**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 09th day of June 2026

**CRIMINAL APPEAL No.125/2025**

[CNR.No:TNKR-01-001573-2025]

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| From what court this appeal is preferred | : | The Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur. |
| Number of the case in that court | : | S.T.C.No.415/2019 |
| Name and Description of the appellants | : | M. Velmurugan<br>S/o.Muthusamy,<br>No.6-2-42, 6th Ward, Periyar Colony,<br>Nilakottai Town and Taluk,<br>Dindigul District. |
| Name of the Complainant | : | G.R.S.Trader,<br>Rep.by its Managing Partner,<br>G. Ravisankar,<br>S/o.Ganapathy,<br>Asai Apartment,<br>Bharathi Nagar,<br>Karur 639001. |
| The sentence and law under which it was imposed in the lower court | : | The accused was convicted and sentenced to undergo one year simple imprisonment and to pay the cheque amount of Rs.4,00,000/- as compensation to the complainant under section 357 (3) of Cr.PC within a period of one month., in default of payment of which to undergo simple imprisonment for another one month for the offence u/s. 138 NI Act. |
| Whether confirmed, modified or reversed and if modified modification | : | **In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast** |

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| | | **Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025 is confirmed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law.** |
| Date of filing | : | 06.05.2025 |
| Date of notice issued by that court to appear | : | 06.05.2025 |
| Date of bail bond if the appellant has been let out on bail | : | ---- |
| Date of the appellant ordered to appear | : | ---- |
| Date of hearing | : | 03.06.2026 |
| Date of judgment / order | : | 09.06.2026 |

This criminal appeal is coming on 03.06.2026 for final hearing before me in the presence of Thiru. S. Nedumaran, Advocate for the appellant/accused and of Thiru.P.Vijayakumar, 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/Sec.415 of BNSS Act 2023 against the judgment of conviction and sentence passed by the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025 and to set aside the same.

2) The case was registered against the accused u/s.138 N.I. Act and after trial the learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025 is found guilty u/s.138 N.I. Act, convicted and sentenced to undergo one year simple imprisonment and to pay the cheque amount of Rs.4,00,000/- as compensation to the complainant under section 357(3) of Cr.PC., within

a period of one month, in default of payment of which to undergo simple imprisonment for another one month for the offence u/s. 138 NI Act.

3(1) The respondent is the complainant before the trial Court. He has preferred a private complaint u/s 200 of Cr.P.C. for the offence u/s 138 of Negotiable Instruments Act. According to the complainant, his firm is a registered partnership firm dong business in money lending and the accused had business transaction with the complainant's firm. On 17.08.2016, the accused has borrowed a sum of Rs.25,00,000/- from the complainant firm for his urgent need family expenses and to discharge the early debt. The said mortgage part loan amount for a sum of Rs.13,00,000/- was issued by way of cash and balance amount of Rs.12,00,000/- was transferred by the complainant's firm bank account to the accused bank account. Further, the accused has executed a registered simple mortgage deed dated 17.08.2016 in favour of the complainant's firm in respect of the suit property. The accused has agreed to pay interest at the rate of Rs.2.10 per hundred per month and on failure at the rate of Rs.2.25 per hundred per month. The accused has agreed to pay the principal within a period of eleven months. The period of redemption is over.

3(2) Subsequent to the above said borrowal, the accused has paid the interest only as then and there upto 31.08.2017 and the same was given credit to the accused account of the said mortgage loan. Inspite of the complainant's firm repeated request and demands made in person, the accused has not cared to discharge the mortgage loan amount along with interest. Thereafter, on 28.11.2018, the complainant firm has issued a legal notice dated 28.11.2018 to discharge the said mortgage loan amount and the accused had received the legal notice on 29.11.2018. After that during the last week of June 2019, the accused has issued a post dated cheque dated 02.08.2019 bearing No.172733 drawn on State Bank of India, Natarajapuram, Nilakottai Branch for a sum of Rs.4,00,000/- in favour of the complainant firm towards the part satisfaction of the said mortgage loan amount.

