IN COURT OF THE PRINCIPAL SESSIONS JUDGE, KANNIYAKUMARI AT NAGECOIL

Present: Thiru K. Dhanasekaran, M.L., L.L.M.
Principal Sessions Judge.

Wednesday, the 15th day of July, 2026.

Criminal Appeal No. 35/2026

(CNR No.TNKK01-000152-2026)

1. Name of the Trial Court	Judicial Magistrate No.II, Kuzhithurai.
2. Number of the case in Trial Court	STC No. 142/2018
3. Name and description of the Appellant/Accused	Shajin, (age 32) S/o. Thabasumani, Door No. 14-113, Chenampirai, Vazhuthoor North, Thengapattanam Post, Vilavancode Taluk, Kanyakumari District.
4. Name and description of the respondents	Gopaladhas, (Age 52) S/o. Chellaiyan Nadar, Aluninttavilai, Vazhuthoor North, Thengapattanam Post, Vilavancode Taluk, Kanyakumari District.

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5. The judgment of the Trial Court	The appellant/accused was convicted and sentenced to undergo simple imprisonment for six months and to pay a compensation of Rs.3,00,000/- to the complainant u/s 357(3) of Cr.P.C. and in default of payment of compensation, to undergo further period of simple imprisonment for one month for the offence u/s 138 of Negotiable Instruments Act.
6. Findings of this Court	In the result, the Criminal Appeal is dismissed. The judgment of conviction and sentence imposed on the appellant/accused, as well as the order directing payment of compensation, passed by the learned Judicial Magistrate No.I, Kuzhithurai, in S.T.C. No.142 of 2018, dated 02.12.2025, are hereby confirmed. The trial Court is directed to take necessary steps to secure the presence of the appellant/accused and execute the sentence in accordance with law.
7. Date of filing	09.03.2026

8. Date of Judgment	15.07.2026

This criminal appeal came up on 07.07.2026 for final hearing before me in the presence of

Thiru C.V. Arun - Advocate for the appellant/accused

Thiru S. Sree Sukin - Advocate for the respondent

and upon hearing the arguments on both side and upon perusing the materials available on record and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

The present Criminal Appeal has been preferred by the appellant/accused challenging the judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Kuzhithurai, in Summary Trial Case No.142 of 2018, dated 02.12.2025, whereby the appellant was found guilty of the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881, and was consequently convicted and sentenced. The appellant seeks to set aside the said judgment of conviction and sentence.

2. **The sum and substance of the averments contained in the private complaint filed by the respondent/complainant under Section 200 of the Code of Criminal Procedure is as follows** :-

The respondent/complainant alleged that the accused/appellant was well known to him. On 10.03.2018, the accused approached the complainant at his residence and requested financial assistance of a sum of Rs.3,00,000/-, assuring that the amount would be repaid during the month of May, 2018. The complainant agreed to arrange the amount and, accordingly, on 18.03.2018 paid a sum of Rs.3,00,000/- to the accused. In discharge of the said liability, the accused issued a duly filled and signed cheque bearing No.629012102, dated 18.05.2018, for a sum of Rs.3,00,000/-, drawn on Bank of Baroda, Kuzhithurai Branch, and assured the complainant that the cheque would be honoured on presentation on or after 18.05.2018. Acting upon the instructions of the accused, the complainant presented the cheque for collection through his banker, Vijaya Bank, Thengapattanam Branch, on 18.05.2018. However, the cheque was returned unpaid on 21.05.2018 with the endorsement "Funds Insufficient". Thereafter, on 05.06.2018, the complainant caused a statutory legal notice to be issued to the accused demanding payment of the cheque amount within fifteen days from the date of receipt of the notice. The accused deliberately refused to receive the notice, and the registered postal cover was returned on 07.06.2018 with the endorsement "Refused". Despite the deemed service of the statutory notice, the accused failed to make payment of the cheque amount within the prescribed period. According to the complainant, the cheque had been issued towards the discharge of a legally enforceable debt and its dishonour, coupled with the failure of the accused to comply with the statutory demand notice, constituted an offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881. Hence, the complainant filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.II, Kuzhithurai, seeking punishment of the accused in accordance with law.

3. Upon presentation of the private complaint by the complainant, the learned trial Court perused the complaint and the materials produced in support thereof and, being satisfied that a prima facie case was made out, took cognizance of the offence and issued process to the accused. Pursuant to the summons issued by the Court, the accused appeared before the trial Court. The substance of the accusation was explained to him, to which he pleaded not guilty and denied the allegations levelled against him. Consequently, the case was taken up for trial.

