malabar Hospital. The accused claimed that he is the Managing Partner of the said hospital. But, the accused has failed to repay the amount as agreed. When the complainant demanded back the amount, the accused requested extension of time for further period of one year. But, the accused did not repay the amount as agreed. When the complainant again demanded the amount, the accused executed and issued Exbt. P1 cheque for the amount of Rs. 14,30,000/- in discharge of said liability. PW1 further testified that the accused executed and issued Exbt. P1 cheque without sufficient fund in his account. The accused willfully has not arranged sufficient fund in his account knowing the consequences thereof.

14. PW1 is residing at Mahe. He is managing the business of his children. He had studied up to 5th std. He was earlier working as a salesman at a footwear shop. Thereafter, he worked abroad. His son-in-law is conducting a readymade shop by name *Loft* at Thalassery. He is the Manager of the said shop. He is earning Rs. 15,000/- as salary from the shop. His children used to transfer amounts to him from abroad. He has acquaintance with the accused for last 15 years. The accused is the well known Gynaecologist at Thalassery. The accused had worked various hospitals at Thalassery. The accused is also conducting real estate business. He paid Rs. 14,30,000/- to the accused in cash. He further testified that പ്രതി, ടിയാൻ Income Tax കൊടുക്കുന്ന ആളാണെന്നും അതുകൊണ്ട് ബേങ്ക് മുഖേന സംഖ്യ വേണ്ടെന്ന് പറഞ്ഞതുകൊണ്ടാണ് കാഷ് ആയി സംഖ്യ കൊടുത്തത്. According to PW1, he had received more than Rs. 14,00,000/-

as compensation in 2011, for acquisition of his property for road widening. Said amount was credited to the State Bank of India, Mahe Branch. He had withdrawn an amount of Rs. 10,00,000/- from his bank account. He borrowed an amount of Rs. 400,000/- from his friend. He paid said amounts together to the accused as Rs. 14,30,000/-, at the house of the accused at Chettamkunnu on 17.11.2013. He did not receive any security from the accused at the time of advancing the amount. He further testified that the accused used to borrow monies from him and repaid the same. The accused signed Exbt. P1 cheque in his presence.

15. The accused admitted his signature in Exbt. P1 cheque. In *Kalamani Tex v. Balasubramanian. P (2021 (1) ILR Ker. 855)*, the Hon'ble Supreme Court held that "The Statute mandates that once the signature (s) of an accused on the cheque/ negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him". In *Bhir Singh v. Mukesh Kumar (2019 (1) KLT 598)***,** the Hon'ble Supreme Court held that "a person who signs a cheque and make it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. In *Murukan T.P v. Bojan (AIR 2018 SC 3601),* the Hon'ble Supreme Court held that under section 139 of the Negotiable Instruments Act once a cheque has been signed and issued in favour of the holder, there is a statutory presumption that it is issued in discharge of the debt or liability. There is liability on the accused to rebut the presumption by adducing cogent and reliable evidence. In *Krishna Rao v. Shakargouda (AIR 2018 SC 3173),* the Hon'ble Supreme Court held that burden is on the accused to rebut the presumption if there is evidence to show that cheque contains the

signature of the accused. In *Shanil James v. State of Kerala (2022 (6) KHC 278),* the Hon'ble High Court of Kerala held that when the complainant discharged the initial burden to prove the transaction led to execution of the cheque, the presumption under Sec. 118 and 139 of the NI Act would come into play. These presumptions are rebuttable and it is the duty of the accused to rebut the presumptions and the standard of proof of rebuttal is nothing, but preponderance of probabilities. In *Triyambak S. Hegde v. Sripad (2022 (1) SCC 742),* the legal position relating to presumption arising under S.118 and S.139 of N.I. Act on signature being admitted has been reiterated. As held in the decisions cited above, the burden is on the accused to show that the case was filed misusing his cheque. But, in this case, the accused did not adduce any evidence in this regard. It is settled that mere denial regarding the existence of debt shall not serve any purpose. In this case, the accused has disputed the financial capacity of the complainant. The complainant has produced his Exbt. P8 Pass Book to show his solvency. Exbt. P8 would show that the complainant had withdrawn an amount of Rs. 900,000/- from his account on 07.11.2013. PW1 testified that he paid Rs. 14,30,000/- to the accused by utilising said amount also. As discussed above, the accused has failed to rebut the presumption by adducing any cogent or credible evidence. No satisfactory explanation is offered by the accused with respect to the possession of the cheque, issued on his account, with the complainant.

