IN THE COURT OF JUDICIAL MAGISTRATE,

FAST TRACK COURT, (MAGISTERIAL LEVEL)- AMBATTUR,

TIRUVALLUR– 53.

PRESENT- Tmt.K.MAHASAKTHI,B.B.A.,L.LB(Hons).,

JUDICIAL MAGISTRATE, FAST TRACK COURT, AMBATTUR.

Dated: 19th SEPTEMBER 2025

S.T.C.No.337/2022

CNR.NO.TNTR-3500-3707-2022

PARTICULARS UNDER RULE 106 OF CRIMINAL RULES OF PRACTICE, 2019:- +

1.	**Serial Number**	**S.T.C.No.337/2022**
2.	**Name of Complainant and Offence**	Mr. A.R. Yusuf U/s.138 NI Act
3.	**Accused Name**	Mr. B. Jayakumar
4.	**Father / Husband Name**	-
5.	**Occupation**	-
6.	**Residence**	1.No. 19, 1st Street, Collector Nagar, Anna Nagar West, Chennai – 101. 2.J.B.S. Electricals, No.121, Mugappair Road, Sathya Nagar, Padi, Chennai 50 and No.15, Thottakara Street, Pandeswaram, Chennai – 55.
7.	**Age**	-
8.	**Date of Occurence**	-
9.	**Date of Complaint**	03.10.2022
10.	**Apprehension**	-
11.	**Release on bail**	-
12.	**Date of Commitment**	-
13.	**Commencement of Trial**	29.02.2024
14.	**Close of Trial**	23.07.2025
15.	**Sentence or Order**	19.09.2025

16.	**Service of copy of judgment or finding on accused**	ACQUITTAL
17.	**Explanation of delay**	No Delay

Mr. A.R. Yusuf -------Complainant

Vs.

Mr. B. Jayakumar --------Accused

JUDGMENT UNDER SECTION 255 Cr.P.C

A	Serial Number of the Case	STC.No.337/2022
B	Date of Offence	15.09.2022 (Date of expiry of 15 days time after legal notice)
C	Name of the Complainant & Address	Mr. A.R. Yusuf, S/o. (Late) S. Abdul Rahman, No.13, Masoodhi Street, T.M.P. Nagar, Padi, Chennai – 50.
D	Name of Accused	Mr. B. Jayakumar
E	Offence Complained of	Dishonor of Cheque- culpable u/s.138 of the Negotiable Instruments Act.
F	Plea of the Accused and his Examination in Brief	Pleaded not Guilty.
G	Final Order	ACQUITTAL
H	Judgment Reserved on	23.07.2025
I	Judgment Pronounced on	19.09.2025

PART-B – A brief statement of reasons for the decision

This case having been taken on file by this court and coming up for final hearing before me today and in the presence of Mr.K.Shivakumar, Advocate for the complainant and the accused being defended by Advocate, Mr.M.Anandan and the case having stood over for consideration till this day and upon the arguments advanced by both side and upon considering the materials on record on merits this court delivered the following

JUDGMENT

1. This Judgment shall decide upon the complaint filed by Mr.A.R.Yusuf (hereinafter referred to as the **‘Complainant’**) under Section 138, Negotiable Instruments Act, (hereinafter referred to as the **‘the NI Act’**) against Mr. B. Jayakumar (hereinafter referred to as the '**Accused**').

2. The case of the Complainant, in brief, is that the complainant is doing land business like selling and buying and also doing brokerage of the properties for past 30 years. The complainant states that one D.Mangilal and D.Misrilal are the owners of the property situated at survey no.90/5 and 90/6 new patta number 1222, for a total extend of 3274 Sq.ft within the sub registrar of Avadi. The above property had been purchased by the complainant from that D.Mangilal and D.Misrilal executed a sale agreement amount of Rs.3,75,000/-, but the complainant had paid a sum of Rs.3,00,000/- to the property owners and on condition that the balance amount of Rs.75,000/- will be paid within one month from the date of execution of sale agreement. Thereafter the complainant had paid the balance consideration of Rs.75,000/- on 25.02.2011 and on receipt of the D.Mangilal and D.Misrilal had executed Power of attorney in favour of the complainant on 27.01.2011 vide registration no.381/2011 on the file of sub registrar office Avadi to sell the property.

