

IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE, KARUR

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

DISTRICT AND SESSIONS JUDGE.

Tuesday, the 07th day of April 2026

CRIMINAL APPEAL No.124/2025

[CNR.No:TNKR-01-001495-2025]

From what Court the appeal is preferred	: Judicial Magistrate No.II, Kulithalai.
Number of the case in that Court	: S.T.C.No.204/2023
Name and Description of the appellant	: V. Rajagopal, S/o. Viswanathan, No.32, Chinna Andar Street, Kulithalai Po, Kulithalai Taluk, Karur District.
Name of the complainant	: Tmt. K. Ramya, W/o. Karthick, No.50, New Court Street, Kulithalai Po, Kulithalai Taluk, Karur District.
The sentence and law under which it was imposed in the lower court	: The accused is convicted and sentenced to undergo six months simple imprisonment and directed to pay compensation of Rs.7,00,000/- to the complainant u/s.357(3) of Cr.P.C, failing which he shall undergo simple imprisonment for two months.
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 No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025 is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.
Date of filing	: 28.04.2025
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	: 26.03.2026
Date of Judgment/Order	: 07.04.2026

This criminal appeal is coming on 26.03.2026 for final hearing before me in the presence of Thiru. K.S.M. Sahul Hameed, Advocate for the appellant/accused and of Thiru. T. Dhamodharan, 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 No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025 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 No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025 has found guilty against the accused u/s.138 of N.I.Act and convicted and sentenced to undergo six months simple imprisonment and directed to pay compensation of Rs.7,00,000/- to the complainant u/s.357(3) of Cr.P.C, failing which

he shall undergo simple imprisonment for two months.

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, the complainant stated that the appellant/accused agreed to sell the house to the complainant and received an advance payment sum of Rs.32,00,000/- from the complainant and agreed to received remaining sum of Rs.25,00,000/- within six months and he signed in the sale agreement on 28.03.2022. Thereafter, the complainant has requested the appellant/accused to execute the sale deed as per the sale agreement dated 28.03.2022. Further, the appellant/accused has issued a cheque dated 10.01.2023 drawn on Karur Vyshya Bank, Kulithalai Branch bearing registration no.001153 for a sum of Rs.7,00,000/- in favour of the complainant repayment of the alleged sale advance amount and assured that the cheque would be honoured on its presentation.

3(2) Further, the complainant has presented the cheque for collection on 01.03.2023 through his banker Canara Bank, Kulithalai Branch. Further, the said cheque was returned as Funds Insufficient on 02.03.2023. On 07.03.2023, the complainant caused issuance of legal notice to the accused calling upon him to repay the cheque amount. The accused has received the notice on 10.03.2023. In spite of the statutory notice, the accused neither chosen to pay the amount due under the dishonoured cheque within the stipulated period nor send any reply 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., he was 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, the complainant examined himself as P.W.1 and one Karthick was examined as PW2 who is the husband of P.W.1 and Ex.P1 to Ex.P7 were marked whereas on the side of the

accused, D.W.1 to D.W.3 were examined and Ex.D1 was 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 six months simple imprisonment and directed to pay compensation of Rs.7,00,000/- to the complainant u/s.357(3) of Cr.P.C, failing which he shall undergo simple imprisonment for two months.

7) Having been aggrieved against the judgment of conviction and sentence, passed by the Judicial Magistrate No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025, 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. The trial court has failed to appreciate in total the oral and documentary evidence adduced on the side of the appellant.

ii) The trial court has failed to see that there is no legally enforceable debt between the appellant and the respondent as alleged in the complaint.

iii) The trial court has not taken into consideration that the appellant never given the cheque for sum of Rs.7,00,000/- for repayment of the alleged sale advance amount.

iv) The trial court has failed to see that the respondent's husband got unfilled empty cheque from the appellant.

v) The trial court has failed to see that the respondent's husband has admitted that after the alleged cheque date he had received of Rs.2,00,000/- on serveral times through google pay account from the appellant.

