



**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.

Wednesday, the 25th day of March 2026

CRIMINAL APPEAL NO. 89/2024

(CNR.No.TNDG01-004891-2024)

1. Trial Court : District Munsif -cum-Judicial Magistrate Court, Natham.
2. Trial Court's Case No. : C.C. No. 16/2019
3. Appellant's Name : 1.Mohammed Udhuman Ali (age 49/2024)
S/o.S.M.Musthafa,
Saliya Nagar,
Mullai Nagar,
Natham Town,
Dindigul District.
4. Respondents' Name :1. 1.P.Dhanaraj (age 58/2024)
S/o.Paramasivam,
Kuttur,
Punnapatti Village,
Natham Taluk,
Dindigul District.

2.The Public Prosecutor,
Principal District and Sessions Court,
Dindigul.
5. To what Offence the trial court passed the order and the sentence : U/S. 138 of N.I.Act.

The accused is hereby convicted for the offense under Section 138 of the N.I.Act and is sentenced to one year of rigorous imprisonment. The accused is directed to pay the check amount of Rs. 7,00,000/- to the complainant as compensation under

Section 357(2) of the Code of Criminal Procedure. In default of payment of the said compensation, the accused shall undergo an additional one month of rigorous imprisonment.

1 Whether the order of the : **CONFIRMED**
trial court is confirmed or
modified

6. Taken on file : 03.10.2024
7. Date of arguments heard : 12.03.2026
8. Date of Order : 25.03.2026

This Criminal Appeal came on 12.03.2026 for hearing before this Court in the presence of Thiru.J.Rajasekaran, Thiru.K.V.Ravichandran, Thiru.T.K.P.Jeevan and Thiru.C.G.Ramkumar learned Counsel appearing for the Appellant Thiru.A.Jahangir learned Counsel appearing for the Respondents and upon perusal of written arguments on both sides and upon perusing the material records and having stood over for consideration till this day, this Court delivers the following :

JUDGMENT

1. This Criminal Appeal is directed against the judgment dated 29.08.2024 passed by the Learned District Munsif-cum-Judicial Magistrate, Natham, in C.C. No.16 of 2019. The respondent herein, as complainant, had initiated proceedings under Section 138 of the Negotiable Instruments Act against the appellant/accused.
2. The case of the complainant, in brief, is that the accused had borrowed a sum of Rs.7,00,000/- and, in discharge of the said liability, issued a cheque dated

08.11.2018 bearing Cheque No.042033 drawn on his savings account No.241100050300751 maintained with Tamil Nadu Mercantile Bank, Natham Branch. The said cheque, when presented for encashment on 03.01.2019 through City Union Bank, Natham Branch, was returned unpaid with the endorsement “stop payment”.

3. Subsequently, the complainant caused a statutory legal notice dated 22.01.2019 to be issued through counsel, calling upon the accused to repay the cheque amount. The said notice was duly served on the accused on 23.01.2019. However, despite receipt of the notice, the accused failed to make payment within the statutory period. Consequently, the complainant initiated prosecution by filing a complaint in C.C. No.16 of 2019 under Section 200 Cr.P.C. read with Section 138 of the Negotiable Instruments Act before the learned Trial Court.
4. On the side of the complainant, the complainant examined himself as PW1 and exhibits P1 to P6 were marked.

Ex.P1 – The Original Cheque issued by the Accused from the TamilNadu Mercantile Bank, Natham Branch. (Cheque No.042033).

Ex.P2 – The Original Pay-in Slip used by the Complainant to deposit the said cheque at the City Union Bank, Natham Branch.

Ex.P3 – The Original Cheque Return Memo stating the reason for the return of said cheque.

Ex.P4 – Office copy of the Legal Notice sent by the complainant to the Accused, along with the Postal Receipt.

Ex.P5 – Online acknowledgment copy confirming the Accused received the legal notice.

Ex.P6 – Certified copy of the Reply Notice sent by the Accused's lawyer.

On the side of the Defence, the accused examined himself as DW1 and Exhibits D1 to D5 were marked.

Ex.D1 – Certified copy of the Plaint the case No. O.S.92/2018 filed in the District Munsif Court, Natham.

Ex.D2 – Notice of acceptance regarding the stop payment of the transaction dated 26.11.2018 issued by Tamil Nadu Mercantile Bank.

Ex.D3 – Cheque book/record slips for Cheque Nos.042021 to 042040.

Ex.D4 – Receipt books for sales conducted during the Periods: 01.02.2015 to 30.05.2016 and 15.07.2018 to 27.08.2018.

Ex.D5 – The entry recorded on 30.12.2017 in the savings account passbook held in the name of the respondent, M. Mohamed Usman Ali.

