



**IN THE COURT OF THE PRINCIPAL DISTRICT AND  
SESSIONS JUDGE, CHENGALPATTU.**

Present: Thiru.T.Chandrasekaran, M.L.,  
Principal District and Sessions Judge,  
Chengalpattu.

Dated: Saturday, the 06<sup>th</sup> day of June 2026.

**Criminal Appeal No.71 of 2023**  
**(CNR No.TNCG01-005478-2023)**

(A Criminal Appeal preferred against the Judgment passed by  
the Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur  
in C.C. No.158 of 2014 on 19.06.2023)

A.Petchimuthu, aged about 38 years, S/o.Appadurai,  
No.33, Shanthi Nagar 4<sup>th</sup> Cross Street,  
Gowrivakkam, Chennai - 600 073.

... Appellant/Accused

**//Versus//**

Manamalli, aged about 56 years, W/o.Lakshmipathi,  
No.7, Muraliram Flats, Duraisamy Garden,  
Nanganallur, Chennai - 600 061.

... Respondent/Complainant

From which Court the Appeal is preferred	Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur
Number of the case in Lower Court	C.C. No.158 of 2014
Number of the Criminal Appeal	<b>Criminal Appeal No.71 of 2023</b>
Name and Description of the Appellant	A.Petchimuthu, S/o.Appadurai, Aged about 38 years, No.33, Shanthi Nagar 4 <sup>th</sup> Cross Street, Gowrivakkam, Chennai - 600 073.



Name and Description of the Respondent	Manamalli, aged about 56 years, W/o.Lakshmipathi, No.7, Muraliram Flats, Duraisamy Garden, Nanganallur, Chennai - 600 061.
The Sentence and law under which it was imposed in the trial Court:	
	The Accused is found guilty of offence U/s.138 Negotiable Instruments Act; convicted and sentenced the accused to undergo simple imprisonment of three months and to pay a compensation of Rs.3,50,000/- to the complainant within one month, in default of payment of compensation within one month, the accused has to undergo simple imprisonment of two months.
Date of Presentation	12.07.2023
Date of Filing	18.07.2023
Date on which notice issued by the Court	18.07.2023
Bail Bond if appellant has been let out on bail/sentence suspended	Sentence suspended by this Court in C.M.P. No.3993 of 2023 on 22.08.2023.
Date on which the Appellant ordered to appear	25.07.2023
Date of First hearing	25.07.2023
Date of Final hearing	28.04.2026
Date of order and Sentence	06.06.2026
Whether confirmed, modified or reversed, and if modified, the modification	<b>Confirmed -</b>
In the result, the Criminal Appeal No.71 of 2023 is dismissed by confirming the judgment pronounced by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C. No.158 of 2014 dated 19.06.2023. The trial Court shall take appropriate steps for securing the presence of the accused and for execution of the sentence in accordance with law.	



This Criminal Appeal came up before me on 28<sup>th</sup> day of April 2026, for final hearing, M/s.G.Prathap Singh and T.Thanigaivel, the learned counsels appearing for the Appellant/Accused and M/s.M.P.John Peter, the learned counsel appearing for the Respondent/complainant, upon hearing the oral arguments and upon perusing the written arguments filed by the respondent/complainant and other relevant records and having stood over the matter for consideration till this day, this Court has delivered the following:

### **JUDGMENT**

This Criminal Appeal arises out of the Judgment pronounced by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C. No.158 of 2014 dated 19.06.2023, whereon the learned Judicial Magistrate concluded that the accused found guilty of offence U/s.138 NI Act, convicted the accused U/s.255(2) Cr.P.C. and sentenced him to undergo simple imprisonment for three months and directed to pay a compensation of Rs.3,50,000/- to the complainant within one month and in default of payment of compensation within one month, the accused has to undergo further simple imprisonment of two months. The accused who was convicted by trial court is the appellant herein.



**2. Brief facts set-out in C.C. No.158 of 2014 are as follows:**

According to the complainant, the accused had approached her during the month of November, 2011 through one Kanakaraj and request loan for his urgent business expenses. On the request of the accused and on the recommendation of the said Kanakaraj, the complainant had lent a sum of Rs.1,75,000/- on 11.11.2011 and on that date, the accused had executed a deed for the amount borrowed and promised to repay the interest for the principal at the rate of 1.5% per annum on or before 10<sup>th</sup> day of every succeeding month. The accused had agreed to repay the principal within a period of 6 months and had also executed a promissory note on the same date apart from all the above.

