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, Erode.

Wednesday, the 3rd day June, 2026

Criminal Appeal No.462 of 2023

(CNR No.TNED01-007393-2023)

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.199 of 2023
03	Number of the Appeal	:	Criminal Appeal No.462 of 2023
04	Name and description of the Appellant/Accused	:	M.Mani, W/o.Muthusamy, Sai Mani Printers, Nanthini Textile Printers, Chinnakadu, Rasampalayam, Periyasemur Post, Erode. also at Mugesh Printers (Elumalai), 127, Thottakkadu, Muthu Manickam Nagar, Kaikattivalasu, Rasampalayam, Villarasampatti Post, Erode.
05	Name and description of the Respondent/Complainant	:	B.Velmurugan, S/o.Balakrishnan, Sri Ponnaiyan Washing, Door No.18/11, Weavers Colony, Veerappanchathiram, 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.5,00,000/- 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.199 of 2023 passed by the Fast Track Court I at Magisterial Level, Erode is confirmed.
08	Date of or on which		
	1) Presentation	:	19-12-2023
	2) Filing	:	22-12-2023
	3) Notice issued by the court	:	10-01-2024
	4) Bail bond of appellant	:	As per order in CMP.No.455/2024
	5) Appellant ordered to appear	:	29-01-2024
	6) Hearing	:	07-04-2026
	7) Judgment	:	03-06-2026

This Criminal Appeal coming on 07-04-2026 before me for final hearing in the presence of Mr.P.C.Palanisamy, the learned Advocate appearing for the appellant/accused and of Mr.S.Devarajan, the learned Advocate appearing for the respondent/complainant and upon hearing the oral arguments of both sides 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 of CrPC seeking to set aside the judgment of conviction, sentence and compensation dated

22-11-2023 in STC.No.199 of 2023 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. <u>The case of the complainant in nutshell</u>

The accused is well known to the complainant. The accused had borrowed a sum of Rs.5,00,000/- as hand loan on 11-06-2022 from the complainant. Inorder to discharge the said debt and to repay the same, the accused has issued a post dated cheque on the same day in favour of the complainant, drawn on Lakshmi Vilas Bank, Thindal Branch, bearing No.000196, dated 11-07-2022 for a sum of Rs.5,00,000/-. The complainant presented the above said cheque for collection through IDBI Bank Limited, Sathy Road Branch, Erode on 11-07-2022. But the said cheque was dishonoured due to insufficiency of funds and with the endorsement as kindly contact drawer drawee bank and please present again. On 23-07-2022, he sent a notice to the accused calling upon him to pay the amount. The accused received the notice on 27-07-2022. Even after the said notice, the accused did not make payment. Therefore, the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act. 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.199 of 2023. On appearance of the accused in the case, copies of documents were furnished to her. 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 the complainant. On the side of

the complainant, the PW1 was examined and the documents in Ex.P1 to Ex.P5 were marked. After completion of the 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 22-11-2023 by convicting the accused for the offences u/s138 of NI Act and accused was sentenced to three months simple imprisonment and to pay Rs.5,00,000/- to the complainant as compensation and in default the accused shall undergo further one month simple imprisonment. Aggrieved by the judgment of conviction, sentence and awarding compensation of the trial court, the accused had come forward with this Criminal Appeal.

07. Grounds of Appeal

The judgment of the trial court is against law and weight of evidence. The respondent have no means to lend such a huge amount of Rs.5,00,000/- to the appellant. The section 138(b) of NI act have not been complied by the respondent. The respondent have not produced any documentary evidence to prove the statutory notice been sent to the address mentioned in the statutory notice. The trial court failed to consider that the address in Ex.P3 and the address in the Ex.P5 were different. The trial court failed to consider that during cross examination the respondent admits that he sent two notices in two different dates. But the respondent have not produced the second notice which was considered for taking cognizance. The Ex.P2 cheque was returned with an endorsement kindly contact drawer/drawee bank and present again. But the respondent have never approached both banks to know the exact reason for return. The respondent in cross examination admits that the statutory notice was sent to different firm in which the appellant is not a partner or proprietor. In any event the conviction and sentence is highly excessive. 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. Both sides have not turned up for oral arguments even after providing more than sufficient chances. The criminal appeal was posted to 07-04-2026 on special list for both side arguments. On 07-04-2026, both sides Advocate have appeared, but they have not turned up for oral arguments for the reasons best known to them. The criminal appeal is pending for nearly more than three years without any progress. Having no other go, the criminal appeal was reserved for judgment by directing both sides to file written arguments. Even then, both sides have not turned up to file written arguments.

