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 01st day of April 2026

CRIMINAL APPEAL No.121/2025

[CNR.No:TNKR-01-001280-2025]

From what Court the appeal is preferred	:	The Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur.
Number of the case in that Court	:	C.C.No.859/2017
Name and Description of the appellants	:	1. J. John Lobo, S/o. T.S. John Lobo, Thundiparambilveetil, No.539, Thekkadi Kava, Kumily Village, Peermed Taluk, Iduki District. Karur 685 509. 2. Roselin K. Thomas, W/o. J. John Lobo, Thundiparambilveetil, No.539, Thekkadi Kava, Kumily Village, Peermed Taluk, Iduki District, Karur 685 509.
Name of the complainant	:	R. Periyasamy, S/o. Rakkiyannan, No.40, Indira Nagar, South Gandhigrammam, Thanthoni Village, Karur District.
The sentence and law under which it was imposed in the lower court	:	The accused no.1 and 2 are convicted and sentenced to undergo one year simple imprisonment and directed to pay jointly and severally compensation of Rs.5,00,000/- to the complainant u/s.357(3) of Cr.P.C, within a period of one month, failing which the appellants/accused no.1

		and 2 shall undergo simple imprisonment for one month.
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 Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in C.C.No.859/2017 dated 17.03.2025 is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.**
Date of filing	:	16.04.2025
Date of notice issued by that court to appear	:	29.04.2025
Date of bail bond if the appellant has been let out on bail	:	-----
Date of the appellant ordered to appear	:	17.06.2025
Date of hearing	:	18.03.2026
Date of Judgment/Order	:	01.04.2026

This criminal appeal is coming on 01.04.2026 for final hearing before me in the presence of Thiru. H. Elango, Advocate for the appellant/accused and of Thiru. P. Thangavel, 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 Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur C.C.No.859/2017 dated 17.03.2025 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 Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur C.C.No.859/2017 dated 17.03.2025 has found guilty against the accused u/s.138 of N.I.Act and convicted and sentenced to undergo one year simple imprisonment and directed to pay jointly and severally compensation of Rs.5,00,000/- to the complainant u/s.357(3) of Cr.P.C, within a period of one month, failing which the appellants/accused no.1 and 2 shall undergo simple imprisonment for one month.

3) The respondent is the complainant before the trial Court. He has preferred a complaint for the offence u/s 138 of Negotiable Instruments Act. Further, it has been stated that the accused no.1 is the husband of the accused no.2 and they are well known persons to the complainant.

3(2) During the fourth week of October 2016, the accused no.1 approached the complainant for some financial assistance. Further, on 05.11.2016, the accused no.1and 2 have jointly borrowed a sum of Rs.5,00,000/- from the complainant for their urgent family and business expenses. On the same day, the accused no.1 executed a promissory note in favour of the complainant agreeing to repay the same on demand with interest at a rate of five paise per hundred per day. Further, the accused did not pay any amount either towards principal or interest. After several demands, during the first week of August 2017, the accused no.1 and 2 jointly issued a post dated cheque dated 29.08.2017 drawn on their joint account maintained with State Bank of Travancore, Kumily branch No.569161 for a sum of Rs.5,00,000/- in favour of the complainant towards the principal amount.

3(3) The complainant has presented the cheque for collection on 29.08.2017 through his banker, Canara Bank, Karur Branch for collection but the same was dishonoured as Funds Insufficient on 30.08.2017. Thereafter, on 22.09.2017, the complainant has issued a legal notice to the accused no.1 and 2 calling upon him to repay the cheque amount but the same was returned as refused on 25.09.2017. In spite of the statutory notice, the accused neither chosen to pay the amount due under the dishonoured cheque within the stipulated period nor sent any reply. Therefore, the complainant filed a complaint against the accused no.1 and 2 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 no.1 and 2 denied the same. Therefore, the accused no.1 and 2 was put on trial.

