IN THE COURT OF THE JUDICIAL MAGISTRATE No.II, SANKARI

Present: Thiru.D. SIVAKUMAR, B.Sc., M.I.B., LL.B., P.G.D.C.A.,

Judicial Magistrate No.II, Sankari

Monday, 27th day of July, 2026

S.T.C. No: 560 OF 2021

CNR.No. TNSA09-000641-2021

Mrs. P.M. Parimala, (aged about 50/2021)
W/o. Murugesan,
Arasiramani bit – 2 village,
Kurukkuparaiyur,
Sankari Taluk,
Salem District. … Complainant

-Vs-

Mr. K.R. Periannan, (aged about 48/2021),
S/o. Ramasamy,
Arasiramani bit – 2 village,
Alaththur, Reddypalaiyam Post,
Karattupalaiyam,
Sankari Taluk,
Salem District. … Accused

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CASE SUMMARY

<table>
<tr><th>S.No.</th><th>Particulars</th><th colspan="3">Details</th></tr>
<tr><td>I.</td><td>Period of Remand of Accused</td><td colspan="3">Nil. Since Accused not arrested</td></tr>
<tr><td>II.</td><td>Date of filing of Private Complaint in Court</td><td colspan="3">05.04.2021</td></tr>
<tr><td>III.</td><td>Date of questioning of Accused Under Section 251of Cr.P.C</td><td colspan="3">12.10.2021</td></tr>
<tr><td>IV.</td><td>Filing of Miscellaneous petitions and their result</td><td colspan="3">1. CMP:1945/2022 – Petition u/s. 311 Cr.P.C. filed and Allowed dated 07.09.2022
2. CMP:2578/2022 – Petition u/s. 91 Cr.P.C. filed and Allowed dated 30.05.2024
3. CMP:1967/2024 – Petition u/s. 311 Cr.P.C. filed and dismissed dated 21.09.2024
4.CMP:2158/2024 – Petition u/s. 315 Cr.P.C. filed and Allowed dated 17.10.2024
5.CMP:2159/2024 – Petition u/s. 254(2) Cr.P.C. filed and Allowed dated 17.10.2024
6. CMP:02/2026 – Petition u/s. 311 Cr.P.C. filed and Allowed dated 27.03.2026</td></tr>
<tr><td rowspan="5">V.</td><td rowspan="5">Date of examination in chief and cross-examination of witnesses</td><td>Witnesses</td><td>Examination in chief</td><td>Examination in cross</td></tr>
<tr><td>PW1</td><td>15.06.2022</td><td>07.10.2022, 04.11.2022</td></tr>
<tr><td>PW2</td><td>25.07.2022</td><td>24.08.2022</td></tr>
<tr><td>DW1</td><td>18.10.2024</td><td>18.10.2024</td></tr>
<tr><td>DW2</td><td>27.04.2026</td><td>27.04.2026</td></tr>
<tr><td>VI.</td><td>Date of examination of Accused under Section 313(1)(b) of Cr.P.C</td><td colspan="3">03.09.2022</td></tr>
<tr><td>VII.</td><td>Details of abscondance of Accused and his appearance / production</td><td colspan="3">Nil</td></tr>
<tr><td>VIII.</td><td>Grant of stay by superior Court and the result thereof</td><td colspan="3">Nil</td></tr>
</table>

IN THE COURT OF THE JUDICIAL MAGISTRATE No.II, SANKARI

JUDGMENT IN S.T.C. NO. 560 OF 2021 ON THE FILE OF THE JUDICIAL MAGISTRATE No.II, SANKARI.

**PRESENT: Thiru. D. Sivakumar, B.Sc., M.I.B., L.L.B., P.G.D.C.A.,
Judicial Magistrate No.II, Sankari**

(Monday, Dated: 27th day of July 2026)

Complainant	:	Mrs. P.M. Parimala (50/2021), W/o. Murugesan.
Accused	:	Mr. K.R. Periannan (48/2021), S/o. Ramasamy.
Offence	:	Under Section 138 of the Negotiable Instrument Act 1881.
Finding	:	Accused is found guilty for the offence under Section 138 R/w 142 of the Negotiable Instrument Act 1881.

Sentence :	In the result, (i) The Accused found guilty for the offence under Section 138 R/w 142 of the Negotiable Instruments Act, and the Accused is hereby convicted under Section 255(2) of Cr.P.C. The Accused is sentenced to a simple imprisonment of one year for having committed the offence under Section 138 R/w section 142 of the Negotiable Instruments Act and to pay a compensation of Rs.5,00,000/- (Rupees Five Lakhs Only)which shall be paid within three months from the date of this Judgment and on its failure, the Accused is directed to undergo 2 (Two) months simple imprisonment, in addition to the substantive sentence.

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Serial Number	Description of the Accused					
	Name	Father's Name	Caste or race	Occupation	Residence	Age
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Mr. K.R. Periannan	Mr.Ramasamy	Hindu	Agricultural	Arasiramani bit – 2 village, Alaththur, Reddypalaiyam Post, Karattupalaiyam, Sankari Taluk, Salem District.	48/2021

Date of							Explanation of delay
Occurrence	Complaint	Apprehension or appearance	Release on bail	Commencement of trial	Close of trial	Sentence or Order	
(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
03.02.2021	05.04.2021	Nil	Nil	08.11.2021	27.04.2026	27.07.2026	Nil

This case was taken on file on 26.08.2021 and coming on 27.07.2026 for final hearing before me in the presence of Advocate Mr. R. Ramasamy and E.Dhanraj Counsels for the Complainant and Advocate Mr.S. Manivannan, Counsel for the Accused, heard both the sides, records and evidence perused and having stood over for consideration till this day, this Court deliver the following,

JUDGMENT

1). The case is based on the Complaint filed by the Complainant under Section 138 R/w Section 142 of the Negotiable Instruments Act, 1881, against the

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Accused.

2). **Gist of the Complaint**:

(i). On 29.10.2020 the Accused borrowed a sum of Rs. 5,00,000/- in cash from the Complainant towards his urgent family expenses and for construction of compound wall around his house by assuring the Complainant to repay the same within 2 months and the Accused issued a post dated cheque bearing no:004817 dated 29.12.2020 drawn on I.C.I.C.I Bank Limited, Sankari Branch, in favour of the Complainant towards repayment of the said money. Believing the assurance given by the accused the Complainant presented the said cheque bearing no: 004817 for collection on 22.01.2021, through her Indian Bank Limited, Thevoor Branch, and the said cheque was dishonored as “Account Closed” on 03.02.2021.