10. Point No.1- Discussion and Decision

(i) The complainant had filed the private complaint for the offence u/s 138 NI Act against the accused. It is not in dispute that the complainant and accused are known to each other. The case of the complainant is that on 11-06-2022, accused had borrowed an amount of Rs.5,00,000/- from the complainant and that in order to discharge the said loan, the accused had issued a post dated cheque for Rs.5,00,000/- dated 11-07-2022 and that the complainant had presented the cheque on 11-07-2022, but the said cheque was dishonoured on 12-07-2022 for the reason of “kindly contact drawer drawee bank and please present again” and that the complainant had issued legal notice to the accused on 23-07-2022 calling up on to pay the cheque amount and that after receiving the legal notice on 27-07-2022, the accused had not paid the cheque amount. It is not the case of the accused that the impugned cheque was not related to her bank account. It is not the case of the accused that the impugned cheque was not that of her cheque.

(ii) The PW1 had categorically deposed that the accused had issued the impugned cheque towards discharging the debt. The Ex.P1 would show that the accused had issued Lakshmi Vilas Bank, Thindal Branch cheque bearing number 000196 dated 11-07-2022 for Rs.5,00,000/- in favour of the complainant. The Ex.P2 would show that the complainant had presented the impugned cheque for collection on 11-07-2022 and that the impugned cheque was dishonoured on 12-07-2022 for the reason of "kindly contact drawer drawee bank and please present again". The Ex.P3 to Ex.P5 would show that the complainant had issued legal notice to the accused on 23-07-2022 and that the accused had received the legal notice.

(iii) The accused side had not specifically disputed the documents in Ex.P1 to Ex.P5 during the cross examination of the PW1. 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 & 142 of Negotiable Instruments Act on 16-11-2022. It is not the case of the accused that the complaint was premature. The complaint was filed with delay and the same was condoned by the trial court as per the order in Crl.MP.No.8352/2022, dated 27-04-2023. It is not the case of the accused that the complainant had stolen the impugned cheque from him.

(iv) During the 1st questioning in the case, the accused had not denied the signature in the Ex.P1 impugned cheque. Likewise, during the section 313 CrPC enquiry, the accused had not denied the signature in the Ex.P1 impugned cheque. During the cross of the PW1, the accused side had admitted the signature in the Ex.P1 impugned cheque. Hence, it is clear that, the accused had admitted his signature in the Ex.P1 impugned cheque. As per the dictum laid down by the Hon'ble Supreme Court of India in K.Bhaskaran Vs Sankaran Vaidhyan Balan reported in 1999 (7) SCC 510, once signature in the cheque was admitted by the accused then court has to draw presumptions u/s 118 & 139 of the Negotiable Instruments Act in favour of the complainant.

(v) 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.

(vi) 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."

(vii) As per section 20 of Negotiable Instruments Act, whenever wholly blank or an incomplete cheque was issued, the drawer prima facie gives authority to the holder thereof to make or complete the cheque. The contentions of the accused side that the accused had issued only blank cheque and that the accused had not filled up the impugned cheque and that the complaint was not maintainable since the cheque was filled up by third person with different ink are all not legally acceptable in view of dictum laid down by the Hon'ble Supreme Court of India in Bir Singh Vs Mukesh Kumar reported in AIR 2019 SC 2446, the Hon'ble Madras High Court in N.Sreerangan

Vs.V.V.Khalid Haji reported in CDJ 2011 MHC 4104 and in M.Palanisamy Vs Karvannan reported in 2013 (2) TNLR 18 (MAD).

