IN THE FAST TRACK COURT,
(at Magisterial level), ALANDUR

Present: Tmt. E. Bhuvaneshwari, B.A., B.L.,
Judicial Magistrate,Fast Track Court
(at Magisterial Level), Alandur.

Friday, the 03rd day of October 2025

CC No. 32 of 2022

CNR NO. TNCG0C- 000032-2022

1.	Case No.	C.C.No. 32 of 2022
2.	Name of the Complainant	Mrs. Geetha Jyothsana
3.	Father's Name	
4.	Address of the Complainant	
5.	Name of the Accused	A1. M/s. Concept Homes India Pvt. Ltd., Rep by its Managing Director A2. Mrs. Diana Brice, A3.Mr. Subramaniyan Directors, M/s. Concept Homes India Pvt ltd.
6.	Father's Name	
7.	Address of the Accused	
8.	Date of Complaint	21.06.2021
9.	Date of Release on bail	-
10.	Date of Commitment	Not Applicable
11.	Date of Commencement of Trial	29.09.2022
12.	Closure of Trial	03.03.2025
13.	Sentence or order	**Accused not found guilty and acquitted**

14.	Service of copy of judgment or finding on accused	**Copy Not Served**
15.	Explanation of delay	There is no inordinate delay in this case

Learned Counsels for the Complainant : M/s.D. Arun Kumar , Mr.V. Senthil, Mrs.S. Sudha and Mr. Gopal

Learned Counsels for the Accused : M/s. Mythili Srinivas, Mr.R.N. Ganesh, Mr.S. Manohar and Mr.P. Prabhu

JUDGMENT

1. The instant complaint is in respect of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "the NI Act").

2. **Brief facts alleged by the complainant is set out below:**

a) The accused are involved in the business of constructing residential apartments and villas in and around Chennai. The complainant had approached the accused for purchase of a concept home in the year 2012 and invested towards an individual villa, to be developed in the subsequent projects being developed by them in and around Chennai. The complainant over a period of 3 years had invested a sum of Rs.82,00,000/- towards her dream villa by both cash and cheques. At the time of receipt of the above mentioned sum of Rs.82,00,000/- the accused had promised the complainant to pay her interest @24% on her money till the date of handing over of the actual possession of the villa to her. That as per the mutually agreed terms the accused had started paying the interest to the complainant. After a period of 4 years when she was shown the upcoming villa project, the villa proposed by the accused was not to the expectation of the complainant as the same was being promoted outside Chennai city. Hence the complainant had opted out of the villa project and sought for the return of her money.

b) After several reminders to the accused both personally and over phone the accused had finally came forward to return her money and the accused had issued a cheque with No.067002 dated 28.12.2020 drawn on TMB bank, Thiruvanmiyur branch for a sum of Rs.54,00,000/-. As per the instruction the complainant had presented the said cheque through her bankers ICICI bank, Madipakam branch on 18.03.2021 and the same was returned with endorsement "Exceeds Arrangements" vide memo dated 19.03.2021. The complainant had then issued a legal notice to the accused on 12.04.2021 and the said notice has been received by the accused on 16.04.2021 and reply notice dated 08.05.2021 was sent by the accused. Despite receipt of the legal notice, the accused had failed to pay the cheque amount within the stipulated time period and hence according to the complainant, the accused had committed an offence punishable under section 138 of the Negotiable Instruments Act 1881.

3. To prove his case, the complainant has examined herself as PW1 by way of affidavit and has marked Ex.P1 to P5. In her affidavit she has fully corroborated the averments made by her in the complaint and has relied upon the following documents:

a) Cheque bearing No.067002 dated 28.12.2020 as EX.P1

b) Return Memo dated 19.03.2021 as Ex.P2

c) Legal Notice dated 12.04.2021 as Ex.P3

d) Acknowledgment Card dated 16.04.2021 as Ex.P4

e) Reply Notice dated 08.05.2021 as Ex.P5

4. On finding a prima-facie case against accused, they were summoned vide order dated 12.04.2022. Consequent to the service of notice, the accused had appeared before this court and was then explained the substance of accusation against them under Section 251 of C.r.P.c on 29.09.2022 and all the accused denied it as a false case against them, and claimed to be tried. The Managing Director of Concept Homes India Pvt. Ltd Mr.Mahaganapathy has stated that it is false that the complainant paid money towards purchasing a villa, and it is true that they obtained money from the complainant only as a loan. Further, the cheque issued as security has been misused by the complainant to file this complaint against them, even after repayment of the loan amount. The second and third accused who are Directors of the accused company have stated that the complainant is known to them for the past 15 years, and the complainant used to invest money in their company, for which the case cheque was issued as security.