**2.1.** However, the accused had not paid either the principal or interest as promised and he had evaded from repaying the amount. After repeated demands, the accused had issued a cheque dated 04.04.2014 bearing cheque No.011141 drawn on Axis Bank, Medavakkam Branch for a sum of Rs.2,48,500/- towards the repayment of the principal and the interest. The accused had also handed over the original title deed of a property standing in the name of one Thangamani stating that he will get back the document on payment of the due amount.



2.2. The complainant had presented the said cheque for collection on 04.04.2014 through her banker namely Indian Bank, Nanganallur branch, but the said cheque was returned by the accused bank on 05.04.2014 along with a return memo containing an endorsement “Accounts closed”. Thereafter, on 11.04.2014, the complainant sent a legal demand notice through her counsel, calling upon the accused to make payment of the cheque amount within 15 days of receipt of notice. Despite service of notice, the accused failed to make payment. Therefore, the accused is liable to be punished for the offence under section 138 of the N.I. Act, and thus a complaint.

3. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur, after observing all the formalities contemplated under the Act took cognizance of the complaint on file and the case was numbered as C.C. No.158 of 2014.

4. Before the learned Judicial Magistrate, on the side of the complainant, the complainant has examined herself as PW.1 and five documents were marked as Ex.P1 to Ex.P5. The Promissory note dated 11.11.2011 has been marked as Ex.P1; the original impugned cheque has been marked as Ex.P2; the 05.04.2014 dated cheque return memo has been



marked as Ex.P3; the 11.04.2014 dated Legal demand notice has been marked as Ex.P4 and the Acknowledgment Cards are marked as Ex.P5.

**4.a.** No witness has been examined and no document has been marked on the side of the accused.

**5. The deposition of complainant in short reads as follows:**

**Thiru.Manamalli (PW.1):**

During November, 2011, the accused had approached the complainant through one Kanagaraj and requested to lend amount for his urgent business expenses; because of the request of the accused and on the recommendation of the said Kanagaraj, on 11.11.2011, the complainant had lent a sum of Rs.1,75,000/-, which she kept for her son's college admission; on the date of borrowal of loan, the accused had executed a deed for the said loan in the presence of witnesses and voluntarily promised to repay interest for the principal amount at the rate of 1.5% per annum on or before 10<sup>th</sup> day of every succeeding month and agreed to repay the principal within a period of 6 months; apart from the above, the accused had executed promissory note in her favour on the same date; but the accused had neither paid interest nor the principal amount within the stipulated period as agreed by him; therefore, the complainant insisted the accused to repay the loan



amount together with accrued interest, but the accused failed to repay; almost all times the accused had failed to pick-up her phone calls and somehow she was able to contact the accused through other numbers; when the complainant approached the accused directly during the year 2013, the father of the accused initially told that she had committed fault as she has suo moto lent loan without his consent; however, the father of the accused assured that he will make the accused to settle the due amount as soon as possible; later on the father of the accused also changed his mind and openly challenged that the accused is a skilled son, therefore, it is not easy for her to recover the due amount from the accused.

During January, 2014, when she contacted the accused at his residence, he had promised her that he is about to receive huge sum derived from real estate business and he will definitely settle the due amount, within a period of three months; in support of his promise, the accused had come to the institute of the said Kanagaraj and issued post-dated cheque bearing cheque No.011141 dated 04.04.2014, drawn on Axis Bank, Medavakkam Branch in her favour for a sum of Rs.2,48,500/- towards due interest and principal; further as surety, the accused had voluntarily handed over original title deed standing in the name of one Smt.Thangamani and told



that as soon as the due amount is recovered through presentation of the said cheque, he will get back the said document.