3(3) On 02.08.2019, the complainant has presented the said cheque for collection through his banker Canara Bank, Karur Branch. But the same was returned as "Funds

Insufficient" and the same was intimated to the complainant with memo dated 05.08.2019. Thereafter, the complainant issued a legal notice dated 08.08.2019 by demanding the amount due under the cheque within 15 days from the receipt of the notice. The accused has received the notice on 14.08.2019 and has sent the reply notice on 21.08.2019 with false averments. The accused had issued said cheque wantonly and dishonestly and it was dishonored. Hence the complaint has been filed by the complainant punishable under section 138 of N.I. Act.

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

5) Before the trial Court, on the side of the complainant, the complainant examined himself as P.W.1 and Ex.P1 to Ex.P8 were marked. On the side of the accused, the accused examined himself as D.W.1, one M.Mohamed Raffiq was examined as D.W.2 and one S.Ganesh was examined as D.W.3 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 the accused to undergo one year simple imprisonment and directed to pay compensation of Rs.4,00,000/- to the complainant u/s.357(3) of Cr.P.C, within a period of one month, in default of payment of which to undergo simple imprisonment for another one month.

7**) Having been aggrieved against the judgment of conviction and sentence, passed by the learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025, the accused preferred this appeal on the following grounds:**

i) The Judgment of the trial Court is contrary to law, weight of evidence and all probabilities of case.

ii) The trial Court has utterly failed to understand what is the meaning of Statutory Notice U/S.138 of Negotiable Instruments Act. The trial Court has failed to understand the case of the appellant/accused and passed the order without application of mind.

iii) The respondent/complainant has intentionally not submitted the mortgage deed before the Court as a document for the trail proceedings, subsequent to that the respondent/complainant had executed the sale agreement in respect of same property in favour of Palanisamy S/o.Marappan on very next day of execution of mortgage deed dated 19.08.2016, but the trail Court not considered the same and passed this order.

iv) That the Respondent/Complainant has obtained alleged documents from the appellant/accused which is only given for the purpose of simple mortgage collateral purpose, not for specific needs, hence the order of the trail Court is liable to set aside.

v) The trial Court has not applied its mind in respect of appellant/accused and transaction between the respondent/complainant they entered into simple mortgage in respect his property, as such respondent/complainant had received, another set of documents obtained from the wife of the appellant/accused namely Latha and the cheques belong to City Union Bank, Nilakkottai Branch bearing cheques number 000003 to 000008, still in the hands of respondent/complainant.

vi) It is pertinent to note that the trial Court has failed to understand that whether simple mortgage held between the appellant/accused and the respondent/complainant, even the appellant/accused has not paid interest automatically the respondent/complainant is entitled to recover penal interest, subject to the terms and conditions mentioned in the simple mortgage deed dated 17.08.2016. From this it is crystal clear if the appellant/accused has Interest committed default or interest in payment of the complainant can claim penal interest. Hence the conviction order of the trial Court is liable to set aside.

vii) The trial Court ought to have not considered that the respondent/complainant has filed a mortgage suit in O.S.No. 172 of 2019 on the file of the District Judge, Dindigul for the total amount of mortgage, in which the appellant/accused entered his appearance through his Advocate and matter is pending for adjudication, in mean time the respondent/complainant had filed this case before the trail Court, which is not maintainable under law. Hence the order of the trail Court is liable to set aside.

viii) That the complaint of the respondent/complainant has no cause of action to file such complaint and the date causes of action are not admitted. The complainant is a registered partnership firm doing finance business in money lending and other incidental business, which is registered on 28.11.2013, not recent one. Hence the cause of action not admitted one.

ix) It is submitted that the trial Court utterly failed to note that the respondent/complainant even failed to produce the simple mortgage deed before the trial Court to ascertain value of mortgage and mortgage conditions. Hence the order of the trail court is liable to set aside.

x) It is submitted that the trial Court failed to note that what is necessity arose to the appellant/accused to allegedly borrow a sum of Rs.4,00,000/- that too after he has paid a huge sum of Rs.25,00,000/- as mortgage amount to the respondent/complainant. Hence the order of the trail court is non application of mind.

