IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE, KARUR

PRESENT:- THIRU K.H.ELAVAZHAGAN, B.Sc., M.L.,

DISTRICT AND SESSIONS JUDGE.

Wednesday, the 17th day of June 2026

CRIMINAL APPEAL No.61/2025

[CNR.No:TNKR-01-000665-2025]

From what Court the appeal is preferred	:	The Judicial Magistrate No.I, Kulithalai
Number of the case in that Court	:	S.T.C.No.201/2023
Name and Description of the appellant	:	Anthoniraj S/o.Arokkiyam, No.9/2. N.Poolampatti (V. Periyapatti), Manaparai Taluk, Trichy District.
Name of the complainant	:	Vellaisamy, S/o.Andiyappa Gounder @ Andiyappan, Tharagampatti via, Chinnaampatti Post, Kadavur Taluk, Karur District.
The sentence and law under which it was imposed in the lower court	:	The accused is convicted and sentenced to undergo one year simple imprisonment and directed to pay compensation of Rs.3,50,000/- to the complainant within one month under section 357 (3) of Cr.PC., in default of payment to undergo simple imprisonment for another three months for the offence u/s. 138 NI Act.
Whether confirmed, modified or reversed and if modified modification	:	**In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025 is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.**
Date of filing	:	25.02.2025

Date of notice issued by that court to appear	:	27.02.2025
Date of bail bond if the appellant has been let out on bail	:	----
Date of the appellant ordered to appear	:	----
Date of hearing	:	05.06.2026
Date of Judgment/Order	:	17.06.2026

This criminal appeal is coming on 05.06.2026 for final hearing before me in the presence of Thiru M. Selvakumar, Advocate for the appellant/accused and of Thiru. P. Saravanan Advocate for the Respondent/Complainant and on hearing the arguments of both sides and upon perusing the judgment of the trial Court and the case records and having stood over till this day for consideration, this Court delivered the following:

JUDGMENT:-

The criminal appeal is filed u/s.374(3) of Cr.P.C against the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025 and to set aside the same.

2) The case was registered against the accused u/s.138 of N.I.Act and after the trial, the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025 has found guilty against the accused u/s.138 of N.I.Act and he was convicted and sentenced to undergo one year simple imprisonment and directed to pay compensation of Rs.3,50,000/- to the complainant within one month under section 357 (3) of Cr.PC., in default of payment to undergo simple imprisonment for another three months.

3(1) The respondent is the complainant before the trial Court. He has preferred a private complaint u/s 200 of Cr.P.C. for the offence u/s 138 of Negotiable Instruments Act. According to the complainant, the accused is a well known person to him and based on such acquaintance, on 02.11.2022, the accused has borrowed a loan amount of Rs.3,50,000/- from the complainant as loan for his urgent family expenses agreeing to repay the same within two months and the accused has issued a post dated cheque dated 03.01.2023 bearing No.689712 drawn on State Bank of India, Manaparai Ilankakurichi Branch for a sum of Rs.3,50,000/- in favour of the complainant in order to discharge the above said liability. Further, on 01.01.2023 when the complainant asked the accused to repay the loan, the accused has told him to present the above said cheque for collection.

3(2) Therefore, on 13.01.2023 , the complainant has presented the said cheque for collection through his banker Indian Overseas Bank, Tharagampatti Branch. But the same was returned as "Funds Insufficient" with memo dated 16.01.2023 and the complainant has received the said memo on 19.01.2023. Thereafter, on 27.01.2023, the complainant issued a legal notice to the accused calling upon him to repay the cheque amount. The accused has received the said notice on 03.02.2023. In spite of the statutory notice, the accused has not chosen to pay the amount due under the dishonoured cheque within the stipulated period or reply to the notice. Therefore, the complainant filed a complaint against the accused and the complaint has been filed within the limitation period.

4) The Trial Court took cognizance of the complaint filed by the complainant and after complying with all the formalities under Section 207 of Cr.P.C., they were questioned about the commission of offence u/s 138 of Negotiable Instruments Act. But, the accused denied the same. Therefore, the accused was put on trial.

5) Before the trial Court, on the side of the complainant examined himself as P.W.1 and Ex.P1 to Ex.P4 were marked and on the side of the accused, one Manikandan was examined as D.W.1 and one Kennadi was examined as D.W.2 and Ex.D1 and Ex.D2 were marked.