When the said cheque was presented by her for collection on 04.04.2014 through her banker Indian Bank, Nanganallur Branch, the same was returned on 05.04.2014 for reason 'Account closed'; the complainant had been frustrated by wilful, deliberate and cheating attitude of the accused in allowing the cheque to be dishonoured for the reason account closed; since the cheque was returned unpaid, she had sent a statutory notice on 11.04.2014 by RPAD to the accused to his residential and business address through her counsel intimating about the dishonour of the said cheque and called upon him to pay the cheque amount of Rs.2,48,500/- within 15 days; although the accused had received the notices, he did not choose to either pay the due amount or reply to the statutory notice; since the accused failed to repay the due amount despite receipt of the notices, the accused had committed an offence punishable U/s./138 of the Negotiable Instruments Act, accordingly, he will have to be punished for the said offence.

6. After completion of a full-fledged trial, on 19.06.2023, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur



pronounced Judgment concluding that the accused found guilty of offence U/s.138 NI Act, convicted the accused U/s.255(2) Cr.P.C. and sentenced him to undergo simple imprisonment for three months and directed to pay a compensation of Rs.3,50,000/- to the complainant within one month and in default of payment of compensation within one month, the accused has to undergo further simple imprisonment of two months. No fine has been imposed.

**7. The adjudication of the trial court are as under:**

1. The presentation of impugned cheque for encashment and dishonour for the reason 'account closed' are not in dispute.
2. The signature of the accused in the cheque is not specifically denied.
3. The accused has been served with statutory demand notice.
4. The complaint has been filed in time.
5. As per Sec.139 of N.I.Act, every negotiable instrument is presumed to have drawn and accepted for consideration.
6. The presumption envisaged under Sec.118 of the Act can legally be inferred and only in case of the accused is able to raise a probable defense which creates doubts about the existence of legally enforceable liability, the prosecution will fail.
7. Coming to the defense case of the accused, mere non mentioning of the cheque number in the statutory notice when other details



regarding the name of the bank, branch of the bank on which the cheque drawn, the date of borrowal of loan, principal loan amount borrowed and a demand for the payment of cheque amount were stated in the said statutory notice, the notice cannot be held to be defective.

8. The accused has admitted the issuance of cheque to one Kanagaraj while answering question put to him under Sec.313(1) (b) of Cr.P.C.
9. In the complaint it is stated that the cheque was obtained from the accused by Kanakaraj in his institute and it was handed over to the complainant by the said Kanakaraj on whose assurance, she paid the money to the accused.
10. In the statutory notice Rs.2,48,000/- is demanded and in the complaint the cheque amount mentioned is Rs.2,48,000/- only. Whereas the cheque was presented for Rs.2,48,500/-. The said discrepancy in the amount which is meagre is only a typographical error which cannot affect the merits of the prosecution.
11. The non production of deed allegedly handed over to the complainant cannot lead the court to take adverse inference against the case of the complainant under Sec.114(g) of the Indian Evidence Act, when the liability of the accused is sufficiently proved by the complainant.
12. The amount was lent at the rate of 1.5% per month.
13. The defense of the accused is improbable and not sufficient to



rebut the presumptions drawn in favour of the complainant.

14. The accused miserably failed to show the impugned cheque and promissory note were not executed for any legal debt or liability.

8. Being aggrieved by the said Judgment of conviction, this Criminal Appeal is preferred by the Appellant/accused.

**9. Grounds of Appeal:**

- The Order of the court below is contrary to law, weight of evidence and probabilities of the case. The trial court failed to appreciate the contentions raised by the appellant and convicted him on untenable grounds. The court below has failed to observe the fact that the respondent/complainant ought to prove the legally enforceable debt against the appellant/accused, which she failed.
- The trial court has miserably failed to consider the contentions of the appellant that he is not liable to pay any amount to the respondent and had not issued the disputed cheque to the respondent as alleged in the complaint.
- The trial court has not considered the contention of the appellant that his liability had not been proved beyond reasonable doubt.
- The trial court has miserably failed to appreciate the argument of the appellant that the complainant has not proved the debt that can be enforced by law and lending capacity of the complainant.
- The trial court has miserably failed to appreciate the argument of the appellant that the cheque was not given as a loan or liability to insist.