4. In order to substantiate the case of the complainant, the complainant examined himself as P.W.1 and marked Exts.P.1 to P.5. On the side of the accused, D.Ws.1 to 3 were examined and Exts.D.1 to D.6 were marked.

5. After a full-fledged trial, the learned Judicial Magistrate No. II, Kuzhithurai, by judgment dated 02.12.2025 in Summary Trial Case No.142 of 2018, found the accused guilty of the offence and convicted and sentenced him accordingly. The trial Court also directed the accused to pay compensation to the complainant/respondent herein. Aggrieved by the said judgment of conviction and sentence, the appellant/accused has preferred the present Criminal Appeal before this Court on various grounds, seeking to set aside the same.

6. The point for consideration that arises in the appeal is :-

Whether the Judgment of conviction and sentence dated 02.12.2025 passed in Summary Trial Case No.142 of 2018 by the learned Judicial Magistrate No.II, Kuzhithurai, is liable to be set aside?

7. **Point** :-

Heard both side and perused the relevant records.

8. The sum and substance of the grounds of appeal raised by the appellant/accused is as follows :-

The respondent/complainant has falsely alleged that the appellant visited his residence on 10.03.2018 and borrowed a sum of Rs.3,00,000/- from him. In fact, on the said date, the appellant was employed abroad and was not present in India. Therefore, the allegation that the appellant met the respondent at his residence and borrowed the alleged amount is wholly false and improbable. The respondent further claimed to have issued the statutory demand notice dated 05.06.2018 under Section 138 of the Negotiable Instruments Act, 1881. However, the said notice was never served on the appellant. Hence, the mandatory requirement under Section 138 of the Negotiable Instruments Act regarding the issuance and service of the statutory notice has not been duly complied with. It is further contended that the respondent was well acquainted with the appellant's father and had assured him that he would arrange a bank loan. Believing the said assurance, the appellant's father entrusted Ext.P.1 cheque to the respondent for the limited purpose of obtaining the loan. Instead of arranging the loan as promised, the respondent misused the cheque and instituted the present complaint for his own benefit. The appellant has also disputed the execution of Ext.P.1 cheque by contending that the signature appearing therein is not his. It is further alleged that the date and other particulars in Ext.P.1 cheque have been written in one ink, whereas the signature appears to have been made in a different ink, thereby indicating a material alteration in the cheque. On the above grounds, the appellant seeks to set aside the judgment of conviction and sentence passed by the trial Court.

9. The respondent/complainant filed a private complaint under Section 200 of the Code of Criminal Procedure against the appellant/accused alleging that the appellant had borrowed a sum of Rs.3,00,000/- from him on 18.03.2018. Towards repayment of the said amount and in discharge of his legally enforceable debt, the appellant issued Ext.P.1 cheque bearing No.629012102 for a sum of Rs.3,00,000/-, drawn on the Bank of Baroda, Kuzhithurai Branch. The respondent presented Ext.P.1 cheque for collection through his Savings Bank Account maintained with the Indian Bank, Thengapattinam Branch, on 18.05.2018. However, the cheque was dishonoured and returned unpaid on 21.05.2018 with the endorsement "Funds Insufficient." Thereafter, the respondent issued the statutory demand notice dated 05.06.2018 calling upon the appellant to pay the cheque amount within the prescribed period or to submit his reply. The notice was returned with the postal endorsement "Refused." Despite the deemed service of the statutory notice, the appellant neither sent any reply nor paid the cheque amount. Consequently, alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, the respondent filed the present private complaint.

10. The defence of the appellant, inter alia, is that the respondent falsely alleged that the appellant visited the respondent's residence on 10.03.2018 and borrowed a sum of Rs.3,00,000/-. According to the appellant, he was abroad on the

said date and, therefore, it was impossible for him to have met the respondent at his residence as alleged in the complaint. The appellant further contended that although the respondent claimed to have issued the statutory notice dated 05.06.2018 as contemplated under Section 138 of the Negotiable Instruments Act, 1881, the said notice was never served on the appellant. Hence, according to the appellant, the mandatory requirement of issuing and serving the statutory notice under Section 138 of the Negotiable Instruments Act has not been complied with. It is also the specific case of the appellant that the respondent was well acquainted with the appellant's father and had assured him that he would arrange a bank loan. Believing the said representation, the appellant's father allegedly handed over Ext.P.1 cheque to the respondent. However, instead of facilitating the loan, the respondent misused the cheque and filed the present complaint for his own benefit. The appellant further denied that the signature found in Ext.P.1 cheque was his. It was contended that the date and other particulars in Ext.P.1 cheque were written in one ink, whereas the signature was found in a different ink, thereby indicating material alteration in the cheque. On the above grounds, the appellant prayed that the complaint be dismissed and the judgment of conviction and sentence passed by the trial Court be set aside.

