

**JUDICIAL MAGISTRATE COURT NO.I, MADURANTAKAM**  
**Present: Tmt. N. Valliamma, B.Sc., B.L.,**  
**Judicial Magistrate No.I,**  
**Madurantakam**

**Tuesday, the 09<sup>th</sup> day of June 2026**  
**CC No. 42 of 2021**  
**CNR NO. TNCG-15-000134-2021**

B.Devanathan, Age.45,  
S/o.Balasubramani,  
Kavathur Village,  
Veeranakunnam Post,  
Madurantakam Taluk,  
Chengalpattu District.

...Petitioner/Complainant

- VS -

M.Thangavel, S/o.Manicka Gounder,  
TMT Treaders, Paddy and Rice Merchants,  
No.41, Mariyamman Koil Street,  
Vadamanipakkam Village and Post,  
Madurantakam Taluk,  
Chengalpattu District.

...Respondent/Accused

| S.No | Description                                               | Remarks        |
|------|-----------------------------------------------------------|----------------|
| 1.   | The period of Remand of the Accused/Surrender             | ---            |
| 2.   | Date of filing of the complaint/Final Report in the Court | 12.02.2020     |
| 3.   | The date of Committal of the Case to the court of Session | Not applicable |

|             |                                                                    |                                                                                                                                                    |  |              |              |            |            |            |
|-------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------|--------------|------------|------------|------------|
| 4.          | First Questioning U/s.281 Cr.P.C.                                  | 30.08.2023                                                                                                                                         |  |              |              |            |            |            |
| 5.          | Filing of Miscellaneous petition and result                        | Nil                                                                                                                                                |  |              |              |            |            |            |
| 6.          | Date of Examination in chief and cross examination of witness      | <table> <tr> <td></td><td><b>Chief</b></td><td><b>Cross</b></td></tr> <tr> <td><b>PW1</b></td><td>07.10.2023</td><td>08.11.2024</td></tr> </table> |  | <b>Chief</b> | <b>Cross</b> | <b>PW1</b> | 07.10.2023 | 08.11.2024 |
|             | <b>Chief</b>                                                       | <b>Cross</b>                                                                                                                                       |  |              |              |            |            |            |
| <b>PW1</b>  | 07.10.2023                                                         | 08.11.2024                                                                                                                                         |  |              |              |            |            |            |
| 7.          | NBW Issued date                                                    | ---                                                                                                                                                |  |              |              |            |            |            |
| 8.          | NBW recalled                                                       | ---                                                                                                                                                |  |              |              |            |            |            |
| 9.          | Questioning u/s.351 (1) (b) of BNSS                                | 04.01.2025                                                                                                                                         |  |              |              |            |            |            |
| 10.         | Details of Abscondence of an accused and his appearance/production | Nil                                                                                                                                                |  |              |              |            |            |            |
| <b>S.No</b> | <b>Description</b>                                                 | <b>Remarks</b>                                                                                                                                     |  |              |              |            |            |            |
| 1.          | The period of Remand of the Accused/Surrender                      | ---                                                                                                                                                |  |              |              |            |            |            |
| 2.          | Date of filing of the complaint/Final Report in the Court          | ---                                                                                                                                                |  |              |              |            |            |            |
| 3.          | The date of Committal of the Case to the court of Session          | Not applicable                                                                                                                                     |  |              |              |            |            |            |

**Learned Counsels for the Complainant :** MR.N.Kanagaraj, MR.A.Dhayalan.

**Learned Counsels for the Accused :** Mr.A.Jayamani, Mr.A.Manikandan, Mr.P.Nishanth.

## **JUDGMENT**

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

### **2. Gist of the complaint**

a) The Complainant is a farmer and he is regularly cultivating the paddy and he is also act as a mediator in the paddy sales. The accused is doing rice and paddy business. Thereby the complainant and accused were known to each other, while so the complainant supplied the paddy to the accused and the accused has not paid the money for a sum of Rs.6,00,000/- and the accused assured to repay the same within short span of time but accused is evaded to pay the same. After repeated demands by the complainant, the accused has issued a cheque for Rs.6,00,000/- drawn at Karur vysya Bank, Achirupakkam Branch, bearing Cheque No.000445 dt.12.11.2019 infavour of the complainant herein. On request of the accused, the complainant had presented the above said cheque for collection at Indian Bank, Madurantakam Branch in his account on 13.12.2019. The cheque was returned on 13.12.2019, for the reason “Funds Insufficient” with a memorandum.

