IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF -CUM-JUDICIAL MAGISTRATE, GUDALUR

PRESENT: THIRU. G. SARAVANAKUMAR, B.A, B.L., (Hon's)
Principal District Munsif -cum- Judicial Magistrate, Gudalur.
Saturday, Dated: 4th day of July' 2026

STC. No. 975 of 2023

CNR.No.TNNS070020232023

M/s/ Sree Gokulam Chit & Finance
Co.(P) Ltd, No. 66 (Old 356),Arcot Road,
Kodambakam,Chennai – 600024,
Represented by
Mr. K.Santhosh, aged 33 / 2023,
S/o. Krishnan Kutty, Business Manager,
Sree Gokulam Chit & Finance
Co. (P) Ltd, Gudalur Branch,
Gudalur, The Nilgiris. -- Complainant

-Vs-

Mr. M.A. Yusuf, Aged 62/2023,
S/o. Mr. Aliyar,
D.No. 20/571, 2nd mile,
Thattakolly, Gudalur,
The Nilgiris. -- Accused

The Offence involved in this case having been taken cognizance and taken on file on 29.12.2024 and coming before me on 12.06.2026 for final hearing in the presence of Mr. K.M.Clinton, Learned Advocate for Complainant and Mrs. A.Rabiya Beevi, Learned Advocate for Accused, after hearing both sides, therefore upon perusing the material records and having stood over for consideration till this day, this court delivered the following :

G.SARAVANAKUMAR Digitally signed by G.SARAVANAKUMAR Date: 2026.07.04 19:30:58 +0530

CASE SUMMARY

<table>
<tr><th>Sl.No.</th><th>Particulars</th><th>Details</th></tr>
<tr><td>I.</td><td>Period of Remand of Accused</td><td>Nil. Since accused not arrested</td></tr>
<tr><td>II.</td><td>Date of filling of Private complaint in court</td><td>29.12.2024</td></tr>
<tr><td>III.</td><td>Date of questioning of accused under section 251 of Cr.p.c</td><td>08.01.2025</td></tr>
<tr><td>IV.</td><td>Filling of Miscellaneous petitions and their result</td><td>(i) Petition filed under section 353 of BNSS Act in Crl.M.P.No. 306/2026 and the same was dismissed as Not pressed on 09.06.2026

(ii) Petition filed under section 311 of Cr.P.C in Crl.M.P.No. 340/2026 and the same was dismissed on 24.06.2026.

(iii) Petition filed under section 70(2) of Cr.P.C in M.P.No. 9/2026 and the same was allowed on 08.05.2026.</td></tr>
<tr><td>V.</td><td>Date of examination in chief and cross-examination of witnesses</td><td><table><tr><td>Witnesses</td><td>Examination in chief</td><td>Examination in cross</td></tr><tr><td>Pw1</td><td>26.11.2025</td><td>11.02.2026
25.02.2026</td></tr></table></td></tr>
<tr><td>VI.</td><td>Date of examination of accused under section 313(1)(b) of Cr.p.c</td><td>08.05.2026</td></tr>
<tr><td>VII.</td><td>Details of abscondence of accused and his appearance / production</td><td>Nil</td></tr>
<tr><td>VIII.</td><td>Grant of stay by superior court and the result thereof</td><td>Nil</td></tr>
</table>

JUDGMENT

1. This Judgment shall decide upon the complaint filed by M/s Sree Gokulam Chit & Finance, represented by Mr. K.Santhosh, Business Manager (hereinafter referred to as the 'Complainant') under Section 138, Negotiable Instruments Act, (hereinafter referred to as the 'the NI Act') against M.A. Yusuf (hereinafter referred to as the 'Accused').

