

IN THE COURT OF THE JUDICIAL MAGISTRATE
FAST TRACK COURT AT TIRUCHENGODE

Present: Tmt. S.Shanmathi,B.A.,B.L.,
Judicial Magistrate,
Fast Track Court (ML),
Tiruchengode.

24th day of July 2026, Friday

Old STC No. 319/2013

Renumbered as STC No.20/2016

in

Judicial Magistrate, Tiruchengode

New STC No. 52/2016

CNR.No.TNNM0F0000952016

P.S. Deivaraj
S/o Subramanian
D.No.90/2-5 C.H.B. Colony West,
Velur Road,
Tiruchengode Town & Taluk,
Namakkal District

....Complainant.

/Vs/

P. Sengottaiyan
S/o Palanisamy
D.No.1/B1, Goundankadu,
Elanthakuttai Post,
Veppadai,
Tiruchengode Taluk,
Namakkal District.

...Accused

This case was filed with condone delay (Cmp No.3011/2013) in Judicial Magistrate, Fast Track Court in STC No.319/2013 and then filed in Erode Criminal Justice Division, Fast Track Court due to Territorial Jurisdiction and was transferred

to JM Tiruchengode Court in STC No.20/2016 due to Territorial jurisdiction and transferred from this court and taken up here as new STC.No.72/2016 in which Mr.T.V.M.Saravanaraj Advocate appeared for the Complainant, and Mr. P.Meiyalagan Advocate for Accused. After hearing the submissions, upon perusing the materials on record and having stood over for consideration till this day, this court delivers the following:-

JUDGMENT

1. The averments of Complaint in brief

The complainant is residing in the above address. The accused is Friend of the complainant. That, on 24.02.2012 the accused approached the complainant at his residence and borrowed a sum of Rs. 4,00,000/- (Rupees Four Lakhs only) for his urgent family necessity, Latter, the Accused paid the interest at the rate of 18% per annum for the said amount in favour of the Complainant. For the urgent family and business necessity, the Complainant requested to the Accused to repay the debt amount, On 01.12.2012, the accused approached the complainant at his residence and issued a cheque for the principal and part of interest amount, totally Rs.4,34,000/- to the complainant drawn by the accused in favour of the complainant for Rs.4,34,000/- from Axis Bank, Erode bearing No.002169 dt.03.12.2012.

On the request of the accused, to encash the cheque, the complainant presented the cheque for collection on 19.02.2013 through his account in ICICI Bank, Tiruchengode Branch. The same was returned unpaid on 20.02.2013 as Drawers Signature differ' and the complainant came to know the return of the cheque on 20.02.2013. Hence the complainant issued a legal notice to the accused on 20.03.2013 by demanding the accused to settle the cheque amount within 15 days from the date of receipt of the legal notice.

The accused received the legal notice on 08.04.2013, but the accused neither paid the amount nor replied. The statutory grace time of 15 days expired on 24.04.2013. The non filing of the complaint in time as contemplated by the act is neither willful nor wanton. The complainant filed a separate application to condone the delay in filing this complaint. The accused knowing fully well that the said cheque was bound to be dishonored, gave the said cheque to the complainant with dishonest intention and cheated the complainant. The accused there by committed an offence under section 138 of negotiable instrument act as amended by the act 66 of 1988 and liable to be punished.

The residence of the complainant where the accused borrowed the amount from the complainant, the complainant's bank at Tiruchengode, Tiruchengode Taluk, where the cheque was deposited for collection are within the limit of Tiruchengode Town Police Station and at Tiruchengode where the complainant sed the legal notice to the accused is within the limit of Tiruchengde Town Police Station, therefore this Honourable Court has jurisdiction to try this case. The cause of action for the complaint arose on 24.02.2012. accused borrowed the amount of Rs.4,00,000/- on 01.12.2012, when the accused issued the cheque for Rs.4,34,000/- to the complainant on 19.02.2013, when the cheque was presented for collection at ICICI Bank, Tiruchengode, on 20.02.2013. when the cheque was returned unpaid by the Axis Bank, Tiruchengode, on 20.03.2013.

when the complainant issued the legal notice to the accused demanding payment of the cheque amount, on 09.05.2013, when the accused received the legal notice, and on the date on which the accused failed to pay the cheque amount to the complainant within 15 days statutory grace time given notice. The accused knowingly has committed the offences punishable under sections 138 and 142 of the Negotiable Instrument Act. Due to the act of the accused, the

complainant is suffering a lot and so the accused is liable to pay to the tune of the cheque amount as compensation to the complainant U/s.357 of Cr.P.C. Therefore the complainant humbly prays that this Honourable Court may be pleased to punish the accused U/s.138 and 142 of the Negotiable Instrument Act and direct him to pay the cheque amount to the complainant as compensation and thus render justice.