xi) It is submitted that the trial Court without properly discuss the case has passed a mechanical order. The trial Court has failed to note down the admissions given by the complainant in favour of the appellant at the time of cross examination. 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 of cheque u/s 138 (a) of NI Act | Dt of returned memo and reason for return in 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 1 3 8 (c) NI Act. | Dt when the cognizance of offence made u/s 142(b) of NI Act. |
|---|---|---|---|---|---|---|
| 02.08.2019 | 02.08.2019 | 05.08.2019 Funds Insufficient | 08.08.2019 | Legal Notice was received by the accused on 14.08.2019 and the accused has issued the reply notice on 21.08.2019. | 29.08.2019 | 09.09.2019 |

9(1) In this case on hand, the accused had given a post dated cheque bearing No.172733 drawn on State Bank of India, Natarajapuram, Nilakottai Branch for a sum of Rs.4,00,000/- in favour of the complainant towards discharge of the part satisfaction of the above said mortgage loan amount. The cheque bearing registration no.172733 was presented for collection by the complainant on 02.08.2019 through his banker Canara Bank, Karur Branch. It was returned as “Funds Insufficient” on 05.08.2019. Thereafter, the complainant has issued legal notice to the accused on 08.08.2019 to pay the amount within 15 days from the date of receipt of the notice and the accused has received the said notice on 14.08.2019. Further, the accused has issued the reply notice on 21.08.2019. Then the Complainant had filed the present case on 09.09.2019. The statutory demand notice was given within 30 days, after expiry of 15 days from the date of receipt of notice, the present case was filed within 30 days. Therefore, the statutory need for lodging complaint against the accused is fulfilled by the complainant u/s.138 of NI Act. So, there is no legal infirmity in the present case. I answered to this Point No.1 accordingly.

**10) Answering for Points 2 and 3**

10(1) The appellants herein have filed the appeal against the judgment in S.T.C.No.415/2019 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.

10(2) The complainant was examined as P.W.1 and Ex.P1 to Ex.P8 were marked on the side of the complainant and on the side of the accused, the accused examined himself as D.W., one M.Mohamed Raffiq was examined as D.W.2 and one S.Ganesh was examined as D.W.3 and Ex.D1 was marked.

The document Ex.P1 goes to show the notarized copy of registration certificate of complainant firm dated 28.11.2013 (compared with original). Ex.P2 goes to show the notarized Form A of the complainant firm dated 28.11.2013 (compared with original). Ex.P3 goes to show the original cheque for Rs.4,00,000/- dated 02.08.2019 bearing registration No.172733 drawn on State Bank of India, Natarajapuram, Nilakottai Branch. Ex.P4 goes to show that original return memo dated 05.08.2019 issued by Canara Bank, Karur

Branch. Ex.P5 goes to shows the office copy of Legal notice dated 08.08.2019 issued by the complainant through his counsel to the accused. Ex.P6 goes to show the served postal track consignment dated 14.08.2019. Ex.P7 goes to show the office copy of the reply notice dated 21.08.2019 issued by the accused through his counsel to the complainant. Ex.P8 goes to show the copy of plaint in O.S.No.172/2019. Furthermore, Section 139 of the Negotiable Instrument Act and Section 118 of the Evidence Act, goes that presumption is in favour of the holder in cheque.

***10(3) Section 139 reads as follows:***

***139. Presumption in favour of holder:***

***It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.***

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

10(4) After going through the materials available on record, it is seen that it is not in dispute that Ex.P3 is the cheque leaf supplied by the bank to the appellant/accused in respect of the account he was maintaining with the banker, namely State Bank of India, Natarajapuram, Nilakottai Branch. It is also not in dispute that the signature found therein is that of the appellant/accused.