16. In view of above, it can be summed up that the complainant has succeeded in proving that Exbt.P1 cheque was drawn, executed and delivered by the accused in discharge of a legally enforceable liability. Hence, this point is answered in favour of the complainant.

17. **<u>Point No. (II)</u>:-** The oral evidence of PW1, coupled with Exbt.P2 memorandum would prove that the complainant had presented Exbt. P1 cheque for encashment and the cheque was returned by the bank for the reason 'Insufficient Funds'. The accused has no case that there was sufficient amount in his account on the date of presentment of Exbt. P1 cheque. In view of Exbt.P2 memorandum, it is clear that Exbt.P1 cheque was bounced for insufficiency of funds in the account of the accused. Thus, this point is found in favour of the complainant.

18. **<u>Point No.(III)</u>**:- It is the case of the complainant that he had complied with all statutory formalities prior to the institution of the complaint. The complaint in the above case is filed within time. Exbt. P3 and P4 are the Lawyer Notices. Exbt. P5 is the Postal Receipts. Exbt. P6 and P7 are the Acknowledgment Cards. In view of the above, it is clear that the complainant has preferred this complaint after complying all statutory formalities. Thus, the point is found in favour of the complainant.

19. **<u>Point No. (IV) and (V)</u>:-** In view of my findings on point Nos. (I) to (III), the accused is found guilty for the offence punishable under Sec. 138 of the Negotiable Instruments Act and he is convicted thereunder.

20. The scheme of the Act is to compensate the payee or holder in due course on successful prosecution of the offender for the loss or injury he has suffered. As held in *Nalinakshan. M.V v. M. Rameshan and Another (2009 (1) KLT 556)* by the Hon'ble High Court of Kerala, it is not expedient to release a person convicted of the offence under S.138 of the Act on probation under the benevolent provisions of the Probation of Offenders Act.

21. The next question that relevant for consideration is regarding the sentence to be imposed on the accused. In *Damodar S Prabhu Vs. Sayed*

Babalal. H. (AIR 2010 SC 1907), the Hon'ble Supreme Court of India has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect.

In the result, the accused is found guilty and sentenced to pay fine of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) for the offence under Sec. 138 of the Negotiable Instruments Act. In default of payment of fine, the accused shall suffer Simple Imprisonment for a period of 5 months (Five Months). If realised, the fine amount of Rs. 14,30,000/- (Rupees Fourteen Lakh and Thirty Thousand Only) shall be given to the complainant as compensation under Sec. 357 (1) of the Code of Criminal Procedure.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in the open Court, this the 30th day of April, 2024).

sd/-

JUDICIAL FIRST CLASS MAGISTRATE,
THALASSERY

APPENDIX

WITNESSES EXAMINED FOR COMPLAINANT:-

PW1 : Abooty

EXHIBITS MARKED FOR COMPLAINANT:-

Exbt.P1:	Cheque No. 033633 dated. 18.11.2017 of IDBI Bank, Kannur
Exbt.P2:	Memorandum, dated. 07.12.2017, issued by Kerala Gramin Bank, New Mahe Branch
Exbt.P3:	Lawyer Notice, dated. 18.12.2017
Exbt. P4:	Lawyer Notice, dated. 18.12.2017
Exbt. P5:	Postal Receipt, dated. 18.12.2017
Exbt. P6:	Acknowledgment Card
Exbt. P7:	Acknowledgment Card
Exbt. P8:	Bank Passbook of PW1 at North Malabar Gramin Bank
Exbt. P9:	Bank Account Statement of PW1

WITNESSES EXAMINED FOR DEFENCE:-

Nil.

EXHIBITS MARKED FOR DEFENCE:-

EXHIBITS MARKED ON THIRD PARTY:-

Nil

sd/-

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THALASSERY**

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