- The trial court had not considered the version of the accused about the contradictions in the evidence of the respondent in chief examination and cross examination.
- The trial court ought to have acquitted the appellant/accused by considering the nature of the case and the evidence adduced.
- The trial court ought to have considered the fact that in the notice of the respondent/complainant it is stated that the accused executed promissory note of the same date of borrowal of loan and ought to have held that the Promissory Note Ex.P1 is a promissory note otherwise payable than on demand and therefore, stamp duty is payable as per article 49(b) of the Stamp Act. The above said aspect was further fortified by the Hon'ble High Court of Bombay (Aurangabad Bench) in *Shiva Sahakari UP Jal Sinchan Sanstha Ltd Vs. The Nanded District Central Co Op Bank and in Writ Petition No.9317 of 2011* dated 25.07.2012.
- From the Plain reading of the entire Ex.P4 namely the demand notice, there is no whisper about the details of the cheque other than the aspects of presentation and return on account of account closed and in particular the cheque number is not at all mentioned anywhere in the entire notice. Therefore, it is crystal clear that the appellant/accused issued a post-dated cheque drawn from Axis Bank, Medavakkam Branch in favour of the respondent/complainant dated 04.04.2014 for a sum of Rs.2,48,000/ (not more or less than that) and the demand is also for Rs.2,48,000/- (not more or less than that) and there is no ambiguity with respect to the cheque amount and its



demand there on i.e., 2,48,000/- and further the cheque number is not at all mentioned in the entire Ex.P4.

- The cheque amount and its demand thereon after the same being returned unpaid on account of account closed in Ex.P4 notice is issued for Rs.2,48,000/- and in all other places such as complaint, sworn statement and proof affidavit of the respondent/ complainant, the cheque amount and its demand thereon is shown as Rs.2,48,500/- and both are contradictory to each other and it is a serious discrepancy and an ambiguity and there is no proper explanation to the above ambiguity and this aspect is completely given a go-by by the trial court. Further, in the examination of the accused U/s.281 of Cr.P.C. dated 06.12.2012, the cheque amount is stated as Rs.1,75,000/- (dated 04.04.2014, drawn at Axis Bank, Medavakkam Branch) which creates a serious doubt in the mind of the accused.
- In the entire Ex.P4 i.e., notice, there is no whisper or mention about the cheque number and further even in the complaint, there was no mention of the cheque number and the date till the filing of the same and thereafter the cheque number and the date of the cheque were inserted with an arrow mark as '*No.011141 dt.4.4.2012 K.Dani (signature of the counsel)*'. The above said amendment ought not to have been done after the filing of the complaint in the court without there being any appropriate petition much less the amendment petition to that effect and hence the same ought to have been viewed seriously since the same is nothing but a fraud played upon the court and the above version is fortified by the respondent/complainant



during her cross examination. From the reading of the cross examination, it is categorically proved that till the filing of the complaint in the court, there was no cheque number and its date in the complaint and after filing of the complaint, the cheque number and its date were inserted without the knowledge of the complainant herself and then how the insertion was made in the complaint without there being any petition much less petition for amendment to that effect and further the same correction was made in copy of the complaint served to the accused as well and the said correction was made in the proof affidavit of the complainant dated 07.01.2015 as well and this aspect was not looked into by the trial court.

- From the plain reading of the Paragraph No.1 in Page No.1 of the statutory notice, paragraph No.3 in Page No.2 of the complaint and the Paragraph No.4 in Page No.1 of the proof affidavit of the complainant, it appears that on the date of loan borrowed, the accused had executed a deed for the said loan in the presence of witnesses and voluntarily promised to repay interest for the principal amount at the rate of 1.5% per month and on or before 10th of every succeeding month and agreed to repay the principal within a period of six months. But shockingly, neither the said deed was shown in the list of documents in the complaint nor marked/produced by the complainant during the course of the trial of the case.
- The entire case has been constructed by the complainant on the basis of the above referred deed alleged to have been executed by the accused and the same is very important to prove the innocence of the



accused and also to rebut the presumption of the existence of the legally enforceable debt or liability of the accused, if any. If the complainant fails to produce the same despite this petition, the court may presume that the complainant approached this court with unclean hands as the base is very weak upon which the case has been constructed.