2) The Accused had appeared before this Court after receiving the summons issued from this Court, and on appearance of the Accused, the copies of the material records were furnished to the Accused as provided U/s.204 Cr.P.C. and U/s.281 Cr.P.C. the Accused was questioned regarding the allegations levelled against him, by the Complainant, which was denied by the Accused and he claimed to be tried by this Court. Further, as directed by this Court, U/s.88 Cr.P.C, the Accused had executed a bond for a sum of Rs.10,000/-.

3) On the side of the Complainant, the Complainant was examined as PW1 and Ex.P1 to Ex.P9 were marked. Subsequent to the completion of examining the witnesses on the side of the Complainant, the Accused was questioned U/s.313 (1) (b) Cr.P.C regarding the incriminating circumstances and testimonies deposed against her, by the witnesses examined on the side of the Complainant, which was denied by the Accused.

4) On the side of the Accused, witness DW1 to DW3 have been examined and the side of Accused evidence was closed, the case was posted for arguments.

ARGUMENTS ADVANCED ON THE SIDE OF THE COMPLAINANT:

5) The Learned Counsel appearing for the Complainant has submitted that, the Legal Notice dated 20.03.2013, was address to the Accused to the correct address and the same was received in the accused address, in compliance with the statutory requirement U/s.138 of the N.I.Act.

6) The cheque has been returned by the Bank for signature differ as it could be clearly seen from Ex.P2. In addition to this, the Learned Counsel has submitted that the accused borrowed from the complainant a sum of Rs.4,34,000/- she gave ExP1 cheque, as stated above it was dishonoured in return memo ExP2. Hence, in view of the above submissions the Learned Counsel has prayed to convict the Accused based on the presumptions for the offence punishable U/s.138 of the N.I.Act and award compensation to the Complainant U/s.357 Cr.P.C.

POINT FOR CONSIDERATION:-

- 1) Whether the present Complaint is maintainable before this Court U/s.138 of the N.I.Act?
- 2) Whether the statutory presumptions U/s.118, 139 of the N.I. Act have been rebutted by the defence?
- 3) Whether the accused has raised preponderance of probabilities that dislodges the complainant's case and consequently discharges the burden of proof?

DISCUSSION:-

1) MAINTAINBILITY OF THE COMPLAINT U/S.138 OF THE N.I.ACT

7) The present Complaint has been filed in respect of the cheque dated 03.12.2012, drawn at Axis Bank, Erode branch, presented by the Complainant, on

19.02.2013, in ICICI Bank, Thiruchengode Branch, and the cheque presented by the Complainant was dishonoured by the Bank, on 20.02.2013, due to Signature differ in the Bank account of the Accused, for which a Legal Notice dated 20.03.2013, was sent to the Accused by the Complainant. Thereafter, the notice sent by the Complainant, to the Accused and the same was received in the address on 08.04.2013. Thus, in the absence of any evidence to the contrary in respect of the maintainability of the present Complaint, this Court is of the considered view that, the Complainant has complied with the essential requirements for maintaining the present Complaint against the Accused.

2) & 3) PRESUMPTIONS U/S.118 AND 139 OF THE N.I.ACT AND PREPONDERANCE OF PROBABILITY

8) Before traversing into the factual matrix and merits of the case, useful reference is made to Section.118 and Section.139 of the N.I. Act which reads as follows:-

118. PRESUMPTIONS 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;*
- b) as to date - that every negotiable instrument bearing a date was made or drawn on such date;*
- c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
- d) as to time of transfer - that every transfer of a negotiable instrument was*

made before its maturity;

e) as to order of endorsements - that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

f) as to stamps - that a lost promissory note, bill of exchange or cheque was duly stamped;

g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

139. PRESUMPTIONS IN FAVOUR OF HOLDER.

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.

9) It is settled law that, in case of dishonor of cheque, the initial burden lies on complainant to prove that, the cheque in issue was issued by the accused for the discharge in whole or in part of his liability i.e., consideration and the debt owned by the accused is a legally enforceable one. Once, the complainant had established, then the onus is upon the accused to rebut the presumption.

10) In the instance case, the complainant himself was examined as PW.1 by means of proof affidavit and reiterated the facts averted in the complainant.