11. On consideration of the rival submissions advanced on behalf of both parties and upon perusal of the entire records, it appears that the

respondent/complainant filed a private complaint against the appellant/accused seeking prosecution under Section 138 of the Negotiable Instruments Act on the allegation that the cheque issued by the appellant was dishonoured. The appellant denied the allegations and challenged the judgment of the trial Court on the four principal grounds urged in the present appeal. A preliminary examination of Exts.P.1 to P.5 reveals that the appellant issued Ext.P.1 cheque dated 18.05.2018, drawn on Bank of Baroda, Kuzhithurai Branch, in favour of the respondent with an assurance that the cheque would be honoured on presentation. Acting on the instructions of the appellant, the respondent presented the cheque for collection through his banker, Vijaya Bank, Thengapattanam Branch, on 18.05.2018. However, the cheque was returned unpaid on 21.05.2018 with the endorsement "Funds Insufficient". Thereafter, the respondent caused a statutory lawyer's notice dated 05.06.2018 to be issued to the appellant demanding payment of the cheque amount within fifteen days from the date of receipt of the notice. Though the notice was duly issued, the appellant neither complied with the demand nor paid the cheque amount within the statutory period. Thus, on the basis of Exts.P.1 to P.5, the respondent has established the foundational facts necessary to attract the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act. Consequently, the initial mandatory presumption operates in favour of the respondent that the cheque was issued for the discharge of a legally enforceable debt or liability. However, it is equally well settled that the said presumption is rebuttable, and the appellant is entitled to rebut the same by adducing cogent evidence or by establishing a probable defence on the touchstone of the preponderance of probabilities. In the present appeal, the appellant has assailed the judgment of the trial Court on four principal grounds. Therefore, this Court proposes to examine each of the grounds independently in the light of the oral and documentary evidence available on record and the settled principles governing prosecutions under Section 138 of the Negotiable Instruments Act.

12. The first ground of appeal raised by the appellant is that the respondent alleged that the appellant visited the respondent's residence on 10.03.2018 and requested a hand loan of Rs.3,00,000/-. According to the appellant, he was abroad on the said date and, therefore, it was impossible for him to have visited the respondent's residence as alleged in the complaint. The respondent, however, has specifically pleaded that the appellant borrowed a sum of Rs.3,00,000/- on 18.03.2018 and, towards repayment of the said liability, issued Ext.P.1 cheque bearing No.629012102 drawn on Bank of Baroda, Kuzhithurai Branch. The complainant presented the cheque for collection through his banker on 18.05.2018, but the cheque was returned unpaid on 21.05.2018 with the endorsement "Funds Insufficient." In support of his plea of alibi, the appellant relied upon Ext.D.1. A careful perusal of Ext.D.1 reveals that although the appellant was abroad on

10.03.2018, he had returned to India on 15.03.2018. Therefore, there was no impediment for the appellant to have borrowed the loan amount on 18.03.2018, as specifically pleaded by the respondent. It is pertinent to note that the alleged visit to the respondent's residence on 10.03.2018 was only the circumstance in which the appellant is stated to have requested financial assistance. Even assuming that the appellant was abroad on that date, a request for financial assistance could have been made through any mode of communication. More importantly, the actual transaction of loan, according to the complaint, took place only on 18.03.2018, after the appellant had returned to India on 15.03.2018. Consequently, the appellant's absence from India on 10.03.2018 does not, by itself, discredit the respondent's case regarding the borrowing on 18.03.2018 and the subsequent issuance of Ext.P.1 cheque towards discharge of the legally enforceable debt. Therefore, this Court is of the considered view that the discrepancy regarding the date on which the appellant initially requested the loan is not a material contradiction affecting the core prosecution case. The appellant has failed to establish that such discrepancy demolishes the respondent's version or rebuts the statutory presumption available under Sections 118 and 139 of the Negotiable Instruments Act. Accordingly, the first ground of appeal is devoid of merits and is liable to be rejected.