- In the statutory notice dated 11.04.2014 of the complainant at Paragraph No.3 in Page No.2 it is stated as, '... in support of your promise you had come to the Institute of the said Kanagaraj and issued a post-dated cheque drawn from Axis Bank, Medavakkam Branch in favour of our client dated 04.04.2014 for a sum of Rs.2,48,000/- towards due interest and principal...' and further at Paragraph No.5 in page No.2, it is stated as 'Therefore, on behalf of our client you are hereby called upon to pay the cheque amount of Rs.2,48,000/- . Whereas, in the cheque (Ex.P2), it is stated as Rs.2,48,500/-, and in the promissory note (Ex.P1) it is stated as Rs.1,75,000/-, and whereas in questioning under Sec.281 Cr.P.C. dated 06.12.2014, in the second question the cheque amount is stated as Rs.1,75,000/- and whereas in the complaint at Paragraph No.7 in Page No.3 and Paragraph No.9 in page No.4 the cheque amount is stated as Rs.2,48,500/- respectively, and whereas in the proof affidavit of the complainant the cheque amount is stated as Rs.2,48,500/- only.
- From the reading of all the above, it is crystal clear that there is an ambiguity with respect to the cheque and hence it would be more



appropriate to direct the respondent/complainant to produce the deed alleged to have been executed by the petitioner/accused on the date of borrowal of loan as narrated supra in order to clarify what was the actual transaction between the petitioner and the respondent and hence the appellant/accused filed a petition under sec.91 of Cr.P.C. before the trial court and the same was allowed with a direction to the respondent/complainant herein to produce the deed as per the operative portion of the order passed in Crl.M.P. No.792 of 20213 in C.C. No.158 of 2014 dated 03.03.2023. Even after this order, the complainant did not produce any such deed and this aspect nor properly gone into by the trial court, while convicting the appellant/accused.

**10.** Though sufficient opportunities provided to the appellant for arguments, the appellant neither chosen to make his oral arguments nor file his written arguments. Thereafter, the Criminal Appeal was reserved for Judgment by 06.01.2026. On that day, the appellant/accused filed re-open petition for his arguments, the said petition was allowed on 07.03.2026, imposing a cost of Rs.1,000/- to other side. Even thereafter, the appellant failed to comply the condition and he has not chosen to put forth his arguments.

**11. Written arguments filed on the side of the respondent/complainant in brief read as follows:**

The Respondent/Complainant has established her case through Ex.P1



Promissory note, Ex.P2 Cheque, Ex.P3 returned memo, Ex.P4 statutory notice and Ex.P5 acknowledgment card. Further to strengthen her case, she was examined as PW-1.

Though the deed executed by the accused on the date of the loan is not filed and marked as a document by the Respondent/Complainant, the accused has not denied the execution of the said deed and has not asked any question relating to the deed.

As regards the question that the complainant not mentioned the cheque number in the legal notice, the learned counsel for the complainant relied upon the judgment of the Supreme Court of India in **1999 STPL 10860 SC in Central Bank of India Vs. M/s.Saxons Farms** and the Judgment rendered by the Hon'ble High Court of Judicature at Madras in **((2014) 3 MLJ (Cri) 136) in Polyfine Industries rep. by its partners and others Vs. P.Gopal** and yet another judgment of the Hon'ble High Court of Judicature at Madras in **M/s.Patvolk Vs. M/s.Hydra Impex Pvt. Ltd & Anr.**

As regards the point stated by the appellant/accused in the grounds of appeal regarding there is a difference of cheque amount in the legal notice of the complainant as Rs.2,48,000/- but, in the Ex.P2 it is stated as Rs.2,48,500/-, the learned counsel for the respondent/complainant relied



upon the Judgment of the Hon'ble High Court of Judicature at Madras in ***2016 STPO 8738 Madras (III(2016) BC 536 = 2016(3) DCR 148) in C.P. Prabhakaran & anr. Vs. Arjun Amaravathi Chits (P) Ltd & Ors.*** and argued that in the subject case, though the notice is sent for Rs. 2,48,000/-, cheque amount of Rs. 2,48,500/- is correctly mentioned in the complaint, in the proof affidavit and the correct cheque (Exhibit P2) is filed and the said judgment is squarely applicable to this case.

