IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE, PALA

Present :- Sri. K.P Pradeep, Addl. District & Sessions Judge

Saturday the 31st day of May, 2025

10th day of Jyaishta, 1947

Crl.A. No. 148/2023 & Crl. A. No.149/2023

Crl.A. No. 148/2023
(ST. No.305/2018 of JFCM Court-II, Kanjirappally)

Appellant:

Bijily Muhammed, aged 52 years, S/o Ahmed Khan,
Palackal House, Kanjirappally P O, Kottayam District.

By Adv.Santhosh Abraham

Respondents: -

1. Kerala State represented by Public Prosecutor.
2. Balu Muralikrishna, aged 39 years,
   S/o M. Muralidharakumar, Thottuvayil House,
   Thampalakkadu P O, Kanjirappally, Kottayam District.

By Addl.Public Prosecutor. (R1)
By Adv. Sajan Mathew (R2)

Crl.A. No. 149/2023
(ST. No.2925/2017 of JFCM Court-II, Kanjirappally)

Appellant:

Bijily Muhammed, aged 52 years, S/o Ahmed Khan,
Palackal House, Kanjirappally P O, Kottayam District.

By Adv.Santhosh Abraham

Respondents: -

1. Kerala State represented by Public Prosecutor.
2. Balu Muralikrishna, aged 39 years,
   S/o M Muralidharakumar, Thottuvayil House,
   Thampalakkadu P O, Kanjirappally, Kottayam District.

By Adv. Addl. Public Prosecutor. (R1)
By Adv. Sajan Mathew (R2)

This Crl.Appeals came before me for hearing on 31/05/2025 and the court on the same day passed the following :-

Common Judgment

1. These Criminal Appeals 148/2023 and 149/2023 were filed by the accused from the Common Judgment in ST No.305/2018 and ST No 2925/2017 respectively of Judicial First Class Magistrate Court- Kanjirappally filed U/s. 138 of the Negotiable Instrument Act. (hereinafter referred to for short as 'the NI Act' only).

2. The offence alleged against the accused is U/s 138 of N.I Act. Respondents 1 and 2 are the complainant and State of Kerala respectively.

3. Parties are hereinafter referred to as per their status in the original complaint.

4. Learned Magistrate has jointly tried both ST 305/2018 and ST 2925/2017 and ST 2925/2017 was considered as a leading case and evidence was adduced in the case and after the trial the learned trial court passed the common judgment in those cases.

5. In ST 305/2018 the accused was sentenced to undergo simple imprisonment for a period of one year and to pay compensation of Rs.5,50,000/- and in default of payment of compensation the accused has to undergo simple imprisonment for a further period of six months.

6. In ST 2925/2017 the accused was sentenced to undergo simple imprisonment for a period of one year and to pay compensation of Rs.11,50,000/- and in default of payment of compensation the accused has to undergo simple imprisonment for a further period of six months.

7. The averments in the complaint are as follows:-

ST 305/2018

8. Complaint and accused are friends. Accused borrowed Rs.8,00,000/- (Rupees Eight Lakhs Only) on 26.2.2016 and Rs.7,00,000/-(Rupees Seven Lakh Only) on 30.3.2016 from the complainant for his business purpose. The accused had agreed to return the same within three months. After the expiry of three months when complainant demanded back the amount the accused sought some more time to return the amount. The complainant had agreed for the same. On 25.3.2017 to make repayment of the money accused and complainant had entered into an agreement and as per the terms of the agreement out of Fifteen Lakhs borrowed from the complainant accused agreed to pay Rupees Four Lakhs each on 30.4.2017, 30.7.2017 and 30.11.2017 and balance amount of Three Lakhs on 15.3.2018 in four installments. At the time when the agreement was entered into accused had issued four cheques. The entries in the four cheques dated 30.4.2017, 30.7.2017, 30.11.2017 and 15.3.2017 were written by the accused himself and handed it over to the Complainant. At the time when the accused issued those cheques he had informed the Complainant that the cheques would be encashed on its presentation before the bank.

9. When cheques dated 30.4.2017 and 30.7.2017 were presented before the State Bank of Travancore Kanjirappally branch the cheques were dishonoured and returned and therefore on the basis of those cheques ST 2925/2017 had been filed before the Judicial First Class Magistrate Court Kanjirappally.

10. The cheque dated 30.11.2017 for Rs.4,00,000/- executed by the accused/complainant was presented before the

South Indian Bank Ponkunnam Branch, the same was dishonoured and returned due to insufficiency of funds in the account of the accused and the dishonour memo was received by the complainant on 12.12.2017.

