**IN THE COURT OF JUDICIAL MAGISTRATE, SENDAMANGALAM**

**Presence: S. RAJA KUMARAN, B.E., L.L.B.,**

**Judicial Magistrate, Sendamangalam.**

**17th Day of June, 2026**

**(2057th Thiruvalluvar year, Visuvavasu year, Aani, st day)**

**Calander Case No. 91 /2021**

**CNR No. TNNM14002106-2021**

B. Gunanithi,
S/O. Balachandran,
2/25(1), Chettiyaar thottam,
West street, Pachudaiyampatti pudur post - Complainant
Sendamangalam taluk
Namakkal district

Vs

R. Sengodan,
Assistant Agri Officer
Ulavarsandai,
R.S. Puram, Kavulibrown road - Accused
R.S. Puram post,
Coimbatore taluk and district

**Case summary**

**(As per the Order of High Court of Madras, R.O.C No. 814/ 2020/RG/F1. Dated 0f 07.04.2021)**

| S. No | Summary | Details |
|---|---|---|
| 1. | Date of | 20.10.2021 |

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<tr><td>5.</td><td>Date of examination in chief and cross examination of witness</td><td>
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<tr><td>Defence side witnesses</td><td>Name of the witnesses</td><td>Examination in chief</td><td>Cross examination</td></tr>
<tr><td>DW1</td><td>Balachanthiran</td><td>09.02.2026</td><td>-</td></tr>
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<tr><td>7.</td><td>Date of Judgment</td><td>17.06.2026</td></tr>
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When this case under C.C.No. 91 /2021 came before me for final hearing, after having been tried by this court, Advocate Mr. N. Ragulan, M.A.,M.L., appearing for complainant, Advocate Mr. S. Manojkumar, M.B.A.,LL.M., appearing for the accused, upon hearing both side arguments, perusing the evidence and documents and court records of both sides, this court delivers the following

## JUDGMENT

### 1.Brief averments of the complaint

1.1. The case of the complainant is that the complainant and accused were friends and on 26.07.2021, the accused has borrowed a loan of Rs.7,00,000/- from the complainant at complainant's house for his urgent need and receiving the same, the accused issued a post-dated cheque bearing cheque No. 003470, dated 10.08.2021, State Bank of India at Mohanur branch in Namakkal district, in favour of complainant for sum of Rs. 7,00,000/- and assured the complainant that he will repay the amount in 15 days.

1.2. On 10.08.2021, the complainant presented the said cheque in Union Bank of India at Sendamangalam Branch in Namakkal district, wherein the complainant is maintaining his account and the cheque was returned on 12.08.2021, stating that "Exceeds arrangement".

1.3. Subsequently on 03.09.2021, the complainant issued a legal notice to the accused. The accused returned the same on 14.09.2021 without receiving same and the same was returned as "Not Claimed". Hence the complainant prayed that accused has committed an offence punishable under section 138 and section 142 of the Negotiable Instrument Act 1881 and thereby to grant other reliefs as deems fit.

2. After recording the Sworn Statement of the Complainant and also upon the perusal of the documents, having found of the prima facie case against the accused, this Court took cognizance for the offence u/s 138 of NI Act and issued summons to the accused. Since the accused evaded the process of summons, warrant was issued against the accused. The accused was produced on the execution of warrant and the copy of the complaint was furnished and substances of the accusation u/s.138 of NI Act were read over and explained to him and for which the accused denied same as false and claimed to be tried.

3. On the side of the complainant, the complainant examined himself as PW1 and Ex.P.1 to Ex.P.4 were marked. Ex.P.1 is Original Cheque for Rs. 7,00,000/- dated 10.08.2021 at State Bank of India, Mohanur branch, bearing cheque no. 003470, Ex.P.2 is Return Memo dated 12.08.2021, Ex.P.3 is Office copy of Legal Notice dated 03.09.2021 issued by the complainant through his counsel to the accused, Ex.P.4 is copy of return cover and acknowledgement card.

4. After the completion of complainant side evidence, the accused was questioned u/s.313(i)(b) of Cr.P.C with regard to the incriminating circumstances appearing against the accused in the complainant side evidence. For which, he denied the same as false and claimed to have defence evidence. On the side of defence, DW1 and Dw2 were examined and Ex.D.1 to Ex.D.3 were marked.

5. On the perused available records, the points for consideration are as follow

(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 warrant 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?

6. Heard both sides.

7.1. The first point of determination is whether the ingredients of the offence enumerated in section 138 of the Negotiable Instruments Act,1881 have been met. In order to see whether the complainant has discharged the initial onus on him, it is expedient to extract the essential ingredients of the section 138 of Negotiable Instruments Act as follow

(a) Issuance of cheque for an amount by the drawer to the payee / complainant

(b) Presentation of cheque within 3 months from the date on which it is drawn or within the period of its validity.

