IN THE COURT OF THE JUDICIAL MAGISTRATE, KOMARAPALAYAM

**Present : Tmt.A.K.Padmapriya, B.Sc, M.L.,
Judicial Magistrate, komarapalayam**

Friday, the 10th day of July- 2026

STC.No.395/2020

CNR No :TNNM16-001948- 2020

G.Gopinath (46),
S/o.P.Gobalan,
D.No.50A, Mariamman Kovil Street,
Alampalayam,
Pallipalayam,
Kumarpalayam,
Namakkal. **...Complainant**

//Vs//

D.Balachandar (58),
S/o.Dharmalingam,
Sri Hari Lubes and chemicals,
D.No.37A, Gokulam Apartment,
Anna Street,
Venkattapuram,
Coimbatore. **…Accused**

This case was filed before the Court of Judicial Magistrate, Thiruchengode and taken on file on 09.10.2019 in STC.NO.296/2019 and on constitution of this court, the said case was transferred to this court on 17.07.2020 as per order of the Hon'ble Principal District Judge in R.O.C.No.5880/2020 dated 13.07.2020 and came for final hearing before me on 04.07.2026 in the presence of **Thiru.S.Punithraj**, the learned counsel for the complainant and **Thiru.A.Baskaran**, the learned counsel for all the accused and upon hearing arguments and on perusing the entire records and having stood over for consideration till this day, this court doth the following

A K PADMAPRIYA Digitally signed by A K PADMAPRIYA Date: 2026.07.10 12:21:41 +0530

JUDGMENT

1. The complainant had filed this complaint against the accused for an offence of dishonour of cheque bearing No.771448 dated 07.02.2019 for a sum of Rs.20,00,000/- (Rupees twenty Lakhs only) which is punishable under section 138 of Negotiable Instruments Act through a private complaint under section 200 of Cr.P.C.

2. GIST OF THE COMPLAINT :-

2.1. The complainant and accused have best acquaintance for many years. On 09.11.2018, accused approached to complainant and demanded hand loan of Rs.20,00,000/- (Rupees twenty lakhs only) for urgent business and family needs. Since Complainant has the most trust on accused, he paid the amount of Rs.20,00,000/- (Rupees twenty lakhs only) to accused. The accused had issued post dated cheque bearing No.771448 of State Bank of India, Ganapathy, Coimbatore Branch dated 07.02.2019 for Rs.20,00,000/- (Rupees twenty Lakhs only) towards the repayment of the said amount making complainant to believe that the cheque will be duly honoured on presentation.

2.2. On that accused assurance and request, the complainant had presented the cheque on 07.02.2019 at Indian Bank, Pallipalayam Branch. The cheque was dishonoured on 11.02.2019 as "insufficient fund". The complainant had issued legal notice on 26.02.2019 calling upon the accused for the repayment of the said amount within fifteen days from the date receipt of said notice. The legal notice was received by the accused on 05.03.2019 and had not repaid the amount and had not issued reply notice. Hence, the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. The accused had issued the cheque with full knowledge and intention to cheat the complainant and therefore the accused had committed an offence punishable under section 138 of the Negotiable Instruments Act and the accused may be punished for the dishonour of cheque with maximum sentence and he may be directed to pay the cheque amount as compensation to the complainant.

3. <u>QUESTIONING U/S 251 of Cr.P.C.</u>

On receipt of the complaint, sworn statement was recorded and cognizance was taken for offence under section 138 of the Negotiable Instrument Act and process was issued against the accused along with copy of complaint u/s 207 of Cr.P.C. On appearance, the accused was furnished with the copies of the documents relied upon by the complainant and the accused was questioned as to the substance of accusation made in the complaint. The accused denied the case as false and claimed to be put on trial.

<u>4.COMPLAINANT SIDE EVIDENCE:</u>

The complainant in order to prove his case, the complainant himself was examined as PW1 and EX.P1 to EX.P.7 was marked through him.

<u>5. THE CASE OF THE COMPLAINANT AS PER THE EVIDENCE IS AS FOLLOWS:</u>

5.1. To prove the case of the complainant, he had examined himself on filing of proof affidavit which is the verbatium of the complaint. The complainant had deposed as that, the complainant and accused have best acquaintance for many years. On 09.11.2018, accused approached to complainant and demanded hand loan of Rs.20,00,000/- (Rupees twenty lakhs only) for urgent business and family needs. Since Complainant has the most trust on accused, he paid the amount of Rs.20,00,000/- (Rupees twenty lakhs only) to accused. The accused had issued **EX.P.1 post dated cheque bearing No.771448 of State Bank of India, Ganapathy, Coimbatore Branch dated 07.02.2019 for Rs.20,00,000/-** (Rupees twenty Lakhs only) towards the repayment of the said amount making complainant to believe that the cheque will be duly honoured on presentation.