5. The Learned counsel for Accused filed an application under Section 145(2) of the NI Act and stated that the present case is false and frivolous. The application was allowed and accused were granted an opportunity to cross-examine the complainant. Pw1 was duly cross examined by accused. With that the complainant side evidence was closed.

6. The Statement of all the accused was recorded under Section 313(1)(b) of C.r.P.C on 12.09.2024 after explaining all the incriminating circumstances and evidences against them to enable them to offer an explanation. The accused denied all the evidences as false and added that they borrowed money from the complainant for interest, and the money was not paid for purchasing Villa, as stated by the complainant. They further stated that the cheque was issued only as security and they have evidence on their side to lead.

7. Then the matter was listed for defence evidence. The accused examined the Bank managers of Tamil Nadu Mercantile Bank, Thiruvanmiyur Branch and Bank of Baroda, Nelson manickam Road Branch as Dw1 and Dw2 and marked

I) Construction Agreement dated 28.11.2007 as Ex.D1

ii) Sale Deed dated 06.12.2007 as Ex.D2

iii) Complainant ICICI Bank Transactions as Ex.D3

iv) ICICI Bank Account Statement from 22.05.2012 to 14.08.2020 as Ex.D4

v) Complainant Signed Cash payment Voucher dated 08.10.2018 as Ex.D5

vi) Complainant Signed Cash payment Voucher dated 14.05.2015 as Ex.D6

vii) Complainant Signed Cash payment Voucher dated 12.10.2015 as Ex.D7

viii) Complainant Signed Cash payment Voucher dated 18.03.2016 as Ex.D8

ix) Complainant Signed Cash payment Voucher dated 17.06.2017 as Ex.D9

x) Complainant Signed Cash payment Voucher dated 31.07.2018 as Ex.D10

xi) Complainant Signed Cash payment Voucher dated 07.08.2018 as Ex.D11

xii) Complainant Signed Cash payment Voucher dated 01.10.2016 as Ex.D12

xiii) TMB Bank Statement of accused from 01.01.2013 to 31.01.2013 as Ex.D13

Xiv) Bank Statement of Mrs.Thanga Vasanthal from 01.02.2013 to 28.02.2013 as Ex.D14, as evidence on his side. After due cross examination of Dw1 and Dw2, the defence side evidence was closed vide order dated 03.03.2025.

8. Final arguments of both sides heard. The arguments of both sides have been considered and the records of the case has been carefully perused.

9. In order to ascertain whether the accused has committed the offence under Section 138 of the NI Act, it is deemed fit to examine separately as to whether all the indispensable ingredients constituting the offence have been proved by the complainant. The offence under Section 138 of the NI Act has the following ingredients:-

a) The cheque has been drawn on an account maintained by a person in a bank for payment of a certain amount of money to another person from out of that account;

b) The cheque has been issued for the discharge, in whole or in part, of any legal and enforceable debt or other liability;

c) That cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;

d) That cheque has been returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

e) The payee or the holder in due course of the cheque has 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 by him from the bank regarding the return of the cheque as unpaid; and

f) 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.

10. Being cumulative, it goes without saying that it is only when all the aforementioned 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. Presentation of the impugned cheques for encashment and dishonour of the impugned cheque for the reason "Exceeds Arrangement" are not disputed as it is a matter of record proved by the return memo dated 19.03.2021. The demand notice sent to the accused was acknowledged by them and a reply notice was also sent on 16.04.2021. The signature in the cheque was not specifically denied when the accused were explained the substance of accusation under section 251 of C.r.P.C. or when they were questioned under section 313(1)(b) of C.r.P.C. Finally, this complaint has been filed within limitation period. Therefore the essential ingredients of section 138 of the N.I.Act as mentioned above has been duly satisfied except that the cheque has been issued for the discharge in whole or in part of any legal and enforceable debt or other liability.

