IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

Present: Thiru.S.Karthikeyan, M.A., M.L., M.Sc., P.G.D.C.F.Sc., P.G.D.D.F.,

Principal Sessions Judge.

Friday, the 17th day of July, 2026

Criminal Appeal No. 940/2025

(CNR No.TNCH01-016900-2025)

against

S.T.C.No. 7914/2022

(On the file of XXVII Metropolitan Magistrate,

at Saidapet, Chennai)

From what Court the appeal is preferred	:	XXVII Metropolitan Magistrate, Saidapet, Chennai.
Number of the case in that Court	:	S.T.C.No. 7914 / 2022
Number of the Appeal	:	C.A.No. 940/2025
Name and description of the Appellant	:	S. Suresh Khanna, S/o. Sugunakar, F-6, Gokul Adharsh Apartments, No.69/45, 7th avenue, Ashok Nagar, Chennai – 600 083.
Respondent's name in the appeal.	:	Mrs. Sundari, W/o. Mr. Gopal, F-1, Giriappa Road, T.Nagar, Chennai – 600 017.
The sentence and law under which it was imposed by the lower court	:	

The respondent/Accused not guilty of the offence punishable u/s. 138 of NI Act. The respondent/Accused is acquitted as per sec. 264 of Cr.P.C.

Whether confirmed, modified or reversed; and if modified the	:	In the result, the appeal is dismissed.

The Judgment passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in S.T.C.No. 7914/2022, dated 27.06.2025 is hereby confirmed.

Date of, or on which							
	Presentation	Filing	Notice issued by Court to appear	Bail bond if Appellant has been let out on bail.	Respondent ordered to appear.	Hearing	Judgment Dated
C.A.No. 940/ 2025	26.07.2025	28.07.2025	01.08.2025	--	26.08.2025	03.07.2026	17.07.2026

This appeal came up before this court on 03.07.2026 for final hearing in the presence of M/s.E.Prabu, S.Mohan, M. Peer Mohamed, K.Gowtham, M.Raghul, B.Vignesh, R.Shivsangar, Nandhakrishnan, Raghul Babu, J.Iswarya, counsel for the Appellant and M/s. A.Sachin Raja, P.Kalaiarasan, C.Thirumalai, M.Senthil Kumar, counsel for the respondent and upon hearing both sides and upon perusing the case-records and judgment of the trial court and having stood over for consideration till this date, this Court delivered the following:-

JUDGMENT

The present appeal is directed against the judgment of acquittal passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in S.T.C.No. 7914/2022, dated 27.06.2025.

2. The Circumstances, which leads to file the present appeal, are as follows:-

The Appellant/complainant herein has filed a private complaint before the learned XXVII Metropolitan Magistrate for the offence punishable u/s. 138 of Negotiable Instruments Act and the same was taken on file in S.T.C.No.7914/2022. The same was tried before the XXVII Metropolitan Magistrate and the learned trial court has found that the respondent not guilty and acquitted her by the Judgment dated 27.06.2025.

3) Aggrieved by the said decision, the Appellant/complainant herein is before this court on the following Grounds:

> *a) The Judgment of acquittal passed by the Trial Court is contrary to law and legally unsustainable. The Judgment of the Trial Court is patently palpable and per se perverse. The Judgment of acquittal is contrary to the dictum laid by the Hon'ble Supreme Court of India and our Hon'ble High Court.*
>
> *b) The learned trial judge erred in acquitting the respondent/Accused solely on the ground that the statutory notice (Ex-P3) did not specifically mention the amount demanded, thereby rendering the complaint non maintainable without reading Ex.P3 Notice as a whole and without taking into consideration that the notice specifically mentioned the cheque number and the date which was within the knowledge of the respondent as the cheque was dishonoured by his banker since the funds were insufficient in the respondents bank account.*
>
> *c) The learned trial judge erred in holding that the statutory notice (Ex P3) did not specify the amount demanded. A perusal of the notice clearly indicates that the complainant demanded repayment of the "legally enforceable debt" as per the dishonoured cheque (Ex-P1), which was explicitly described with its number, bank details, and account number. The notice, read as a whole, leaves no ambiquity about the amount demanded, as it directly correlates to the cheque for Rs. 3,75,000/-.*
>
> *(d) The learned trial judge ought to have seen that a notice need not use the exact words "cheque amount" if the demand is clear and unambiguous. In the present case, the notice explicitly referred to the dishonoured cheque and demanded repayment of the debt linked to it, which suffices under Section 138(b) of the Act. The learned magistrate ought to have seen that the respondent did not deny the issuance of cheque nor disputed his signatures or the details of amount, date that was mentioned in Ex.P1 cheque. The learned magistrate ought to have seen that, when the signatures are admitted, the presumption under Section 118 and 139 of the Negotiable Instruments Act that the cheque was issued for legally enforceable debt or liability gets attracted and it is the onus of the respondent to dislodge the presumption to shift the burden upon the complainant. However, the respondent had not let in any evidence to dislodge the presumption.*

