



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 29TH DAY OF OCTOBER 2025 / 7TH KARTHIKA, 1947

CRL.A NO. 222 OF 2014

JUDGMENT DATED 30.09.2013 IN Crl.A NO.206 OF 2013 OF SESSIONS COURT,
KOZHIKODE

APPELLANT/COMPLAINANT:

KORANIL YUSAF, AGED 35 YEARS,
S/O.ABDULLA HAJI, KORANIL HOUSE, THIRUVALLUR P.O., VADAKARA
TALUK, KOZHIKODE

BY ADV SRI.T.G.RAJENDRAN

RESPONDENTS/ACCUSED/STATE:

- 1 V.A FIROZ, AGED 40 YEARS
S/O.ABDUL MAJEED, VALIYAKATH HOUSE, EDATHURUTHY P.O.,
MUKUNDAPURAM VIA, THRISSUR 680 703.
- 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV SRI. J.R. PREM NAVAZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27.10.2025, THE
COURT ON 29.10.2025 DELIVERED THE FOLLOWING:



'CR'

JOHNSON JOHN, J.

Crl. Appeal No. 222 of 2014

Dated this the 29th day of October, 2025

J U D G M E N T

This appeal by the complainant is against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881 ('N.I Act' for short).

2. As per the complaint, the accused borrowed Rs.3,75,000/- from the complainant and subsequently issued a cheque for Rs.3,75,000/- dated 13.12.2010 to the complainant in discharge of the debt.

3. When the complainant presented the cheque for collection, the same was dishonoured due to insufficiency of funds in the account of the accused and in spite of issuance of statutory notice, the accused failed to pay the cheque amount to the complainant.

4. Before the trial court, from the side of the complainant, PW1 examined and Exhibits P1 to P7 were marked and from the side of the



accused, DWs 1 and 2 were examined and Exhibits D1 and D2 were marked.

5. After trial and hearing both sides, the trial court convicted and sentenced the accused under Section 138 of the N.I Act and against the judgment of the trial court, the accused filed Crl. Appeal No. 206 of 2013 before the Sessions Court, Kozhikode. As per the impugned judgment dated 30.09.2013 in Crl. Appeal No. 206 of 2013 of the First Additional Sessions Judge, Kozhikode, the judgment of the trial court was set aside and the accused was found not guilty of the offence under Section 138 of the N.I Act and he was acquitted.

6. Heard Sri. T.G. Rajendran, the learned counsel for the appellant, Sri. J.R. Prem Navaz, the learned counsel for the accused/first respondent and Smt. Hasnamol N.S., the learned Public Prosecutor for the second respondent.

7. The learned counsel for the appellant argued that the accused has not disputed the signature in Exhibit P1 cheque and that the Sessions Court ought to have found that the complainant is entitled for



the benefit of the presumptions under Sections 139 and 118 of the N.I Act.

8. The learned counsel for the accused/first respondent argued that the complainant has not disclosed, when and where the original transaction took place and as to when and where the accused executed and issued the cheque, in the complaint or in the chief affidavit of PW1 and that the evidence of PW1 in cross examination regarding the alleged transaction does not tally with the averments in the complaint. It is also argued that the evidence of PW1 in cross examination and the evidence of DWs 1 and 2 and Exhibits D1 and D2 would show that the case put forward by the accused is more probable and therefore, there is no reason to interfere with the findings in the impugned judgment.

9. It is stated in the complaint and the chief affidavit of PW1 that the complainant and the accused were friends and that they were working together abroad. According to the complainant, the accused borrowed Rs.3,75,000/- for his business purpose in the presence of one Aboobacker and subsequently, when the complainant demanded back



the amount, the accused executed and issued Exhibit P1 cheque dated 13.12.2010 for Rs.3,75,000. But, it is pertinent to note that in the complaint or in the chief affidavit of PW1, it is not stated, when and where the complainant paid the amount to the accused and when and where the accused executed and issued the cheque to the complainant.

10. In cross examination, PW1 admitted that Rs.3,75,000/- is a big amount for him and he has no objection in producing documents to show the withdrawal of the said amount from the Bank. In another part of the cross examination, PW1 stated that the accused issued the cheque either towards the end of November, 2010 or during the beginning of December, 2010 and he cannot exactly remember the date of execution and issuance of cheque by the accused. He denied the suggestion of the defence that the accused has not issued Exhibit P1 cheque to him.

11. PW1 would say that he paid the money to the accused two months prior to the receipt of the cheque from the accused. PW1 admitted that A.M Muhammed Shameem and Shoukkathali are known to him. He also admitted that himself and Shoukkathali were in Gulf for



about 10 years. However, PW1 denied the suggestion that the accused borrowed 50,000 UAE Dirham from Shoukkathali during 2010 and subsequently, the accused executed an agreement with Shameem, the brother of Shoukkathali, and entrusted cheque bearing number '215652' of the Federal Bank to the said Shameem and in spite of subsequent payment to Shoukathali, the said cheque was not returned. He also denied the suggestion of the defence that there was no financial transaction between him and the accused and that the accused has not issued any cheque to him.