On that date the original documents of the property were handed over to the complainant. During 2021 september month, the accused had approached the complainant to sell the above said property, after negotiation both agreed to the sale consideration of Rs.10,50,000/-. Thereafter the sale agreement had been executed between the complainant and the accused on 01.09.2021, the accused had paid a sum of Rs.5,00,000/- as advance to the complainant, on condition the balance consideration of Rs.5,50,000/- will be paid within three months. The complainant had handed over all the original documents of the property to the accused. Due to ill health the accused had went to his native place Ramanathapuram during September and october 2021. The complainant made repeated phone calls to the accused but he not responded then the complainant had verified with the encumbrance on 26.02.2022 for the property with shock the owner of the property D.Mangilal and D.Misrilal had cancelled the power of attorney and executed a registered sale deed No.16889/2021 in favour of the accused vide sub registrar of Avadi. With ill intention the owners of the property and the accused had colluded and executed the sale deed without the complainant knowledge. The complainant had approached the accused to pay balance amount of Rs.5,50,000/- to him in discharge of his liability hence the accused had issued a post-dated cheque bearing no.000203 dated on 20.07.2022 drawn on Karur Vysya Bank, Mogappair branch, Chennai for a sum of Rs.5,50,000/- signed by the accused in favor of the complainant. Suddenly the complainant needed a sum of Rs.20,000/- in may month, 2022. The accused also paid a sum of Rs.20,000/- to the complainant hence the same cheque bearing No.000209 dated 20.07.2022 for a sum of Rs.5,30,000/- drawn on Karur Vysya Bank, Mogappair branch, Chennai for a sum of Rs.5,30,000/- signed by the accused in favor of the complainant**(hereinafter called the cheque in dispute)** was presented for collection with his banker Indian Overseas Bank, Padi Branch, Chennai but the cheque was returned for a reason stated as “Funds Insufficient” and the same was informed to the complainant by the banker and the complainant had lodged complainant against the accused before T3 Korattur police station, the police advised the accused to make the repayment to the complainant. on the advice the complainant approached the accused he had given instruction to present the cheque again for collection, again it was returned for reason “Fund insufficient “communicated to the complainant by way of return memo dated 23.08.2022. Then the complainant had sent a legal notice to the accused demanding the repayment of the dishonored cheque amount on 30.08.2022. The said notice was delivered to the accused and false reply notice had been sent by the accused. Even after the said legal notice the accused had not repaid the cheque amount. Hence the accused is liable for the offence, so, this present case was filed under sec.138 of N.I.Act.

3. After recording the sworn statement of the complainant and also upon on the perusal of the documents, having found the *prima facie* case against the accused and this court have taken cognizance of the offence and issued summons to the accused. The accused appeared on summons and the copy of the complaint was served on him and on questioning they pleaded not guilty and claimed for trial.

4. The complainant had examined himself as PW1, he has filed his proof affidavit *in lieu* of chief examination and through him documents-Exhibits P1 to P16, were marked and his testimony in the chief examination was replica of the complaint. Mr.Elumalai had been examined as pw1 and no documents marked by him, with the above evidence the complainant side evidence was closed. Thereafter, the statement of 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. In the accused side no witness has been examined and no documents marked then this court had closed the Defense witness and had proceeded the case.

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

6. The learned counsel for the complainant in his 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, The complainant is the true and lawful owner of the property only after entering the sale agreement for the valuable sale considertation Rs.3,75,000/- and upon payment of full sale consideration the Power of Attorney given to the complainant and handed over all the original documents to him by Magilal and Misrilal. It is the general procedure of the persons doing real estate