(ii). Hence, the Complainant issued a legal notice dated 24.02.2021, through Registered Post with Acknowledgment to the accused, demanding to pay her the cheque mentioned value within 15 days and the said legal notice was received by the Accused on 02.03.2021. Since in the said legal notice the date of lending was wrongly mentioned as 29.10.2021 instead of 29.10.2020 due to typographical error the Complainant had issued a Rejoinder Notice dated 10.03.2021 to the Accused and the same was received by the said Accused on 12.03.2021. But the Accused having failed to repay the said cheque mentioned value, the Accused with intention to defraud the Complainant had conspired with

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Date: 2026.07.27 15:36:06 +0530

his son Mr.Chinnusamy and had issued a reply notice stating false allegations that the Accused had Borrowed a loan from the husband of the Complainant on 01.06.2010 a sum of Rs.2,00,000/- and that the Accused had tendered 10 signed blank cheques, 10 signed blank promissory notes along with 100 signed blank document papers and that the husband of the Complainant had demanded him to pay the said money to the Bank Account of one Mr.Sakthivel. Hence, the present Complaint.

3). The above Complaint was filed on 05.04.2021 before the Judicial Magistrate Court No.I, Sankari, Court and upon examining the Complainant, the present Complaint was taken on file and cognizance of the offence under Section 138 R/w Section 142 of the Negotiable Instruments Act, 1881, against the Accused on 26.08.2021 and an order to issue summons to the Accused was passed. Summons case procedure was followed. The Accused appeared on summons and Copies were furnished to the Accused free of cost and the substance of the accusation was stated and the Accused denied being guilty. As such this Court proceeded for Trial and evidences were recorded. While so, the above complaint was transferred to this Court on 22.04.2024 vide order passed by the Hon'ble Chief Judicial Magistrate, Salem in R.O.C no:508/2024/A dated 19.02.2024.

4). On the Complainant's side Two witnesses – P.w.1, P.w.2 were examined. Five Exhibits – Ex.P1 to Ex.P8 were marked.

5). **<u>The Gist of the evidence on the side of the Complainant:</u>**

5). (i). **<u>Pw1</u>**: The Complainant, Mrs. Parimala, had examined herself as P.W1, by filing Affidavit and adduced evidence in consistent with his Complaint and has deposed that, on 29.10.2020 the Accused borrowed a sum of Rs. 5,00,000/- in cash from her towards his urgent family expenses and for construction of compound wall around his house by assuring her to repay the same within 2 months and the accused issued a post dated cheque bearing no:004817 dated 29.12.2020 drawn on I.C.I.C.I Bank Limited, Sankari Branch, in favour of the Complainant towards repayment of the said money. Believing the assurance given by the accused she presented the said cheque bearing no: 004817 for collection on 22.01.2021, through her Indian Bank Limited, Thevoor Branch, and the said cheque was dishonored as "Account Closed" on 03.02.2021.

5). (ii). Hence, she issued a legal notice dated 24.02.2021, through Registered Post with Acknowledgment to the accused, demanding to pay her the cheque mentioned value within 15 days and the said legal notice was received by the Accused on 02.03.2021. Since in the said legal notice the date of lending was wrongly mentioned as 29.10.2021 instead of 29.10.2020 due to typographical error, she had issued a Rejoinder Notice dated 10.03.2021 to the Accused and the same was received by the said Accused on 12.03.2021. But the Accused having failed to repay the said cheque mentioned value, the Accused with intention to defraud the her had conspired with his son Mr.Chinnusamy and had issued a reply notice stating false allegations. Hence, the present Complaint. and hence the present Complaint.

5). (iii). <u>**Pw2**</u>: Mr.Kannan was examined on the side of the Complainant as Pw2 by filing proof Affidavit. He has deposed that he knows both the Complainant and the Accused. The Accused borrowed a sum of Rs.5,00,000/- from the Complainant on 29.10.2020 and that the accused had issued a post dated cheque to the Complainant towards discharge of the said debt and that he has direct knowledge about the same since he had visited the Complainant's house on 29.10.2020 and that Accused had sought money from the Complainant towards his family expenses and for the construction of compound wall around his house, and that the accused had assured repayment within 2 months and he borrowed money from the Complainant in his presence. The Accused had tendered a filled cheque dated 29.12.2020 pertaining to I.C.I.C.I Bank Account.

6). After closure of the Complainant side evidence, the incriminating portion of the evidences were explained to the Accused and he was questioned U/s. 313

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Date: 2026.07.27 15:36:28 +0530

(1) (b) of Cr.P.C and the Accused denied the evidence as false and has stated that it is a false case. On the side of the Defence, Two witnesses Dw1 and Dw2 were examined.

6). (i). It is pertinent to state that, while, assigning number to the Defence side witnesses, there existed a mistake in assigning of number to the Branch Manager, ICICI Bank, Sankari as Dw3, in the Deposition, instead of assigning the said witness as Dw2, the same was pointed out by the Learned counsel for the Accused on 22.07.2026 and he had filed a memo for the same towards rectification of the said mistake. The Learned counsel for the Complainant had endorsed no objection on the said memo towards rectifying the same. This Court on perusing the case records found that the said mistake had occurred while assigning number to the Defence side witnesses, inadvertently. Hence, on the consent of both parties and in the interest of justice, this Court on 22.07.2026 had passed an order in the notes paper of the case records, towards the rectification of the said mistake and in the connected case records, thus in the Deposition of the Branch Manager, ICICI Bank, Sankari, the rectification was carried out and he was assigned the number as Dw2.

7). <u>The Gist of the evidence on the side of the Defence:</u>

7). (i). <u>**Dw1**</u>: The Accused Mr. Periannan, examined himself as Dw1, and has adduced evidence that, he had subscribed Rs.5,00,000/- Chit conducted by the Husband of Pw1, Mr.Murugesan, and that he had received Rs.4,00,000/- from the chit and during the subscription period of the chit, he had tendered 10 cheques, 10 Bond papers to Pw1 and after the termination of the said Chit, the said Cheques and the Bond papers were not returned to him. He had closed his I.C.I.C.I Bank Account in the year 2013 and that though the Complainant has stated that she had sold her Lorry and had lend him through the said sale proceeds, the said Lorry is still running in the name of the Complainant and that it is false to state that he borrowed from the Complainant by visiting her house, since the said period pertains to Corona virus infection period and that he does have any financial transaction with the Complainant.

7). (ii). **Dw2**: Mr.Suresh, Branch Manager, I.C.I.C.I. Bank, Sankari was examined as Dw2 and he adduced evidence that, I.C.I.C.I. Savings Bank Account no:088601000259 was closed on 20.05.2013 and since 10 years has elapsed after closing of said Bank Account, the details of the said Bank Account has been destroyed and hence he could not furnish the Bank statement for the period from 2010 to March 2026.