5) Before the trial Court, on the side of the complainant, the complainant examined himself as P.W.1 and P.W.2 and Ex.P1 to Ex.P6 were marked whereas on the side of the accused, DW1 was examined and Ex.D1 to Ex.D8 documents 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 convicted and sentenced to undergo one year simple imprisonment and directed to pay jointly and severally compensation of Rs.5,00,000/- to the complainant u/s.357(3) of Cr.P.C, within a period of one month, failing which the appellants/accused no.1 and 2 shall undergo simple imprisonment for one month..

7) Having been aggrieved against the judgment of conviction and sentence, passed by the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur C.C.No.859/2017 dated 17.03.2025, 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 proper consideration of prosecution witness's evidence and contradiction. The trial court's conviction is moral one not in accordance with law.

iii) The judgment of the trial court committed manifest error on the point of law which has resulted in miscarriage of justice. The trial court has failed to consider that for the said borrowed amount Rs.5,00,000/- the complainant got promissory note as well as cheques, whereas the contentions of the appellants that the cheque was not issued to the complainant was not considered. The trial court has failed to consider that the source of income of the complainant was not adduced in the evidence. Not even, the income tax return of the complainant or the bank statement to establish the amount was given to the accused are not established.

iv) The trial court has failed to consider the complainant categorically failed to prove by producing the account statement to establish that the amount was with the complainant.

v) The trial court has failed to see that the appellants herein rebutted the presumption under Negotiable Instruments Act. The trial court further failed to consider the evidence that as deposed by P.W.1 the cheque was not issued to the complainant.

vi) The trial court further erred in holding that the cheque was issued not in the name of the complainant whereas as elicited through evidence that the name was filled up only by the complainant and the trial court ought to have come to the conclusion that the cheque was not issued to the complainant.

vii) It is further pertinent to consider that the subject matter of the cheque was stolen by one Sebastian Babu and for which the appellants/accused preferred to register a case before the police only after getting knowledge on receiving the summons from the court. Further, it has been stated that the finding of the trial court that the complaint was given only as an after thought is also no tenable for the reasons that the appellants registered the FIR only after getting knowledge of the cheque in the hands of the complainants. In the said FIR the accused has given the complaint that Periyasamy, the complainant herein, colluded with one Sebastian Babu and proceeding to take action against the appellants.

viii) The trial court has failed to consider the deposition of PW1regarding the exchange of old currency on the eve of demonetization. Further, the trial court has failed to consider the evidence let in, that a sale deed to show that the cheques were not issued for any consideration was not duly appreciated. One Unnikrishnan as per the Ex.D1 sale deed was executed in favour of the complainant on the request of Sebastian Babu, who is nothing but the accused in the Cr. No.266 of 2018 on the file of the Kumily Police Station, in which it was registered that the relevant cheques were stolen by the Sebastian Babu and the trial court failed to give due appreciation of the evidence.

ix) Having concluded that the complainant and Sebastian Babu had transaction but contrarily failed to consider that the cheque on the hands of Sebastian Babu was filled up with the name of the complainant and produced before the Court.

x) The trial court has failed to consider that the evidence let in before the court, the business of the appellant was not elicited in any evidence, and however the offer of the complainant to the accused is not proved. Without having any knowledge of the business of the accused the complainant could not have given the money to the accused.

xi) The trial court has failed to consider that the contradictory evidence that during first week of October 2017, the accused in the house of the complainant has given one cheque and another two cheques were given at his office. The contradictory evidence was not considered by the trial court.

xii) The trial court has failed to consider that no bank officials were enquired for return of the cheque. Further, it has been stated that the complainant is not aware of the signature of the accused no.1, he could not establish the signature in the cheque.

xiii) Further, it is the vital evidence before the trial court that the complainant is known to Sebastian Babu and the complainant deposed that he frequently given loan to Sebastian Babu. Therefore, it can be presumed that the cheque taken away by Sebastian Babu was mischievously used by the complainant.

xiv) It is elicited before the trial court that one Sebastian Babu has stolen the cheque of the accused and initiated action before several court, for which Ex.D4 and Ex.D5 were marked. Further, in STC No.204/2017 the case was dismissed in Ex.D6 whereas the trial court has failed to consider the same. Further, it has been stated that the complainant has given opportunity to file IT returns but he failed to file any documents to prove his income. The complainant has failed to prove his income and the source of the amount given as a loan. Furthermore, it has been stated that no income tax returns were produced in the trial court. The source for the total amount of Rs.15,00,000/- as alleged to have been given to the accused is not produced before the trial court.

xv) Further, it has been stated that the sentence imposed by the trial court against the appellant/accused is highly excessive. Hence, prays to allow the appeal.

