IN THE COURT OF JUDICIAL MAGISTRATE (FAST TRACK COURT AT MAGISTERIAL LEVEL) AT KARUR

Present: Mr. R. Mahesh, B.A.LL.B(Hons.), LL.M
Judicial Magistrate (Fast Track Court at Magisterial Level), Karur
Monday, the 16th day of December 2024

S.T.C. No. 38 of 2022

CNR No.	**TNKR06-001117-2021**

K.Manoj Kumar, 29/2021,
Son of Late Kanthasamy. :: Complainant

-Vs-

R.Jeganathan, 57/2021,
Son of Ramasamy. :: Accused

<table>
<tr><th colspan="3">Statement as per Rule 106 of the Criminal Rules of Practice, 2019</th></tr>
<tr><td>1.</td><td>Name of the Complainant</td><td>K.Manoj Kumar, 29/2021,
Son of Late Kanthasamy,
No.41, Peirya Vadugapatti,
Athur Village, Vennamalai Post,
Manmangalam Taluk,
Karur District.</td></tr>
<tr><td rowspan="4">2.</td><td>Name of the accused</td><td rowspan="4">R.Jeganathan, 57/2021,
Son of Ramasamy,
No.5/122, Min Nagar, Kovilur,
Vedasandur Taluk, Dindigul District.
<u>Working at:</u>
Conductor, TNSTC,
Dindigul Division, Natham Road,
Dindigul District.</td></tr>
<tr><td>Father's Name</td></tr>
<tr><td>Occupation</td></tr>
<tr><td>Residence</td></tr>
<tr><td>3.</td><td>Date of occurrence</td><td>02.09.2021</td></tr>
<tr><td>4.</td><td>Date of filing of Complaint</td><td>15.11.2021</td></tr>
<tr><td>5.</td><td>Date of Apprehension</td><td>N.A</td></tr>
<tr><td>6.</td><td>Date of Release on bail</td><td>N.A.</td></tr>
<tr><td>7.</td><td>Date of Commitment</td><td>Not applicable</td></tr>
<tr><td>8.</td><td>Date of Commencement of Trial</td><td>01.12.2023</td></tr>
<tr><td>9.</td><td>Closure of Trial</td><td>19.10.2024</td></tr>
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<tr><td>10.</td><td>Sentence</td><td colspan="3">The accused is convicted under Sec.255(2) of Cr.P.C. for the offence under Sec.138 of Negotiable Instrument Act and is sentenced to undergo simple imprisonment for a period of One Year and also ordered to pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the complainant under Sec.357(3) of Cr.P.C. within a period of one month from the date of judgment; and, in default of payment of compensation, the accused shall undergo simple imprisonment for a period of One Month.</td></tr>
<tr><td>11.</td><td>Service of copy of judgment or finding on accused</td><td colspan="3">Free copy provided to the accused.</td></tr>
<tr><td>12.</td><td>Explanation for delay</td><td colspan="3">No delay.</td></tr>
<tr><td>13</td><td>Date of questioning of the accused under section 251 of Cr.P.C</td><td colspan="3">01.12.2023</td></tr>
<tr><td>14.</td><td>Filing of all miscellaneous petitions and their results including the results on challenge before superior Courts</td><td colspan="3">MP.No.11/2024 filed under Sec.311 Cr.P.C by the accused and Ordered on 23.02.2024.</td></tr>
<tr><td rowspan="2">15.</td><td rowspan="2">Date of examination in-chief and cross-examination of a witness.</td><td></td><td>Chief</td><td>Cross</td></tr>
<tr><td>PW1</td><td>16.04.2024</td><td>30.07.2024</td></tr>
<tr><td></td><td></td><td>PW2</td><td>10.06.2024</td><td>30.07.2024</td></tr>
<tr><td>16.</td><td>Date of examination of the accused under section 313 of the code;</td><td colspan="3">20.08.2024</td></tr>
<tr><td>17.</td><td>Details of abscondence of an accused and his appearance/production, as the case may be; and</td><td colspan="3">Nil</td></tr>
<tr><td>18.</td><td>Grant of stay by superior Courts and the results thereof</td><td colspan="3">Nil</td></tr>
</table>

This case was taken on file on 31.01.2022 and came up for final hearing before me on 03.12.2024 in the presence of Mr.K.Senthilkumar, Counsel for the Complainant and Mr.Y.John Kirubagaran, Counsel for the accused and upon consideration of submissions and on perusal of entire material records and having stood over for consideration till this date, this Court delivered the following;

JUDGMENT

This complaint is filed under Sec. 138 of Negotiable Instruments Act, 1881 for punishing the accused and for payment of compensation under Sec. 357 of Code of Criminal Procedure, 1973.