business after payment full sale consideration they will obtain power of attorney instead of sale deed only for the purpose of resale to the third parties for profit. Hence the contention of the accused that the complainant is not an owner of the property is totally false. The Power of Attorney had been cancelled by the principals without any prior notice to the complainant and the notice and Register Post Receipt or Acknowledgement stated has been sent on 01.11.2021 are not filed before this Hon'ble Court. The accused not issued any notice to the complainant to cancel the sale agreement and return the advance amount given on 01.09.2021 after execution of sale deed dated 22.11.2021 or before to that. The sale agreement period is in existence and only that period before completion of period the accused in a hurry manner approached the principals and obtained the sale deed by misrepresentation by cheating the complainant. No person without get return of the advance amount Rs.5,00,000/- cannot purchase the property by giving additional amount. There is no possibility any person don't give cheque for payment after completion of sale deed even if the same obtained by influence by the complainant there is no defence to the accused what revented him to further proceeding against the same illegal action. The cheque given by him not denied and his signature not denied and it is only stated in the reply notice that the cheque has been obtained with the influence of Korattur Police but the same not been proved by the accused. The accused not proved his case in cross examination of Pw1 & Pw2 further the accused failed to step into box to adduce evidence or to prove not filed any documents of his defence . The allegation that cheque has been obtained by influence of Korattur Police not been proved by the accused and the police authorities never interfering in the money dispute. The cheque is dated 20.07.2022 and the complainant given only on 17.08.2022 and there is no question of the obtaining cheque under influence of the Korattur Police. Furthr the principals Mangilal and Misrilal really wants to Cancel the power of attorney they should return the advance amount of Rs.3,75,000/- which is received under sale agreement dated 27.01.2011 and further if it is taken as it is only a Power of Attorney why they not claimed the Advance Sale Consideration amount of Rs.5,00,000/- given by the accused till this date. If the accused given the payment of the full sale consideration the complainant may invest in the some other property and he will get 10 times profit on the same but due to cheating of the accused in payment of balance sale consideration the complainant suffered heavy monetary loss. Therefore the complainant proved the charges against the accused and the accused hereby punished Under Section 138 of Negotiable Instrument Act, 1881 and compensation of the cheque amount has been awarded twice the cheque amount Under Section 357 of the Criminal procedure Code in the interest of justice.

7. *Per Contra,* the learned counsel for the accused in his argument would contend that the complainant is not entitled for the statutory presumptions in this case. It was further contended that the complainant relied the Ex.P1/Unregistered Sale Agreement executed by Mr.D.Mangilal and D.Misrilal in favour of the complainant dated 27.01.2011, from the said Ex.P1 it is well clear that it is just a sale agreement. It is pertinent to note that the sale agreement would not give right over the property. Apart from that, the limitation for the said Sale Agreement was ended, but till date it has not renewed by either parties. Hence, the said Ex.p1 is infructuous. The reason for sale agreement has not enforced into Sale Deed would best known to the Complainant and D.Mangilal & D.Misrilal/Owners of the property and till date the complainant has not challenged the said document before any Court of Law even after 14 years. The Ex.P2 gives power to the Complainant to sell the property, upon such power the complainant executed the Sale agreement/Ex.P3 in favour of Accused by receiving sum of Rs.5,00,000/- as part sale consideration amount out of total sale consideration amount Rs.10,50,000/-. However, even after the Accused proposed for willingness and readiness to pay the balance in total consideration amount to buy the property, the complainant has failed proceed upon the conditions mentioned in the Sale Agreement/Ex.P3 and evaded to execute sale deed in favour of Accused. Aggrieved by the Act of the Complainant, the Accused approached the owners of the Property directly and explained the prejudice and agony caused by the Power Agent/Complainant. After the meet with the owners of the property it came to know the Complainant being a power agent has not paid the advance amount sum of Rs.5,00,000/- which received by him. As the result, the complainant cheated the owners of the property, therefore upon the fraudulent act of the complainant, they cancelled the Power of Attorney deed dated 25.02.2011 through vide document No.16886 of 2021 dated 22.11.2021 after issuing proper notice to the Complainant. Till date the said cancellation of power of Deed was not challenged by the complainant before the4 Court of Law. From such date of cancellation of power of attorney deed dated 22.11.2021, the complainant would not have right over the property as Power Agent. Accordingly, the owners of the property after receiving further amount sum of Rs.5,96,800/- executed sale deed in favour of the Accused which is marked as Ex.P4. Therefore, the Accused have paid more than amount fixed in the sale agreement dated 01.09.211. As per the Ex.P3 sum of Rs.5,50,000/- alone is the balance need to give against the sale consideration amount. However, the Accused paid sum of Rs.5,96,800/- totally 10,96,000/- has been paid with respect to the property. Therefore, the Complainant has not issued the legal notice within 30 days from the date of the Cheque 1st time when it is dishonored. ie., 22.07.2022. Instread, to bring the cheque in question under the statutory limitation period the cheque was again presented by the Complainant and issue a legal notice under sec.138(b) of NI Act. Subsequently, the Cheque in Question was presented again by the Complaint on 23.08.2022. Hence, the Legal Notice was not presented within 30 days from the date of its 1st dishonor. Hence, the Complainant has not complied the statutory condition under sec.138(b) of NI Act by sending the Demand Notice within 30 days from the date of return memo first it was returned. Therefore, this case is filed under the barred by limits. Therefore, the Accused prays that the above written arguments may be taken into consideration and considering the facts and circumstances and preponderance of probability and rebuttable presumption may be given to the Accused and this Hon'ble Court may be pleased to acquit the Accused.