(e) The learned magistrate ought to have upheld the credibility in mercantile transaction with respect to the Negotiable Instrument instead of acquitting the Accused on mere technicalities which did not shake the root of the case in prosecuting the respondent to his willful disobedience to the statutory notice. The Learned magistrate ought to have seen that, issuance of statutory notice is only to give an opportunity to the Accused to comply with the demand and to escape from the clutches of criminal prosecution and in this case the respondent/Accused is fully aware of the cheque and its date and the value that it bears and consciously did not raise any objections with respect to the value of the cheque in the entire proceedings and therefore, the dismissal of the complaint solely on the ground of alleged non-disclosure of cheque amount in the notice would only be doing violence to the statutory Object with which the prosecution for dishonor was made in the Act.

(f) The learned trial judge ought to have seen that substantive merits of the case to have been prioritized over a hyper-technical defect. The respondent/Accused never raised the issue of the notice's validity during the trial, and the court on its own considered this aspect dismissed the Complaint on this ground, which clearly shows that the respondent/Accused didn't have any ambiquity or doubt over the amount demanded in the statutory notice and the same conferring to the cheque amount. The learned trial judge ought to have seen that the legislative intent of Section 138 aims to deter dishonour of cheques and ensure credibility in commercial transactions. The learned trial judge ought to have seen the respondent's admission during cross-examination that he had borrowed money from the complainant and had only partially repaid it. This admission corroborates the appellant's case and establishes the respondent's liability in addition to the statutory presumption. The learned trial judge ought to have seen that, the purport of the statutory notice envisaged under the Act is to provide an opportunity for the drawer of the cheque to make right the wrong by repaying the cheque amount. When the notice discloses the information when read as whole and the drawer understands it perfectly as the respondent has not raised the issue of defect in the notice and still chose not to rectify the wrong, then the trial court ought not to have on its own raised this non - existent issue and ought not to have dismissed the complaint.

Hence it is prayed to set aside the order of Acquittal by the Hon'ble XXVII Metropolitan Magistrate at Saidapet, Chennai dated 27.06.2025 made in STC. No.7914/2022.

4. In this Appeal, notice was issued to the respondent. Respondent appeared through her counsel. Both side heard. Both sides submissions were perused and considered. Trial court records were called for and perused.

<u>5. Point for determination:-</u>

Whether the judgment of acquittal passed by the learned XXVII Metropolitan Magistrate, in S.T.C.No. 7914/2022, dated 27.06.2025 is sustainable?

<u>6. ANSWER</u> :

6. The appellant has presented the complaint before the learned XXVII Metropolitan Magistrate wherein he submitted as follows:-

a. In the year of 2010 one Velmurugan become walking friend to the complainant. The said Velmurugan introduced the Accused as his brother's wife. In the month of August 2015 the Accused have informed the complainant that she is in urgent need of money for a sum of Rs.3,75,000/-, in order to settle the debtors. The complainant informed her that he has no source to lend such huge amount. But the Accused persuaded him and promised to repay the money within a period of one year. Deceived by Accused false promise with a bonafide belief, by arranging money from his relatives, pledging jewels, friends and saving on 12.08.2015 the complainant paid to the Accused a total sum of Rs.3,75,000/- (Rupees Three Lakhs Seventy Five Thousand Only) at the residence of the complainant by way of cash.

b. After receiving the above amount, the Accused started to show her real colour and subsequently avoided the complainant and only gave evasive replies. After continuous insistent and demands at last the Accused accepted for repayment of money. On 19.12.2021 the Accused gave a cheque bearing No.381790 drawn on State Bank of India, South Boag Road Chennai Branch having in Accused's A/c No.31462642851 and requested the complainant to present the cheque based on the Accused instructions. After issuance of the cheque also, the Accused dodged the complainant and avoided repaying the money. Hence the complainant decided to lodge police complaint against Accused. Somehow the Accused gained knowledge about the same, frightened over the above, contacted the complainant and requested him to present the cheque on 15.07.2022 and Accused also assured that the cheque will be honoured on presentation.