(c) Return of Cheque by the bank as unpaid on account of Insufficiency of funds and etc.

(d) Issuance of notice by complainant within 30 days from the date of receipt of information from the bank regarding returning of the cheque as unpaid.

(e) Failure of payment by the drawer of said cheque to the payee or the holder on due course within 15 days from the receipt of the said notice.

7.2. On seeing whether complainant has satisfied the essential ingredients, it is notable that the complainant testified himself as PW1 and supported his version of complaint that when accused borrowed the money sum of Rs. 7,00,000/- from the complainant on 26.07.2021, he issued the post-dated case cheque for the amount of Rs. 7,00,000/- bearing No. 003470, dated 10.08.2021 to the complainant for the amount he borrowed. Through PW1, the cheque issued by the accused was marked as Ex.P.1 and on the perusal of the Ex.P.1, it is seen that the cheque in No. 003470, was issued by the accused to the complainant dated 10.08.2021 for the amount of Rs. 7,00,000/-. Moreover, the accused has not denied the signature on the cheque. From the above discussions, this court concluded that the accused has issued the cheque to the complainant.

7.3 when it comes to the second ingredient, as per the Notification No. RBI/2011-12/251, DBOD AML-BC-No.47/19.01.006-2011/12, dated 4-11-2011(w.e.f. 1-4-2012), a cheque shall be presented with in three months from the date on which it is drawn or within the period of its validity. In this instant case the Ex.P.1 cheque was issued being dated on 10.08.2021. The PW1, in his evidence stated that the complainant presented the said cheque on 10.08.2021, in Union Bank of India at Sendamangalam Branch in Namakkal district, wherein the complainant is maintaining his account and the cheque was returned on 12.08.2021, stating that “Exceeds arrangement”. The return memo was marked through PW1 as Ex.P.2. On the perusal of Ex.P.2 return memo, this court finds that the cheque was being processed by the bank on 11.08.2021 and the same was returned on 12.08.2021. From the oral evidence of PW1 and Ex.P.2 return memo, it is concluded that the cheque was presented within 3 months from the date on which it is drawn or within the period of its validity.

7.4 When it comes to the third ingredient i.e, the cheque should have been returned unpaid by stating the reasons of Insufficiency of funds etc. In this instant case as alleged by the complainant, the Ex.P.1 cheque was returned. The return memo was marked through PW1 as Ex.P.2. On the perusal of Ex.P.2, it is evident that the Ex.P.1 cheque was returned stating reason of "Exceeds arrangement".

7.5 When it comes to the fourth ingredient, i.e (d) Issuance of notice by complainant within 30 days from the date of receipt of information from the bank regarding return of the cheque as unpaid. In this instant case, the Ex.P.1 – returned cheque and regarding return memo Ex.P.2 are furnished. On the perusal of the Ex.P.2, it is evident that the cheque was returned on 12.08.2021. Thereon the complainant issued notice to the accused on 03.09.2021. The office copy of the legal notice was marked as Ex.P.3. Hence it is concluded that the notice was issued to the accused within 30 days from the date of receipt of the information regarding the return of cheque.

7.6. when it comes to the fifth ingredient, i.e, (e) Failure of payment by the drawer of said cheque to the payee or the holder on due course within 15 days from the receipt of the said notice. From the averments in the complaint and evidence adduced by PW1, it is seen that accused neither gave reply nor made payment.

7.7 From the above discussions it is evident that the complainant has satisfied all the ingredients as stated under section 138 of Negotiable Instruments Act and discharged the initial burden of proof.

7.8 When it comes to the second point of determination i.e, Whether the facts and circumstances of this case warrant raising of presumption under section 139 of the Negotiable Instruments Act,1881, it is essential to look into whether the cheque was issued only to discharge the legally enforceable debt. The section 139 of Negotiable Instruments Act, reads as

> "Section 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, of any debt or other liability"

7.9 In order to avail the presumption that under section 139 of Negotiable Instruments Act, 1881, the complainant must discharge the onus as laid down under section 138 of the Negotiable Instruments Act, 1881. From the discussions in the first point of determination, it was concluded that the ingredients of the offence enumerated in section 138 of the Negotiable Instruments Act,1881 have been met. Hence the complainant is entitled for the presumption under sections 118 and 139 of Negotiable Instruments Act, 1881, i.e, the complainant is holder in due course and the alleged liability is legally enforceable liability.

7.10. The third point of determination is Whether the accused has rebutted the said presumption (if raised) in favour of the complainant. Since the complainant has discharged the initial burden of the proof, now the onus is on the accused to prove that alleged liability is not legally enforceable liability. 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, 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.(Crl)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 is analyzed.

