IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, DINDIGUL

Present: **THIRU. SWARNAM J. RAJAGOPALAN, B.A.B.L.,(HONS.)**

Additional District and Sessions Judge, Dindigul

Tuesday, the 21st day of July 2026

<u>CRIMINAL APPEAL NO. 73/2024</u>
(CNR.No.TNDG01-003698-2024)

1.	Trial Court	:	Judicial Magistrate Court No.III, Dindigul.
2.	Trial Court's Case No.	:	C.C. No. 23/2021
3.	Appellant's Name	:	K.Eswari (Age about 48 years) W/o.Karnan 31/7, Nalvar Illam, 3rd Street, Krishnarav Street, East Govindapuram, Dindigul District.
4.	Respondents' Name	:1.	1. Vadivel (Age about 33 years) S/o.Karuppaiah Poonaiyankalam Sanarpatti, Dindigul East Taluk, Dindigul District. 2. State through Public Prosecutor Dindigul.
5.	To what Offence the trial court passed the order and the sentence	:	U/S. 138 of N.I.Act. The accused is found guilty under section 138 of Negotiable Instruments Act and she is convicted and sentenced to undergo six months simple imprisonment as per section

			255(2) Cr.P.C. and also directed to pay Rs.10,00,000/- (Ten Lakhs Rupees – Cheque amount) as compensation to the complainant within a period of one month under section 357 (3) of the code of criminal procedure code in default to undergo simple imprisonment for one month. The period already undergone if any, by the accused person shall be set off u/s.428 of Crpc. No case property received in this case.
6.	Whether the order of the trial court is confirmed or modified	:	**CONFIRMED**
7.	Taken on file	:	30.08.2024
8.	Date of arguments heard	:	04.07.2026
9.	Date of Order	:	21.07.2026

This Criminal Appeal came on 04.07.2026 for hearing before this Court in the presence of Thiru. James Ilango, (DLSA) learned Counsel appearing for the Appellant, Thiru. T.Kennady, learned Counsel appearing for the 1st Respondent and of Thiru.S.Soosai Robert, Additional Public Prosecutor for the 2nd Respondent, after having heard arguments of both sides and on perusal of records and having stood over for consideration till this day, this Court delivers the following :

JUDGMENT

1. The instant Criminal Appeal has been preferred by the accused challenging the judgment of conviction and sentence dated 05.07.2024 passed by the learned Judicial Magistrate No.III, Dindigul, in C.C. No.23 of 2021, whereby the appellant/accused was found guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and was convicted and sentenced to undergo a simple imprisonment for six months and pay Rs.10,00,000/- (Ten Lakhs Rupees – Cheque amount) accordingly. Aggrieved by the said conviction and sentence, the present appeal has been preferred invoking the appellate jurisdiction of this Court.

2. **<u>Facts Leading to the Appeal:</u>**

   The case of the complainant, in brief, is that the accused, who is closely related to the complainant, approached him during May 2020 seeking financial assistance for meeting her family expenses. Believing the request made by the accused, the complainant allegedly advanced a hand loan of Rs.10,00,000/- on 01.05.2020, with an understanding that the same would be repaid within two months.

3. According to the complainant, since the amount was not repaid within the stipulated period, the accused issued Cheque No.198254 dated 12.07.2020 drawn on Syndicate Bank, Dindigul, for a sum of Rs.10,00,000/- towards discharge of the said liability.

4. The complainant presented the cheque through his banker, Canara Bank, Sanarpatti Branch, on 14.07.2020, but the cheque was returned unpaid on 21.07.2020 with the endorsement "Funds Insufficient." It is the further case of the complainant that upon contacting the accused over phone, the accused requested that the cheque be presented after some time on account of the financial difficulties arising out of the COVID-19 pandemic. Acting upon such request, the complainant re-presented the cheque on 22.09.2020, but it was again dishonoured on 24.09.2020 with the same endorsement.
5. Thereafter, the complainant caused a statutory notice dated 23.10.2020 demanding payment of the cheque amount. The notice was admittedly received by the accused on 26.10.2020. The accused sent a reply notice dated 19.11.2020, denying the entire transaction and disputing the liability. Since payment was not made within the statutory period, the complainant instituted the private complaint under Sections 138 and 142 of the Negotiable Instruments Act.
6. The learned Judicial Magistrate recorded the sworn statement of the complainant under Section 200 Cr.P.C., found a prima facie case took cognizance of the offence and, issued summons to the accused, and after the appearance of the accused, framed the substance of accusation and put forth the same to the accused. The accused denied the accusations and claimed to be tried.

