IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF -CUM-JUDICIAL MAGISTRATE, GUDALUR
PRESENT: THIRU. G. SARAVANAKUMAR, B.A, B.L., (Hon's)
Principal District Munsif -cum- Judicial Magistrate, Gudalur.
Tuesday, Dated: 28th day of July' 2026

STC. No. 44 of 2025

CNR.No.TNNS070000842025

Mr. Vadivel, Aged 45/2025,
S/o. Mr.Manickam
D.No. 10/ 480, Kalkori,
T.K.Pet, Gudalur, The Nilgiris. … Complainant

-Vs-

Mr. Radhakrishnan, Aged 55/2025,
S/o. Mr.Ramakrishnan,
Karlapatty, Near Transformer,
Puthoorvayal, M.T.Nagar Post,
Gudalur, The Nilgiris. . . . Accused

The Offence involved in this case having been taken cognizance and taken on file on 14.02.2025 and coming before me on 17.07.2026 for final hearing in the presence of, Mr.A.Jegadeesan, Learned Advocate for Complainant and Mr.V.J.Jibin and Mr.R.Ashok, Learned Advocates for Accused and upon hearing the submission and perusing the material records and having stood over for consideration till this day, this court delivered the following

CASE SUMMARY

Sl.No.	Particulars	Details
I.	Period of Remand of Accused	Nil. Since accused not arrested
II.	Date of filling of Private complaint in court	14.02.2025
III.	Date of questioning of accused under section 251 of Cr.p.c	22.07.2025

IV.	Filling of Miscellaneous petitions and their result	Nil
V.	Date of examination in chief and cross-examination of witnesses	Witnesses: Pw1; Examination in chief: 17.03.2026, 11.05.2026; Examination in cross: 10.06.2026
VI.	Date of examination of accused under section 313(1)(b) of Cr.p.c	14.07.2026
VII.	Details of abscondence of accused and his appearance / production	Nil
VIII.	Grant of stay by superior court and the result thereof	Nil

JUDGMENT

1. This Judgment shall decide upon the complaint filed by Mr. Vadivel (hereinafter referred to as the **'Complainant'**) under Section 138, Negotiable Instruments Act, (hereinafter referred to as the **'the NI Act'**) against Mr. Radhakrishnan (hereinafter referred to as the '**Accused**'). The cheque involved in this case is herein after referred to as **"the cheque in dispute"**.

2. The case of the Complainant in brief,

2.1. On 09.07.2014 the accused entered into a Sale Agreement with the complainant as a power of attorney of Dr.Samuvel for selling an extent of 5 cents of a house plot in R.S.No. 929/1 of Gudalur village in Patta No. 116 at the rate of Rs.1,13,000/- per cent and for a total consideration of Rs.5,65,000/- and in the layout this plot was delineated as plot No-5 and on the date of sale agreement the complainant paid a sum of Rs. 50,000/- to the accused towards the sale consideration.

2.2. It was agreed that at the time of settling the entire sale consideration the accused had to handover the possession of the property to the complainant and execute proper sale deed in favour of him or any one as directed by the complainant. On 07.05.2015 the complainant settled the entire sale consideration and as there was some problems for registering the document as the classification of the land was not completed then, the accused asked the complainant to wait till the problem was sorted out, however the accused handed over the possession of the property to the complainant and promised to register the document as and when the complainant called upon him to do so without any condition.

2.3. The complainant was waiting for sorting out the classification. In the mean time with respect to the same property the accused clandestinely executed a sale deed in favour of his wife namely Tmt. Maya as if he sold the property as a power of attorney of Dr. Samuvel. As the accused undertook to execute the sale deed either in favour of the complainant or his nominee the complainant entered in to a sale agreement with one Vimal Kumar S/o. Kanagasabai on 22.10.2020 for selling the above said property at the rate of Rs. 2,10,000/- per cent and undertook to execute the sale deed by bringing the original patta holder i.e. Mr. Samuvel or his power of attorney i.e. the accused to the sub-register office either in his or his nominee's favour.

2.4. After the sale agreement, the sale property was measured and it was found that the available extent of land was only 4.5 cents and not 5 cents as claimed by the accused and hence Mr. Vimal Kumar told the complainant that he would pay only for the available extent of 4.5 cents of land and it comes to Rs. 9,45,000/-. After knowing the shortage of ½ cent the complainant informed the accused about the shortage and demanded the accused to repay the excess amount which the complainant paid to him believing in his words that the extent of land was 5 cents. The accused agreed to repay Rs. 70,000/- towards the consideration of ½ cent.

