IN THE COURT OF FAST TRACK AT MAGISTERIAL LEVEL, TIRUVALLUR.

Present: Selvi.V.B.Selvaarasi, B.A.B.L., LL.M.,
Judicial Magistrate,
Fast Track Court at Magisterial level,
Tiruvallur.
Tuesday, 23rd day of January 2024

S.T.C.NO.123 of 2022

C.N.R.No.TNTR320022252025

Mr.M.Thilagavathy,age 57,
G.Munirathinam,
residing at No.3/15, 2nd street,
M.G.R.Nagar,
Periyakuppam,
Tiruvallur-602 001. ...Complainant

//VS//

Mr.J.Mukundan, age 30,
S/o.N.S.Janakiraman,
No.7, Neelakanda Metha street,
Geethalaya Appartment,
T.Nagar, (Opposite Shivagi Ganesan House). ...Accused

This case came up before me for final hearing in the presence of M/s.V.Mahadevan, learned counsel for the Complainant, and M/s.R.P.Ramesh, learned counsel for the Accused and having stood over for consideration till this day on perusal of records, this court delivered the following:

JUDGMENT

The complainant has filed this complaint against the accused, for an offence of dishonour of cheque bearing no.030749 for a sum of Rs.6,00,000/- (Rupees Six lakhs only) which is punishable under section 138 of Negotiable Instrument Act (in short referred as N.I.Act) through a private complaint under section 200 of Cr.P.C.

The sum and substance of the complaint:

2. The complainant states that during the month of March 2022 father of the accused namely N.S.Janakiraman approached complainant and requested a sum of Rs.6,00,000/- to meet his urgent business needs for the same accused issued post dated cheque bearing no.030749 dated 09.08.2022 for Rs.6,00,000/- drawn on Axis Bank Ltd. Anna Nagar Branch. Complainant presented the said cheque in his account holding Canara Bank, Tiruvallur branch and it was returned on 16.08.2022 with reason "Funds insufficient". Therefore the complainant issued legal notice on 24.08.2022 and the same was returned as "refused" on 25.08.2022. Since the accused failed to make payment, the complainant has filed this complaint for offence of dishonour of cheque.

3. The complaint was filed on 19.09.2022 and on 31.10.2022 being satisfied with the prima facie material available on record the cognizance for the offence under section 138 of N.I. Act has been taken, and the process has been issued against the accused and he appeared before this court. Copies served to the accused along with summon. On receiving summon accused appeared before this court. Then, under section 251 Cr.P.C. the substance of accusation made in the complaint was put to the accused. The accused denied the same. Thus, the accused pleaded not guilty and claimed to be tried.

4. The trial commenced on 10.01.2023 when the complainant adopted his pre-cognizance stage evidence as post cognizance stage evidence. Therefore evidence of Pw1, proof affidavit and documents marked as ExP1 to Ex.P7 were adopted as post-cognizance stage evidence. Thus, the complainant has examined one witness and totally marked seven documents. One Mr.Elumalai, Branch Manager, Canara Bank,Tiruvallur Branch was examined as Pw2 Ex.P8 was marked through him. One Mr.Srinivas, Branch Manager, Axis Bank, Anna Nagar Branch was examined as Pw3 Ex.P9 was marked through him.

Upon closure of the complainant side evidence, under section 313(1)(b) Cr.P.C. on 07.06.2023 the incriminating evidences brought out in the complainant's case was put to the accused. He denied the same. The accused has chosen to remain silent. Despite sufficient opportunity, no evidence was adduced on the side of the accused.

Inspite of sufficient opportunity, no argument was advanced on both side. Perused the records.

5. Now **points for consideration** are:

1. whether the complainant has proved the basic facts of dishonour of cheque so as to constitute offence under section 138 of N.I.Act?
2. Whether the complainant has proved his case, if so whether accused is able to rebut the presumption raised in favour of the complainant through his defence of preponderance of probability?

<u>Point 1:</u>

6. In order to prove the ingredients of section 138, the complainant examined himself as Pw1 and marked Ex P1 to Ex P12. Ex P1 is the original cheque leaf bearing no.030749 dated 09.08.2022. Ex.P2 is the return memo issued by Canara Bank dated 16.08.2022. Ex.P3 is the office copy of the legal notice issued to N.S.Janagiraman dated 24.08.2022. Ex.P4 is the returned postal cover sent to N.S.Janagiraman. Ex P5 is the returned postal cover sent to J.Mukundan. Ex P6 is the Copy of Aadhar card of the complainant. Ex.P7 is the office copy of the legal notice issued to N.S.Janagiraman dated 24.08.2022.