Similarly, as per the judgment of the Hon'ble High Court of Judicature at Madras in ***M/s. Sai Infra Equipment's Pvt. Ltd. Vs. M/s. L&W Constructions Pvt. Ltd.***, there is no mandate to mention the cheque number in the notice. Further in the statutory notice cheque amount is covered and no excess amount is demanded in the statutory notice. In the Judgment, it is observed as:

*“Statutory Notice of Demand - Statutory notice in no uncertain terms speaks about transaction between the parties. Demand made by the respondent with respect to the cheque amount. Complaint filed was perfectly in order.”*

The requirement of giving notice to the drawer of the cheque is to enable him to avoid prosecution under Section 138 of the Act. It is well - settled principal of law that the notice has to be read not in a hyper -



technical manner. It must be construed strictly but in a sensible manner  
(See *Surendra Das v. State of Kerala: 2019(3) KHC 105:2019 KLT 895*).

In *Viswanathan v. Ramachandran Nair: 1996 (2) KLT 449*, it has been held that when there is only one transaction between the parties and when there is only one transaction of issuance of cheque between the parties, a mistake in the number could not mislead the drawer of the cheque and such mistake does not render the notice invalid.

Further, the meeting of the accused and father of the accused by the Respondent/Complainant and the demand made by her at his residence were also not at all denied by the accused and did not put any question to the Respondent/ Complainant during cross-examination.

Very pertinently, it is submitted that during cross - examination, the issuance of cheque; Signature of the cheque; obtaining of the loan not at all denied as well as none of the questions relating to the above were asked to the Respondent/ Complainant. Further, very mandatorily, though Ex.P4 statutory legal notice received by the accused, which is substantiated through Ex.P5 acknowledgment card, no reply has been given by the accused. So, all his defenses are belated and after - thought.

During the cross-examination, the below mentioned question was



asked by the accused's side: -

"நான் தாக்கல் செய்துள்ள புகார் மனுவின் 7 வது பத்தியில் எண்.011141 மற்றும் தேதி ஆகியவை பேனாவால் இடைச்சேர்க்கை செய்யப்பட்டுள்ளது என்றால் சரிதான். (சாட்சி தாமத முன்வந்து புகார் தாக்கல் செய்யப்படும் நேரத்தில் அந்த சேர்க்கைகள் அதில் காணப்படவில்லை என்றும் பின்பு சேர்க்கப்பட்டதாக தெரிகிறது என்றும் கூறுகிறார்). புகார் மனுவில் மேற்குறிப்பிட்ட இடைச்சேர்க்கை செய்ததில் என்னுடைய கையொப்பம் பெறப்படவில்லை என்றால் சரிதான்"

However, as per the admitted question, the correct cheque number has been mentioned in the complaint. Further, in the complaint, the signature of the Counsel is sufficient.

Further, the learned counsel for the respondent/complainant cited the Judgment of the Hon'ble High Court of Madras rendered in **2018 STPL 783 Madras = (2017(2) LW (Crl.) 331 - 2017(2) Mad WN (Cri) 161 = 2017 (3) DCR 493**) and stated that the principle stated in the aforesaid judgment as regards the presumption under Sec.139 of the NI Act is applicable to the present case. Further, in the recent Judgment decided on 21.08.2019 by the Hon'ble Supreme Court of India in *M/s.Shree Daneshwari Traders Vs. Sanjay Jain and another 2019 STPL 9871 SC*), their lordships held the presumption U/s.139 of the NI Act in favour of the respondent/complainant.



It has been held that issuance of a cheque becomes a promise to pay under section 25 (3) of the Contract Act. Execution of a cheque is an acknowledgment of a legally enforceable liability.

It has been held that it is obligatory for the Court to raise a presumption in every case where factual presumption has been established - presumption is mandatory.

Moreover, except this transaction, no other transaction held between the Respondent/Complainant and the accused. Further, the Respondent/Complainant is not doing any money lending business. Because of the request made through one Kanagaraj (now deceased), the Respondent/Complainant being lady, on humanitarian consideration, came forward to help the accused by lending the amount which she kept for the fees for education of her son. Consciously, there is no necessity for the complaint to make any false claim or statement as alleged by the appellant/accused. The execution of the Pro-note, Ex.P1 is a vital document to prove the genuineness of the transaction. Further after conviction, the appellant/accused approached the complainant and her counsel thrice to settle the amount. After that preferred the subject appeal against the judgment passed without any infirmities. The grounds on which



the appeal preferred by the appellant/accused is total contrary to the settled principles and all his pleadings are after thought without replying to the statutory notice. Because of the various unlawful attitudes and attempts to escape from the clutches of criminal law, the accused had to be dealt with strictly.

