IN THE COURT OF THE JUDICIAL MAGISTRATE NO.II

Present: C.DINESH KUMAR B.A.LL.B(Hons)., LL.M

Judicial Magistrate No.II, Dindigul

On Tuesday, the 28th day of July 2026

Calender Case (C.C) No. 221 of 2016

CNR No. TNDG03-001732-2016

N. Manisekaran, (41/2016),
S/o. Naganayagovder,
Door No. 14/25K,
5th Street, Nagal Puthur,
Dindigul. ... Complainant

/ Vs /

B. Muthuchamy, (55/2016),
S/o.Poppagovder,
Muthamman Complex,
R.S Road, Vadamadurai,
Vedasanthur,
Dindigul. ...Accused

Case – Summary

Statement as per rule 106 of criminal rules of practice, 2019		
S.No	**Description**	**Details**
1.	Serial Number	Calender Case (C.C) No.221 of 2016
2.	Name of the Police station and crime Number	Not applicable
3.	Name of the accused	B. Muthuchamy S/o.Poppagounder,
4.	Father's Name	

<table>
<tr><td>5.</td><td>Occupation</td><td colspan="3" rowspan="3">Muthamman Complex,
R.S Road, Vadamadurai,
Vedasanthur, Dindigul
55/2016</td></tr>
<tr><td>6.</td><td>Residence</td></tr>
<tr><td>7.</td><td>Age</td></tr>
<tr><td>8.</td><td>Date of occurrence</td><td colspan="3">Not applicable</td></tr>
<tr><td>9.</td><td>Date of complaint</td><td colspan="3">30.09.2015</td></tr>
<tr><td>10.</td><td>Date of apprehension</td><td colspan="3">Nil</td></tr>
<tr><td>11.</td><td>Date of release on bail</td><td colspan="3">Nil</td></tr>
<tr><td>12.</td><td>Date of commitment</td><td colspan="3">Not applicable</td></tr>
<tr><td>13.</td><td>Date of questioning and plea of the accused</td><td colspan="3">On 29.08.2016 the accused questioned on substance of accusation U/s. 138 NI Act. Accused denied the case as false and pleaded not guilty and claims to be tried.</td></tr>
<tr><td rowspan="4">14.</td><td rowspan="4">Date of commencements of trial -The date of examination – in chief and cross-examination of a witness</td><td>Witnesses</td><td>Examined in – Chief</td><td>Examined - in Cross</td></tr>
<tr><td>CW1</td><td>30.09.22</td><td>08.08.25</td></tr>
<tr><td>DW1</td><td>17.04.26</td><td>17.04.26</td></tr>
<tr><td>DW2</td><td>28.04.26</td><td>28.04.26</td></tr>
<tr><td>15.</td><td>The date of examination of the accused under section 313 of the code – Closed of trial</td><td colspan="3">03.01.2023</td></tr>
<tr><td>16.</td><td>Sentence on order</td><td colspan="3">In the result, the accused is found guilty for the offence U/s. 138 of Negotiable Instruments act and the accused is convicted under Section 248(2) Cr.P.C and the accused is sentenced to undergo simple imprisonment for the period of One Year, and the accused is</td></tr>
</table>

		directed to pay the fine of Rs.4,00,000/- (Cheque Amount) (Rupees Four Lakhs only) as compensation under section 357 of Cr.P.C. to the complainant within two month, in default the accused shall undergo further period of two months simple imprisonment. The custody period if any already undergone by the accused shall be set off under Section 428 of Cr.P.C.
17.	Service of copy of Judgment or finding on accused	No. The Judgment was uploaded on CIS portal and made available in E- Courts
18.	Explanation of delay	There is no inordinate in the disposal of the case
19.	Property order	No case property was seized and hence no property order passed.

This case having been taken on file 21.06.2016 and coming up for final hearing before me today in the presence of Advocate Thiru.R.Murugesh,B.Sc.,B.L., for the Complainant and the accused being defended by Advocate, Thiru.T.Balachandiran, B.A., B.L., and the case having stood over for consideration till this day on considering the material papers, this court delivered the following

JUDGMENT

The complainant had filed a private complaint under section 200 of Cr.P.C, against the accused under Section 138 of the Negotiable Instruments Act.

I. THE CASE OF THE COMPLAINANT IN BRIEF IS AS FOLLOWS:

1. The case of the complainant is that, the accused at borrowed an amount of Rs.4,00,000/- on 07.06.2015 for his expenses. And the accused told the complainant that he would return back the money within 1 month and thereafter one month the accused came to the complainant house and accused issued a cheque (Cheque No. 003812) dated 29.07.2015 which belongs to Canara Bank, Vadamadurai Branch and told the Complainant to present the cheque in the bank and withdraw the amount. And as per the request of the accused, the complainant had presented a cheque in State Bank of India, Dindigul Nagal Nagar Branch for collection on 29.07.2015 and the same was returned on 01.08.2015 for reason of “Funds Insufficent” and thereafter the complainant had sent legal notice through his advocate on 26.08.2015 and the accused had received the notice on 27.08.2015. The accused had not repaid the amount till date. Issuing a cheque without honouring the same is punishable offence under this act and thus the accused had committed the offence punishable U/s. 138 of the Negotiable Instruments. Hence, the complainant has preferred this complaint against the accused.