6) On consideration of both side evidence and documents, and other materials on record, the learned trial Magistrate arrived conclusion that, the accused committed offence u/s.138 of NI Act and he was convicted and sentenced to undergo one year simple imprisonment and directed to pay compensation of Rs.3,50,000/- to the

complainant within one month under section 357 (3) of Cr.PC., in default of payment to undergo simple imprisonment for another three months.

7) Having been aggrieved against the judgment of conviction and sentence, passed by the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025 , the accused has preferred this appeal on the following grounds:

i) The judgment of the trial Court is against law, weight of evidence and probabilities of the case.

ii)The trial Court has failed to consider the intrinsic merits of the evidence in proper perspective.

iii)The trial Court has only considered the chief examination of the respondent and based on same, the trial Court has convicted the accused.

iv)The trial Court has failed to convicted the accused only based on the assumption which is against the natural justice.

v)The respondent during his cross examination has deposed that on 02.11.2022, he has withdrawn a sum of Rs.2,00,000/- from his bank account and has given a sum of Rs.1,50,000/- from his hand. However, in Ex.D1 account statement of the complainant produced by the D.W.1 Manikandan, there is no records for withdrawal of amount for a sum of Rs.2,00,000/- on 02.11.2022. From these facts, it is clear that the averments made by the complainant that he has lend a sum of Rs.3,50,000/- as loan to the accused is false and the fact that the accused has issued the alleged cheque on 02.11.2022 is also a false one. The trial Court has failed to consider these aspects and if the trial Court has considered the same, it will be proved that the alleged cheque is a fabricated one.

vi) Further, in the Ex.D2 Bank statement produced by the D.W.2 Kennadi, it is seen that the alleged cheque was presented for collection on 30.11.2022. However, in the complaint, notice and in the chief examination, the respondent has not stated about the above said facts and the trial Court has failed to consider the same.

vii) Further, the respondent has filed this false case as against the accused by using the cheque which was issued as security for the previous loan borrowed by the accused. Since the respondent during his cross examination has stated that he has got two cheques from the accused and out of which one cheque is unfilled one and the same was with him. From the above said facts, it is clear that the contentions raised by the respondent is false one.

viii) The trial Court has failed to consider the arguments on the side of this appellant and has convicted him on 29.01.2025. The said conviction passed by the trial Court is unsustainable.

ix)The trial Court has failed to consider the fact that the appellant has not borrowed any amount from the complainant and therefore, he is not liable to pay any amount.

x)The conviction passed by the trial Court by stating the reason that the accused has not denied his signature in the cheque is not acceptable. The trial Court has convicted the accused only based on the wrong assumption and not based on correct evidence. The trial Court has convicted the accused only for its moral convictions. Hence, prays to allow the appeal.

8) On consideration of the complaint, evidence and other materials on record, the point arise for determination is are as follows:-

1 Whether the respondent/complainant fulfilled the statutory need for lodging the complaint against the accused as contemplated u/s 138 of N.I Act ?
2 Whether the appellant/accused has rebutted the presumption under 114 of Evidence Act and u/s 118 and u/s 139 of N.I. Act?
3 Whether the appellant has signed the cheque?
4 Whether the appeal can be allowed?

9) Answering for Point 1 :

The Section 138 N.I. Act contemplates as follows:-

The cheque has been presented to the bank within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier.

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 the drawer of such cheque failed 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.

The following table goes to show the various dates from the date of issuance of cheque and till the date of complaint to prove the legal requirements as stated above.

Dt.of cheque	Dt.when presented for collection u/s 138 (a) of NI Act	Dt.of returned memo and reason for returned cheque.	Dt. when issued legal notice to the accused	Dt.when the accused get receipt of notice and Reply notice to the complainant	Dt when the expiry of 15 days of receipt of notice as per Sec 138 (c) NI Act.	Dt when the cognizance of offence made u/s.142(b) of NI Act.
03.01.2023	13.01.2023	16.01.2023 Funds Insufficient	27.01.2023	Legal notice was received by the accused on 03.02.2023 and no reply notice was issued by the accused.	18.02.2023	09.03.2023

9(1) In this case on hand, the accused had issued a post dated cheque dated 03.01.2023 bearing No.689712 drawn on State Bank of India, Manaparai Ilankakurichi Branch for a sum of Rs.3,50,000/- in favour of the complainant to discharge the above said liability. The cheque was presented for collection by the complainant through his banker viz.Indian Overseas Bank, Tharagampatti Branch on 13.01.2023. It was returned as "Funds Insufficient" on 16.01.2023 and the same was intimated to the complainant on 19.01.2023. Then the complainant has issued legal notice to the accused on 27.01.2023 to pay the amount within 15 days from the date of receipt of the notice and the accused has received the notice on 03.02.2023. Then the Complainant had filed the present case on 09.03.2023. The statutory demand notice was given within 30 days, after expiry of 15 days from the date of receipt of notice, the present case was filed within 30 days. Therefore, the statutory need for lodging complaint against the accused is fulfilled by the complainant u/s.138 of NI Act. So, there is no legal infirmity in the present case. I answered to this Point No.1 accordingly.