b) The complainant has issued a lawyer notice on 24.12.2019 through his counsel calling upon the accused to make payment within 15 days from the date of receipt of the notice. The said legal notice was served to the accused on 26.12.2019. The accused despite service of notice neither pay the amount nor replied. And thereby the accused has committed an offence U/s.138 of NI Act. Hence this case.

3. On finding prima-facie case against the accused, he was summoned vide order dated 25.03.2021. Consequent to the service of summons, the accused appeared before this court and then explained the substance of accusation against him under Section 281 of Cr.P.C on 30.08.2023 to which he pleaded not guilty and claimed for trial.

4. To prove the case, the complainant has examined himself as PW1 by way of affidavit and has marked Ex.P1 to P4. The complainant in his affidavit, he has fully corroborated the averments made in the complaint and has relied upon the following documents:

1. Bearing No. 000445 dt 12.11.2019 for sum of Rs.6,00,000/- as Ex.P1.
2. Cheque Return memo dated 13.12.2019 as Ex.P2.
3. Legal Notice dated 24.12.2019 as Ex.P3
4. Acknowledgment Card as Ex.P4

PW1 was duly cross examined by the accused, with that the complainant side evidence was closed.

5. The Statement of the accused was recorded under Section 351(1)(b) of BNSS on 04.01.2025 after explaining all the incriminating circumstances and evidences against him to enable him to offer his explanation. The accused denied all the evidences against him. Despite sufficient opportunities, the accused has not produced either oral or documentry evidence on his side. At request of accused side defence evidence was closed on 12.03.2025.

6. Both side arguments heard. The submissions of both sides have been considered and the records of the case has been carefully perused.

7. During arguments the counsel for the complainant argued that the complainant has proved his case by producing impugned cheque, cheque return memo, notice issued to the accused and acknowledgment card. The complainant also deposed in line with his complaint, on the other hand the accused has not rebutted the presumption build by the complainant, hence the accused is liable to punished for the offence under section 138 of NI Act.

8. On the other hand the counsel for the accused argued that the complainant and the accused person were doing rice business. Hence the accused person herein has given many blank cheques for security purpose in connection with the above said rice business. The accused person herein as paid entire amount towards purchase of rice to the complainant herein. The complainant has filed this case using the security cheques with ill-intention to enrich illegally. Hence the ingredients of sec.138 of Negotiable Instrument Act has not been fulfilled. By cross examining PW1, accused has rebutted the presumption under section 118 and 139. Hence the complaint against the accused is liable to dismiss.

9. Now the point that arise for the determination of this case is, whether the complainant had proved his case against the accused U/Sec.138 of the NI Act beyond any doubts? In order to ascertain whether the accused has committed the offense under Section 138 of the NI Act, it is deemed fit to examine separately as to whether all the indispensable ingredients constituting the offense have been proved by the complainant. The offense under Section 138 of the NI Act has the following ingredients:-

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

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

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

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

e) The payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

f) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

**10.** Being cumulative, it goes without saying that it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act. On considering complaint, evidences, defences and submissions, there is no dispute regarding that the complainant and accused are know to each other even before filing of the present case and they were doing rice business. The accused did not deny the issuance of cheque to the complainant. Further there is no dispute that the cheque in question was returned dishonoured for the reason “Funds Insufficient” as it is a matter of record proved by Ex.P-1 and Ex.P-2,

impugned cheque No.000445 dated 12.11.2019 and the cheque return memo dated 13.12.2019. The demand notice sent to the accused was properly served and the same is proved through Ex.P-3 and Ex.P-4, legal Notice sent by the complainant and Acknowledgement card.

