BEFORE THE FAST TRACK COURT (MAGISTERIAL LEVEL), THOOTHUKUDI

Present: Tmt. Shivani S P, B.A.,LL.B (Hons), LL.M,

Judicial Magistrate Fast Track Court, Magisterial Level, Thoothukudi

Friday, the 19th day of June, 2026

SUMMARY TRIAL CASE No: 270/2022

CNR No. TNTT0B-003979-2019

Complainant	Mr. P. Chandrasekararan, S/o. Mr. Pandian, Proprietor, Pandian Finance, 150-A, Sivan Kovil Street, Thoothukudi (Central PS Limit)
Accused	Mr.G.Francis Posco Gomaz, S/o Mr.Gabiriyeal Gomaz, Mariya Manson, 120/2 Kaliappar Pillai Street, Super Scan Center Opposite side, Thoothukudi.
Offence	u/s 138 of the Negotiable Instruments Act, 1881
Finding	The accused is found guilty of the offence u/s 138 of NI Act
Sentence	In the end, this court finds the accused Mr. Francis Bosco Gomez guilty of the offence u/s 138 of the NI Act and convicts him under Sec.255(2) of Cr.P.C. The accused is sentenced to undergo simple imprisonment for a period of one year and to pay a compensation of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand only) to the complainant under sec.357(3) of Cr.P.C within one month and in default of payment of compensation, the accused

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	shall undergo a further period of two months simple imprisonment considering the overall facts and circumstances of the case.

Serial Number	**Description of the accused**			
	Name	**Father's name**	**Address**	**Occupation**
(1)	Mr.Francis Posco Gomaz	Mr.Gabiriyeal Gomaz	Thoothukudi	-

Date of							**Explanation for delay**
Occurrence	**Complaint**	**Appearance or apprehension**	**Release on bail**	**Commencement of trial**	**Close of trial**	**Sentence of trial**	**-**
07.05.19	10.06.19	29.08.23	-	12.10.23	12.06.26	19.06.26	

(The above-mentioned details are given as per Rule 106 of the Criminal Rules of Practice, 2019)

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This case came up before this court for final hearing in the presence of Mr. Chandrasekaran, the complainant (Party in person) and Advocate Mr. K.Jegan, the learned counsel for the Accused, upon perusal for the documents and arguments of both sides and having stood over for final consideration till this date, this court delivered the following

JUDGMENT

The complainant has filed this complaint under section 200 of Code of Criminal Procedure, read with sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “N.I. Act”) against the accused.

I. **The case of the complainant in brief**

1. That the accused is an acquaintance of the complainant. That on 20.10.016, the accused made a loan application for Rs. 1,20,000/- to the complainant following which on 30.10.2016, the accused executed a promissory note in favour of the complainant wherein the accused promised to repay the said amount within 28 months at an interest of 1% per month. The accused also executed a denomination for the same. On the same day, the accused issued a post-dated cheque dated 28.02.2019 bearing number 030817 drawn on Bank of India for a sum of Rs. 1,20,000/- in favour of the complainant. That the accused also executed a written acknowledgment for the loan. Photographs of the above transactions were also taken by the complainant with the consent of the accused.

2. When the complainant presented the said cheque for collection on 30.03.2019 through his banker Catholic Syrian Bank, Thoothukudi, the same was dishonoured with an endorsement "Funds Insufficient" on 03.04.2019. Following the dishonour, the accused approached the complainant and sought two weeks' time to repay the debt amount. Yet, he did not repay the cheque amount. So, the complainant sent a statutory demand notice to the accused on 22.04.2019 and the same was received by the accused on 23.04.2019.
3. Since the accused did not repay the impugned cheque amount within 15 days, the present complaint is filed

II. **<u>Evidence adduced on the side of the complainant</u>**

4. On the side of the complainant, the complainant examined himself as PW1. Ex.P1 to Ex.P11 were marked through him. **Ex.P1** is the loan application made by the accused to the complainant dated 20.10.2016. **Ex.P2** is the promissory note dated 30.10.2016 executed by the accused in favour of the complainant. **Ex.P3** is the denomination written by the accused. **Ex.P4** is the cheque dated 28.02.2019 bearing number 030817 drawn on Bank of India for a sum of Rs. 1,20,000/- in favour of the complainant. **Ex.P5** is the written acknowledgement of debt executed by the accused. **Ex.P6** is the letter written by the accused to the complainant. **Ex.P7** is the return memo dated 03.04.2019 for Ex.P4. **Ex.P8** is the statutory demand notice dated 22.04.2019 sent to the accused along with the postal receipt. **Ex.P9** is the acknowledgement card for the same.

III. **<u>The case of the accused</u>**

5. In the case on hand, the accused did not dispute any of the complaint averments.

IV. **<u>Evidences adduced on the side of the accused</u>**

6. No witnesses were examined on the side of the accused and no exhibits were marked.

V. **<u>Points for consideration</u>**

7. On perusal of the material records placed, this court finds it necessary to determine the following aspects:
   i. Whether an offence u/s 138 of the Negotiable Instruments Act 1881 has been made out against the accused in the present case?
   ii. Whether the accused has rebutted the presumption u/s 118 and 139 of the NI Act and has established a probable defence?