2. The brief averments in the Complaint is as follows;

On 09.07.2020, the accused borrowed a sum of Rs.10,00,000/- from the complainant for his urgent needs of family expenses and business expenses. On the same day, the accused executed a promissory note in favour of the complainant agreeing to repay the same on demand with interest at a rate of Rs.1.00 per hundred per month. The accused neither paid principal nor interest. On 02.06.2021, the accused approached the complainant at his residence and issued a cheque dt.01.09.2021, drawn on Canara Bank, Dindigul Nagal Nagar branch bearing No.907211 for a sum of Rs.10,00,000/- in favour of the complainant towards discharge of his part liability and assured him that the cheque would be honoured on its presentation.

2.2. On 01.09.2021, the complainant presented the cheque before his banker State Bank of India, Karur Branch for collection. But the said cheque got dishonoured and it was returned as “Funds Insufficient” on 02.09.2021. On 28.09.2021, the complainant caused issuance of notice to the accused to his permanent and working addresses, which was received by him at his permanent address on 01.10.2021 and returned by him as “Unclaimed” at his working address . But, the accused did not come forward to repay the cheque amount. The accused is liable to compensate the sufferings of the complainant. Therefore, the complainant has filed the present complaint under Sec. 138 of N.I. Act within the statutory period. Thus, the complainant prayed for punishing the accused and for payment of compensation under Sec.357 of Cr.P.C.

3. On receipt of the complaint, sworn statement of the complainant was recorded. Prima facie case being made out against the accused, this Court took cognizance of the offence under Sec.138 of N.I. Act and summons was issued to the accused along with a copy of the complaint. Upon appearance of the accused on receipt of summons, the substance of accusation made in the complaint had been readover to the accused and he was asked if he pleaded guilty. The accused denied the accusations and pleaded not guilty and claimed to be tried. Hence, Trial was ordered.

4. In order to prove her case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P6. One Anbarasan was examined as PW2 and marked Ex.P7.

5. The case of the complainant as per the evidence of complainant is as follows;

On 09.07.2020, the accused borrowed a sum of Rs.10,00,000/- from the complainant for his urgent needs of family expenses and business expenses. On the same day, the accused executed Ex.P1 promissory note in favour of the complainant agreeing to repay the same on demand with interest at a rate of Rs.1.00 per hundred per month. The accused neither paid principal nor interest. On 02.06.2021, the accused approached the complainant at his residence and issued Ex.P2 cheque dt.01.09.2021, drawn on Canara Bank, Dindigul Nagal Nagar branch bearing No.907211 for a sum of Rs.10,00,000/- in favour of the complainant towards discharge of his part liability. On 01.09.2021, the complainant presented the cheque before his banker State Bank of India, Karur Branch for collection. But the said cheque got dishonoured and it was returned as "Funds Insufficient" on 02.09.2021 vide Ex.P3 return memo. On 28.09.2021, the complainant caused issuance of Ex.P4 legal notice to the accused, which was received by him. But, the accused did not come forward to repay the cheque amount. PW2 Anbarasan deposed about borrowal of amount and execution of pro note by the accused. With this, the complainant closed his side evidence.

6. The incriminating circumstances appearing in the evidence of the complainant were put to the accused as per Section 313 (1) (b) of Cr.P.C. The accused denied the evidence as false. No oral or documentary evidence were adduced by the defence.

7. Points for determination:

1. Whether the accused issued Ex.P2 cheque dated 01.09.2021 to the complainant for discharge of any legally enforceable debt or other liability?

2. Whether the accused discharged his reverse burden to rebut the presumption under Sec. 139 of N.I. Act?

3. Is the guilt of the accused proved beyond reasonable doubt by the complainant?

8. Points 1 to 3:

The submissions were heard. The records were perused. Sec. 138 of Negotiable Instruments Act contains the following ingredients;

(i) A person must have drawn a cheque on an account maintained by him in a Bank for payment of certain amount of money to any person out of his account.

(ii) The cheque should have been drawn for the discharge of any debt or any liability in whole or in part.

(iii) The cheque has been presented to the Bank within a period of six months from the date on which it was drawn or within a period of its validity, whichever is earlier.

(iv) The cheque is returned by the Bank unpaid, either because of the amount in the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

(v) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount by giving a notice in writing, to the drawer within thirty days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid;

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

(vii) On non-payment of the amount due on the dishonoured cheque within fifteen days of the receipt of the notice by the drawer, the complaint should have been filed within one month from the date of expiry of the grace time of fifteen days.

9. The cardinal principle of criminal jurisprudence is that a criminal Trial proceeds with the presumption that an accused is innocent unless proven guilty beyond reasonable doubt. The initial burden of proof is on the complainant to prove beyond reasonable doubt the issuance of cheque unless the accused admits the same. In cases of offence under Section 138 of NI Act, there is reverse onus clause contained in Sec.118 of N.I. Act, which provides for presuming 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 for consideration, unless the contrary is proved. Similarly, Sec. 139 of the Act provides for presumption that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. It is pertinent to point out that one of the essential ingredients for Sec.138 of N.I. Act is that the cheque in question must be drawn for the discharge of any debt or any liability in whole or in part.

