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

Monday, the 13th day of May 2026
CC No. 81 of 2023
CNR NO. TNCG-15-002237-2023

Dhanapal, S/o.MannaGounder,
No.4, Variyar Street,
Senguntharpettai,
Madurantakam Taluk,
Chengalpattu District.
…Petitioner/Complainant

- VS -

Kamaraj, S/o.Chellaiaya,
No.131, Vittilapuram Colony,
Main Road,
Kalpakkam- 603102
…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	10.02.2023
3.	The date of Committal of the Case to the court of Session	---

4.	First Questioning u/s.281 Cr.P.C.	03.12.2024
5.	Filing of Miscellaneous petition and result	Nil
6.	Date of Examination in chief and cross examination of witness	**Chief** **Cross** **PW1** 24.06.2025 28.08.2025 **DW1** 25.10.2025 13.11.2025
7.	NBW Issued date	---
8.	NBW recalled	---
9.	Questioning u/s.351 (I) (b) of BNSS	09.09.2025
10.	Details of Abscondence of an accused and his appearance/production	Nil
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	---
3.	The date of Committal of the Case to the court of Session	Not applicable

Learned Counsel for the Complainant : MR.K.Thilagaraj

Learned Counsels for the Accused : Mr.M.Paramasivam

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 accused was known to the complainant for the past 15 years. The accused have approached the complainant in the last week of August 2022 and requested, demanded a loan amount of Rs.3,00,000/-(Rupees Three Lakhs only) for the purpose of Business Expense. At that time the accused has assured to return the loan amout promptly without fail. Hence the complainant have believed and trusted the words given by the accused and the complainant has given a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the accused on 26.08.2022.

b) After several demands and request made by the complainant, the accused have issued cheque dt.25.12.2022 bearing cheque NO.148790 for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) in favour of the complainant drawn on the Canara Bank, Kalpakkam Branch-603102 to clear the debt and discharge the accused legal liabilities.

c) On the request of the accused, the complainant had presented the above said cheque for collection through his bank Canara Bank, Madurantakam Branch on 13.01.2023. The cheque was returned on 13.01.2023 for the reason "Insufficient Fund" in the accused account with a memorandum. The complainant has informed by his banker about the fact of the dishonored of cheque.

d) The accused have issued the cheque without sufficient fund and also knowing fully well the consequences thereof. The complainant has issued a lawyer notice on 18.01.2023 to the accused calling upom on him to repay the above said amount in respect of dishonored cheque. The notice was received on 20.01.2023 for the reason addresse cannot be located, but the accused never paid any amount. The complainant he has filed this complainant with in one month from the date of expiry of 15 days grace time given under the notice for the payment of said amount. Inspite of the same accused neither replied the notice nor required the amount. Hence this complaint.

3. *<u>Case of the accused as per evidence</u>*

The accused deined the entire allegations made against the accused in the compliant filed by the complainant. The accused has never borrowed any loan from the complainant herein. The cheque in question is not issued towards the repayment of legally enforceable debt. The complainant has misused the cheque. The complainant has not produced any evidence to prove debt. The complainant was served as Sub Inspector of Police at Sadras police station around 10 years. At that time the complainant herein was engaged in informal money dealing. The complainant used to give money to the persons living in and around Sadras and Kalpakkam area varing from Rs.10,00,000/- to Rs.50,00,000/- for interest at the rate of 3% permonth. The complainant forced the accused to collect the interest amount from the persons who borrowed money fromt the complainant herein. Since the complainant was served as Sub inspector of police the accused person with no other go done all the works as directed by the complainant. In that connection the complainant herein as got a cheque from the accused person.

4. On 09.01.2023 the complainant connected the accused person and said that the complainant faced loss of Rs.1,00,000/- due to the accused and directed to accused to get the said money from relevant person and hand over the same. Druing January 2023 the accused received the legal notice. Subsequently he contected the complainant and the complainant told him not to give any reply. Ther after the accused has received summons from the court, he also appeared before this court and contected the complainant the complainant said if he gives Rs.50,000/-. The complainant will withdraw the complaint. Beliveing words of the complainant the accused has paid Rs.50,000/- to the complainant through his bank account. Eventhen the complainant has not withdraw the present case.

5. On finding prima-facie case against the accused, he was summoned vide order dated 13.04.2023. 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 03.12.2024 to which he pleaded not guilty and claimed for trial.

6. 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. 148790 dt 25.12.2022 for a sum of Rs.3,00,000/- as Ex.P1.