5. Upon consideration of the oral and documentary evidence adduced by the parties, the Learned Judicial Magistrate, by judgment dated 29.08.2024, was pleased to hold that the complainant had successfully established the case of dishonour of cheque as the execution of the cheque having not been denied by the accused, the learned Trial Judge drew the statutory presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant. It was further held that the accused had failed to rebut the said presumption by raising a probable defence, and consequently, no burden stood shifted back to the complainant to prove the existence of consideration independently.

6. Accepting the case of the complainant, the learned Trial Judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year. The Trial Court further directed the accused to pay compensation of Rs.7,00,000/- under Section 357(2) Cr.P.C., in default to undergo simple imprisonment for a further period of one month.

7. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the accused. The gist of the grounds raised in the memorandum of appeal is as follows:

8. The appellant would contend that the learned Trial Judge has failed to properly appreciate the materials placed on record by the defence. According to the appellant, there was no direct transaction or consideration or legally enforceable liability

between the complainant and the accused. It is his specific case that the cheque in question was not issued to the complainant, but was handed over to one Ganesan, who is a party to O.S. No.92 of 2018, and that the said cheque has been misused in collusion with the complainant.

9. It is further contended that the complainant has failed to establish his financial capacity to advance a sum of Rs.7,00,000/-, as no documentary evidence such as bank statements, income records, or proof of source of funds has been produced. The appellant would also submit that the amount allegedly involved is substantial and improbable in the absence of proof of means of the complainant.

10. The appellant also contends that the learned Trial Judge has failed to consider material contradictions in the evidence of the complainant and has erroneously drawn the presumption under Section 139 of the Act without the foundational facts being satisfactorily established. It is therefore submitted that the conviction and sentence imposed by the Trial Court are unsustainable in law and on facts, and the appellant prays that the judgment of the Trial Court be set aside and he be acquitted of the charge under Section 138 of the Negotiable Instruments Act.

11. Point for Determination

The sole point for determination that arises for consideration in this appeal is:

Whether the learned Trial Judge was right in holding that the complainant has established the legally enforceable liability of the accused under Section 138 of the Negotiable Instruments Act and consequently convicted

him, and if so, whether the said finding suffers from any perversity or illegality warranting interference by this Court?

12. Submissions on behalf of the Appellant:

The learned counsel appearing for the appellant/accused would submit that the conviction recorded by the Trial Court is unsustainable both on facts and in law. According to the appellant, the cheque in question was not issued in favour of the complainant towards any legally enforceable debt. It is contended that the accused had borrowed only a sum of Rs.80,000/- from one Ganesan, and the cheque was issued to the said Ganesan in that connection. The said cheque, it is alleged, has been misused by the complainant in collusion with the said Ganesan.

13. It is further contended that there was no privity of contract or direct transaction between the complainant and the accused, and therefore, no liability could be fastened upon the accused. The learned counsel would also submit that the complainant has failed to establish his financial capacity to advance a sum of Rs.7,00,000/-, as no supporting documents such as bank statements, income records, or proof of source of funds have been produced.

14. The appellant would further contend that material contradictions in the evidence of the complainant have not been properly appreciated by the Trial Court. It is also argued that the complainant himself has admitted acquaintance with the said Ganesan during cross-examination, which probalises the defence version. The

pendency of O.S. No.92 of 2018 involving the said Ganesan has also not been given due consideration by the court below.

15. According to the appellant, the documents marked as Exs.P1 to P6 are either not connected to the accused or have been fabricated with the assistance of the said Ganesan. In such circumstances, the learned Trial Judge ought not to have invoked the presumption under Section 139 of the Negotiable Instruments Act. It is therefore submitted that the impugned judgment is liable to be set aside and the appellant is entitled to acquittal.

16. Submissions on behalf of the Respondent:

Per contra, the learned counsel appearing for the respondent/complainant would submit that the execution of the cheque is admitted by the accused, in as much as the signature in the cheque has not been disputed. Once execution is admitted, the statutory presumption under Section 139 of the Negotiable Instruments Act automatically arises in favour of the complainant.

17. It is the contention of the respondent that the defence put forth by the accused is wholly unsubstantiated. Though the accused claims that the cheque was issued to one Ganesan and has been misused, no steps have been taken by the accused to substantiate the said claim. Significantly, the accused has neither examined the said Ganesan as a witness nor initiated any legal proceedings or lodged any complaint alleging misuse of the cheque.

18. It is further pointed out that the accused, examined as DW1, has admitted in cross-examination that no action was taken against the said Ganesan for non-return of the cheque. Moreover, in Ex.D2, namely the stop payment instruction given to the bank, the accused has merely stated that the cheque was “ Reported lost” and has not been allegedly misused by any third party. This, according to the respondent, clearly falsifies the defence now put forth by the accused.