**12. The points for consideration in this appeal are:**

- 1) Whether the judgment of the trial Court convicting the accused for the offence U/s.138 NI Act is correct?
- 2) Whether, the Appeal can be allowed?

**13.** This Court independently considered the oral and documentary evidence let-in before the trial Court, by either side. For the convenience's sake the parties are referred to hereunder in accordance to their litigative status before the trial Court.

**Point No.1 & 2:**

**14.** The promissory note marked as Ex.P.1 is dated 11.11.2011 for a sum of Rs.1,75,000/-. The impugned cheque marked as Ex.P2 is dated 04.04.2014 for a sum of Rs.2,48,500/-. In the statutory notice, though the principal amount borrowed is stated as Rs.1,75,000/-, the cheque amount has been mentioned as Rs.2,48,000/-. The appellant/accused sought to



capitalize upon the discrepancy of Rs.500/- between the cheque amount and the amount mentioned in the legal notice and also the omission of the cheque number in the statutory notice. However, the said aspects had already been elaborately considered by the learned trial Magistrate, who rightly concluded that the discrepancy is only a typographical error and not one going to the root of the prosecution case.

**15.** On a careful scrutiny of the oral evidence of P.W.1, this Court finds that there is absolutely nothing substantial elicited in the cross-examination so as to probabilize the defence of the accused or discredit the complainant's version. The testimony of P.W.1 remained materially consistent with the averments made in the complaint, proof affidavit and statutory notice. No major contradiction touching upon the foundational facts of the transaction, namely the borrowal of loan, execution of promissory note, issuance of cheque and subsequent dishonour, has been brought on record through cross-examination.

**16.** It is pertinent to note that the accused has not specifically denied his signature in Ex.P2 cheque. Equally, the issuance of cheque itself has not been effectively disputed. Once the execution of cheque is admitted or not specifically denied, the statutory presumption under Sections 118 and



139 of the Negotiable Instruments Act comes into operation in favour of the complainant. The burden thereafter shifts upon the accused to rebut the presumption by raising a probable defence through cogent evidence or by effectively demolishing the complainant's case during cross-examination. In the present case, such burden has not been discharged by the accused.

**17.** The appellant heavily relied upon certain admissions said to have been made by P.W.1 during cross-examination, particularly with respect to the insertion of cheque number and date in the complaint and the non-production of the alleged deed executed at the time of loan transaction. However, this appellate Court finds that the learned trial Magistrate had already adverted to those aspects in detail and assigned proper reasons while rejecting the defence contention. The alleged insertion of cheque particulars in the complaint, even assuming to be true, does not in any manner alter the identity of the transaction when the impugned cheque itself had been produced before the Court as Ex.P2 and its execution remained substantially unchallenged. More importantly, no suggestion had been put to P.W.1 that Ex.P2 cheque was fabricated or that the cheque pertained to a different transaction fortified by Bonafide material. The accused has not chosen to depose before the trial court notwithstanding the



fact that he can establish his rebuttal plea through the cross examination of P.W.1.

**18.** Likewise, though much emphasis was laid upon the non-production of the alleged title deed of one Thangamani said to have been executed on the date of borrowal, the same cannot by itself be fatal to the complainant's case. The complainant had produced Ex.P1 promissory note evidencing the loan transaction and Ex.P2 cheque towards discharge of liability. The statutory presumption attached to the cheque cannot be lightly displaced merely on the ground that another supporting document was not produced. The accused neither chose to enter the witness box nor examined any witness to probabilize his defence. No documentary evidence was adduced from his side to rebut the presumption or to establish that there was no legally enforceable debt.

