

**IN THE COURT OF JUDICIAL MAGISTRATE -I, CHENGALPATTU**Present : **Tmt.V.Lavanya, M.L.,**

Judicial Magistrate - I, Chengalpattu.

Dated, the 24th day of April 2026

**Calendar Case No.113/2023****JUDGMENT**

G.Jagadeeswari,  
W/o.Gopiraj,  
No.25B/7, Thirumalai Nagar,  
3rd Street, Radha Mahal Back Side,  
Chengalpattu.

. . .Complainant.

/Vs/

V.Sundar,  
S/o.Venkatesan,  
No.22/7, Dr.Varadarajan Street,  
Chengalpattu Town and Taluk.

. . .Accused.

This case is taken on file on 16.05.2023 came up for final hearing on 16.04.2026 before me in the presence of M/s.H.T.Maheshkumar, G.Sankar, A.Vijayakumar and B.Prabhakaran, Advocates for the complainant and M/s.T.Ilangovan and S.Sasikumar, Advocates for the accused and on hearing complainant side arguments and upon perusing the document and having stood over till this day for the consideration of this court delivers the following:-

**JUDGMENT**

1) This is a case instituted by the complainant for the offence under Section 138 of the Negotiable Instruments Act, 1881 as against the accused for dishonor of cheque.

2) On receipt of this complaint, the sworn statement of the complainant was recorded. Since Prima facie materials were there to presume that the accused had committed the offence Under Section 138 of Negotiable Instruments Act, this court had taken Cognizance of the offence Under Section 138 of Negotiable Instruments Act against the accused. On appearance of accused, copies of complaint and documents were furnished to accused. Thereafter substance of accusation under Section 138 of Negotiable Instruments Act were read, explained and questioned to the accused. The accused pleaded not guilty and claims to be tried.

3) Brief of complainant's case:

(i) The accused is well known to the complainant. The accused is running several business. The accused approached the complainant and borrowed Rs.8,00,000/- for his business development and for settling his debts. The accused promised to pay the amount within two months. But the accused did not repay the borrowed amount as promised. The complainant insisted the accused to repay the borrowed amount. The accused on the pretext of one or the other postponed the repayment. Thereafter the complainant convened a local Panchayat with elders and the accused finally issued a cheque bearing No.001475 dated 22.02.2023 for a sum of Rs.5,00,000/- drawn on ICICI bank, Chengalpattu branch.

(ii) As per the request of the accused the complainant presented the cheque Ex.P1 for collection through her bank – Federal Bank, Chengalpattu Branch. But the above cheque was returned with an endorsement "Funds Insufficient" vide return memo dated 24.02.2023 (Marked as Ex.P2).

(iii) Hence, the complainant issued a legal notice to the accused dated 04.03.2023 (Marked as Ex.P3) by registered post calling upon the accused to pay the cheque amount of Rs.5,00,000/- due under the dishonored cheque mentioned above within 15 days from the date of receipt of the statutory notice. The accused received the notice on 06.03.2023 and the acknowledgment card is marked as Ex.P4. The accused sent a reply notice (marked as Ex.P5) with false allegations dated 13.03.2023. The accused failed to repay the cheque amount as demanded in the statutory notice. Thus accused committed the offence punishable under Section 138 of Negotiable Instruments Act . Hence, the complaint.

4) The complainant examined herself as PW1 to prove her case and marked Ex.P1 to P5.

5) The incriminating evidence against accused was explained to him and his statement was recorded under Section 313 of Cr.P.C. The accused during 313 Cr.P.C. questioning stated that he never borrowed amount from the complainant. That he

never issued a cheque to the complainant. The accused has examined himself as DW1 and marked Ex.D1 to D4.

6) The brief of facts stated by the accused in his evidence:-

The accused and complainant's husband namely Gopiraj are close relatives of the accused. Few years ago, they were residing in the same area and as such they were having good relationship with each other. The accused used to do certain works on contract basis. During the year 2015 – 2022 the accused was doing contract work at Uttarpradesh. He used to stay at Uttarpradesh for two to three months for contract works. Once in three months, the accused used to visit his mother who was residing at Chengalpattu. The accused was living with his mother. Hence, the accused used to sign his ICICI bank, Chengalpattu branch cheques and would keep it at his residence for encashing the same by his mother for her medical and emergency expenses. The mother of the accused in case necessity would inform him over phone and would encash the cheque at bank. In the beginning of the year 2017, the accused had kept the signed blank cheques bearing No.001473, 001474 and 001475 at his residence and went to Uttarpradesh. After few days, the mother of the accused called him over phone and informed that the above cheques are missing from the house. The accused after reaching Chengalpattu during February 2017, had submitted a stop payment letter to the manager of ICICI bank, Chengalpattu branch. The accused marked his max insurance life policy dated 15.05.2017 as Ex.D1. The tax receipts dated 10.10.2017 as Ex.D2, the cheque stop payment form dated 17.03.2018 as Ex.D3, GST form dated 04.05.2018 as Ex.D4. Only after receiving the legal notice of the complainant on 04.03.2023 the accused came to know that the cheques bearing No. 001473, 001474 and 001475 were taken by the husband of the complainant namely Mr.Gopiraj. Immediately, the accused had issued a reply notice dated 13.03.2023. Due to the difference of opinion between the accused and the complainant's husband, the cheques are presented for encashment for taking revenge and this false case has been filed. The accused is earning sufficient amount which is necessary for his family. The accused was never under a situation to borrow loan amount for running

