IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 29th DAY OF JULY 2026 / 7TH SRAVANA, 1948

RFA NO. 173 OF 2006 (F)

AGAINST THE JUDGMENT & DECREE DATED 23.12.2005 IN OS NO.57 OF 2003 OF SUB COURT, KOTTARAKKARA

APPELLANT IN RFA / DEFENDANT IN O.S:

**PRAMEELA VARGHESE, W/O VARGHESE KOSHY,
AGED 36, RESIDING AT PUTHEN PURACKAL,
VETTITHITTA, CHAMBALAMKKODE,
PIRAVANTHOOR MURI AND VILLAGE,
PATHANAPURAM TALUK.**

BY ADV. SHRI.G.SREEKUMAR (CHELUR)

RESPONDENT IN RFA /PLAINTIFF IN O.S:

**ABRAHAM SAMUEL, S/o SAMUEL, AGED 48,
RESIDING AT CHITTAKKATTU VEEDU, AMBALANIRAPPU,
THALAVOOR MURI AND VILLAGE, PATHANAPURAM TALUK.**

**BY ADVS. SRI.B.S.SWATHI KUMAR
SRI.HARISANKAR N UNNI
SMT.ANITHA RAVINDRAN**

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY ON 08.07.2026, THE COURT ON 29.07.2026 DELIVERED THE FOLLOWING:

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MOHAMMED NIAS C.P., J.

...

R.F.A. No.173 of 2006

...

Dated this the 29th day of July, 2026

JUDGMENT

The defendant in a suit for realisation of money filed by the respondent/plaintiff is the appellant.

2. O.S. No.57/2003 was filed for recovery of an amount of Rs.3,31,100/- alleging that the appellant and her husband had approached the respondent/plaintiff and borrowed money for business purposes and that a cheque was issued by the defendant for repayment of the said amount.

3. The appellant contended that she had neither borrowed any amount nor issued any cheque, and that her husband, whose whereabouts are not known, may have handed over a cheque leaf from their joint account, leading to the fabrication of the cheque. It

is alleged that there is a substantial difference in the signature.

4. The cheque was dishonoured when it was presented, and though a criminal complaint was filed, the appellant was acquitted. Thus, the suit was filed claiming the principal amount of Rs.2,15,000/- along with interest at the rate of 15% per annum, totalling Rs.3,31,100/-.

5. The trial court framed issues as to whether the plaintiff is entitled to get the plaint amount as alleged and whether the defendant has drawn the cheque towards the discharge of the amount as alleged.

6. On behalf of the plaintiff, Ext. A1, the alleged cheque, A2 Dishonour Memo and the post-acknowledgement to lawyer notice A3 were marked. The specimen signature card maintained by the bank was summoned and marked as Exhibit X1. On behalf of the plaintiff, PW1 to PW3 were examined. The defendant relied on Ext. B1 to B4 and examined DW1.

7. The trial court found that the defendant has no case

that her husband had forged her signature in Ext.A1 and no circumstance has been brought out in evidence to show that the plaintiff is aware of the signature of the defendant. It is found that the defendant had drawn Ext.A1 cheque in favour of the plaintiff, and there is no case for the defendant that there were sufficient funds in her account to honour Ext.A1 cheque. It has been brought out through the testimony of PW3, the Bank Manager, that Ext.A1 cheque was returned dishonoured for want of sufficient funds in the account of the defendant. The defendant was held liable to pay the cheque amount along with interest to the plaintiff.

8. Learned counsel for the appellant, Sri. Sreekumar Chelur argues that though the nature of the proceedings under Section 138 of the Negotiable Instruments Act and the civil case, claiming money based on the said cheque, are different, this is a case where the Magistrate Court had clearly found that there was no execution of the cheque as alleged by the plaintiff, and that the transaction/borrowal itself was disbelieved. It is therefore argued

based on the judgment in ***Hope Plantations Ltd. v. Taluk Land Board, Peermade and Another*** **[(1999) 5 SCC 590]** and ***Gopal Prasad Sinha v. State of Bihar*** **[(1970) 2 SCC 905]** that principles of issue estoppel will apply and a re-litigation on the same facts and evidence cannot be done. At any rate, it is submitted that there is nothing more that is produced in the civil case to prove the transaction and, in the absence of that, a decree could not have been granted.

9. Pointing to the evidence of PW1, who deposed that he had not seen the person who wrote the cheque, it is argued that there was no proof of execution of the cheque. PW2, the brother of the plaintiff, was confronted with his previous testimony made in the criminal case, wherein he had admitted that the money was paid to the defendant's husband and not to the plaintiff. Though the trial court found that there was some difference in the signature on the cheque, it held that the defendant had the habit of putting different signatures in different places and granted a decree. Since the execution of A1 cheque was not proved, the plaintiff had not

discharged his burden of proving the transaction. Consequently, no presumption was possible under the Negotiable Instruments Act. He relied on the decision in **Subanamma Ninan and others v. George Veeran [2019 (5) KHC 103 (DB)]** to contend that the cause of action for a suit for money based on a dishonoured cheque cannot be said to be the same for a suit based on original consideration. Both are different since the source determining the right and obligations of the parties to such suits is not at all the same.