11. After the receipt of dishonour memo of the cheque dated 30.11.2017 the complainant had issued an Advocate notice by demanding the cheque amount on 15.12.2017. Accused accept the notice on 23.12.2017. Even after the receipt of demand notice accused did not return the amount hence the Complaint.

ST 2925/2017

12. Complaint and accused are friends. Accused borrowed Rs.8,00,000/- (Rupees Eight Lakhs Only) on 26.2.2016 and Rs.7,00,000/-(Rupees Seven Lakh Only) on 30.3.2016 from the complainant for his business purpose. The accused had agreed to return the same within three months. After the expiry of three months when complainant demanded back the amount the accused sought some more time to return the amount. The complainant had agreed for the same. On 25.3.2017 to make repayment of the money accused and complainant had entered into an agreement and as per the terms of the agreement out of Fifteen Lakhs borrowed from the complainant accused agreed to pay Rupees Four Lakhs each on 30.4.2017, 30.7.2017 and 30.11.2017 and balance amount of Three Lakhs on 15.3.2018 in four installments. At the time when the agreement was entered into accused had issued four cheques. The entries in the four cheques dated 30.4.2017, 30.7.2017, 30.11.2017 and 15.3.2017 were written by the accused himself and handed it over to the Complainant. At the time when the accused issued those cheques he had informed the Complainant that the cheques would be encashed on its

presentation before the bank.

13. When cheque dated 30.4.2017 was presented for collection through the State Bank of Travancore Kanjirappally branch, the same was dishonoured and returned due to insufficiency of the funds in the account of the accused and the dishonour memo was received by the complainant on 2.8.2017.

14. When the cheque dated 30.7.2017 for Rs.4,00,000/- was presented for collection through State Bank of Travancore Kanjirappally branch the same was dishonoured and returned due to insufficiency of funds in the account of the accused and the complainant received the dishonour memo 2.8.2017.

15. After the receipt of the dishonour memos dated 2.8.2017 complainant has sent an advocate notice by demanding those cheque amounts on 4.8.2017. Accused accepted the notice on 8.8.2017. Even after the receipt of notice accused did not return the amount hence the complaint.

16. Before the learned trial court, complainant was examined as PW1 and Exts.P1 to P13 were marked from the side of the complainant.

17. After closed the evidence of the complainant, when the accused was examined U/s 313 Cr.P.C he denied all incriminating circumstances or evidence brought out in evidence against him.

18. No defence evidence was adduced.

19. After the evaluation of the evidence adduced by the complainant the learned Magistrate found the accused guilty of the offence punishable U/s 138 of N.I Act and convicted and passed sentence in both cases as mentioned above.

20. The finding of the learned trial court is assailed by the

accused on the various grounds. One of the main ground was that the learned trial Court has failed to appreciate the evidence in its correct perspective and the learned trial Court ought to have found that the evidence of Pw1 is not trust worthy and it ought not to have been considered to convict the accused. Since the finding of the trial Court is erroneous the conviction and sentence imposed in both the cases are liable to be set aside.

21. Both the appeals are considered together. Heard both sides.

22. The points arose for consideration in the appeal are:-

1. Whether the finding of the learned trial court in both cases that the accused has committed the offence punishable U/s 138 of N.I Act suffers from any illegality ?
2. Whether conviction and sentence imposed by the learned trial court in both cases require any interference ?
3. What shall be the order to be passed ?

23. **Point Nos.(1) and (2):-** Both these points are considered together. Accused borrowed Rs.8,00,000/- (Rupees Eight Lakhs Only) on 26.2.2016 and Rs.7,00,000/-(Rupees Seven Lakh Only) on 30.3.2016 from the complainant for his business purpose. The accused had agreed to return the same within three months. After the expiry of three months when complainant demanded back the amount the accused sought some more time to return the amount. The complainant had agreed for the same. On 25.3.2017 to make repayment of the money accused and complainant had entered into an agreement and as per the terms of the agreement out of Fifteen Lakhs borrowed from the complainant accused agreed to pay Rupees Four Lakhs each on

30.4.2017, 30.7.2017 and 30.11.2017 and balance amount of Three Lakhs on 15.3.2018 in four installments. At the time when the agreement was entered into accused had issued four cheques. The entries in the four cheques dated 30.4.2017, 30.7.2017, 30.11.2017 and 15.3.2017 were written by the accused himself and handed it over to the Complainant. At the time when the accused issued those cheques he had informed the Complainant that the cheques would be encashed on its presentation before the bank.

24. The cheque dated 30.11.2017 for Rs.4,00,000/- executed by the accused/complainant was presented before the South Indian Bank Ponkunnam Branch, the same was dishonoured and returned due to insufficiency of funds in the account of the accused and the dishonour memo was received by the complainant on 12.12.2017. thereafter on the basis of the Ext P9 cheque ST 305/2018 was filed.