8). **Chart for Witnesses Examined:**

8). (a). **Chart for Witnesses Examined on the side of the Complainant:**

Prosecution Witness No.	**Name of Witness**	**Description**
Pw1	Mrs. Parimala, **(Complainant**)	She adduces evidence about the lending of money and about the dishonour of the cheque and about the filing of the present Complaint.
Pw2	Mr. Kannan, **(Eye witness)**	He adduces evidence about the lending transaction by the Complainant to the Accused and about the issuance of the disputed cheque by the Accused to the Complainant

8). (b). **Chart for Witnesses Examined on the side of the Defence:**

Defence 8). (c). Witness No.	**Name of Witness**	**Description**
Dw1	Mr.Periannan, **(Accused)**	He adduces evidence by denying the said lending transaction and denies the issuance of the disputed cheque towards the alleged lending transaction.
Dw2	Mr.Suresh **(Branch Manager – I.C.I.C.I Bank, Sankari)**	He adduces evidence regarding the closure of the I.C.I.C.I Bank Account by the Accused

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8). (c). Chart for Exhibited Documents filed by the Complainant side:

Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex.P1	Cheque bearing no: 004817, dated 29.12.2020 - **(Original)**	**Pw1**
Ex.P2	Cheque Deposit slip dated 22.01.2021 - **(Original)**	**Pw1**
Ex.P3	Cheque Return memo dated 03.02.2021 - **(Original)**	**Pw1**
Ex.P4	The Demand / Legal Notice dated 24.02.2021 issued by the complainant to the accused – **(Office copy)**	**Pw1**
Ex.P5	Rejoinder Notice dated 10.03.2021 issued by the Complainant to the Accused – **(Office copy)**	**Pw1**
Ex.P6	Postal Track Consignment dated 02.03.2021 – **(online copy)**	**Pw1**
Ex.P7	Postal Acknowledgment card dated 12.03.2021 - **(Original)**	**Pw1**
Ex.P8	Reply notice dated 11.03.2021 issued by the Accused **(Original)**	**Pw1**

8). (d). <u>Chart for Exhibited Documents filed by the Defence side :</u>

Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex.D1	Transaction Inquiry statement dated 20.05.2013 issued by the I.C.I.C.I. Bank, Sankari Branch - **(Original)**	**Dw1**

9). Both side arguments heard. Records perused.

10). At the outset before appreciating the facts and evidence adduced in the case, it will be appropriate to ascertain whether the statutory requirements are complied with.

(a). Whether the Accused issued a cheque drawn on account maintained by him?

(b). Whether the cheque was issued to discharge in whole or part of any legal debt or liability?

(c). Whether the said cheque has been presented to the bank within a period of 6 months (now 3 months) from the date of the cheque or within a period of its validity, whichever is earlier?

(d). Whether the said cheque when presented for encashment, was returned unpaid or dishonoured?

(e). Whether the Complainant had issued legal notice of demand to drawer within 30 days from the date of information by the bank?

(f). Whether the Accused failed to make payment within 15 days from the date of receipt of the said Demand notice?

11). P.w.1 in her evidence has deposed that the Accused has issued a post dated cheque bearing no:004817 dated 29.12.2020 drawn on I.C.I.C.I Bank Limited, Sankari Branch, in her favour towards repayment of the said money and that she had presented the said cheque bearing no: 004817 for collection on 22.01.2021 and the same was dishonored on 03.02.2021 as " Account Closed " and hence she issued a legal notice dated 24.02.2021 through Registered Post with Acknowledgment to the accused, demanding to pay him the cheque mentioned value within 15 days and the said legal notice was received by the Accused on 02.03.2021 and a Rejoinder notice was issued by her on 10.03.2021 and the same was received by the Accused on 12.03.2021.

11). (i). In the verdict passed by the Hon'ble Madras High Court in **M/s. Challani Rank Jewellery and 2 others - Vs - Ashok Kumar Jain,** in Crl.O.P.No.21268 of 2024 and Crl.M.P.Nos.12190 & 12191 of 2024, by its order dated 17.10.2024**,** in paragraph no.32 and 33, it has been held that:

" 32. In this regard, it is profitable to refer the observation of the

Supreme Court judgment in **Laxmi Dyechem v. State of Gujarat** reported in [(2012) 13 SCC 375]:-

“ We find ourselves in respectful agreement with the decision in Magma case (NEPC Micon Ltd. v. Magma Leasing Ltd. (1999) 4 SCC 253) that the expression “amount of money … is insufficient” appearing in Section 138 of the Act is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the “signatures do not match” or that the “image is not found”, which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. (emphasis supplied).”

“ 33. If the above logic and analogy is applied, it is amply clear that in cases of ‘account block’ or ‘account freezed’ complaint under Section 138 of NI Act is maintainable, if the complainant prima facie satisfies that in the account there was no sufficient fund to honour. As Supreme court has held, the genus of the crime is any one of the contingencies envisaged under Section 138 of NI Act. If the complaint discloses that dehors of account block or account freeze and even otherwise, the cheque could not been passed due to want of fund in the account, the drawer of the cheque cannot take umbrage under the fact that his account is blocked or freezed. Issuing the cheque without sufficient fund to honour is the genus of the crime.”

11). (ii). Hence, by going by the said principle laid by the Hon’ble Madras High Court in **M/s. Challani Rank Jewellery case, (as stated supra)** the dishonour of cheque as ‘ Account Closed ’ constitute a dishonour within the meaning of Section 138 of the Act. Though, the Accused had issued a reply notice to the Complainant, he had failed to repay the said cheque mentioned value to her within the stipulated period. Thus, this Court on analyzing the facts of the case, infers that the statutory requirements have been complied with.

12). Now, the Points for consideration are:

(a). Whether the Complainant has proved the case against the Accused for the offence U/s. 138 R/w 142 of the Negotiable Instruments Act, 1881 Act beyond reasonable doubt?

Or

(b). Whether the Accused has rebutted the presumptions by preponderance of probabilities?

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12). (a). Now, this Court has to ascertain as to whether the Complainant has discharged her initial burden of proof and as the legal presumption U/s. 118 and 139 the Negotiable Instruments Act, 1881, Act carries in favour of the Complainant if the issuance of the cheque and signature thereon is admitted by the Accused, whether the Accused has rebutted the same by preponderance of probabilities?

12). (b). The learned counsel for the Complainant has contended in his argument that the Accused has admitted the signature in the cheques. On perusal of the records, it is learnt the Accused has not disputed the signature contained in the alleged cheques in his evidence as a whole. During cross examination of the Accused who adduced evidence as Dw1, he had admitted his signature which is contained in the disputed cheque and that the disputed cheque pertains to his Bank Account, which was closed in the year 2013. While the facts remain so, the Accused having not disputed the signature contained in the alleged cheques nor having disputed the fact that the alleged cheques does not pertain to his Bank Account, the said facts are evident that the Accused has admitted the issuance of the alleged cheque to the Complainant, except for the fact that the alleged signed blank cheque with nine other other signed blank cheques along with ten signed blank promissory notes and 100 signed blank document papers were tendered as security towards the debt borrowed by him from the husband of the Complainant and that the said debt was repaid and that the alleged cheque was misused by the Complainant.

12). (c). It is pertinent to state that since, it is well settled proposition of Law that “Once the cheque relates to the account of the Accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the Complainant. The presumption referred to in Section 139 of the Negotiable Instruments Act, 1881, Act is a mandatory presumption and not a general presumption, but the Accused is entitled to rebut the said presumption.”