5.2. On that accused assurance and request, the complainant had presented the cheque on 07.02.2019 at Indian Bank, Pallipalayam Branch. The cheque was dishonoured on 11.02.2019 as "insufficient fund". The **return memo** was marked as **EX.P.2**. The complainant had issued **EX.P.3 legal notice** on 26.02.2019 calling upon the accused for the repayment of the said amount within fifteen days from the date receipt of said notice. The legal notice was received by the accused on 05.03.2019. The **Postal receipt** was marked as **EX.P.4**. The **postal track report** was marked as **EX.P.5.** The accused had not repaid the amount and had not issued reply notice. Hence, the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. The accused had issued the cheque with full knowledge and intention to cheat the complainant and therefore the accused had committed an offence punishable under section 138 of the Negotiable Instruments Act and the accused may be punished for the dishonour of cheque with maximum sentence and he may be directed to pay the cheque amount as compensation to the complainant**.**

6. <u>QUESTIONING U/S.313 (1) (b) of Cr.P.C:</u>

On completion of the complainant side evidence, the accused was questioned U/S.313(1)(b) of Cr.P.C regarding the incriminating evidence against him and he had denied the same as false evidence.

<u>7. ACCUSED SIDE EVIDENCE:</u>

The Head Constable of Velipalayam police station of Nagapattinam named Selvam was examined as DW1 and through him EX.D.1 was marked.

<u>8. THE CASE OF THE ACCUSED AS PER THE EVIDENCE IS AS FOLLOWS:</u>

8.1. On 05.12.2019, the accused Balachandar had filed complaint before Velipalayam Police station of Nagapattinam District and CSR.No.263/2019 was registered. The report of Inspector of Police of Velipalayam Police Station and the CSR copy was marked as EX.D.1. In EX.D.1, the Inspector of Police had filed report stating that the accused Balachandar had registered complaint against Tamilselvan S/o.Rajan stating that the accused and Tamilselvan had invested Rs.5,00,000/- each and started Sakthi Polimer company at Mahalakshmi Nagar, Kattampatti of Nagapatinam District and the business was carried on well and Tamilselvan had asked for more investment and hence, the accused had borrowed amount from his friends and purchased Goods for the company. Tamilselvan had given only part amount and when accounts was verified it is seen that Rs.40,00,000/- was misappropriated and Tamilselvan was liable to pay Rs.49,00,000/-. When the accused Gopinath had asked for the amount, Tamilselvan had refused to pay the same. The accused Gopinath had kept cheque No.771448 and 771449 at Polimer company and Tamilselvan had refused to return back the same. On 05.12.2019 after enquiry on compromise, the petition was closed. DW1 had produced only the online copy of the CSR copy and had stated that the case file of the said petition was found to be missing due to cyclone.

9. ARGUMENTS ADVANCED BY THE COMPLAINANT:

9.1. The learned counsel for the complainant had argued that the complainant had proved his case beyond reasonable doubt. The accused had received the legal notice sent to him and had not made any reply till date and had not repaid any amount. Hence, adverse inference must be drawn against the accsued. The accused had contended that he had kept the cheque at his office and Tamilselvan had taken the said cheque and filed this false complaint. But to prove the same, no proper admissible relevant evidence was adduced by the accused. The learned counsel for the complainant contended that the presumption available in favor of the complainant is not rebutted. Hence, the learned counsel for the complainant prayed to hold the accused to be punished for dishonour of the cheque u/s 138 of Negotiable Instruments

Act.

10. ARGUMENTS ADVANCED BY THE ACCUSED:

10.1. The learned counsel for the accused contend that the cheque was not issued to the complainant. The cheque was not issued for legally enforceable debt. The brother in law of the complainant, Tamilselvan and the accused had started a company and they had dispute with regard to amount transaction. The cheque that had been kept by the accused at his office was taken by Tamilselvan and he had filed this false complaint through the complainant. The same is established through the oral evidence of DW1. Hence, prayed for acquittal of the accused.