1. After receipt of the complaint, the complainant examined upon oath and after recording the sworn statement, the court considers that there is a prima facie case and there is sufficient ground for proceeding against the accused. The complaint was taken on file and summons were issued for the appearance of the accused. On the appearance of accused, copies were furnished to him and substance of the offence stated to him and the accused asked whether he pleads guilty or has any defence to make. The accused pleaded not guilty and claims to be tried and thus posted for the Complainant's side evidence. As per the dictum laid down in “**Indian Bank Association case (2014 (2) SCC (Cri) 652)”** in Para. 18 and as directed in the latest dictum in “**M/s. Meters and Instruments Private Limited Case reported in CDJ 2017 SC 1113”** the complainant examined as PW1 and had let in his pre cognizance evidence in the form of proof affidavit and had marked the documents. The Proof affidavit was received and the exibits Ex.P1 to Ex.P5 were marked.

II. QUESTIONING U/S. 313(1)(b) OF Cr.P.C 1973

2. On completion of the evidence on the side of the complainant, The incriminating evidence appearing against the accused given by the complainant side witnesses were read over and explained to the accused U/s.313(1)(b) Cr.P.C. and accused denied the evidence as false and complainant side evidence closed.

3. On the side of defence, the DW1, DW2 was examined. Exhibits D1 was marked on the side of the Defence.

III. POINT FOR DETERMINATION

4. The point for determination is whether the complainant has proved his case, that the accused issued a cheque for discharge of legally enforceable debt and the same being dishonoured ?

<u>IV. ARGUMENT ADVANCED</u>

5. The complainant argued that, through the documents, he very well proved his case beyond any reasonable doubt and proved the initial burdern and also argued that, the accused has not rebutted the presumption by means of probable defence. And through the evidence adduced by the complainant it is well proved that it is a legally enforceable debt and the accused does not prove or rebutted the evidence of complainant through any of the document. Hence the accused is liable to be punished under sec.138 of N.I. Act.

6. The counsel for the accused argued that, the debt is not a legally enforceable debt and also argued that, the complainant had no any source of income to give the cheque amount to the accused which is very well proved from the Ex.D1 and moreover the cheque was not issued to the complainant rather it was issued to the person namely subbiah for the security for the chit fund. And also argued that, the complainant to prove that the debt is legally enforeceable debt. Hence, prayed to dismiss the complaint.

<u>V. APPRECIATION OF EVIDENCE AND FACTS</u>

7. Before going in to the facts of the case, let us consider the ingredients to prove the case under sec.138 of Cr.P.C. "**In Kusum Ingots & alloys Ltd. Vs. Pennar Peterson Securities Ltd, (2000) 2 SCC 745"**, the Hon'ble apex court explained the ingredients of the offence under section 138 N.I Act as under:

8. “On a reading of the provisions of section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

i. A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability.

ii. That 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.

iii. That cheque is returned by the bank unpaid, either because 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;

iv. The payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

v. 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;” case law initial burden.

10. It is a well settled legal position that the presumption U/s.118 and 139 N.I.Act is in favour of the holder of cheque. And it is a rebuttable presumption and the burden lies on the accused to prove that he had no liability or debt upon the accused on the date of issue of the cheque.Presumptions U/s. 118 and 139 of N.I.Act are rebuttable presumptions. The pre-condition to claim the statutory presumption is to prove the execution of instrument.

11. Here in case in hand the existence of liability is proved since the execution of cheque by the accused for the debt it is very well proved on the side of complainant through his evidence and documents corroborating the transactions and the execution of cheque. Further, the evidence given by the complainant who is examined as PW1 and PW2 are cogent and co-related to the transactions and hence the presumption is drawn in favour of complainant and now, it is the duty of the accused to rebutt the presumptions drawn from the complainant side.

12. **Bir singh vs Mukesh kumar, (2019) 4 Supreme Court Cases 197, it was held as follows:**"Section 139 mandates that unless the contrary is proved, it is to be presumed that the holder of a cheque received the cheque of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability. However, the presumption is rebuttable by proving to the contrary. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused to prove by cogent evidence that there was no debt or liability. Mere denial or rebuttal by the accused was not enough."

13. "**K.N. Beena, Appellant v. Muniyappan and another, AIR 2001 SC 2895**". it was held that, in a complaint U/s.138 the court has to presume that the cheque had being issued for debt or liability, this presumption is rebuttable and however the burden of proving that a cheque had not been issued for a debt or liability is on the accused, denial/ averments in the reply by the accused are not

sufficient to shift burden of proof on to the complainant, accused has to prove in trial by leading cogent evidence that there was no debt or liability.