10. The learned counsel for the respondent, B.S.Swathi Kumar and Sri. Harisankar N. Unni argued that the alleged difference in signatures could not have been considered, as the cheque was dishonoured for want of sufficient funds and not because the signatures were different, and therefore, a discussion on the comparison of the signatures was unnecessary. Learned counsel also relied on Section 20 of the Negotiable Instruments Act. He further argued that the acquittal in the prosecution under Section 138 can in no way affect the outcome of the civil suit. It is

argued that the nature of evidence required for a successful prosecution of the 138 proceedings, and this case being entirely different, the principles of issue estoppel or cause of action estoppel do not arise.

11. It is further argued that the execution of the cheque is proved by the evidence of PW1 to PW3, and since the signature was admitted, the burden was on the defendant to prove the case set up by her. The plaintiff also had the benefit of presumption under the Negotiable Instruments Act. The trial court had considered the evidence, both oral and documentary and granted a decree, which calls for no interference with this appeal. He also cited the judgments in **Sh. Vishnu Dutt Sharma v. Smt. Daya Sapra [2009 (4) KHC 581]**, and **L.C. Goyal v. Suresh Joshi (Mrs) and Others [1999 KHC 1070]** in support of his contentions.

12. Heard both sides and perused the records.

13. The point arising for consideration is whether the transaction and the execution of the A1 cheque stand proved.

14. The first contention advanced by the appellant is that, in view of her acquittal in the prosecution under Section 138 of the Negotiable Instruments Act arising out of the same cheque, the present suit is barred by the principles of issue estoppel and re-litigation. The said contention cannot be accepted. At the outset, it is to be noticed that the findings rendered by the criminal court in the proceedings under Section 138 are not relevant under Section 43 of the Evidence Act. The acquittal of an accused in a prosecution under Section 138 of the Negotiable Instruments Act does not by itself bind a civil court trying a suit involving the same cheque or transaction. Criminal and civil proceedings are independent. A prosecution under Section 138 is a criminal proceeding requiring proof of guilt beyond reasonable doubt, whereas a civil suit is decided on the preponderance of probabilities. Consequently, an acquittal in the criminal case does not operate as res judicata or issue estoppel in the civil proceedings. [See: ***Sh Vishnu Dutt Sharma v. Smt. Daya Sapra*** (2009 (4) KHC 581)].

15. Even where the Magistrate records a categorical finding that the cheque was not executed by the accused or the alleged loan or transaction is not proved, the civil court is not legally bound by that finding. The civil court must independently appreciate the evidence adduced before it and arrive at its own conclusion on the issues. If the Magistrate records a finding that the cheque was not executed because, for example, the signature is forged or not proved to be that of the accused, that finding is nevertheless not binding on the civil court. If in the civil court the plaintiff produces stronger evidence such as expert evidence, admissions or other corroborative material, the civil court is entitled to reach a different conclusion. Even where the same documents are produced, and the very same witnesses are examined in both the prosecution under Section 138 of the Negotiable Instruments Act and the civil suit, the criminal court's judgment does not become binding on the civil court merely for that reason.

16. It is also to be understood that there is a difference in the standard of proof and an acquittal may merely signify that the complainant failed to establish the offence beyond reasonable doubt; it does not necessarily mean that the defendant has disproved the existence of the debt or liability. The same evidence may still satisfy the lower standard applicable in a civil suit. The reason is that two courts decide the dispute on fundamentally different legal standards. Accordingly, the civil court is required to independently appreciate the evidence, even if it is identical to that adduced before the criminal court.

17. Applying the above principles, this Court is unable to accept the contention of the appellant that her acquittal in the prosecution under Section 138 of the Negotiable Instruments Act operates as issue estoppel or otherwise bars the present civil proceedings. The appellant's contention founded on issue estoppel, res judicata or relitigation, therefore, necessarily fails.

18. The next aspect to be considered is the contention regarding the signature in Ext.A1 cheque. The appellant contended that the signature appearing in Ext.A1 differs from her specimen signature in Ext.X1 and, therefore, the cheque was not executed by her. This contention cannot be accepted. The appellant herself admitted in evidence that she was in the habit of putting different signatures. The admitted documents produced in the case also demonstrate variations in her signatures. Further, Ext.A1 was dishonoured for insufficiency of funds and not on the ground that the signature differed from the specimen signature maintained by the bank. As held by the Hon'ble Supreme Court in **L.C. Goyal**'s case (supra), where a cheque is returned for insufficiency of funds and not for signature mismatch, the plea that the signature is forged ordinarily cannot be accepted. The finding of the trial court that the signature in Ext.A1 belongs to the appellant, therefore, does not warrant interference.

19. The next and more crucial question is whether the

execution of Ext.A1 cheque has been established. The appellant has throughout disputed the execution of the cheque. It was her specific case that her husband might have borrowed amounts from the plaintiff and issued a cheque from their joint account. True, the Magistrate Court, in the prosecution under Section 138, disbelieved the transaction/borrowing put forth by the plaintiff and found the cheque was given as security. PW1 and PW2 deposed regarding the execution of the cheque.

