IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT, ATTUR.

Present: Tr. N. Mohanasundaram, B.B.A., L.L.B(Hons).,

Judicial Magistrate, Fast Track Court,

Attur.

Tuesday 4th Day of August 2026

STC.No:193/2021

CNR.No. TNSA15-000312-2021

1.	Details of the Complainant	S.Ponnusamy(40), S/o.Subramani, 114 A2, Singipuram new Colony, Singipuram Post, Vazhapadi Taluk, Salem District.
2.	Details of the Accused	S.Nagarathinam(40), S/o.Subbaiya Mudaliyar, 19/11, Kolandhan Street, Ammapet, Salem District 636 003.
3.	The Offence Complained	U/s.138 and 142 of Negotiable Instruments Act, R/W u/s.200 Cr.P.C.
4.	The Plea of Accused	Pleaded not guilty.
5.	Date of complaint	20.12.2021
6.	Commencement of Trial	09.09.2025
7.	Closure of the Trial	14.07.2026
8.	Judgment	04.08.2026
9.	Reason for delay	Miscellaneous petitions

This case was taken cognizance on 27.12.2021 and came for final hearing before me on 29.07.2026 in the presence of Thiru.K.Chandrasekaran, B.A., B.L., the learned counsel for the complainant and Thiru.P.PraveenKumar, B.A., B.L., the learned counsel for the Accused. After hearing submissions and upon perusing all the

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connected materials on records, having stood over the case for consideration till this day, this court delivers the following.

JUDGMENT

1. This complaint is filed U/s. 200 of Code of Criminal Procedure r/w Section 138 and 142 of the Negotiable Instruments Act, 1881 against the accused alleging that, the accused has committed the offence under section 138 of NI Act and prayed for awarding suitable punishment to the accused according to law and for award of compensation to him.

The case of the complainant is as follows:

2. The complainant and the accused are very close friends. By using said acquaintance, the accused had borrowed short term hand loans from the complainant and repaid the same with proper manner. In this juncture, on 1st week of July 2021, the accused approached the complainant to help by giving financial assistance of Rs.8,25,000/- (Rupees Eight Lakhs and Twenty Five Thousands only) to meet out his family and busincess expenses. The complainant arranged the amount and informed the same to accused. On 02.09.2021 the accused borrowed a sum of Rs.Rs.8,25,000/- (Rupees Eight Lakhs and Twenty Five Thousands only) in cash from the complainant. On the same date 02.09.2021 the accused issued a post dated cheque bearing No.**253661** as dated **05.10.2021**, drawn on State Bank of India, Ammapet branch. As per the instruction of the accused the complainant has presented the cheque for

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encashment with his banker in Equitas Small Finance Bank Limited, Attur branch on **05.10.2021**. That on **06.10.2021** the cheque was returned as unpaid for the reason **“Funds Insufficient”.** Thereafter, the complainant caused **statutory notice** to accused on **01.11.2021** and the same was returned on 05.11.2021 for the reason “**Insufficient Address”.** As the period of 15 days have lapsed from the date of return of the statutory notice the complainant filed private complaint against accused for the offence punishable U/s.138 Negotiable Instruments Act 1881.

3. After filing of the complaint sworn statement of the complainant was recorded. On perusal of records this court satisfied that there are sufficient grounds found to proceed against the accused and took cognizance for the offence punishable u/s. 138 of NI Act by issuing summons to the accused. After appearance of accused, copies of material documents were furnished u/s. **207 of Cr.P.C** at free of cost. Then, the **substance of accusation** explained to accused **u/s. 251 of Cr.P.C** for which the accused pleaded as **"பொய் வழக்கு, எந்த பணமும் நான் வாங்கவில்லை."** and therefore, the case was posted for trial.

4. The complainant was examined as Pw1 and **Ex.P1 to Ex.P5** were marked through him. One Mayakkannan was examined as Pw2. After closing the evidence of complainant’s side, this court explained to the accused incriminating circumstances appearing against in the prosecution evidence and he was questioned **u/s 313(1)(b) of Cr.P.C.** for which he claimed as False case and False evidences. **No witness**

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examined on the side of the accused, no documentary evidence filed on the side of accused.