10(5) But, the contention of the appellant/accused is that he has executed a mortgage deed dated 17.08.2016 for a sum of Rs.25,00,000/- in favour of the complainant in respect of his property and during that time, the respondent/complainant has obtained unfilled signed promissory note and unfilled signed cheques and other documents from him and his wife as security. Further, the complainant has paid only a sum of Rs.12,00,000/- through RTGS and he has failed to give the remaining amount of Rs.13,00,000/-. Further, the appellant/accused has contended that when he asked the respondent/complainant to give the remaining amount, in order to grab more money from him, the respondent/complainant has misused the cheque and filed this false case as against him. Hence the accused is bound to rebut the same as per the Sec. 139 of N.I.Act.

10(6) Further, in order to rebut the presumption under Negotiable Instruments Act, the accused examined himself as D.W.1, one M.Mohamed Raffiq was examined as D.W.2 and one S.Ganesh was examined as D.W.3 and Ex.D1 was marked.

10(7) Ex.D1 goes to show the certified copy of the sale agreement executed by the accused and one Palanisamy dated 19.08.2016.

10(8) The D.W.1 during his chief examination has deposed that he has approached the GRS Traders Ravisankar for obtaining loan for a sum of Rs.25,00,000/- for his business expenses. The said Ravisankar has accepted to give him loan and he has also inspected his property. On 17.08.2016, he has mortgaged his property to the said Ravisankar. Based on the same, the said Ravisankar has transferred money to his City Union Bank Account and he has stated that he would give the remaining sum of Rs.13,00,000/- within two days.

10(9) Thereafter, on 19.08.2016, the said Ravisankar has asked him to come to Nilakottai Sub-Register Officer and to execute sale agreement in favour of his partner viz.Palanisamy in respect of the mortgaged property. The said sale agreement was executed stating that a sum of Rs.60,00,000/- was spoken as sale amount and out of which a sum of Rs.10,00,000/- was given and the same was registered. Further, he deposed that he asked the remaining amount of Rs.13,00,000/- from the said Ravisankar. The said Ravisankar has asked him to come to Karur and get the amount.

10(10) Further, he deposed that when he asked for the mortgage loan to the said Ravisankar, he has asked to give his cheques as security. Therefore, he has issued unfilled signed six SBI bank cheques bearing Nos.172733 to 172738, his wife's six City Union Bank cheques bearing Nos.000003 to 000008 and unfilled signed Rs.100/-, Rs.50/- bond papers, unfilled signed 5 empty white sheets and 5 green bond papers to him. Further, he deposed that the said Ravisankar has one application like sale agreement and he also signed in the same. Further, when he asked the said Ravisankar to give the remaining amount, the said Ravisankar has stated that he would give the same if he pays the interest amount regularly. Based on the same, he has paid a sum of Rs.6,00,000/- as interest for nearly 7 – 8 months. Even after that the said Ravisankar has failed to give the remaining amount of Rs.13,00,000/- and therefore, he stopped to pay the interest.

10(11) He deposed that thereafter, the complainant has filed a suit in O.S.No.172/2019 on the file of the Dindigul District Court based on the mortgage deed and the same is still pending. After that, a case was filed as against him and his wife before this Court using the unfilled cheques given by him. Further, 4 cheques were filled for each Rs.4,00,000/- and the cases have been filed against him. In that two cases were pending before the Judicial Magistrate No.2 Karur and two cases were pending before this Court. Likewise, the partner of the said Ravisankar viz.Palanisamy has also filed a cheque case as against him for a sum of Rs.20,50,000/- . The complainant has filed several cases by using the unfilled signed cheques issued by him.

10(12) D.W.2 and D.W.3 who are the witnesses to the sale agreement in Ex.D1 has corroborated the evidence of D.W.1 with regard to the execution of the mortgage deed and sale agreement in Ex.D1.

10(13) One of the ground raised by the appellant/accused is that the trial Court utterly failed to note that the respondent/complainant even failed to produce the simple mortgage deed before the trial Court to ascertain value of mortgage and mortgage conditions. Hence the order of the trail court is liable to set aside.

10(14) From the perusal of the records, it is seen that the appellant/accused has not disputed the execution of the mortgage deed dated 17.08.2016 for a sum of Rs.25,00,000/-. Further, the appellant/accused has not disputed the filing of the mortgage suit by the respondent/complainant in O.S.No.172/2019 during his examination.