2. The case of the Complainant in brief as follows,

2.1. The accused was a chit subscriber for the chit bearing No. G2G/3375/PRY/11 with the complainant branch for the value of Rs.3,00,000/- (Rupees Three Lakh only) with a monthly subscription of Rs.15,000/- per month. The chit started on 14.08.2019 and terminated on 14.03.2021. The chit was bidded by the accused for an amount of Rs.3,00,000/- and payment was duly released by the complainant company on 18.12.2019. At the time of receiving the amount, the accused assured the repayment of future monthly installments shall pay by him without default before the due date.

2.2. The accused had made some sporadic payment of Rs.34,200/-. The complainant made demands to the accused to settle the dues. Finally on 01.10.2022, the accused voluntarily came forward and agreed to clear the outstanding dues of the chit account and verified the accounts. In discharging of the outstanding liability of Rs. 1,06,900/- (Rupees One lakh Six Thousand and Nine Hundred only). The accused issued a Cheque bearing No. 017352 drawn on Canara Bank, Gudalur Branch dated 01.10.2022 and instructed the complainant to present the cheque in the bank for encashment with a promise that the same shall be honoured without fail.

2.3. As per the instruction, the complainant deposited the Cheque for collection through The Catholic Syrian Bank Ltd, Gudalur branch, but the same was returned dishonored with a memo dated 05.12.2022 for the reason "Funds Insufficient". The complainant caused a statutory legal notice to the accused bringing to his knowledge regarding the dishonor of the Cheque and calling upon the accused to make the payment within 15 days from the date of receipt of the notice. The accused received the notice on 04.01.2023, Though the accused never bothered to pay the cheque amount as demanded or not even cared to cast a reply till this day. Hence, this complaint.

3. COGNIZANCE OF OFFENCE:-

The complainant was examined upon oath and sworn statement recorded. On perusal of material records, the court has satisfied that there are sufficient grounds for proceedings and taken cognizance the offence of dishonour of cheque under Section 138 of Negotiable Instruments Act, under section 190(1)(a) of Cr.p.c against the accused. And ordered issuance of summons to the accused under Section 204(1)(a) of Cr.p.c.

4. Compliance of Sec.207 of Cr.P.C:-

In pursuant of appearance of accused on summon, ensured the copies of material records has been furnished to the accused along with summon under section 204(3) of Cr.p.c, accordingly Section 207 Cr.p.c. complied.

5. Examination of the accused under section 251, 281 of Cr.P.C

After providing sufficient time to ascertain the facts of the case, the accused was examined under Section 251, 281 of Cr.p.c, and the substance of the offence explained to him and asked whether he plead guilty. The accused had denied the same and pleaded not guilty.

6. Complainant side evidence

The complainant had examined himself as PW1 and he has filed his proof affidavit *in lieu* of chief examination and through him documents under Exhibits P1 to P8 were marked, his testimony in the chief examination was replica of the complaint. With these said evidence complainant side was closed.

7. Examination of the accused under section 313 of Cr.P.C

Thereafter, statement of the accused u/s.313 C.r.P.C was recorded after disclosing the incriminating circumstances and evidence against the accused, to which the accused had denied the complainant evidence as false and further stated that there is evidence on his side. ***The accused further stated that he was suffering from Heart Attack and Diabetes, therefore he was unable to repay the money properly***. Despite of opportunity given, the defense side did not adduce any evidence. Therefore defence side evidence was closed.

8. Point for consideration

Now the point for determination before this court is whether the complainant had established a case against the accused under section 138 of the N.I.Act beyond any doubts, so as to punish the accused for the same?