11. The only question remaining for determination is whether a legally valid and enforceable debt existed qua the complainant and the cheque in question was issued in discharge of said liability/debt. 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. In the case of **K. N. Beena vs. Muniyappan (AIR 2001 SC 2895)**, it was observed as follows:

"Thus in complaints 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. This Court in the case of **Hiten P. Dalal vs. Bratindranath Banerjee reported in (2001) 6 SCC 16** has also taken an identical view."

12. The Hon'ble Supreme Court, in the case of **Hiten P. Dalal vs. Bratindranath Banerjee**

(AIR 2001 SC 3897), observed as follows:

"Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in **State of Madras vs. A.Vaidyanatha Iyer, (AIR 1958 SC 61)**, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused (ibid)."

13. As regard to legally enforceable debt, **Our Hon'ble Supreme court in Rangappa V/s. Sri Mohan 2010 (11) SCC 441** has held that; "the presumption mandated by u/Sec.139 of N.I Act includes a presumption that there is exists of legally enforceable debt or liability. This is of course in the nature of a rebuttal presumption and it is open to the Accused to raise defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein there can be no doubt that there is an initial presumption which favours the Complainant. when the Accused has to rebut the presumption u/Sec.139 of N.I. Act, 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 presumption can fail, 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 or her own."

14. In the recent decision of **the Hon'ble Apex Court reported in 2021 (1) KCCR 545 between M/s.Kalamani Tex & Another and P. Balasubramanian** at para No.14 and 15 it is held as under; "Adverting to the case in hand, we find on a plain reading of its judgment that the trial court completely overlooked the provisions and failed to appreciate the statutory presumption drawn u/Sec.118 and 139 of N.I. Act. The Statute mandates that once the signature(s) of an Accused on the Cheque/ negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the Accused to discharge the presumption imposed upon him.

15. Also, in the case of **K. Bhaskaran vs. Sankaran Vaidhyan Balan [1999 (4) RCR (Criminal) 309],** it has been held by the Hon'ble Supreme Court as under:

"As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability."

16. Further, 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". **In Rangappa vs. Srimohan [(2010) 11 SCC 441], the Hon'ble Supreme Court** has observed:

"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."

17. Thus, as laid down in catena of decisions, it is an established law that onus lies upon the accused to rebut the presumption and to establish that the cheque in question was not given in respect of any debt or liability, with the standard of proof being preponderance of probabilities. Therefore, it becomes critical to examine whether the explanation of the accused coupled with the evidence on record is sufficient to dislodge the presumptions envisaged by Sections 118 and 139 of the NI Act.

18. As discussed above, in this case, the presentation of the impugned cheque, its dishonour and service of statutory demand notice are not disputed as it has been proved on the basis of cogent evidence. The defence of the accused is that they obtained money from the complainant only as a loan and the money was not paid for purchasing Villa. The complainant made an investment of Rs.56.97 Lakhs in their company for interest @18% for which Rs.22.91 Lakhs was paid as interest and Rs.50,37,000/- was paid towards repayment of the principal amount. Further the security cheque has been misused to file this false complaint against them.

19. The version of the complainant is that she had paid Rs. 82 lakhs in total to the accused towards purchase of a Villa, and subsequently, when she opted out of the Villa project and sought for return of the amount, the accused had assured to repay it with interest @ 24% per annum. It is admitted by the complainant that there was no written agreement executed between her and the accused for purchase of villa, and she entered into an agreement for purchasing a flat from the accused in 2007 which is Ex.D1. It is also admitted by the complainant that there is no agreement with the accused to show that the accused had assured to pay 24% interest for the amount paid towards purcashing villa. The complainant has produced her bank accounts statements as Ex.D4 according to which the complainant had paid Rs.56.97 lakhs to the accused in total, and according to the complainant, the remaining amounts were paid in cash. But the complainant has not produced any proof of such payments.

