

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 26<sup>th</sup> day March 2026

Criminal Appeal No.236 of 2022

(CNR No.TNED01-003652-2022)

01	From what court the Appeal is preferred	:	Fast Track Court II at Magisterial Level, Erode.
02	Number of the case in that court	:	STC.No.45 of 2019
03	Number of the Appeal	:	Criminal Appeal No.236 of 2022
04	Name and description of the Appellant/Accused	:	G.Gopalakrishnan, S/o.Late Gurusamy Gounder, 41, R.V.E. Nagar, Sabares Jeweler Building, Near Rakkiampalayam Pirivu, Kangayam Main Road, Tiruppur. <u>Office at</u> Advocate Prakash Apartment, R.V.E. Nagar, Near Rakkiampalayam Pirivu, Kangayam Main Road, Tiruppur.
05	Name and description of the Respondent/Complainant	:	K.Kasiviswanathan, S/o. Krishnan, 54, K.N.K. Road, Karungalpalayam, 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 six months simple imprisonment and to pay Rs.90,000/- 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.45 of 2019 passed by the Fast Track Court II 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	: 01-08-2022 : 17-11-2022 : 29-11-2022 : As per order in CrI.MP.No.3595/2022 : 14-12-2022 : 10-03-2026 : 26-03-2026

This Criminal Appeal coming on 10-03-2026 before me for final hearing in the presence of Mr.P.C.Palaniswamy, the learned Advocate appearing for the appellant/accused and of the respondent/complainant appearing as party in person 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 01-07-2022 in STC.No.45 of 2019 passed by the Fast Track Court II 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

The complainant and accused are well known each other for past several years. Considering the close relationship, the accused have borrowed a sum of Rs.90,000/- from the complainant on 15-11-2018 for his urgent expenses and for prompt to repayment of the said debt, the accused have issued a post dated cheque bearing No.370394 dated 03-12-2018, drawn on HDFC Bank, Tiruppur Branch for Rs.90,000/-. As per the accused assurance, the complainant presented the cheque for collection on 03-12-2018 through Canara Bank, Karungalpalayam Branch, Erode. But, the cheque was dishonored on 13-12-2018 as account closed. The complainant issued notice to the accused on 20-12-2018 calling upon to pay the said amount of Rs.90,000/- within 15 days from the date of receipt of notice and the same was received on 29-12-2018. But, the accused neither the paid any amount nor give any reply. The accused had committed an offence under section 138 of the Negotiable Instruments Act.

05. After following the due procedures enumerated in the CrPC, the learned Judicial Magistrate had taken the case on file in STC.No.45 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 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 01-07-2022 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.90,000/- 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 trial court failed to consider that the respondent has not proved the financial capacity to lend the cheque amount to the appellant. Passing of consideration is not proved. The trial court wrongly considers that mere denial of allegation is fatal to the case. The trial court failed to consider that there is no direct transaction between the appellant and the respondent. The appellant had no necessity to get a amount of Rs.90,000/- as a hand loan from the respondent. The respondent had no means to lend the said amount to the appellant. The respondent took the money from the bank and deposited the same day and which could not been given to the appellant as the respondent claims. The trial court failed to consider that the defence taken by the appellant. 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. Oral arguments of the accused side in a nutshell

The learned counsel for the accused would submit that the accused had not borrowed any amount from the complainant and that the accused had not issued the impugned cheque in favour of the complainant and that the complainant had not established the case beyond all reasonable doubt and that the impugned cheque was issued to one Ramesh in blank for security purpose in the course of business transactions and that the complainant had no source of income to lend the said amount to the accused and that impugned cheque was not issued for legally enforceable debt and that the appeal may be allowed.

10. Oral arguments of the complainant side in a nutshell

The respondent/complainant would submit that judgment shall be passed based on the trial court records.

11. 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 15-11-2018, accused had borrowed an amount of Rs.90,000/- from the complainant and that in order to discharge the said loan, the accused had issued a post dated cheque for Rs.90,000/- dated 03-12-2018 and that

the complainant had presented the cheque on 12-12-2018, but the said cheque was dishonoured on 13-12-2018 for the reason of account closed and that the complainant had issued legal notice to the accused on 20-12-2018 calling up on to pay the cheque amount and that after receiving the legal notice on 29-12-2018, the accused had not paid the cheque amount. It is not the case of the accused that the impugned cheque was not related to his bank account. It is not the case of the accused that the impugned cheque was not that of his 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 HDFC Bank, Tiruppur Branch cheque bearing number 370394 dated 03-12-2018 for Rs.90,000/- in favour of the complainant. The Ex.P2 would show that the complainant had presented the impugned cheque for collection on 12-12-2018 and that the impugned cheque was dishonoured on 13-12-2018 for the reason of account closed. The Ex.P3 to Ex.P5 would show that the complainant had issued legal notice to the accused on 20-12-2018 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 30-01-2019. It is not the case of the accused that the complaint was filed beyond the period of limitation. It is not the case of the accused that the complaint was premature. It is not the case of the accused that the complainant had stolen the impugned cheque from him. The Hon'ble Supreme Court of India in Laxmi Dyechem VS State of Gujarat reported in 2012 (13) SCC 375 had held that the cheque dishonored for the reason of

account closed would become offence u/s 138 of NI Act subject to other conditions prescribed being satisfied.

(iv) During the 1<sup>st</sup> 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 not suggested that the signature found in the Ex.P1 impugned cheque is not that of the accused. 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. 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.

(v) 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.”

(vi) 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 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).

(vii) The accused side had not filed any document to establish that one Ramesh belonged to Tiruppur District and accused have jointly engaged in Tiles and Chemical business. The accused side had not stated as to when the said Ramesh had took the impugned cheque ?. The accused side had not stated as to in which place the said Ramesh had took the impugned cheque ?. The accused side had not stated as to why the accused had not taken legal steps as against the said Ramesh ?. The accused side had not stated as in what manner or in what way the complainant is related/known to the said Ramesh ?. Hence, it is clear that the defences taken by the accused side are all nothing but false.

(viii) 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."

(ix) The PW1 had categorically deposed with regard to the source of income for lending money to the accused. 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 CrI.Rev.P.No.607/2016 dated 10-08-2017.

(x) 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. The judgments relied on by the accused side in the grounds of appeal are all not applicable to the facts of the present case. 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.45 of 2019 passed by the Fast Track Court II at Magisterial Level, Erode is confirmed. The learned Judicial Magistrate, Fast Track Court II 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 26<sup>th</sup> 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 II at Magisterial Level, Erode.

II ADJ Court, Erode

CA.No.236/2022

Dated 26-03-2026

Judgment