

**IN THE COURT OF THE IV ADDITIONAL DISTRICT AND
SESSIONS JUDGE, MADURAI.**

**Present: Thiru. S. John Sundarlal Suresh, B.Sc., M.L.,
IV Additional District and Sessions Judge, Madurai.**

Saturday the 7th day of March, 2026

C.A.No.16 of 2022

CNR No.TNMD01002762-2022

1. From which court this appeal is preferred	The Judicial Magistrate, Thirumangalam.
2. Case number of trial court	STC No.25 of 2017
3. Criminal Appeal No.	C.A. No.16/2022
4. Name of the appellant/ accused	S. Balmurugan, 46/2022, S/o Samayan (late), 10/119, Uvari Village, Villur Post, Thirumangalam Taluk, Madurai District.
5. Name of the respondent/ Complainant	K. Krishnan (54/2022) S/o Karmegam, 59, Backiyalakshmi Nagar, Ambedkar Nagar, Thirumangalam Town, Madurai District.
6. Conviction and sentence of trial Court	The appellant/ accused is found guilty u/s 138 Negotiable Instruments Act and convicted and sentenced to undergo one year Simple Imprisonment.
7. Whether the judgment of the trial Court confirmed or modified or set aside	In the result, the appeal is allowed, judgment of the trial court is set aside and thereby the appellant/accused is acquitted with regard to the offence u/s 138 of N.I. Act, the bail bond executed by the appellant/accused stands discharged.

8. Date of presentation of CrI.Appl.	23.03.2022
9. Date on which Criminal Appeal taken on file	30.03.2022
10. Date of final hearing	17.02.2026
11. Date of Judgment	07.03.026

This criminal appeal came up for final hearing on 17.02.2026 in the presence of Thiru.B.Duraipandi Advocate for the appellant/accused, the argument of the appellant was heard on 26.06.2025 and Thiru.M.Ponnambalam Advocate filed vakalath for the respondent/complainant but no representation on the side of the respondent/complainant and hearing the argument of appellant side and having been stood over for consideration till this day, this court delivered the following

JUDGMENT

The complainant/Respondent had filed the petition Under Section 138 and 142 of the amended N.I Act and Sec.80 and 357 of the Cr.P.C. as against the appellant/accused. The trial court after taking into consideration of the evidence emerged on record convicted the appellant/accused Under Section 138 of the N.I Act and sentenced to undergo simple imprisonment for the period of one year. Aggrieved over the same the appellant/accused filed this appeal before this court.

2. The contents of complaint filed by the respondent/complainant in the trial Court in brief as follows:

One Kaviyarasi is wife of the accused. The accused and his wife had borrowed a sum of Rs.10,00,000/- from the complainant to discharge the

sundry debts. Moreover the accused had purchased the house of the complainant on credit of a sum of Rs.10,00,000/- and executed the registered pronote for a total sum of Rs.20,00,000/- with regard to the above said debt in favour of the complainant and agreed to pay the interest at the rate of Rs.1.50 for Rs.100/- per month. When the complainant asked the accused to repay the above said amount with interest he had issued cheque for a sum of Rs.22,40,000/- in favour of the complainant towards the principle amount with interest. The complainant on 20.09.2016 presented the cheque in his bank namely Canara Bank, Thirumangalam Branch for collection but the said cheque was returned with an endorsement that funds insufficient in the account of the accused. The complainant had issued statutory notice on 28.09.2016 to the accused to pay the said amount due under the cheque but the accused neither repay the said amount nor send any reply notice. Hence the cheque amount to be recovered in the form of the compensation to the complainant and the accused to be punished.

3. The contents of grounds of appeal filed by the appellant/accused in brief as follows:

- The learned Judicial Magistrate failed to note that the appellant clearly rebutted the presumption by stepping into the witness box and leading cogent evidence and by way of destroying the evidence of complainant in his cross examination.
- The learned Judicial Magistrate ought to have seen that P.W.1 in his cross examination admitted that he sold his house property worth about 13,14 lakhs for 10 lakhs only since he needs money urgently, but the respondent has sold the property by obtaining promissory note without receiving money from the appellant.