10) Answering for Points 2 and 3

10(1) The appellant herein has filed the appeal against the judgment in S.T.C.No.201/2023 dated 29.01.2025 on the file of the learned Judicial Magistrate No.I, Kulithalai.

10(2) For the convenience the parties nomenclature as used as before the trial court.

10(3) On the side of the complainant, the complainant was examined as P.W.1 and Ex.P1 to Ex.P4 were marked and on the side of the accused, one Manikandan was examined as D.W.1 and one Kennadi was examined as D.W.2 and Ex.D1 and Ex.D2 were marked.

The document Ex.P1 goes to show the original cheque bearing registration no.689712 for Rs.3,50,000/- dated 03.01.2023 drawn on State Bank of India, Manaparai Elankakurichi Branch. Ex.P2 goes to shows that original return memo dated 16.01.2023 issued by Indian Overseas Bank, Tharagampatti Branch. Ex.P3 goes to the show the office copy of the legal notice issued by the complainant to the accused dated 27.01.2023. Ex.P4 goes to show the copy of the Postal track consignment. Furthermore, Section 139 of the Negotiable Instrument Act and Section 118 of the Evidence Act, goes that presumption is in favour of the holder in cheque.

10(4) Section 139 reads as follows:

139. Presumption in favour of holder:

It shall be presumed, unless the contrary is proved, 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, or any debt or other liability.

From the above, it is clear that it is presumed that unless contrary is proved the holder of a cheque received for the discharge of liability.

10(5) After going through the materials available on record, it is seen that it is not in dispute that Ex.P1 is the cheque leaf supplied by the bank to the appellant/accused in respect of the account he was maintaining with the banker, namely State Bank of India, Manaparai Elankakurichi Branch. But, the contention of the appellant/accused is that he has issued two cheques as security to the respondent/complainant during his Tapioca root business and thereafter, he has repaid the amount the said amount. However, the respondent/complainant failed to return back the said cheques and has filed this false case as against him. Hence the accused is bound to rebut the same as per the Sec. 139 of N.I.Act.

10(6) Further, in order to rebut the presumption under Negotiable Instruments Act, one Manikandan, the Bank Manager of Indian Overseas Bank, Tharagampatti Branch was examined D.W.1 and one Kennadi, the Bank Manager of State Bank of India, Manaparai Branch was examined as D.W.2 and marked Ex.D1 and Ex.D2.

10(7) Ex.D1 goes to show that the original complainant's bank statement and Ex.D2 goes to show the original accused bank statement.

10(8) One of the ground raised by the learned counsel for the appellant/accused is that the respondent during his cross examination has deposed that on 02.11.2022, he has withdrawn a sum of Rs.2,00,000/- from his bank account and has given a sum of Rs.1,50,000/- from his hand. However, in Ex.D1 account statement of the complainant produced by the D.W.1 Manikandan, there is no records for withdrawal of amount for a sum of Rs.2,00,000/- on 02.11.2022. From these facts, it is clear that the averments made by the complainant that he has lend a sum of Rs.3,50,000/- as loan to the accused is false and the fact that the accused has issued the alleged cheque on 02.11.2022 is also a false one.

10(9) From the perusal of the evidence of D.W.1, he has deposed that on 02.11.2022, the respondent/complainant has not taken any amount from his bank account and at that time, there was only a sum of Rs.1,552/- in his account. However, during his cross examination he has deposed that from 24.09.2022 to 21.03.2024, the respondent/complainant has made transactions for more than a sum of Rs.2,00,000/- and on 26.01.2023, there was a sum of Rs.2,72,577/- in the account of the said Vellaisamy. Further, from the perusal of evidence of D.W.2 and Ex.D2 Bank statement of the accused, it is clear that a cheque was presented for collection on 30.11.2022 and the same was returned and a charge of Rs.590/- was taken and on 16.01.2023, the cheque was returned and the charge of Rs.158/- was taken from the account for return of the cheque. Further, the cheque in Ex.P1 is the cheque of the accused which belongs to the State Bank of India, Manaparai Ilankakurichi Branch. Therefore, it is clear that the respondent/complainant has sufficient means to lend a sum of Rs.3,50,000/- to the appellant/accused and the return of the Ex.P1 cheque for the reason Funds Insufficient was also proved. Further, it is not the specific contention of the respondent/complainant he has withdrawn the whole amount on 02.11.2022 itself. Therefore, the above said ground raised by the appellant/accused is unsustainable.