> **The Hon’ble Supreme Court in ‘Rangappa -Vs- Sri Mohan’ reported in ‘(2010) 11 SCC 441’** has laid down “the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability...... This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, here can be no doubt that there is an initial presumption which favours the complainant.”

12. (d). In view of the above dictum, this Court is of the considered view that, the Complainant had discharged her initial burden of proving the execution of the alleged cheque and that the cheque was issued for a legally enforceable debt or liability.

12). (e). Now, it is to be looked into as to whether probable defence has been raised by the Accused through evidence and documents rebutting the presumptions. The manner in which the Accused can rebut the presumptions has been laid down by the **Hon'ble Supreme Court in 'Basalingappa -Vs- Mudibasappa' reported in 2019 (1) MWN (Crl) DCC 145 (SC)** as follows;

> "25.2- 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 preponderance of probabilities."

> "25.3- To rebut the presumption, it is open for 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."

13). The Learned Counsel of the Accused contended that, the Accused has

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Date: 2026.07.27 15:37:50 +0530

resisted the claims of the Complainant on the following ground:

That the Complainant never lent a sum of Rs. 5,00,000/- to the Accused and that the Accused did not issue the disputed cheque in favour of the Complainant and that the disputed signed blank cheque along with nine other cheques, 10 signed blank Promissory note, 100 signed blank document papers were tendered, as security towards the debt borrowed by him from the husband of the Complainant (Mr.Murugesan) and that he had not filled the particulars contained in the alleged cheque and the same has been misused by the Complainant, hence, there exist no legally enforceable debt.

13). (a). At the outset the accused has denied the fact that there existed any lending transaction amongst himself and the Complainant (Pw1). Though, the Accused had contended in his Reply notice (Ex.P8), that he had issued to Mr.Murugesan (the husband of the Complainant) as security his ten signed blank cheques with ten signed blank promissory notes along with 100 signed blank document papers, towards borrowing a sum of Rs.2,00,000/- from the said Mr.Murugesan on 01.06.2010 and that the said cheques, promissory notes and document papers were not returned back to him, the Accused has not even mentioned the specific cheque numbers said to be handed over by him, in his reply notice nor in his evidence. Further, the Accused had taken a contradictory stand while he was examined as Dw1, that the said cheques, promissory notes and documents were tendered as security towards subscription of Chit from Mr.Murugesan (the husband of the Complainant). During cross examination of Dw1 he had denied the fact that he did mention in his Reply notice that the disputed cheque was issued by him to Mr.Murugesan as a security towards borrowing a sum of Rs.2,00,000/- from him, which is contradictory to the facts mentioned in Reply notice (Ex.P8).

13). (b). Further, during cross examination of Pw1, he had contended that he issued the disputed cheque to the Complainant towards the subscription of chit from her. All the aforesaid pleas are contradictory to each other. The Accused has failed to furnish any relevant document to establish the fact that he had borrowed a sum of Rs.2,00,000/- from the said Mr.Murugesan as alleged by him on 01.06.2010, nor he has produced any document or material to establish the fact that he had subscribed a chit conducted by Pw1. Pw1 having denied the fact that she had not conduct chit business, there is nothing on record to show that Pw1 conducted chit business. The burden to prove the fact that, Pw1 conducted Chit business, falls on the Accused and the Accused has not let in any cogent evidence to substantiate his plea.

13). (c). While, Pw1 contends that the alleged cheque was issued towards the discharge of the money borrowed from her by the Accused, there is no cogent evidence to establish the fact of the alleged debt of Rs.2,00,000/- was borrowed by the Accused from Mr.Murugesan. Further, the Accused had failed to adduce cogent evidence to establish his plea as to the date of repayment of the alleged sum of Rs.2,00,000/- to Mr.Murugesan, in order to corroborate his evidence. Hence, there exists a suspicion as to whether the Accused had tendered the alleged signed blank cheques, signed blank cheques promissory notes and signed blank cheques documents papers as security to Mr.Murugesan towards the alleged lending transaction or as security towards the chit alleged to have been subscribed by him.

13). (d). It is not let known to Court by the accused as to why even after the repayment of the alleged loan which is said to be borrowed from Mr.Murugesan or after the maturity of the chit as alleged to have been subscribed from Pw1, he did not claim back his aforesaid security cheques, promissory notes and documents and the accused has not shown to the Court, the reason as to why all these years he kept mum without even enforcing his right, in accordance with Section 81 of the Negotiable Instruments Act, to claim back his alleged cheques etc., until he had issued his reply notice. Even, in his reply notice, he has not stated the specific cheque numbers. Though, the Accused states that after he had repaid his debt and that he had sought his alleged cheques to be returned back to him, but the Accused has failed to state as to when, on what date, where and with whom he claimed to return back his alleged cheques, promissory notes and documents. Interestingly, the Accused had not issued any stop payment instruction to his Bank, by elucidating the aforesaid facts. Nor, there is any material to show that the accused had lodged any Police complaint regarding the refusal to return back the said security instruments. The Burden to prove the fact that the alleged disputed cheque was tendered by the Accused as security towards his debt or towards his chit subscription, is on the accused, but he had failed to prove same. Thus, the accused has failed to raise his probable defence.

13). (e). Yet another stance taken by the Accused to rebut the presumption under Section 118 and section 139 of the Negotiable Instruments Act is that, the alleged cheque was not filled by him and that he had signed the cheque is Tamil and the particulars mentioned in the cheques are in English, and that the blank signed cheques has been misused by the Complainant. Now, coming to the point as to whether the signed blank cheque would not attract the penal provisions of Section 138 the Negotiable Instruments Act and would render the cheque as invalid. For deciding the said the fact, this Court is duty bound to quote verdict of the Hon'ble Supreme Court has held in **"Bir Singh -Vs- Mukesh Kumar" in "Crl.A. No. 231/2019" dated 06.02.2019 (in Paragraph 37 and 38)"**

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and

makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted."

" 38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

13). (f). Thus, it is clear that even a blank cheque leaf, voluntarily signed and handed over by the Accused, which is handed over in lieu of making payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. Now, coming to the case in hand, it is not the case of the Accused that he neither signed the cheque nor parted with it under any threat or coercion. Pw1 in her cross examination has stated that the Accused had filled the particulars contained in the cheque in English and had signed in Tamil. Pw2 in his cross examination has stated that he saw the alleged cheque and the Accused had filled the particulars contained in it, in English. The evidence of the Pw2 is corroborated with the evidence of Pw1.

13). (g). Hence, the contention of the Accused that he had signed the cheque is Tamil and the particulars mentioned in the cheques are in English, is not a sole ground to suspect the execution of the disputed cheque. Though the accused states that his cheques was misused by Pw1, the said fact is to be proved by him and as such, it would not dis-entitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence to show the existence of undue influence or coercion.