13. The second ground of appeal raised by the appellant is that the respondent allegedly issued the statutory notice dated 05.06.2018 under Section 138 of the Negotiable Instruments Act, 1881, but the same was never served upon him. Hence, according to the appellant, the mandatory requirement of issuance and service of statutory notice under Section 138 of the Negotiable Instruments Act has not been complied with. In reply, the respondent contended that he had issued the statutory demand notice, marked as Ext.P.3, dated 05.06.2018, calling upon the appellant to pay the cheque amount covered under Ext.P.1. It is further contended that the notice was sent to the correct address of the appellant through registered post. However, the appellant deliberately refused to receive the notice, and consequently the postal authorities returned the cover with the endorsement "Refused."

14. This Court has carefully perused the relevant records. The appellant has merely contended that he did not receive the statutory notice and, therefore, the mandatory requirement under Section 138 of the Negotiable Instruments Act has not been satisfied. On the other hand, the respondent has established that he had duly dispatched the statutory notice within the prescribed period. Ext.P.3, the office copy of the statutory notice, together with the returned postal cover, clearly discloses that the postal authorities made the endorsement "Refused." When a notice sent to the correct address of the addressee is returned with the endorsement "Refused," the law

presumes due service upon the addressee. The refusal to receive the notice amounts to constructive service, as the addressee is deemed to have had an opportunity to receive and know the contents of the notice but intentionally evaded its receipt. An accused cannot take advantage of his own deliberate refusal to receive the statutory notice in order to defeat the object of Section 138 of the Negotiable Instruments Act. It is well settled that refusal to accept a statutory notice is equivalent to due service in the eye of law. Therefore, the contention of the appellant that there was no service of statutory notice is devoid of merit. The mandatory requirement under the proviso to Section 138 of the Negotiable Instruments Act stands duly complied with by the respondent. Consequently, the plea of non-service of the statutory notice is liable to be rejected.

15. The third ground of appeal is that the respondent was well acquainted with the appellant's father and had assured him that he would arrange a bank loan. Believing such assurance, the appellant's father allegedly handed over Ext.P.1 cheque to the respondent. According to the appellant, instead of facilitating the bank loan, the respondent misused the cheque and filed the present complaint for his own benefit. In reply, the respondent contended that if the appellant's case were true and Ext.P.1 cheque had in fact been handed over by the appellant's father for the purpose of obtaining a bank loan, the appellant ought to have examined his father as a

material witness to substantiate such a defence. Admittedly, the appellant failed to examine his father or adduce any acceptable evidence in support of the said plea. Therefore, according to the respondent, the said defence is wholly unsubstantiated and is liable to be rejected.

16. In this regard, this Court has carefully perused the relevant records. The appellant contended that the respondent had obtained Ext.P.1 cheque from the appellant's father on the pretext of arranging a loan from a third party, but failed to procure such loan and, instead, misused the cheque by filing the present complaint as though the appellant had borrowed a sum of Rs.3,00,000/- from the respondent and issued Ext.P.1 cheque towards discharge of the said liability. The respondent, on the other hand, denied the said allegation and contended that the appellant's father had not entered the witness box to explain the circumstances under which Ext.P.1 cheque, admittedly belonging to the appellant, came into the possession of the respondent. It is pertinent to note that the appellant has never disputed that Ext.P.1 is his cheque or that it pertains to his bank account. On the contrary, he has admitted that Ext.P.1 cheque was issued from his personal bank account. If, as alleged, the appellant had entrusted Ext.P.1 cheque to his father, it was incumbent upon him to explain the circumstances under which such entrustment was made. More importantly, the appellant's father, who was the material witness to

substantiate the said defence, was not examined before the trial Court. In the absence of any satisfactory explanation from either the appellant or his father, the plea that the respondent had obtained Ext.P.1 cheque from the appellant's father remains a mere bald assertion unsupported by any acceptable evidence. Consequently, this Court finds no merit in the said defence, and the same is liable to be rejected.