vi) The respondent has not endorsed the receipt of Rs.2,00,000/- on the back of the cheque, but the respondent has presented the cheque for entire amount as per the Supreme Court Judgment. The trial court has not considered the judgment of the Honourable Supreme Court reported in 2022 Livelaw (SC) 830.

vii) The trial court has failed to see that the trial court has not read the finding of the Honourable Supreme Court in its judgment that under section 56 read with the

section 15 of the Act, an endorsement may be made by the recording the part payment of the debt in the cheque or in a note appended to the cheque when such an endorsement is made the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured. Further, it has been stated that the offence under section 138 would not be attracted, since that cheque does not represent a legally enforceable cheque at the time of encashment.

viii) The trial court has failed to fix burden proof upon the respondent/complainant. The trial court has failed to see that the respondent has not proved the guilty against the appellant. Further, the trial court has furnished the appellant on the presumption and assumptions.

ix) The trial court ought to have been given the benefit of doubt and ought to have acquitted the appellant of the charged leveled against him. Further, in any event the sentence imposed against the appellant is highly excessive and is not correct. Further, the trial court ought to have dismissed the complaint by holding that the complaint is not legally sustainable one.

x) Further, it has been stated that the appellant/accused has not received any money from the respondent and has not given any cheque to this respondent. Further, the respondent has filed the complaint only for getting unlawful income. The trial court has simply held erroneously against the appellant that he was guilty under section 138 of NI Act. 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.
10.01.2023	01.03.2023	Funds Insufficient on 02.03.2023	07.03.2023	10.03.2023 Reply notice was not issued by the accused.	25.03.2023	18.04.2023

9(1) In this case on hand, the accused had given a post cheque bearing registration No.001153 dated 10.01.2023 for Rs.7,00,000/- drawn on Karur Vyshya Bank, Kulithalai 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 01.03.2023. It was returned as Funds Insufficient on 02.03.2023. Then he issued legal notice to the accused on 16.10.2018 to pay the amount within 15 days from the date of receipt of the notice. The accused has received a legal notice by the accused on 07.03.2023 and the same was received by the appellant/accused on 10.03.2023. Then the Complainant had filed the present case on 18.04.2023. 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.

Answering for Points 2 and 3

The appellant herein has filed the appeal against the judgment in S.T.C.No.204/2023 dated 08.04.2025 on the file of the Judicial Magistrate No.II, Kulithalai.

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

The complainant has examined himself as P.W.1 and one Karthick was examined as PW2 who is the husband of P.W.1 and Ex.P1 to Ex.P7 were marked whereas on the side of the accused, D.W.1 to D.W.3 were examined and Ex.D1 was marked.

The document Ex.P.1 goes to shows that Sale agreement dated 28.03.2022. Ex.P.2 goes to shows that the original cheque drawn on Karur Vyshya Bank, Kulithalai Branch bearing No.001153 dated 01.03.2023. Ex.P.3 goes to shows that the return memorandum dated 02.03.2023. Ex.P.4 goes to shows that the office copy of the statutory

notice issued by the complainant dated 07.03.2023. Ex.P.5 goes to shows that the registered post receipt dated 08.03.2023. Ex.P.6 goes to shows that the acknowledgment card dated 10.03.2023. Ex.P.7 goes to shows that the complainant's bank account statement. 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 appellant/accused has not denied his signature in the Ex.P2 cheque. It is seen that the appellant/accused has not disputed in Ex.P2 is the cheque leaf which supplied by the bank to the appellant/accused in respect of the account he was maintaining with the banker, namely Karur Vyshya Bank, Kulithalai Branch bearing No.001153. Therefore, it is also not in dispute that the signature found therein is that of the appellant/accused. But, the appellant/accused has denied the claim of the respondent/complainant.

9(4) Further, the contention of the appellant/accused is that one Karthick i.e., PW2 who is the husband of the respondent/complainant has stolen the cheque of the appellant/accused from his shop and he misused the said cheque and filed this case through the respondent/complainant.