8. This court have 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 honor 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.

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. In the present case, the Complainant has proved the above-mentioned ingredients on the face of it.

9. The 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. 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. 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. 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 as held

Hiten P. Dalal (Vs) Bratindranath Banerjee [(2001) 6 SCC 16]:

> "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 favor 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."

10. In the present case, the Accused has not denied his signature in the cheque in question Ex.P-1 for a sum of Rs. 15,00,000/- and had also not denied the receipt of the legal notice sent by the complainant, at the stage of framing of substance of accusation under Sec 251 Cr.P.C. It was also not disputed that the accused had received the legal notice. It has been observed by the Hon'ble Supreme Court in **Rangappa (Vs) Sri Mohan, [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 raise by the Court in favor of the Complainant"*

11. 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 defense 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 defense and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. However, the accused/drawer of a cheque in question neither raises a probable defense 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".

12. 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”.

13. 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 defense that the court must either believe the defense to exist or consider its existence to be reasonably probable, the standard of reason ability being that of the prudent man. The same was affirmed by the Hon'ble Supreme Court in **Krishnajanardhan Bhat vs. Dattatraya G. Hegde [2008Crl.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 defense 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 defense 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 defense 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 defense to liability, that the presumption can be stated to have been rebutted.

14. 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*".

15. 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".*

16. 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, the standard of reason ability being that of the prudent man. The same was affirmed by the Hon'ble Supreme Court in **Krishnajanardhan Bhat vs. Dattatraya G. Hegde [2008Crl.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 defense 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 defense 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 defense 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 defense to liability, that the presumption can be stated to have been rebutted.

17. Even without the above said presumptions also, the complainant had examined himself as PW-1 and marked the original cheque bearing No. 000209 dated 20.07.2022 as Ex.P-6 after it was duly deposited for collection and same was returned by the Drawers Bank for the reasons “Funds Insufficient” as claimed in the complaint

and said fact was established by marking the “Return Memo” as Ex.P7. Thus, the complainant had established the fact as stated in this complainant that the cheque in Ex.P-6 was returned for the reason of “Funds Insufficient”. Further, the same Cheque was again deposited for 2nd time for encashment and it was returned again for the same reason “Funds Insufficient” on 23.08.2022. Aggrieved Complainant, issued Common Legal Notice to Accused and 3 another and said copy of the common Legal Notice along with India Postal Department’s Receipts is marked as Ex.P-10, the Acknowledgment Due card is the proof of Delivery and two returned postal covers sent to various addresses of Accused’s are marked as Ex.P-11 and Ex.P-12 is the Acknowledgment Due cards and returned postal covers sent to the Mangilal and Mishrilal is marked. Hence, the receipt of the legal notice sent to the accused is established. In addition, the Complainant had also examined one Elumalai as Pw-2, through him No Documents were marked except oral evidence. On the entire perusal of the records 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 defense*”.

18. Further, the complainant has successfully discharged his initial burden to prove his case, and the presumptions are raised in his favor. Now, the point for determination is whether the accused has rebutted the presumptions by raising probable defense, It is a settled position of law that the reverse onus is upon the accused to rebut the presumptions, and the same is an ‘evidentiary burden’ and a ‘persuasive burden’ as held by the Honourable Supreme Court in Rangappa v. Sri Mohan. Further, as held by the Supreme Court in Basalingappa v. Mudibasappa, it is open for the accused to rely on the evidence let in by the complainant to rebut the presumption, and that it is not necessary for the accused to take the stand to support his defense. Admittedly, in the case at hand, the accused has not examined any witness, but relied upon the materials available on records submitted by the complainant and upon the cross-examination of Pw-1 to rebut the presumptions and the case of the complainant. In support to rebut the presumptions the accused raised several defenses in this case which are all discussed hereunder.