17. The appellant has raised yet another defence that he did not affix his signature on Ext.P.1 cheque. According to him, the date and the amount in Ext.P.1 cheque are written in one ink, whereas the signature appearing therein is written in a different ink. On that basis, he contended that Ext.P.1 cheque had undergone material alteration and, therefore, the respondent had not approached the Court with clean hands in alleging that the appellant had issued Ext.P.1 cheque towards discharge of the loan liability. The respondent denied the said contention. According to him, on 18.03.2018, when the appellant borrowed a sum of Rs.3,00,000/-, he simultaneously issued Ext.P.1 cheque. The respondent fairly admitted that the date and amount in Ext.P.1 cheque are written in one ink, while the signature appears in a different ink. However, he categorically asserted that all the entries in the cheque, including the signature, were already found in that condition on 18.03.2018 itself when the appellant handed over the cheque to him. Therefore, according to the respondent, no

material alteration was made by him in Ext.P.1 cheque, and the allegation of the appellant in that regard is wholly untenable.

18. Section 138 of Negotiable Instrument Act, 1881 reads as follows :-

> *"Dishonour of cheque for insufficiency , etc., of funds in the account – Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment.........................*
>
> *Provided that nothing contained in this section shall apply unless -*

(a) The 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;

(b) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c). The drawer if such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. "

19. Though the appellant contends that the signature found in Ext.P.1 cheque is not his, he did not take any steps to substantiate the said plea by seeking an expert opinion. If the appellant genuinely disputed the signature, it was incumbent upon him to have the disputed signature found in Ext.P.1 cheque compared with his admitted signatures by referring the document to the Forensic Science Department for scientific examination. However, no such attempt was made. On a careful comparison of the signature found in Ext.P.1 cheque with the admitted signature of the appellant

available in the deposition of R.W.1, this Court is of the considered view that both signatures appear to be substantially similar. In the absence of any expert evidence or other convincing material to establish that the signature in Ext.P.1 is forged or materially different from his admitted signature, the plea that Ext.P.1 cheque suffers from material alteration or that the signature is not that of the appellant cannot be accepted. Accordingly, the defence raised by the appellant on the ground of material alteration in Ext.P.1 cheque is liable to be rejected

20. At this juncture, this Court has carefully considered the facts and evidence available on record. It is established that on 18.03.2018, the accused borrowed a sum of Rs.3,00,000/- from the complainant and, towards discharge of the said legally enforceable debt, issued Cheque No.629012102 (Ex.P1) drawn on the Bank of Baroda, Kuzhithurai Branch, dated 18.05.2018. The complainant presented the said cheque for collection through Vijaya Bank, Thengapattanam Branch, on 18.05.2018. However, the cheque was dishonoured and returned on 21.05.2018 under the return memo (Ex.P2) with the endorsement "Insufficient Funds." Thereafter, despite the complainant's demand for payment, the accused failed to honour the cheque amount. Consequently, the complainant caused a statutory notice (Ex.P3) dated 05.06.2018 to be issued through his counsel, calling upon the accused to pay

the cheque amount of Rs.3,00,000/- within fifteen days from the date of receipt of the notice. The accused neither complied with the demand nor paid the cheque amount.

21. Once the execution of the cheque is admitted, the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 comes into operation, whereby it shall be presumed, unless the contrary is proved, that the cheque was issued for the discharge, in whole or in part, of a legally enforceable debt or other liability. In the present case, the appellant/accused has failed to rebut the said statutory presumption by adducing any cogent or convincing evidence. His defence has remained a mere plea, unsupported by acceptable evidence. The complainant has satisfactorily established all the essential ingredients constituting the offence under Section 138 of the Negotiable Instruments Act, 1881. The learned trial Magistrate has properly appreciated the oral and documentary evidence and has rightly recorded the finding of guilt against the accused. This Court does not find any illegality, perversity, or infirmity in the Judgment of conviction and sentence passed by the learned Judicial Magistrate in S.T.C. No.142 of 2018, dated 02.12.2025, warranting interference in this appeal. Accordingly, the point for determination is answered against the appellant and in favour of the respondent/complainant.

22. In the result, the Criminal Appeal is dismissed. The judgment of conviction and sentence imposed on the appellant/accused, as well as the order directing payment of compensation, passed by the learned Judicial Magistrate No.I, Kuzhithurai, in S.T.C. No.142 of 2018, dated 02.12.2025, are hereby confirmed. The trial Court is directed to take necessary steps to secure the presence of the appellant/accused and execute the sentence in accordance with law.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this Wednesday, the 15th day of July, 2026.

DHANASEKARAN KAMU

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Date: 2026.07.15 19:14:07 +0530

Principal Sessions Judge,
Kanniyakumari at Nagercoil.

Principal Sessions Court,
Kanniyakumari at Nagercoil.
Fair Judgment in
CA.No. 35/2026
Dt.: 15.07.2026