

**IN THE COURT OF THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, CHENGALPATTU**

**Present : Thiru.A.Saravanakumar,B.A.B.L.,
Additional District & Sessions Judge,
Chengalpattu**

Thursday, the 16th day of April 2026

(Thiruvalluvar Aandu 2056, Parabhava Varudam, Chithirai Month 3rd Day)

Criminal Appeal No.18/2024

CNR No: TNCG01-000883-2024

From which Court the Appeal is preferred	..	Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur
Number of the case in that Court	..	C.C.No. 133 of 2020
Number of the Appeal	..	Crl.Appeal No.18/2024
Name and description of the Appellant/ accused	..	Mr. M. Balamurugan S/o. Meenakshisundaram, No.9A/12(94), Patcharisikkara Street, 3 rd Lane, Madurai-625001.
Name and description of the Respondent/ complainant	..	Ms. A. Kiruthika,D/o.T.Arumugam, ..Represented through power agent Mr.Dhanush Kodi Pandian Residing at No. 9/26-A, Subrabath Flats,TNGO Colony, 4 th Street, Nanganallur, Chennai - 600 061.

The sentence and law under which it was imposed in the Lower Court

Accused was convicted u/s.138 of Negotiable Instrument Act and sentenced to undergo 6 months simple imprisonment and directed to pay a fine of Rs.17,50,000/-. The accused was further directed to pay the fine amount as compensation to the complainant under section 357 of Cr.P.C. within one month and in default of payment of compensation within one month, the accused has to undergo a further simple imprisonment of two months considering the over all facts and circumstances of the case.

Whether Confirmed, modified or reversed, If modified the modification. .. Appeal is dismissed and Judgment of Trial Court is Confirmed.

In the result, (i). The Criminal Appeal is dismissed; (ii). The Judgment of conviction and sentence imposed by the Judicial Magistrate, Fast Track Court, Magistrate Level, Alandur in C.C.No.133/2020 dated 02.01.2024 is confirmed; and (iii). The trial court is directed to secure the accused and send him to prison to undergo the remaining period of sentence.

Date of Presentation	..	21.02.2024
Date of Filing	..	21.02.2024
Date on which notice issued by Court to appear	..	27.02.2024
Date of bail bond if any	..	02.01.2024 and 19.08.2025
On which date appellant ordered to appear	..	27.02.2024
Date of 1 st hearing	..	27.02.2024
Date of Judgment	..	16.04.2026

This appeal coming before this court on 06.04.2026 for final hearing in the presence of M/s.R.Karthikeyan, P.Kannan, G.Saravanan, Ashok Kumar and S.Mohan, Counsels for Appellant/accused and M/s.Ramparakash Rajagopal, A. Murugan and G.Rajesh, Counsels for Respondent/complainant and upon hearing the arguments on both sides and perusal of written arguments filed by both sides and upon perusing the entire material records and the documents, this Court delivered the following:-

JUDGMENT

This Criminal Appeal has been filed as against the judgment and conviction passed by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur in C.C.No.133 of 2020 dated 02.01.2024.

2. The complaint was filed u/s.200 Cr.P.C. against the accused alleging that the accused was introduced to the Complainant through Mr.Dhanushkodi Pandiyan who is the Power Agent of the complainant and is a common family friend to both the complainant and the accused. The accused came to know from him that the complainant has received Rs.20,00,000/- as a gift from her father when the complainant's father sold their family property. The complainant's power agent, a family friend who was aware of all the transactions between the complainant and the accused, approached the complainant through her father and requested a loan of Rs. 15,00,000/- for the accused's family and business requirements. The complainant's power agent stood as guarantor for the repayment, and the complainant accordingly lent a sum of Rs. 15,00,000/- on 09.04.2018, of which Rs. 10,00,000/- was paid by cheque bearing No.004906 dated 09.04.2018 drawn on City Union Bank, Irungalur, Trichy, and the remaining Rs. 5,00,000 was paid in cash.

