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

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

Dated: Wednesday, the 03rd day of June 2026.

Criminal Appeal No.49 of 2022
(CNR No.TNCG01-005494-2022)

(A Criminal Appeal preferred against the Judgment passed by the Judicial Magistrate, (Fast Track Court) Magisterial Level, Alandur in C.C. No.181 of 2018 dated 12.08.2022)

Y. Manoj, S/o.Yuvaraj,
No.56, G-2B, Anugraha Apartments,
Singanna Chetty Street,
Chindatripet, Chennai - 600 002.

... Appellant/Accused

//Versus//

Sudhakar, S/o.Raja Puthiran,
No.737, B2, Brown Stone Foundation,
8th Main Road, Rama Nagar South,
Madipakkam, Chennai - 600 091.

... 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.181 of 2018
Number of the Criminal Appeal	**Criminal Appeal No.49 of 2022**
Name and Description of the Appellant	Y. Manoj, S/o.Yuvaraj, No.56, G-2B, Anugraha Apartments, Singanna Chetty Street, Chindatripet, Chennai - 600 002.

Name and Description of the Respondent	Sudhakar, S/o.Raja Puthiran, No.737, B2, Brown Stone Foundation, 8th Main Road, Rama Nagar South, Madipakkam, Chennai - 600 091.
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 and the accused is convicted U/s.255(2) of Cr.P.C., sentenced to undergo one year simple imprisonment and to pay a compensation of Rs.8,00,000/- to the complainant, U/s.357(3) of Cr.P.C. within one month, in default of payment of compensation, the accused shall undergo further period of two months simple imprisonment as default sentence.
Date of Presentation	24.08.2022
Date of Filing	06.09.2022
Date on which notice issued by the Court	06.09.2022
Bail Bond if appellant has been let out on bail/sentence suspended	Sentence suspended by this Court as ordered in Crl.M.P. No.3990 of 2022 dated 12.09.2022.
Date on which the Appellant ordered to appear	09.09.2022
Date of First hearing	09.09.2022
Date of Final hearing	27.04.2026
Date of order and Sentence	03.06.2026

Whether confirmed, modified or reversed, and if modified, the modification	**Confirmed.** - In the result, the Criminal Appeal is dismissed and the Judgment of conviction and sentence dated 12.08.2022 passed in C.C. No.181 of 2018 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur is hereby confirmed. The bail bond, if any, executed by the appellant shall stand cancelled. The trial Court is directed to secure the presence of the accused and commit him to prison for undergoing the remaining period of sentence, if any, in accordance with law.

This Criminal Appeal came up before me on 27th day of April 2026, for final hearing, M/s.J.Selvaprakash, the learned counsel appearing for the Appellant/Accused and M/s.M.Kirubakaran, the learned counsel appearing for the Respondent/complainant, upon perusing the written arguments of both the sides and the 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.181 of 2018 dated 12.08.2022, whereon the learned Judicial Magistrate concluded that the accused is found guilty of offence U/s.138 NI

Act, convicted the accused U/s.255(2) of Cr.P.C., sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.8,00,000/- to the complainant, U/s.357(3) of Cr.P.C. with one month, in default, the accused shall undergo further two months simple imprisonment. The accused who was convicted by trial court is the appellant herein.

2. Brief facts set-out in C.C. No.181 of 2018:

According to the complainant, he is running vegetable and Fruit business at K72, Periyar Vegetable shop, Koyambedu, Chennai and the accused is running a fruit shop in the name of K.V.M. Fruit shop at TF 18, Anna Fruit Market, Koyambnedu, Chennai. Since the complainant and accused are running business in the same campus, they had a good relationship with each other. The accused had approached the complainant for financial assistance and had obtained a loan of Rs.8,00,000/- for his business purpose. The accused had also assured to repay it in six months and even after the expiry of the said period, he had not repaid it. After his repeated demands, the accused had issued a cheque for the said amount of Rs.8,00,000/- in the second week of February 2018 bearing cheque No.031274, dated 22.03.2018 drawn on Axis Bank Ltd, Vepery, Chennai and also had assured that the same will be honoured on its presentation.

The complainant had presented the same for collection through his banker namely Tamilnad Mercantile Bank, Pallikaranai Branch on 23.03.2018 and the same was returned by the bank for the reason 'drawers signature differs' with a return memo dated 26.03.2018. The complainant had thereafter issued a legal notice dated 24.04.2018 to the two addresses of the accused demanding repayment of the loan amount within 15 days of service of the notice.

2.1. The notice directed to both the address furnished by the accused as his address No.9/33 A, 2nd Street, Kamala Nagar, Thiruvottriyur, Chennai - 600 107 and K.M.V. Furit shop at TF 18, Anna Fruit Market, Koyambedu, Chennai - 600 092. The notices sent to those two addresses were returned with endorsement 'No such person' on 25.04.2018 and 26.04.2018 respectively.