Heard both sides. Perused the materials and documents available on record.

5. The counsel for the complainant argued that all the ingredients of the offence u/s 138 of N.I. Act are satisfied as proved through the documents exhibited on the side of the complainant and prayed for awarding maximum punishment and compensation.

Points for consideration in this case are as follows:

5.1. Whether the ingredients of the offence enumerated in section 138 of the Negotiable Instruments Act,1881 have been met?

5.2. Whether the facts and circumstances of this case warrants raising of presumption under section 139 of the Negotiable Instruments Act,1881?

5.3. Whether the accused has rebutted the said presumption (if raised) in favour of the complainant?

5.4. Whether the complainant has proved this case against the accused beyond all reasonable doubts?

Point No.5.1:

5.1.1. In order to attract offence punishable under section 138 of Negotiable Instruments Act, 1881 the following ingredients must have been satisfied:

1. The alleged cheque should have been drawn by the accused from the account maintained by him for discharging the liability arise out of the cheque.

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2. The alleged cheque should have been presented for enchasement within a period of three months or before its validity whichever is earlier, from the date on which, it was drawn.
3. The cheque presented must have been returned for insufficiency of funds in the drawers account or for exceeding arrangements made with drawers account or for any reason prescribed in law
4. The complainant must have issued notice to accused informing the dishonour of cheque and demanding to pay the amount for which cheque was issued
5. The accused, even after receiving the demand notice have not paid the amount within 15 days of receipt of notice.

Taking into consideration above aspects, on careful perusal of case, it transpires that, the complainant has examined himself as **PW1** witness and marked through him **cheque** dated **05.10.2021** as **Ex.P1**. The **return memo** dated **06.10.2021** issued by the Bank marked as **Ex.P2** which shows that the cheque was dishonoured. **Ex.P3** is the **statutory notice** dated **01.11.2021** sent by the complainant to accused within 30 days from the date of return of cheque, demanding him to pay the cheque amount within 15 days from the date of receipt of statutory notice. The **return postal cover** dated **03.11.2021** marked as **Ex.P4.**

5.1.2. The Ld. Counsel for accused submitted that, the mandatory ingredient of Section.138(b) of causing notice upon the accused has not been fulfilled. The Ld. Counsel argued that, the address of the accused has been wrongly mentioned on the notice, for that reason, the notice returned on the ground of Insufficient address. The address of accused mentioned in notice as Nagarathinam, No.2, Kanga Sabapathi Street, Near Rajeswari Sengunthar Marrige Hall, Ammapet, Salem – 636003. As aforesaid, Ex.P3- notice was returned with endorsement Insufficient address, the returned notice cover marked as Ex.P4. . He further stated that, the complainant has willfully caused notice to incorrect address. The Ld. Counsel further submitted that, the complainant, thereafter, filed complaint with correct address of accused that is, Nagarathinam, aged 40 years, S/o, Subbaiya Mudaliyar, 19/11, Kolandhan Street, Ammaper, Salem – 636003. Later on, summons to accused issued by the court, has been served on the correct address of accused. The counsel in support of his submission relied upon the Judgment of Hon'ble High Court of Madras, in ***M/s.Seshasayee Paper & Boards Ltd, Vs M/s.3H Classics,*** reported in ***2026(1) LW (Crl) 152.*** The counsel argues that, the complainant admitted in cross examination, that legal notice was not served to accused address. The relevant deposition is reproduced here:

> **"வழக்கறிஞர் அறிவிப்பு எதிரியின் விலாசத்திற்கு சார்வு செய்யப்படவில்லை என்றால் சரிதான்".**

5.1.3. Therefore, the counsel for accused argued that, the complainant himself has admitted that, the notice was not served to correct address of accused and it is also evident from Ex. P3. Per contra, the Ld. Counsel for complainant argued that, the complainant has sent the notice to the address given by accused only. The counsel,

