IN THE COURT OF THE DISTRICT SESSIONS JUDGE, KARUR.
Present: Thiru.K.H.Elavazhagan, B.Sc., M.L.,
DISTRICT AND SESSIONS JUDGE
Thursday, the 11th day of June 2026

CRIMINAL APPEAL NO.59/2025

(CNR.No.TNKR-01-000673-2024)

From what court this appeal is preferred	:	Fast Track Court Judicial Magistrate (At Magistrate Level), Karur.
Number of the case in that court	:	C.C. No.747/2017
Name and Description of the appellant	:	Chandrasekar, S/o. K.P. Muthusamy, No.39/22-L.G.P. Nagar, 3rd Cross, Karur Town, Karur Taluk, Karur District.
Name of the Complainant	:	S. Periasamy, S/o. Subbarayan, Chinnathathampalayam, Palmaruthapatti Post, Aravakurichi Taluk, Karur District.
The sentence and law under which it was imposed in the lower court	:	The accused Convicted and sentenced to undergo one year simple imprisonment and to pay compensation of Rs.6,00,000/- to the complainant within a period of one month in default of which he has to undergo simple imprisonment for a period of one month for the offence u/s. 138 of NI Act.
Whether confirmed, modified or reversed and if modified modification	:	**In the result, this appeal is dismissed and the judgment of conviction and sentence passed by the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur in C.C. No.747/2017 dated 02.08.2023**

		is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.
Date of filing	:	03.02.2024
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	:	24.03.2025
Date of hearing	:	04.06.2026
Date of judgment/order	:	11.06.2026

This criminal appeal is coming on 04.06.2026 for final hearing before me in the presence of Thiru. N. Prakash, Advocate for the appellant/accused and of Thiru. Pazha Anand, 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) Cr.P.C against the judgment of conviction and sentence passed by the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur in C.C. No.747/2017 dated 02.08.2023 and to set aside the same.

2. The case was registered against the accused u/s.138 N.I. Act and after trial the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur in C.C. No.747/2017 dated 02.08.2023 is found guilty u/s.138 N.I. Act, Convicted and sentenced to undergo one year simple imprisonment and to pay compensation of Rs.6,00,000/- to the complainant within a period of one month in default of which he has to undergo simple imprisonment for a period of one month for the offence u/s. 138 of NI Act.

3. The complainant states that the accused has got acquaintance with the him for the past few years. On 01.06.2016, the accused has borrowed a sum of Rs.6,00,000/- for his urgent family expenses and business needs and agreeing to repay the same with interest at the rate of Rs.1.50/- paisa for Rs.100/- per month. Thereafter, the accused has not paid any amount either towards principal or interest.

3(1) Further, on 05.09.2017, the accused has issued cheque bearing No.947676 dated 05.09.2017 for Rs.6,00,000/- drawn on State Bank of India, Karur Town Branch in favour of the complainant. As per request of the accused, the complainant presented the cheque branch for collection on 05.09.2017 through his banker Axis Bank, Karur Branch and the same was returned by the returned with an endorsement "Funds Insufficient" dated 07.09.2017. After that, the complainant issued a registered legal notice dated 13.09.2017 to the accused residents and to the accused office address by demanding the amount due under the cheque within 15 days from the receipt of the notice. The legal notice was received by accused on 14.09.2017 after receiving notice neither issued reply nor make payment. Further, he stated that the accused has issued the cheque without any sufficient amount in his amount and knowing the consequences. The accused had issued said cheque wantonly and dishonestly and it was dishonored. Hence the complaint has filed by the complainant punishable under section 138 of N.I. Act.

4. The complainant was taken cognizance, in C.C. No.747/2017 and during trial, complainant examined witnesses PW1 and one Gopalakrishnan was examined as PW2 and marked documents Ex.P1 to Ex.P5 and on the side of the accused, no oral evidence was marked and Ex.D1 was marked. On consideration of evidence and documents, and other materials on record, the learned trial Magistrate arrived conclusion that, the accused committed offences u/s 138 NI Act and Convicted and sentenced to undergo one year simple imprisonment and to pay compensation of Rs.6,00,000/- to the complainant within a period of one month in default of which he has to undergo simple

imprisonment for a period of one month for the offence u/s. 138 of NI Act.