10. In the decision of the Hon'ble Supreme Court in Bir Singh v. Mukesh Kumar, reported in (2019) 4 SCC 197, it was held as under:

> "*32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

11. Thus, the law is clear on the point that when the complainant discharged the initial burden by proving the transaction leading to issuance of cheque and its execution, either by admission of accused or by evidence, the presumption under Section 139 of the N.I Act would come into play. Once the presumption arises in favour of complainant, the onus shifts upon the accused to rebut the presumption by proving the non-existence of debt or other liability. Therefore, the complainant has the initial burden of proving the issuance of cheque by the accused towards discharge of legally enforceable debt.

12. It is in the backdrop of above requirements of law, the point arose for consideration in this case has to be decided. It is the case of the complainant that on 09.07.2020, the accused borrowed a sum of Rs.10,00,000/- from the complainant for his urgent needs of family expenses and business expenses by executing Ex.P1 pro note in favour of the complainant agreeing to repay the same on demand with interest, that on 02.06.2021, the accused issued Ex.P2 cheque dt.01.09.2021, drawn on Canara Bank, Dindigul Nagal Nagar branch bearing No.907211 for a sum of Rs.10,00,000/- in favour of the complainant towards discharge of his part liability, that on its presentation on 01.09.2021, the said cheque got dishonoured and it was returned as “Funds Insufficient” on 02.09.2021 and that inspite of receipt of legal notice dt.28.09.2021, the accused did not come forward to repay the cheque amount within the stipulated time.

13. The complainant examined himself as PW1 by filing proof affidavit, reiterating his contentions in the complaint. When the cross examination of PW1 is carefully perused, it can be seen that the accused admitted his signature in Ex.P2 cheque but denied the claim of the complainant. It is his defence that the pro note and cheque were issued as signed but unfilled to some other person and that the cheque and pro note were misused by the complainant. Therefore, it is clear that the accused did not dispute the execution of Ex.P2 cheque. There is no denial of fact that the cheque was returned for the reason “funds insufficient”.

14. Since there is no denial of the signature in the disputed cheque, the presumptions under Sec.118 and 139 of NI Act arise in favour of the complainant that the cheque was issued for legally enforceable debt. Now, the onus shifts on to the accused to establish that the disputed cheque was not issued for a legally enforceable debt or other liability.

15. It is true that the presumptions under Sec.118 and 139 of NI Act are rebuttable. It has been settled in law that the accused can either adduce independent evidence or rely on the evidence tendered by the complainant to rebut the presumption. It is also trite that the standard of proof required to rebut the presumption is that of "preponderance of probabilities". Therefore, the point now to be considered is whether the accused probabilised his defence that there existed no legally enforceable debt or liability towards the complainant.

16. The Learned Counsel for the complainant submitted that there is no dispute about signature of the accused in pro note and cheque and as such, the presumption is in favour of the complainant, that the accused did not prove his defence, that there is no evidence adduced by the accused to prove that he did not issue Ex.P2 cheque to the complainant, that the accused failed to rebut the presumption against him and therefore, the accused has to be convicted.

17. It is revealed from the perusal of the records that the accused received Ex.P4 statutory notice dated 28.09.2021. But, the accused did not send any reply notice. The accused took his defence for the first time in the cross-examination of PW1. During questioning under Sec. 313(1)(b) of Cr.P.C., the accused only denied the evidence as false evidence and did not set out his defence.

18. When the cross examination of PW1 is carefully perused, it is evident that PW1 denied the suggestions that the pro note and cheque given to someone else were misused by the complainant. The accused did not elicit any favourable circumstance in the cross-examination of PW1 to probabilise his defence.

19. There is no evidence brought on record to prove that the accused had any transaction with someother person. The accused did not even state with whom he had transaction and when did he issue pro note and cheque to that person. Mere suggestions to the witness will not amount to proof of the fact suggested. The denial of the allegations in the complaint alone would not be sufficient to rebut the presumption in favour of the complainant. There must be clear and cogent evidence on record to rebut the presumption against the accused.

20. While the accused cross-examined PW1, there is nothing substantial elicited in his cross-examination so as to discredit his testimony. Admittedly, the accused did not place on record an iota of evidence so as to probabilise his defence that there was no consideration passed under Ex.P1 pronote and Ex.P2 cheque. The accused did not place on record any document to prove either borrowal or discharge of loan from anyone else. Further, there is no iota of evidence that the accused issued Ex.P2 cheque to someone else.