his family. The accused never borrowed loan from anybody. The accused denies all the contents of the complainant. This petition is filed to extract money from the accused. The accused had filed M.P.No.1/2023 to send the cheques for expert opinion. But, as the complainant in their counter contended that the cheques were issued in the year 2017 in order to cut down the expenses, the accused not pressed the above petition. As the cheques were signed in the year 2017 and as the cheque was not issued for any legal liability, this case has to be dismissed. The complainant had filed this false case on the instigation of her husband to extract money from the accused.

7) Arguments :-

i) Complainant side arguments:-

The complainant and the accused are relatives. The accused borrowed Rs.8,00,000/- from the complainant. To discharge the said liability he had issued two cheques. The accused admitted his signature in the cheque. The defence of the accused is that, the complainant's husband had stolen the cheque. The accused denied the issuance of cheque. But the accused did not lodge any complaint regarding the stolen cheque. The stop payment document submitted by the accused is not relevant to this case and the same has been admitted by the accused during cross examination. The uncle of the accused namely Devadas has signed behind the cheque. The accused did not rebut the presumption which is in favour of the complainant. The complainant has proved the case as against the accused. And prayed to convict the accused.

ii) Defence side arguments :-

The accused had issued reply notice denying issuance of cheque. The accused never borrowed the money from the complainant. The accused was working in Uttarpradesh in the year 2017 and the case cheque was misplaced. The case cheque was not issued to the complainant. The complainant did not mention the date of payment of loan and the date of issuance of the cheque. During cross examination, the complainant had stated that the cheque was received on 21.02.2023. As per the complaint, the cheque was issued during panchayat. As per the counter filed in

M.P.No.1/2023. the cheque was given in the year 2017. The complainant had stated contradictory facts before this court. The Ex.D1 to D4 proves the fact that accused was working at Uttarpradesh in the year 2017. Only when the accused received the legal notice he came to know about the possession of cheque by the complainant. The complainant did not send any rejoinder notice for the reply notice sent by the accused. The accused rebutted the presumption. The complainant failed to prove her case. The accused counsel relied on the judgment MCB Rajesh Vs R. Sivasubramani reported in 2021 Supreme (MAd) 1585, in support of above contention and prayed to acquit the accused.

8) Decision and Reasons for the same :-

i) In this case, the accused had sent a reply notice for the statutory notice sent by the complainant. In the reply notice, the accused had questioned the genuineness of the signature in the cheque Ex P1. However, during trial the accused in his evidence admitted his signature. Hence, the complainant is entitled for statutory presumption U/s.118 and 139 of Negotiable Instruments Act. The presumption U/s.139 of Negotiable Instruments Act is drawn in favour of the complainant. Hence, it is presumed that the Ex.P1 cheque was received by the complainant for discharge of the liability of the accused. The accused is now having the burden to prove the contrary to the above presumed facts. The complainant in this case has presented the cheque within validity period. The cheque was returned by the bank unpaid for the reason "Funds Insufficient". The complainant proved the dishonor of cheque through his evidence and return memo Ex.P2. The complainant has sent statutory demand notice Ex.P3 within limitation period. The accused did not pay the amount. The accused sent reply notice Ex.P5. The complainant filed this case within limitation period. Hence, in view of above stated reasons, it is decided that the complainant discharged the initial burden of proof as against the accused by proving the necessary ingredients under section 138 of Negotiable Instrument Act.

ii) The accused to rebut the statutory presumption is relying on the reply notice, the cross examination of complainant and evidence deposed by the accused as DW1 and the documents marked by him.

iii) The defence of the accused is that, during the year 2017, the accused was living with his mother at Chengalpattu. In the year, 2017 as he was working in Uttarpradesh on contract basis, he used to keep signed blank cheques at his residence at Chengalpattu for the medical and emergency expenses of his mother. His mother used to encash the cheques in bank in case of necessity. The accused in his evidence had stated that in the year 2017, he had kept signed blank cheques bearing No.001473, 001474, 001475 drawn on ICICI Bank, Chengalpattu branch at home and went to Uttarpradesh. After few days, the mother of the accused called over phone and informed him that the above cheques are missing. Hence, the accused had given a stop payment letter to the bank. According to the accused, when he received the legal notice from the complainant he found that the husband of the complainant being the relative of the accused had stolen the above cheques.