25. When cheque dated 30.4.2017 was presented for collection through the State Bank of Travancore Kanjirappally branch, the same was dishonoured and returned due to insufficiency of the funds in the account of the accused and the dishonour memo was received by the complainant on 2.8.2017.

26. When the cheque dated 30.7.2017 for Rs.4,00,000/- was presented for collection through State Bank of Travancore Kanjirappally branch the same was dishonoured and returned due to insufficiency of funds in the account of the accused and the complainant received the dishonour memo 2.8.2017. on the basis of Exts P2 and P3 ST 2925/2017 was filed.

27. When complainant was examined as Pw1 he deposed before the Court as what he had averred in the complaint. According to him the accused borrowed an amount of

Rs.8,00,000/- on 26.2.2016 and Rs.7,00,000/- on 30.3.2016 and accordingly the accused had borrowed Rs.15,00,000/-. When complainant demanded back the amount Ext P1 agreement was executed on 25.3.2017 between the accused and complainant and as per the terms of the agreement accused had agreed to return the amount in four installments ie, Rs.4,00,000/- each on 30.4.2017, 30.7.2017 and 30.11.2017 and balance Rs.3,00,000/- on 15.3.2018 and at the time when Ext P1 was executed accused had executed and issued Exts P2, P3 and P9 and another cheque bearing No.475344 for Rs.3,00,000/- in favour of the complainant. When Exts P2(Cheque No 475342) and P3 (Cheque No 475343) were presented for collection through South Indian Bank, Kanjirappally branch those cheques were dishonoured due to insufficiency of funds in the account of the accused as per Exts P4 memo dated 25.7.2017 and P5 memo dated 1.8.2017 respectively. Complainant received those memos on 2.8.2017 and thereafter on 4.8.2017 Ext P7 advocate notice was sent by the complainant by demanding the cheque amount. Ext P6 is the postal receipt. Accused accepted Ext P7 advocate notice on 8.8.2017. When Ext P9 cheque dated 30.12.2017 was presented for collection the same was dishonoured due to insufficiency of funds in the account of the accused. Ext P10 is the dishonour memo dated 1.12.2017. After the receipt of Ext P10 dishonour memo on 12.12.2017 the complainant has sent Ext P12 advocate notice by demanding the cheque amount on 15.12.2017. Ext P11 is the postal receipt. Accused accepted Ext P12 notice on 23.12.2017. Ext A13 is the A/D card.

28. The accused did not return the amount covered by Ext P2 and P3 after the receipt of Ext P7 notice and amount covered by Ext P9 after the receipt of Ext P12 notice. Complainant

has specifically stated that all entries in the Ext P2, P3 and P9 cheque were written by the accused himself and after its due execution the cheques were handed over to the complainant at the time when Ext P1 was executed.

29. When PW1 was cross-examined the defence taken by the accused that his six cheques had been lost and therefore he had given notice to the bank about the same. The cheques(P2, P3 and P9) produced by the accused before the court are the three cheques among those cheques which had been lost from the accused. When Pw1 cross-examined he deposed that accused had borrowed Rs.15,00,000/- from him. Accused issued the cheque to the complainant at his house. At the time when he gave money to the accused he had not received any document for the same. Pw1 has specifically stated that the cheques were given to him by the accused on 25.3.2017. One of the defence taken by the accused during the cross-examination of Pw1 that the handwriting and the signature which are same in the cheques are not of the accused. When accused was examined U/s. 313 Cr.P.C he has simply stated that he is not liable to pay any amount to the complainant.

30.Though Pw1 was cross-examined the accused has not disputed Ext P1 agreement. If the accused had not borrowed any amount from the complainant and he had not executed Ext P1 agreement the accused should have a defence that he had not executed Ext P1 agreement. In Ext P1 agreement it has been stated that the accused had money transaction with the complainant and he had to pay Rs.15,00,000/- to the complainant and by virtue of Ext P1 agreement accused had agreed to return the Rs.15,00,000 in four installments ie, Rs.4,00,000/- each on 30.4.2017, 30.7.2017, 30.11.2017 and balance Rs.3,00,000/- on 15.3.2018. It also has been stated in Ext P1 that the accused had given Ext P2 cheque No 475342 dated 30.4.2017 for 4 lakh, P3 cheque No 475343 dated 30.7.2017 for 4 Lakh, P9 cheque No 475345 dated 30.11.2017 for 4 Lakh and cheque No 475344 dated 15.3.2018 for 3 Lakhs/- to the complainant. In Ext P1 complainant and accused have been shown as 1st and 2nd party respectively. Both the parties have put their signature in Ext P1 . The execution of Ext P1 has not been disputed by the accused. At the same time in the cross-examination the defence taken by the accused is that the entries in the cheque and signature which are seen in the cheques are not of the accused. If at all the accused has disputed the signature which are seen in Ext P2. P3 and P9 cheques the burden is on the accused to prove his actual signature. If the accused had disputed Ext P1 agreement definitely the defence taken by the accused could have been considered.

