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IN THE COURT OF XXXV METROPOLITAN MAGISTRATE COURT (FTC-II), EGMORE AT ALLIKULAM, CHENNAI – 03.

Present : Dr. J. STALIN, M.L., Ph.D,
XXXV Metropolitan Magistrate,
XXXV Metropolitan Magistrate Court(FTC-II)

Saturday, 06th day of December 2025.

S.T.C. No.8433/2024
CNR- TNCH0F- 008173-2024

a)	The Serial Number of the Case	S.T.C No.8433 of 2024
b)	Date of Commission of the Offence	31.01.2024
c)	Name of the Complainant	Mr.M.Babuparthiban S/o.Maharajan Residing at No.2, Jothi Venkataachalam Street, Atrinsonpalace, Flat GB, Vepery Chennai – 600 007.
d)	Name of the Accused Person	Mr.P.Surendar No.4, Bakthavatchala Street Koyambedu, Chennai – 107.
e)	The Offence complained of or proved	Not Proved
f)	The plea of accused and his examination	-
g)	The final order	Acquitted
h)	The date of such order	06.12.2025
i)	In all cases in which an appeal lies from the final order either under section 373 or under section 374 CrPC, a brief statement of the reasons for the decision.	In result, the accused is not found guilty for offence under Section 138 of N.I. Act and the accused is acquitted as per Sec.255(1)Cr.P.C.

This case coming before me for final hearing on 25.11.2025 in the presence of M/s.S.Madhusudhanan, D.Arul Thumilan and C.Lingam, advocates for the complainant and M/s.S.Somasundaram and R.Rajesh,advocates for the accused

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and upon hearing their arguments, perusing the materials on records this Court delivers the following;

JUDGMENT

This complaint has been filed by the complainant against the accused under Section 138 of the Negotiable Instruments Act.

2. Gist of facts of the complaint: -

The Complainant states that the accused borrowed a sum of Rs.9,20,000/- from the complainant. For discharge the liability, the accused issued cheque the cheque bearing No.743565, dated 01.11.2023 drawn on M/s.State Bank of India, Arumbakkam Branch, Chennai for a sum of Rs.9,20,000/- to the complainant. When the said cheque was presented before the complainant M/s.Tamilnadu Mercantile Bank, Egmore Branch and it was returned with an endorsement of "insufficient fund" on 01.11.2023. Therefore, on 21.11.2023 the complainant issued a legal notice to the accused, the said notice was received by the accused on 25.11.2023. The accused has not repaid such amount, therefore, accused committed the offence under section 138 and 142 of Negotiable Instrument Act.

3. On receipt of the complaint, sworn statement was recorded and cognizance was taken for offence under Section 138 of the Negotiable Instrument Act on 31.01.2024 and process was issued against the accused along with copy of complaint u/s 204(3) Cr.PC. On receipt of summons, the accused appeared and the accused was furnished with the copies of the documents relied upon by the complainant and the accused was questioned about the substance of accusation made in complaint. The accused pleaded not guilty and claimed to be put on trial.

4. The complainant in order to prove his case, examined PW1 and marked Ex.P1 to Ex.P-4 on the side of complainant.

5. **The case of the complainant as per the evidence is briefly as follows:-**

The Complainant states that the accused borrowed a sum of Rs.9,20,000/- from the complainant. For discharge the liability, the accused issued cheque the cheque bearing No.743565, dated 01.11.2023 drawn on M/s.State Bank of India, Arumbakkam Branch, Chennai for a sum of Rs.9,20,000/- to the complainant, under Ex.P-1. When the said cheque was presented before the complainant M/s.Tamilnadu Mercantile Bank, Egmore Branch, Chennai and it was returned with an endorsement of "insufficient fund" on 01.11.2023, under Ex.P-2. Therefore, on 21.11.2023 the complainant issued a legal notice to the accused, under Ex.P-3 the said notice was received by the accused on 25.11.2023, under Ex.P-4. The accused has not repaid such amount, therefore, accused committed the offence under section 138 and 142 of Negotiable Instrument Act.

6. On completion of evidence of complainant, the accused was questioned under Section 313(1)(b) Cr.P.C, on the incriminating circumstances in the evidence. The accused denied the evidence as false and stated that she has not lead evidence in the side of defence.

