

In the Court of the II Additional District and Sessions Judge, Erode.

Present: V.Suresh B.A., B.L.,

II Additional District and Sessions Judge.

Thursday, the 26th day of March 2026

Criminal Appeal No.132 of 2022

(CNR No.TNED01-000242-2020)

01	From what court the Appeal is preferred	:	Fast Track Court I at Magisterial Level, Erode.
02	Number of the case in that court	:	STC.No.264 of 2019
03	Number of the Appeal	:	Criminal Appeal No.132 of 2022
04	Name and description of the Appellant/Accused	:	N.Mathiyalagan, S/o.Natarajan, 28/17, AD Colony, Station Pudhur, Pasur Post, Erode. Working as: Office Assistant, Tamil Nadu Civil Supplies Corporation, H-139, Phas 3 – II, Manickampalayam Housing Unit, Erode.
05	Name and description of the Respondent/Complainant	:	A.Thiyagarajan, S/o. P.Athappan, Door No.92, Theeran Chinnamalai Street, Nadarmedu, Erode.
06	The sentence and law under which it was imposed in the trial court	:	Accused found guilty under section 138 of NI Act and sentenced to three months simple imprisonment and to pay Rs.1,00,000/- to the

		complainant as compensation and in default, the accused shall undergo further one month simple imprisonment.
07	Whether confirmed, modified or reversed and if modified, the modification	: The Criminal Appeal is dismissed. The judgment of conviction, sentence and awarding compensation in STC.No.264 of 2019 passed by the Fast Track Court I at Magisterial Level, Erode is confirmed.
08	Date of or on which 1) Presentation 2) Filing 3) Notice issued by the court 4) Bail bond of appellant 5) Appellant ordered to appear 6) Hearing 7) Judgment	: 12-02-2020 : 18-08-2022 : 30-08-2022 : As per order in CrI.MP.No.2445/2022 : 15-09-2022 : 16-02-2026 : 26-03-2026

This Criminal Appeal coming on 16-02-2026 before me for final hearing in the presence of Mr.S.Devarajan, the learned Advocate appearing for the appellant/accused and of Mr.V.Shankar, the learned Advocate appearing for the respondent/complainant and upon hearing the oral arguments of respondent/complainant side and perusing the records and having stood over for consideration till this day, this court delivers the following

Judgment

01. The appellant/accused had preferred the Criminal Appeal under Section 374 (3-A) of CrPC seeking to set aside the judgment of conviction, sentence and compensation dated

18-12-2019 in STC.No.264 of 2019 passed by the Fast Track Court I at Magisterial Level, Erode.

02. The appellant shall be referred as accused and the respondent shall be referred as complainant hereinafter for sake of convenience.

03. The complainant had preferred complaint against the accused for the offence under section 138 of Negotiable Instruments Act before the trial court.

04. The case of the complainant in nutshell

(i) The accused is known person to the complainant. The accused has borrowed a sum of Rs.1,00,000/- from the complainant on 29-01-2019 for his urgent expenses and the accused had promising to repay the said sum with interest there on at the rate of 18% per annum, for the aforesaid sum and the accused paid a sum of Rs.1,500/- as advance interest on that date. On 29-01-2019, to discharge the same the accused has issued a post dated cheque in favour of the complainant for a sum of Rs.1,00,000/- dated 29-04-2019 drawn on the State Bank of India, State Bank road, Erode Main Branch bearing No.363603.

(ii) The complainant has presented the cheque for collection on 29-04-2019 through Lakshmi Vilas Bank, Moolapalayapam Branch, Erode. The said cheque was dishonoured on 02-05-2019 for the reason of exceeds arrangement. The complainant issued a legal notice dated 15-05-2019 to the two addresses of the accused calling upon him to pay the cheque amount with interest @ 18% within fifteen days from the date of receipt of the notice. The accused has received the notice in his residence address on 21-05-2019 and the accused has received the notice in his office address on 24-05-2019. The accused neither made payment nor replied. Hence, the complaint.

05. After following the due procedures enumerated in the CrPC, the learned Judicial Magistrate had taken the case on file in STC.No.264 of 2019. On appearance of the accused in the case, copies of documents were furnished to him. Substance of the offence were explained to the accused and the accused had denied guilty. Hence, the trial court had ordered for examination of witness on the side of complainant. On the side of complainant, the PW1 was examined and the documents in Ex.P1 to Ex.P6 were marked. After completion of complainant side evidence, the accused was enquired as per section 313 of CrPC. On the side of the accused, no witness was examined and no document was marked.

06. After hearing both sides, the trial court had pronounced judgment on 18-12-2019 by convicting the accused for the offences u/s 138 of NI Act and accused was sentenced to three months simple imprisonment and to pay Rs.1,00,000/- to the complainant as compensation. Aggrieved by the judgment of conviction, sentence and compensation of the trial court, the accused had come forward with this Criminal Appeal.