9(5) Here, the contention raised by the appellant/accused is unbelievable, since, he has not filed any formal complaint has against the respondent/complainant and her husband. Furthermore, on 07.03.2023, the

complainant caused issuance of legal notice to the accused calling upon him to repay the cheque amount. The accused has received the notice on 10.03.2023. The appellant/accused has not come forward to send the reply notice to the complainant by setting out his defence. Evenmore, to substantiate the same, the appellant/accused has not produced any relevant documents to probabalise his defense. Hence, the defense raised by the appellant/accused is unbelievable one.

9(6) Further, on the side of the accused, D.W.1 to D.W.3 were examined and Ex.D1 account statement of the appellant/accused was marked. Upon perusal of the evidence of DW1, he has deposed that he has known the appellant/accused and the respondent/complainant. Furthermore, he has deposed that the appellant/accused has stated that he has agreed to sell the house to the complainant as per the sale agreement and for the same the appellant/accused has stated that he has received the amount from the respondent/complainant. Furthermore, DW1 has deposed that as per the request of both parties, he has affix his signature in the sale agreement. Further, in the cross examination of DW1, he has stated that he has know that the appellant/accused has paid the amount through G-pay to the respondent/complainant. The case in hand that the appellant/accused has not produced any documents to prove that he has given a sum of Rs.7,00,000/- to the respondent/complainant. Evenmore, upon perusal of the Ex.D1 account statement of the appellant/accused which goes to shows that there was no amount of 7,00,000/- was in the account of the appellant/accused from the year January 2023 to June 2023. Thereafter, the appellant/accused has failed to prove the same.

9(7) Furthermore, in the stage of questioning under section 313(1)(b) of Cr.P.C., also the appellant/accused has not raised his defence. In the stage of cross examination, he has come forwarded with the above said defence without any material records in viewed only an afterthought.

9(8) Therefore, the appellant/accused himself has admitted that his signature in the alleged cheque Ex.P2 and furthermore, he has failed to probabalise his defense through his documentary evidences.

9(9) Therefore, the appellant/accused has failed to probabalise his defence that he has not issued the Ex.P2 cheque for a sum of Rs.7,00,000/- to the respondent/complainant. 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.

10. 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.

11. 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.

12. 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 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.

13. 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.

13(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 person 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 anything 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 in 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.

14. 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.

Here, the contention raised by the appellant/accused is acceptable when he has produced sufficient documents to prove the case. The case in hand the appellant/accused has not produced any relevant documents to substantiate his contention. Therefore, the contention raised by the appellant/accused is unsustainable one.

15. Furthermore, the case in hand, the appellant/accused has not took a steps to close his account by giving instruction to his bank. Even more, he has not filed any formal complaint as against the respondent/complainant for the misuse of his cheque. Therefore, the appellant/accused has failed to prove that how the alleged cheque was came into the hands of the respondent/complainant.

16. 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.

17. 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.

18. 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, 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 appellant/accused had failed to produce relevant material records to substantiate his contention under section 138 of the Act which leads to the inference that there was merit in the complainant's case. Hence, I hold that the appellant has committed the offence u/s 138 Negotiable Instrument Act.

19. 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 07.03.2023. The accused has received a legal notice on 10.03.2023. 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 way of producing any valid documents. Hence, he has not come forwarded with his defense with valid documents even the trial court has given sufficient time to prove his defense.

19(1). 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(2) 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 has committed the offence u/s 138 Negotiable Instrument Act.*

19(3). 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(4). 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 No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025.

Taking into consideration of all the materials on record, I am of the view that there is no relevant materials placed before this court to prove the contention of the appellant/ accused. This court also perused the judgment of

the Judicial Magistrate No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025.

In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the Judicial Magistrate No.II, Kulithalai in S.T.C.No.204/2023 dated 08.04.2025 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 07th day of April 2026.

DISTRICT AND SESSIONS JUDGE,
KARUR.