13). (h). On considering the aforesaid facts, this Court is of the considered view that the argument advanced by the Learned Counsel for the Accused is not sustainable and hence, the issuance of the signed blank cheque, though it may be signed in Tamil and the particulars mentioned in the cheques are in English, would squarely attract the penal provisions of Section 138 the Negotiable Instruments Act and would not render the cheque as invalid.

13). (i). Furthermore, as per section 20 of the Negotiable Instruments Act, there is no bar in filling the particulars of the cheque by any other person other than the drawer of the cheque and it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer, unless the drawer adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. In the case in hand the accused has not denied his signature contained in the cheque and burden to prove the fact that the cheque had not been issued for payment of a debt or in discharge of a liability falls on him. Hence, on considering the aforesaid facts, this Court is of the view that the accused has failed to raise his probable defence.

13). (j). During cross examination of Pw1 the accused had questioned about the business of Pw1 and she had stated that she does agriculture and that she owned a lorry in her name and the same was sold two years before and that she can produce the documents pertaining to the Lorry to show that she owned it in her name and that she lent the accused out of its sale proceeds and she has further stated that her husband sold the said Lorry, hence, he knows the details of the person who bought the Lorry.

13). (k). During cross examination of Dw1, the Complainant had contended that though she and one Mr.Vijayan had produced the documents sought by him, in lieu of order passed by the Court in the petition filed by him under section 91 of Cr.P.C, he did no mark the said documents, since, they would affect his case. The said fact was denied by Dw1. On perusal of the case records, this Court learns that the Accused had filed a petition under section 91 of Cr.P.C seeking the Complainant to produce her Lorry R.C. Book, Lorry loan statement and the Lorry sale agreement, wherein this Court had passed an order to issue summons to the Complainant to produce the copy of the R.C Book, Sale Agreement of the said Tipper Lorry bearing registration no: TN 30 R 4429 and had further issued summons to one Mr.Vijayan for production of Original R.C.Book of the said Tipper Lorry and the copy of the sale agreement.

13). (l). In compliance of the said order on 30/08/2024 both the Complainant and Mr.Vijayan had appeared before the Court, wherein the Complainant had produced the copy of R.C. Book of the said Tipper Lorry and the sale agreement and Mr.Vijayan had produced before the Court the copy of the sale agreement of the said Tipper Lorry and the sale agreement executed in between himself and Sri Mahalakshmi Traders (to whom he had allegedly sold the said Lorry), and the copy of R.C.Book of the said Tipper Lorry. Though, the Accused had sough for production of the said documents, for the reasons best known to him, he has not marked the said documents produced by the Complainant and one Mr.Vijayan, on his side. Nor, the said documents were marked on the side of the Complainant too. Since, the said documents were not marked by either party, this Court is not bound to adjudicate the said documents or its contents. But, this Court infers that, if the said documents were favourable to the case of the Accused, then the same would have been marked on his side.

13). (m). Moreover, the Accused having examined himself as Dw1 has claimed that still now the said Lorry is running in the name of Pw1, which is contrary to his plea, since he had earlier questioned her ownership of the said vehicle and now he take a different stand that the said Lorry was owned by Pw1. This Court on appreciation of evidence is of the view that it is for the Accused to produce cogent materials to establish the fact that the Pw1 had not sold the said Tipper lorry. Hence, as per the evidence adduced by Pw1 in her cross examination, that she can produce the said documents, she had produced the said documents which were in her possession, as sought by the Accused.

13). (n). Since, Pw1 had produced the said documents and for the fact that the said documents have not been marked in evidence, the same has created a suspicion or doubt by the Accused regarding the fact whether Pw1 had owned the alleged Tipper Lorry in her name and whether she sold the said Lorry, are now wipped out. Now, it is for the Accused to prove the contrary that, Pw1 had no sufficient income to lend the Accused. But, no materials are place by the Accused to establish the fact that Pw1 had no means to lend him. Even, leaving alone the fact that the documents produced by Pw1 and one Mr.Vijayan were not marked on the side of the Complainant, the presumption under section 118 and 139 of the Negotiable Instruments Act is in favour of Pw1, and the Accused has to prove the fact that Pw1 had no source of income or means to lend him. But, the Accused had not let in any cogent evidence to substantiate his defence.

13). (o). During the cross examination of Pw1, she has stated that she knows the Accused for about 35 years, for which there is no specific denial made by the Accused. Further, Pw1 in her cross examination has stated that the accused used to borrow money from her for the past 10 to 15 years and would repay the same and that with the knowledge of her husband she lent money to the Accused and that the Accused had sought money towards building a compound wall and for his household expenses and that at the time of the lending transaction, her son, her Father in Law and Mother in law and one Mr.Kannan were present and she lent the Accused in the denomination of Rs.500/- consisting of 10 bundles and that Mr.Kannan came to her house before she lent the Accused.

13). (p). Mr.Kannan, was examined as Pw2 and he had deposed in his chief examination that on 29.10.2020, Pw1 lent Rs.5,00,000/- to the Dw1 and that he has direct knowledge about the same and that for the purpose of constructing compound wall and towards his family expenses Dw1 had borrowed the said money from Pw1, in his presence and that Dw1 tendered a filled in I.C.I.C.I bank cheque dated 29.12.2020. During cross examination of Pw2, he has stated that both the Pw1 and Dw1 are his relatives and he visited the house of Pw1 at about 11.00 hrs towards inviting her for the Munniappan Temple festival at Moonamangalam and that Dw1 came to her house after him and he sought Rs.5,00,000/- from Pw1 towards constructing compound wall and had assured to repay the same within 2 months and that Dw1 received the money and he issued the cheque dated 29.12.2020 pertaining to his I.C.I.C.I Bank Account.

13). (q). The said evidence of Pw2 corroborates with the evidence of Pw1 and though Pw2 was cross examined on the side of the Accused, there exist no evidence in favour of the Accused nor any evidence creating any suspicion or doubt about the alleged lending transaction and the tendering of cheque by the Accused. Though, Pw1 is her cross examination has stated that she does not remember the cheque number, its date, the date of presentment of the cheque and its dishonour, this Court is of the view that the said facts are already on record by the way of exhibits and they have been stated by her during her chief examination and she had not stated any wrong facts/dates pertaining to the cheque number or about the alleged dates in her cross examination and moreover this Court is of the view that since, the transaction took place on 29.10.2022, there are chances that the witness may not remember the exact dates and the number and furthermore, Pw2 having corroborated the evidence of Pw1, the said answer given by Pw1, while she was cross examined, that she does not remember the dates and the cheque number, cannot be construed as a vital material which would affect the case of the Complainant.

13). (r). During cross examination of Pw1, the Accused has questioned her as to what documents the Accused gave towards the alleged lending transaction and for which Pw1 as stated that the Accused only issued the alleged cheque and further in her cross examination she has stated that during the previous lending transactions, the Accused had not given any document and since she lent a huge sum of money this time, the Accused had tendered the alleged cheque. There is no specific denial by the Accused regarding the said facts. On analysing the said evidence, this Court is of the view that the Accused was in a habit of borrowing hand loans from Pw1 without even tendering any security documents and the said cheque was tendered to Pw1, since, the money lent was a huge amount. On Considering the said facts this Court finds that there exists no discrepancy in the said evidence adduced by Pw1 nor does the said evidence raises any suspicion about the alleged lending transaction.