7. <u>Evidence before the trial court</u>

During trial, the complainant examined himself as PW-1 and marked Exs.P-1 to P-6, namely:

- Ex.P-1 – Cheque dated 12.07.2020;
- Ex.P-2 – Bank return memo dated 21.07.2020;
- Ex.P-3 – Bank return memo dated 24.09.2020;
- Ex.P-4 – Statutory legal notice dated 23.10.2020;
- Ex.P-5 – Postal acknowledgment Card; and
- Ex.P-6 – Reply notice dated 19.11.2020.

No witness was examined nor any document produced on behalf of the accused.

8. In his chief examination, PW-1 reiterated the averments contained in the complaint and the statutory notice. During cross-examination, he admitted that the cheque transaction had taken place during the COVID-19 lock down period and that the accused's residence was situated about one and a half kilometres away from his residence. PW-1 specifically denied the suggestion that the cheque had originally been handed over by the accused to one Pandi, who was carrying on pawn-broking business, and that the complainant had subsequently misused the cheque owing to matrimonial disputes between himself and his wife, who is admittedly the sister's daughter of the accused.

9. PW-1 further deposed that he had sufficient financial capacity to advance the loan from his agricultural income as well as from his employment as a salesman in a ration shop. Though he admitted that he had not reflected the said transaction in his income-tax returns despite being aware of such requirement, he denied that he lacked the financial capacity to advance the loan.

10. The reply notice issued by the accused assumes significance. The accused consistently denied borrowing any amount from the complainant and specifically pleaded that the cheque had been entrusted to one Pandi in connection with pawn transactions and that the complainant, owing to strained matrimonial relationship with his wife, had colluded with the said Pandi and misused the cheque to falsely implicate the accused. Except such plea, no supporting material was placed before the trial Court.

11. The Learned Trial Judge after trial was pleased to hold that the cheque in question was issued by the accused and the consideration in presumed and then convicted the accused person for the sentence imposed.

12. **<u>Grounds of Appeal:</u>**

Assailing the judgment of conviction and sentence passed by the learned Judicial Magistrate No.III, Dindigul, the appellant/accused has preferred the present appeal contending that the learned trial Magistrate failed to appreciate the oral and documentary evidence in its proper perspective and erroneously convicted the appellant under Section 138 of the Negotiable Instruments Act. According to the appellant, the findings of the trial Court are based upon surmises and conjectures rather than upon a proper appreciation of the evidence available on record, rendering the judgment unsustainable in law.

13. The appellant would further contend that the learned Magistrate failed to assign due weight to the admissions elicited from PW1 during cross-examination. It is submitted that the complainant had nowhere disclosed either in the statutory notice or in his chief examination that he was possessed of sufficient financial means to advance a cash loan of Rs.10,00,000/- to the accused. Though during cross-examination PW-1 claimed that he derived agricultural income and was employed as a salesman in a ration shop, such explanation was introduced only at a later stage and, according to the appellant, was nothing but an afterthought. It is further contended that PW1 admittedly did not disclose the alleged cash transaction in his income-tax returns despite being aware of the statutory requirement to do so, which itself casts serious doubt upon the very existence of the alleged loan transaction.

14. The appellant has also raised a specific defence that there existed serious matrimonial disputes between the complainant and his wife, who is admittedly a close relative of the accused. Since the accused had supported the complainant's wife during such matrimonial discord, the complainant, harboring animosity against the accused, allegedly misused a cheque which

had earlier been entrusted by the accused to one Pandi in connection with pawn transactions. According to the appellant, the learned trial Court completely overlooked this probable defence and mechanically invoked the statutory presumption under the Negotiable Instruments Act.

15. The appellant would further submit that the presumption available under Sections 118(a) and 139 of the Negotiable Instruments Act is only a rebuttable presumption and that an accused is required to establish only a probable defence on the basis of preponderance of probabilities. According to the appellant, the defence raised in the present case was sufficient to rebut the statutory presumption, thereby shifting the burden back upon the complainant to independently establish the existence of a legally enforceable debt. Since the complainant had failed to discharge such burden, the conviction recorded by the trial Court is liable to be set aside. On the above grounds, the appellant prayed that the judgment of conviction and sentence be reversed and that the appellant be acquitted of the charge.

16.<u>Submissions of the Parties:</u>

After the appeal was taken on file, the learned counsel who had originally entered appearance on behalf of the appellant filed a memo dated 08.08.2025 reporting that he had no instructions from the appellant and sought permission to withdraw from the case. Recording the said memo, this Court directed issuance of notice to the appellant to secure her appearance and to make alternative arrangements for legal representation. However, the notice issued by this Court was returned unserved with the endorsement that no such addressee was found. Since the appeal is one arising out of a conviction and the appellant could not be left unrepresented, this Court, in order to ensure compliance with the constitutional mandate of a fair hearing and the principles of natural justice, appointed the Legal Aid Defence Counsel to represent the appellant. The learned Legal Aid Defence Counsel accepted the assignment, perused the entire records, advanced elaborate arguments on behalf of the appellant, and was heard in extenso. The learned counsel appearing for the respondent/complainant was also heard, and the entire records of the trial Court were carefully perused before disposal of the appeal.