iv) Now the point to be decided is whether the accused had proved the probability of above defence by letting in proper evidence. In this case, except the legal notice and the defence evidence of the accused, he did not produce any evidence to prove the fact that the case cheque bearing No.001475 (Ex.P1) was missing in the year 2017. He did not produce any evidence to prove that it was stolen by the husband of the complainant. On perusal of cross examination of the complainant, no facts were elicited to prove the fact that the case cheque was stolen from the residence of the accused in the year 2017. Though the accused claims in this case that he had issued a stop payment letter to the bank he did not prove the said fact through proper evidence. The accused did not produce the stop payment letter which was submitted to the bank in the year 2017. The accused did not summon the bank witnesses to prove the fact of giving stop payment letter and to prove the reason for stop payment. The accused did not summon any other witness to prove the fact that the husband of the complainant had actually stolen the case cheque. According to the

accused, only after receiving the legal notice from the complainant, he came to know that the cheque was stolen by the complainant's husband who is the relative of the accused. A normal prudent man, in a circumstance when his cheque has been stolen and misused for huge sum of Rs.5,00,000/- is expected to take some legal action against the person who had stolen his cheque. In this case, the accused did not take such action against the husband of the complainant. The accused did not summon the husband of the complainant to bring on record the facts and circumstances under which the cheque was stolen. The accused had simply denied the liability by merely claiming that his cheques were stolen by the husband of the complainant without proving the probability of the same. In view of the above stated reasons, this court finds that the above defence of the accused that the husband of the accused had stolen the cheque Ex.P1 and misused the same through complainant, is not probable to believe in the absence of any evidence to prove the same.

v) The second line of defence taken by the accused during cross examination is that in the counter statement filed by the complainant in M.P.No.1/2023 it is admitted by the complainant that the amount was borrowed by the accused in the year 2017. That the cheque which has been taken by the husband of the complainant in the year 2017 is misused in this case. The complainant during cross examination had clearly stated that she had given the loan amount to the accused on 20.02.2023 at the residence of the accused as cash. The source of income for the same according to the complainant is that she pledged her jewels. The complainant stated during cross examination stated that she did not mention in the counter that the accused borrowed loan in the year 2017. The complainant categorically denied receiving of cheque in the year 2017 in the cross examination. The accused in this case is denying borrowal of amount from the complainant. As per the evidence of the accused, he has no necessity to borrow the said amount and he never borrowed loan from the complainant. When he has denied the borrowal of amount, there cannot be defence of issuance of cheque in the year 2017. The contention in the counter that the amount was borrowed in the year 2017 and issuance of cheque in the year 2017 is denied by

the complainant in the cross examination. In such circumstances the said contention in the counter cannot be relied on. Hence, it is decided that, as the contention in the counter is denied by the complainant, it is not rebutting the presumption which is in favour of the complainant.

vi) The learned counsel for the complainant argued that the uncle of the accused namely Devadas had signed behind the cheque as witness. In this case, the accused did not choose to examine his mother or his uncle Devadas to elicit proper facts. According to the complainant the accused issued the cheque Ex.P1 and the uncle of the accused namely Devadas had signed as witness for the transaction. However the accused is denying the liability and also issuance of cheque to the complainant. But the accused did not bring on record the probable evidence to prove that he has not legally enforceable liability to be discharged towards the complainant and that the cheque was not issued for any legally enforceable debt. The accused cannot rebut the presumption by mere denial. The accused failed to bring on record a probable defence to rebut the presumption.

vii) Hence, in view of the above stated reasons this court decides that the accused failed to rebut the presumption by adducing probable evidence. Whereas, the complainant had proved all the ingredients which constitutes the offence u/s.138 NI Act as against the accused.

In the result, the accused is found guilty and convicted for the offence under Section 138 of Negotiable Instruments Act. This court sentences the accused to undergo simple imprisonment of six months under Section 255(2) of Cr.P.C. The accused is ordered to pay cheque amount as compensation to the complainant under Section 357(3) of Cr.P.C. in default to undergo simple imprisonment of one month.

Dictated to steno typist and typed by her in computer, corrected and pronounced by me in the open court on this the 24th day of April 2026.

Judicial Magistrate No.I,  
Chengalpattu.

**Annexure:****List of complainant side Witnesses:**

PW1 - Jagadeeshwari (Complainant)

**List of complainant side Exhibits :**

Ex.P1/PW1	22.02.2023	Cheque bearing No.001475 of Rs.5,00,000/-.
Ex.P2/PW1	24.02.2023	Return Memo
Ex.P3/PW1	04.03.2023	Legal Notice of complainant
Ex.P4/PW1	06.03.2023	Acknowledgment card
Ex.P5/PW1	13.03.2023	Reply notice of the accused

**List of defence side witnesses :**

DW1 - Sundar (Accused)

**List of defence side Exhibits :**

Ex.D1/DW1	15.05.2017	Max Life Insurance Policy
Ex.D2/DW1	10.10.2017	Mandate Form for makinb GST Payment through NEFT/RTGS Mode
Ex.D3/DW1	17.03.2018	Cheque stop payment form
Ex.D4/DW1	04.05.2018	Form GST PMT

Judicial Magistrate No.I,  
Chengalpattu.