The Cheque and cash were given to the accused in the presence of the witnesses Mr. Dhanushkodi Pandiyan (Power Agent), Mr. Bhuvaneshwaran, Mr. Thirunavukarasu and the complainant's family members. The said cheque bearing No.004906 was duly honoured and the amount was credited directly to the accused bank account.

The accused executed a promissory note dated 09.04.2018 in favour of the complainant in the presence of above said witnesses, confirming a debt of Rs.15,00,000/- repayable with interest @ 24% per annum on demand. The accused has given interest only for a few months from the loan date and thereafter stopped giving interest and

started to give reasons as if the accused business is in loss and also he has family problems. The complainant gone to the extent of demanding only the principal amount and the accused made to believe the complainant as if the accused will settle the entire amount with interest by selling his house and further promised the complainant that he will settle the entire loan amount with interest by the end of August 2019. However, the accused has not returned the 'Principal' loan amount to the complainant and failed to abide by his promise.

Thereafter on 01.09.2019, upon demand through the Power Agent, the accused came to Chennai and issued two filled cheques bearing Nos.036404 and 036405 drawn on Indian Overseas Bank, North Vadambokki Street, Madurai branch dated 10.09.2019(Account No.0314010000031624) for Rs.7,50,000/- each, totaling Rs.15,00,000/-, and signed them before the complainant and witnesses viz., Mr. Dhanushkodi Pandiyan (Power Agent), Mr. Bhuvaneshwaran, Mr. Thirunavukarasu and other family members.

The complainant presented the cheques bearing Nos.036404 and 036405 through her account in Karnataka Bank, Nanganallur Branch on 10.09.2019(Account No.1702500100034701) on the same day i.e. on 10.09.2019 for collection, but both the cheques were dishonored by Indian Overseas Bank, Madurai Branch on 12.09.2019 for the reason 'Funds Insufficient'.

The reasons for dishonour were intimated to the complainant banker through intimation return memos dated 17.09.2019. Thereafter, the complainant sent a demand notice to the accused calling upon him to pay the cheque amount within the stipulated time period of 15 days. The accused failed to pay the cheque amount within the stipulated period. The said legal notice was returned as 'unclaimed'. As the accused failed

to repay the amount within the stipulated period, the complaint was filed under section 138 of the Negotiable Instrument Act by the complainant against the accused.

3. After recording the sworn statement of the complainant and perusal of the records, the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur took cognizance of the offence u/s.138 of Negotiable Instrument Act and issued summons to the accused.

4. **Questioning u/s.251 of Cr.P.C:-**

On the appearance of the accused, a copy of complaint was served on him and he was questioned u/s.251 Cr.P.C. He pleaded not guilty and claimed to be tried.

5. **Case of the complainant:-**

On the side of the complainant, the power agent of the complainant has been examined as PW1 and on his side Ex.P1 to Ex.P9 were marked. From his evidence the following case has been culled out:-

6. PW1 Danush Kodi Pandian is the power of attorney of complainant Krithika. The special power of attorney deed has been marked as Ex.P1. The accused, the complainant and PW1 are known to each other. From the PW1, the accused was known to the complainant. The accused borrowed a sum of Rs.15,00,000/- on 09.04.2018. PW1 stood as guarantor. At the time of borrowal of the loan amount, PW1 was present. The amount of Rs.15,00,000/- was paid by way of a cheque bearing no.004906 dated 09.04.2018 for Rs.10,00,000/- and Rs.5,00,000/- by cash on the same day. That the accused executed a promissory note dated 09.04.2018 in favour of the Complainant acknowledging a debt of