5. Having been aggrieved against the judgment of conviction and sentence, passed by the learned Fast Track Court Judicial Magistrate (At Magistrate Level), Karur in C.C. No.747/2017 dated 02.08.2023 the accused preferred this appeal on the following grounds:

i. The judgment of the trial court is contrary to law, weight of evidence and probabilities of the case.

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

iii. Further, it has been stated that the trial court is against the provision of NI Act and evidence act. Further, it overlooks the proceedings of Cr.P.C., and the evidence act.

iv. The trial court has come to a hasty conclusion that the appellant/accused could let in direct evidence in respect of disprove the case of the respondent/complainant.

v. The trial court has wrongly appreciate the loop holes on the cross examination of the appellant/accused and strengthen the case of the respondent/complainant and failed to consider the character of the complainant. When the complainant was cross examined regarding to the aspect of the complaints filed by the complainant.

vi. Further, the trial court has failed to appreciate the legal position laid down in a judgment reported in 2013(1) MWN (Cr) DCC 72 a case disposed by the High Court of Madras made in Palanisamy Vs Karvannan – Where in a case of appellant that he borrowed money from his father in law and his friend. But to prove same, appellant not examined his father in law and his friend, hence the presumption under section 139 held rebutted by respondent – acquittal up held.

vii. The trial court has completely went wrong in deciding the issue relating to the theory of the disputed cheque received for the purpose of a security for the loan amount and hence no complaint would lie under section 138 of NI Act.

viii. The trial court has failed to appreciate the legal position laid down in a judgment dated 17.06.2004 made in a case Madras Cements Limited Vs Vuggam Sambasiva Rao – When the cheque was issued as security no complaint will lie under section 138 for the NI Act.

ix. The appellant/accused has submits that the complainant deposition clearly reflects the real thigh behind the filing of the above complaint. Further, the trial court has failed to appreciate the defense taken by the accused with regard to the passing of consideration. Further, the trial court went a wrong in its judgment relating to the consideration and the legally enforceable liability.

x. The trial court has failed to appreciate the defense taken by the accused that he has not borrowed any amount from the complainant and never executed any promissory note infavour of the complainant as averred in the private complaint on 01.06.2016 and to discharge the above loan amount the accused never issued any cheque.

xi. The trial court has failed to appreciate the defense taken by the accused and failed to consider that the respondent/complainant with the active collusion of his associates.

xii. It has been stated that it is necessary to send the promissory note and relevant documents namely specimen writing of the PW2 for expert opinion for compare the writing and obtaining report and such report is necessary for lawful adjudication of the case and hence the appellant has filed CMP 4348/2023 and the same was dismissed on 05.06.2023 and against which the appellant filed revision before this Court in Crl.R.No.16/2023 along with stay application but the trial court pronounced judgment in CC 747/2017 dated 02.08.2023 and hence the appellant not pressed the criminal revision petition without deciding the appeal on merits.

xiii. The trial court has failed to consider the contradictions found in the complaint and the proof affidavit of the respondent/complainant.

xiv. The trial court has failed to appreciate the legal position reported in 2013(1) DCR 417 Delhi High Court in a case of Kulvinder Singh Vs Kaffel Ahmed, 2013(1) DCR 390 Kerala High Court in a case of Rajeev Vs State of Kerala, 2013(1) MWN (Cr) DCC 19(Ker) Kerala High Court as Ernakulam Bench in a case of V.S. Chandran VS Bindhu and State of Kerala.

xv. Further, he has stated that the judgment of the trial court is not correct and liable to be set aside. Hence, he prays to set aside the judgment in CC 747 of 2017 dated 02.08.2023.

6. 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?

7. 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.
05.09.2017	05.09.2017	Funds Insufficient on 07.09.2017	13.09.2017	14.09.2017 No Reply notice was issued by the accused	29.09.2017	20.10.2017

7(2) In this case on hand, the accused had given a post dated cheque bearing No.947676 dated 05.09.2017 for Rs.6,00,000/- drawn on State Bank of India, Karur Town branch in favour of the complainant to discharge the above said liability accused issued a post dated cheque to the complainant. The cheque was presented for collection by the complainant on 05.09.2017 through his banker Axis Bank, Karur Branch. It was returned as Funds Insufficient on 07.09.2017. Then he issued legal notice to the accused on 13.09.2017 to pay the amount within 15 days from the date of receipt of the notice and the accused has received the legal notice on 14.09.2017 and no reply notice was issued by accused. Then the Complainant had filed the present case on 20.10.2017. 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.