2.2. The accused is very well residing in the aforesaid addresses, giving wrong information to the postal authorities and managed to get returned with such an endorsement in order to escape from the legally enforceable liability and the accused never came forward to settle the dishonoured cheque amount, thereby, the accused had committed the offence punishable under section 138 of Negotiable Instruments Act, 1881.

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.181 of 2018.

4. Before the learned Judicial Magistrate, on the side of the complainant, the complainant has examined himself as PW.1 and four documents were marked as Ex.P.1 to Ex.P.4. The Cheque in question having No.031274 dated 22.03.2018 has been marked as Ex.P.1; the 26.03.2018 dated cheque return memo issued by the Tamilnad Mercantile Bank, Pallikaranai Branch has been marked as Ex.P.2; the 24.04.2018 dated Legal demand notice sent by the complainant has been marked as Ex.P.3 and the Returned Postal cover is marked as Ex.P.4.

4.a. On the side of the accused, the accused was examined himself as D.W.1 and two documents have been marked as Ex.R.1 and Ex.R.2. The private notice sent to the accused has been marked as Ex.R.1 and the Returned Postal cover has been marked as Ex.R.2.

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

Thiru.Sudhakar, (PW.1):

The complainant is running a vegetable and fruit business at No.K72, Periyar Vegetable Shop, Koyambedu, Chennai; the accused is running a Fruit shop in the name and style of K.M.V. Fruit shop at TF 18, Anna Fruit Market, Koyambedu, Chennai; since he and the accused are running a business within the same campus, in the course of business, the accused had developed good relationship with him; on 22.05.2015, the accused approached him for financial assistance and availed a loan of Rs.8,00,000/- for the development of his fruit business, with an assurance of repaying the same in six months; believing his words, the complainant mobilized funds from his own sources and close relatives, had given the amount what he sought for and he had executed documents for the same; after the six months period, the accused never repaid the aforesaid amount of Rs.8,00,000/- hence, he insisted for the repayment of the loan, but he had given lame excuses and dodged the payment for over two years; the accused even avoided his phone calls making him to run pillar to post; after repeated requests and demands, at last in the second week of February 2018, he issued a cheque bearing No.031274, drawn on Axis Bank Ltd, Veppery, Chennai dated 22.03.2018 for the said amount of Rs.8,00,000/-, and assured that the same will be honoured on its presentation.

As per the instruction of the accused, he presented the cheque for realization through his banker Tamilnad Mercantile Bank, Pallikaranai Branch on 23.03.2018, but to his shock and surprise, the said cheque w3as returned by his banker for the reason 'Drawers Signature differs' and the same was received by him on 26.03.2018; the accused having availed the loan on false representation making him to believe that he will repay the loan amount as assured issued the aforesaid cheque towards discharge of legal enforceable liability and with a malafide intention to cheat him intentionally made a different signature and allowed the instrument to get dishonoured.

On receipt of dishonour intimation, he caused issuance of legal notice dated 24.04.2018 as contemplated by law, in which the address given by the accused demanding the accrued to settle the dishonoured cheque amount of Rs.8,00,000/-, within 15 days of receipt of the notice to the two addresses given by the accused as his address; the notice sent to the address furnished by the accused as his address No.9/33 A, 2nd Street, Kamala Nagar, Thiruvottriyur, Chennai - 600 107 was returned with an endorsement 'No such person' on 25.04.2018 and the legal notice sent to the other address K.M.V. Furit shop at TF 18, Anna Fruit Market, Koyambedu, Chennai was returned with endorsement 'No such person' on 26.04.2018; the accused is very well residing in the aforesaid addresses, giving wrong information to the postal authorities and managed to get returned with such an endorsement in order to escape from the legally enforceable liability and the accused never came forward to settle the dishonoured cheque amount, thereby, the accused had committed the offence punishable under section 138 of Negotiable Instruments Act.

Thiru.Y.Manoj, (D.W.1):

He is doing Fruit business at Koyambedu Marked; during 2015, he obtained a loan of Rs.2,50,000/- from the complainant; the said loan was obtained with a repaying term of 100 days as Thandal loan; however, could not be able to repay the amount; later on the 10th month instalment, he has repaid the total amount of Rs.3,60,000/- along with interest; at the time of getting loan, he (the complainant) obtained a cheque as security; after paying the full loan amount, he asked the return of security cheque, for which, the complainant replied it was kept in the market office, later replied that kept in his house and assured to return later; after several demands, he did not return the security cheque; during the year 2016, since he suffered loss in the business, he did not regularly go to the place of business and could not be able to meet him; later during the year 2018, while met him, the accused asked the return of the said cheque; for which, he replied that there are arrear due amount, after paying the due amount, he can get back the cheque; but, without any due or arrears, he fully settled the loan amount; during March, 2018, the complainant presented the said cheque for collection, since the signature is not proper it was returned; using the said cheque this case has been initiated; later, on receipt of the legal notice, he came to know about this case.