20. Further, as per Ex.D4, the accused has paid Rs.33,14,000/- to the complainant, and Rs.9 lakhs and Rs.1 Lakh were paid to the complainant from the bank accounts of 2nd accused and her mother Mrs. Thangavasanthal, which is proved through Ex.D13 and

Ex.D14, for which the complainant has explained that those amounts were paid from their personal accounts for a different transaction and not from the company's account towards repayment of the complaint stated amount. But the same has not been stated by the complainant in her complaint and the complainant herself through Ex.D3 has stated that she paid an amount of Rs.3 Lakhs out of the complaint stated Rs.82 Lakhs to one Vasuki, who is the wife of Mr.MahaGanpathy,the Managing Director of the accused company. So, the stand of the complainant that the above said Rs.9 lakhs and Rs.1 Lakh were paid for a different transaction is not acceptable.

21. Further, the complainant has admitted that Ex.D6 to Ex.D12 are vouchers signed by her on receipt of payments from the complainant, which totally amounts to Rs.29.75 lakhs. The accused through the cross examination of Pw1 has finally placed that the accused had repaid Rs.50,37,000/- through bank payments and Rs.22.91 Lakhs as interest, which is not denied by the complainant. Hence, from the above the accused has argued that they were not liable to pay the cheque amount as alleged by the complainant.

22. Hence, from the above discussions, this court is of the considered view that the complainant has not proved that she made payment of Rs.82 lakhs to the accused that too towards purchase of villa. Also, there is no proof on the side of the complainant to show that the accused assured to pay 24% interest for the amount paid till handing over the possession of villa. Further the accused had produced proof for the payments of Rs.73

lakhs to the complainant. Thus, the accused is able to create a doubt in the lending of huge amount of loan to the accused and there is no explanation as to how the cheque amount was arrived by the complainant. The accused is able to raise a probable defence that the cheque should have been issued as security and the same has been presented for a huge amount. Here, the standard of rebuttal of presumptions being the preponderance of probabilities, the accused has rebutted the legal presumptions which stood in favour of the complainant and so the burden shifted to the complainant to prove that the cheque was issued in discharge of liability.

23. Here, it is pertinent that in **Kumar Exports vs. Sharma Carpets [(2009) 2 SCC 513],** the Hon'ble Supreme Court, in this regard held as under:

"The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."

In the present case, the accused has been able to prove that the cheque was issued only as security and the issuance of the cheque are so probable that a prudent man ought to suppose that the cheque was issued only as security. The complainant has failed to prove beyond doubts that the accused is liable to pay the cheque amount. The defence of the accused seems to be more probable. Therefore, the case must be decided in favour of the accused.

24. Therefore, in the present case the benefit of doubt must go to the accused. The complainant has not been able to prove his case and there are some serious lacunae in the story of the complainant. Moreover, the presumption of law which is to be drawn in favour of the drawee of the cheque, namely, the complainant, that the cheque has been issued for the valid discharge of his debt, gets dislodged by the accused.

25. It is a well settled principle of law that prosecution has to stand on its own leg and prove its case beyond reasonable doubt. Also it has been held by **Hon'ble Supreme Court in Rahul Builders vs. Arihant Fertilizers and Chemicals and another [(2008) 2 SCC 321],** NI Act envisages application of the penal provisions which needs to be construed strictly. Therefore, even if two views in the matter are possible, the Court should lean in favour of the view which is beneficial to the accused. This is more so, when such a view will also advance the legislative intent, behind enactment of this criminal liability.

26. Hence in the light of above discussion, it comes out that the complainant has failed to prove his case beyond all the reasonable doubts and he has failed to fulfill all the ingredients of offence under section 138 NI Act against the accused. The accused has been able to rebut the presumption in favour of the complainant as the standard of proof so as to prove a defence on the part of the accused is only 'preponderance of probabilities' and 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 he relies as the same was held by **Hon'ble Supreme Court in M/s Indus Airways Private Limited and others vs. M/s Magnum Aviation Private Limited and another CA No.830 of 2014.**

27. In the light of the above discussions and observations, this Court has no hitch to hold that the complainant has failed in proving his case beyond the shadow of reasonable doubts. This court exonerates the accused for the offence u/s 138 NI Act. The accused is hereby acquitted under section 255(1) of C.r.P.c

Typed by me directly in my laptop, corrected and pronounced by me in the open Court, this the 03rd day of October 2025.