1 <u>Answering for Points 2 and 3</u>

The appellant herein has filed the appeal against the judgment in C.C. No.747/2017 dated 02.08.2023 on the file of the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur.

For the convenience the parties nomenclature as used as before the trial court.

7(3) The complainant was examined as PW1 and one Gopalakrishnan was examined as PW2 and marked documents Ex.P1 to Ex.P5 and on the side of the accused, no oral evidence was marked and Ex.D1 was marked.

The document Ex.P.1 goes to show that the Promissory Note executed by accused in favour of the complainant dated 01.06.2016. Ex.P.2 goes to show the cheque drawn on State Bank of India, Karur Town branch, bearing No.947676 for Rs.6,00,000/- dated 05.09.2017. Ex.P.3 goes to show that the original return memorandum dated 07.09.2017. Ex.P.4 goes to show that the office copy of the statutory notice issued by the complainant to the accused dated 13.09.2017. Ex.P5 goes to show that the original acknowledgment card dated 14.09.2017. 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.

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.

7(4) After going through the materials available on record, it is seen that it is not in dispute that Ex.P1 promissory note and the Ex.P2 cheque are 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, Karur Town branch. It is also not in dispute that the signature found therein in the Ex.P2 cheque is that of the appellant/accused. Hence the accused is bound to rebut the same as per the Sec. 139 of N.I.Act.

7(5) The defense of the accused is that he has borrowed a sum of Rs.1,00,000/- to the complainant and for the same he has given the unfilled two cheques to the respondent/complainant. Furthermore, the appellant/accused has stated that he has paid weekly interest to the respondent/complainant which comes more than that of Rs.3,00,000/- for the borrowal of Rs.1,00,000/- to the respondent/complainant. Hence, the cheques were misused by the respondent/complainant and he has filed this false case against him.

7(6) Here, the above said contention raised by the appellant/accused is acceptable when he has produced sufficient documents to prove the same. But, the appellant/accused has failed to produced sufficient documents to substantiate his contention.

7(7) Furthermore, the respondent/complainant has sent the Ex.P4 legal notice dated 13.09.2017 and the appellant/accused has received the legal notice dated 14.09.2017. But, the appellant/accused has not sent any reply notice to the respondent/complainant by setting out of his defense.

7(8) Here, to substantiate his contention, the appellant/accused has not produced any single document to prove about that he has given the cheques as security for the borrowal of Rs.1,00,000/- to the respondent/complainant. To substantiate the same, on his side no one was examined. Even more, the appellant/accused has not filed any formal complaint against the said respondent/complainant for misusage of his documents. In this stage of cross examination, the appellant/accused has taken the defense against the respondent/complainant is unbelievable one. Hence, the contention of the appellant/accused against the misusage of cheque by the respondent/complainant was not proved by him through any documents satisfactorily.

8. One of the contention raised by the appellant/accused is that the respondent/complainant has asked exorbitant interest to appellant/accused and the appellant/accused refused to pay exorbitant interest to the respondent/complainant and due to that motive, the respondent/complainant has filed a false case by misusing his cheques which was given for security for the amount Rs.1,00,000/-.

8(1) The contention raised by the appellant/accused is unbelievable one since he has not filed any formal complaint as against the respondent/complainant for the exorbitant interest asked against him. Even more, he has not sent any reply notice to the respondent/complainant by setting out of his defense. Hence, the contention is viewed only as afterthought.

9. Further, at the time of cross examination, one of the contention raised by the appellant/accused is that the signature in the Ex.P1 promissory note is not that of appellant/accused. But, the appellant/accused has not denied his signature in the promissory note as well as in the cheque at the time of questioning under section 313 of Cr.P.C., Therefore, the contention raised at the time of cross examination regarding the dispute of signature is squarely an afterthought. Hence, the appellant/accused has failed to rebut the presumption that the cheques were issued for consideration.

