IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 7TH DAY OF AUGUST 2026 / 16TH SRAVANA, 1948

CRL.A NO. 932 OF 2021

ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC NO.2079 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS, THIRUVANANTHAPURAM (JMFC XII) (TEMPORARY)

APPELLANT:

D. CHANDRAN
AGED 61 YEARS
VISHNU VIHAR, TC 55/1012, NEERAMANKARA,
KAIMANAM PO, THIRUVANANTHAPURAM- 695040

BY ADVS.
SHRI.M.R.HARIRAJ (SR.)
SMT.ALINA ANNA KOSE
SMT.VIDYA A.K
SHRI.VISWAJITH C.K
SMT.GISHA G. RAJ
SHRI.REJIVUE K.C.

RESPONDENTS:

1 S. ANILKUMAR
TC 55/1417, VALLARAVILA, NEERAMANKARA,
KAIMANAM PO, THIRUVANANTHAPURAM- 695040.

2 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA- 682031.

BY ADV SHRI.K.P.MADHU FOR R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2026 THE COURT ON 07.08.2026 DELIVERED THE FOLLOWING:

CR

JUDGMENT

Dated this the 7th day of August, 2026

Complainant in C.C.No.2079/2015 on the files of the Temporary Special Court (the Judicial Magistrate of First Class) for the trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short), Thiruvananthapuram, has filed this criminal appeal under Section 378(4) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), after getting the leave of this Court. The 1st respondent herein is the accused before the trial court and the 2nd respondent is the State of Kerala, represented by the Public Prosecutor.

2. Heard the learned counsel for the complainant/appellant and the learned counsel for the 1st respondent/accused. Perused the trial court records.

3. I shall refer the parties in this appeal as 'complainant' and 'accused' for easy reference.

4. Consequent to dishonour of cheque, (when the cheque presented for collection the same returned with endorsement, “payment stopped by drawer”) bearing No.140482, dated 28.01.2013, for ₹7,00,000/- (Rupees seven lakh only), alleged to be issued by the accused to the complainant, the complainant launched prosecution, alleging commission of offence punishable under Section 138 of the NI Act by the accused, when the accused failed to repay the same on demand.

5. The learned Magistrate took cognizance of the offence punishable under Section 138 of the NI Act. During trial, PW1 was examined and Exts.P1 to P5 were marked on the side of the complainant. After questioning the accused under Section 313(1)(b) of Cr.P.C., when opportunity was provided to the accused to adduce defence

evidence, the accused himself got examined as DW1, and Exts.D1 to D7(a) were tendered in evidence through him.

6. On appreciation of evidence, the learned Magistrate found that the complainant failed to prove beyond doubt that he was the holder of the cheque entitled to its possession in his own name and receive the money thereunder. Accordingly, relying on doubtful circumstances, the learned Magistrate found that the complainant failed to prove his case beyond doubt to get the benefit of presumptions under Sections 118 and 139 of the NI Act. Consequently, the accused was acquitted.

7. The learned Magistrate relied on the decision of this Court in **Basalingappa Vs. Mudi Basappa,** reported in **2019(2) KHC 451,** to hold that when financial capacity of the complainant would be questioned, it was incumbent upon the complainant to explain his financial capacity.

8. Similarly, another decision of the Apex Court in **M.S.Narayana Menon Vs. State of Kerala and Another** reported in **2006 SC 336** was also relied on by the learned Magistrate to hold that *"for rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. The standard of proof evidently is pre-ponderance of probabilities Inference of pre-ponderance of probabilities can be drawn not only from the materials on records, but also by reference to the circumstances upon which he relies".*

9. Apart from the same, the learned Magistrate held in paragraph No.9 as under:

> "9. According to accused he borrowed ₹2,35,000/- from the complainant in 2011. And he issued two blank signed cheque in that transaction as security. Definite case of the accused was that on the cheque date 28.1.2013 he had no transaction with the complainant. In the decision in

G. Gopan V. Tonny Varghese and another 2008(1) KLT 257 Hon'ble High Court held that merely because the cheque contained the signature of the accused, it cannot be said that the cheque was drawn by accused as contemplated under section 138 of Negotiable Instruments Act. It was further held that when execution itself is not proved by the complainant, the presumption under section 139 is not available to him. In **Jose Vs P.C. Joy 2008(3) KLT 512** Hon'ble High Court held that the probability of the prosecution case does not depend on the improbability of false of defence case. In **Santhi Vs. Mery Sherly 2011 (3) KLT 273** Hon'ble High Court has held that the absence of word "execution" in section 138 is of no consequence and not an excuse for the complainant not to prove execution, in a prosecution for the offence under section 138 of Negotiable Instruments Act. It is also held that mere production of a cheque or marking the same as an exhibit will not prove that the cheque is drawn by the accused. It is further, held that mere fact that the cheque produced in court came from possession of complainant alone will not sufficient to prove the execution. Thus complainant has to prove his case."