12. The accused is examined as DW1 and he deposed that the cheque was given to one Shameem, who is the brother of Shoukkathali, as per Exhibit D1, agreement, and that the details of the cheque are mentioned in Exhibit D2 agreement. According to DW1, he is not aware as to how the complainant obtained possession of the cheque given to Shameem. In cross examination, DW1 denied the suggestion that Exhibits D1 and D2 are fraudulently created for the purpose of this case.



13. DW2, Muhammad Noufal, is the first witness in Exhibit D2 and he identified his handwriting and signature in Exhibits D1 and D2 and stated that the said transaction was in 2010. He also identified Exhibit P1 as the cheque handed over by the accused to Shameem. In cross examination, DW2 stated that the complainant is not known to him.

14. The learned counsel for the appellant argued that nothing is mentioned in Exhibit P7, reply notice, regarding Exhibits D1 and D2 and only at the time of 313 questioning, the accused put forward a case that Exhibit P1 cheque was entrusted to one Shameem, who is the brother of Shoukkathali and since the accused has not disputed the signature in the cheque, the Sessions Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt, as held by the Honourable Supreme Court in ***Kalamani Tex v. P. Balasubramanian [(2021) 5 SCC 283]*** and this Court in ***Priyamvada K. v. M. Rahufina and others*** [2024(1)KLT 417].

15. ***In Basalingappa v. Mudibasappa ((2019) 5 SCC 418)***, the Hon'ble Supreme Court summarised the principles of law governing the



presumptions under Sections 118 and 139 of the N.I Act in the following manner:

- “(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
- (ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
- (iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities 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.
- (iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.”

16. In ***ANSS Rajashekar v. Augustus Jeba Ananth [2019 (2) KHC 155= 2019 (1) KLD 492]***, it was held that when evidence elicited from complainant during cross examination creates serious doubt about the existence of debt and about the transaction and the complainant fails to establish the source of funds, the presumption under Section 139 is rebutted and the defence case stands probabilised.



17. In ***APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers and Others [2020 (1) KHC 957 = 2020 (1) KLD 313]***, it was held that whenever the accused questioned the financial capacity of the complainant in support of his probable defence despite the presumption under Section 139 onus shifts again on the complainant to prove his financial capacity.

18. It is well settled that the standard of proof which is required from the accused to rebut the statutory presumption under Sections 118 and 139 of the N.I Act is preponderance of probabilities and that the accused is not required to prove his case beyond reasonable doubt. The standard of proof, in order to rebut the statutory presumption, can be inferred from the materials on record and circumstantial evidence.

19. When considering the evidence in this case on the basis of the above legal principles, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross examination relatable to the time of execution and issuance of the cheque, especially in view of the fact that the complainant has not disclosed the date of



execution and issuance of the cheque in the complaint or in his chief affidavit.

20. The decision of the Honourable Supreme Court in ***Sanjabij Tari v. Kishore S.Borcar*** [2025(6) KHC 250(SC)] shows that ultimately it becomes the duty of the court to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

21. In the impugned judgment, it is observed that in spite of challenge regarding the source and admission by PW1 in cross examination that he can produce the bank records showing withdrawal of the amount, no document is produced to prove the source of the complainant for advancing Rs.3,75,000/- to the accused and that apart from Exhibit P1 cheque, there is no other reliable evidence to show that the complainant has advanced such a huge amount to the accused and that even though it is stated in the complaint that one Aboobacker has



witnessed the transaction, there was no attempt on the part of the complainant to examine the said Aboobacker.

22. It is well settled that the offence made punishable under Section 138 of the N.I Act is a regulatory offence for improving the credibility of negotiable instruments and therefore, the test of proportionality should guide the construction and interpretation of the statutory presumptions and the accused cannot be expected to discharge an unduly high standard of proof. Therefore, if the accused is able to raise a probable defence, which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail.

23. On a careful re appreciation of the entire evidence, I find no reason to disagree with the finding in the impugned judgment that the evidence of DWs 1 and 2, Exhibits D1 and D2 and the evidence of PW1 in cross examination creates serious doubt about the existence of the debt and the alleged execution and issuance of the cheque by the accused to the complainant, especially in view of the fact that the



number of Exhibit P1 cheque '215652' of the Federal Bank is seen specifically recorded in Exhibit D2 receipt dated 05.01.2010. In that circumstance, I find no reason to disagree with the findings in the impugned judgment that that the accused has succeeded in rebutting the statutory presumptions and that the complainant has not succeeded in proving the offence under Section 138 of the N.I Act against the accused. Therefore, I find that this appeal is liable to be dismissed.

In the result, this appeal is dismissed.

sd/-

**JOHNSON JOHN,
JUDGE.**

Rv