c. Believing the Accused words on 15.07.2022, the complainant presented Accused at his bankers at Karur Vysya Bank, Ashok Nagar Branch in his Account No. 1278155000057650. To his shock and surprise on 16.07.2022 the said Cheque was returned with endorsement "FUNDS INSUFFICIENT" vide memo dated 16.07.2022. Immediately the complainant tried to contact the Accused but the Accused failed to respond, left out with no other alternative remedy he has constrained to issue statutory notice to Accused on 10.08.2022 and it was delivered to her on 12.08.2022. After receiving the statutory notice, till date the Accused -have not responded for the same.

d. Knowing well consequences regarding the offence under section 138 of Negotiable Instruments Act, the Accused has committed the offence and she is liable to be punished.

It is prayed that this Hon'ble court may be pleased to take cognizance of the complaint and to Register a case by issuing process to Accused, deal Severely with the Accused and punish the Accused in accordance with law. Order for the payment of compensation out of the fine amount by double the cheque amount that may be recovered under section 357 of Criminal Procedure Code and pass such further or other orders.

7. The appellant examined himself as P.W.1 and exhibited Ex-P.1 to P.4. On closure of evidence on the side of the appellant, the Respondent/Accused was examined under Section 313 (i)(b) of Cr.PC and the respondent denied the incriminating circumstances. The learned Magistrate, on going through the evidences projected on the side of the appellant, found that the statutory notice for dishonor of cheque has been issued without specifying the amount demanded to be paid. Therefore, the learned trial court has relied on the decision of the Hon’ble Apex Court in a case ***Suman Sethi Vs. Ajay K. Churiwal*** and another, reported in (2000) 2 SCC 380 and recorded the acquittal of the respondent.

8. The learned counsel for the Appellant contended that the law does not require that the notice to be in a specific format. The notice is to be read as a whole. If the Ex-P.3 demand notice was read as whole, it makes it very clear that the demand for cheque amount is made without any ambiguity and the Accused has also understood the

demand notice and contested the case. The learned counsel for the appellant contended that the respondent has not denied the execution of the cheque and therefore, the presumption u/s. 139 of NI Act is in favour of the appellant. The learned counsel for the appellant further contended that the respondent has not taken defence that the notice is vague and she was not in a position to understand the same. Therefore, according to the learned counsel for the appellant, the Judgment of the acquittal is erroneous and is liable to be set aside.

9. Before going into the validity of Ex-P.3, legal notice, it is useful to refer to Section 138 of the Negotiable Instruments Act and the same is extracted hereunder for easy reference:-

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account.-*
>
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

10. On careful reading of the said provision, it is palpably clear that only upon the compliance of the clauses (a), (b) and (c) to Proviso to Section 138 of NI Act, the offence deemed under Section 138 will become operative. Clause (b) to Proviso makes it very clear that the payee or the holder in due course of the cheque, as the case may be, shall make a demand of the payment of 'the said amount of money' by giving 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 unpaid. The said amount of money referred to in clause (b) to proviso makes further clear that the the demand shall be made in respect of the amount mentioned in the cheque.

11. In this case, it is to be seen whether Ex-P.3 notice satisfies the said proviso or not. Therefore, for better appreciation, Ex-P.3, demand notice is extracted herein below.

To
Mrs. Sundari,
W/o.Mr.Gopal,
F-1, GiriappaSalai,
T-Nagar, Chennai-600017.

Sir,

Under due instructions from my client Mr.S.Suresh Khanna S/o. Late. Mr.Sugunakar residing at F-6, Gokul Adharsh Apartments, 69/45, 7th Avenue, Ashok Nagar, Chennai 600 083, I hereby issue this following notice:-

i. My client states that, in the year of 2010 one Velmurugan become a walking friend to my client. The said Velmurugan introduced you as his brother's wife.

ii. My client states that in the month of August 2015 you have informed my client that you are in urgent need of money for a sum of Rs.3,75,000/-, in order to settle the debtors. My client informed that he has no source to lend such huge amount. But you persuaded my client and promised to repay the money within a period of one year. Deceived by your false promise with a bonafide belief, by arranging money from his relatives, pledging jewels, friends and saving on 12.08.2015 my client paid you a total sum of Rs.3,75,000/- (Rupees Three Lakhs Seventy Five Thousand Only) at the residence of my client by way of cash.