10(15) The appellant/accused has sent reply notice in Ex.P7 dated 21.08.2019 by denying the allegations leveled against him. The appellant/accused in his reply notice has stated as follows:-

*2. That by executing a registered simple mortgage deed on 17.08.2016 in favour of your client regarding the immovable property where my client is residing with his family i.e., the house building bearing Door No.6/2/42, Ward No.6, Periyar Colony, Nilakottai Town, my client has borrowed a sum of Rs.25,00,000/ subject to the terms and conditions mentioned in the registered mortgage deed dated 17.08.2016.*

*3. That in addition to that, your client has obtained ten singed blank pro-notes, one a hundred rupees Non Judicial blank signed stamp paper and another fifty rupees Non Judicial blank signed stamp paper, five white blank signed in revenue affixed stamp papers and five white blank signed papers, ten green blank singed in revenue stamp papers and ten green blank signed without revenue stamp affixed papers, one agreement sheet and six signed blank State Bank of India, Natarajapuram Nilakkottai Branch cheques bearing Numbers 172733 to 172738. Similarly another set of documents obtained from my client's wife namely Latha and the cheques are not State Bank of India cheques. Here City Union Bank, Nilakottai Branch bearing Cheque Numbers 000003 to 000008.*

*4. That so, the alleged cheque as mentioned in your notice has been given by way of Security and not for the part payment of amount borrowed from you as alleged in your notice and as such, the alleged statutory notice issued under the provisions of Negotiable Instrument Act is not admitted. Only by way of threatening my client, your client has instructed you to issue this notice.*

10(16) In the Ex.P7 reply notice also, the appellant/accused has not disputed the execution of the mortgage deed. Therefore, the non-production of the mortgage deed is not fatal to the case of the respondent/complainant. Therefore, the above said ground raised by the appellant/accused is unsustainable.

10(17) Further, the appellant/accused has stated that during the execution of the mortgage deed dated 17.08.2016, the respondent/complainant has sent a sum of Rs.12,00,000/- through RTGS and the complainant has failed to give the balance sum of Rs.13,00,000/-. Further, the appellant/accused has delayed to take the above said defense prior to the issuing of notice and even during the 313(1)(b) of Cr.P.C questioning also, he has simply stated that a false case has been registered against him. Further, the appellant/accused in his Ex.P7 reply notice dated 21.08.2019 has raised the above said defense. However, the appellant/accused has not produced any document in order to prove the fact that the respondent/complainant has given only a sum of Rs.12,00,000/- and failed to give remaining amount of Rs.13,00,000/-.

10(18) Even in Ex.D1 sale agreement dated 19.08.2016, it was mentioned that the appellant/accused has agreed to clear the encumbrance of mortgage with the respondent/complainant for a sum of Rs.25,00,000/- by executing discharge receipt and registering it. Further, in Ex.D1 would also shows that there is a forfeiture clause for advance amount of Rs.10,00,000/- paid by Palanisamy. Even when this agreement was registered, there is no dispute raised by the appellant/accused regarding the recital for Rs.25,00,000/- mortgage debt. Therefore, it is highly doubtful that the appellant/accused has not received the remaining sum of Rs.13,00,000/- from the respondent/complainant during the execution of mortgage deed. Therefore, the said contention is unbelievable.

10(19) Further, the appellant/accused has not taken any steps as against the respondent/complainant regarding the misuse of the cheques. However, he has accepted the signature in the alleged cheque. These facts creates doubt over the case of the appellant/accused. Therefore, the appellant/accused has failed to rebut the presumption u/s.139 of Negotiable Instruments Act.

10(20) Further, the case in hand, the appellant/accused has not proved the contrary that the cheque was not issued by him. Further, the appellant/accused has not denied his signature in the alleged cheque. Therefore, the presumption is in favour of the respondent/complainant. Therefore, the Ex.P3 cheque has been executed by the appellant/accused since he has not proved his claim. Further, the appellant/accused has not proved his claim through his documentary or in oral evidence. Further, the appellant/accused has not given rebuttal evidence to prove her case.