Rs.15,00,000/- repayable with interest at 24% per annum on demand. The bank statement of the complainant is marked as Ex.P2 and the promissory note has been marked as Ex.P3. The acknowledgment receipt dated 09.04.2018 acknowledging the receipt of Rs.15,00,000/- by the accused has been marked as Ex.P4. The accused paid interest only for a few months and thereafter stopped, citing business losses and family problems as reasons for non-payment. Despite repeated demands, the accused did not repay even the principal amount. The accused has promised the complainant that he will settle the loan with interest by selling his house by the end of August 2019, but he failed to do so. However, on 01.09.2019, upon demand through the Power Agent, the accused came to Chennai and issued two cheques bearing Nos.036404 and 036405 drawn on Indian Overseas Bank, North Vadamboki Street, Madurai Branch dated 10.09.2019 for Rs.7,50,000/- each, totaling Rs.15,00,000/-, and signed them in the presence of the Complainant and witnesses, namely Mr. Dhanushkodi Pandiyan (Power Agent), Mr. Bhuvaneshwaran, Mr. Thirunavukarasu, and other family members. The cheques bearing nos.036404 and 036405 dated 10.09.2019 were marked as Ex.P5 and Ex.P6. The complainant presented the said cheques through her account at Karnataka Bank, Nanganallur Branch on the same day for collection, but both the cheques were dishonoured by Indian Overseas Bank, Madurai Branch on 12.09.2019 for 'Funds Insufficient'.

The dishonor of the cheques was intimated to the complainant through return memos dated 17.09.2019. The return memo has been marked as Ex.P7. Thereafter, the Complainant issued a demand notice to the accused calling upon him to pay the cheque amount within 15 days. The accused failed to make payment, and the legal notice was returned as 'unclaimed'. The Demand legal notice has been marked as Ex.P8 and the 'unclaimed' returned cover is marked as Ex.P9. The accused has not repaid the cheque amount within the stipulated period, and therefore the complaint is filed u/s.138 of the Negotiable Instrument Act.

7.Questioning u/s.313(1)(b) Cr.P.C.:-

After the evidence of PW1 complainant was over the accused was questioned u/s.313(1)(b) Cr.P.C. in respect of the incriminating circumstances available in the evidence of the prosecution witnesses. The accused denied as false. No witnesses were examined on the side of the accused and no documents were marked.

8. Finding of Trial Court:-

The trial court after considering the evidence of the respective sides and also of the submissions came to the conclusion that the accused found guilty u/s.138 of N.I.Act and also convicted the accused sentenced to undergo 6 months simple imprisonment and directed to pay a fine of Rs.17,50,000/-. The accused was directed to pay the fine amount as compensation to the complainant under Section 357 Cr.P.C. within one

month and in default of payment of compensation within one month, the accused has to undergo a further simple imprisonment of two months considering the overall facts and circumstances of the case. Having aggrieved by the findings and sentence of the learned Judicial Magistrate Fast Track Court (Magistrate Level), Alandur, the present appeal is filed.

9. Grounds of appeal:-

The grounds of appeal run as follows:

- i). The judgment of the trial court is against law, the weight of evidence, and is biased against the preponderance of probabilities of the case.
- ii). The learned trial Judge has pronounced judgment on the basis of surmises and conjectures.
- iii). The learned trial Judge ought to have dismissed the complaint as there was no valid evidence to substantiate or prove the complaint.
- iv). The learned trial Judge, as in the judgment, has verbatim discussed Sections 138 and 142 of the N.I. Act.
- v). The learned trial Judge thereafter verbatim discussed Sections 118 and 139 of the N.I. Act.
- vi). The learned trial Judge has failed to consider the facts that the accused did not know the complainant, only the POA Dhanushkodi, who gave the payment of Rs. 10,00,000/- who is residing at Madurai, but the cheque was given for security purposes and the same was misused by the complainant.
- vii). The learned trial Judge, in his judgment, has not taken into consideration the contention stated by the Appellant that the security cheque was misused by the power agent along with the complainant, and did not appreciate the contention of the appellant.