11. POINTS FOR CONSIDERATION:

Whether the complainant has proved his case, beyond reasonable doubt that the accused had issued EX.P.1 in favour of the complainant to satisfy a legally enforceable debt, which existed between the complainant and the accused ?

12. ANSWER TO THE POINT:

12.1. Heard both sides. Records perused. On considering the complaint for the substance of accusation against the accused for offence of dishonour of cheque, initially, the ingredients for constituting the offence under section 138 of the Negotiable Instruments Act has to be analysed. It read as follows:

1) Cheque must have drawn on an account maintained by the accused in bank.
2) Cheque should have been issued for discharge, in whole or in part, of any debt or other liability.
3) Cheque was presented in the bank within a period of its validity.
4) Cheque was returned by the bank unpaid due to insufficient fund or exceeds the amount arranged to be paid from that account.
5) Notice in writing, was served to the drawer of the cheque, within 30 days.
6) Drawer of such cheque fails to make payment of the said amount of money

within 15 days of the receipt of the notice.

Only if all the above mentioned ingredients are satisfied, the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the Negotiable Instruments Act.

12.2. The case of the complainant is that, the complainant and the accused are well known to each other. On that basis, the complainant, on 09.01.2018 had lend Rs.20,00,000 to the accused for his urgent family expenses. The accused had promised to repay the amount within one month and had issued **EX.P.1 post dated cheque bearing No.771448 of State Bank of India, Ganapathy, Coimbatore Branch dated 07.02.2019 for Rs.20,00,000/-** on the same date of borrowal of the amount.

12.3. The complainant contended that EX.P.1 was issued by the accused to the complainant for repayment of the part of the borrowed debt. On perusal of cheque, EX.P.1, it is seen that it was drawn in the name of the firm of the accused from its account holding State Bank of India bank, Coimbatore branch. It specified the bank account number and the name of the firm of the accused. There is no dispute regarding the fact that the account number mentioned in cheque belonged to the firm of the accused. The accused had no where denied that Sri Hari Lubes and Chemicals do not belong to him and had not denied that the fact that he is the authorised signatory of the said company. On perusal of Ex.P1, it specified the date as 07.02.2019 and it was presented in complainant's account holding bank on 07.02.2019. The validity period of cheque is three months, therefore, Ex.P.1 was presented in bank within validity period.

12.4. On perusal of EX.P2 , it is seen the cheque was returned as **“Funds insufficient”** on 11.02.1019. The cheque was returned on 11.02.2019. The dishonour of Ex.P.1 was communicated to the accused on 26.02.2019 through EX.P.3. On perusal of EX.P.4, it comes to know that the legal notice on 26.02.2019 was issued to the accused demanding cheque amount. It shows that the notice was issued within 30 days. It was received under EX.P.5 on 27.02.2019. From this date, the 15 days lapsed on 14.03.2019. The complaint was filed on 11.04.2019. Due to defect, the petition was returned and represented belatedly and the delay in representation was condoned as per order in CMP.NO.4501/2019. The accused had not specifically admitted admitted his signature in the cheque in his questioning under section 251 or 313 of Cr.P.C. The cheque in dispute is returned for the reason as funds insufficient and not for the reason signature differs. Though the complainant had vaguely denied the signature in the cheque, he had not taken steps to send the same to expert to prove his contention. Hence, this court hold that the signature in the cheque is that of the accused.

12.5. In **APS Forex Services Pvt Ltd Vs Shakthi International fashion linkers (2020 SCC online SC 193),** the Hon'ble Supreme Court of India held that,

> **"5 ....Once the accused has admitted the issuance of chequewhich bears his signature, there is presumption that there exist a legally enforceable debt or liability under Sec 139 of the NI Act. However, such a presumption is rebuttable in nature and the accused is required to lead the evidence to rebut such a presumption"**

On reading of above principle and as held by Honourable Supreme Court in **Rangappa Vs. Sri Mohan, (2010) 11 page 441 and M.S,Narayana Menon Vs State of Kerala (2006 (6) SCC 39) and Basalingappa Vs Mudibasappa (2019 (5) SCC 418),** when the accused admitted signature, then the presumption exist as legally enforceable debt. In the present case, this court concluded that the signature in the cheque is that of the accused. This clearly, establishes that the complainant had proved the ingredients for offence under section 138 of the Negotiable Instrument Act. Therefore, this court is of considered view to draw the initial statutory presumption in favour of the complainant that there exists a legally enforceable debt or liability. As the initial presumption is available in favour of the complainant, it is the duty cast upon the accused to rebut the presumption by way of producing appropriate evidences.