21. The complainant, being holder in due course of cheque, is presumed to have received the cheque for legally enforceable debt. Upon careful scrutiny of the entire materials brought on record by both parties, this Court finds that the accused failed to probabilise his defence that Ex.P2 cheque was issued to someone else and not to the complainant. Thus, this Court is of considered view that the accused has failed to discharge his reverse burden to rebut the presumption under Sec. 139 of the N.I. Act.

22. While adjudging whether in a case the presumption of consideration has been rebutted, it is important to underscore that only in a case where the accused comes up with a convincing defence, the presumption can be stated to have been rebutted. He has the burden to prove the contrary. If the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or other liability, the pendulum of onus swings back to the complainant to prove by way of evidence, beyond reasonable doubt, that the cheque in question was issued by the accused in discharge of, whole or in part, of any debt or other liability, and now the presumptions under Section 118 (a) and Section 139 will not operate in favour of the complainant.

23. When the oral evidence and documentary evidence placed on record are carefully perused and in the light of the presumption of law arose out of admission of execution of Ex.P2 cheque by the accused, it is evident that on 09.07.2020, the accused borrowed a sum of Rs.10,00,000/- from the complainant for his urgent needs of family expenses and business expenses by executing Ex.P1 pro note in favour of the complainant agreeing to repay the same on demand with interest, that on 02.06.2021, the accused issued Ex.P2 cheque dt.01.09.2021, drawn on Canara Bank, Dindigul Nagal Nagar branch bearing No.907211 for a sum of Rs.10,00,000/- in favour of the complainant towards discharge of his part liability, that on its presentation on 01.09.2021, the said cheque got dishonoured as “Funds Insufficient” on 02.09.2021 and that inspite of receipt of legal notice dt.28.09.2021, the accused did not come forward to repay the cheque amount within the stipulated time.

24. As found by this Court supra, the accused has failed to rebut the presumption to shift onus on to the complainant and failed to discharge his reverse onus of proof. Upon careful scrutiny of entire matters placed on record, this Court finds that the complainant has proved the guilt of the accused for the offence under Sec.138 of the N.I. Act beyond reasonable doubt. Thus, the points 1 to 3 are answered accordingly.

25. Result

In fine, the accused is found guilty of offence under Sec.138 of NI Act.

26. With regard to the quantum of sentence, it is pertinent to consider that the accused borrowed amount from the complainant and did not pay the same but, the accused issued cheque knowing that it would be dishonoured. Given the economical loss suffered by the complainant and on considering the entire facts and circumstances of the case, this Court is of considered view that the complainant has to be compensated by the accused.

27. In the result, the accused is convicted under Sec.255(2) of Cr.P.C. for the offence under Sec.138 of Negotiable Instrument Act and is sentenced to undergo simple imprisonment for a period of One Year and also ordered to pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the complainant under Sec.357(3) of Cr.P.C. within a period of one month from the date of judgment; and, in default of payment of compensation, the accused shall undergo simple imprisonment for a period of One Month.

28. The Bail Bond executed by the accused shall stand cancelled.

Dictated to the Typist, who typed the same directly in the computer, taken print out, corrected by me and pronounced by me in open court on this 16th day of December 2024.

R MAHESH

Digitally signed by R MAHESH
DN: cn=R MAHESH, ou=GOVERNMENT OF TAMILNADU, o=TAMIL NADU STATE JUDICIAL SERVICE, st=Tamil Nadu, c=IN

Judicial Magistrate (FTC at ML),
Karur.

<u>List of Complainant side Witness:-</u>

S.No.	Witness No.	Witness name.
1.	PW1	K.Manojkumar.
2.	PW2	B.Anbarasan.

<u>Complainant side Exhibits:-</u>

S.No.	Date	Particulars	Exhibits No.
1.	09.07.2020	Original promissory note executed by accused in favour of the complainant.	Ex.P1
2.	01.09.2021	Original cheque drawn on Canara Bank, Dindigul, Nagal Nagar Branch, bearing No.907211 for Rs.10,00,000/-.	Ex.P2
3.	02.09.2021	Return Memorandum.	Ex.P3
4.	28.09.2021	Office copy of the notice issued by the complainant.	Ex.P4

5.	01.10.2021	Served postal acknowledgment sent to the accused permanent address.	Ex.P5
6.	01.10.2021	Unserved postal cover sent to the accused working address.	Ex.P6

<u>List of Defence side Witness and Exhibits:</u> **NIL**

R MAHESH

Digitally signed by R MAHESH
DN: cn=R MAHESH, ou=GOVERNMENT OF TAMILNADU, o=TAMIL NADU STATE JUDICIAL SERVICE, st=Tamil Nadu, c=IN

Judicial Magistrate (FTC at ML),
Karur.

<u>Note:-</u>

1. No Witness were called for more than three hearings.
2. Case disposal intimated to the complainant.