E BHUVANESHWARI Digitally signed by E BHUVANESHWARI Date: 2025.10.03 18:07:11 +0530

Judicial Magistrate,
Fast Track Court at Magisterial Level,
Alandur.

Complainant side witness:-

Pw1:- Mr. Geetha Jyothsna (The Complainant himself)

Complainant side Exhibits:-

Ex.P.1	:	Cheque bearing No.067002 dated 28.12.2020
Ex.P.2	:	Return Memo dated 19.03.2021
Ex.P.3	:	Legal Notice dated 12.04.2021

Ex.P.4	:Acknowledgment Card dated 16.04.2021
Ex.P.5	:Reply Notice dated 08.05.2021

Accused side Witness :-

DW1:- Mr. Saravanan, Chief Manager (TMB Bank, Thiruvanmiyur branch).

DW2:- Mr. Venkatraju , Chief Manager (Bank of Baroda Nelson Manickam Road Branch)

Accused side Exhibits :-

Ex.D.1	:Construction Agreement dated 28.11.2007
Ex.D.2	:Sale Deed dated 06.12.2007
Ex.D.3	:Complainant ICICI Bank Transactions
Ex.D.4	:ICICI Bank Account Statement from 22.05.2012 to 14.08.2020
Ex.D.5	:Complainant Signed Cash payment Voucher dated 08.10.2018
Ex.D.6	:Complainant Signed Cash payment Voucher dated 14.05.2015
Ex.D.7	:Complainant Signed Cash payment Voucher dated 12.10.2015
Ex.D.8	:Complainant Signed Cash payment Voucher dated 18.03.2016
Ex.D.9	:Complainant Signed Cash payment Voucher dated 17.06.2017

Ex.D.10	:	Complainant Signed Cash payment Voucher dated 31.07.2018
Ex.D.11	:	Complainant Signed Cash payment Voucher dated 07.08.2018
Ex.D.12	:	Complainant Signed Cash payment Voucher dated 01.10.2016
Ex.D.13	:	TMB Bank Statement of accused from 01.01.2013 to 31.01.2013
Ex.D.14	:	Bank Statement of Mrs.Thanga Vasanthal from 01.02.2013 to 28.02.2013

NOTE:

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

2. Bail bonds executed by the accused cancelled and the sureties if any stands discharged.

E BHUVANESHWARI Digitally signed by E BHUVANESHWARI Date: 2025.10.03 18:07:17 +0530

Judicial Magistrate,
Fast Track Court at Magisterial Level,
Alandur.

CASE SUMMARY AS PER THE CIRCULAR OF HON'BLE HIGH COURT,MADRAS IN R.O.C NO.814/2020/RG/F1, DT.07.04.2021

I	the period of remand of the accused	:	(Private complaint)
ii	the date of filling of the complaint/final report in the court	:	21.06.2021
iii	the date of committal of the case to the Court of Session	:	
iv	the date of questioning of the accused under Section 251 of the Code of Criminal Procedure, 1973.	:	29.09.2022

V	filling of all miscellaneous petitions and their results including the results on challenge before superior Courts; except routine petitions like petitions under section 317 of the Code	:	CMP No.4222/2023, dated 05.09.2023 U/sec.91 of crpc petition was allowed, CMP No.6526/2023, dated 27.11.2023 U/sec.309 of crpc petition was allowed, CMP No.2169/2024, dated 08.11.2024 U/sec.254(2) of NI act petition was allowed.
vi	date of examination in-chief and cross-examination of witness	:	12.04.2022, 16.06.2023 03.08.2024, 10.02.2025 10.02.2025
vii	date of examination of the accused under Section 313 of the Code	:	12.09.2024
viii	Details of abscondence of an accused and his appearance / production, as the case may be	:	---
ix	grant of stay by superior Courts and the results thereof.	:	---

E BHUVANESHWARI Digitally signed by E BHUVANESHWARI Date: 2025.10.03 18:07:22 +0530

Judicial Magistrate,
Fast Track Court at Magisterial Level,
Alandur.