Further, the complainant relied and marked Ex.P1- cheque dated 03.12.2012, Ex. P2 - Bank Return Memo dated 20.02.2013, Ex.P3- Advocate Notice dated 20.03.2013, Ex.P.4 Acknowledgment Card dated 08.04.2013. On perusal of Ex.P1, it seen that the cheque in issue has been issued to the complainant from the account maintained by the accused. On perusal of Ex.P2, it seen that the said cheque was dishonored for the reason "Signature differ" and the Ex.P3 and Ex.P4 shows that after return of the cheque, the complainant issued a statutory legal notice to the accused and the same was received by the accused.

11) On perusal of questions raised to P.W.1 during the cross examination by the defence side and 313 (1) (b) questioning, it would disclosed that the signature in the Ex.P.1 was disputed by the accused. The accused completely denies borrowing any money from the complainant. The defense of the accused is that on 01.03.2011, he joined a chit with the complainant and on 01.12.2011, he took out the chit amount and handed over his one empty unsigned blank cheque as security. Although he repaid that entire chit amount, complainant failed to return the security cheque issued by him.

12) But the accused during his chief examination as Dw3 admits that he handed over the cheque leaf, which is claiming to be blank and for security purpose. Under Section 139, the burden of proof shifts to the accused to prove a probable defense on the scale of preponderance of probabilities. Bare oral assertions without supporting evidence fail to meet this legal threshold. Since the accused claimed the signature was not his, the legal obligation was on him to file an application under Section 45 of the Indian Evidence Act requesting a handwriting expert comparison. The accused did not furnish any material document, which holds his specimen signature to show a genuine mismatch. The mere denial of signature in

a statement under Section 251 and 313 CrPC or during cross-examination, without adducing cogent documentary or expert evidence, remains an unproven assertion. The accused took no concrete steps to disprove the signature or rebut the underlying debt, in respect of the above defence, hence the statutory presumptions favor the complainant.

13) Hence, statutory presumption U/s. 118 and 139 of NI Act has been raised in favour of the complainant. It is pertinent to note that Section 139 of the NI Act provides a statutory presumption that the Cheque was handed over in respect of a debt or other liability. Under Section 118 of the NI Act, every negotiable instrument is presumed to have been drawn and accepted for consideration. Even though, the presumption stands in favor of the complainant is a rebuttable one and the onus is on the accused to raise the probable defense to rebut the presumption. The Hon'ble Supreme court has laid down the principles about the standard of proof on the part of the accused to rebut the said presumption in the following case;- **Krishna Janardhan Bhat V. Dattatraya G. Hegde reported in AIR 2008 SC 1325** it was observed as follows:

Standard of proof on the part of an accused and that of the prosecution in a criminal case is different. 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 the accused is preponderance of probabilities.

And In **Rangappa v. Srimohan reported in (2010) 11 SCC 441,**

Keeping this in view, it is a settled 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'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

14) Thus, as laid down in the above decisions, it is an established law that onus lies upon the accused to rebut the presumption enumerated u/s. 118 and 139 of N.I Act is not beyond reasonable doubt, but the standard of proof for rebutting the presumption is that of preponderance of probabilities. Therefore, this court has to looked into, whether the accused has raised any probable defence to rebut the said presumption.

15) As per the above discussion the statutory presumptions under Sections 118 and 139 of the NI Act operate in favor of the complainant. The burden shifts to the accused to dismantle these presumptions by raising a highly probable defense. It is admitted that the cheques was given by way of security, and it was not for the discharge of any debt or any liability is also a matter of defence. Further handing over of the cheques by way of security would not extricate the accused from the discharge of liability arising from such cheques. Suffice it to observe, the impugned judgment of **The Honble Apex Court in Sripathi Singh Vs State of Jharkhand and another reported 2021 SCC online SC1002** stated as,

A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance.

‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under section 138 and the other provisions of NI act would flow.

16) From the supra dictum it is vivid that, when a cheque is issued and is treated as ‘security’ towards payment of an amount with a time period being stipulated for payment, all that it ensures is that such cheque which is issued as ‘security’ cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the Accused would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented.

17) The accused admitted that he had issued the cheque as security, the cheque which was held as security was presented for realization. Accused state that the chit amount was fully paid, but the accused does not sent any legal notice or does not initiate any legal proceedings aganist the complainant for recovery of blank

Cheque. The cheque was returned as Signature differ. The only plea stating as the cheque was given for security purpose does not create presumption that the cheque is issued as security purpose. Therefore, prima facie the cheque which was taken as security had matured for payment and the complainant was entitled to present the same.