12.6. The presumption under section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of prepondarance of probabilities. To rebut the presumption, it is open to the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference 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.

12.7. The first defence taken by the accused is that the cheque was not issued to the complainant for legally enforceable debt. The brother in law of the complainant, Tamilselvan and the accused had started a company and they had dispute with regard to amount transaction. The cheque that had been kept by the accused at his office was taken by Tamilselvan and he had filed this false complaint through the complainant. To prove the same, the accused had relied upon the oral evidence of DW1. DW1 who is the Head constable of Velipalayam police of Nagapattinam police station had deposed as that, on 05.12.2019, the accused Balachandar had filed complaint before Velipalayam Police station of Nagapattinam District and CSR.No.263/2019 was registered. The report of Inspector of Police of Velipalayam Police Station and the CSR copy was marked as EX.D.1. In EX.D.1, the Inspector of Police had filed report stating that the accused Balachandar had registered complaint against Tamilselvan S/o.Rajan stating that the accused and Tamilselvan had invested Rs.5,00,000/- each and started Sakthi Polimer company at Mahalakshmi Nagar, Kattampatti of Nagapatinam District and the business was carried on well and Tamilselvan had asked for more investment and hence, the accused had borrowed amount from his friends and purchased Goods for the company. Tamilselvan had given only part amount and when accounts was verified it is seen that Rs.40,00,000/- was misappropriated and Tamilselvan was liable to pay Rs.49,00,000/-. When the accused Gopinath had asked for the amount, Tamilselvan had refused to pay the same. The accused Gopinath had kept cheque No.771448 and 771449 at Polimer company and Tamilselvan had refused to return back the same. On 05.12.2019 after enquiry on compromise, the petition was closed. DW1 had produced only the online copy of the CSR copy and had stated that the case file of the said petition was found to be missing due to cyclone. The alleged complaint was filed after the filing of the present complaint before this court. The complainant had no where stated as to when he had came to know about the missing of the cheque and why he had not placed any complaint about it earlier. Mere giving of the complaint at police station after the filing of the said complaint cannot be taken as proved and it does not have any relevancy for the reason that the complainant had not examined Tamilselvan. As the complainant had stated that he and Tamilselvan had entered into compromise, he could have been examined Tamilselvan on his side to prove the said fact. Also, nothing elicited during the cross examination of PW1 to prove the fact that the cheque was misused by Tamilselvan.

12.8. The another contention put forth by the accused is that the complainant do not have financial capacity to lend amount. To prove the financial capacity of the complainant, EX.P.7 was marked. EX.P.7 is the bank statement of the complainant. On perusal of EX.P.7, it is seen that the complainant had Rs.95,14,480/- in his account. The complainant had possessed nearly a crore in his bank account. The accused had vaguely taken up the plea that the complainant is not having financial capacity to lend amount. EX.P.7 shows the financial capability of the complainant. The accused had no where questioned PW1 in the cross examination about the fact of sourcing of the amount alleged to be given to the accused. The accused had not raised any questioned as to how he had given the amount to the complainant as either cash or bank transfer. Nothing elicited in the cross examination of PW1 as to create the doubt in the alleged transaction taken place between the complainant and the accused or with regard to the financial capability of the complainant. In the circumstances, unless and until the contrary to the issuance of cheque under Ex.P1 is proved, the presumption shall be made of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of endorsement, as to stamps and that holder is a holder in due course and further, this cheque has been issued for discharge of whole or part of the legally enforceable debt or liability. These presumption are available to the complainant under Section 118 and 139 of the Negotiable Instruments Act. Mere asking of suggestion and bare denial by the accused without adducing any proper evidence is not acceptable and appreciable. In these circumstances, this court is of considered view that the complainant has proved the offence under Section 138 the Negotiable Instrument Act against the accused beyond reasonable doubt.

13. RESULT :

In the result, the accused is found guilty for offence under Section 138 of the Negotiable Instruments Act. The accused is convicted as per Section 255(2) Cr.P.C. The accused when questioned about the sentence had pleaded for lesser sentence. Considering the facts and circumstances of the case, the accused is sentenced to undergo simple imprisonment for a period of **one year.** The accused shall pay a sum of **Rs.20,00,000/-(Rupees twenty lakhs only)** as compensation under Section 357 Cr.P.C within 30 days from this date. In default the accused shall undergo a simple imprisonment for **three months** in addition to the sentence passed No fine is imposed. Copy of Judgment furnished to the accused free of cost.