8.1. The learned counsel for the complainant in his oral argument would submit that the complainant had established the ingredients of the Section 138 of the N.I.Act by the examining himself as PW-1, and he had marked the original cheque given by the accused for a sum of Rs.1,06,900/- as Ex.P4. The bank return memo was marked as Ex.P5. It is seen from the Ex.P5 that the cheque in dispute was returned for the reasons of “Funds insufficient” as claimed in the complaint. There was no sufficient fund in the accused bank account on the date of issuance of the cheque, In this case the accused had not denied his signature in the cheque and he not denied the entrustment of the cheque to the complainant, he is not adduced proper evidence to prove his case. Once the signature was admitted and failed to prove his case by the accused, the complainant is entitled for the statutory presumptions in favour of him as per the N.I.Act and the burden to rebut the said presumptions is solely upon the accused. But in this case the accused had not rebutted the said presumption. All the above facts would be the circumstance admitting the version of the complainant case. While so, the evidence of the PW-1 and the presumptions in favour of the complainant are in tact. It is sufficient to convict the accused. When the accused had not rebutted the presumptions then the complainant could use the presumptions in favour of him to substantiate his case. Hence, it must be taken that the accused had not rebutted the presumption as per Sec.139 of the N.I.Act and it was prayed to convict the accused and to order compensation to the complainant for the monitory loss he had suffered.

9. *Per contra, the learned counsel appearing for the accused would argued that, the present complaint is liable to be dismissed as the complainant failed to establish the existence of legally enforceable debt or liability. The evidence of PW1 reveals several material contradiction suppression and admissions which go to the route of the complainant’s case. The Pw1 admitted that there is no Incorporation document of the company was produced. Moreover, he admitted that no license or registration document authorizing the complainant to conduct chit business in the Nilgiris District were produced. The Pw1 further admitted that there was a chit agreement between the complainant and the accused, but the chit agreement was not*

produced before this court. Without production of the chit agreement, the alleged liability remains unproved. Therefore, it is evident that there is no legally enforceable debt existed on the date of presentation of cheque. Hence the accused is entitled to be acquitted. Written Argument also filed by the defense side.

10. On point

This court had carefully perused the records and the materials available in the case bundle. For properly appreciating the facts of the case and the legal aspects to be determined, a reference is necessary to the relevant statutory provisions.

11. **Essential ingredients for constituting the offence u/s.138 N.I. Act:**

The following are the essential ingredients for constituting the offence u/s.138 N.I. Act:

* Person must have drawn a cheque on an account maintained bank for payment of certain amount of money to another person from out of that account.

* The cheque should have been issued for discharge, in whole or in part, of any debt or other liability;

* That cheque has been presented to the bank within a period of three months from the date of which it is drawn or within the period of its validity whichever is earlier;

* That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

* The payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

* The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

12. It is only when all the above mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

13. **<u>Presumptions under the NI Act</u>**

The NI-Act raises two presumptions in favor of the holder of the cheque i.e. the Complainant in the present case;

*** firstly**, in regard to the passing of consideration as contained in Section 118 (a) and,

*** secondly**, a presumption that the holder of cheque received the cheque of the nature referred to in Section 138, for discharge in whole or in part, of any debt or other liability.

14. For the offence under Section 138 of the Act, the presumptions under Sections 118 and 139 have to be compulsory raised as soon as execution of cheque by accused is admitted or proved by the complainant and thereafter burden is shifted to accused to prove otherwise. These presumptions shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in

discharge of any debt or liability etc. A presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. The presumptions under section 118 and 138 are rebuttable in nature.

"Section 118(a) and section 139 of the Act read as under:

Sec.118. Presumption as to Negotiable Instruments: Until the contrary is proved, the following presumptions shall be made:

(a) of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Sec. 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."

15. In the present case, the Accused has not denied his signature in the cheque in question and had also not denied the receipt of the legal notice which was sent by the complainant, at the stage of questioning either under section 251, 281 or under section 313 of Cr.PC.

16. It is apposite to note here that the Hon'ble Supreme Court in **<u>Rangappa (Vs) Sri Mohan, [AIR 2010 SC 1898</u>**] observed as follows,

"Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption contemplated under Section 139 of the Negotiable Instruments Act has to raised by the Court in favour of the Complainant" .

17. In the case of **M/S Laxmi Dyechem (Vs) State of Gujarat & ors. [2013 CRI.L.J. 3288]** the Hon'ble Supreme Court has observed as follows –

"Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant".