07. Grounds of Appeal

(i) The judgment of the trial court is against law, weight of evidence and probabilities of the case. The trial court failed to see that there was no consideration of Ex.P1 cheque. The trial court has not given any opportunity to cross examine PW1. Further, the trial court has not given any opportunity to the accused to examine the witnesses on his side. The trial court has delivered the judgment in a hurried manner. During the course of first questioning under section 251 of CrPC., the appellant has pleaded not guilty. Further, during the course of examination under section 313(1)(b) of CrPC., the appellant denied the case of the complainant. The appellant has filed an application in CrI.MP.No.6598 of 2019 under section 311 of CrPC to recall PW1.

(ii) The said application allowed on cost on 08-11-2019. Due to unavoidable circumstances, the appellant was not able to comply with the order of the court. The trial court has not granted any opportunity to the accused to prefer any revision. Even on the date of delivering the judgment, the appellant has filed CrI.MP.Nos.8666 of 2019 and 8667 of 2019 to reopen the evidence and to recall PW1. But without hearing the said applications, the trial court has erroneously dismissed the application. The trial court should have held that there is no liability on the part of the appellant. The trial court should have held that the cheque Ex.P1 not issued to discharge the legally enforceable debt. The trial court without considering the facts and the circumstances of the case held that the appellant found guilty under section 138 of Negotiable Instruments Act. The judgment of conviction, sentence and awarding compensation passed by the trial court has to be set aside.

08. Points for consideration

1. Whether the charges for the offence u/s 138 of Negotiable Instruments Act against the accused was proved by the complainant ?
2. Whether the Criminal Appeal has to be allowed?

09. Even after providing more than sufficient opportunities the accused side had not turned up for oral arguments. The criminal appeal was posted to 16-02-2026 in special list for arguments. On 16-02-2026, both side Advocates have appeared. The accused side had not turned up for oral arguments even after request by this court. The complainant side had adduced oral arguments. The complaint was filed before trial court in the year 2019. The Criminal Appeal was filed along with delay excuse petition on 12-02-2020. The Criminal Appeal is pending for nearly 6 years without any progress. Having no other go, this court had reserved the Criminal Appeal for judgment by directing the

accused side to file written arguments. Even then, the accused had not filed written arguments.

10. Oral arguments of the complainant side in a nutshell

The learned counsel for the complainant would submit that the accused had borrowed an amount of Rs.1,00,000/- from the complainant and that the accused had issued the impugned cheque towards discharging the liability and that the accused side had not denied the contention of the PW1 by way of cross examination and that presumptions provided in the Negotiable Instruments Act in favour of the complainant were not rebutted by the accused and that the complainant case was proved beyond all reasonable doubt through oral and documentary evidences and that the accused side had not turned up for cross examination of PW1 for years together even after providing more than sufficient opportunities to the trial court and that no sufficient grounds were put forth by the accused side to remand the case and that the appeal may be dismissed.

11. Point No.1- Discussion and Decision

(i) The complainant had filed private complaint for the offences under section 138 of Negotiable Instrument Act. The contention of the complainant that accused is known person to the complainant was not denied by the accused side. The case of the complainant is that on 29-01-2019, accused had borrowed an amount of Rs.1,00,000/- from the complainant and that in order to discharge the said loan, the accused had issued a posted dated cheque for Rs.1,00,000/- dated 29-04-2019 and that the complainant had presented the cheque on 29-04-2019, but the said cheque was dishonoured on 02-05-2019 itself for the reason of exceeds arrangement. The PW1 had categorically deposed that the accused had issued the impugned cheque towards discharging the debt.

(ii) It is not the case of the accused that the impugned cheque was not issued by his bank concerned with his bank account. It is not the case of the accused that the

impugned cheque is not that of his cheque. The Ex.P1 would show that the accused had issued State Bank of India, State Bank road, Erode Main Branch, Erode cheque bearing number 363603 dated 29-04-2019 for Rs.1,00,000/- in favour of the complainant. The Ex.P2 would show that the complainant had presented the impugned cheque for collection and that the impugned cheque was dishonoured on 02-05-2019 for the reason of exceeds arrangement. The Ex.P3 to Ex.P6 would show that the complainant had issued legal notice to the accused on 15-05-2019 and that the accused had received the legal notice addressed to his residence on 21-05-2019 and that the accused had received the legal notice addressed to his office on 24-05-2019. The accused side had not specifically disputed the documents in Ex.P1 to Ex.P6. It is not in dispute that the accused had not repaid the cheque amount as sought for in the legal notice. Admittedly, the complainant had filed the complaint u/s 138 and 142 of Negotiable Instruments Act on 19-06-2019.

