

Presumption in favour of a cheque holder u/s 139 of the NI Act exists even if NBFC to which the cheque was issued charged interest higher than that permissible under the Kerala Money-Lenders Act

Referring to the decision in the case of *Nedumpilli Finance Company Limited v. State of Kerala* [(2022) 7 SCC 394] where the Apex Court had ruled that “the entire life of a Non-banking Financial Company (NBFC) from the womb to the tomb is regulated and monitored by the RBI, and the NBFCs regulated in terms of Chapter IIIB of the RBI Act, 1934, cannot be regulated by the Kerala Money-Lenders Act, 1958”, the Kerala High Court in the case of **Abdulla P. vs Manappuram General Finance and Leasing Ltd. [Criminal Revision Petition No. 1530 of 2018] dated August 08, 2025**, has held that the argument that the interest claimed by the complainant was excessive and in violation of Kerala Money-Lenders Act 1958, and therefore it was an illegal transaction and for that reason, cheque cannot be treated as a cheque issued in discharge of a legally enforceable debt etc., are untenable.

Briefly, the petitioner had entered into a hire purchase agreement with the 1st respondent NBFC for getting a loan to purchase a vehicle. On default of payment of the loan amount, the vehicle was repossessed, and for the balance amount, a cheque was issued. This cheque was dishonoured by the petitioner. The Trial court found the petitioner to be guilty of the offence under Section 138 of the NI Act. The petitioner contended that the NBFC had charged exorbitant interest in the hire-purchase agreement, higher than that permissible under the Money Lenders Act, and the entire transaction was illegal. Therefore, it was argued that the cheque was not issued in discharge of a legally enforceable debt.

The High Court held that the presumption under Section 139 NI Act entails an obligation on the court to presume that the cheque in question was issued by the drawer or accused in discharge of a debt or liability. Of course, it is a rebuttable presumption. It is a settled position of law that the standard of proof for doing so is that of preponderance of probabilities. The accused has not succeeded in rebutting the said presumption. For rebutting the presumptions under Section 118(a) and 139 of the NI Act accused has to lead credible evidence. Mere denial of the case of the complainant is not sufficient to shift this burden to the complainant. Therefore, finding that the accused had not rebutted the presumption while the complainant had succeeded in establishing that the cheque was issued in discharge of a legally enforceable debt, the High Court upheld the conviction and dismissed the petition.