19. Keep the above Law of Principle in mind, it seems to be that this complainant is involved in Real Estate business and broker. In the due course of his business, he had executed an unregistered sale agreement dated 27.01.2011 from the owners of the properties namely D.Mangilal and D.Mishrilal by paying sum of Rs.3,75,000/- wherein this present accused also signed as witness. However, without entering into sale agreement the complainant executed a registered Power of Attorney deed dated 25.02.2011 between the complainant and owners of Property namely D.Mangilal and

D.Mishrilal. The reason stated by the complainant for not executing sale deed in his favour is that “the normal practice/procedure of the persons doing land business they will purchase the property upon payment of entire sale consideration and receive all the original documents.” As such they executed power of attorney deed instead sale deed. It is pertinent to note that the complainant had paid Rs.3,00,000/- out of Rs.3,75,000/- and balance amount shall be paid within one month from the date of execution of Ex.P1 but there is no evidence by the complaint to show that he had paid the pending consideration amount i.e., Rs.75,000/-. Hence, it is doubtful the complainant has paid the entire consideration amount to the owners of the property to raise the power to sell the property as per the condition in the power of attorney. Therefore, the term in the sale agreement was not complied by the complainant. As the result, the Ex.P1 become voidable. Further, the unregister agreements do not confer a valid title.

20. Subsequently, through the Ex.P2 the complainant became a Power Agent for the same property by executing Power of Attorney deed between the owners and the PW1. Being a Power Agent he has entered into an unregistered sale agreement with the accused dated 01.09.2021 which is known from the evident of Ex.P3. Therefore, from the averments in the said Ex.P3, it is evident that the complainant/Pw-1 is just a power agent from the date of execution of power of attorney deed dated 01.09.2021. The PW1 is the Power Agent, it is primary duty to oblige the conditions with the buyer/accused and act upon the conditions and instructions by the Principal or the

owner of the property. The complainant after receiving the advance amount for a sum of Rs.5,00,000/- from the accused and stating that due to ill health he had went to his native place at Ramanathapuram for period September & October, 2021 and stayed with his family for his treatment, even the medical bill marked by the PW1 is irrelevant and not medical bill of the PW1, which raises doubtful on his conduct and reliability of the documents. As the result, the accused approached the land lords and paid the balance sale consideration amount to land owner, as such they registered the property in the name of the accused and one Baskar.

21. Further, it is observed that the Ex.P2 was cancelled by the principals through the Ex.P4/Cancellation of Power of Attorney deed dated 22.11.2021 in vide Document No.16886/2021 at Avadi Sub Registrar office. The complainant itself admitted that he has not filed any civil suit against the Principals/Owners for cancellation of Power of Attorney deed. Therefore, since from the date of cancellation of the said Power of Attorney deed the Principals/Owners of the scheduled property become the lawful owner to their property and the complainant restrained to do act as Power Agent.

22. It is evident on the material available on record, admittedly on the same day through Ex.P5, the owners of property namely D.Mangilal and Mishrilal, after receiving the sum of Rs.10,96,800/- from the accused & one P.Baskar and executed the sale deed in favor of them through vide registration No.16889/2021 dated

22.11.2021. Therefore, the Accused had paid the entire consideration amount for property which is fixed by the land owners. Hence, there is no legally enforceable liability to owner of the property after the registration of the concern property. Therefore, this court does not find that there is any legally enforceable liability exist on the date of presenting the cheque in the bank by the PW1. Furthermore, after the principals cancelled the power of attorney deed, the right over the property to scheduled property as claimed by the complainant was restrained and without any right the complainant cannot deposit the cheque for the balance consideration amount and same unacceptable.