(viii) It is not in dispute that the accused had received the legal notice of the complainant. The accused side had not denied the Ex.P5 postal acknowledgment card signed by the accused. It is true that the PW1 had deposed that he had issued legal notice to the accused and the same was returned and that he had issued another legal notice to the accused and the same was received by the accused. Admittedly, the accused is having the legal notice of the complainant. It is not the case of the accused that the averments stated in the legal notice served upon her differs from the averments stated in the Ex.P3 legal notice copy. It is not the case of the accused that the averments in the legal notice served upon her does not contain the particulars as to the ingredients of the offence u/s 138 of NI Act. The impugned cheque was dishonoured on 12-07-2022. The contention of the complainant that on 27-07-2022, the accused had received the legal notice was not specifically denied by the accused. It is not the case of the accused that the complainant had issued the legal notice beyond the period of limitation and that she had received two legal notices from the complainant. In these circumstances, the contention of the accused side that two legal notices were issued by the complainant and that address of the accused stated in copy of legal notice differs from the address of the accused stated in postal acknowledgment card and consequently, the complainant is not maintainable are all liable to be rejected.

(ix) The Hon'ble Supreme Court of India in Laxmi Dyechem Vs State of Gujarat reported in 2012 (13) SCC 375 held that the expression " amount of money ... is insufficient" appearing in section 138 of the Act is a genus and dishonour for the reasons such as " as account closed", "payment stopped", "referred to the drawer" are only species of that genus. It is not the case of the accused that on the date of presentation of the impugned cheque, there were sufficient funds in her bank account. The accused side had not filed any document to establish that on the date of presentation of the impugned cheque, sufficient funds were available in the bank account of the accused. The accused had not issued any reply notice to the complainant. The accused had not paid the cheque amount. In these circumstances, as per the dictum of the Hon’ble Supreme Court of India in Laxmi Dyechem VS State of Gujarat reported in 2012 (13) SCC 375, the cheque dishonored for the reason of “kindly contact drawer drawee bank and please present again” would become offence u/s 138 of NI Act subject to other conditions prescribed being satisfied.

(x) The accused had not issued any reply notice to the complainant and the same leads to inference that there was merit in the case of the complainant as per the dictum of the Hon’ble Supreme Court of India in Rangappa Vs Sri Mohan reported in AIR 2010 SC 1898. The accused side had not filed any document to establish that the accused had have previous business transaction with the complainant. The accused side had not stated as to when the impugned cheque was issued to the complainant for security purpose during the business transactions ?. The accused had not stated as to why the accused had not taken any legal steps to get back the impugned cheque from the complainant ?. The accused side had not taken any specific defences as to how the impugned cheque went into the hands of the complainant ?. Hence, it is clear that the defences taken by the accused side are all nothing but false.

(xi) 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."

(xii) The accused side had admitted the fact that complainant has been doing business. The accused herself had stated that she had have business transactions with the complainant. In these circumstances, the contentions of the accused side that the complainant had no source of income to lend money to the accused and that the complainant had not filed any documents to establish the loan transactions and consequently, the complaint is not maintainable are all liable to be rejected in view of the dictum of the Hon’ble Supreme Court of India stated above. As per the dictum of the Hon’ble Full Bench of the Supreme Court of India in Rangappa Vs Sri Mohan reported in AIR 2010 SC 1898, the presumptions mandated by Section 139 of the NI Act includes the presumption as to existence of a legally enforceable debt or liability. The contentions of the accused side that the complainant had not stated the impugned debt in his income tax return and consequently, the complaint is not maintainable are all liable to be rejected in view of the dictum of the Hon’ble Supreme Court of India stated above and the Hon’ble Delhi High Court in Dilip Chawla Vs Ravinder Kumar and another in Crl.Rev.P.No.607/2016 dated 10-08-2017.

(xiii) The mere denial of the case of the complainant by the accused 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, the contentions of the accused side in the grounds of appeal are all liable to be rejected in view of sections 118 and 138 of Negotiable Instruments Act and the dictum of the Hon’ble Supreme Court of India Hiten P.Dalal Vs Bratindranath Banerjee reported in CDJ 2001 SC 366. 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 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.199 of 2023 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 03rd day of June, 2026.

V SURESH Digitally signed by V SURESH Date: 2026.06.03 17:09:40 +0530

II Additional District and Sessions Judge,
Erode.

Annexure : Nil

V SURESH Digitally signed by V SURESH Date: 2026.06.03 17:09:50 +0530

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.462/2023

Dated 03-06-2026

Judgment