Viii).The learned trial Judge ought to have considered the relationship that the complainant's counsel and the complainant are husband and wife, and that the power agent and the complainant's counsel are advocates who misused the cheque given for security.

ix). The learned trial Judge failed to consider that the appellant settled part of the amount of Rs. 4,00,000/- through the complainant's bank account Rs.3,00,000/- settled and Rs. 1,00,000/- cash received by the power agent. Since the ten lakhs is the borrowed amount, the appellant was ready to settle the balance six lakhs to the power agent. The complainant's counsel also filed a memo before the Trial Court.

x).The learned trial Judge relied upon the averments and contentions of the complainant but did not consider that there is only documentary evidence to support the contention of the complaint.

xi). The learned trial Judge totally relied on the oral evidence of the Respondent/Complainant but did not consider the cross-examination done by the appellant.

xii). The learned trial Judge, in his judgment, has again come to the conclusion that the complainant's averments are true since the complainant let in evidence in the box, but the complainant proved his claim by forged documentary evidence.

xiii). The trial court miserably failed to appreciate the contention of the appellant/accused that the subject cheque was not issued towards the discharge of the liability.

xiv). The learned trial Judge has wrongly come to the conclusion that the subject cheque is towards the discharge of the liability by sufficient evidence and beyond reasonable doubt.

xv). The learned trial Judge failed to note the evidence of the complainant, which is inconsistent.

xvi). The learned trial Judge has not even whispered anything about the contra evidence in the deposition made by the complainant.

xvii). The learned trial Judge has wrongly come to the conclusion that the accused has failed to rebut the presumption.

xviii). The learned trial Judge did not appreciate the contention of the Appellant/Accused that the subject cheque was issued as a security purpose given to one Dhanushkodi, but he acted as a power agent.

xix). The learned trial Judge relied upon only the chief examination of the Respondent/Complainant.

xx). The learned trial Judge erred in observing that "Accused had not chosen to enter the witness box to substantiate his defence and failed to produce sufficient documents."

xxi). The judgment of the trial court is biased and one-sided.

xxii). The learned trial Judge has caused a miscarriage of justice.

Therefore, the appellant prays to allow this Appeal and to set-aside the conviction and sentence imposed on the appellant/accused in C.C.No.133/2020 dated 02.01.2024 on the file of the court of Judicial Magistrate Fast Track Court (Magistrate Level), Alandur.

10. The submission of the respondent:-

The learned counsel for the appeal respondent in his arguments has submitted that the trial court has properly considered the complaint, appreciated the evidence and applied the correct provision of law to the facts of the case. It is his submission that the judgment of the trial court need not be set aside.

11. The Point:

Upon the perusal of entire records and also the submissions of the respective sides, this court has framed the following point for consideration:

1. Whether the Judgment of conviction passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C.No.133/2020 dated 22.01.2024 is sustainable both on law and facts?
2. Whether the appeal is to be allowed?

12. Answer to the point No.1:

The challenge in this appeal is, whether the judgment of conviction passed by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur in C.C.No.133/2020 dated 02.01.2024 is sustainable both on law and facts. The appellant is the accused in C.C.No.133/2020 and the appeal respondent is the complainant therein. For the purpose of easy understanding and convenient discussions, the parties are described in their litigative status in the private complaint.

13. It is the case of the complainant in brief that the complainant's Power Agent, a family friend who knew all the transactions between the complainant and accused, approached the complainant through her father and requested to lend Rs.15,00,000/- for accused family and business requirements. In order to discharge the said liability, the accused issued two cheques bearing Nos. 036404 and 036405 dated 10.09.2019 for Rs.7,50,000/- each, totaling Rs.15,00,000/-, drawn on

Indian Overseas Bank, North Vadamboki Street, Madurai Branch. The complainant further submitted that when the cheques were presented for collection on the same day through her account at Karnataka Bank, Nanganallur Branch on the same day for collection, but both cheques were dishonoured by Indian Overseas Bank, Madurai Branch on 12.09.2019 for 'Funds Insufficient'. The complainant further contends that after the return of cheques she issued legal notice dated 27.09.2019 calling upon the accused to pay the cheques amount and the notice was returned as "Unclaimed" on 10.10.2019. Therefore, the complainant contends that the accused issued the cheques knowing fully well that his account had no sufficient funds and thereby cheated the complainant.