2. Cheque Return memo dated 13.01.2023 as Ex.P2

3. Legal Notice dated 18.01.2023 as Ex.P3

4. Acknowledgment card Ex.P4

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

7. The Statement of the accused was recorded under Section 351(1)(b) of BNSS on 09.09.2025 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. He further stated that he has evidence on his side to lead. Then the matter was posted for defence evidence. The accused person Kamaraj was deposed as DW1, the complainant duly cross examined DW1, with that the defence side evidence was closed.

8. Final arguments of both sides heard, written arguments filed on the side of accused and the same is carefully perused. The submissions of both sides have been considered and the records of the case has been carefully perused.

9. 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, acknowledgement card, mandatory notice to the accused has been properly served. 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 offense under section 138 of NI Act.

10. On the other hand the counsel for the accused argued that the signature found in the cheques is not accused person’s signature. The complainant has not produced any evidence to prove the loan, the complainant herein with ill -intension filed this case using the security cheque, Issued for other money delaing. The accused is not liable to pay any amount to the complainant. Hence the ingredients of sec.138 of Negotiable Instrument Act has not been fulfilled. By cross examining PW1 and through the evidence of DW1, accused has rebutted the presumption under section 118 and 139. Hence the complaint against the accused is liable to dismiss.

11. Now the point that arise for the determination of this court is, whether the complainant had proved this 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.

12. 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 for more than 10 years even before the present case and 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.148790 dated 25.12.2022 and the cheque return memo dated 13.01.2023. 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 dated 18.01.2023 and Ackonledgement card.

13. 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. Whereas the DW1 has deposed that the signature found in the cheque is not that of his signature, the complainant has received the cheque from the accused for the security purpose 10 years back. Without any cause the complainant herein filed this case with ill intension. The counsel for the accused also argued inline with the deposition of DW1.

14. 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. The signature found in the impugned cheque is seems to be similar to the signature of accused made in questioning U/s.251 Cr.P.C, 351(1)(b) of BNSS, and signature found in the deposition. At this juncture it is the duty of the accused to prove the signature found in the cheque is not his signature but the accused has not taken any steps to prove the same.

15. Finally, this complaint has been filed within limitation period. 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.

16. 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."*

17. 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."

18. 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."*

19. 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."

20. 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."

21. 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.

22. 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 was served as Sub Inspector of Police at sadras police station around 10 years. At that time the complainant herein was engaged in informal money dealing. The complainant used to give money to the persons living in and around sadras and Kalpakkam area varing from Rs.10,00,000/- to Rs.50,00,000/- for interest at the rate of 3% permonth. The complainant forced the accused to collect the interest amoount from the persons who borrowed money fromt the complainant herein. Since the complainant was served as Sub inspector of police the accused person with know other go done all the works as directed by the complainant. In that connection the complainant herein as got a cheque from the accused person.

23. 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 the specific case of the accused is that he has not borrowed any sum from the complainant When the signature found in the ExR1 promissory note and the signature found in the impugned cheque were compared, both the signatures are very similar to each other.

24. Though the accused claims that he has not borrowed any amount from the complainant during the year 2019, the accused person has not disputed the execution of ExR1. Moreover there is no any leading question to PW1 against ExR1 and thereby the accused has failed to lead any convincing evidence to aid him in discharge of his onus, 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 unrebutted.

25. 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.3,00,000/- (Rupees Three 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 13th day of May 2026.

VALLIAMMA

Judicial Magistrate No.1
Digitally signed by VALLIAMMA
Location: Madurantakam
Date: 2026.05.13 17:09:23 +0530

Judicial Magistrate No.I,
Madurantakam.

Complainant side witness:-

PW-1 Dhanapal S/o.MannaGounder (The Complainant)

Complainant side Exhibits:-.

Ex.P.1	Bearing No. 148790 dt 25.12.2022 for a sum of Rs.3,00,000/-

Ex.P.2	Cheque Return memo dated 13.01.2023
Ex.P.3	Legal Notice dated 18.01.2023
Ex.P.4	Acknowledgment card

Accused side witness :

PW-1 Kamaraj, S/o.Chellaiya (The Accused)

Accused side Exhibits : NIL

VALLIAMMA

Judicial Magistrate No.1
Digitally signed by VALLIAMMA
Location: Madurantakam
Date: 2026.05.13 17:09:32 +0530

Judicial Magistrate No.I,
Madurantakam.

CC 81/2023

13.05.2026

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 Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) (Cheque amount Rs.3,00,000/- after deducting Rs.50,000/-the amount paid by the accused) 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