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submitted that, the accused had not produced any documentary evidence or oral evidence to prove his correct address. The counsel submits that, the complainant shifted to new address without any information, for that reason the initial legal notice returned as insufficient address. The Ld. Counsel pointed out to deposition made by complainant in cross examination. The relevant deposition is reproduced here:

> "வழக்கறிஞர் அறிவிப்பு அனுப்புவதற்கு முன்னிட்டும், வழக்கு தாக்கல் செய்யப்பட்ட பின்பும், எதிரியின் சரியான முகவரி எனக்கு தெரியாது என்றால் தெரியும், வழக்கு தாக்கல் செய்வதற்கு முன்பாக ஒரு விலாசத்தை எதிரி சொன்னார், பின்னிட்டு மற்றொரு முகவரி இருப்பதை தெரிந்துகொண்டேன். எதிரிக்கு உண்மையில் கடன் கொடுத்திருந்தால் அவரின் சரியான முகவரியை தெரிந்துகொண்டு கடன் கொடுத்து, சட்ட அறிவிப்பு அனுப்பி இருப்பேன் என்றால் எதிரி சொன்ன முகவரி தான் எனக்கு தெரியும்".

5.1.4. From the aforesaid deposition, it reveals that, he sent the legal notice to the last known address of the accused. According to complainant, he sent the legal notice to the address given by accused. Later on, he came to know that, he changed his address to some other place. However, both the addresses are situated in same place, changes appear in the street name and door number alone. Further, the complainant states that, the accused was residing in a monthly rented house. But the accused denied that, and states that, he is living in own house. But no documentary evidence produced to prove that, the accused lives in his own house. It is judicially noticeable fact that, a person living in rental house may shift to other rental house as per his convenience. In those circumstances he is obliged to intimate the same to other person, whom he owes

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certain legal obligations, so as to enable him to proceed legal actions based on his every known particulars. It is further to be noted that, the father's name of accused has been wrongly mentioned by complainant. A specific suggestion was put to complainant in cross examination, as to father name of accused. However, no documentary evidence produced by accused to prove his father's name. The Ld. Counsel for complainant drawn attention of this court to section 27 of General Clauses Act, where it is provided that a notice sent through registered post to last known address is deemed to be a proper notice. The counsel further argued that, a debtor who secretly shift their residence without informing the creditor cannot take advantage of their own omission to claim non service of notice. He further argued that, if the accused had shifted to a new address is a pure question of fact within the exclusive knowledge of the accused and as per section 106 of Indian Evidence Act, 1872, the accused is bound to prove the fact within his exclusive knowledge. The Ld. Counsel for complainant further submits that, if at all the accused was residing in different address he could have produced the receipt or any document linked with that address, but no such document produced by the accused. In support of his contention he relied upon the Judgment of Hon'ble Supreme Court, ***CC.Alavi Haji Vs Palapetty Muhammed, (2007) 6 SCC 555, Vidhyadhar Vs Manikrao, (1999) 3 SCC 573.*** Mere suggestions in cross examination alone, not sufficient to prove the defense of accused. Therefore, considering all the elements, it appears that, the contention of the accused that, the statutory notice has not been served duly, cannot sustain in the present case. Thus on considering the evidence of Pw1 along with **Ex.P1 to Ex.P4**, it is satisfied that the ingredients enumerated under section 138 of NI Act, stands established accordingly. Therefore, point no.5.1 is answered in affirmative.

<u>Point No.5.2:</u>

5.2.1. The complainant does have the benefit of presumption in his favour as per section 139 under certain circumstances in respect of liability of the accused to him. Section 139 says as follows:

Sec. 139 – Presumption in favour of the holder:

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

In so far as the presumption is concerned, it comes into play when the accused has categorically admitted the signature on the cheque is that of him. In the present case, the accused has not denied the signature on the cheque. On the aspect of presumption, the Hon'ble Supreme Court of India held in ***Triyambak S Hegde Vs Sripad Crl.A.No.849850/2011*** that if the signature on the cheque is admitted, the presumption under section 139 shall be raised that the cheque was issued in discharge of debt or liability. In the present case, the signature has been impliedly admitted by accused. Therefore, the presumption u/s.139 of the Act raised in favour of the complainant. Hence, point no.5.2 is answered in favour of the complainant.

