

**IN THE COURT OF THE JUDICIAL MAGISTRATE SIRKALI**

Present: Thiru. R.Kailaash B.A.,B.L.,  
Judicial Magistrate,  
Sirkali.

Tuesday, the 12<sup>th</sup> day of March 2026

**S.T.C.No.1395/2024**  
**CNR.No. TNMY08-005200-2024**

1.	Details of the Complainant	:	G. Kaliyamoorthy, S/o. Gurusamy N.S.P.Nagar, Thenpathi, Sirkali Town, Mayiladuthurai Dt.
2.	Details of the Accused	:	Mathavan, S/o. Sellamuthu 9/10, Kamarajar 2 <sup>nd</sup> Street, Kulathur main road, Villivakkam, Chennai-48.
3.	Date of Complaint	:	13.11.2024
4.	Commencement of Trial	:	20.06.2025
5.	Closure of Trial	:	18.02.2026
6.	Judgment	:	12.03.2026
7.	Reason for Delay	:	Absence of the accused

This case was taken cognizance on 16.12.2024 and came up for final hearing on 10.03.2026 in the presence of Mr.S. Balasubramanian Counsel for the complainant and there was no representation for the accused. After hearing the submissions, upon perusing the materials on record and having stood over for consideration till this day, this court delivers the following:-

**JUDGMENT**

The complainant has filed this complaint U/s.223 of Bharathiya Nagarik Suraksha Sanhitha r/w section 138 & 142 of the Negotiable Instrument Act against the accused alleging that, the accused has committed the offence u/s.138 of N.I Act and prayed for awarding suitable punishment to the accused according to law and for award of compensation to him.

**2. The case of the complainant is as follows:**

The accused and the complainant are family friends. On that basis, on **21.11.2023** for the purpose of meeting out his family and business development expenses, the accused borrowed a sum of **Rs.2,00,000/-** from the complainant as loan and he had executed a hand letter on the same day. When the complainant insisted for repayment, in order to discharge the said loan, on **03.08.2024** the accused issued two cheques which are dated as **03.08.2024** bearing Nos.**000124** and **000125** in favour of the complainant, drawn on **K.V.B Ulundupet Branch**. When at the request of the accused, he presented the cheque for collection on **05.08.2024** through his banker viz. **City Union Bank, Sirkali Branch** it was returned unhonoured on the same day for the reason **“INSUFFICIENT FUNDS”**. Again, at the request of the accused, the complainant again presented the cheque on **05.09.2024** and again it was dishonoured on **17.09.2024**. Therefore, the complainant issued a registered legal notice to two different address of the accused on **30.09.2024** demanding him to settle the cheque amount. The said notices were served on **01.10.2024** and on **09.10.2024**. As the accused neither issued reply nor repaid the cheque amount, this complaint was filed before this court on **13.11.2024**.

**3.** After filing of the complaint, sworn statement of the complainant was recorded. This court took cognizance of the offence u/s 138 of NI Act and on satisfaction that there are sufficient grounds available to proceed against the accused, summon was issued to the accused. After his appearance, copies of material documents were furnished u/s 230 of BNSS at free of cost. Then, the substance of accusation in this case was explained to the accused u/s 274 of BNSS for which the accused pleaded as ‘False case’ and so the case was posted for trial.

**4. The case of the accused is as follows:**

The accused has not defended this case in a fullfledged manner for the reasons best known to him. He chose not to issue a reply to the demand notice, he chose not to cross examine the complainant covering all aspects and also he failed to adduce any evidence on his part even after grant of several opportunities. It is the

defence of the accused that his brother is a tenant under the complainant who is owning a godown. The said person owes rent to the complainant. For the purpose of recovery of arrears of the said rent the complainant has foisted this false case using the blank cheques of the accused that was entrusted with him. He had also taken the plea of alibi and claimed that on the alleged date of borrowing he was admitted at hospital. The cross examination of the complainant by the defence side is much about the introductory facts and suggestions regarding the defence of the accused. The said cross examination neither probablised the defence of the accused nor improbablised the case of the complainant. Thus though the accused claimed it as a false case, he failed to establish the same. Thus, this case was not fully defended by the accused.

5. The complainant was examined as **P.W.1** and **Ex.P1-P7** were marked. After closing the evidence of complainant's side, this court explained the incriminating circumstances appearing against him in the evidence and the accused was questioned u/s 351(1)(b) of BNSS for which he claimed as 'False case and False evidences'. On the part of the accused, no witnesses were examined and no documents were marked.

6. Heard both sides. Perused the materials and documents available on record.

7. The counsel for the complainant argued that all the ingredients of the offence u/s 138 of N.I. Act are satisfied as proved through the documents exhibited on the side of the complainant and prayed for awarding maximum punishment and compensation.

**8. The points for consideration are as follows:**

- (i) Whether the ingredients of the offence enumerated in section 138 of the Negotiable Instruments Act, 1881 have been met?
- (ii) Whether the facts and circumstances of this case warrants raising of presumption under section 139 of the Negotiable Instruments Act, 1881?

(iii) Whether the accused has rebutted the said presumption (if raised) in favour of the complainant?

(iv) Whether the complainant has proved this case against the accused beyond all reasonable doubts?

**9. Point No.I:**

The complainant has filed this complaint alleging that the accused has committed the offence u/s.138 of the N.I Act. To attract the offence under section 138, the following conditions must have been satisfied.

1. The accused should have drawn the cheque from the bank account maintained by him for payment of any amount of money to the complainant.

2. The said cheque should have been drawn for the discharge, in whole or in part, of any debt or other liability.

3. The cheque should have been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

4. The cheque should have been returned by the bank unpaid, either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the agreed arrangements.