18. Likewise, in the case of **K.N.Beena (Vs) Muniyappan and another [2002 SCC (CRI) 14]** the Hon'ble Supreme Court has observed as follows:

"Under Section 118 unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in a complaint under Section 138 the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused".

19. Thus, as soon as the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from

rebutting it and proving the contrary. The rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable.

20. The same was affirmed by the Hon'ble Supreme Court in **Krishnajanardhan Bhat vs. Dattatraya G. Hegde [2008 Crl.L.J. 1172]** wherein it was held that standard of proof on the part of an accused and that of the prosecution in a criminal case is different. The Hon’ble Court also held that prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of accused is 'preponderance of probabilities'. Inference of preponderance of possibilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies. While adjudging whether in a case the presumption of consideration has been rebutted, it becomes important to underscore that a mere denial of liability or vague defence of blank cheque as security, cannot be taken at the mere ipse dixit of the accused. The accused has to come forth with a convincing defence that appeals to the judicial conscience. Needless to state that if on a bare denial the presumption is stated to be rebutted, that would defeat the legislative intention of having a presumption in the first place. The reverse onus clause has been introduced further the legislative objective of improving the credibility of negotiable instruments. The presumption that a person would not normally hand over a signed cheque to another unless the same is for a liability has to be respected and given its full play. Only in a case where the accused comes up with a convincing defence to liability, that the presumption can be stated to have been rebutted.'

21. In the present case it was not in dispute that the signature found in the Ex.P4-cheque in dispute is that of the accused and he had also received the legal notice sent by the complainant in Ex.P6 at the time of questioning under Section 251, 281 and 313 of Cr.P.C. the accused had not denied his signature in the cheque in dispute, but the defense of the accused is that, he is not liable to pay any amount to the complainant company. He did not issue the cheque to the company on the date of cheque. He issued the cheque to the complainant at the time of subscribing the chit with the company. By misusing the same, this false complaint has lodged against him. In order to proving the same the accused did not adduce any oral evidence or documentary evidence. Further, during his examination of 313 Cr.P.C, he answered that he was suffering from Heart Attack and Diabetes, therefore he was unable to repay the money properly.

22. Even without the above said presumptions under section 118 and 139 of NI Act and also, the complainant examined himself as PW-1 and he had marked the original cheque in Ex.P4, the said cheque was returned for the reason " Funds insufficient ", And the said fact was established by marking the return memo Ex.P5. Thus, the complainant had established the fact of dishonour of the cheque in dispute as stated in this complaint. Moreover, the complainant also marked the copy of the legal notice sent by him as Ex.P6. The said legal notice was duly served to the accused vide Ex.P8 - Postal Acknowledgment card.

23. In this case signature and date on the cheque in dispute is not disputed by the accused. The PW-1 categorically deposed that the accused joined in a chit with the complainant company for value of Rs.3,00,000/- with a monthly subscription of Rs.15,000/-. The chit was started on 14.08.2019 and terminated on 14.03.2021 and the chit was bidded by the accused and received payment from the complainant with

an assurance that he shall pay the future monthly installment without default. But the accused was in default of payment of Rs.1,06,900/-. In discharge of that liability, the accused issued the Ex.P4 – cheque in favour of the complainant. It was not rebutted by the accused.

24. On the entire perusal of the records the complainant had substantiated his case and the essential ingredients of the Section 138 of the Negotiable Instruments Act as held by the Apex Court in **<u>Indian Bank Association Case reported in 2014(5) SCC 590-</u>** in para 18. "*We make it clear that if Provisos (a),(b) and (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences*"

25. Having found that the complainant had fulfilled his part of onus in proving his case, now it is for the accused to raise a probable defence that he is not at all having any enforceable legal debt or liabilities with the complainant. Though the accused is not necessarily bound to let in evidence by coming into the witness box but necessarily there must be some piece of evidence to show that the case of the complainant is not reliable. During the questioning under section 251, 281 of the Crpc the accused answered that the complainant case is false. But he did not pleaded that he did not issued the cheque on 01.10.2022 to the complainant. He never issued the cheque in dispute to the complainant and he did not give any assurance to repay the said loan amount to the complainant.