13). (s). Pw1 is her cross examination has stated that due to typographical error the date of lending was wrongly mentioned in the legal notice (Ex.P4) as 29.10.2021 and that she had issued a Rejoinder notice to the Accused even before the Accused issued his Reply notice. This Court on perusing the Legal notice

(Ex.P4) infers that though the date of lending is mentioned as 29.10.2021, the date of the cheque is mentioned as 29.12.2020, the date of presentation of the cheque is mentioned as 22.01.2021 and the date of Return of the cheque is mentioned as 03.02.2021 and the said legal notice is dated as 24.02.2021, hence it is apparent that the wrong mentioning of the date of lending in the Legal notice was due to typographical error.

13). (t). While so, it is inferred from Ex.P5 that the Rejoinder notice elucidating the typographical error was sent on 10.03.3021, whereas the reply notice was issued by the Accused on 11.03.2021 as per Ex.P8, which fact shows that Pw1 had issued the Rejoinder notice even before the Accused issued the Reply notice. Hence, on considering the said facts, this Court is of the view that the existence of typographical error while mentioning the date of the alleged lending transaction is not fatal to the case of the Complainant.

13). (u). Pw1 in her cross examination has stated that the Accused had filled the particulars contained in the said cheque in English and had signed in Tamil. Pw2 in his cross examination has stated that he saw the said cheque and that the Accused filled the particulars contained in it, in English. The evidence of Pw2 is corroborated with the evidence of Pw1. Though, the Accused had put a suggestion while cross examining Pw1 that, the Accused does not know to read or write, the burden of proving the said fact falls on the Accused. On perusing the cheque this Court finds that the particulars contained in the said cheque are filled in English and the signature of the Accused is in Tamil. The Accused has not denied specifically the fact that the handwriting contained in the alleged cheque is not his handwriting. Hence, the contention of the Accused that he does not know English or to read and write and that the particulars contained in the alleged cheque is written in English, does not in any way aid his case.

13). (v). Though, Pw1 in her cross examination has stated that the fact of the presences of her son, Mother in law and Mr.Kannan at the time of the lending transaction and the fact that the Accused and herself had previous financial transaction and the fact that the accused had sough her to lend money a week before were not mentioned in the Legal Notice and the Complaint, this Court is of the view that a Complaint filed under section 138 of the Negotiable Act is not an encyclopedia and it should contain the facts pertaining to the essential elements regarding the Issuance of Cheque, Cheque particulars, Presentation and its Dishonour, Issuance of Notice, and the complaint should disclose the fact that it is filed within the prescribed time.

13). (w). Hence, the complaint doesn't need to be lengthy by describing the detailed account of the transaction or the underlying debt. Thus, the Complaint under section 138 of Negotiable Instruments Act is not intended to be exhaustive legal document and they focus on the core elements of the offence rather than going into minute details, for which evidence can be adduced during the Trial of the case by parties whom affirm the same and the said facts may be cross examined for disproving it. Pw1 in her cross examination has adduced evidence on the said facts and there are no discrepancy in her evidence. Moreover, Mr.Kannan was examined as Pw2 and he had supported the version of Pw1 and his evidence is reliable and he had withstood the cross examination of the Accused. Thus, the plea of the accused that, PW1 has failed to disclose in the Legal Notice and or Complaint, the aforesaid facts, is not sustainable.

13). (x). The Accused had questioned Pw1 during her cross examination that she has no sufficient means to lend the alleged loan, for which Pw1 has denied the same. The Accused has not shown that Pw1 has no sufficient means through any documents nor there is any corroborative evidence. Furthermore, the Accused has not shown to Court that he had enough money in hand or in his Bank Account, at the time of the alleged lending period, so as to establish the fact that there was no necessity for him to borrow money from Pw1. Hence, this Court is of the view that the denial of Source of income by the Accused is only a mere denial. Moreover, presumption under section 118 and 139 of the Negotiable Instruments Act is in favour of the Complainant and the Accused has not placed any material/evidence to rebut the same.

13). (y). The Accused has taken a defence that he had constructed compound wall around his house in the year 2017 itself. The said fact is denied by Pw1. Hence, it is for the Accused to prove the same with cogent evidence, since the said facts are within his knowledge. But, no such material or evidence has been placed by the Accused before the Court, to substantiate his claims.

13). (z). The Accused had contended while cross examining Pw1 that, the date of the alleged lending pertains to the period of Corona virus infection and further during the cross examination of Pw2, the Accused had contended that as of 29.10.2020 due to the Nation wide prohibitory order (lock down) passed towards spread of Corona virus infection (COVID-19 pandemic), hence, Pw2 could not have visited the house of Pw1 and that the Government had prohibited conducting Temple festivals during the said period and hence there would have been no Temple functions as stated by Pw2.

14). This Court on analysing the said facts, takes Judicial Notice, of the Prohibitory order passed by the Central Government in lieu of COVID-19 pandemic, under section 57 of the Indian Evidence Act, over the said fact of the imposition of the prohibitory order and this Court is of the view that though the said prohibitory order was in force during the said period, there was not much of restrictions imposed towards the movement of public and in fact Court's were functioning in the month of October 2020 and there was no absolute restrictions towards movement of public, functioning of shops, etc., at that point of time. Further, the Accused having raised such issue, it is him, who have to establish the said fact before the Court, through cogent evidence or materials, that there was an entire ban towards the movement of public at the public place. But, such materials or evidence has not be placed on record by the Accused to substantiate his plea.

14). (a). During cross examination of Pw1, the Accused had questioned Pw1 as to whether she or her husband carries on Chit business, for which Pw1 had denied the fact that neither herself or her husband does Chit business. Further, during cross examination of Pw1, the Accused had contended that he had subscribed a Chit conducted by Pw1 in the year 2010 and that Pw1 had received cheque from him towards security purpose and after the termination of the said Chit, Pw1 had not returned said security cheques and had misused the same.

14). (b). While Pw2 was cross examined by the Accused, the Accused had contended that the money received by him from Pw1 was repaid, but Pw1 had not returned his cheque. The said plea of the Accused is contradictory to his earlier plea that he had subscribed a Chit from Pw1 and for security purpose he had tendered her, his cheque. Now, the Accused had taken a stand which is entirely different from that of his previous stand and has stated that he had received money from Pw1 and that he having repaid the money, Pw1 had not returned the said cheque and has misused it.