<u>Point No.5.3:</u>

5.3.1. The presumption envisaged Under section 139 of the NI Act, is a rebuttable

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presumption, such presumption can be rebutted proving contrary by providing evidence by the accused. At this point, the Hon'ble Supreme Court of India laid down in ***Rangappa vs. Sri Mohan (2010) 11 SCC 441*** as, when the accused has to rebut the presumption under section 139, the standard of proof is that of establishing preponderance of probabilities not the strict proof. Similarly, Hon'ble Supreme Court of India in ***Basalingappa vs. Mudibasappa (2019) 9 SCC 418*** held that, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the complainant in order to raise probable defense. It is not necessary for the accused to get into the witness box in support of his defense.

5.3.2. The complainant stated in complaint that, he and accused are very close friends. The accused also not disputed the acquaintance of complainant. Therefore, **acquaintance between complainant and accused** is not in dispute. The version of complainant stands established accordingly.

5.3.3. In so far so as **circumstances of lending** is concerned, the complainant states that, the accused approached him during first week of July, 2021 for financial assistance to the tune of Rs.8,25,000/- (Eight Lakhs and Twenty-Five Thousand Rupees only) to meet out his family and business expenses. The complainant arranged the same and gave the amount of Rs.8,25,000/-(Eight Lakhs and Twenty-Five Thousand Rupees only) to the accused on 02.09.2021 in hard cash. In support of his case, **Pw2** examined, who is the relative of complainant. Pw2 claims to be eyewitness

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to the transaction. Pw2 deposed that, on 02.09.2021, he was present in the shop of complainant, at that time, the accused and his friends came there and borrowed sum of Rs. Rs.8,25,000/-(Eight Lakhs and Twenty-Five Thousand Rupees only) from complainant in cash. The Ld. Counsel for accused argues that, the evidence of Pw2 is untrustworthy and not credible for reasons that; the name of Pw2 was not mentioned in statutory notice, complaint, and in chief examination of pw1. Secondly, name of Pw2 was not mentioned in list of witnesses appended in complaint. That; pw2 is close relative of pw1. He further argues that, Pw2 himself admitted that, his chief examination was typed by complainant and he has signed the chief affidavit. That; Pw2 does not know the details of cheque and name of the friends of accused, who accompanied the accused alongside at the time of transaction. Further, pw2 deposes he was present at the relevant time of alleged transaction, it does not mean that, he should be aware of the each and every detail of transaction. Likewise, in the present case, pw2 witnessed two facts; firstly, the complainant lent sum of Rs.8,25,000/-(Eight Lakhs Twenty-Five Thousand only), secondly, the accused issued the cheque for the same. Therefore, Pw2 cannot be expected to know and memorize the particulars of cheque such as cheque number, date and name of persons, who accompanied the accused at the time of transaction, ultimately those persons are third person to Pw2. The reasons cited by the accused over the evidence of pw2 are merely a lacuna on the procedural aspects. Further, pw2 stated the date of alleged transaction correctly. He further, deposed that, the friend of the accused has filled the cheque. The complainant also stated in his deposition, that friend of the accused filled the cheque and in which

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the accused put his signature. Therefore, it is clearly evident that, Pw2 has been present and witnessed the transaction. For those reasons, the evidence of pw2 cannot be held to be untrustworthy and not credible.

5.3.4. In so far as **issuance of cheque** is concerned, the complainant says that, the accused issued the cheque to complainant with respect to cheque amount. Whereas, the accused says that, one Arun @ Elthosh Varghese was known to accused. The said person also residing in Ammapet, Salem and engaged in retailer business of Poultry/Chicken. The said Arun Arun @ Elthosh Varghese used to purchase chicken from complainant on credit basis and sells them to various retail shops. The accused also engaged in business of selling chicken. While so, the Arun @ Elthosh Varghese had outstanding balance to be paid to the complainant, therefore the complainant refused to sell chicken to him and asked Arun @ Elthosh Varghese to settle the outstanding balance to proceed further in the business. Therefore, the Arun @ Elthosh Varghese approached the accused to convince the complainant to release fresh chicken on stock credit basis to Arun @ Elthosh Varghese, on condition that the accused issue a blank unfilled signed cheque as security. Moreover, the complainant already obtained many filled signed cheque from Arun @ Elthosh Varghese. On the promise made by Arun @ Elthosh Varghese, the accused gave his signed unfilled blank cheque to Arun @ Elthosh Varghese, who in turn handed over the same to complainant.