6. After completion of a full-fledged trial, on 12.08.2022, the learned Judicial Magistrate, (Fast Track Court) Magisterial Level, Alandur pronounced Judgment, concluded that the accused is found guilty of offence U/s.138 NI Act, convicted the accused U/s.255(2) of Cr.P.C., sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.8,00,000/- to the complainant, within one month, in default, the accused shall undergo further two months simple imprisonment. No fine has been imposed.

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

a) In law, mismatch of signatures will be treated on par with insufficiency of funds, payment stopped and closure of account which are offences under Sec.138 of N.I.Act.

b) The complainant has established the basic ingredients under Sec.138

of N.I.Act and he is entitled to statutory presumptions under Sec.139 of N.I.Act.

c) Once the issuance of cheque and signature admitted, it is required to presume that the cheque was issued as consideration for a legally enforceable liability.

d) The standard of proof so as to prove the defense on the part of the accused is preponderance of probability.

e) The complainant had sent a private notice to the address T/E.15, Anna Fruit Market and the same was received by the accused.

f) The accused had not taken any steps to repay the money within 15 days from the date of receipt of the notice.

g) The accused has raised a defense that he had obtained only Rs.2,50,000/- from the complainant with interest at the rate of 60%. The accused also underlined in his arguments that he repaid the entire amount of Rs.3,60,000/- which included principal and interest amount.

h) But the so-called repayment is bereft of any documentary proof.

i) The accused had not taken steps to get back the cheque issued for security by sending notice to the complainant or lodging any police complaint. The defense of cheque issued as security also could not help the accused in rebutting the presumption drawn in favour of the complainant.

j) As far as the defense raised challenging the financial capacity of the complainant is concerned, once the presumption is drawn under

Sec.139 of N.I.Act, the court should not go into the question of the fund of the complainant.

k) Hence the arguments advanced by the accused on the line that the cheque was misused is liable to be rejected. The accused has miserably failed to rebut the presumptions under the Negotiable Instruments Act and failed to establish his probable defense.

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

9. Grounds raised by the appellant/ accused in the Memorandum of Appeal:

- The Judgment of the court below is against the Law. The court below erred in convicting the accused without considering the material evidence available on record.
- The court below has failed to note that there is no legally enforceable debt for the appellant to issue the cheque to the respondent. Mere issuance of the cheque will not attract offence U/s.138 of NI Act and on that basis the presumption U/s.139 of NI Act cannot be drawn against the appellant.
- The court below has failed to note that the respondent was running a finance company under the name and style of Sivaganapathy Finance and Chit Company at No.K72, Periyar Vegetable Market Koyambedu and also branch office at Madipakkam. The respondent was not running vegetable shop in the above said address at any point of time.

The appellant is running Fruit shop under the name and style of K.M.V. Fruit shop at T/E 18, Anna Fruit Marker, Koyambedu. The respondent had given loan to the entire shop owners of Anna Furit Marked as well as Periyar Vegetable Marked. This was proved by the appellant, through his DW.1 chief examination.

- The court below failed to note that the respondent misused the security cheque issued by the appellant drawn on Axis Bank Ltd, Veppery Branch, Chennai in Cheque No.031274 on 10.02.2025, while he received a sum of Rs.2,50,000/- loan / thandal.
- The court below failed to note that he paid the daily loan/thandal amount to the total amount of Rs.2,68,500/-.
- The court below failed to note that the appellant received private notice in the above complaint. After receipt of the private notice only he came to know that the complainant was misusing the blank cheque given by the accused. Prior to filing of the complaint, he did not receive any legal notice from either the complainant or his counsel.
- The respondent wantonly sent the legal notice with wrong address to the accused shop and residence address. The complainant is running the finance company at No.K72, Periyar Vegetable Market, Koyambedu, Chennai and accused is running the Fruit shop at T/E 18, Anna Fruit market, Koyambedu, Chennai. The respondent uased to come daily to the Fruit market and collect the loan / tandal amount from the shop owners, who got loan from him and he very well knows the shop numbers. Only to get unlawful gain, he sent the legal notice to the wrong address i.e. No.T/P 18, Anna Fruit Market,

Koyambedu, Chennai. Further, the accused is residing at No.56, G-2B, Anugraha Apartments, Singanna Chetty Street, Chindatripet, Chennai - 600 002 not at No.9/33A, 2nd Street, Kamala Nagar, Thiruvottriyur, Chennai - 107 at any point of time.