- The learned Judicial Magistrate has erred in holding that the appellant/ accused accepted that he had executed the promissory note before the Sub Registrar office for a sum of Rs.20,00,000/- while the appellant/accused specifically stated in his chief examination and his cross examination specifically stated that he executed the Promissory note for 2,00,000/-.
- The learned Judicial Magistrate ought not to have presumed that since the appellant did not deny his signature he borrowed cheque amount from the respondent that the appellant has clearly rebutted the presumption under section 139 of NI Act by stepped into the witness box and led cogent evidence.
- The learned Judicial Magistrate failed to note that the appellant purchased the property from respondent for 12 lakhs for which he paid 10 lakhs to the respondent and he was liable to pay Rs.2,00,000/- hence he issued blank cheque to the respondent as security that the respondent fraudulently obtained the appellant's and his wife's signature in blank promissory note while obtained signature in the sale deed that subsequently the respondent filled up the cheque as per his whims and fancies to the tune of above 22,40,000/- and filed the case under section 138 of NI Act and that appeal is to be allowed.

4. The Points for consideration are as follows:

1)	Whether the offence U/s 138 of Negotiable Instruments Act proved by the respondent/complainant as against the appellant/ accused beyond the reasonable doubt?
2)	Whether the complainant proved the issuance of the cheque under Ex.P1 dated 20.09.2016 by the appellant/accused for legally enforceable debt?

3)	Whether the judgment of the trial court convicting the appellant/ accused is correct in law?
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5. Point Nos.1 to 3:

The specific case of the respondent/complainant is that the accused and his wife had borrowed a sum of Rs.10,00,000/- from the respondent/complainant to discharge the sundry debts. Moreover the appellant/accused had purchased the house of the respondent/complainant on credit of a sum of Rs.10,00,000/- and the executed the registered pronote for a total sum of Rs.20,00,000/- with regard to the above said debt in favour of the respondent/complainant. When the respondent/complainant asked the appellant/accused to repay the above said amount with interest he had issued cheque for a sum of Rs.22,40,000/- in favour of the respondent/complainant towards the principle amount with interest. The respondent/complainant on 20.09.2016 presented the cheque in his bank namely Canara Bank, Thirumangalam Branch for collection but the said cheque was returned with an endorsement that funds insufficient in the account of the appellant/accused. But the appellant/accused did not pay the said amount. Hence the appellant/accused committed the offence punishable u/s 138 of the N.I. Act.

6. But the specific case of the appellant/accused is that the respondent/complainant told that the appellant/accused to purchase his property consisting of one house for a sum of Rs.12,00,000/- but the appellant/accused told him that he has only a sum of Rs.10,00,000/- with him and that he need not want the said property. However the respondent/complainant told to the appellant/accused to pay a sum of Rs.10,00,000/- as he is in urgent need of money and asked the appellant/accused to execute

the pronote for the balance sum of Rs.2,00,000/-. The appellant/accused purchased the above said house property on 19.01.2016 for a sum of Rs.10,00,000/-. Even though wife of the appellant/accused and the appellant/accused affixed the signatures for the balance a sum of Rs.2,00,000/- the respondent/complainant obtained the 3 cheques of Karur Visiya Bank, Thirunagar from the appellant/accused. The respondent/complainant filed this complaint to grab the amount from the appellant/accused by way of filing complaint filled up the cheque given by the appellant/accused for a security. Hence the complaint to be dismissed.

7. This court carefully considered the case of the both parties and perused the records. The specific case of respondent/complainant is that the accused and his wife had borrowed a sum of Rs.10,00,000/- from the respondent/complainant to discharge the sundry debts. Moreover the appellant/accused had purchased the house of the respondent/complainant on credit of a sum of Rs.10,00,000/- and the executed the registered pronote for a total sum of Rs.20,00,000/- with regard to the above said debt in favour of the respondent/ complainant. When the respondent/complainant asked the appellant/accused to repay the above said amount with interest he had issued cheque for a sum of Rs.22,40,000/- in favour of the respondent/complainant towards the principle amount with interest. It is pertinent to note that the respondent/complainant was examined as PW.1 in his cross examination he stated that he gave a sum of Rs.10,00,000/- on 15.10.2015 to the appellant/accused in two installments each for a sum of Rs.5,00,000/- and no one was available in his home at that time when amount was given that the appellant/accused agreed to repay the said amount within two or three months that but he did not pay the same and the appellant/ accused cheating him, assured to make the