17.The learned Legal Aid Counsel appearing for the appellant submitted that the defence required to rebut the statutory presumption is only one based upon preponderance of probabilities and not proof beyond reasonable doubt. Placing reliance upon the celebrated decision of the ***Hon'ble Supreme Court in Basalingappa v. Mudibasappa***, it was contended that the defence regarding the matrimonial dispute, misuse of the cheque and absence of proof regarding the complainant's financial capacity sufficiently rebutted the statutory presumption.

18. It was further argued that once such probable defence had been raised, the burden shifted back upon the complainant to independently establish the legally enforceable debt, which he had failed to do in this case.

19.Per contra, the learned counsel for the respondent submitted that the learned trial Magistrate had correctly appreciated the evidence and rightly invoked the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and filed his detailed written arguments. It was argued that the accused admittedly never disputed the signature found in the cheque. The contention regarding the COVID lockdown was also without merit, since admittedly the parties were residing within a short distance of each other and no complete prohibition on movement existed.

20.It was further submitted that the defence remained a mere suggestion without any legal evidence. The alleged pawn broker Pandi was not examined. No documentary evidence was produced. No complaint regarding loss or misuse of the cheque was ever lodged. No stop-payment instructions were issued to the bank. Consequently, the trial Court rightly rejected the defence and rightly convicted the accused.

21.Heard both sides. The entire records were carefully perused.

22.<u>Point for Determination:</u>

The following point arises for determination in this appeal:

Whether the judgment of conviction and sentence passed by the learned Judicial Magistrate No.III, Dindigul, in C.C.No.23 of 2021, convicting the appellant for the offence punishable under Section 138 of the Negotiable

Instruments Act, suffers from any illegality, perversity or misappreciation of evidence warranting interference by this appellate Court?

23.<u>Discussion and Reasons:</u>

Before adverting to the rival submissions, it is necessary to bear in mind the scope of an appeal against conviction under Section 138 of the Negotiable Instruments Act. Though the appellate Court possesses the power to re-appreciate the entire evidence independently, interference with the findings of the trial Court is warranted only when such findings are shown to be perverse, contrary to law, or unsupported by the evidence available on record. If the appreciation of evidence by the trial Court is found to be reasonable and in accordance with settled principles of law, the appellate Court would ordinarily refrain from substituting its own view merely because another view is also possible.

24.At the outset, it is not in dispute that Ex.P-1 cheque admittedly belongs to the account maintained by the accused. The defence has also not disputed the signature found in Ex.P-1 cheque. Once the execution of the cheque is either admitted or proved, the statutory presumptions contemplated under Sections 118(a) and 139 of the Negotiable Instruments Act immediately come into operation.

25.The principal defence of the accused is that the cheque had originally been entrusted to one Pandi, a pawn broker, and that the complainant, owing to matrimonial disputes with his wife, who is related to the accused, colluded with the said Pandi and misused the cheque.

25. This Court finds that the said defence remains a mere assertion without any legal evidence whatsoever. If really the cheque had been handed over to one Pandi, the accused could have very well examined the said Pandi before the trial Court. No explanation has been offered for not taking any steps to summon him as a witness. Likewise, no pawn receipt, account book, pledge register or any contemporaneous document has been produced to fortify her plea. Equally significant is the fact that no police complaint alleging misuse of the cheque was ever lodged by the accused. No stop-payment instructions were even issued to the banker or any communication of alleged misuse from the accused to either Pandi or the Complainant prior to the deposit of the cheque in question. These are natural and expected acts of a prudent person who apprehends misuse of a signed cheque. The complete absence of any such conduct considerably weakens the defence version.

26. The argument relating to the strained matrimonial relationship between the complainant and his wife also does not probabilise the defence. Even assuming that such matrimonial disputes existed, the same by itself cannot establish that the cheque was misused. Motive alone cannot substitute proof. The defence is required to place before the Court some acceptable material connecting the

alleged dispute with the cheque in question. No such material has been forthcoming.

27.The next contention raised by the appellant relates to the financial capacity of the complainant. PW-1 admittedly stated during cross-examination that he was deriving agricultural income and was also employed as a ration shop salesman. He further admitted that the transaction had not been reflected in his income-tax returns. This omission certainly enables the Court to scrutinize the complainant's version with greater care. However, such omission, by itself, cannot automatically rebut the statutory presumption once the execution of the cheque is admitted. Income-tax violations, if any, may have independent legal consequences, but they do not by themselves render an otherwise legally enforceable debt non-existent.