- The complainant is running only finance business in Anna Fruit market and Periyar Vegetable Market and gave loan to several fruit and vegetable shop owners and he got blank cheques from them for security purpose. After settlement of the loan amount also, the complainant did not return the cheques to the shop owners, instead, he used to file several cases against those owners. The following cases are filed by the complainant against the shop owners:

    - C.C. No.14 of 2018 - against Saleem
    - C.C. No.15 of 2018 - against Perumal
    - C.C. No.45 of 2017 - against Baskar
    - C.C. No.178 of 2018 - against Balu
    - C.C. No.179 of 2018 - against Kaya Mohideen
    - C.C. No.180 of 2018 - against Krishnaiya

  So, it is very clear that the complainant is running a finance company and received cheques from several shop owners for security purpose, after the settlement of the amount, he used to file criminal cases against them in order to get unlawful gain.

- The court below failed to note that the complainant admitted in his cross examination that he had no source of income and he lent the loan amount to the accused by receiving hand loan from his relatives. So, it is very clear that the complainant has not approached the court with clean hands.

- The court below failed to mention the judgment in ***P.Pandiyarajan Vs. Sri Parkunan 2015 (1) TNLR 379*** but it has been clearly stated by the Hon'ble Supreme Court in ***Basalingappa Vs. Mudibasappa***, the source of income has to be proved by the respondent.
- The court below failed to note that the respondent cannot take shelter under the presumption vide Sec.139 of NI Act, without proving the legally enforceable debt or liability of the accused. Hence, the conviction inflicted by the court below mainly relying on the presumption U/s.139 of NI Act is liable to be set-aside.
- The court below failed to consider that Sec.139 of the Negotiable Instruments Act, does not presume the debt or liability.
- The court below erred in discussing the issuance of liability and nature of legally enforceable debt.

10. The appellant/accused filed the lengthy written arguments through his counsel, which is nothing but the mere replica of the grounds raised in the Memorandum of appeal.

11. Written arguments filed by the respondent/ complainant:

- The Appellant has preferred the present appeal challenging the Judgment of conviction passed by the trial court, on two principal grounds: (i) that the alleged debt is not legally enforceable; and (ii) that the cheque in question was a mere security cheque which was misused by the Respondent. Both grounds are wholly unsustainable in law and on facts and are nothing but a belated attempt to escape a conviction. The trial court judgment is sound, well-reasoned and in accordance with the settled legal position, and deserves to be confirmed.

- The Appellant has raised identical contentions before the trial court, all of which were carefully considered and rightly rejected. No new facts or evidence have been brought on record in the present appeal that would justify interference with the findings of the trial court

- In the present case, the appellant has categorically admitted the following before the trial court, as recorded in the judgment:

  a) That he issued the cheque bearing No.031274 dated 22.03.2018 drawn on Axis Bank Ltd., Veppery Branch, for Rs.8,00,000/-;

  b) That the signature on the said cheque is his own;

  c) That he did obtain a loan from the Respondent (although he disputed the amount, which dispute was rightly rejected by the trial court).

- Once signature and issuance of the cheque are admitted by the Appellant, the Hon'ble Supreme Court of India in ***Kalaimani Tex Vs. P. Balasubramaniyan, (2021) 5 SCC 283*** - decision of the larger bench has held that it is mandatory to presume that the cheque was issued as consideration for a legally enforceable debt. The trial court correctly applied this binding precedent. The Appellant cannot now turn around and contend that the debt was not legally enforceable, having himself admitted the issuance of the cheque.

- The Appellant's contention that the Respondent failed to prove "source of funds" and that the debt was unenforceable due to alleged money-lending activities is misconceived and deserves to be rejected for the following reasons:

  a) The Hon'ble Supreme Court in **Rohitbhai Jeevanlal Patel Vs. State of Gujarat and Another (2019)** has categorically held that once the presumption under Section 139 of the N.I. Act is raised, the Court cannot go into the question of the financial capacity or source of funds of the complainant. The trial court rightly applied this principle. The Appellant cannot defeat a statutory presumption by raising collateral questions about the Respondent's financial capacity.

  b) The Respondent submits that he runs a legitimate business and had the financial capacity to advance the loan. The Respondent stated in cross-examination that Rs.6,00,000/- was his own money and Rs 2.00.000/- was borrowed from relatives. This explanation is entirely plausible, consistent, and was not successfully impeached by the appellant. Appellant. The Appellant's insinuation that the non-examination of the relative is "fatal" is baseless. The source of funds of the complainant is not a mandatory ingredient of Section 138 of the N.I. Act.

  c) The Appellant's reliance on **Basalingappa Vs. Mudibasappa, (2019) 5 SCC 418** is misplaced. That judgment holds that the accused can rebut the presumption under Section 139 by raising a "probable defense" on a preponderance of probabilities. In the present case, the Appellant failed to completely discharge this burden. He produced no documentary evidence whatsoever before the trial court to show the actual loan amount, any payment receipts, or any proof of repayment. His own cross-examination as DWI conceded that he had no documents to show repayment. Therefore, the **Basalingappa** ratio actually operates against the Appellant.