5.3.5. Thereafter, disputes arose between the complainant and Arun @ Elthosh

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Varghese, in the month of July, 2021. After many mediation, Arun @ Elthosh Varghese paid sum of Rs.4,50,000/- to complainant and the complainant also assured that, he will return the cheques of Arun @ Elthosh Varghese and the accused. However, the complainant willfully filled the cheque of accused and presented the same to bank for encashment. It is to be noted that, the aforesaid defense of accused remains as mere suggestions in put to complainant in cross examination. As per the case of accused, he gave his cheque as security, to Arun @ Elthosh Varghese, for the purpose of convincing the complainant to continue selling stock chickens to Arun @ Elthosh Varghese on credit basis. The Arun @ Elthosh Varghese is the material witness to prove the defense of accused. But the said Arun @ Elthosh Varghese has been examined on the side of accused. Further, the accused himself not stepped into witness box to prove his own case. Of course, it is well settled law, that accused need not step into witness box. However, the preponderance of probabilities has to determined depending on the material evidence and circumstances relied upon by the accused. According to accused, in the present case, the Arun @ Elthosh Varghese is key person, through whom the cheque of accused has been passed to complainant. If that person is not testified as a witness, the passing of cheque as alleged by accused cannot be proved. Therefore, the defense of accused with respect to passing of cheque is not proved.

5.3.6. Further, the accused defends that, the complainant had no **<u>financial capacity</u>** to lend such huge amount. It is well settled law that, the complainant cannot have expected to prove his financial capacity unless the same was disputed initially in reply notice. However, the accused can dispute the financial capacity of complainant through cross examination of complainant and his witnesses and through material evidences produced by complainant. The complainant says that, he is engaged in chicken wholesale business in the name of SPS Broiler, from the year 2009 and earns Rs.3,00,000/-(Rupees Three Lakhs only) per month out of it. He also admitted that, he has filed Income Tax Returns for his income from year 2009 to 2021. He has produced income tax return acknowledgment for the financial year 2014-2015, 2016-2017, 2017-2018, 2018-2019, 2019-2020, was marked as **Ex.P5.** The complainant was put specific suggestion in cross examination, whether he has disclosed the debt of accused in his Income Tax returns, the complainant affirmed that, it was disclosed in Tax returns filed for the financial year 2021-2022. The Ld. Counsel for accused contended that, Income tax returns for the financial year 2021-2022 has not been produced by complainant. However, even non-disclosure of transaction in Income Tax returns does not render the transaction void for the purpose of initiation of legal proceedings under Negotiable Instruments Act, 1881. Because non-disclosure of transactions in income tax returns is subject to penal liability under section. 269SS and 271-AAD of Income tax act. Therefore, it is not necessary for the complainant to produce the relevant income tax returns where debt owed by the accused is said to have been disclosed. Moreso, the Ld. Counsel argued that, the profit and loss account statement appended to income tax returns is bogus and fabricated for the reason that, the PAN number mentioned in profit and loss account statement and Income Tax Return is different to

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each other. The PAN number mentioned in Income Tax Return acknowledgment is BQCPP9293H. whereas, the pan number mentioned in profit and loss account statement is BNDPM6030R. However, the profit and loss account statement is itself not necessary when Income tax return acknowledgment has been filed. Not only that, profit and loss account statement is prepared by auditor specialized in chartered accountant. Therefore, there is possibilities of committing typographical errors while preparing statements. Hence, mismatch of PAN numbers in Income Tax returns and profit loss account is not a tenable defense.