2.5. As Mr. Vimal Kumar was in a foreign country he asked the complainant to execute the sale deed in his wife's name by bringing the patta holder to the sub-register office. The complainant in turn asked the accused to execute the sale deed in her name. At that time only the accused told the complainant that he transferred the property in favour of his wife and mutation has been done in favour of her and assured the complainant that he would bring his wife to the sub-register office and execute the sale deed in favour of Vimal Kumar's wife. A date was fixed for the execution of the document.

2.6. Under the sale agreement Vimal Kumar had paid only Rs. 6,00,000/- to the complainant towards the sale consideration and he promised to settle the balance sale consideration of Rs. 3,45,000/- on the date of execution of the document. Unfortunately on the date of execution of the document due to some personal reason the complainant has gone to his native place and asked Vimal Kumar's wife to give the balance sale consideration of Rs. 3,45,000/- to the accused, as agreed the accused took his wife to the sub register office and executed the sale deed in favour of Vimal Kumar's wife Mrs. J. Meera.

2.7. At the time of execution of the sale deed Mr. Vimal Kumar's wife handed over Rs. 1,80,000/- to the accused and asked him to pay the amount to the complainant, but the accused has not paid the amount to the complainant and when ever the complainant asked him to pay the amount he told the complainant that he used the amount for meeting his urgent family expenditures and told the complainant that he would settle the amount on or before 27.06.2024 and the accused has also given a written undertaking dated 27.05.2024 to that effect in favour of the complainant, in the under taking the accused has also promised to pay the amount Rs.70,000/- on or before 27.06.2024, but as promised the accused has not settled the amount.

2.8.Finally on 30.09.2024 when the complainant demanded him to pay the amount, the accused issued a cheque bearing No 056643 drawn on Canara bank, Gudalur branch dated 30.09.2024 for Rs. 2,50,000/- in favour of the complainant and asked the complainant to present the cheque for collection in the 1st week of December 2024 and promised to honour the cheque, accordingly the complainant presented the cheque for collection through his banker the very same Canara bank, Gudalur branch and the same was returned unpaid with the banker's memo stating the reason "Funds insufficient in the accused's account" and the same was informed to the complainant by his banker on 07.12.2024.

2.9. At the time of entering into the sale agreement and also at the time of giving undertaking the accused was residing at Kusumagiri in Gudalur and at the time of issuing the cheque the accused informed the complainant that he shifted his residence near to Puthoor Vayal Government school, hence the complainant issued a legal notice dated 30.12.2024 to the accused through registered post assuming that he was residing near Puthoor Vayal Government school informing about the return of cheque and demanded him to pay the cheque amount within 15 days from the date of receipt of the legal notice.

2.10. However the registered post was returned to the complainant on 09.01.2025 with the postal authority's endorsement "addressee can not be located" “Insufficient address" after returning the postal cover the complainant was able to trace out his correct address with great efforts. There after the complainant sent a copy of the same legal notice dated 30.12.2024 to the accused through correct address with Acknowledgment on 17.01.2025 and the accused received the notice and acknowledged the same on 21.01.2025 as per the track consignment, however the acknowledgment card was not returned to the complainant. The accused even after receipt of the notice neither sent any reply notice nor paid the cheque amount.

2.11. The accused issued a cheque without providing sufficient funds in his account to meet the liability on the cheque amount with the intention of cheating the complainant. The accused also failed and neglected to pay the cheque amount even after demand notice was sent to him, hence he has committed an offence under section 138 of the Negotiable Instrument Act. Hence this complaint.

3. Examination of the accused under section 274, 316 of BNSS.

After providing sufficient time to ascertain the facts of the case, the accused was examined under Section 274 and 316 of BNSS, and the substance of the offence explained to him and asked whether he plead guilty. The accused had denied the same and pleaded not guilty.

4. Complainant side evidence

The complainant had examined himself as PW1 and he has filed his proof affidavit *in lieu* of chief examination and through his documents under Exhibits P1 to P8 were marked, his testimony in the chief examination was replica of the complaint. With these said evidence complainant side was closed.