d) The allegation that the Respondent is an unlicensed money-lender under the Tamil Nadu Money Lenders Act, 1957 is a new plea not substantiated by any evidence. No such point was put to the Respondent in cross-examination during the trial, nor was any evidence of the Respondent's alleged business status produced. A bald assertion in written arguments cannot substitute for evidence. The Respondent expressly denies being a money-lender within the meaning of the said Act.

e) The allegation of 60% per annum interest is the Appellant's own self-serving statement, unsupported by any document. The Respondent never agreed to any such interest rate. The loan of Rs.8,00,000/- was a legitimate personal loan between known persons in the same market campus. There is no written loan agreement carrying any interest clause, and the

Appellant himself could produce no such document.

- The Appellant has claimed that the actual loan was only Rs 2,50,000/- and not Rs. 8,00,000/-. This defense must be rejected because:

  a) The cheque itself is for Rs.8,00,000/-, Once the cheque is admitted, the presumption under Section 118 of the N.I. Act establishes that the cheque was drawn for that amount as consideration. The burden to rebut this is entirely on the Appellant, and he has produced absolutely no evidence to discharge it.

  b) The Appellant raised a contradictory defense - he admitted having borrowed some amount, but stated it was only Rs.2.50,000/-. He then claimed in his written arguments to have repaid Rs.2,68,500/-, giving a list of dates and amounts. Critically, when he was cross-examined as DW1, he expressly admitted having no documents to prove any repayment. Details mentioned only in written arguments but not spoken to in oral evidence and not supported by any document carry no evidentiary weight.

  c) The question of why, if only Rs.2,50,000/- was borrowed, would the Appellant issue a cheque for Rs.8,00,000/- has never been satisfactorily explained. No rational person who has borrowed Rs.2,50,000/- would issue a blank cheque of Rs.8,00,000/- as security without any written understanding. The Appellant's story is inherently improbable and correctly rejected by the trial court.

- The Appellant's contention that the cheque was merely a "security cheque" and was misused by the Respondent is not a valid defense under Section 138 of the N.I. Act and has been conclusively settled by the Hon'ble Supreme Court. Reliance was placed on the decision of the Hon'ble Supreme Court in **Sripati Singh (since Deceased) Vs. State of Jharkhand (2021).** Applying the ratio of the aforesaid judgment to the present case:

    a) The Appellant admits having borrowed a loan amount from the Respondent. He admits issuing the cheque in question. He claims the cheque was given as security for the said loan. Even if this is accepted (which the Respondent denies), the Appellant's liability under the cheque arises unless and until the underlying loan was repaid to the Respondent's satisfaction.

    b) The Appellant has utterly failed to prove repayment of the loan. He produced no receipts, no bank transfer records, no acknowledgment of payment, and no witness to corroborate repayment. His admission in cross that he has no documents to prove repayment is conclusive. In the absence of proof of repayment, the security cheque does not lose its legal force.

    c) Furthermore, the Appellant took no steps whatsoever to recover the cheque after alleged repayment, no written demand for return of the cheque, no police complaint for cheating, no stop payment instruction to the bank. As rightly noted by the trial court, a prudent person who had genuinely repaid a loan would immediately have taken steps to reclaim the security cheque. The Appellant's total inaction completely undermines his version.

d) The allegation of misuse is a self-serving defense without any corroboration. The Respondent submits that the cheque was issued by the Appellant in full knowledge of its consequences to discharge the outstanding debt, and the same was presented only after the debt remained unpaid despite repeated demands.

- The Appellant also relies on the private notice marked as Ex. R1 to suggest the Respondent had a different address for the Appellant. This actually supports the Respondent's case, not the Appellant's. The fact that a private notice was sent and received by the Appellant (as admitted by the defense itself through cross-examination suggestion) proves that the Appellant was aware of the Respondent's demand well in advance of filing the complaint. Despite being aware of the demand, the Appellant made no repayment which conclusively satisfies the ingredients of Section 138.
- The Respondent submits that the legal notice dated 24.04.2018 (Ex.P3) was dispatched to both the residential address and the business address of the Appellant by registered post. This is not disputed. The returned postal covers were marked as Ex.P4.
- The Hon'ble Supreme Court in ***C.C. Alavi Haji Vs. Palapetty Muhammed, (2007) 6 SCC 555*** has categorically held that when a notice is sent by registered post by correctly addressing the drawer, the mandatory requirement under Section 138 proviso (b) is fulfilled. The presumption of service arises under Section 27 of the General

Clauses Act and Section 114 of the Indian Evidence Act. The same judgment further holds that a drawer who claims non-receipt of notice must, within 15 days of receiving court summons, make payment of the cheque amount. Having failed to do so, the Appellant cannot now claim non-service of notice as a defense.