10. Here, the appellant/accused has not placed any document materials to substantiate his defense. Furthermore, the appellant/accused

has not filed any formal complaint as against the respondent/complainant for the misusage of cheque. Even more, at the time of incriminating circumstances appearing in the evidence of the complainant were put to the appellant/accused as per the section 313(1)(b) of Cr.P.C., the appellant/accused has not raised any question or denied the claim of the respondent/complainant by setting out his defense. Therefore, appellant/accused has failed to rebut the presumption to shift onus on to the respondent/complainant. Therefore, the contention raised by the appellant/accused in the time of cross examination is viewed only as afterthought. Hence, the defense of the accused is unbelievable.

11. Therefore, the appellant/accused has failed to probabilise his defence. Even at the time of 313 questioning he has not raised his contention, he has simply denied the claim of the respondent/complainant. Hence, the appellant/accused has failed to rebut the presumption to shift onus on to the respondent/complainant.

11(1). As per the section 139 of NI Act, 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. When it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration. Once the issuance of cheque is established by admission of the appellant/accused or by evidence the presumptions under section 139 of the Act arise in favour of the complainant.

12. 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 relelvant portion para 14 to 15, is runs as, Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 &139. 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.

13. It is seen that in this case, it is established that the signature in the Ex.P.1 and Ex.P.2 are that of the signature of the accused only and the same was also not denied by the appellant/accused. 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.

14. With this background I have perused the evidence, documents and materials produced by both parties, it is seen that, I have found no materials or circumstances, placed before me to believe the version of the appellant/ accused.

14(2) 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.”

14(3) 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.

14(4) “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 EXP 1 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 Ex P2 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 she 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.

14(5) However, in this case, it is not in dispute that Ex.P.2 is the cheque supplied by the bank to the appellant/accused in respect of the account maintained with its banker and the signature therein is that of the accused. 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.

14(6) 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. Therefore, the accused has failed to rebut the presumption operating against him. Hence, I hold that the appellant has committed the offence u/s 138 Negotiable Instrument Act.

15. I have perused, the evidences and documents and the materials on record. It is seen that, the accused during 313 questioning, replies as, simply denied the issuance of the cheque and false case has been foisted against him. Further, it is seen that, the complainant, issued notice, 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.

16. Hence, I hold that the appellant herein has not adduced any documents as to rebut the presumption. Hence, I hold that the appellant has committed the offence u/s 138 Negotiable Instrument Act.

17. 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.P4 dated 13.09.2017. The accused has received a legal notice on 14.09.2017. Further, the appellant/accused has not sent any reply notice by setting out of his defence. Even at the time of trial or at the time of cross examination, the accused has not taken any steps to prove his defense by producing documents. Hence, he has not come forwarded with his defense with documents even the trial court has given sufficient time to prove his defense. Therefore, upon careful scrutiny of entire matters placed on record, the respondent/complainant has proved the guilt of the appellant/accused for the offence under section 138 of NI Act beyond reasonable doubt.

18. Therefore, the trial Court has rightly come to the conclusion that the accused has committed the offence. The appellant/accused has failed to discharge his 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. Hence, there is no merits in the appeal and appeal is deserves to be dismissed. Accordingly, this appeal is dismissed.

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.

19. Therefore, the respondent/complainant has proved the guilt of the appellant/accused for the offence under section 138 of NI Act beyond reasonable doubt.

19(1). Therefore, the trial Court has rightly come to the conclusion that the accused has committed the offence. 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. Hence, there is no merits in the appeal and appeal deserves to be dismissed. Accordingly, this appeal is dismissed.

20. Answering point No 4 :-

Hence, this court is inclined to dismissed this appeal, by confirming of conviction passed by the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur C.C. No.747/2017 dated 02.08.2023 .

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 Fast Track Court Judicial Magistrate (At Magistrate Level), Karur C.C. No.747/2017 dated 02.08.2023 .

In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the Fast Track Court Judicial Magistrate (At Magistrate Level), Karur in C.C. No.747/2017 dated 02.08.2023 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, corrected and pronounced by me in the open court on this the 11th day of June 2026.

ELAVAZHAGAN

Digitally signed by ELAVAZHAGAN
Date: 2026.06.11 15:26:21 +0530

DISTRICT AND SESSIONS JUDGE,
KARUR.