Directly typed by me in the computer, corrected and pronounced by me in the open court on 10th day of July 2026.

A K PADMAPRIYA
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Date: 2026.07.10 12:23:43 +0530

Judicial Magistrate,
Komarapalayam

STC.No.395/2020

Complainant side witnesses:

PW1	Thiru.G.Gopinath (46), S/o.P.Gobalan

List of Complainant side Exhibits:

Ex P1	Cheque bearing no.771448
Ex P2	Return Memo
Ex P3	Legal Notice
Ex P4	Acknowledgment card
Ex P5	Track Consignment Report
Ex P6	Reply notice
Ex P7	Account Statement

Defence side witnesses

DW1	Thiru.Selvam (43), S/o.Rathinam

Defence side documents:

Ex D1	CSR copy.

A K PADMAPRIYA

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Date: 2026.07.10 12:23:54 +0530

Judicial Magistrate,
Komarapalayam.

Note:

1. The result of the case is intimated to the complainant.
2. No witnesses were detained for more than 3 hearings.
3. Copy of judgment furnished to the accused free of cost.
4. Bond executed to be cancelled.

Judicial Form No.61
(See Rule 106)
IN THE COURT OF THE JUDICIAL MAGISTRATE COURT, KUMARAPALAYAM.
JUDGMENT IN STC NO.395/2020
ON THE FILE OF THE JUDICIAL MAGISTRATE COURT, KUMARAPALAYAM.

Complainant :	G.Gopinath (46), S/o.P.Gobalan
Accused :	D.Balachandar (58), S/o.Dharmalingam
Offence :	U/s.138 of the Negotiable Instruments Act
Finding :	This court find Accused guilty for offence under Section 138 of the Negotiable Instruments Act.
Sentence/order:	The accused is found guilty for offence under Section 138 of the Negotiable Instruments Act. The accused is convicted as per Section 255(2) Cr.P.C. The accused when questioned about the sentence had pleaded for lesser sentence. Considering the facts and circumstances of the case, the accused is sentenced to undergo simple imprisonment for a period of **one year**. The accused shall pay a sum of **Rs.20,00,000/-(Rupees twenty lakhs only)** as compensation under Section 357 Cr.P.C within 30 days from this date. In default the accused shall undergo a simple imprisonment for **three months** in addition to the sentence passed No fine is imposed. Copy of Judgment furnished to the accused free of cost.

Description of the Accused

Sl. No.	Name	Father's Name	Occupation	Residence Address	Age
1	D.Balachandar	S/o.Dharmalingam	Business	D.No.37A, Gokulam Apartment, Anna Street, Venkattapuram, Coimbatore.	58

DATE OF							EXPLANATION OF DELAY AND REMARKS
Offence	Report of complaint	Apprehension of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order	138 NI Act Taken on File 09.10.2019
11.02.2019	30.08.2019	-	-	11.07.22	04.07.26	10.07.2026	

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Judicial Magistrate,
Komarapalayam.

CASE SUMMARY		
Sl. No.	**Description**	**Remarks**
1.	Period of Remand of the Accused	NIL
2.	The date of filing of the Complainant/final report of the Court	30.08.2019
3.	The date of committal of the case to the court of Session	Nil
4.	The date of questioning of the accused under Sections 228,240,246,251 of the Code of Criminal Procedure. 1973, as the case maybe	07.12.2019
5.	Filing of miscellaneous petitions an their results inculding the results on challenge before superior Courts. Except routine petitions like petitions Under Section 317 of the code	1) CMP.No.4501/2019 dated 25.09.2019 u/s.142(b) of NI Act – allowed. 2) CMP.No.79/2020 dated 01.03.2022 u/s.91 of Cr.P.C – Dismissed. 3) CMP.No.928/2023 dated 03.11.2023 u/s.311 of Cr.P.C – allowed.
6.	Date of examination in-chief and cross-examination of a witness	**Witness** / **Chief** / **Cross** **PW1** / 11.07.22 / 27.11.24 **DW1** / 06.10.25 / 24.06.26
7.	Date of examination of the accused Under Section 313 of the code	23.08.2023
8.	Details of abscondence of an accused and his appearance/production, as the case maybe	Nil
9.	Grant of stay by Superior Courts and the results thereof	Nil

A K PADMAPRIYA

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Date: 2026.07.10 12:24:18 +0530

Judicial Magistrate,
Komarapalayam.

STC.No.395/2020