- The Appellant's contention that the shop address was deliberately misstated as "T/F 18" instead of "T/E 18" is a trivial and unsubstantiated allegation. The Respondent submits that:

  a) The legal notice was sent to the residential address as well, which the Appellant himself admits is No.9/334, 2nd Street, Kamala Nagar, Thiruvottiyur, this was the address furnished by the Appellant in the complaint proceedings and in his bank account. The Appellant cannot disown his own stated address.

  b) The claim that the Appellant "never resided" at the Thiruvottiyur address was not proved by any documentary evidence, no rental agreement, Aadhaar card, ration card, or any document establishing a different residential address was produced by the Appellant at trial.

  c) The Respondent also sent a private notice (Ex.RI) to the Appellant's business address, which was received by the Appellant. The Appellant himself through a cross-examination suggestion admitted this. Therefore, the Appellant had actual knowledge of the cheque dishonour and the demand for payment, yet chosen not to make any payment within the statutory period.

- The Respondent submits that even if there were any technical deficiency in notice service (which is denied), the Appellant's receipt of the private notice and his appearance before the court without paying the cheque amount within 15 days of summons completely bars him from raising the defense of non-service, as held in the **C.C. Alavi Haji judgment (supra).**

- The Appellant has sought to create an impression that the Respondent habitually files cheque bounce cases against market traders to obtain unlawful gain, and has cited six other cases. The Respondent submits that this argument is legally irrelevant and factually misleading:

  a) Each case under Section 138 must be decided on its own facts and evidence. The mere filing of other cases by the Respondent against other persons cannot be used as evidence of wrongdoing in the present case. Each of those cases would be decided independently on their respective merits.

  b) The Respondent is not answerable before this Hon'ble Court for proceedings in other cases. Introducing such material is an attempt to prejudice this Court against the Respondent without any relevance to the present transaction.

  c) Importantly, the Appellant does not deny that he took money from the Respondent. He does not deny issuing of the cheque. He does not deny his signature on the cheque. All his defenses are about the quantum of debt and manner of repayment, both of which are unsupported by a single document. The allegation of a pattern of misuse cannot prevail over the complete absence of documentary evidence of repayment.

- Without prejudice to the general submissions above, the Respondent provides the following specific replies to the Appellant's grounds

a) **<u>Ground:</u>** Judgment against law. **<u>Reply</u>:** The trial court has correctly applied the settled legal position under Sections 118, 138. and 139 of the N.I. Act and has relied upon a catena of binding Supreme Court decisions. The judgment is neither perverse nor contrary to law.

b) **<u>Ground:</u>** No legally enforceable debt. ***Reply:*** The statutory presumption under Section 139 that the cheque was issued for a legally enforceable debt was not rebutted by the Appellant. The Appellant produced no evidence of any kind to discharge the burden on him. The trial court's finding on this is unassailable.

c) ***<u>Ground:</u>*** Security cheque misused. ***<u>Reply:</u>*** Even assuming the cheque was issued as security (which the Respondent denies), in the absence of proof of repayment, the liability under the cheque subsists. The Appellant failed to prove repayment by any document. The Supreme Court in Sripati Singh (supra) has settled this position.

d) ***<u>Ground:</u>*** Notice sent to wrong address. ***<u>Reply:</u>*** Notice was sent to both residential and business addresses of the Appellant. Notwithstanding returned postal covers, the Appellant received the private notice and was fully aware of the demand. He did not pay within 15 days of receipt of court summons. His defense of non-service is wholly unsustainable as per the ratio of C.C. Alavi Haji (supra).

e) ***Ground:*** Source of funds not proved. **Reply:** The Hon'ble Supreme Court in **Rohitbhai Jeevanlal Patel (supra)** has held that once presumption under Section 139 is drawn, the question of the complainant's source of funds is irrelevant. This ground is expressly covered by a binding precedent which the trial court correctly applied.

f) ***Ground:*** Section 139 does not presume legally enforceable debt. ***Reply:*** Section 139 raises the presumption that the holder of a cheque received it for the discharge of a debt or liability. The Supreme Court in Kalaimani Tex (supra) has confirmed that upon admission of the cheque, this presumption arises and the accused must rebut it. The Appellant failed to do so.

In the light of the foregoing submissions, it is most respectfully prayed that this Hon'ble Court may be pleased to dismiss the appeal and confirm the judgment and order of conviction and sentence dated 12.08.2022 passed in C.C. No.181 of 2018 by the Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur and pass such other orders as this Hon'ble Court may deem fit and proper in the interests of justice.