20. When an accused admits to signing a cheque but denies its execution, the approach under the Negotiable Instruments Act, 1881 hinges on the specific denial. Signing refers to the physical act of affixing one's signature, which does not imply delivery or intention to act upon the cheque. A signed, unissued cheque does not create liability under Section 138. Issuance involves delivering the cheque to the payee with the intent for it to be acted upon, while execution is broader, encompassing both signing and the cheque being recognised as an operative instrument through

voluntary delivery and intention. In Section 138 cases, if the accused denies the signature, the complainant must prove its authenticity to invoke statutory presumptions under Sections 118(a) and 139. If the signature is admitted but execution is denied, the court must look for the basis for the denial of the execution. Disputing execution, such as by claiming the cheque was signed but not voluntarily delivered or was stolen, can negate execution unless proven to be voluntarily delivered. If the accused admits signing and issuing but disputes the underlying debt, then execution is not in question, triggering the presumptions which the accused must rebut.

21. Additionally, a plea of coercion or lack of consideration does not constitute a denial of execution. If the accused acknowledges signing or delivering the cheque but argues it was done under duress, the legal validity of the act is challenged rather than its execution. In such instances, the burden shifts to the accused to demonstrate that the cheque was obtained through

coercion or is not supported by a valid debt. (See: ***Rangappa v. Sri Mohan*** **(AIR 2010 SC 1898),** ***Basalingappa v. Mudibasappa*** **[(2019) 5 SCC 418]** and ***Bir Singh v. Mukesh Kumar*** **(AIR 2019 SC 2446).**

22. Applying the above principles to the facts of the present case, the foundational issue is not merely whether the signature appearing on Ext.A1 is that of the defendant, but whether Ext.A1 was voluntarily executed by her. The defendant has throughout denied the execution of the cheque, and therefore the initial burden squarely rested on the plaintiff to establish that foundational fact. The evidence adduced by the plaintiff is sufficient, at the highest, to establish the defendant's signature on Ext.A1, but not its execution in the legal sense. Though PW2 deposed in chief-examination that he had witnessed the payment of the amount and the defendant signing the cheque, his cross-examination substantially weakens that version. He admitted that the amount was in fact handed over to the defendant's husband, that he had not seen the amount being written in the cheque, and

that he had not seen who filled up the defendant's name. He was also confronted with his earlier deposition before the Magistrate wherein he had stated that he had seen the amount being written and that the date was written by the defendant's husband. These inconsistencies relate to the very manner in which Ext.A1 came into existence and render the evidence insufficient to establish that the cheque was consciously and voluntarily executed and delivered by the defendant in favour of the plaintiff. At best, the evidence proves the signature; it does not prove execution.

23. This distinction is decisive in the present case. The defence is not one of admitting execution while disputing the liability or consideration. The consistent case of the defendant is that she neither borrowed any amount from the plaintiff nor voluntarily executed or delivered Ext.A1, and that her husband, who was operating their joint account, might have handed over the cheque leaf to the plaintiff. Such a plea is a direct denial of execution. Therefore, the statutory presumptions under Sections

118(a) and 139 of the Negotiable Instruments Act could arise only after the plaintiff had first established the foundational fact of execution.

24. The finding of the trial court that since the husband of the defendant owned a bus regarding which he had availed a loan and that fell into arrears, so there is every likelihood of the defendant borrowing money from the plaintiff in the case is not based on any evidence but surmises and conjectures. The said finding cannot be sustained. The further finding is that, though the defendant disputed having signed the cheque, there was no case that the plaintiff was aware of the signature of the defendant and therefore it was concluded that the defendant had drawn Ext.A1 cheque in the circumstances alleged in the plaint at the time of the borrowal. This also is not based on any evidence and is just based on assumption.

25. On an appreciation of the evidence, both oral and documentary, it is only to be concluded that the foundational fact

has not been satisfactorily established as the plaintiff was first required to prove the execution before invoking the presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act. Since there is no satisfactory evidence regarding the voluntary delivery of Ext.A1 by the defendant or the circumstances under which it became an operative instrument, the statutory presumptions do not arise, and the finding of the trial court that execution stood proved cannot be sustained. The trial court conflated proof of signature with proof of execution, overlooking the distinction between the two.

26. In the light of the facts mentioned above and the irreconcilability of the evidence adduced on behalf of the plaintiff as above, it must be taken that the execution of the cheque in question was not proved, nor is the transaction pleaded by the plaintiff proved. Given the above, I am unable to agree with the finding of the trial court that the execution is proved. The evidence on record is sufficient to hold otherwise. Accordingly, the decree of

the trial court is set aside.

The appeal is allowed, and O.S No. 57/2003 will stand dismissed.

Sd/-

MOHAMMED NIAS C.P.

JUDGE

okb/

Judgment reserved	08/07/26
Date of Judgment	29/07/26
Judgment dictated	08/07/26
Draft judgment placed	10/07/26
Final judgment uploaded	29/07/26