10(10) From, the perusal of the records, it is seen that the appellant/accused during the cross examination of P.W.1 has taken a defense that during the year 2020, himself and the complainant have done a Tapiaco root business and at that time, he has issued two unfilled cheques to the respondent/complainant as security and the same was misused by the respondent/complainant. Further, he has also stated that during the year 2021, he has repaid the amount for the said cheques in the presence of one Kennadi and Francis. However, the respondent/complainant has threatened him to give more interest and has filed this false case as against him.

10(11) However, the defense raised by the appellant/accused is an afterthought since the appellant/accused during 313(1)(b) of Cr.P.C questioning has not raised the above said defense and he has simply stated that false case has been foisted against him and he has not issued any reply to the notice sent by the respondent/complainant in order to prove his contentions. Further, the appellant/accused as stated that he has repaid the amount in the presence of one Kennadi and Francis. However, the appellant/accused has not taken any steps to examine them on his side and further, he has not produced any documentary evidence on his side in order to prove his case. Further, the appellant/accused has not taken any legal action as against the respondent/complainant regarding the misuse of the cheque. Therefore, the appellant/accused has failed to rebut the presumption u/s.139 of Negotiable Instruments Act.

10(12) Further, the case in hand, the appellant/accused has not proved the contrary that the cheque was not issued by him to the respondent/complainant. Therefore, the presumption is in favour of the respondent/complainant. Therefore, the Ex.P1 cheque has been executed by the appellant/accused since he has not proved his claim. Therefore, the appellant/accused has not proved his claim through his documentary or in oral evidence. Further, the appellant/accused has not given rebuttal evidence to prove his case.

10(13) In this regard, I remind the principles laid down in Authority, 2010(4) CTC page 118 S.C in the case Rangappa Vs Sri Mohan, the relevant portion para 14 to 15, is runs as, <u>Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 &139 .</u> The Honourable Apex Court has held that the presumption under Section 139, includes existence of a legally enforceable debt or liability. When an accused has to rebut Presumption under Section 139, standard of proof for doing so, is that of preponderance of probabilities. The Complaint discloses existence of a legally enforceable debt and Accused admitted his signature in cheque, then the Statutory presumption comes into play and same has not been rebutted.

10(14) It is seen that in this case, it is established that the signature in the cheque in Ex.P1 is that of the signature of the accused only. As already stated and also by the principles, laid down by the Lordship, presumption u/s.139 of N.I Act can be taken into consideration and it is for the accused to place the materials to rebut the presumption. The law is well settled that the accused can also rely upon the circumstances and materials placed by the complainant to rebut the presumption.

10(15) Further, in the judgment in ***Tedhi Singh vs.Narayan Dass Mahant, in C.A.No.362 of 2022 dated 07.03.2022*** **wherein the Honourable Supreme Court has held that "*The trial Court and the first Appellate Court have noted that in the case under Section 138 of the N.I.Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the N.I.Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*"**

10(16) With this background I have perused the evidence, documents and materials produced by both parties, it is seen that, the appellant/accused submitted as, he has issued the alleged cheque in Ex.P1 to the respondent/complainant as security to the previous loan borrowed by him and has repaid the same. However, the respondent/complainant has failed to return the cheque and has filed this false case as against him, but I have found no materials or circumstances, placed before me to believe the version of the appellant/ accused.

10(17) The ***Sec 20 of Negotiable Instrument Act reads as below:***

"Inchoate stamped instruments- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable Instrument then in force in"(India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority

to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The per- son so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument any- thing in excess of the amount intended by him to be paid there under."

In the decision reported in 2008 (1 CTC 491) at page 494, it has been held that though section 20 of the Negotiable Instruments Act does not appear to cover a case of a blank cheque, there is no specific bar in the Act for a cheque to be filled up by any person other than the drawer. The payee or holder in due course, has authority to fill up the blanks is the cheque and such instrument is valid in law.

"Under section 20 of the Negotiable Instruments Act, a person who signed a blank stamped paper relating to a negotiable instrument is made liable upon such instrument in the capacity in which he signed it to any holder in due course."

"The instrument may be wholly blank or incomplete in any particular, in either case, the holder has the authority to make or complete the instrument as a negotiable one."