7. On the side of the accused, through PW1 cross exmination, the document Ex.D1 and Ex.D-2 were marked.

8. Points for Consideration:-

Whether the complainant has proved his case, beyond reasonable doubts that the accused have issued cheque under Ex.P-1 in favour of the complainant to satisfy a legally enforceable debt, which is existed between the complainant and the accused?

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9. Points:-

10. Heard both sides.

11. On considering complaint, evidences, defences and submissions, there is no dispute regarding the issuance of cheque, under Ex.P-1 and signature contained therein, as per cross examination of PW1 by the accused. Further, there is no dispute that the cheque in question was returned dishonoured for the reason "Funds Insufficient" under Ex.P-2 and subsequently, the complainant sent legal notice, Ex.P-3 to the accused and the same was received, under Ex.P4 but the accused has not paid the cheque amount. Despite the above admissions, the accused seriously disputed about existing liabilities between the parties and the purpose of issuance of cheque.

12. On considering the objection regarding liabilities, initially, the ingredients for constituting the offence under Section 138 NI Act has to be analysed. It read as follows:-

i. *Cheque must have drawn on an account maintained in bank for payment of certain amount of money to another person.*
ii. *Cheque should have been issued for discharge, in whole or in part, of any debt or other liability;*
iii. *Cheque was presented to the bank within a period of its validity;*
iv. *Cheque was returned by the bank unpaid, due to insufficient fund or exceeds the amount arranged to be paid from that account;*

v. *Notice in writing, was served to the drawer of the cheque, within 30 days;*
vi. *Drawer of such cheque fails to make payment of the said amount of money* within 15 days of the receipt of the notice.

Only if 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.

13. As per the complaint, the cheques were issued for discharge of the debt incurred by the accused. But, on perusal of case of defence side by way of

cross examination of PW1, the accused objected the liability. On perusal of Section 139 of NI Act, it read as follows: -

"Section 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. On reading of above principle, the holder of the cheque has to be presumed that it is received for discharge of debt or liability. Being holder of cheque, it has to be presumed that the cheque under Ex.P-1 was received for discharge of debt or liability.

15. Next, it has to be analysed, 'whether such debt is for legally enforceable debt or liability'. In ***APS Forex Services Pvt. Ltd v. Shakti International Fashion Linkers, Crl. A. 271/2020, dated 14.02.2020, (2020) 2 KLT 21 SC : 2020 SCC online SC 193***), the Hon'ble Supreme Court of India held that

> "*5.2. ……. once the accused has admitted the issuance of cheque which bears his signature, there is presumption that there exists a legally enforceable debt or liability under Section 139 of the N.I. Act. However, such a presumption is rebuttable in nature and the accused is required to lead the evidence to rebut such presumption*".

On reading of above principle, when the accused admitted signature, then the presumption exists as legally enforceable debt.

16. In the present case, the accused has admitted the issuance of cheque and the signature contained in cheque, Ex.P-1. The admission of accused regarding issuance of signed cheque to the PW1 but, it is disputed that it is filled and given to the complainant for security purpose. Further, PW1 evidences that the accused has given his cheque under Ex.P-1 to the complainant. Only dispute is that the cheques were issued as security of loan. In the circumstances, this court is of considered view to draw the initial statutory presumption in favour of the complainant that there exists a legally enforceable debt or liability. This clearly

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establishes that the complainant has proved the ingredients for offence under Section 138 NI Act. As the initial presumption is available in favour of the complainant, it is the duty cast upon the accused to rebut the presumption by way of producing appropriate evidences.

17. On considering whether the accused rebutted the presumption by producing appropriate evidences, in present case, neither oral or documentary evidences were produced by the accused. In the absence of any defence evidences, 'whether the accused can rebut the presumption' has to be analysed. In ***Basalingappa v. Mudibasappa, (2019) 5 SCC 418****,* the Hon'ble Supreme Court of India held as follows:-

"*23. We having noticed the ratio laid down by this Court in above cases on Section 118 (a) and 139, we now summarise the principles enumerated by this court in following manner: -*

I. 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.

II. 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.

III. 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.*

IV. 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,*

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

18. On reading of above principles, it is not necessary to rebut the presumption by examining accused as a witness. It would suffice, if the accused is able to rebut the presumption from the materials available on the complainant side. In the circumstances, the cross examination of complainant evidences and

his documentary evidences has to be analysed, to decide whether the accused rebutted the statutory presumption.