18) The main contention of the accused as the ExP1 is issued as security purpose, then from the above decision of the Hon'ble High court, it is clear that whether or not there was a liability against the cheque when it was issued is irrelevant for the purpose of determination of the liability under NI act. The above precedent further been relied upon by the Hon'ble Apex court in **Sunil Todi Vs The state of Gujarat reported LL 2021 SC 706**, held as, For existing liability under the NI act, it has to be shown that liability existed at the time of presenting the cheque by the payee and not when it was handed over by the drawer to the payee. On dishonour of such cheque the consequences contemplated under the NI act had befallen on accused. When a cheque is issued even though as 'security' the consequence flowing there from is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

19) The learned counsel for accused argued that on demand by the accused the complainant failed to return the cheque. This was also established in the chief of the accused as Dw3, the relevant portion as follow,

நான் தெய்வராஜிடம் 01.03.2011 தேதியன்று சீட்டு போட்டேன். 01.12.2011 தேதியன்று 10 வது ஏலத்தில் நான் சீட்டு எடுத்தேன். அந்த சமயத்தில் பாதுகாப்புக்காக தெய்வராஜ் இரண்டு காசோலைகள் கேட்டார். நான் இரண்டு காசோலைகள் தரமுடியாது என்று சொன்னதற்கு ஒரே ஒரு காசோலையாவது தருமாறு கேட்டார். அதன்படி நான் அவரிடம் ஒரு காசோலையை எதுவும் பூர்த்தி செய்யாமல், கையொப்பம் கூட இடாமல் கொடுத்தேன்.

கடந்த 01.10.2012ம் தேதியன்று சீட்டு முடிந்தது. அந்த சீட்டு முடிந்த நான்கு நாட்கள் கழிந்து, நான், சண்முகசுந்தரம் மற்றும் பிரகாஷ் ஆகிய மூவரும் தெய்வராஜிடம் சென்று நான் கொடுத்திருந்த ஆவணங்களை திரும்ப தரச்சொல்லி கேட்டோம். அதற்கு அவர் அந்த ஆவணங்கள் வேறு ஆவணங்களோடு கலந்துவிட்டதாகவும், தேடித்தருகிறேன் என்றும் சொன்னார்.

ஏலச்சீட்டுக்குரிய தொகை முழுவதையும் நான் தெய்வராஜுக்கு செலுத்திவிட்டேன். அதற்கு பிறகு தான் ஆவணங்களை தரச் சொல்லி கேட்டேன். ஆனால் அவர் தராமல் இருந்துவிட்டு, தற்போது என் காசோலையை அவரே நிரப்பி கையொப்பம் செய்து இந்த பொய் வழக்கை ஜோடித்து தாக்கல் செய்துள்ளார். நான் நிபராத் ஆவேன்.

20) As rightly argued by counsel for complainant that if the defence taken by the accused is true, he would have taken steps to get the cheque back, but accused did not take any legal steps for years and even after receiving notice, he remain silent. Regarding that, the accused's failure to reply to the demand notice issued under Section 138(b) is highly unnatural and leads to an adverse inference. If the complainant was indeed a fraudulent misuse of a security cheque left with complainant, any prudent person would have immediately replied to the complainant's legal notice to place his defense on record. So a critical vulnerability in accused defense is his complete failure to act like a reasonably prudent person

21) Matter of defence is that after the continuous demand the complainant failed to return the blank cheque issued for security purpose. Then the accused should have Sent a legal notice to complainant demanding the return of the blank/security cheques. Given a "Stop Payment" instruction to his bank specifically citing the fear of misuse of those particular cheque number. Lodged a police complaint or filed a civil suit for the recovery of the cheques. But accused did not took any of the above measures, more importantly failed to initiate stop payment in respect of the cheque alleged to be issued to complainant. His complete inaction for years until filing of this case, points directly to unnatural conduct under Section 114 of the Indian Evidence Act, completely demolishing his defense of misused security cheque.

22) Furthermore, mere raising a defence will not come to the aid and rescue of the Accused as rebuttal of presumptions, as the preliminary burden regarding the cheque issued for security purpose and no due balance, will have to be substantiated. In this case the presumption raised in favour of the complainant, then it is up to the accused to rebut the same by furnishing sufficient evidence to prove that repaid all the chit due balance. Eventhough accused examined one Shanmuga sundaram as Dw1, one Prakash as Dw2 and himself as Dw3, without any supporting documents, it remain bare assertions that carry no weight to aid the defence. More importantly the accused side failed to prove that the complainant was running a chit fund. To add on the evidence of Dw1 to Dw3 does not vividly disclose how much was the total chit amount, how much amount was taken by the accused on 10th month and how much amount was pending to be paid. Subsequently by failing to produce any documentary evidence or expert opinion to substantiate the defence of denial of signature or security cheque claim, it is concluded that the accused failed to reverse the onus, to rebut the presumption araised aganist him.