VI. **<u>Discussion and findings</u>**

i. *<u>Whether an offence u/s 138 of the Negotiable Instruments Act 1881 has been made out against the accused in the present case?</u>*

8. To constitute an offence u/s 138 of the NI Act, the following ingredients must be made out:
   a. The cheque must be drawn by the accused in favour of the Complainant
   b. The cheque must have been issued by the accused to discharge a legally enforceable debt or other liability.
   c. The cheque must be 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

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d. The cheque must have been returned by the bank dishonoured.

e. The payee or the holder in due course of the cheque must have made 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 of dishonour of cheque.

f. The drawer of the cheque must have failed to pay the cheque amount within 15 days from the receipt of the statutory notice.

g. Complainant must have approached the court within one month from the expiry of said 15 days

9. Upon satisfaction of the above-said ingredients, the presumptions u/s 118 and 139 of the NI Act will come into play.

10. Now, on perusing the documentary evidences adduced on the side of the complainant, this court is satisfied that the first ingredient that the impugned cheque Ex.P4, has been drawn by the accused in favour of the complainant has been clearly made out. Looking through Ex.P7, it can be inferred that the impugned cheque was presented for collection and was dishonoured on 03.04.2019 so, it can be understood that the impugned cheque was presented for collection within the stipulated period and was dishonoured due to insufficiency of funds.

11. On perusing, Ex.P8 it can be understood that the statutory notice demanding payment was sent to the accused within the stipulated thirty days from the date of receipt of information. From Ex.P9, it is understood that the statutory demand notice was duly served to the accused on 23.04.2019.

12. Therefore, this court answers point (i) in affirmation. With that being said, this court moves on to the second point for consideration.

(ii) *Whether the accused has rebutted the presumption u/s 118 and 139 of the NI Act and has established a probable defence?*

13. The Hon'ble Supreme Court of India in ***Basalingappa v. Mudibasappa (2019) 6 S.C.R 555*** summarised the principles as to presumptions as given in section 118(a) and 139 of the NI Act which is as follows:

    a) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

    b) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

    c) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

    d) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

e) It is not necessary for the accused to come in the witness box to support his defence.

14. In the case on hand, the accused did not dispute the signature on the impugned cheque Ex.P4. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by this Court in favour of the complainant and the reverse onus clauses become operative. To this effect, this court relies on the judgment of the Hon'ble Supreme Court in *Kalamani Tex v. Balasubramanian 2021 (5) SCC 283.*

15. Even though Ex.P1, Ex.P2, Ex.P3, Ex.P5 and Ex.P6 are mere supporting documents for an offence u/s 138 of the Negotiable Instruments Act, 1881, this court is obliged to discuss the evidentiary value and relevancy of each exhibit. Speaking of Ex.P1 and Ex.P3 they are nothing but the loan application and denomination of the accused for Rs. 1,20,000/-. Ex.P5, the written acknowledgement executed by the accused strengthens the case of the complainant.

16. Ex.P6 is the alleged letter written by the accused to the complainant requesting the complainant to present the cheque after a month. But this court is of the opinion that the said letter cannot be treated as valid admissible evidence as it lacks details of the impugned cheque, the date on which it was served upon the complainant, the date on which it was written and so on.

17. In so far as the burden of proof in an offence under Section 138 of N.I. Act is concerned, Section 118 of N.I. Act lays down that, until

the contrary is proved, it shall be presumed that, every negotiable instrument was made or drawn for consideration and Section 139 of N.I. Act, contemplates that, 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.

18. In the case on hand, the accused neither cross examined PW.1 nor let in any defense evidence. So, this court is of the view that the accused has vehemently failed to rebut the presumption u/s 118(a) and 139 of the Negotiable Instruments Act and the complainant has proved his case beyond reasonable doubt. Hence (ii) is decided in favour of the complainant.

VII. **The result**

19. In the end, this court finds the accused Mr. Francis Bosco Gomez guilty of the offence u/s 138 of the NI Act and convicts him under Sec.255(2) of Cr.P.C. The accused is sentenced to undergo simple imprisonment for a period of 6 months and to pay a compensation of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand only) to the complainant under sec.357(3) of Cr.P.C within two months and in default of payment of compensation, the accused shall undergo a further period of two months simple imprisonment considering the overall facts and circumstances of the case.

Directly typed by me in my own laptop mistakes corrected and pronounced by me in open court on this 19th day of June 2026.

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

List of evidence

(As per Rule 107(1) of the Criminal Rules of Practice)

Witnesses on the side of the Complainant

PW1	P. Chandrasekaran	Complainant

List of documents marked on behalf of the Complainant

Exhibit Number	Description of the document	Marked through
Ex.P1	The loan application made by the accused to the complainant dated 20.10.2016	PW1
Ex. P2	The promissory note dated 30.10.2016 executed by the accused in favour of the complainant	PW1
Ex. P3	The denomination written by the accused	PW1
Ex. P4	The cheque dated 28.02.2019 bearing number 030817 drawn on Bank of India for a sum of Rs. 1,20,000/- in favour of the complainant	PW1
Ex.P5	The written acknowledgement of debt executed by the accused	PW1
Ex.P6	The letter written by the accused to the complainant	PW1
Ex.P7	The return memo dated 03.04.2019 for Ex.P4	PW1
Ex.P8	The statutory demand notice dated 22.04.2019 sent to the accused along with the postal receipt	PW1

Ex.P9	The acknowledgement card	PW1

<u>Witnesses and exhibits on the side of the accused: NIL</u>

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