10. While assailing the verdict, the learned counsel for the complainant argued that by the evidence of PW1, supported by Exts.P1 to P5, supported by the evidence given by DW1, the accused himself, stating that on the date of dishonour of the cheque, only ₹358 was available in the account of the accused, the complainant had discharged his initial burden in the matter of transaction led to execution of Ext.P1 cheque and also that there was no sufficient funds in the account of the accused to honour the cheque on the date of presentation of the cheque. In such a case, the learned Magistrate went wrong in negating the benefit of presumptions in favour of the complainant under Sections 118 and 139 of the NI Act. The learned counsel argued that in the instant case, the liability to the tune of ₹2,35,000/-, borrowed by the accused in the year 2011, is admitted by issuing Ext.D4 reply notice and the same has been reiterated during cross-examination of PW1. Despite that, no evidence

let in to prove discharge of the said admitted liability also. She has placed decision of the Apex Court in **Modi Cements Ltd. Vs. Kuchil Kumar Nandi** reported in **(1998) 3 SCC 249,** to contend that if the cheque returned as unpaid with endorsement “payment stopped with drawer”, then also Section 138 of the NI Act would get attracted.

11. That apart, another decision reported in **Kalamani Tex and Another V. P.Balasubramanian** reported in **(2021) 5 SCC 283** has been placed by the learned counsel to hold that admission of the signature in the cheque would lead to take presumptions under Sections 118 and 139 of the NI Act. In paragraph Nos.14 and 15, the Apex Court held as under:

> “14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial court fell in error when it called upon the respondent complainant to explain the circumstances

under which the appellants were liable to pay. Such approach of the trial court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.

15. No doubt, and as correctly argued by the Senior Counsel for the appellants, the presumptions raised under Section 118 and Section 139 are rebuttable in nature. As held in *M.S. Narayana Menon v. State of Kerala*, which was relied upon in *Basalingappa*, a probable defence needs to be raised, which must meet the standard of "*preponderance of probability*", and not mere possibility. These principles were also affirmed in *Kumar Exports*, wherein it was further held that a bare denial of passing of consideration would not aid the case of the accused."

12. Having appraised the rival contentions, the question arises for consideration are:

1. Whether the trial court is right in holding that the accused did not commit any offence under Section 138 of the NI Act?
2. Whether the trial court verdict would require interference?
3. Order to be passed?

13. Point Nos.1 to 3:

Here, the case of the complainant was affirmed by the complainant by filing proof affidavit. According to him, in order to discharge an amount of ₹7,00,000/- due to the complainant, the accused issued Ext.P1 cheque dated 28.01.2013. He testified that when he had presented the cheque for collection on 05.02.2013, the same got dishonoured with endorsement “payment stopped” on 06.02.2013. Issuance of Ext.P3 lawyer notice and acceptance of the same by the accused as per Ext.P5 acknowledgment card were also deposed by PW1. He also deposed that Ext.P4 is the postal receipt showing issuance of legal notice. During cross-examination, he was asked about his job, income and savings. and in reply to the questions put to him, he answered that he worked as an employee of BSNL and at the time his retirement, he had drawn a salary of ₹72,000/-. Out of which, ₹12,000/- required for his monthly expenses and he had a savings of ₹40,000/- per month. He also deposed that the money was given on 28.01.2013 at his residence and the money was kept at his residence.

14. The learned counsel for the accused argued that keeping a huge sum of ₹7,00,000/- at the house without keeping the same in a bank account, admittedly when PW1 maintained a bank account, is an absolute improbability. He also submitted that during further cross-examination, PW1 gave evidence that he did not know who had filled Ext.P1 cheque and that the ink used for putting the signature and the writings therein are different. That apart, Ext.D4 reply notice was issued by the accused, disclosing the real things transcribed, which led to issuance of stop memo as evident from Ext.D1. Therefore, the complainant failed to prove the transaction led to execution of the cheque and the finding of the learned Magistrate is only to be justified. During further

cross-examination of PW1, he deposed that he had given the money on 28.01.2013 and the money was kept at his residence. PW1 also deposed that the accused was his neighbour.

15. The learned Magistrate considered the evidence of PW1, particularly his denial regarding any other transaction with the accused as a reason to disbelieve him. Going through the evidence, even though PW1 denied any other transaction, when it was suggest that on 10.01.2012, ₹35,000/- was transferred by the accused in the account of PW1, his answer was that he did not know the same. At the same time, he conceded that he was ready to produce the bank statement for the month of January.

