Where the complainant fails to prove, through a witness with direct knowledge, the transaction that led to execution of the cheque and the passing of consideration, the initial burden necessary to invoke the presumptions under Sections 118 and 139 of the NI Act remains undischarged

The **Kerala High Court** in the case of **Shijosh vs State of Kerala [CRL.A NO. 1403 of 2008] dated June 09, 2026**, has held that where the complainant fails to prove, through a witness with direct knowledge, the transaction that led to execution of the cheque and the passing of consideration, the initial burden necessary to invoke the presumptions under Sections 118 and 139 of the NI Act remains undischarged. In such a situation, the complainant is disentitled to the benefit of those presumptions, and a finding that the offence under Section 138 has not been proved beyond reasonable doubt cannot be faulted.

The Court underscored that the statutory presumptions under Sections 118 and 139 of the NI Act do not operate in the abstract. The complainant must first lay a credible factual foundation regarding the underlying transaction and the execution of the cheque. Where the person who actually advanced the money and maintained contemporaneous records is not examined, and the complainant lacks direct knowledge of the transaction, the prosecution may fail at the threshold itself.

The Court observed that in a prosecution under Section 138 of the NI Act, the complainant may avail the twin presumptions under Sections 118 and 139, but only after proving the transaction and execution of the cheque in a convincing manner. The Court specifically noted that this would necessarily include proof of the passing of consideration covered by the cheque.

The Court further held that such proof must come from a person having direct knowledge of the transaction and execution of the cheque, and that the evidence of a person without such direct knowledge would be insufficient for that purpose. On the complainant's own showing, the money was paid by his father to the accused in five instalments, and the details were recorded by the father in a notebook which was not produced before the court.

On that basis, the Court found that the transaction and the passing of consideration were in fact between the complainant's father and the accused, and that the complainant himself did not know the transaction or execution of the cheque, including the passing of consideration. The Bench therefore held that the competent person to depose on these aspects was the complainant's father, who was not examined.