iii. My client states that after receiving the above amount you started to show your real colour. You started to avoid my client and only gave evasive replies. After continuous insistent and demands at last you accepted for repayment of money. On 19.12.2021 gave a cheque bearing Cheque No.381790 drawn at State Bank of India, South Boag Road Chennai Branch having in your A/c No.31462642851 and requested my client to present the cheque based on your instructions. After issuance of the cheque also you dodged my client and avoided repaying the money. Hence, my client decided to lodge police complaint against you. Somehow you gained knowledge about the same, frightened over the above you contacted my client and requested him to present the cheque on 15.07.2022 and you have assured that the cheque will be honoured on presentation.

iv. My client states that believing your words on 15.07.2022 my client presented your cheque bearing Cheque No.381790 dated 15.07.2022 having in A/c No.31462642851 drawn at State Bank of India, South Boag Road Chennai Branch at my client's bankers at Karur Vysya Bank, Ashok Nagar Branch in his Account No. 1278155000057650.

v. My client states that to his shock and surprise on 16.07.2022 the Cheque No.381790 dated 15.07.2022 A/c No.31462642851 drawn at State Bank of India, South Boag Road Chennai Branch issued by you was returned with an endorsement "FUNDS INSUFFICIENT".

vi. My client states when my client tried to contact you, you have failed to respond, left out with no other alternative remedy he has constrained to issue this statutory notice to you. Hence through this legal notice you are hereby called upon to repay the legally enforceable debt you are liable to pay to my client vide Cheque No.381790 dated 15.07.2022 in A/c No.31462642851 drawn at State Bank of India, South Boag Road Chennai Branch within 15 days from the date of receipt of this notice, failing which my client will be constrained to take appropriate criminal, other legal action u/s 138 of Negotiable Instrument Act against you and you will be held liable for all the cost and consequences thereof.

12. The learned counsel for the appellant contended that paragraph of the statutory notice specifically states that the respondent has borrowed a sum of Rs.3,75,000/-. According to the learned counsel for the appellant, paragraph 3, must be read in continuation of paragraph 2 and therefore, the cheque referred to therein should be

construed as having been issued towards the discharge of the said loan liability. The said contention cannot be accepted. Though paragraph 3 of the notice states that, after continuous insistence and demand, the respondent has accepted for repayment of money and issued a cheque dated 19.12.2021 bearing cheque No. 381790 drawn on State Bank of India India, South Boag Road, Chennai Branch, the notice conspicuously omits to specify the amount for which the cheque was issued. Therefore, from the plain reading of paragraph 3 of the statutory notice, it cannot be discerned whether the said cheque was issued towards discharge, in whole or in part, of the liability arising from the said loan.

13. Further, even in the concluding paragraph of the notice, the appellant has failed to specify the amount payable under the cheque. Instead, the respondent was merely called upon "to repay the legally enforceable debt that the respondent is liable to pay the cheque no. vide 381790 dated 15.07.2022, in A/c No.31462642851 drawn in State Bank of India, South Boag Branch". Thus, the notice does not contain a specific demand for the payment of the cheque amount as required under clause (b) to Proviso to Section 138 of NI Act. In the absence of a clear and unambiguous demand for the amount covered by the cheque, it cannot be said that the statutory requirement is fulfilled.

14. Though, the learned counsel for the appellant contended that the respondent has not taken such defence, the said contention cannot be accepted. It is incumbent upon the complainant to establish the foundational facts necessary to attract the offence under Section 138 of NI Act. The statutory requirement contemplated under the

proviso (a) to (c) to Sec. 138 of NI Act are mandatory, and only upon their due compliance the offence stand constituted. Mere dishonor of cheque by itself, does not attract criminal liability. It is the failure of the drawer to make payment of the cheque amount within the prescribed period after receipt of a valid statutory notice that completes the offence.

15. In the case in hand, as stated supra, the statutory notice does not contain a clear and unequivocal demand, for payment of the cheque amount. The demand is vague and ambiguous and therefore, does not satisfy the mandatory statutory requirement under clause (b) to Proviso to Section 138 of NI Act. Therefore, the trial court has justified in recording an order of acquittal in favour of the respondent. This court finds no reason to interfere with the said order of acquittal. Accordingly, this appeal is dismissed.

<u>16. Result:</u>

In the result, the appeal is dismissed. The Judgment passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in S.T.C.No. 7914/2022, dated 27.06.2025 is hereby confirmed.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this the 17th day of July, 2026

KARTHIKEYAN SHANMUGAM

Digitally signed by KARTHIKEYAN SHANMUGAM
Date: 2026.07.17 18:37:23 +0530

PRINCIPAL SESSIONS JUDGE.
CHENNAI