10(21) 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.***

10(22) It is seen that in this case, it is established that the signature in the cheque in Ex.P3 is that of the signature of the accused only. As already stated and also by the principles, laid down by the Lordship, presumption u/s.139 of N.I Act can be taken into consideration and it is for the accused to place the materials to rebut the presumption. The law is well settled that the accused can also rely upon the circumstances and materials placed by the complainant to rebut the presumption.

10(23) Further, in the judgment in ***Tedhi Singh vs.Narayan Dass Mahant, in C.A.No.362 of 2022 dated 07.03.2022*** **wherein the Honourable Supreme Court has held that "*****The trial Court and the first Appellate Court have noted that in the case under Section 138 of the N.I.Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the N.I.Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it***

***cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.***"

10(24) With this background I have perused the evidence, documents and materials produced by both parties, it is seen that, the appellant/accused submitted as, he has given the cheque to the complainant as security during the execution of the mortgage deed for a sum of Rs.25,00,000/-. The respondent/complainant has paid only a sum of Rs.12,00,000/- through RTGS and failed to give remaining amount of Rs.13,00,000/-. Inorder to grab more money from him, the respondent/complainant has filed this false case, but I have found no materials or circumstances, placed before me to believe the version of the appellant/ accused.

10(25) The ***Sec 20 of Negotiable Instrument Act reads as below:***

***"Inchoate stamped instruments- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable Instrument then in force in"(India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The per- son so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument any- thing in excess of the amount intended by him to be paid there under."***

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

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

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

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

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

*Even if it is taken for consideration that the accused herein has executed the EXP1 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.*

10(26) However, in this case, it is not in dispute that Ex.P3 is the cheque leaf supplied by the bank to the 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.

**10(27) But, in this regard, it is established in many cases as, it is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a prima facie case is made out by the complainant.**

10(28) With this background I have perused the evidence, documents and materials produced by the parties, it is seen that, the appellant/accused submitted as, the cheque was fraudulently misused by the complainant. Further, the appellant/accused has not produced any documentary evidence on his side to rebut the presumption which is in favour of the complainant. Therefore, it is made crystal clear, that the cheque was given by the appellant/accused only. Though it was denied by the accused, he has not chosen to prove it with sufficient evidences, documents and other materials.

10(29) In this case, the appellant/ accused during 313(1)(b) of Cr.P.C questioning, replies as, simply stated that false case has been foisted against him. However, the appellant/accused has not proved his contentions by his oral or documentary evidence. Further, it is seen that, the complainant issued notice, about the return of cheque, but the accused, has evaded the same. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the complainant. That by itself proved the fact, that the accused has to owe some amount to the complainant and he was being in debt with the complainant and further, the accused had failed to prove in what way, the cheque of the accused gone into the hands of the complainant by way of evidences and documents.

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

10(30) 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.P5 dated 08.08.2019 was received by the accused on 14.08.2019. Further, the appellant/accused has sent Ex.P7 reply notice to the complainant on 21.08.2019 However, he has failed to repay the amount borrowed by him. Upon careful scrutiny fo entire matters placed on record, the respondent/complainant has proved the guilt of the appellant/accused for the offence u/s.138 of NI Act beyond reasonable doubt.

10(31) Therefore, the trial Court has rightly come to the conclusion that the accused have 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. Accordingly, point nos. 2 and 3 are answered.

**11) Answering point No 4 :-**

11(1) Hence, this court is inclined to dismissed this appeal, by confirming of conviction passed by the learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025.

11(2) Taking into consideration of all the materials on record, I am of the view that there is no materials placed before this court to prove the contention of the appellant/ accused. This court also perused the judgment of the learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025.

**In the result, the criminal appeal is dismissed and the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur in S.T.C.No.415/2019 dated 07.04.2025 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 on my dictation, corrected and pronounced by me in open Court on the 09th day of June 2026.

ELAVAZHAGAN Digitally signed by ELAVAZHAGAN Date: 2026.06.10 10:48:57 +0530

DISTRICT AND SESSIONS JUDGE,
KARUR.