7.11. In this instant case, in order to shift the onus back on the complainant, the defence side examined DW1 and DW2 and marked Ex.D.1 to Ex.D.3. DW1 is the father of the complainant and DW2 is the accused himself. Ex.D.1 are Pay slips of the accused persons from 2021 April to 2021 July (4 counts) (Objection raised by the complainant side) and Ex.D.2 is the transfer proceedings of accused out of disciplinary proceedings and Ex.D.3 is copy of adhaar card of accused.

7.12. The accused examined himself as DW2 and took the defence that he did not the give the complaint cheque to the complainant and he had money transactions with his colleague one Periyasamy who was working as Assistant Horticulture Officer at Pudhansandhai and in the year of 2019, he gave the cheque to the said Periyasamy by only signing it as security to the money transactions and the complainant and said Periyasamy were close friends and complainant was preparing of TNPSC exams and he had given Rs.2,00,000/- to the Periyasamy for the purpose of clearing the exams in illegal means and in support of the said transaction, the complainant obtained the complaint cheque from the Periyasamy and filled it and filed this present case.

7.13. Though the accused has adduced oral evidence in support of the above version, the accused has not produced any bank statements in order to show the transactions between him and the said Periyasamy. Even though, the accused has stated that the said Periyasamy was died in an accident, the accused has not examined any other person in order to establish his friendship with the Periyasamy.

7.14. Though the accused took the defence that he gave the cheque to the Periyasamy as a security to money transactions, he has failed to establish the exact point of time and circumstance in which he gave the cheque to the said Periyasamy. It can not be presumed that a cheque was simply given out money transactions without any specifications.

7.15. The defence side argued that the complainant and said Periyasamy were close friends and complainant was preparing of TNPSC exams and he had given Rs.2,00,000/- to the Periyasamy for the purpose of clearing the exams in illegal means and in support of the said transaction, the complainant obtained the complaint cheque from the Periyasamy and filled it and filed this present case. On the perusal of records, this court finds that the complainant during his cross examination specifically denied the suggestion that he and the said Periyasamy were friends and added that he does not know anyone in that name. At this juncture, the accused should have adduced any other evidence in order to show the friendship between the complainant and the said Periyasamy. However, the accused has not produced any such evidence.

7.16. Moreover, the accused failed to explain the reason behind the defence that complainant obtained cheque of the accused person from the said Periyasamy instead of requiring the cheque of the said Periyasamy for the alleged money transaction between the complainant and said Periyasamy.

7.17. In addition, the accused has failed to establish the defence of illegal transaction of Rs.2,00,000/- between complainant and said Periyasamy for the purpose of clearing the TNPSC exam. This court finds that mere oral evidence of the accused would not substantiate such an allegation.

7.18. In addition, accused side took the defence that the complainant does not have the capacity to lend such an amount. The defence side relied on Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983), where our Hon'ble Apex court held as

> "During his cross examination, when financial capacity to pay Rs. 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

and argued that the complainant has not established his financial capacity to lend the said amount.

7.19. On the perusal of the case law cited by the defence side, it is very clear that in that said case there was no satisfactory answer given by the complainant as to his financial capacity as to lend the amount during the cross examination. Whereas in this instant case, the complainant during his cross examination categorically stated that he was doing agriculture and nursery business and he has daily income from Rs.1,000/- to Rs.2,000/- per day and during season time, it would be around Rs.4,000/- to Rs.5,000/- per day and the monthly income would be around Rs.40,000/- to Rs.60,000/- per month and yearly income would be around Rs.4,00,000/- per annum. This court finds that the answers given by the complainant are satisfactory to explain his source of income.

7.20. The defence side also argued that the complainant has not filed any income tax and has made transaction for the amount above Rs. 20,000/- without bank transaction or demand draft or cheque. In Sanjabij Tari Vs Kishore S.Borcar & Anr, ourt Hon'ble Apex court observed as follow

> "20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced……."

From the above discussions, it is concluded that the defence taken by the accused side is not sustainable.

7.21. The accused side also argued that the complainant has not furnished any bill or loan agreement or promissory note or independent witness to establish the transaction between the complainant and accused. The concept of negotiable instrument itself was originated only in order to encourage the money transaction by simplifying the procedure. In that course, possession of negotiable instrument itself is sufficient to establish the money transactions without requiring any other evidence. Hence, the defence taken by the accused side is not an acceptable one.

7.22. The defence side also argued that after the return of cheque, complainant has straightway sent a notice without informing the accused either in person or through phone and the same is not an acceptable manner in ordinary course. However, this court finds that complainant is not required to inform about the return of cheque only in person or through phone. Hence, the defence taken by the accused is not an acceptable one.