7. In the present case, the cheque leaf is dated 09.08.2022. Ex P2 shows that cheque leaf in question was dishonored on 16.08.2022. The complainant examined complainant and accused account holding bankers as Pw2 and Pw3. They adduced the statement of accounts of the complainant and accused as Ex P8 and Ex P9 respectively. Thus, as per return memo (Ex P2) and bank statements (Ex P8 and Ex P9) the cheque leaf was presented within 3 months from the date of issuance of

cheque leaf. The notice was issued within the statutory period of time. The notice issued to accused was returned as refused. The complainant has filed the complaint before this court on 19.09.2022. Thus, a careful scrutiny of the supra documents and eventualities relied on by the complainant would goes to show that the statutory requirements of section 138 of NI Act is complied with, and this complaint is filed within the jurisdiction of this court. Thus, the complainant relied on the statutory presumption enshrined under section 138 of NI Act. Hence, Point 1 is answered accordingly.

Point 2:

8. The case of the complainant is that father of accused (N.S.Janagiraman) approached complainant and borrowed Rs.6,00,000/-, thereby issued post dated cheque. To substantiate the same, complainant was examined as Pw1 and the said cheque is marked as Ex P1. The oral evidence of Pw1 is in consonance with his pleadings. Also during questioning under section 251 and 313(1)(b) of Cr.P.C. accused stated that he availed Rs.2,00,000/- loan from the complainant and issued cheque 5 years ago. Thus, it is clear that transaction exist between the complainant and accused. Accused during questioning under section 251 of Cr.P.C. stated that the signature in the cheque is of him. From the above discussion, it is clear that the cheque in dispute belongs to the accused and signed by him. As has been observed by the **Hon'ble Supreme Court of India** in **M/s.Kalamani Tex & Anr Vs. P.Balasubramanian reported in 2021(1) Civil court cases 599(SC)**, it has been held that, "The statute Mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then 'reverse onus' clauses become operative". Further, in the judgment rendered by the Hon'ble Supreme Court of India in **Rangappa Vs. Sri Mohan,** reported in **AIR 2010 SC 1898** that, "Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the

Complainant.” Hence, from the light of dictum of above authority and above discussion, since the signature and issuance of cheque are established, the complainant is entitled for the statutory presumptions and the onus is upon the accused to raise a probable defence that the cheque in dispute was not supported with existing enforceable debt or liability.

9. The contention of accused is that he availed only Rs.2,00,000/- loan from the complaiant. The cheque was issued as security for previous transactions. On perusal of Pw1 cross examination, it was also suggested that complainant lent Rs.2,00,000/- for interest at the rate of 10%. But no suggestion was made as to whether the said amount was repaid by accused. Also no oral or docuentary evidence was adduced by the accused. At this juncture, it is pertinent to refer the case of **Hiten P.Dalal Vs. Bratindranath Banerjee in (2001) 6 SCC 16,** it was held that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he has no debt or liability to issue the said cheque. In the case on hand, the accused has neither elicited his case from the evidence let in by the complainant nor adduced any evidence. Hence, the above contention does not raise any probable defence to rebut the presumption and also the accused has failed to prove his contention.

10. Accused also contended that he gave unfilled cheque to complainant. Even supposing that the cheque in question was issued as a blank cheque, the complainant has got the authority to fill up the same and present it for collection in view of section 20 of N.I.Act. The implied authority to fill up the cheque and present it for collection can be inferred from the conduct of the accused. As a man of ordinary prudence, the accused has neither given any stop payment instruction nor prior to issuance of statutory notice the accused has not taken any steps to get back his instrument at the hands of the complainant. In this regard, it is more profitable to refer to the Hon’ble

Supreme Court in case of **Bir Singh vs Mukesh Kumar reported in 2019 SCC (4) 197** wherein it has been held that,

> "A instrument reading of the provision of the Negotiable Instruments Act including, in particular, section 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liablility. It is immaterial that the cheque may have been signed by the drawer. If the cheque is otherwise valid, the penal provisions of section 138 would be attracted".
>
> "38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Hence, it is more clear from the light of above dictum that the contention of unfilled cheque does not rebut the presumption.

11. From the foregoing discussion, the accused has failed to raise a probable defence. Thus, the provisions of section 138 of N.I.Act squarely applicable to the present facts and circumstances of the case. It needs to be borne in mind that "bare denial" of the passing of consideration and existence of the debt, apparently would not serve the purpose of the accused. Something which is Probable has to be brought on record for getting the burden of proof shifted to the complainant. In view of the discussion, this court hereby holds that the complainant has proved and substantiated allegation against the accused and all the ingredients of section 138 of N.I.Act also stand proved against the accused beyond all reasonable doubt. Whereas, the accused has neither proved his case nor rebutted the presumption raised infavour of the complainant. Accordingly, the accused is hereby found guilty for the offence u/s 138 of N.I.Act. Thus, point 2 is answered accordingly.

In result,

The accused is found guilty for the offence u/s. 138 of Negotiable Instruments Act and is convicted and sentenced to undergo six months simple imprisonment u/s 255(2) of Criminal Procedure Code and is directed to pay the compensation of Rs.6,00,000/- (Rupees Six lakhs only) to the complainant u/s. 357(3) of Criminal Procedure Code within one month. In default to pay the above mentioned compensation amount, the accused is directed to undergo a further period of three months simple imprisonment. No fine is imposed.