5. Examination of the accused under section 313 of Cr.P.C

Thereafter, statement of the accused u/s.313 C.r.P.C was recorded after disclosing the incriminating circumstances and evidence against the accused, to which the accused had denied the evidence as **“false evidence”** and further stated that the case as **“false case”** and there is no evidence on his side**.** Therefore defense evidence was closed.

6. Point for consideration

Now the point for determination before this court is whether the complainant had established a case against the accused under section 138 of the N.I.Act beyond any doubts, so as to punish the accused for the same?

6.1. The learned counsel for the complainant in his oral argument would submit that the complainant had established the ingredients of the Section 138 of the N.I.Act by the examining himself as PW-1, and he had marked the original cheque given by the accused for a sum of Rs.2,50,000/- as Ex.P3. The bank return memo was marked as Ex.P4. It is seen from the Ex.P4 that the cheque in dispute was returned for the reason of “Funds insufficient” as claimed in the complaint. There was no sufficient fund in the accused bank account on the date of issuance of the cheque, In this case the accused had not denied his signature in the cheque and he not denied the entrustment of the cheque to the complainant, he is not adduced proper evidence to prove his case. Once the signature was admitted and failed to prove his case by the accused, the complainant is entitled for the statutory presumptions in favour of him as per the N.I.Act and the burden to rebut the said presumptions is solely upon the accused. But in this case the accused had not rebutted the said presumption. All the above facts would be the circumstance admitting the version of the complainant case. While so, the evidence of the PW-1 and the presumptions in favour of the complainant are in tact. It is sufficient to convict the accused. When the accused had not rebutted the presumptions then the complainant could use the presumptions in favour of him to substantiate his case. Hence, it must be taken that the accused had not rebutted the presumption as per Sec.139 of the N.I.Act and it was prayed to convict the accused and to order compensation to the complainant for the monitory loss he had suffered.

7. The learned counsel appeared for the accused would argued that the accused has repaid Rs.1,80,000/- to the complainant. Even after receipt of the amount, the complainant failed to return the cheque which was issued as security. Therefore the complainant miserably failed to prove this case. Hence prays to acquit the accused from this case.

8. This court had carefully perused the records and the materials available in the case bundle. For properly appreciating the facts of the case and the legal aspects to be determined, a reference is necessary to the relevant statutory provisions. The following are the essential ingredients for constituting the offence u/s.138 N.I. Act:

* Person must have drawn a cheque on an account maintained bank for payment of certain amount of money to another person from out of that account.

* The cheque should have been issued for discharge, in whole or in part, of any debt or other liability;

* That cheque has been presented to the bank within a period of three months from the date of which it is drawn or within the period of its validity whichever is earlier;

* That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

* The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

* The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

9. It is only when all the above mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

10. The NI-Act raises two presumptions in favor of the holder of the cheque i.e. the Complainant in the present case;

* firstly, in regard to the passing of consideration as contained in Section 118 (a) and,

* secondly, a presumption that the holder of cheque received the cheque of the nature referred to in Section 138, for discharge in whole or in part, of any debt or other liability.

11. For the offence under Section 138 of the Act, the presumptions under Sections 118 and 139 have to be compulsory raised as soon as execution of

cheque by accused is admitted or proved by the complainant and thereafter burden is shifted to accused to prove otherwise.

12. These presumptions shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability etc.

13. A presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. The presumptions under section 118 and 138 are rebuttable in nature.

“Section 118(a) and section 139 of the Act read as under:

Sec.118. Presumption as to Negotiable Instruments: Until the contrary is proved, the following presumptions shall be made :

(a) of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Sec. 139. Presumption in favour of 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.”

14. In the present case, the Accused has not denied his signature in the cheque in question and had also not denied the receipt of the legal notice which was sent by the complainant, at the stage of questioning either under section 274, 316 of BNSS or under section 313 of CrPC.

15. It is apposite to note here that the Hon’ble Supreme Court in **Rangappa (Vs) Sri Mohan, [AIR 2010 SC 1898]** observed as follows,

“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 raised by the Court in favour of the Complainant” .

16. In the case of **M/S Laxmi Dyechem (Vs) State of Gujarat & ors. [2013 CRI.L.J. 3288]** the Hon'ble Supreme Court has observed as follows –

“Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant”.

17. Likewise, in the case of **K.N.Beena (Vs) Muniyappan and another [2002 SCC (CRI) 14]** the Hon'ble Supreme Court has observed as follows:

“Under Section 118 unless the contrary was proved, it is to be

presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in a complaint under Section 138 the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused".