14. In the case in hand, in order to rebutt the presumption, the defence taken by the accused, in the cross examination of PW1 is that, the cheque was not issued to the complainant, rather it was issued to the person namely Subbiah as a security for the chit fund transaction and there is no any debt borrowed form the complainant. But there is no any evidence to prove the above fact on the side of accused. And moreover, Subbiah who was examined as DW1, in his chief examination, he denied the above fact and deposed that, the accused does not issued any cheque to the subbiah. And another defence taken by the accused is that, there is no any source of income for the complainant to give the cheque amount to the accused. And further DW1 who was examined as a bank manager, through the bank statement of 2015 marked, as Ex.D1, he deposed that, there is no any highest amount or the cherque amount being transacted. But though, there is no any evidence to show the income or the transcation in the complainants bank statement, the accused had not rebutted the presumption of holder of cheque, that how the cheque was in the hands of the complainant, and while the accused does not shift the initial burden, the defence of the source of income, would not lead to shift the burden on side of complainant. Hence, from the above discussion, it is clear that, no evidence on side of accused to prove that, the debt is not the legally enforceable debt.

15. But as aforesaid mere denial or any averments is not enough to rebutt the presumption in favour of complainant. And there is no any evidence or documents to rebutt the presumption. Hence it cannot be concluded that, the accused has rebutted the presumption arisen infavour of the complainant and hence, shifting of reverse burden on the complainant will not arise.

16. In the light of the aforesaid discussion this court comes to conclusion that Ex.P1 cheque was issue by the accused for discharging existing legally enforceable debt and on presentation, (collection) and same was returned as “Funds insufficient” As per Ex.P3. So Statutory notice was issued by the complainant As per Ex.P4, and accused does not repaid the amount and hence the complainant had proved the ingredients U/s.138 of the Negotiable Instruments act. Hence presumption was drawn infavour of complainant. The contention of the defence side not proved by probable evidence, except by the way of mere denial, nothing proved by the accused. Hence the defence side does not rebutt the presumption which is drawn infaour of complainant.

17. Having considered the entire evidence, documents and the submissions made by the counsels, this court comes to conclusion that the complainant had succesfully proved this case and hence it is concluded that the accused is found guilty for the offence U/s. 138 of NI Act.

V. DECISION

18. Therefore this court comes to conclusion that the accused is found guilty for the offence U/s. 138 of Negotiable Instruments act and this court does not thinks fit that, the order to release the accused on probation of good conduct after due admonition and on considering the facts and circumstances and nature of offence this court is of opinion that the accused was not given benifit U/s. 360 of Cr.P.C.

19. In the result, the accused is found guilty for the offence U/s. 138 of Negotiable Instruments act and the accused is convicted under Section 248(2) Cr.P.C and the accused is sentenced to undergo simple imprisonment for the period of One Year, and the accused is directed to pay the fine of Rs.4,00,000/- (Cheque Amount) (Rupees Four Lakhs only) as compensation under section 357 of Cr.P.C. to the complainant within two month, in default the accused shall undergo further period of two months simple imprisonment. The custody period if any already undergone by the accused shall be set off under Section 428 of Cr.P.C.

20. There is no any property remanded in this court and hence no order passed in respect of property.

Dictated to the Typist directly and typed by him, corrected and pronounced by me in open court this the 28th day of July 2026.

DINESH KUMAR C
Digitally signed by DINESH KUMAR C
Date: 2026.07.28 19:10:23 +0530

Judicial Magistrate No. II
Dindigul.

VI. Complainant side witnesses :

Sl. No.	Examined as	Name of Witness	Date of examination	Exhibits Marked
1.	CW1	Manisekaran S/o. Naganayagovder	30.09.2022	Ex.P1 to Ex.P5

VII. Complainant side Exhibits :

Sl. No.	Exhibits	Marked through	Date of Document	Description of document
1.	Ex.P1	CW1	29.07.2015	Cheque
2.	Ex.P2	CW1	29.07.2015	Collection Challan
3.	Ex.P3	CW1	01.08.2015	Return memo
4.	Ex.P4	CW1	26.08.2015	Advocate Notice with receipt
5.	Ex.P5	CW1	27.08.2015	AD Card

VIII. Complainant side M.Os.- Nil

IX. Defence side witnesses

Sl. No.	Examined as	Name of Witness	Date of examination	Exhibits Marked
1.	DW1	Subbiah S/o.Mottaiyagonder	17.04.2026	-
2.	DW2	Soundirarajan (SBI Bank Manager, Nagal Nagar Branch) S/o. Manivel	28.04.2026	Ex.D1

X. Defence side Exhibits :

Sl. No.	Exhibits	Marked through	Date of Document	Description of document
1.	Ex.D1	DW1	2015	Complainant Bank Statement

XI. Defence side M.Os. : Nil.

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Date: 2026.07.28 19:10:29 +0530

Judicial Magistrate No. II,
Dindigul.

Note:

1. The result of case is intimated to both parties.
2. Witness were not examined more than three hearings.
4. The True Copy of Judgment furnished to the accused
5. The sentenced passed in this Judgment is suspended till 28.07.2026 to 26.08.2026 as per Crl.M.P. No.1835/2026 order.