14. As against the case of the complainant while cross-examining PW1, the accused has divulged his defences by suggesting that the complainant has issued only Rs.10,00,000/- to the accused and she never lent a sum of Rs.15,00,000/-. It is further suggested that while at the time of giving the loan, the complainant received signed unfilled cheques from the accused. It is the case of the accused that the complainant filled up the said cheques and presented the same for collection. It is further suggested that the cheques were given only as a security for the payment of loan and he had no intention to issue the cheques for debt. Moreover, the accused further suggested that the complainant has not put forth the principal and interest amount in the complaint and further the accused

fully discharged all the loan amounts borrowed from the complainant. While so, based on the above defence, the accused sought for acquittal.

15. The trial court having considered the oral and documentary evidences and also submissions of both sides passed a judgment of conviction. Now, the challenge in this appeal is whether the judgment of conviction passed by the trial is sustainable both on law and facts. It is well established principles of law that in order to bring home an accused u/s.138 of the N.I.Act, the following ingredients must be proved.

- (i). 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;
- (ii). the cheque has been issued for the discharge, in full or in part of any legal and enforceable debt or liability;
- (iii). the cheque has been presented for collection within a period of three months from the date on which it is drawn (or) within the period of its validity whichever is earlier;
- (iv). the cheque has been returned by the bank unpaid as 'funds insufficient';
- (v). the payee or the holder in due course of the cheque has made a demand for payment of the cheque amount by giving notice in writing to the drawer of the cheque within 30 days of receipt of information from the bank regarding the return of the cheque as unpaid; and

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

16. Keeping in view of the above, this appellate court has considered the oral evidence of PW1 and also the documentary evidence produced before the trial court. Ex.P3 is the promissory note executed by the accused in favour of the complainant. A perusal of Ex.P3 would go to show that the accused borrowed a sum of Rs.15,00,000/- by way of cash from the complainant on 09.04.2018 so as to discharge his family and business expenses, wherein he agreed to pay an interest @ 2% per hundred and agreed to pay the amount on demand. It is further noticed that one Dhanushkodipandian and another person have signed as attestors. The accused Balamurugan has signed therein. While cross-examining PW1, the accused did not put a single suggestion that the signature found in Ex.P3 is not to that of him. Moreover, while cross-examining PW1 on 14.06.2023, the accused admitted that the cheque was issued by him. Therefore, it is clear that as per Ex.P3, the accused borrowed a sum of Rs.15,00,000/-. Moreover, Ex.P4 is the acknowledgment deed executed by the accused in favour of the complainant, wherein the accused admitted that he has received a sum of Rs.15,00,000/- and further admitted that he has also issued a promissory note for the said sum. Therefore, Ex.A4 would further fortify

the case of the complainant that the accused borrowed a loan amount of Rs.15,00,000/- from the complainant.

17. Ex.P5 is the cheque dated 10.09.2019. It is for Rs.7,50,000/- bearing cheque no.036404. It is drawn on Indian Overseas Bank in favour of the complainant. The signature of the accused was also found therein. Ex.P6 is another cheque dated 10.09.2019 for Rs.7,50,000/-. It bears no.036405 drawn on Indian Overseas Bank in favour of the complainant. The signature of the accused was also found therein. A further scrutiny of Ex.P5 and Ex.P6 would indicate that the cheque leaves were issued on the account of the accused. What is pertinent to be noted here is that while cross-examining PW1, the accused has not denied the signatures of him. He has suggested that at the time of receiving the loan amount, he issued signed cheques without filling up the same. Therefore, it is seen that the accused has clearly admitted his signatures found in Ex.P5 and Ex.P6.