7.23. The defence side also argued that the accused was earning around Rs.30,000/- at the time of alleged transaction and there is no need for the accused to borrow the amount of Rs.7,00,000/-. A person earning Rs.30,000/- per month may borrow amount of Rs.7,00,000/- and therefore we cannot conclude that the accused was never in position to borrow such an amount.

7.24. The accused side also took defence that the accused was working at Coimbatore at the time of alleged transaction and thereby there is no possibility for the accused to have borrowed the amount from the complainant. The accused side also marked Ex.D.2 which is the transfer proceedings of accused out of disciplinary proceedings. Ex.D.2 states that the accused was transferred from Coimbatore-R.S.Puram Agri office to Namakkal- Naamagiripettai agri office.

However, the Ex.D.3 which is the adhaar card of the accused, shows that he is a resident of Periyapatti, Namakkal district. The accused, having resided at Periyapatti, Namakkal cannot take the defence that he did not come to namakkal at all just because he was working at Coimbatore.

7.25. From the above discussions, this court concludes that the accused has failed to rebut the presumption in favor of complainant.

7.26. The fourth point of determination is Whether the complainant has proved this case against the accused beyond all reasonable doubts? The complainant testified as P.W.1 and supported his case on complaint. He marked the cheque (Ex.P.1) as documentary evidence and also deposed as to its issuance by the accused, deposit of the cheque for collection, its dishonor, issuance of demand notice and inaction on the part of the accused. His testimony is well supported by the other documentary evidences as well viz. Ex.P.2– Ex.P.4. On the perusal of records, the evidence adduced by complainant are cogent, coherent and reliable.

7.27. Therefore, as discussed in Point No. I, the ingredients of section 138 of the Negotiable Instruments Act are 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, this Court is of the considered view that the complainant has proved this case against the accused beyond all reasonable doubts. Hence, this point is also answered in favour of the complainant.

**8. In the result**,

The accused Sengodan is found guilty of offence punishable u/s 138 of Negotiable Instrument Act and hence the accused is convicted u/s 255(2) Cr.P.C and sentenced to undergo Simple Imprisonment of **ONE YEAR** for the offence under section 138 of the Negotiable instrument Act and also the accused is imposed to pay a sum of Rs. 7,00,000/- which is the amount of the cheque as compensation u/s. 357(3) of Cr.P.C to the complainant within the period of 3 months from the date of receipt of the copy of this Judgment and in default of payment of compensation amount, he is directed to undergo Simple Imprisonment for a period of 3 months and further towards recovery of the Compensation amount, it is open to the Complainant to take steps to recover the compensation amount U/s.421 of Cr.P.C.

Directly typed by me and corrected by me and aligned by steno typist and pronounced by me in the open court on this 17th day of June, 2026.

RAJAKUMARAN S

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Date: 2026.06.17 11:03:12 +0530

**Judicial Magistrate,**

**Sendamangalam.**

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

P.W.1- Gunanithi (Complainant)

**List of exhibits marked on the side of complainant:**

| S.No. | Exhibits | Documents | Type | Witness through whom |
|---|---|---|---|---|

| | | | | the document was marked |
|---|---|---|---|---|
| **1** | Ex.P.1 | The cheque bearing No. 003470dated. 10.08.2021 | Original | PW1 |
| **2** | Ex.P.2 | Return Memo dated 12.08.2021 | Original | PW1 |
| **3** | Ex.P.3 | Office copy of Statutory legal notice dated 03.09.2021 | Office copy | PW1 |
| **4** | Ex.P.4 | Copy of return cover and acknowledgment Card | Copy | PW1 |

**List of witnesses examined on the defence side:**

1. D.W.1- Balachanthiran
2. D.W.2- Sengodan (accused)

**List of exhibits marked on the defence side:**

| S.No | **Exhibits** | **Documents** | **Type** | **Witness through whom the document was marked** |
|---|---|---|---|---|
| **1** | **Ex.D.1** | Pay slips of the accused persons from 2021 April to 2021 July (4 counts) (Objection raised by the complainant side) | Copy | DW2 |
| **2** | **Ex.D.2** | Proceedings of transfer of accused out of | Original | DW2 |

| | | | | |
|---|---|---|---|---|
| | | disciplinary proceedings | | |
| **3** | **Ex.D.3** | Adhaar card of accused | Copy(compared with original) | DW2 |

**Note:**

1. Judgment was pronounced in the open court in the presence of complainant and accused.
2. The accused was in bail during the trial
3. No witness was called for evidence for more than three times

RAJAKUMARAN S

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Date: 2026.06.17 11:03:33 +0530

**Judicial Magistrate,**

**Sendamangalam.**