23. Further, it is pertinent to note that in the evidence of PW1 himself admitted that a sum of Rs.5,00,000/- was received by him from the accused, which had been kept in his possession and not paid to the principals/owners of the property. From the exhibits, it is evident that the Accused had paid the entire consideration amount for the scheduled property and there is no further due or claims from the land owners/Mangilal and Mishrilal. Therefore, this court finds that there is no merit on the case of complainant. Mere issuance of the Cheque would not attract offence under sec.138 of Negotiable Instrument Act. There should be a legally enforceable debt or liability. Unfortunately, the said ingredient is not available to convict the accused.

24. Further, the land owners D.Mangilal and D.Mishrilal and the Accused replied for the common legal notice dated 30.08.2022, which are all marked as Ex.P14 and

Ex.13 respectively. The relevant paragraphs are extracted hereunder:

Para No.4) My client state that they came to know the facts whereas your client and one Jayakumar had entered an unregistered sale agreement on 01.09.2021 to dispose their property for a valuable consideration of Rs.10,50,000/- and in the context whereas you client received an advance of Rs.5,00,000/- from the said Jayakumar, towards the total consideration, but whereas your client neither informed the transactions nor paid single rupee towards them as his principals and as the owners of the property.

Para No.5) My client further state that whereas your client said to be turned silent after receipt of the advance and said to be unreachable to the agreement holder the prospective purchaser even after his due efforts thereof the said agreement holder report the same to them as the principals and owner of the agreed property and in the context whereas they jointly effected a notice against your client on 01.09.2021 to call upon him to present in person within 10 days from receipt of the notice to submit the statement of account and to cancel the registered power of attorney but he failed to present in person or reply to the notice within the notice period, which led them to cancel the registered Power deed in document number 16886/2021 at SRO-Poonamallee and executed the sale deed in favour of the Jayakumar vide document number 16889 of 2021 accordingly as sole responsible persons against the misdeed of their agent as per the provisions of law in force.

Para No.6) My client further state that whereas your client possessing the

partial sale consideration against their property to be meant for them as per the principal and agent contractual obligation.

Thereby, my clients inclined to reply your notice jointly and severally to advice your client to withdraw the notice unlawfully affected against them without any valid right and entitlement over their property to refund the partial sale consideration Rs.5,00,000/- received from the said Jayakumar within 15 days of receipt of this notice failing which my client constrained to take appropriate action against your client both in Civil and Criminal nature and he bound to the consequences incidental thereof.

The above said averments in the Reply Notice from the owners of property clearly shows that the complainant does not have right and entitlement over the said property. Further, the complainant after receiving the advance amount, he was unreachable to the either of the parties. Therefore, from the Reply Notice the principals/land owners showed their disappointments and asked to repay the misappropriated advance amount by the complainant.

25. Further, it is pertinent to note that the cheque was initially presented with his banker and same was returned on 22.07.2022, it is evident from the Ex.P7. Subsequently, the complainant lodged complaint before the Korattur Police Station on 17.08.2022, CSR was also issued in that connection, the said complaint and CSR is marked as Ex.P8. However, the complainant had not issued legal notice to the

accused within 30 days from the date “Return Memo” dated 22.07.2022, instead he lodged complaint before the police for his remedy, this court observes that when he could not able to succeed in the police station, he again presented the same cheque for second time for the purpose of saving the limitation as such again the cheque was returned second time on 23.08.2022. It is pertinent to mention herein, the complainant had failed issue a statutory demand notice when after the cheque dishonored for first time on 22.07.2022 for the reason “Funds Insufficient”. Instead, the complainant caused legal notice on 30.08.2022 after the cheque returned for second time. This court finds that the complainant ought to issue the legal notice within 30 days from date of receipt of the first “Return Memo” dated 22.07.2002, when he fails to do so the case falls under barred by limitation. Therefore, the Ex.P-6 cheque in dispute was executed by the accused for legally enforceable liability is doubtful. Also, it is doubtful from the evidence of the PW1 that the accused liable for a sum of Rs.5,30,000/- to the complainant. No prudent man will issue cheque to any person for which he is legally not bound to make any payment. In the present case the accused had purchased the property from the owners on making full sale consideration and executed the registered sale deed. In such circumstance the accused had issued a post-dated cheque and later make a payment of Rs.20,000/- then issued again this cheque in dispute is inconceivable and beyond possibility. This court is of the considered opinion that the said defense of the accused is not mere a possible explanation alone and the cross of the PW-1 by itself and the admissions given by the PW-1 by itself in the minds of the court had raised a serious doubt as to the version of the case as pleaded by the complainant.