5. After the dishonour, the complainant should have made a demand in writing for the payment of the amount mentioned in the cheque, within thirty days of receipt of information by him from the bank regarding the return of the cheque as unpaid.

6. The accused should not have paid the said amount of money within fifteen days of the receipt of the demand notice.

With the above aspects in mind, when the case on hand is analysed it transpires that the complainant examined himself as P.W.1 and through him the cheques were marked as Ex.P1, P2, the return memos from bank showing dishonour of cheques as Ex.P4, Legal Notice demanding payment within 15 days as Ex.P5 and Postal Acknowledge cards as Ex.P6, P7. Therefore, on considering the evidence of P.W.1 along with Ex.P1-P7, it is categorically established that the conditions enumerated

under section 138 of the N.I Act are satisfied. Thus, the first point is answered in favour of the complainant.

#### **10. Point No.II:**

Section 139 of the Negotiable Instruments Act, under certain circumstances raises presumption in favour of the complainant in respect of the liability of the accused to him. It says as follows:

#### ***Sec. 139 – Presumption in favour of the 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, of any debt or other liability.*

As held by Hon'ble Supreme Court of India in ***Rangappa Vs. Sri Mohan*** [2010 (4) CTC 118], section 139 presumes two things as follows:

(i) That there exist a legally enforceable debt or liability

(ii) That the cheque issued in favour of the holder was for discharge of legally enforceable debt or liability.

11. Regarding 'when' Sec 139 presumption comes into play, it was held by the Supreme Court in ***Triyambak S. Hegde Vs. Sripad (Crl.A.No. 849850/2011)*** that if the signature on the cheque is admitted, the presumption under section 139 'shall' be raised that the cheque was issued in discharge of debt or liability. Applying the said ratio to the case on hand, section 139 presumption does come into play since the accused in this case has not specifically denied his signatures in the subject cheque. Therefore, facts of this case warrants raising of presumption under section 139 of the Negotiable Instruments Act and accordingly it is raised. Hence, this point is also answered in favour of the complainant.

#### **12. Point No.III:**

Section 139 of the N.I. Act, as a reverse onus clause imposes an 'evidentiary burden', not a 'persuasive burden'. Hence, as laid down in ***Rangappa Vs. Sri Mohan*** (cited supra), when the accused has to rebut the presumption under section 139, the standard of proof for doing so is that of 'preponderance of

probabilities'. Similarly, as held by the Hon'ble Supreme Court of India in *Basalingappa Vs. Mudibasappa [2020-1-L.W. (CrI)875]*, to rebut the presumption, it is open for the accused to rely on evidence let by him or he can also rely on the materials submitted by the complainant in order to raise a probable defence. It is not necessary for the accused to get into the witness box in support of his defence. Also, the inferences of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. With these settled principles in mind, the facts of the case on hand must be analysed.

**13.** As explained above the accused has not defended this case in a fullfleged. He neither contested this case in full spirit nor settled this matter out of the court in spite of the grant of sufficient opportunities. In view of the same this court concludes that the accused has failed to rebut the presumption raised against him under section 139 of the Negotiable Instruments Act, 1881 even in the standards of 'Preponderance of Probabilities'. Accordingly, the point is answered in favour of the complainant.

**14. Point No.IV:**

On the other hand, when the case of the complainant is analysed, it is cogently supported by oral and documentary evidence. The complainant examined himself as P.W.1 and narrated the sequence of events. He marked the cheque (Ex.P1) as documentary evidence and also deposed as to its issuance by the accused, deposit of the cheque for collection, its dishonour, issuance of demand notice and inaction on the part of the accused. His testimony is well supported by the other documentary evidence as well viz. Ex.P2– P7.

15. Therefore, as discussed in Point No.I, the ingredients of section 138 of the Negotiable Instruments Act were met. Then, as discussed in Point No.II, the presumption under section 139 of the NI Act was drawn against the accused. But, the accused has failed to rebut the said presumption as discussed in Point No.III. Hence,

in view of all the above, I am of the considered view that the complainant has successfully proved this case against the accused beyond all reasonable doubts. Hence, this point is also answered in favour of the complainant.

In the result, the accused is found guilty for the offence under section 138 of the Negotiable Instruments Act, 1881 and is convicted and sentenced to undergo 1 year simple imprisonment u/s. 278(2) of B.N.S.S and is directed to pay a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) i.e., the amount due upon the cheque, to the complainant U/s. 395(3) of B.N.S.S within a period of one month from today. In default to pay the aforesaid compensation amount, the accused is directed to undergo further simple imprisonment for a period of one month.

Dictated to the typist, typed by her, corrected by me and pronounced by me in the open court on this 12<sup>th</sup> day of March- 2026.

Judicial Magistrate,  
Sirkali.

**List of witnesses examined on the complainant's side:**

P.W.1- Kaliyamoorthy (Complainant)

**List of exhibits marked on the side of complainant through P.W.1:**

1.	Ex.P1	The cheque bearing No.000124 dated 03.08.2024
2.	Ex.P2	The cheque bearing No.000125 dated 03.08.2024
3.	Ex.P3	Bank account statement of the complainant
4.	Ex.P4	Return Memos dated 16.09.2024 (2)
5.	Ex.P5	Office copy of statutory legal notice dated 30.09.2024
6.	Ex.P6	Postal Acknowledgement dated 01.10.2024
7.	Ex.P7	Postal Acknowledgement dated 09.10.2024

**List of witnesses examined /exhibits marked on the side of the accused: -Nil-**

Judicial Magistrate,  
Sirkali.