5.3.7. Moreover, the Ld. Counsel for accused contended that, the complainant not obtained any document from the accused, except the cheque. The counsel argued that, the version of complainant that he obtained cheque only, for the purpose of lending huge amount of Rs.8,25,000/- is unbelievable. The counsel referred to cross examination of complainant, the relevant para is reproduced here:

> "பொதுவாக பெரிய தொகையை கொடுக்கும்போது கடன் பெறுபவரிடம் இருந்து புரோ நோட்டு, கடனுறுதி பத்திரம், ஆதார்கார்டு, ஆகியவற்றை பிணையமாக வாங்குவது வழக்கம் என்றால் சரிதான். எதிரியிடமிருந்து ஜாமின்தாரர் சம்மந்தமாக ஏதேனும் ஆவணம் வாங்கினேனா என்றால் இல்லை. உண்மையில் எதிரிக்கு கடன் கொடுத்திருந்தால் மேற்படி ஆவணங்களை பிணையமாக வாங்கியிருப்பேன், அவ்வாறு இல்லாததால் தான் எதிரிக்கு ரூ.8,25,000/- ஐ கடன் கொடுத்ததாக பொய் சொல்கிறேன் என்றால் சரியல்ல".

5.3.8. The counsel further pointed out to profit and loss account of complainant, where he stated that, he lent money to as many as 11 persons, which has been accounted under Sundry debtors. He further, referred to deposition of Pw2, where he admitted that, the complainant has filed 2 to 3 cheque bounce cases before this court. Therefore, the accused says that, the complainant engaged in money lending business. In those circumstances, it is unbelievable to say, the complainant lent money to accused with obtaining cheque only, and without obtaining any other documents. It is to be noted that, each case has to be determined depending on its facts and circumstances. If at all complainant might have been engaged in money lending business as alleged by accused, it is immaterial to the case on hand. Money lending business does not automatically cannot be said to be against the law. First of all, the accused did not prove that, the complainant engaged in money lending business. And it is also cannot be said that, merely because the complainant did not obtain any other documents from the accused except the cheque, the entire transaction is improbable.

5.3.9. In light of the forgoing discussion, this court is of the view that, the accused has failed to rebut the presumption raised against him under section 139 of Negotiable Instruments Act, 1881 in the standards of preponderance of probabilities. Accordingly, this point is answered in negative.

<u>Point No.5.4:</u>

5.4.1. As discussed in Point.No.5.3, the accused failed to rebut presumption by preponderance of probabilities. In the above discussion, this court concludes that the cheque has been issued in favour of complainant for discharging legally enforceable debt. Hence, this point is answered in favour of the complainant.

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5.4.2. In the result, the accused is found guilty for the offence under section 138 of the Negotiable instruments Act,1881 and is convicted and sentenced to undergo one year simple imprisonment u/s.255(2) of Cr.P.C / 278(2) of BNSS and is directed to pay a compensation of Rs.8,25,000/- (Rupees Eight Lakhs and Twety Five Thousand only) i.e., the amount due upon the cheque, to the complainant U/s.357(3) of Cr.P.C /395(3) of BNSS within a period of three months from today (04.08.2026). In default to pay the aforesaid compensation amount, the accused is directed to undergo further simple imprisonment for a period of one month.

Dictated by me to the Steno Typist and Directly typed by her in the Court Computer, pronounced by me in open court, on the 04th day of August 2026.

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Judicial Magistrate,
Fast Track Court, Attur.

<u>Complainant side witness:</u> -

PW1 : Ponnusamy (Complainant)

<u>Complainant side exhibits:</u>-

1.	Ex.P1	State Bank of India, Ammapet Branch, cheque bearing No.253661, dated 05.10.2021.
2.	Ex.P2	The Cheque return memo, dated 06.10.2021.
3.	Ex.P3	Legal Notice (Office copy), dated 01.11.2021.
4.	Ex.P4	The Returned Postal Cover, dated 05.11.2021.
5.	Ex.P5	Income Tax Return Acknowledgement, dated 21.12.2015.

Defense side witness: -

- Nil -

Defense side exhibits:-

- Nil -

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Judicial Magistrate,
Fast Track Court, Attur.