14). (c). Interestingly, the Accused has taken yet another stand, while he was examined as Dw1, that he had subscribed Rs.5,00,000/- Chit conducted by the Husband of Pw1, Mr.Murugesan, and that he had received Rs,4,00,000/- from the chit and during the subscription period of the chit, he had tendered 10 cheques, 10 Bond papers to Mr.Murugesan and after the termination of the said Chit, the said Cheques and the Bond papers were not returned to him. Meanwhile, Mr.Murugesan, had sought the Accused a hand loan of Rs.4,00,000/- and hence the Accused had transferred Rs.4,00,000/- to the Bank Account of one Mr. Sakthivel, who in turn gave the money to Mr.Murugesan. While so, when the Accused asked for repayment of the said money, a dispute arose and Mr.Murugesan who had the cheques of the Accused, through Pw1 had filed the present case.

14). (d). Yet another stand taken by the Accused is that in Ex.P8 – Reply Notice, issued by the Accused to Pw1, it is stated that the Accused on 01.06.2010 had borrowed from Mr.Murugesan a sum of Rs.2,00,000/- agreeing to pay an interest at the rate of 5% and towards the said lending transaction the Accused had tendered 10 blank signed cheques, 10 blank signed Promissory notes along with 100 blank signed document papers. While so, the son of the Accused, Mr.Chinnusamy, had agreed to repay the said debt of his Father (Accused), and hence Mr.Murugesan sent a message to Mr.Chinnusamy through phone, requesting to transfer the money to the Bank Account of one Mr.Sakthivel on 05.06.2017 and though the Accused had repaid the said debt, Mr.Murugesan had not returned his aforesaid 10 blank signed cheques, 10 blank signed Promissory notes along with 100 blank signed documents papers and the said cheque was misused by Pw1.

14). (e). Yet another defence taken by the Accused is that, during his first questioning about the case, by the Court, he had stated that, he had repaid Rs.3,94,000/- to the Bank Account of Mr.Murugesan and that the balance money was repaid by him directly and that Pw1 has filed a false case against him.

14). (f). The aforesaid evidences of the Accused (Dw1) are contradictory to his own plea, since he had earlier contended that it was Pw1 who was conducting the Chit Business and that he gave the disputed cheque to her as security and the same was misused by Pw1, whereas, during the cross examination of Pw2 the accused has stated that the money which was received from Pw1 was repaid by him and that his cheque was misused. Whereas, to the contrary, while the Accused had examined himself as Dw1, he had contended that the husband of Pw1, Mr.Murugesan, conducted the Chit Business and that he had subscribed to the Chit and his cheques were granted to Pw1 as security and Mr.Murugesan had asked him to lend Rs.4,00,000/- and that he through the Bank Account of one

Mr.Sakthivel had transferred the said money, who in turn had given the money to Mr.Murugesan and while the accused demanded to repay the money, Mr.Murugesan had misused his cheque through Pw1.

14). (g). Furthermore, to the contrary, the Accused has mentioned in his Reply notice (Ex.P8) that he had borrowed from Mr.Murugesan Rs.2,00,000/- and that his son Mr.Chinnusamy had repaid the same to the Bank Account of Mr.Sakthivel, as per the request of Mr.Murugesan and that the said Blank signed Cheques, blank signed promissory notes and blank signed documents were not returned to him. Whereas, to the contrary, the Accused during his First question before the Court, had stated that he had repaid Rs.3,94,000/- to the Bank Account of Mr.Murugesan and the remaining money was paid directly.

14). (h). In the case on hand, the defence of the Accused is contradicted by his own evidence and he has failed to let in any cogent evidence or materials before the Court to establish the fact that either Pw1 or her husband Mr.Murugesan had conducted the Chit business, nor the Accused has produced before the Court any materials to show that he either subscribed to the Chit conducted by Pw1 or Mr.Murugesan. The Accused has not examined one Mr.Sakthivel, to corroborate or to establish the fact that the he lent money to Mr.Murugesan through the Bank Account of Mr. Sakthivel, nor did the Accused produced before the Court the details of payment transactions made by him or his son to the Bank Account of the said Mr.Sakthivel.

14). (i). The Accused had further failed to examine his son Mr.Chinnusamy, to establish the fact that his son had repaid the said debt stated to be borrowed by him from Mr.Murugesan, through the Bank Account of Mr.Sakthivel. Nor, did the Accused has furnished any material to establish the fact that he repaid Rs.3,94,000/- to the Bank Account of the said Mr.Murugesan and the remaining money was repaid directly by him. While, the Accused contends during cross examination of Pw1 that he subscribed a Chit conducted by Pw1 in the Year 2010 and that he gave the alleged blank signed cheque as security, during his cross examination as Dw1, he had stated that, he gave the alleged cheque towards the Chit in the year 2013. Which facts are contradictory. This shows that the Accused is trying to speculate with various reasons/explanations, as to how the cheque went into the hands of Pw1, which reasons/explanations are themselves contradictory to each other.

14). (j). The Accused in his evidence or while cross examining Pw1 has not stated as to when he subscribed the said Chit from Pw1 or Mr.Murugesan nor did he state the date on which the said chit was terminated nor did he mention the date of lending Rs.4,00,000/- to Mr.Murugesan or the date on which he transferred the money to Mr.Sakthivel. The Accused has not mentioned that date on which his son Mr.Chinnusamy, transferred money to Mr.Sakthivel towards repayment of the debt alleged to be borrowed by him.

14). (k). Ex.D1, shows that the Accused had closed his I.C.I.C.I. Bank Account on 20.05.2013. The Accused has stated in his cross examination as Dw1 that, he closed his Bank Account and he returned his ATM card to the Bank and that since he had no cheques in his hand, he did not return them to the Bank. Dw2 in his chief examination has stated that the I.C.I.C.I. Bank Account pertaining to the Accused was closed on 20.05.2013 and since 10 years has elapsed after closing of said Bank Account, the details of the said Bank Account has been destroyed and hence he could not furnish the Bank statement for the period from 2010 to March 2026.

14). (l). Dw2 has stated in his cross examination that the details of closure of Bank Account would be known to the person to whom the cheque was granted, only when the said cheque is presented by them. Through the evidence of Dw2 and Ex.D1 it has been established that the Accused had closed his I.C.I.C.I. Bank Account on 20.05.2013. Ex.D1 shows that on the date of closing the said Bank account only Rs.1,881.07/- balance was maintained by the Accused, which fact infers that the cheque mentioned value of Rs.5,00,000/- was not maintained by the Accused in the said bank account, hence, this Court is of the considered view that, even while the said cheque was dishonoured for the reason "Account closed”, since, the Accused did not maintain the cheque mentioned value in his said Bank account, the same will constitute a dishonour within the meaning of section 138 of the Negotiable Instruments Act.

14). (m). This Court finds that there is nothing to show that the Accused had intimated the closure of his I.C.I.C.I. Bank Account with Pw1 and this Court is of the further view that Pw1 may not had knowledge that the I.C.I.C.I. Bank Account of the Accused would have been closed, while she presented the disputed cheque with her Bank. Hence, this Court infers that the disputed cheque has been presented by Pw1 in good faith with her Bank, towards encashment. Further, the evidence of Dw2 is in no way supportive the case of the Accused nor it had affected the case of the Complainant by creating any doubt or suspicion.