16. The defence case put up is that, during 2011, the accused borrowed ₹2,35,000/- from the complainant, for which he had issued Ext.P1 cheque and another cheque bearing No.140480. Thereafter, the liability

was discharged and the accused misused Ext.P1 and foisted the case. In order to explain the circumstances which led to issuance of stop memo as Ext.D1, the accused himself mounted the box as DW1 and it was through him, Ext.D1 stop memo and Ext.D2 postal receipt showing postage of Ext.D1 and the original of Ext.P3 were also marked. Ext.D4 reply notice, Ext.D5 postal receipt thereof and Ext.D6 acknowledgment card showing its acceptance by the complainant were also tendered in evidence through DW1. Ext.D7 tendered in evidence through DW1 is the bank account statement of the accused showing that, as on 10.01.2012, he had transferred ₹35,000/- to the account of the complainant. The relevant portion got marked as Ext. D7(a). During cross-examination, DW1 deposed that now the bank account from which Ext.P1 was issued remained inoperative and he had issued stop memo on 05.10.2012, noting 15 cheques. His version is that he had shown 15 cheque numbers in Ext.D1, as he was not aware about the details thereof for want of anything written in the counter foils.

17. Here, the accused admitted borrowing of ₹2,35,000/- from the complainant during 2011 and also admitted issuance of Ext.P1 and another cheque bearing his signature. The further case of the accused is that he had repaid ₹35,000/- out of ₹2,35,000/- by Ext.D7(a). The further case is that, the remaining ₹2,00,000/- also was repaid. In fact, DW1, while giving evidence, also deposed that he had discharged the liability in full, but the cheques were not returned on discharge of the liability and thus, he had issued stop memo. In this connection, it is relevant to note that the admitted case of the accused is that he had borrowed ₹2,35,000/- and discharged the same. In order to prove the discharge of ₹35,000/-, Ext.D7(a) is available. However, as regards to the discharge of ₹2,00,000/-, apart from the oral evidence of DW1 and the contention raised in Ext.D4 reply

notice, no other evidence forthcoming.

18. It is well settled law that when a party asserts discharge of a liability, he must prove the same with the aid of cogent and convincing evidence. Here, even though Ext.D7(a) would show that the accused credited ₹35,000/- to the account of PW1, apart from his oral evidence, no other evidence tendered. Here, improbability in the evidence of PW1, that he had kept the amount at his residence, has been pointed out by the learned counsel for the accused to justify the judgment of the trial court. However, when PW1 given evidence that he had kept the money at the house and paid the same to the accused, no further questions asked pointing out any improbability in any manner. Similarly, there is no mandate in law that the date, the amount in the cheque and the signature shall be written in one and the same ink. It could be written in different inks according to the circumstances. Merely because the

signature was put by using one ink and entries were made by using another ink by itself would not make the negotiable instrument as an invalid document or a document to doubt its probable execution. Merely because a probable defence is raised, the presumptions under Sections 118 and 139 of the NI Act would not get rebutted, unless the defence put up failed to be established by the yardstick of preponderance of probabilities. In the instant case, going through the evidence of PW1, he was able to give rationale answers as regards to the borrowing of the amount on 28.01.2013, execution of the cheque and failure on the part of the accused to repay the same on demand. It is true that, he had evidence that he had kept the money at his house. But no improbability could be found because of this, as keeping money in the house by itself is not an improbability, unless the improbability to be established by evidence.

19. In this connection, it is pertinent to refer a latest decision rendered by the Apex Court in **Kuntegoweda V. Thurubaiah**, reported in **2026 INSC 790,** on 4th August, 2026, wherein the Apex Court considered the challenge against the financial capacity of the complainant and held in paragraph No.6.7 as under:

> "6.7 Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of 33 financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an

> effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan and therefore the argument and defence of the accused on this aspect falls flat."

Here, the complainant successfully discharged his initial burden so as to avail the presumptions under Sections 118 and 119 of the NI Act. Therefore, the learned Magistrate went wrong in holding that the complainant miserably failed to prove the case beyond reasonable doubt. In view of the matter, the above verdict would require interference.

20. In the result, this appeal is allowed and the verdict impugned is set aside. Consequently, the accused is convicted for the offence punishable under Section 138 of the NI Act and he is sentenced to undergo simple imprisonment for a day till rising of the court and to pay fine of Rs.8,15,000/- (Rupees eight lakh and fifteen thousand only).

In default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.

21. The accused is directed to appear before the trial court at 11.00 am on 14.08.2026 to undergo the sentence. The complainant is also directed to appear before the trial court on the said date.

22. The accused is directed to pay the fine amount as on the said date, failing which the learned Magistrate is directed to execute the sentence imposed by this Court, without fail, as per law.

Registry is directed to forward a copy of this judgment to the trial court for information and compliance, forthwith.

Sd/-
A. BADHARUDEEN
JUDGE

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