31. Though the counsel for the accused had cross examined, the Pw1 nothing was brought out to disbelieve him. From the evidence adduced by the complainant it is seen that Ext P2 and P3 produced in ST 2925/2017 and Ext P9 produced in ST 305/2018 were drawn by the accused from his account maintained with State Bank of Travancore. It is also seen from the evidence that the signature which are seen in those cheques belongs to accused. The accused has not brought on record any evidence to prove that the signature are not of him. The accused has simply taken a defence that though signature are not of him.

32. From the evidence adduced by the complainant it is seen that he has proved the execution of Exts P2, P3 and P9. Therefore the presumption u/ss 139 of NI Act must be drawn in favour of the complainant that he received the cheque of the nature referred to in 138 of N.I Act for the discharge of the lability of the accused.

33. In **Rangappa v. Mohan (AIR 2010 SC 1898)** the Hon'ble Supreme Court has held that "Once the cheque relates to the account of the accused and he accepts and admits the signature on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence".

34. In other words the defence raised by way of rebuttable evidence must be proper and capable to being accepted by the Court. Here in this case, the accused has not disputed that Ex.P2, P3 and P9 cheques were not drawn from his account. Since it was admitted by the accused that the cheques relates to his account and he has not successfully disputed the signature which are seen in Exts.P2, P3 and P9, the presumption u/s 139 of N.I Act must be drawn. The presumption under section 139 of N.I Act says that "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 of N.I Act for the discharge, in whole or in part, of any debt, or other liability".

35. In **Basalingapa v. Mudibasappa (AIR 2019 SC 1983),** it was held by the Hon'ble Supreme Court that the complainant being the holder of the cheque and the signature on the cheque having not been denied by the accused, the

presumption shall be drawn that cheque was issued for the discharge of any debt or other liability.

36. In **M. M. T. C. Ltd. & Another v. Medchl Chemicals & Pharma P. Ltd (2002 (1) SCC 234)** in which the Hon'ble Supreme Court has held that "there is no requirement that complainant himself has to specifically allege in the complaint that there was a subsisting liability; The burden of proving that there was no existing debt or liability is on the accused". If the accused had no liability to make any amount to the complainant he has to prove that there is no existing debt or liability for the accused towards the complainant.

37. Herein this case accused accepted the Ext.P7 and P12 advocate notices issued by the complainant and it was not disputed by the accused. The accused has not sent any reply notice to the complainant. After the receipt of P7 and P12 notice. In **Rangappa v. Mohan (AIR 2010 SC 1898)** the Hon'ble Supreme Court had observed that if the accused had failed to issue reply notice to the notice referred to section 138 of N.I Act it leads to an inference that there is merit in the case of the complainant. If the accused had genuine defence as taken by him at the time of cross examination of PW1 definitely he should have sent a reply notice stating his defence. But it was not done by the accused. Since the accused had not taken any reliable defence evidence to rebut the presumption it cannot be held that the accused had rebutted the presumption drawn in favour of the complainant under section 139 of N.I Act.

38. Considering the facts and circumstances of this case, I am of the view that the finding of the learned Trial Court in both cases(ST 305/2018 and ST 2925/2017) that accused has committed

the offence punishable u/s 138 of N.I Act is to be upheld and it does not require any interference and therefore conviction held by the trial Court is upheld. Considering the nature of the offence and circumstances of this case, I am of the opinion that the substantive sentences imposed by the trial court in both cases are to be modified to imprisonment till the rising of the court. Accordingly point Nos.(1) and (2) are answered against the appellant.

39. **Point No.(3):-** In view of the finding on point Nos. 1 and 2, the both criminal appeal 148/2023 and 149/2023 are liable to be dismissed.

In the result, both Criminal Appeals are dismissed. Conviction in both cases is upheld and substantive sentences imposed against the accused in both cases are modified to till the rising of the Court. The order to pay compensation by the trial court in both cases is confirmed as such.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open court on this the 31st day of May 2025.

K.P Pradeep
Additional District & Sessions Judge

APPENDIX:NIL

Typed by : Sreeja
Compd. By : Jobi

Additional District & Sessions Judge

Common Judgment
In Crl.A No.148/2023 &
Crl.A No.149/2023
Dated: 31.05.2025