18. If the signatures in Ex.P5 and Ex.P6 cheques are admitted, the necessary presumptions u/s.139 of N.I.Act can be drawn. The said section enables the court to presume that once the execution is admitted it can be presumed that the cheques were issued for the discharge of a debt or liability.

19. However, it is to be pointed out that the presumption under section 139 of the N.I.Act is a rebuttable presumption. Section 139 makes it very clear that it enables the court to raise a presumption that the

negotiable instrument is supported by consideration. Therefore, there is no iota of doubt that once the issuance of cheque and signature found therein are admitted, the necessary presumption that the cheque is supported by consideration would arise. Similarly, the presumption that the cheque is issued for the discharge of any debt or liability would also arise. However, the presumption cannot be extended to prove that the debt is for legally enforceable debt. Be that it may, once the issuance and signature in the cheque is admitted and the presumption is raised u/s.139 of the N.I.Act, it is for the accused to rebut the said presumption. While rebutting the presumption mere explanation is not sufficient. The accused must produce proof. For disproving the said presumption, the accused need not come to the witness box and produce his side evidence. He can rely upon the evidence of complainant's side to rebut the said presumption. In this context, the Hon'ble Supreme Court in the case of **Hiten P. Dalal ..Vs..Bratindranath Banerjee** AIR 2001 SC 3897 has held as follows:

“23. The word unless the contrary is proved which occurs in this provision make it very clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.”

20. Similarly, the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat ..Vs.. Dattatraya G.Hedge** 2008(1)CTC 433 has observed as follows:

"20 : Indisputably, a mandatory presumption is required to be raised in terms of section 118(b) and 139 of the Act. Section 13(1) of the Act defines negotiable instrument to mean a promissory note, bill of exchange or cheque payable either to order or to bearer.

23 : An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.

25 : Furthermore, whereas prosecution must prove that the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities . Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.

Para 26 : A statutory presumption has an evidentiary value. The question as to whether the presumption stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative.

Para 34: The courts must be on guard to see that merely on the application of presumption as contemplated under section 139 of the Negotiable instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasized. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused."

20. At this stage, this appellate court has to further see that whether the accused has put forth a probable defence in order to show that the cheques were not issued for the discharge of any debt or liability. In this regard, while cross-examining PW1, though the accused suggested that he gave the cheques only for security, no evidence is produced in this regard. Similarly, though a specific suggestion is put to PW1 that the entire loan amount was discharged by the accused, no oral or documentary evidence is produced in this regard. Though the accused suggested to PW1 that the accused borrowed only a sum of Rs.10,00,000/- and the cheques were filled up for excess amount of Rs.15,00,000/-, it is also not proved. Therefore, it seems that the accused has put forth certain bald suggestions without any substantial materials to rebut the said presumption.

21. The learned counsel for the appellant/accused in his written arguments has also stated that the original complainant namely Kiruthika was not examined and her power agent has been examined as PW1. While so, her non-examination is fatal to the complainant's case. In this regard, the complainant has produced Ex.P1 power of attorney deed executed by the complainant in favour of PW1 Dhanushkodipandian on 13.11.2019. The complainant in her complaint has clearly averred that the power of attorney had a personal knowledge at the time when the accused received the loan and he had also personal knowledge at the time when he

issued the cheques. Similarly, PW1 in his chief-examination has clearly stated that all the transactions were made in his personal knowledge. While cross-examining PW1 not even a single suggestion is put that the PW1 had no personal knowledge of the transaction. Though a specific suggestion is put to PW1 that non-examination of complainant is fatal, the personal knowledge of the PW1 is not challenged. Therefore, this court is of the view that PW1 is competent to speak about the transaction arose in this case.

22. It is further noticed that the complainant has produced Ex.P7. A perusal of Ex.P7 return memo dated 12.09.2019 would go to show that the cheques were presented for collection through the complainant's banker and they were returned as "funds insufficient". It is further seen from Ex.P8 legal notice dated 27.09.2019 and it was returned on 10.10.2019 as 'unclaimed'. It is well established principle of law that a notice returned as unclaimed is also a sufficient service unless the contrary is established by the accused. Keeping in view of the same, it is crystal clear that the complainant has satisfied all the ingredients of the offence u/s.138 of the N.I.Act.