18. Thus, as soon as the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. The rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable.

19. The same was affirmed by the Hon'ble Supreme Court in **Krishnajanardhan Bhat vs. Dattatraya G. Hegde [2008 Crl.L.J. 1172]** wherein it was held that standard of proof on the part of an accused and that of the prosecution in a criminal case is different. The Hon'ble Court also held that prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of accused is 'preponderance of probabilities'. Inference of preponderance of possibilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies. While adjudging whether in a case the presumption of consideration has been rebutted, it becomes important

to underscore that a mere denial of liability or vague defence of blank cheque as security, cannot be taken at the mere ipse dixit of the accused. The accused has to come forth with a convincing defence that appeals to the judicial conscience. Needless to state that if on a bare denial the presumption is stated to be rebutted, that would defeat the legislative intention of having a presumption in the first place. The reverse onus clause has been introduced further the legislative objective of improving the credibility of negotiable instruments. The presumption that a person would not normally hand over a signed cheque to another unless the same is for a liability has to be respected and given its full play. Only in a case where the accused comes up with a convincing defence to liability, that the presumption can be stated to have been rebutted.

20. In the present case it was not in dispute that the signature found in the _Ex.P.3 - cheque in dispute is that of the accused at the time of questioning under Section 274, 316 of BNSS and 313 of Cr.P.C. the accused had not denied his signature in the cheques in dispute. Hence with no other option this court has raised the initial presumption contemplated under Section 118 and 139 of the Negotiable Instruments Act in favour of the Complainant" .

21. Even without the above said presumptions also, the complainant examined himself as PW-1 and he had marked the original cheque in Ex.P3, the said cheque was returned for the reasons " Funds Insufficient ", And the said fact was established by marking the return memo Ex.P4. Thus, the complainant had established the fact of dishonour of the cheque in dispute as stated in this complaint. Moreover, the complainant also marked the copy of the legal notice sent by him as Ex.P5. The said legal notice was received by the accused vide Postal Track Consignment Card under Ex.P8. It appears that no response was

given by the accused to the notice under Ex.P5. Therefore the complainant has proved his case through legally acceptable evidence as mentioned above.

22. Now let us examine, whether the accused has disproved the evidence of PW1 and rebutted the above presumption?. The specific case of the accused is that the accused has repaid Rs.1,80,000/- to the complainant. Even after receipt of the amount, the complainant failed to return the cheque which was issued as security. But by misusing the security cheque, the present false case is filed against him. However, in order to proving the same the accused did not adduce any oral evidence or documentary evidence.

23. On the entire perusal of the records it is found that, the complainant had substantiated his case and the essential ingredients of the Section 138 of the Negotiable Instruments Act as held by the Apex Court in **Indian Bank Association Case reported in 2014(5) SCC 590-** in para 18. *"We make it clear that if Provisos (a),(b) and (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences"*

24. Having found that the complainant had fulfilled his part of onus in proving his case, now it is for the accused to raise a probable defence that she is not at all having any enforceable legal debt or liabilities with the complainant. Though the accused is not necessary bound to let in evidence by coming into box but necessarily there must be some piece of evidence to show that the case of the complainant is not reliable. During the questioning under section 274, 316 of the BNSS the accused answered that the complainant

case is false. But he did not pleaded he is not liable to pay any amount to the complainant, he never issued the cheque in dispute to the complainant and he did not give any assurance to repay the said loan amount to the complainant.

25. It was also not explained or even suggested why and what was the situation made the complainant to signed the cheque in dispute. But there was no satisfactory explanation coming from the defence side as to the justification of the conduct of the accused in doing so. When there was no evidence to support the defence version this court is of the considered opinion that the said defence was unbelievable and it was taken only just for the purpose of this case.

26. Thus, when the accused had failed to establish his defence by letting in any evidence or by the materials on record, this court is of the considered opinion that the mere suggestion made to the PW1 that the accused had paid sum of Rs.1,80,000/- to the complainant, would not solve the purpose for the accused. Because any one can invariably made such a suggestion to the complainant, then the meaning of incorporating the presumption as to the legally enforceable debt in Sec.139 would become futile.

27. If at all the accused could able to establish his defence then the burden would again shift upon the complainant to establish his case without the aid of the presumptions. But in this case the accused had miserably failed to rebut the presumptions as discussed above and the judgments discussed supra. Hence, this court is of the considered opinion that defence of the accused is totally not trustworthy and it is liable to be rejected.