26. This court is of the considered opinion that the accused had raised a serious doubt in the version of the case of the complaint itself and the accused had rebutted the presumptions under sec.139 N.I.Act in the light of the Dictums laid down in the **M/S Laxmi Dyechem** discussed in *supra*. The complainant had miserably failed to state the date on the loan was borrowed and the date on the cheque was issued by the accused to the complainant. Further the complainant had failed to produce the books of accounts as deposed in his evidence that all the transactions are been recorded by him in his books of account.

27. It is observed by three Judges larger bench of our Supreme Court in **Rangappas case** in 2010 (3) MLJ that Section 139 N.I.Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable under Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. While dealing with the nature and standard of proof to be adduced by way of rebuttal

evidence the Supreme Court observes "in such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clause and the accused cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is the settled legal position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities' and therefore if the accused is able to raise a probable defence which create doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. This court is of the considered opinion that the above dictum squarely applicable to the facts of the case.

28. Thus, this court is of the considered opinion that the arguments advanced by the accused is acceptable and the arguments of the complainant does not fit as per the evidence on record as discussed in the earlier paras. And the failure on the part of the complainant to give possible explanation for all the material discrepancies found in the evidence and the non-examination of the material witness would only compel this court to hold that the prosecution fails to prove the case as pleaded in the complaint. As such the mere failure of the accused to enter the witness box will no way affect the merit of the defense raised on the side of the accused.

29. When this court in the preceding paras had found out the inherent weakness in the case of the complainant and which goes to the root of the case, this court is of the considered opinion that the accused is able to raise a probable defense and had created a serious doubts with regard to the very maintainability of the case by the complaint and that the cheque in dispute was not supported by any legally enforceable liability in respect of the complainant- A.R. Yusuf in the light of the dictum laid down in **Krishnajanardhan Bhat** case discussed *supra*, that the cheque in dispute Ex.P6 was not supported by any legally enforceable liability and he had successfully rebutted the presumption under section.139 of the Negotiable Instruments Act and the burden shifts back to the complainant, which the complainant failed to discharge. **Hence, the accused in this case namely B.Jayakumar is acquitted from the alleged offence under Sec.138 of the Negotiable Instruments Act, 1881 under Sec.255(1) Cr.P.C.**

Typed directly by me in my laptop, corrected and pronounced by me in the open court this the 19th day of September 2025.

Digitally signed by
Tmt.K.Mahasakthi.B.B.A.,L.L.B.,(Hons)

Annexure

Complainant side witness

Pw-1- Mr. T. Krishnamoorthy

Complainant side Documents

Exhibits
Ex.P-1- Sale Agreement dated 27.01.2011
Ex.P-2- Power of Attorney Doc.No.381/2011 dated 25.02.2011
Ex.P-3- Sale Agreement Dated 01.09.2021
Ex.P-4- Cancellation of Power of Attorney Doc. No.16886/2021 dated 22.11.2021
Ex.P-5- Sale Deed Doc. No.16889/2021 dated 22.11.2021
Ex.P-6- Original cheque
Ex.P-7- Return Memo dated 21.07.2022
Ex.P-8- Complaint and CSR.No.1156/2022 dated 18.08.2022
Ex.P-9- Return Memo dated 22.08.2022
Ex.P-10- Legal Notice dated 30.08.2022 with postal Receipt
Ex.P-11- Acknowledgement card and 2 Returned covers
Ex.P-12- Acknowledgement Card (2 series) and 2 Returned Covers
Ex.P-13- Reply Notice of the Accused dated 16.09.2022
Ex.P-14- Reply Notice dated 16.09.2022
Ex.P-15- Proof of documents the complainant is staying at Ramanathapuram
Ex.P-16- Encumbarance Certificate Dated 26.02.2022

Accused Side Witness: NIL

Accused side Document:NIL

Note:

1. The result of the case was informed to the complainant.

Digitally signed by
Tmt.K.Mahasakthi.B.B.A.,L.L.B.,(Hons)