23. This court has perused the judgment of the learned Judicial Magistrate, Fast Track Court, Magistrate level, Alandur. It is noticed that the learned Judicial Magistrate after considering the materials available

on record awarded simple imprisonment of 6 months as against the accused and to pay a fine of Rs.17,50,000/- along with default sentence.

24. The learned counsel for the appellant/accused in his written arguments has submitted that the defence has successfully rebutted the presumption by showing that the transaction was only for Rs.10,00,000/- and the blank cheques issued for security purpose was misused by the complainant. The learned counsel for the accused further submits that the trial court has not considered the material contradictions in the evidence of PW1. He further stated that the PW1 being the power agent of the complainant is not entitled to depose on behalf of the complainant and the trial court has failed to appreciate his evidence. It is his submission that non examination of material witness namely complainant is fatal to the complainant's case. It is his submission that the trial court has committed error in accepting Ex.P3 and Ex.P4 without proof.

25. Moreover, the learned counsel for the appellant/accused has relied upon a judgment of Hon'ble Supreme Court rendered in the case of **Indus Airways ..Vs.. Magnam Aviation** (2014)12 SCC P539, **Krishna Janardhan Bhat ..Vs.. Dattatraya G.Hegde** (2008)4 SCC 54, **K.Subramani ..Vs.. K.Damodara Naidu** (2015)1 SCC 99, **John K.Abraham ..Vs.. Simon C.Abraham** (2014) 2 SCC 236, **R. Vijayan ..Vs.. Baby** 2023 SCC Online SC 201 , **Kumar Exports ..Vs.. Sharma Carpets** 2009 (2) SCC.

26. As a refutation, the learned counsel for the complainant/appeal respondent submitted that the trial court has properly appreciated the evidence and came to a correct conclusion. Since there is no irregularity or illegality in the judgment passed by trial court, the appeal may be dismissed.

27. Having regard to the submissions of both sides, this appellate court has elaborately considered that the accused borrowed a sum of Rs.15,00,000/- and executed a promissory note and confirmation deed. To discharge the said amount, he has issued the cheques and when it was presented for collection , it returned as 'funds insufficient'. This court has also came to the conclusion that in spite of sending of legal notice, the cheque amounts were not paid. This court has also observed that the non-examination of complainant is not fatal to the complainant's case and the complainant has miserably failed to rebut the necessary presumptions u/s.139 of N.I. Act. Hence the various contentions raised by the learned counsel for the appellant/accused are not sustainable and the cases referred are not applicable to the case on hand. Moreover, since the trial court has properly understood the facts, appreciated the evidence and applied correct proposition of law, this court is not inclined to interfere with the findings arrived at by the trial court. While so, this court holds that the judgment of conviction passed by the learned Judicial Magistrate, Fast Tract Court at Magistrate Level at Alandur in C.C.No.133/2020

is sustainable both on law and facts. Accordingly, the 1st point is answered. On that scores, the appeal is dismissed. Accordingly, the 2nd point is answered.

28. In the result,

- (i). The Criminal Appeal is dismissed.
- (ii). The Judgment of conviction and sentence imposed by the Judicial Magistrate, Fast Track Court, Magistrate Level, Alandur in C.C.No.133/2020 dated 02.01.2024 is confirmed.
- (iii). The trial court is directed to secure the accused and send him to prison to undergo the remaining period of sentence.

Dictated to the Stenographer and directly computerized by her, corrected and pronounced by me in Open court this the 16th day of April 2026.

Additional District & Sessions Judge
Chengalpattu

Both side witnesses and Exhibits: NIL

Additional District & Sessions Judge
Chengalpattu

Fair/Draft Order

CrI. Appeal No. 18/2024

Dated :16.04.2026

ADJC/CPT