This Judgment is dictated to the steno-typist, directly typed by her on computer, corrected and pronounced by me in the open court on 23rd day of January 2024.

Sd/.V.B.Selvaarasi
Judicial Magistrate,
Fast Track court at Magisterial level,
Tiruvallur.

Complainant side Witnesses:

Pw1	Thilagavathy,W/o.Munirathinam
Pw2	Elumalai S/o.Natarajan
Pw3	Srinivas S/o.Purushothaman

Complainant side Exhibits:

Ex.P1	Original cheque bearing no.030749 dated 09.08.2022 drawn on Axis Bank Ltd. Anna Nagar Branch, Chennai.
Ex.P2	Return memo issued by Canara Bank, Tiruvallur Branch.
Ex.P3	Office copy of the legal notice dated 24.08.2022
Ex.P4	Returned postal cover
Ex.P5	Returned postal cover
Ex.P6	Copy of the complainant aadhar card (Compared with original)
Ex.P7	Office copy of the Legal notice dated 24.08.2022

Ex.P8	Statement of accounts of complainant from 01.01.2021 to 31.12.2021
Ex.P9	Statement of accounts of accused from 01.08.2022 to 31.08.2022

Defence side Witness: NIL

Defence side Exhibits: NIL

Sd/.V.B.Selvaarasi
Judicial Magistrate,
Fast Track court at Magisterial level,
Tiruvallur.

Judicial Form No.61

(See Rule 106)

IN THE COURT OF THE FAST TRACK COURT, MAGISTERIAL LEVEL, THIRUVALLUR

JUDGMENT IN STC No.123 of 2022

ON THE FILE OF THE FAST TRACK COURT, MAGISTERIAL LEVEL, THIRUVALLUR

Complainant:-Tr.M.Thilagavathy, age 49, W/o.G.Munirathinam,residing at no.3/15.2nd street, M.G.R.Nagar, Periyakuppam, Tiruvallur-602 001

Accused:-Tr.J.Mukundhan, S/o.N.S.Janagiraman, No.7,Neelakanda Metha street, Geethalaya appartment, T.Nagar, (Opposite Shivagi Ganesan House).

Offence:- Section 138 of Negotiable Instrument Act

Finding:- The Accused is found guilty.

Sentence:- The accused is found guilty for the offence u/s. 138 of Negotiable Instruments Act and is convicted and sentenced to undergo six months simple imprisonment u/s 255(2) of Criminal Procedure Code and is directed to pay the compensation of Rs.6,00,000/- (Rupees Six lakhs only) to the complainant u/s. 357(3) of Criminal Procedure Code within one month. In default to pay the above mentioned compensation amount, the accused is directed to undergo a further period of three months simple imprisonment. No fine is imposed.

Serial number	Description of the accused					
	Name	Father name	Caste or race	Occupation	Residence	Age
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	J.Mukundan	N.S.Janagiraman	--	--	No.7,Neelakanda Metha street, Geethalaya appartment, T.Nagar, (Opposite Shivagi Ganesan House).	

Date of							Explanation of delay
Occurrence	Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or order	
(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
16.08.2022	19.09.2022	--	--	10.01.2023	19.10.2023	23.01.2024	--

Sd/.V.B.Selvaarasi
Judicial Magistrate,
Fast Track court at Magisterial level,
Tiruvallur.

Case Summary As per the Circular of Hon'ble High Court Madras in R.O.C. No.814/2020/RG/F1,Dated 07.04.2021

I	The period of remand of the accused	Not available (Private Complainant)
II	The date of filling of the complaint/ final report in the court	19.09.2022
III	The date of committal of the case to the Court of Session	Not available
IV	The date of questioning of the accused under sections 228,240,246 and 251 of the Code of Criminal Procedure, 1973 as the case may be	28.12.2022
V	Filling of all miscellaneous petitions and their results including the results on challenge before superior Courts, except routine petitions like petitions under section 317 of the code	CMP.No.1618/2023 (sec.311 of Cr.P.C.)-allowed. CMP.No.2260/2023(sec.309 of Cr.P.C.) -dismissed.
VI	Date of examination in-chief and cross examination of witness	Pw1Chief examination-31.10.2022 Pw1 Cross examination-04.08.2023 Pw2 Chief and cross-19.10.2023 Pw3 Chief and cross-19.10.2023
VII	Date of examination of the accused under section 313 of the code	07.06.2023
VIII	Details of abscondence of an accused and his appearance/production, as the case may be	Not available
IX	Grant of stay by Superior Courts and the results thereof	Not available

Sd/.V.B.Selvaarasi
Judicial Magistrate,
Fast Track Court at Magisterial level,
Tiruvallur.

Note:
1. The result of the case is intimated to the complainant.
2. Non Bailable Warrant is issued against the accused.

Judicial Magistrate,
Fast Track Court at Magisterial level,
Tiruvallur.

-TRUE COPY-

Judicial Magistrate,
Fast Track Court at Magisterial level,
Tiruvallur.