7(2) The counsel for the appellant/accused has also filed the written arguments along with the citations of Honourable Supreme Court of India in Basalilngappa Vs Mudibasappa, Rangappa Vs Mohan and Sharad Birdhichand Sarda Vs State of Maharashtra. Therefore, the counsel for the appellant/accused putforth his arguments in the lines of the grounds. Hence, he prays to allow this appeal as against the appellant/accused.

7(3) The counsel for the respondent/complainant has filed the written arguments along with the citations of Honourable Supreme Court of India in Criminal Appeal No.4171/2024 in Ashok Singh vs State of Uttar Pradash and another. Hence, he prays to dismiss this appeal as against the appellant/accused.

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 appellants/accused no.1 and 2 have rebutted the presumption under 114 of Evidence Act and u/s 118 and u/s 139 of N.I. Act?

3 Whether the appellants/accused 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.
29.08.2017	29.08.2017	Funds Insufficient on 30.08.2017	22.09.2017	The legal notice was returned as refused on 25.09.2017	10.10.2017	07.11.2017

9(1) In this case on hand, the accused had given a post cheque bearing registration No.569161 dated 29.08.2017 for Rs.5,00,000/- drawn on State Bank of Travancore, Kumily 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 on 29.08.2017. It was returned as Funds Insufficient on 30.08.2017. Then he issued legal notice to the accused on 22.09.2017 to pay the amount within 15 days from the date of receipt of the notice. The legal notice was returned as Refused on 25.09.2017. Then the Complainant had filed the present case on 07.11.2017. 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.

Answering for Points 2 and 3

The appellant herein has filed the appeal against the judgment in C.C.No.859/2017 dated 17.03.2025 on the file of the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur.

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

The complainant was examined himself as P.W.1 and P.W.2 and Ex.P1 to Ex.P6 were marked whereas on the side of the accused, DW1 was examined and Ex.D1 to Ex.D8 documents were marked.

The document Ex.P.1 goes to shows that the original promissory note executed by the accused in favour of the complainant dated 05.11.2016. Ex.P.2 goes to shows that the original cheque drawn on State Bank of Travancore, Kumily Branch, bearing registration No.569161 for sum of Rs.5,00,000/- dated 29.08.2017. Ex.P.3 goes to shows that the return memorandum dated 30.08.2017. Ex.P.4 goes to shows that office copy of the statutory notice issued by the counsel for the complainant to the accused dated 22.09.2017. Ex.P.5 goes to shows that the returned postal cover to the accused no.1 dated 25.09.2017. Ex.P.6 goes to shows that the returned postal cover to the accused no.2 dated 25.09.2017. 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.

9(2) 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.

9(3) After going through the materials available on records, it has seen that the appellants/accused no.1 and 2 have not denied their signature in Ex.P2 cheque. Furthermore, the appellants/accused no.1 and 2 have not disputed the Ex.P2 is the cheque leaf supplied by the bank to the appellants/accused no.1 and 2 in respect of the account of appellants/accused no.1 and 2 which was maintaining with the banker, namely State Bank of Travancore, Kumily Branch, bearing registration No.569161. Therefore, it is also not in dispute that the signature found therein is that of the appellants/accused no.1 and 2. The appellants/accused no.1 and 2 have denied the claim of the respondent/complainant and further the appellants/accused no.1 and 2 have stated in the cross examination of the PW1 that one Sabastian Babu has theft the cheques of the accused from the house of the appellants/accused no.1 and 2. Further, the appellants/accused has stated that the said Sabastian Babu has given the cheques to the complainant which were misused for filing complaint against them.