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 has carefully and independently re-appreciated the entire oral and documentary evidence available on record, the findings rendered by the learned Judicial Magistrate, the grounds urged in the memorandum of appeal, the written arguments advanced on either side and the legal position governing prosecutions under Section 138 of the Negotiable Instruments Act. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

Point No.1 & 2:

14. The genesis of the prosecution case is that the complainant and accused were admittedly known to each other as both were carrying on fruit and vegetable business in the Koyambedu Market Complex, Chennai. According to the complainant, on account of acquaintance and cordial business relationship, the accused approached him seeking financial assistance for the development of his fruit business and borrowed a sum of Rs.8,00,000/- with a promise to repay the same within six months. It is the further case of the complainant that despite repeated demands, the accused failed to repay the said amount and eventually issued Ex.P1 cheque bearing No.031274 dated 22.03.2018 for Rs.8,00,000/- drawn on Axis Bank Ltd., Vepery Branch, Chennai towards discharge of the legally enforceable debt.

Upon presentation, the cheque came to be dishonoured under Ex.P2 bank memo dated 26.03.2018 for the reason "Drawer's Signature Differs." Thereafter, statutory demand notice under Ex.P3 dated 24.04.2018 was issued to the accused, but the same returned under Ex.P4 postal cover with endorsement "No such person." Since the accused neither paid the amount nor complied with the statutory demand, the complaint came to be lodged.

15. Per contra, the defence of the accused is not one of total denial. The accused as D.W.1 admitted acquaintance with the complainant and further admitted obtaining financial assistance from him. However, according to him, he borrowed only a sum of Rs.2,50,000/- as "thandal" loan during the year 2015, that too for 100 days, and had subsequently repaid the same with interest to the tune of Rs.3,60,000/-. His further defence is that, Ex.P1 cheque was issued only as a security cheque at the time of availing the loan and the complainant misused the same after repayment. It is also contended that statutory notice was not properly served and that the complainant lacked financial capacity to lend Rs.8,00,000/-.

16. At the outset, it is pertinent to note that issuance of cheque and signature therein are not seriously disputed by the accused. Though the cheque was dishonoured for the reason "signature differs," the accused himself has admitted before the trial Court that the cheque pertains to his account and the signature therein belongs to him. Once execution of cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act spring into operation in favour of the complainant. The legal position is too well settled that once issuance of cheque and signature are admitted, it shall be presumed that the cheque was issued in discharge of a legally enforceable debt or liability, unless the contrary is proved by the accused by raising a probable defence on the touchstone of preponderance of probabilities.

17. The learned counsel for the appellant would vehemently contend that the complainant has failed to prove existence of legally enforceable debt and mere issuance of cheque would not automatically attract the presumption under Section 139 of the N.I. Act. This contention does not merit acceptance. It is by now settled that the presumption under Section 139 includes the existence of legally enforceable debt or liability. The burden initially lies upon the accused to rebut such presumption through acceptable materials. It is no doubt true that the burden on the accused is not as stringent as that of the prosecution and he may rebut the same even through circumstances elicited in the complainant's evidence. However, some acceptable and probable material must be placed before the Court.

18. In the case on hand, the accused has admittedly taken inconsistent and mutually destructive stands. On one hand, he disputes the loan amount and contends that only Rs.2,50,000/- was borrowed; on the other hand, he admits issuance of cheque but claims that it was given as security. If really only Rs.2,50,000/- had been borrowed, no plausible explanation whatsoever is forthcoming from the accused as to why a cheque for Rs.8,00,000/- came to be issued in favour of the complainant. The defence remains wholly unsubstantiated.

19. Much emphasis has been laid by the appellant on the plea that Ex.P1 cheque was only a security cheque and was subsequently misused by the complainant. This Court finds no merit in the said contention. Merely because a cheque is described as a security cheque, it does not ipso facto absolve the drawer from liability under Section 138 of the Negotiable Instruments Act. When an underlying liability subsists and the amount due remains unpaid, presentation of such cheque towards discharge of liability would nevertheless attract penal consequences upon dishonour. The cardinal question is whether the accused had discharged the liability. In the present case, except the interested oral testimony of D.W.1, absolutely no material has been placed to substantiate repayment.

20. The accused would state that he repaid the entire amount along with interest amounting to Rs.3,60,000/-. However, significantly, not even a scrap of paper has been produced evidencing repayment. No receipts, account entries, bank records, independent witnesses or acknowledgment from the complainant have been produced. During cross-examination, D.W.1 candidly admitted that he possessed no documentary proof for repayment. In commercial transactions involving such magnitude of money, a prudent man would ordinarily insist upon acknowledgment or return of security instruments after settlement. Curiously, though the accused claims complete repayment, no notice seeking return of cheque was issued, no police complaint was lodged alleging misuse of cheque and no stop-payment instruction was issued to the bank. Such total inaction on the part of the accused seriously dents the veracity of his defence.