19. The learned counsel would submit that the accused has failed to rebut the statutory presumption even on the touchstone of preponderance of probabilities. Mere denial of liability is insufficient to discharge the burden cast upon the accused. In support of this contention, reliance is placed on the decision of the **Hon’ble Supreme Court in *Bir Singh v. Mukesh Kumar, (2019) 4 SCC 794***, wherein it has been held that the burden of rebutting the presumption lies upon the accused and the same cannot be discharged by a mere bald denial.

20. It is therefore submitted that the Trial Court has rightly appreciated the evidence and convicted the accused, and the same does not call for any interference in the present appeal by this Court.

21. **Discussion and Findings:**

It is an admitted and undisputed fact that the cheque in question bears the signature of the accused. Once the execution of the cheque is admitted, the statutory presumption arises that the cheque was issued towards discharge of a legally enforceable debt or

liability. The burden therefore shifts upon the accused to rebut the said presumption by placing before the Court a probable and acceptable defence.

22. In the present case, the defence of the accused is that the cheque was not issued to the complainant but was handed over to one Ganesan in connection with a loan of Rs.80,000/-, which was subsequently repaid by the accused to him, and that the said cheque has been misused. However, this defence, on a careful scrutiny, does not inspire the confidence of this Court, for the reasons given in the succeeding paragraphs.

23. A significant circumstance that militates against the defence version is Ex.D2, the stop payment instruction issued by the accused to his banker reported on 26.11.2018. In the said document, the accused has not alleged any misuse of the cheque by a third party, but has merely stated that the cheque was "Reported lost." This contemporaneous document assumes considerable evidentiary value, as it reflects the immediate conduct and version of the accused at the relevant point of time. The subsequent plea of misuse by a third party, which finds no place in Ex.D2, is therefore clearly an afterthought and renders the defence inherently inconsistent and unreliable.

24. Further, the conduct of the accused subsequent to the alleged misuse of the cheque is wholly unnatural. Despite claiming that the cheque was not returned by the said Ganesan and was misused, the accused has admittedly not taken any action against him. No complaint has been lodged, no legal proceedings have been proved to

be initiated, and no steps have been taken to recover the cheque or to prevent its misuse. The plaint filed by accused in Ex.D1 was for the relief of permanent injunction restoring the Defendant not to vacate the plaintiff from his shop, in which he states about the handing over of the cheque in question to the Ganesan. However such Ganesan was not summoned and examined by the accused. Such inaction, particularly when the cheque amount is substantial, is inconsistent with the conduct of a prudent person and materially weakens the defence put forth.

25. Another crucial aspect is that the accused has failed to examine the said Ganesan, who is projected as the central figure in the defence story as already abserved by me. When the entire defence hinges upon the alleged transaction with Ganesan, the non-examination of such a material witness gives rise to an adverse inference against the accused. The Court is therefore constrained to hold that the defence has not been substantiated even to the minimum standard required.

26. The contention regarding absence of financial capacity of the complainant also does not merit acceptance in the facts of the present case. Once the execution of the cheque is admitted, the presumption extends not only to the issuance of the cheque but also to the existence of consideration. The burden lies on the accused to raise a credible doubt regarding the financial capacity of the complainant. In the absence of any substantive material elicited in cross-examination or any independent evidence placed by the defence, a mere suggestion or bald assertion regarding lack of financial capacity cannot be a ground to dislodge the statutory presumption.

27. It is also to be noted that the defence taken by the accused suffers from internal inconsistencies. On the one hand, the accused claims that the cheque was issued to a third party for a smaller amount and repaid; on the other hand, the contemporaneous record shows that the cheque was reported as lost to his banker. These mutually destructive stands further erode the credibility of the defence and reinforce the presumption operating in favour of the complainant.

28. The standard required for rebuttal is that of preponderance of probabilities; however, even such a standard has not been met in the present case. The accused has failed to place before this the learned Trial Judge any cogent or reliable material to probalilise his defence. In such circumstances, the presumption remains unrebutted.

29. This Court finds that the learned Trial Judge has thus evaluated the evidence, correctly applied the statutory presumption, and arrived at a well-reasoned conclusion. The findings are based on proper appreciation of evidence and do not suffer from any perversity, illegality, or misapplication of law.

30. Accordingly, this Court holds that the complainant has successfully established the offence under Section 138 of the Negotiable Instruments Act, and the conviction and sentence imposed by the Trial Court are liable to be affirmed as no grounds are made out for its interference.

In the result, this appeal is dismissed and the judgment of the learned District Munsif cum Judicial Magistrate, Natham in C.C. No.16/2019, dated 29.08.2024 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 he 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 him in order to commit her to prison to undergo the remaining period of sentence.

Dictated to the stenographer, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 25th day of March 2026.

Additional District Judge,
Dindigul.