9(4) Upon perusal of the Ex.P.2 the original cheque drawn on State Bank of Travancore, Kumily Branch, bearing registration No.569161 for sum of Rs.5,00,000/- which goes to shows that the appellants/accused no.1 and 2 are the joint account holder and the alleged cheque was drawn on joint account of the appellants/accused no.1 and 2 and they both were affix their signatures in the alleged cheque. Hence, the both accused no.1 and 2 are liable to probabilise their defence that the signed cheques were misused by the respondent/complainant. Hence, the appellants/accused has to prove that they did not borrowed any amount from the respondent/complainant.

9(5) On the side of the appellants/accused no.1 and 2 Ex.D1 to Ex.D8 documents were marked.

The document Ex.D.1 goes to shows that Copy of the Sale deed (compared with original) dated 10.05.2013. Ex.D.2 goes to shows that notarized copy of Sale agreement (compared with original) dated 12.02.2013. Ex.D.3 goes to shows that the Copy of the Sale deed dated 02.11.2007, 30.08.2006 and 15.02.2006. Ex.D4 goes to shows that Copy of the complaint in STC No.204/2017 (compared with certified copy). Ex.D5 goes to shows that the copy of the cheques State Bank of Travancore, Kumily Branch, bearing registration no.569165, 569166, 569168, 569170 and 569172 dated 28.08.2017 for sum of Rs.10,00,000/- each. Ex.D6 goes to shows that copy of the judgment in STC No.204/2017 dated 04.06.2024. Ex.D7 goes to shows that the Web copy of order of stay of all proceedings in STC No.204/2017 by the Honourable Supreme Court of India dated 08.11.2024. Ex.D8 goes to shows that the true copy of First Information Report in Cr. No.266/2018 on the file of Kumily Police Station.

9(6) Upon perusal of the Ex.D1 Copy of the Sale deed dated 10.05.2013 which goes to shows that the Sale deed was executed by one Unnikrishnan in favour of the PW1 and on the same accused no.1 and his son are the witness in the sale deed Ex.D1. Therefore, from the copy of the Sale deed Ex.D1 which clearly goes to shows that there was a well acquaintance between the complainant and the accused from the year 2013 and hence it reveals that the appellants/accused has know the respondent/complainant since from the year 2013.

9(7) Furthermore, the appellants/accused no.1 and 2 have stated that they have filed a complaint against the said Sabastian Babu on the file of Kumily Police Station in Crime No.266/2018. Upon perusal of the Ex.D8 true copy of First Information Report in Cr. No.266/2018 on the file of Kumily Police Station which goes to shows that the appellants/accused has given the complaint on 21.04.2018 but the case in hand, the complainant has appeared before this court on 13.02.2018 on the service of summons. Therefore, the complaint given against one Sabastian Babu on 21.04.2018 is squarely viewed as afterthought. Furthermore, the accused has only given the complaint in the year 2018 but the period of occurrence was between the year 2014 to 2017. Hence, the accused has not take any steps prior to this complaint. Furthermore, the accused has given only the complaint on 21.04.2018 but the appellants/accused have not come forward to take any steps to give instructions to the bank to Stop the Payment. Hence, Ex.P8 is clearly viewed as afterthought. Hence, the appellants/accused has failed to probabilise that the cheques would have been stolen by the said Sabastian and the same was given to the respondent/complainant.

10. Therefore, the appellants/accused has failed to prove his defense whereas the respondent/complainant has clearly proved his contention through his documents Ex.P1 to Ex.P6. Therefore, the respondent/complainant has clearly proved the appellant/accused no.1 and 2 have borrowed the said amount. Hence, the appellants/accused no.1 and 2 have failed to prove the same thorough their exhibits.

11. Furthermore, upon perusal of the Ex.D4 Copy of the complaint in STC No.204/2017. Ex.D5 Copy of the cheques State Bank of Travancore, Kumily Branch, bearing registration no.569165, 569166, 569168, 569170 and 569172 for sum of Rs.10,00,000/- each. Ex.D6 Copy of the judgment in STC No.204/2017 dated 04.06.2024 would goes to shows that the said Sabastian Babu has filed the case as against the appellants/accused and the same was dismissed for non prosecution. Even more, Ex.D4, Ex.D5, Ex.D6

and Ex.D7 are the complaint filed by the Sabastian Babu which are not relevant to this case. The case in hand, the appellants/accused has prove whether they have borrowed the said amount to the respondent/complainant or not, whether the said Sabastian has misused the cheques of the appellants/accused no.1 and 2 and how the said cheque was travelled into the hands of the respondent/complainant. Hence, the exhibits produced by the appellants/accused no.1 and 2 are not relevant to determine the above said points in this case.