"Bills and notes are often executed with the name of the payee left in blank to be afterwards filled by actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an indorser and any bonafide holder for value may fill it up, with his own name and sue upon it."

While so, as discussed above, in the EXP1 cheque herein the name of the complainant only shown as payee.

Even if it is taken for consideration that the accused herein has executed the EXP 1 cheque herein with the names of the payee left in blank to be afterwards filled, then it enables the bonafide holder for value to fill it up, and the person who signed a blank cheque i.c.the accused is made liable upon such instrument in the capacity in which he signed it to any holder in due course, as per sec.20 of Negotiable Instruments Act, as discussed above.

In the decision reported in 2012 (2) MWN (Cr.) (DCC) 33 (SC), the division bench of our Hon'ble apex court in para 18 held as below:

"We may also refer to the Judgment delivered by this court in the case, ICDS ltd., V.Beena Shabeer and Anr.2002 (2) MWN (Cr.) DCC 68 (SC). In the said judgment this court has referred to the nature of liability which is incurred by the one who is a drawer of the cheque. If the cheque is given towards any liability or debt which might have been incurred even by someone else, the person who is a drawer of the cheque can be made liable under section 138 of the Act.

10(18) However, in this case, it is not in dispute that Ex.P1 is a cheque leaf supplied by the bank to the accused in respect of the account maintained with its banker. Further, I am having cursory reading of the judgment of the trial court, it is seen that the trial court very clearly discussed the fact that the accused has not been adduced sufficient evidence to prove that the cheque was not issued for any consideration and it was forged and misused.

10(19) But, in this regard, it is established in many cases as, it is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a prima facie case is made out by the complainant.

10(20) With this background I have perused the evidence, documents and materials produced by both parties, it is seen that, the appellant/accused submitted as, the cheque was fraudulently misused by the complainant. On perusal of the cross examination of the PW1, D.W.1, D.W.2, and Ex.P1 the cheque, it is made crystal clear, that the cheque was given by the appellant/accused only. Though it was denied by the accused, he has not chosen to prove it with sufficient evidences, documents and other materials.

10(21) In this case, the appellant/ accused during 313(1)(b) of Cr.P.C questioning, replies as, simply stated that false case has been foisted against him. However, the appellant/accused has not proved his contentions by his oral or documentary evidence. Further, it is seen that, the complainant issued notice, about the return of cheque, but the accused, has evaded the same. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the complainant. That by itself proved the fact, that the accused has to owe some amount to the complainant and he was being in debt with the complainant and further, the accused had failed to prove in what way, the cheque of the accused gone into the hands of the complainant by way of evidences and documents. Further it is seen that the appellant/accused had failed to reply to the statutory notice under section 138 of the Act which leads to the inference that there was merit in the complainant's case.

10(22) Hence, I hold that the appellant herein has not adduced any evidence as to rebut the presumption. Hence, I hold that the appellant has committed the offence u/s 138 Negotiable Instrument Act.

10(23) The appellant/accused has to pay the amount within the statutory period that is within 30 days from the date of issuance of notice. The legal notice Ex.P3 dated 27.01.2023 was received by the appellant/accused on 03.02.2023. Further, the appellant/accused has not sent any reply to the complainant and he has failed to repay the said amount. Upon careful scrutiny of entire matters placed on record, the respondent/complainant has proved the guilt of the appellant/accused for the offence u/s.138 of NI Act beyond reasonable doubt.

10(24) Therefore, the trial Court has rightly come to the conclusion that the accused has committed the offence. The appellant/accused has failed to discharge her onus of proof. The compensation awarded by the trial Court is also not excessive. Therefore, this Court do not find any reason to interfere with the findings given by the trial Court and the sentence awarded against the accused. Accordingly, point nos. 2 and 3 are answered.

11) Answering for Point No. 4

11(1) Hence, this court is inclined to dismissed this appeal, by confirming of conviction passed by the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025.

11(2) Taking into consideration of all the materials on record, I am of the view that there is no materials placed before this court to prove the contention of the appellant/ accused. This court also perused the judgment of the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025.

In the result, this appeal is dismissed and the judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Kulithalai in S.T.C.No.201/2023 dated 29.01.2025 is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.

Dictated to the Steno-typist, typed by her directly on computer on my dictation, corrected and pronounced by me in open Court on the 17th day of June 2026.

ELAVAZHAGAN

Digitally signed by ELAVAZHAGAN
Date: 2026.06.17 17:41:43 +0530

DISTRICT AND SESSIONS JUDGE,
KARUR.