26. It is the case of the accused that, at the time of subscribing the chit , he issued the cheque to the complainant, by misusing the same, this case has been filed against him. But there was no evidence to prove the same. When there was no

evidence to support the defence version this court is of the considered opinion that the said defence was unbelievable and it was taken only just for the purpose of this case.

27. If at all the accused could able to establish his defence then the burden would again shift upon the complainant to establish his case without the aid of the presumptions. But in this case the accused had miserably failed to rebut the presumptions as discussed in the paras and the judgments discussed *supra.*

28. From the foregoing discussions, this court is of the considered opinion that the accused had miserably failed to rebut the presumptions under the Negotiable Instruments Act and he had failed to establish his probable defence. And had failed to discharge the burden upon him as per the dictum laid down in **T.Vasanthakumar (Vs) Vijayakumari, reported in 2015(2)MLJ(Crl)605(SC)** and thus this court is of the consider view that the complainant had fulfilled the basic ingredients of Sec.138 Negotiable Instruments Act and the accusation against the accused was proved by the complainant beyond any doubts. And this court also as a corollary comes to the conclusion that the Ex.P4 Cheque in dispute for the total sum of Rs.1,06,900/- was given by the accused to the complainant to discharge the legally enforceable debt for the total amount of Rs.1,06,900/- as seen from them and as the said cheque was returned for the reason of 'Funds insufficient' vide Ex.P5 and after the Ex.P6 legal notice too, the accused had not repaid the amount within the statutory period, further there was no pleading that at the time of dishonour of the cheque there was sufficient fund available in the accused account, and when the defence of the accused was not believed by this court in the discussions supra, the accused is found guilty under the Sec.138 of the Negotiable Instruments Act.

29. In the result, the accused is found guilty under section 255(2) Cr.P.C for the offence under section 138 Negotiable Instruments Act and convicted and sentenced to undergo **TEN months simple imprisonment** and **to pay a compensation of Rs.1,06,900/- (One Lakh Six Thousand and Nine Hundred Only) (value of the dishonoured cheque) to the complainant** under section 357(3) Cr.P.C **with in One month** and **in default** of payment of the compensation, the accused shall undergo a further period of **TWO months simple imprisonment as default sentence,** considering the over all facts and circumstances of the case.

Dictated to the Stenotypist, directly by her in the system attached with chamber, corrected and pronounced by me in the open court this the 4th day of July' 2026.

G.SARAVANAKUMAR Digitally signed by G.SARAVANAKUMAR Date: 2026.07.04 19:31:45 +0530

PRINCIPAL DISTRICT MUNSIF -CUM-
JUDICIAL MAGISTRATE, GUDALUR.

COMPLAINANT SIDE WITNESS

Sl. No	Particulars of witnesses	Description
1 Mr.	Mr.K.Santhosh	Complainant

COMPLAINANT SIDE EXHIBITS

Sl.No.	Particulars of exhibits	Proved by
Ex.P1	Copy of the resolution in favour of Power Agent	PW1
Ex.P2	Copy of General Power of Attorney in the name of Complainant	PW1
Ex.P3	Statement of Account	PW1
Ex.P4	Cheque bearing No.017352 drawn on Canara Bank, Gudalur.	PW1
Ex.P5	Cheque Return Memo	PW1

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Ex.P6	Legal notice issued by the complainant to the Accused	PW1
Ex.P7	Postal Receipt	PW1
Ex.P8	Postal acknowledgment card	PW1

DEFENCE SIDE WITNESSES: Nil

DEFENCE SIDE EXHIBITS: Nil

G.SARAVANAKUMAR

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Date: 2026.07.04 19:31:51 +0530

PRINCIPAL DISTRICT MUNSIF -CUM-JUDICIAL MAGISTRATE, GUDALUR