28.The appellant also contended that the complainant had not mentioned in the statutory notice or in the complaint regarding the source from which the amount of Rs.10,00,000/- was advanced. In the considered opinion of this Court, such omission is not fatal. A statutory notice under Section 138 is only intended to inform the drawer about the dishonour of the cheque and demand payment. It is not expected to contain every minute evidentiary detail relating to the source of funds. The omission to narrate the complainant's financial source in the notice cannot outweigh the statutory presumption, particularly when the defence has failed to probabilise her own version.

29.The submission that the alleged transaction could not have taken place during the COVID-19 lockdown also does not merit acceptance. PW-1 has categorically stated that the residence of the accused was only about one and a half kilometres away from his residence. No material has been produced by the defence to establish that movement between the residences was legally impossible on the relevant date. Mere reference to the lockdown, without more, cannot render the complainant's version inherently improbable.

30.A careful reading of Ex.P-6 reply notice further reveals that the defence now projected before the Court substantially rests upon the allegation of misuse of the cheque. However, except the bare allegation contained in the reply notice and suggestions put during cross-examination, no substantive evidence has been let in to probabilise the same. It is well settled that suggestions put in cross-examination do not by itself constitute evidence.

31.In the present case, the foundational facts necessary to invoke the statutory presumption stand substantially established. The cheque in question admittedly belongs to the account maintained by the accused. The accused has nowhere disputed her signature appearing on Ex.P-1 cheque. The dishonour of the cheque for the reason "Funds Insufficient" is evidenced through Exs.P-2 and P-3. The issuance and service of the statutory demand notice under Exs.P-4 and P-5 also remain undisputed. Thus, the complainant has established all the foundational facts required under Section 138 of the Negotiable Instruments Act.

32.Once these foundational facts stand established, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act automatically come into operation. It is now well settled by the decisions of the ***Hon'ble Supreme Court in Rangappa v. Sri Mohan, Bir Singh v. Mukesh Kumar, and Basalingappa v. Mudibasappa***, that the presumption extends not only to the execution of the cheque but also to the existence of a legally enforceable debt or liability. Although such presumption is rebuttable, the accused must bring on record such facts and circumstances as would make the non-existence of the liability reasonably probable. Mere denial or explanation unsupported by acceptable evidence would not suffice as already observed by me supra.

33.Another important circumstance which deserves notice is that the accused has not disputed the receipt of the statutory notice. Though a reply notice was issued, the accused did not choose to enter the witness box. While it is true that an accused cannot be compelled to depose, once a specific plea involving facts within her exclusive knowledge is raised, namely, entrustment of the cheque to Pandi and alleged misuse thereof, the failure to substantiate such plea by examining herself or any supporting witness assumes significance while assessing whether the statutory presumption has been rebutted.

34.It is also pertinent to note that no evidence has been placed to show that the cheque had been lost, stolen or otherwise wrongfully retained by the complainant. There is no contemporaneous complaint to the police, no legal notice issued to Pandi alleging misuse, and no correspondence with the bank seeking to prevent encashment of the cheque. These omissions constitute relevant circumstances while appreciating the probability of the defence.

35.This Court is mindful of the principle laid down in ***Basalingappa v. Mudibasappa*** that the accused is not required to prove the defence beyond reasonable doubt. Nevertheless, the defence should be supported by some acceptable material capable of creating a reasonable probability against the existence of the debt. In the present case, the defence remains only at the level of suggestions and assertions without any corroborative evidence. Such a defence falls short of the standard of preponderance of probabilities contemplated under law.

36.The learned trial Magistrate has appreciated the oral and documentary evidence, considered the defence put forth by the accused, and assigned cogent reasons for rejecting the same. This Court does not find any perversity, misreading of evidence, or erroneous application of law in the conclusions reached by the trial Court. On the contrary, the findings are fully supported by the evidence on record and are consistent with the settled legal principles governing prosecutions under Section 138 of the Negotiable Instruments Act.

37.In the upshot, this Court holds that the appellant has failed to rebut the statutory presumptions available in favour of the complainant, and the conviction recorded by the learned trial Magistrate calls for no interference in this appeal and accordingly the appeal stands dismissed.

38.**In the result,** this appeal is dismissed and the judgment of the learned Judicial Magistrate No.III, Dindigul in C.C. No.23 of 2021, dated 05.07.2024 is upheld confirming the conviction and sentence imposed against this accused/appellant. The accused is directed to surrender before the trial Court in 15 days and she shall be committed to prison to undergo the period of sentence imposed. If the accused failed to surrender within 15 days, the trial Court shall issue Non Bailable Warrant and to secure her in order to commit her to prison to undergo the remaining period of sentence.

Directly dictated by me to the google docx, typed by it, corrected and pronounced by me in Open Court on this the 21st day of July 2026.

SWARNAM J RAJAGOPALAN

Digitally signed by SWARNAM J RAJAGOPALAN
Date: 2026.07.23 16:24:12 +0545

Additional District and Sessions Judge,
Dindigul.