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28. It is a well settled proposition of law that mere suggestion to a witness would not amount to proof of the said fact unless and until the same was proved by any acceptable evidence on record and this court would lend support of the following Judgment. In "**V.S. Yadav Vs. Reena**." Crl.A. No. 1136 of 2010 passed by Hon'ble High Court of Delhi, the Hon'ble Court observed at para 5 that:

"In the present case, the accused in his statement stated that he had given cheques as security. If the accused wanted to prove this, he was supposed to appear in the witness box and testify and get himself subjected to cross examination. His explanation that he handed the cheques as security for taking loan from the complainant but no loan was given should not have been considered by the Trial Court as his evidence and this was liable to be rejected since the accused did not appear in the witness box to dispel the presumption that the cheques were issued as security. Mere suggestion to the witness that cheques were issued as security or mere explanation given in the statement of accused U/s 281 Cr.PC that the cheques were issued as security does not amount to proof".

29. Hence, this court is of the considered opinion that the said plea of the accused is liable to be rejected and there is not even a preponderance of probabilities to make this courts mind that the accused had rebuted the presumptions in favour of the complainant. This court could also able to see that when the accused had taken a specific plea as above, it is the duty of the accused to establish why he had signed in the cheque without even getting the loan, why he was not lodged complaint as against the complainant if he was not given the cheque to him and which prevented him from issuing reply notice to the complainat. But the accused had not stated any circumstance for the deviation of

the same, which only goes to prove that the defence of the accused is not true and taken just for the case. There is no material contradictions in respect of the case by the evidence of the PW1.

30. From the foregoing discussions, this court is of the considered opinion that the accused had miserably failed to rebut the presumptions under the Negotiable Instruments Act and she had failed to establish her probable defence. And had failed to discharge the burden upon her as per the dictum laid down in **T.Vasanthakumar (Vs) Vijayakumari, reported in 2015(2) MLJ (Crl) 605 (SC).**

31. Thus this court is of the consider view that the complainant had fulfilled the basic ingredients of Sec.138 Negotiable Instruments Act and the accusation against the accused was proved by the complainant beyond any doubts. And this court also as a corollary comes to the conclusion that the Ex.P3 Cheque in dispute for the total sum of Rs.2,50,000/- was given by the accused to the complainant to discharge the legally enforceable debt and as the said cheque was returned for the reason of 'Funds Insufficient' vide Ex.P4 and after the Ex.P5 legal notice too, the accused had not repaid the amount within the statutory period, further there was no pleading that at the time of dishonour of the cheque there was sufficient fund available in the accused account, and when the defence of the accused was not believed by this court in the discussions supra, the accused is found guilty under the Sec.138 of the Negotiable Instruments Act.

32. In the result, the accused is found guilty under section 255(2) Cr.P.C for the offence under section 138 Negotiable Instruments Act and convicted and sentenced to undergo **TEN months simple imprisonment** and **to pay a**

compensation of Rs.2,50,000/- (value of the dishonoured cheque) to the complainant under section 357(3) Cr.P.C **with in One month** and **in default** of payment of the compensation, the accused shall undergo a further period of **TWO months simple imprisonment as default sentence,** considering the over all facts and circumstances of the case.

Dictated by me, Typed by the Steno-typist in the system attached with chamber, corrected and pronounced by me in the open court this the 28th day of July' 2026.

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**PRINCIPAL DISTRICT MUNSIF -CUM-
JUDICIAL MAGISTRATE, GUDALUR.**

COMPLAINANT SIDE WITNESS

Sl. No	Particulars of witnesses	Description
Pw1	Mr. Vadivel	Complainant

COMPLAINANT SIDE EXHIBITS

Sl.No.	Particulars of exhibits	Proved by
Ex.P1	Sale Agreement	PW1
Ex.P2	Return Undertaking given by the accused in favour of the Complainant	PW1
Ex.P3	Cheque bearing No.056643 drawn on Canara Bank, Gudalur	PW1
Ex.P4	Cheque Dishonour Memo	PW1
Ex.P5	Legal Notice	PW1
Ex.P6	Returned Cover	PW1

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Ex.P7	Postal Receipt	PW1
Ex.P8	Postal Track Consignment	PW1

DEFENCE SIDE WITNESSES:
Nil

DEFENCE SIDE EXHIBITS:
Nil

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