(iii) The Hon'ble Supreme Court of India in Bir Singh Vs Mukesh Kumar reported in AIR 2019 SC 2446 had held as follows ;

“36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 39, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any

person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. "

(iv) The accused had not issued any reply notice to the complainant by disputing the execution of the impugned cheque. The accused had not disputed his signature in the Ex.P1 impugned cheque during section 313 Cr.P.C enquiry. The accused side had not turned up for cross examination of PW1 in order to dispute the signature in the Ex.P1 impugned cheque. It is clear that the accused had admitted his signature in Ex.P1

impugned cheque. As per section 118 of Negotiable Instruments Act, it shall be presumed that every cheque made or drawn for consideration and that every such cheque when it has been accepted, endorsed, negotiated or transferred was accepted, negotiated or transferred for consideration. As per section 139 of Negotiable Instruments Act, it shall be presumed that holder of a cheque received the cheque for the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability. The presumptions are drawn in favour of the complainant as per sections 118 & 138 of Negotiable Instruments Act. It is not the case of the accused that the complainant had stolen the impugned cheque from the accused.

(v) The Hon'ble Supreme Court of India in Rohitbhai J Patel Vs The State of Gujarat reported in 2019 (5) SCALE 138 had held as follows ;

"17. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the Trial Court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant. The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

20. On perusing the order of the Trial Court, it is noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. We are of the

considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient."

(vi) The complaint was filed before the trial court on 19-06-2019. The judgment was pronounced by the trial court on 18-12-2019. The accused had filed the already appeal on 12-02-2020 with delay excuse petition. The accused had successfully kept the delay excuse petition for two years. Thereafter, the criminal appeal was taken on file on 18-08-2022. The accused had successfully dragged on the criminal appeal for nearly four years. The trial court judgment and the trial court docket sheet orders would clearly show that even after providing more than sufficient opportunities, the accused side wantonly had not turned up for cross examination of the PW1 and the accused side had not turned up to adduce defence side evidence. The attitude of accused in conducting the case before the trial court is not appreciable. The accused had to suffer for his own wrongs. If the case was remanded to trial court, then the object of the Negotiable Instruments Act would be defeated. If these types of attitude of the accused are encouraged by remanding the case to trial court, then in no case accused side would cross examine the PW1 and the accused side shall keep the matter for years together before trial court and appellate court. In these factual circumstances, the case could not be remanded to the trial court.

(vii) The contentions of the accused stated in grounds of appeal are all against the directions of the Hon'ble Supreme Court of India in *Suo Motu W.P.(CrI).No.2 of 2020 In Re: Expeditious trial of cases under section 138 of NI Act and of the Hon'ble Madras High Court in M/s Ultimate Computer Care rep by its proprietor and another Vs M/s S.M.K. Systems reported in 2025 MHC 369*. It is pertinent to note that the impugned

cheque amount of Rs.1,00,000/- alone. In these circumstances, the case could not be kept pending either before trial court or before appellate court for decades together as per whims and fancies of the accused.

(viii) The accused side had not disputed the documents in Ex.P1 to Ex.P5 by way of cross examination of the PW1. There is no contradictions in the oral evidence of the PW1. The mere denial of the case of the complainant by the accused in the appeal is not acceptable. By mere creation of doubts over the case of the complainant itself would not entitle the accused for seeking acquittal from the charges. The accused side had not rebutted the presumptions in favour of the complainant provided under sections 118 and 138 of Negotiable Instruments Act by way of sufficient evidences. Hence, for the foregoing reasons, this court is of view that the complainant had proved the charge against the accused beyond all reasonable doubt and that the accused is guilty of the offence u/s 138 of Negotiable Instruments Act. The trial court had imposed proper imprisonment and compensation in accordance with the facts of the case. The accused side had not made out any case to interfere with the findings of the trial court. Accordingly, the point is answered in favour of the complainant.

12. Point No.2- Discussion and Decision

The point number 1 is answered in favour of the complainant. In these circumstances, the judgment of conviction, sentence and awarding of compensation passed by the trial court requires no interference in this appeal and consequently, the appeal is liable to be dismissed. Accordingly, the point is answered in the favour of the complainant.

In the result, the Criminal Appeal is dismissed. The judgment of conviction, sentence and awarding compensation in STC.No.264 of 2019 passed by the Fast Track Court I at Magisterial Level, Erode is confirmed. The learned Judicial Magistrate, Fast

Track Court I at Magisterial Level, Erode shall take necessary steps to execute the sentence imposed to the accused.

Directly dictated by me to the Steno-Typist and typed by her in the computer, corrected and pronounced by me in the open court on this 26th day of March 2026.

II Additional District and Sessions Judge,
Erode.

Annexure : Nil

II Additional District and Sessions Judge,
Erode.

Copy to :

The learned Judicial Magistrate,
Fast Track Court I at Magisterial Level, Erode.

II ADJ Court, Erode
CA.No.132/2022
Dated 26-03-2026
Judgment