19. On considering evidence and submission, the accused raised the following defences in order to rebut the presumption available in favour of the complainant, they are:-

i.that the cheque was issued as security of loan transaction with one Kalyanasundaram the owner of Saravana Multi Speciality Hospital, on misusing such cheque, this complaint has been lodged.

ii. That there is no legal transaction between the complainant and accused. The cheque is not issued any of the legally enforceable debt or liability.

20. On considering the above said objection, there is no dispute regarding issuance of cheque and signature in cheque. But the main contention of the accused is that the cheque was issued to one Tr.Kalyana Sundaram. There is no dispute regarding accused is professionally doctor further the plea complainant that he is running rice mill and his wife is also partner of such rice shop. The relationship of accused and complainant is not explained in complaint and this evidence. In these circumstances, the issuance of loan for a sum of Rs.9,00,000/- without obtained any supportive document is not probable.

21. Further, the main contention of complainant is that the amount has given on cheque which is subjected matter in present case. On perusal of cheque is related to the period of 2014. But the alleged transaction is related to the period of 2023. Therefore, the issuance of cheque for such loan is not probable. Further, it created probability regarding issuance of cheque to Tr.Kalyana Sundaram.

22. Further more, the complainant in his cross examination Para-6 stated that he has relationship with accused since 2014. How such relationship and for

what purpose such relationship has been entered is not explained anywhere in complaint as well as evidence of PW1 also. Therefore, the issuance of amount as loan without obtaining any supportive document is not probable.

23. In addition, the PW1 deposed in his cross examination that he has not run any financial business and he has not given any loan for interest. But the source of income is stated that the money has been received from his business as well as obtained a sum of Rs.30,00,000/- by way of pledging his **wife's** jewels. No ordinary man will give any loan without interest by obtaining money for interest when he pledged the jewe1s, it is subject to interest.

24. In these circumstances, the same money has given to the accused without interest is not probable. Therefore, the loan transaction between the complainant and accused is not probable. Further, the issuance of cheque for any legal debt or liability to the complainant is not probable. Hence the defence of accused is probable. The statutory presumption in favour of the complainant is rebutted.

25. Hence this court is of considered view, that the complainant has failed to established the existence of legally enforceable debt, on the date of issuance of cheques. Hence, this obejction of defence side is probable and it has rebutted the presumption.

26. In pursuance of above discussion, the cheque has issued for discharge of security amount, therefore, it is not a legally enforceable debt. Hence, the cheque under Ex.P-1is not issued for legally enforceable debt. Until the contrary is proved, it is presumed that the cheque in question was issued towards legally enforceable debt or liability. But, when the accused proved some contrary to the case of the complainant, then the burden shifted upon the complainant to prove his case beyond the reasonable doubt. Although, the statutory presumption in

favour of complainant, even it will suffice, if the accused created a doubt in the cae of the complainant. In this case, the accused clearly raised the doubt, about the legally enforceable debt existing between the parties. Hence, this court is considered view that the defence raised by the accused is proved the contrary in the case of complainant, therefore, on applying the principle of pre-ponderance of probability, in rebuts the presumption available in favour of the complainant.

27. **In the result, the accused is not found guilty for offence under Section 138 of N.I. Act and the accused is acquitted as per Sec.255(1)Cr.P.C.**

Dictated to the Steno-Typist, transcribed by her, corrected and pronounced by me in the open Court, this the Saturday 06th day of December, 2025.

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XXXV Metropolitan Magistrate,
XXXV Metropolitan Magistrate Court/FTC – II,
Egmore @ Allikulam, Chennai.

<u>List of Complainant side witness:</u>

PW1 – Mr.Babuparthiban

<u>List of Complainant side Exhibits:</u>

Ex.P-1 The cheque bearing No.743565 dated 21.10.2023.
Ex.P-2 Return Memo, dated 01.11.2023.
Ex.P-3 Legal notice, dated 21.11.2023.
Ex.P-4 Acknowledgement Receipt, dated 25.11.2023.

<u>List of Accused side Witness:</u> NIL

<u>List of Accused side Exhibits:</u> (through PW1 cross)

Ex.D-1 Daily status of Case No.6010/2016, dated 17.09.2016.
Ex.D-2 Daily status of Case No.8307/2018, dated 04.01.2019.

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XXXV Metropolitan Magistrate,
XXXV Metropolitan Magistrate Court/FTC – II,
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