12. Therefore, the appellant/accused has took a steps to close their account by giving instruction to their bank but in the other hand, they have not take any steps to issued reply notice to the complainant by setting out their defense. Even more, they have not filed any formal complaint as against the respondent/complainant for the misuse of their cheque. Therefore, the appellants/accused no.1 and 2 have failed to prove that how the alleged cheque was came into the hands of the respondent/complainant.

13. Therefore, the appellants/accused no.1 and 2 have not denied the signature found in the Ex.P3, Ex.P4 and in Ex.P5. Hence, the appellants/accused no.1 and 2 have failed to discharge their burden to rebut the presumption under section 139 of the Negotiable Instrument Act. Therefore, the appellants/accused has failed to probabilise their defence that they have not issued the Ex.P5 cheque for a sum of Rs.5,00,000/- to the respondent/complainant. Even at the time of 313 questioning they have not raised their contention, they have simply denied the claim of the respondent/complainant. Hence, the appellants/accused have failed to rebut the presumption to shift onus on to the respondent/complainant.

14. 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 appellants/accused or by evidence the presumptions under section 139 of the Act arise in favour of the complainant.

15. 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.

16. It is seen that in this case, it is established that the signature in the Ex.P.2 is that of the signature of the appellants/accused no.1 and 2 only and the same was also not denied by the appellants/accused no.1 and 2. 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.

17. 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.

17(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."

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 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 EXP6 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.e. 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.

17(3) However, in this case, it is not in dispute that Ex.P.2 is the cheque supplied by the bank to the appellants/accused in respect of the joint account maintained with its banker and the signature therein is that of the appellants/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.

17(4) But, in this regard, it is established in many cases as, it is for the accused to explain her 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.

18. Further, one of the contention raised by the appellants/accused no.1 and 2 in the grounds is that the trial court has failed to consider that the source of income of the complainant was not adduced in the evidence. Not even, the income tax return of the complainant or the bank statement to establish the amount was given to the accused are not established.

18(1) Here, I remind the principles laid down in the judgment of Honourable Supreme Court of India in *Tedhi Singh Vs Narayan Dass Mahant in Criminal Appeal No.362 of 2022*, which held that the trial court and the first Appellate Court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suite. 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 wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.

18(2) Here, the contention raised by the appellants/accused no.1 and 2 are acceptable when they have produced sufficient documents to prove the case. The case in hand, the appellants/accused no.1 and 2 have not produced any documents to substantiate their contention. Therefore, the contention raised by the appellants/accused no.1 and 2 are unsustainable one.

19. 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 them. 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 she 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 appellants/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.

19(1). Hence, I hold that the appellants/accused herein has not adduced any valid documents as to rebut the presumption. Hence, I hold that the appellant has committed the offence u/s 138 Negotiable Instrument Act.

19(2). The appellants/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 22.09.2017. The legal notice was returned as refused on 25.09.2017. Even at the time of trial or at the time of cross examination, the appellants/accused no.1 and 2 have not taken any steps to prove their defense. Further, they have not come forwarded with their defense with valid documents even the trial court has given sufficient time to prove their defense.

19(3) 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.

19(4) Therefore, the trial Court has rightly come to the conclusion that the accused has committed the offence. The appellants/accused no.1 and 2 have 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. 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.

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(5) 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 Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in C.C.No.859/2017 dated 17.03.2025.

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 Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur C.C.No.859/2017 dated 17.03.2025.

In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur C.C.No.859/2017 dated 17.03.2025 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, corrected and pronounced by me in the open court on this the 01st day of April 2026.

ELAVAZHAGAN

Digitally signed by ELAVAZHAGAN
Date: 2026.04.10 12:33:12 +0530

DISTRICT AND SESSIONS JUDGE,
KARUR.