23) In the absence of any credible and substantial evidence, the averment that, Ex.P1 cheque was issued only as security and no due balance chit amount is untenable and lacks creditworthiness. In the event of failure to discharge the initial burden of proof, the question of reversal or transmission of burden of proof upon the Complainant will not arise. In view of the discussion, this court found that the complainant proved his case against the accused and the accused failed to rebut the presumption U/s. 118 (a) and 139 of N.I.Act by raising any probable defence and failed to prove her defence

24) In so far as Sec.146 of the N.I. Act is concerned, the provision envisages the presumption which has to be considered in favour of holder in due course with regard to the return memo of a cheque issued by the Bank. The Return Memo issued by ICICI Bank, Tiruchengode Branch dated 20.02.2013, in respect of the Cheque No.002169, namely Ex.P1 for a sum of Rs.4,34,000/- (Rupees Four Lakhs Thirty Four Thousand only) clearly shows that, the Return Memo Ex.P2 is a prima facie evidence by which presumption U/s.146 of the N.I.Act can be construed in favour of the Complainant. Therefore, having regard to the dishonouring of Ex.P1 cheque on its presentation by the Complainant, the Complainant becomes the holder in due course of Ex.P1, as it will have to be statutorily presumed under the ambit of Sec.146 of the N.I.Act and thus the presumption U/s.146 of the N.I.Act will have to be drawn in favour of the Complainant as neither any material evidence has been produced nor any oral evidence has been adduced by the accused is efficient to prove the contrary.

25) Therefore, in light of the aforementioned reasons set out above, the Judgments relied upon, in the considered opinion of this Court, the Complainant has discharged the burden of proof and the accused has not rebutted the presumption. Eventhough the accused denied the borrowal of any debt and no due payment, the

accused neither elicited his case from the evidence let in by the complainant nor adduced any evidence and does not raise any probable defence to rebut the presumption. Hence, this court holds that the dishonouring of the cheque, namely Ex.P1 and the failure to make payment by the accused have been and the statutory presumptions have not been rebutted. Thus, the accused is found to be guilty for the offence punishable U/s.138 of the Negotiable Instruments Act.

3) RESULT:

In result, as the offence committed by the accused person is proven beyond reasonable doubt, the accused is found guilty and convicted U/s.255(2) Cr.P.C, for the offence punishable U/s.138 of the Negotiable Instruments Act and Sentenced to undergo 6 months Simple imprisonment and directed to pay a sum of Rs.4,34,000/- (Rupees Four Lakhs thirty four thousand only) as compensation U/s 357 (3) Cr.P.C to the Complainant, within a period of 1 month from the date of receipt of this Judgment and in default of payment, Simple Imprisonment for a period of 3 months shall be undergone. Further, towards recovery of the compensation amount, it is open to the complainant to take steps to recover the compensation amount U/s. 421 Cr.P.C. No fine imposed. No Material Objects marked on either side.

This judgment is dictated by me to the Steno-Typist her directly typed it in the computer then corrected by me and pronounced in the open Court this the **24th day of July 2026.**

Judicial Magistrate,
Fast Track Court(ML),
Tiruchengode.

Annexure**Complainant side witnessess:**

Sl.No.	Witness Name
PW1	Deivaraj

Accused side witness:

Sl.No.	Witness Name
DW1	Shanmugasundram
DW2	Prakash
DW3	Sengottaiyan

Complainant side documents:

Exhibits	Documents
Ex.P1	Axis Bank, Erode Branch, bearing cheque No.002169 for Rs.4,34,000/- dt.03.12.2012
Ex.P2	Collection slip dt.19.02.2013
Ex.P3	Bank Debit Advise dt.20.02.2013
Ex.P4	Cheque returned Memo dt.20.02.2013
Ex.P5	Legal Notice dt.20.03.2013
Ex.P6	Legal notice sent to the Post master dt.11.05.2013
Ex.P7	Proof of delivery dt.22.05.2013
Ex.P8	Certified true copy of counter filed by the respondent/Accused in Cmp No.3011/2013
Ex.P9	Original vehicle registration certificate

Accused side documents: NII

Judicial Magistrate,
Fast Track Court(ML),
Tiruchengode.