**11.** The accused has not specifically denied his signature in the cheques when he was explained the substance of accusation under section 281 of C.r.P.C. or when he was questioned under section 351(1)(b) of BNSS. On perusal of Ex.P-2, cheque return memo, it is found that the cheque was returned as Funds Insufficient. In Ex.P-2 there is no whisper about signature mismatch, hence the signature found in the cheque is not reason for return of cheque.

**12.** The counsel for the accused argued that the amount mentioned in numbers in the cheque seems to be 1,00,000/- being corrected as 6,00,000/-. Which is the material alteration, hence the ingredients of section 138 of NI Act is not fulfilled. The impugned cheque is carefully perused. In the impugned cheque the amount in numbers is written as Rs.6,00,000/-. The number 6 is written slightly like no.1 at the down edge a circle has been written. Whereas the amount in words has been clearly written as Six lakh. At this juncture, it is just and necessary to read section 18 of NI Act which reads as follows,

**13. 18. Where amount is stated differently in figures and words.—**

*If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.*

As per the above provision of law when there is dispute between the amount written in words and numbers in the cheque, the amount written in word will prevail over. In this case the amount written in words and numbers are one and the same. The amount written in words as well as in number are very clear. Hence it cannot be treated as material alteration.

**14.** Finally, when it comes for limitation, the complainant has filed this complaint with delay of 3 days. The complainant has filed petition under section 142 (b) of NI act along with affidavit narrating the reason for delay in Crl.M.P.No. 2235/2020 and the same was allowed on cost and delay of 3 days was condoned by this court by order dated 27.11.2020. Therefore the essential ingredients of the section 138 of the N.I.Act as mentioned above has been duly satisfied except that the cheque has been issued for the discharge in whole or in part of any legal and enforceable debt or other liability.

**15.** The only question remaining for determination is whether a legally valid and enforceable debt existed qua the complaint and the cheque in question was issued in discharge of said liability/debt. It is pertinent to note that Section 139 of the NI Act provides a statutory presumption that the cheque was handed over in respect of a debt or other liability. Under Section 118 of the NI Act, every negotiable instrument is presumed to have been drawn and accepted for consideration. In the case of **K. N. Beena vs. Muniyappan (AIR 2001 SC 2895)**, it was observed as follows:

*“Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of **Hiten P. Dalal vs. Bratindranath Banerjee reported in (2001) 6 SCC 16** has also taken an identical view.”*

**16.** The Hon'ble Supreme Court, in the case of **Hiten P. Dalal vs. Bratindranath Banerjee (AIR 2001 SC 3897)**, observed as follows:

*“Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which*



*the cheques are drawn, as noted in State of Madras vs. A.Vaidyanatha Iyer, (AIR 1958 SC 61), it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused.”*

17. As regard to legally enforceable debt, Our Hon’ble Supreme court in **Rangappa V/s. Sri Mohan 2010 (11) SCC 441** has held that; *“the presumption mandated by u/Sec.139 of N.I Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttal presumption and it is open to the Accused to raise defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein there can be no doubt that there is an initial presumption which favours the Complainant. when the Accused has to rebut the presumption u/Sec.139 of N.I. Act, the standard of proof for doing so is that of ‘preponderance of probabilities’. Therefore, if the Accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the presumption can fail, The Accused can rely on the materials submitted by the Complainant in order to raise such a defence and it is conceivable that in some cases, the Accused may not need to adduce evidence of his or her own.”*

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

*“As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque*

*bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability.”*

**19.** Further, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. **In Rangappa vs. Srimohan [(2010) 11 SCC 441], the Hon'ble Supreme Court** has observed:

*“Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”*

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

**21.** As discussed above, in this case, the presentation of the impugned cheque, its dishonor and issuance of statutory demand notice are not disputed as it has been proved on the basis of cogent evidence. The defence of the accused is the complainant and the accused herein were doing rice business, in connection with the said business transactions the accused person has given

several blank cheques to the complainant herein. Even after payment of entire money the complainant herein has filed the present case using the cheque issued for security purpose.