payment that as the respondent/ complainant is in urgent need of money sold the house which is worth of 13 or 14 lakhs of rupees to the appellant/accused at the rate of Rs.10,00,000/-. Thus it is clear from the specific admission of the PW.1 that he had sold his house for lesser rate to the appellant/accused as the respondent/complainant is urgent need of money. Moreover the respondent/ complainant in the cross examination admitted the fact that earlier he was doing real estate business and currently doing building contract work. Therefore it is clear that the respondent/complainant had good knowledge about the pulse of the society and the mind set of the people in particularly money transaction and land dealings. Even as per the specific admission of the respondent/complainant who was examined as PW.1 in his cross examination that the appellant/accused along with his wife had borrowed a sum of Rs.10,00,000/- from him, but he cheated him without repaying the said amount that moreover as the respondent/complainant required urgent need of money he had chosen to sell his house for lesser rate to the appellant/accused. But the specific case of the respondent/complainant is that he sold the said house for a total sum of Rs.10,00,000/- on credit and the appellant/accused issued a cheque for a total sum of Rs.22,40,000/- with regard to the amount of a sum of Rs.10,00,000/- borrowed by the appellant/accused and his wife and also the amount of sum a of Rs.10,00,000/- towards the sale consideration of the said house with interest. It is pertinent to note that the respondent/complainant who was examined as PW.1 himself admitted that the appellant/accused cheated him without repaying the amount which was borrowed from him earlier. While it is so when the respondent/complainant is in urgent need of money why should again he sold his house on credit to the appellant/accused who cheated the respondent/complainant without making any payment is not only quite

doubtful but also throws doubt over the case of the respondent/complainant with regard to passing of consideration in favour of the appellant/accused. The above said conduct of the respondent/ complainant who had good knowledge about the pulse of the society and the mind set of the people in particularly with regard to the money transaction and land dealings contrary to the ordinary prudent man who would behave in the given circumstances related to this case. Moreover no prudent man like the respondent/complainant would again sold his house on credit to the person who cheated him earlier without making repayment of the amount especially when the respondent/complainant is urgent need of money. The above said facts throws considerable doubt over the case of the respondent/complainant.

8. Moreover the respondent/complainant who was examined as PW.1 in his cross examination admitted the fact that the respondent/complainant earlier gave a sum of Rs.10,00,000/- from the bank deposit and the postal deposit belonged to him. But no documents filed by the respondent/complainant that he had deposit of Rs.10,00,000/- in bank and postal department. Therefore the source of making earlier payment of sum of Rs.10,00,000/- by the respondent/complainant to the appellant/accused is quite doubtful. No doubt on cumulative appraisal of the evidence of the appellant/accused who was examined as R.W.1 he stated that the pronote for a sum of Rs.20,00,000/- was registered on the date when the house was purchased but very next sentence the appellant/accused stated that he did not receive any amount that the appellant/accused gave pronote infavour of the respondent/ complainant for a sum of Rs.2,00,000/- for the balance sale consideration of the Rs.2,00,000/- that no doubt appellant/accused admitted the signature in the disputed cheque and also demand of the amount by the

respondent/ complainant found in the pronote. The appellant/accused who was examined as RW.1 in his cross examination stated that he had executed for a sum of Rs.2,00,000/- infavour of the respondent/complainant. Hence it can not be construed that the appellant/accused admitted the transaction in connection with the disputed cheque. Under these circumstances on cumulative appraisal of the evidence emerged on record in view of the finding as above in the context of the conduct of the respondent/complainant this court concluded that the disputed transaction under Ex.P1 cheque is surrounded by the suspicious circumstances and passing of consideration under the above cheque infavour of the appellant/accused is not proved manner known to law by the respondent/complainant. While it is so that the defence taken by the appellant/accused that the cheque was issued for the balance amount with regard to the purchase of the house appears to be probable one. Moreover when the disputed transaction under Ex.P1 cheque is surrounded by the suspicious circumstances and the passing of consideration under the above cheque infavour the appellant/accused quite doubtful one and that the presumption under sections 118 and 138 of the N.I Act will not operate in favour of the respondent/complainant in respect of passing of consideration in favour appellant/accused under Ex.P1 cheque. But the trial court on misappreciation of the evidence convicted the appellant/accused. Hence the judgment of trial court is unsustainable in law liable to be set aside and that appeal is to be allowed there by appellant/accused is to be acquitted.

In the result, the appeal is allowed, judgment of the trial court is set aside and thereby the appellant/accused is acquitted with regard to the offence u/s 138 of N.I. Act, the bail bond executed by the appellant/accused stands discharged.

Dictated by me to the Stenographer, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court this the 7th day of March 2026.

IV Additional District and Sessions Judge,
Madurai.