**19.** Further, the cross-examination of P.W.1 does not reveal any material contradiction regarding the source of funds, the circumstances under which the amount was advanced or the issuance of cheque. The complainant consistently deposed that the amount was lent on the recommendation of one Kanagaraj, that a promissory note was executed and that the cheque was issued towards repayment of principal and accrued



interest. Except making suggestions, which were denied by P.W.1, nothing worthwhile has been elicited in her cross-examination.

**20.** Significantly, the accused had admittedly not sent any reply notice to the statutory notice issued under Section 138 of the Negotiable Instruments Act. If really there had been no liability or if the cheque had not been issued towards discharge of debt, the natural conduct of the accused would have been to immediately deny the allegations by issuing an appropriate reply. The silence maintained by the accused at the earliest point of time assumes significance and strengthens the complainant's case.

**21.** The discrepancy regarding the cheque amount being mentioned as Rs.2,48,000/- in the legal notice as against Rs.2,48,500/- in Ex.P2 cheque and complaint, in the considered opinion of this appellate court, is too trivial to invalidate the prosecution. The difference is only Rs.500/- and there existed only one cheque transaction between the parties. The accused could not have been misled or prejudiced on account of such minor discrepancy, especially when the particulars regarding the bank, branch, date of transaction and dishonour for the reason "Account Closed" were clearly stated in the statutory notice. Therefore, the contention of ambiguity raised by the appellant does not merit acceptance.



**22.** Above all, there is no fresh or significant material emerging from the deposition of P.W.1 which had escaped the consideration of the learned trial Magistrate. The admissions, if any, elicited during cross-examination were already taken note of and adequately addressed by the trial Court while rendering the judgment of conviction. This appellate court finds no perversity or infirmity in the appreciation of evidence undertaken by the learned Magistrate. Hence, upon an independent re-appreciation of the evidence available on record, this Court is of the considered view that the complainant had successfully established the ingredients of the offence under Section 138 of the Negotiable Instruments Act and the accused failed to rebut the statutory presumption by raising a probable defence.

**23.** Considering the nature of the transaction, the prolonged deprivation of the complainant's money, and the conduct of the accused in failing to honour the cheque despite statutory demand notice, this Court finds no infirmity in the sentence imposed by the learned trial Magistrate. The object of Section 138 of the Negotiable Instruments Act is not merely punitive but also compensatory in nature, intended to enhance the credibility of commercial transactions and instil confidence in banking



instruments. In the present case, the accused borrowed a sum of Rs.1,75,000/- as early as on 11.11.2011 and issued the cheque dated 04.04.2014 for Rs.2,48,500/- towards discharge of the liability inclusive of agreed interest. Even after dishonour of the cheque for the reason “Account Closed” and receipt of statutory notice, the accused neither repaid the amount nor issued any reply disputing the liability at the earliest opportunity. On the contrary, the accused prolonged the litigation and failed to establish any probable defence to rebut the statutory presumption available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act.

**24.** The complainant has been deprived of the legitimate dues for a considerable period and compelled to undergo protracted litigation for realization of the amount covered under the dishonoured cheque. In such circumstances, the award of compensation is fully justified to restitute the complainant and to meet the ends of justice. Equally, the sentence of imprisonment imposed by the learned trial Court cannot be termed excessive or disproportionate, particularly when the dishonour occurred on account of closure of account, which reflects a deliberate failure to honour the financial commitment undertaken by the accused. The sentence



imposed is proportionate to the gravity of the offence and serves the legislative intent of ensuring financial discipline and deterrence against misuse of negotiable instruments. Hence, this Court finds that both the sentence of imprisonment and compensation awarded by the learned trial Magistrate are just, reasonable and do not warrant any interference.

**25. In the result, the Criminal Appeal No.71 of 2023 is dismissed by confirming the judgment pronounced by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C. No.158 of 2014 dated 19.06.2023. The trial Court shall take appropriate steps for securing the presence of the accused and for execution of the sentence in accordance with law.**

Dictated to the Steno-typist, directly computerized by him, corrected and pronounced by me in open Court, on this the 06<sup>th</sup> day of June 2026.

**Principal District and Sessions Judge,  
Chengalpattu.**

**List of Witnesses and Evidences on Appellant's side: - NIL -  
List of Witnesses and Evidences on Respondent's side: - NIL -**

**Principal District and Sessions Judge,  
Chengalpattu.**