**22.** Though the accused taken a defence that the complainant has misused the security cheque and filed the present case, the accused has not produced any convincing evidence to substantiate his case. The accused also not stated what action was taken by the accused when the complainant was refused to return the security cheque. Moreover during cross examination of PW1 the accused side cross examined the PW1 as follows

“காசோலையில் உள்ள விவரங்கள் அனைத்தையும் எதிரி தான் நிரப்பி கொடுத்தார். 12.11.2019 ம் தேதியில் காசோலையை நிரப்பி என்னிடம் மதியம் 3.00 மணியளவில் கொடுத்தார். நான் 13.12.2019 ம் தேதி காசோலையை வங்கியில் டெபாசிட் செய்தேன். என்னிடம் இருக்கும் எதிரி கொடுத்த பாக்கி 9 காசோலைகள் எப்போது கொடுக்கப்பட்டது என்றால் வழக்கு காசோலை கொடுப்பதற்கு முன்பே கொடுத்துவிட்டார்.”

“எதிரி என்னிடம் எதுவும் நிரப்பப்படாத காசோலை கொடுத்தார் என்றாலும் அதை நான் நிரப்பிக்கொண்டு தவறாக பயன்படுத்தி எதிரியின் மீது காசோலை மோசடி வழக்கு பொய்யாக தாக்கல் செய்திருக்கிறேன் என்றால் சரியல்ல.”

the question putforth by the accused side clearly shows that the accused has given around 10 cheques to the complainant herein. Since the accused claims that he has paid the entire amount towards the business transactions, the burden is on accused to prove his case or atleast to create a shadow of doubt over the case of the complainant. But in this case the accused has not produced any evidence to discharge his burden.

**23.** The presumption of law operates infavour of existence of debt or liability. It was the sole burden and duty of accused to prove absence of liability

by raising a "probable" defence. However, the accused has failed to discharge his onus and the legal presumptions gone un rebutted.

**24.** Having considered the entire evidence, this court is of the opinion that the complainant has successfully proved all the essential ingredients of Section 138 of the N.I.Act and the accused is held guilty for committing the offence punishable u/s.138 of the N.I. Act. He is hereby convicted under section 278(2) BNSS for the offence under section 138 of the N.I.Act. Accordingly, the accused is hereby sentenced to undergo a simple imprisonment of 6 months and hereby directed to pay the amount covered by the impugned cheque i.e., Rs.6,00,000/- (Rupees Six lakhs only) as fine. The accused is further directed to pay the fine amount as compensation to the complainant under section 395(3) of BNSS within one month and in default of payment of compensation within one month, the accused has to undergo a further simple imprisonment of one month considering the overall facts and circumstances of the case.

Dictated by me to the steno and typed by her directly in the computer, corrected and pronounced by me in the open Court, this the Tuesday on 09<sup>th</sup> day of June 2026.

Judicial Magistrate No.I,  
Madurantakam.

**Complainant side witness:-**

PW-1 Devanathan S/o.Balasubramani (The Complainant)

**Complainant side Exhibits:-.**

|        |                                                             |
|--------|-------------------------------------------------------------|
| Ex.P.1 | Bearing No. 000445 dt 12.11.2019 for a sum of Rs.6,00,000/- |
| Ex.P.2 | Cheque Return memo dated 13.12.2019                         |
| Ex.P.3 | Legal Notice dated 24.12.2019                               |
| Ex.P.4 | Acknowledgment Card                                         |

**Accused side witness and Exhibits : Nil**

Judicial Magistrate No.I,  
Madurantakam

**CC 42/2021**

**09.06.2026**

Having considered the entire evidence, this court is of the opinion that the complainant has successfully proved all the essential ingredients of Section 138 of the N.I.Act and the accused is held guilty for committing the offence punishable u/s.138 of the N.I. Act. He is hereby convicted under section 278(2) BNSS for the offence under section 138 of the N.I.Act. Accordingly, the accused is hereby sentenced to undergo a simple imprisonment of 6 months and hereby directed to pay the amount covered by the impugned cheque i.e., Rs.6,00,000/- (Rupees Six lakhs only) as fine. The accused is further directed to pay the fine amount as compensation to the complainant under section 395(3) of BNSS within one month and in default of payment of compensation within one month, the accused has to undergo a further simple

imprisonment of one month considering the overall facts and circumstances of the case.

**JM No.I/MKM**