21. The learned trial Judge has rightly observed that the accused had miserably failed to probabilise his defence. Of course, the standard required from the accused is only preponderance of probability. Yet, even that lesser burden has not been discharged in the instant case. Mere bald assertion without supporting material cannot rebut a statutory presumption.

22. The appellant further attacked the financial capacity of the complainant to lend Rs.8,00,000/- which is a huge amount. It is harped much that the complainant having admitted that he had borrowed money from his relative, his financial capacity is doubtful. This Court finds the said contention to be unsustainable. Once statutory presumption under Section 139 comes into play, the burden shifts upon the accused. Unless the accused raises a probable defence creating serious doubt regarding the transaction, the complainant is not expected to independently prove his source of funds in the first instance. In the instant case, the complainant had clearly explained that he mobilized funds from his own sources and relatives. Merely because relatives were not examined, an adverse inference cannot be automatically drawn. More importantly, the accused failed to demolish the complainant's version through any cogent material.

23. Going diametrically opposite to the stand taken that the respondent/complainant lacks financial capacity, the reliance placed by the appellant upon alleged money lending activities of the complainant also does not advance his case. Mere allegation that the complainant was running finance business or had instituted other cheque bounce cases against different individuals would not by itself probabilise the defence in the present case. As rightly emphasised on the side of the respondent in his written submission, every prosecution under Section 138 of the N.I. Act has to be decided on its own facts and evidence. No documentary evidence whatsoever has been produced to establish that the complainant was an unlicensed money lender or that the transaction in question was legally unenforceable. It goes without saying that the bald allegations cannot replace proof.

24. Equally untenable is the challenge raised with regard to service of statutory notice. The Ex.P3 statutory notice had admittedly been dispatched to the residential as well as business address of the accused. The accused attempted to contend that wrong addresses had been mentioned and therefore there was no service of notice. However, the materials on record reveal that the complainant had acted bona fide in issuing notice to the addresses known to him. More importantly, the accused admittedly appeared before the Court pursuant to summons and even thereafter failed to make payment within the statutory period. Hence, the plea of non-service loses significance.

25. The contention that dishonour on account of "signature differs" would not attract Section 138 of the N.I. Act is equally devoid of merit. The settled legal position recognizes dishonour on account of mismatch of signature on par with dishonour for insufficiency of funds or payment stopped, when the cheque admittedly belongs to the account of the accused and execution thereof is admitted. In the present case, the accused has admitted ownership of the account and issuance of cheque. Hence, dishonour for "drawer's signature differs" cannot rescue the accused from criminal liability.

26. The learned trial Judge has elaborately appreciated the oral and documentary evidence in proper perspective and has rightly concluded that the complainant had successfully established the foundational ingredients of Section 138 of the Negotiable Instruments Act. The findings rendered by the learned Judicial Magistrate are neither perverse nor contrary to evidence available on record. On the contrary, the judgment reflects proper application of settled principles governing presumptions under Sections 118 and 139 of the Negotiable Instruments Act and the burden of rebuttal resting upon the accused.

27. This Court finds that the defence projected by the accused is bereft of material particulars, unsupported by documentary evidence and inherently improbable. The accused having admitted issuance of cheque and having failed to rebut the statutory presumption by raising a probable defence, the conviction recorded by the learned trial Judge warrants no interference.

28. As regards sentence, the learned Judicial Magistrate has imposed only one-year simple imprisonment and directed payment of compensation equivalent to cheque amount, namely Rs.8,00,000/- under Section 357(3) Cr.P.C., without imposing any separate fine. Considering the nature of offence, amount involved and prolonged deprivation suffered by the complainant, this Court finds the sentence imposed to be just, reasonable and proportionate. No grounds are made out warranting interference with sentence also.

29. Accordingly, the Point No.1 is answered in favour of the complainant holding that the judgment of conviction rendered by the learned Judicial Magistrate in C.C. No.181 of 2018 dated 12.08.2022 is legally sustainable and based upon proper appreciation of evidence. The Point No.2 is answered against the appellant holding that the appeal deserves dismissal.

30. In the result, the Criminal Appeal is dismissed and the Judgment of conviction and sentence dated 12.08.2022 passed in C.C. No.181 of 2018 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur is hereby confirmed. The bail bond, if any, executed by the appellant shall stand cancelled. The trial Court is directed to secure the presence of the accused and commit him to prison for undergoing the remaining period of sentence, if any, in accordance with law.

Dictated to the Steno-typist, directly computerized by him, corrected and pronounced by me in open Court, on this the 03rd day of June 2026.

T CHANDRASEKARAN
Digitally signed by T CHANDRASEKARAN
Date: 2026.06.03 18:00:11 +0530

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 -

T CHANDRASEKARAN
Digitally signed by T CHANDRASEKARAN
Date: 2026.06.03 18:00:16 +0530

Principal District and Sessions Judge,
Chengalpattu.