14). (n). Though, the Accused alleges that his Cheques were misused by Pw1 by filing the present case, there are no materials/evidence to show that he had lodged any complaint against Pw1 or her husband, before the Police, regarding the non returning of the alleged Blank signed cheques, blank signed promissory notes and the blank signed documents. Though, the Accused states during his cross examination as Dw1, that Mr.Murugesan being his relative, he did not lodge any complaint towards the misuse of the cheque, the said reason cannot be believed, since, no prudent man would leave behind his signed blank cheques, promissory notes and documents in the hands of another, even if they being his relative and that too for the fact that when the debt has been allegedly repaid, since the said negotiable instruments/documents can be easily converted into valuable security and also for the reason that the Accused had not even shown to Court that he had issued Stop Payment instruction to his Bank pertaining to his alleged cheques(s) by citing the reason of repayment of his debt.

14). (o). Since, the Accused has taken several contradictory stands with regard to the alleged money said to be borrowed by him and regarding the repayment of the said debt, and regarding the tendering of the disputed cheque, the evidence adduced by the Accused is considered to be not reliable and is not trustworthy. The defence taken by the Accused is considered to be highly suspicious and speculative. Thus, the evidence adduced by the Accused has not supported his own pleas, thereby the Accused has failed to prove his defence.

14). (p). This Court infers that the defence put-forth by the accused, as aforesaid, may be an after thought to escape from the penal proceedings under section 138 of the Negotiable Instruments Act and the same makes the defence of the accused a suspicious one. The presumption under Section 139 of the Negotiable Instruments Act, 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 preponderance of probabilities. It is not necessary for the accused to step in the witness box for adducing evidence on his side to support his defence and Section 139 of the Negotiable Instruments Act, is not a persuasive burden.

14). (q). On the conjoint reading of the evidence adduced by the Complainant in her chief examination and in her cross examination, Pw1 has withstood the cross examination of the accused and the accused has not even created a doubt or suspicion regarding the alleged lending transaction, since, the accused has not proved the fact that his signature in the disputed cheque was forged nor did he deny the fact that the alleged cheque does not pertain to his Bank Account, nor did he prove the fact through cogent evidence or through cross examination of Pw1 and Pw2 that as to how and when the alleged cheque was granted to the complainant, as security towards the alleged lending of Mr.Murugesan or as security towards the alleged subscription of Chit from the Complainant or to Mr.Murugesan and the accused having not explained in his evidence as to why he did not enforce his right to receive back his cheque from Mr.Murugesan or from Pw1 at the time of the alleged repayment of debt and the Accused having taken contradictory pleas regarding the fact as to how the disputed cheque went into the hands of Pw1, the evidence of the Accused being unreliable and not trustworthy, this Court is of the view that the Accused has not raised his probable defence.

15). When the question as to whether the Complainant has discharged her burden of proof that there was a legally recoverable debt as contended by her is considered, the only conclusion that can be arrived in the present case is that the Complainant has established the same. Hence, on appreciation of evidence and documents, this Court comes to the conclusion that the accused has failed to bring out the materials to rebut the presumptions under Section 118 and Section 139 of Negotiable Instrument Act. The accused has not raised any probable defence and he has failed in rebutting the presumption raised in favour of the complainant by preponderance of probabilities. Hence, this Court holds that the Complainant has proved her case beyond reasonable doubt against the accused.

16). In fine, this Court concludes that the Accused is found guilty of the offence under Section 138 R/w section 142 of the Negotiable Instruments Act.

(i) In the light of the above scenario, the accused is hereby convicted as per Section 255 (2) of Code of Criminal Procedure for the offence under section 138 R/w section 142 of the Negotiable Instruments Act.

(ii) The accused is sentenced to a simple imprisonment of one year for having committed the offence under Section 138 R/w section 142 of the Negotiable Instruments Act. The Bail bonds executed by the accused shall stand cancelled immediately.

(iii) In the verdict passed by the Hon'ble Supreme Court of India, in ***M/s. Meters & instrument Pvt Ltd. Vs. Kanchana Mehta, reported in (2018)1 SCC-***

***560,** it has been held* at para 18 *that "The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court."* This Court on considering the same and on bearing in mind the date of the transaction and the primary object of the provision, this Court is of the view that, rather than imposing punitive sentence, if sentence of fine is imposed with a direction to compensate the complainant for its monitory loss, by awarding compensation under section 357 of Cr.P.C, the same would meet the ends of justice.

(iv) The amount covered under the disputed cheque is Rs.5,00,000/- and the date of cheque is 29.12.2020. By considering all these aspects, this Court is of the considered view that, it is just and proper to impose a sum of Rs.5,00,000/- as compensation to the Complainant under section 357 of Cr.P.C. The said sum of Rs.5,00,000/- (Rupees Five Lakhs Only) shall be paid within three months from the date of this Judgment and on its failure, the Accused is directed to undergo 2 (Two) months simple imprisonment, in addition to the substantive sentence.

Directly typed by me on my laptop, corrected by me and pronounced by me in the open Court on this 27th day of July 2026.

SIVAKUMAR D

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Judicial Magistrate No.II,

Sankari

(a). **Complainant Side Witnesses**:

S. No	Particulars of witnesses
Pw1	Mrs. Parimala - Complainant
Pw2	Mr. Kannan - Eye witness to the transaction

(b). **Complainant Side Exhibits:**

S.No.	Date	Particulars of Exhibits
Ex.P1	29.12.2020	Cheque bearing no: 004817, dated 29.12.2020 - **(Original)**
Ex.P2	22.01.2021	Cheque Deposit slip - **(Original)**
Ex.P3	03.02.2021	Cheque Return memo - **(Original)**
Ex.P4	24.02.2021	The Demand / Legal Notice issued by the Complainant to the Accused – **(Office copy)**
Ex.P5	10.03.2021	Rejoinder Notice issued by the Complainant to the Accused – **(Office copy)**
Ex.P6	02.03.2021	Postal Track Consignment – **(Online copy)**
Ex.P7	12.03.2021	Postal Acknowledgment card - **(Original)**
Ex.P8	11.03.2021	Reply notice issued by the Accused **(Original)**

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(c). **Defence Side Witnesses:**

S.No	Particulars of witnesses
Dw1	Mr.Periannan - Accused
Dw2	Mr.Suresh - Branch Manager – I.C.I.C.I Bank, Sankari

(d). **Defence Side Exhibits:**

S.No.	Date	Particulars of Exhibits
Ex.D1	20.05.2013	Transaction Inquiry statement issued by the I.C.I.C.I. Bank, Sankari Branch **- (Original)**

Note:

1) The accused was on bail during the trial.
2) None of the witnesses were detained for more than three days.
3) The results were reported to both the parties.
4) The Case summary is attached to the Judgment.

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Judicial Magistrate No.II,
Sankari.

ANNEXURE:-
STATEMENT OF PARTICUALRS AS PER RULE 106 OF CRIMINAL RULES OF PRACTICE:-

1.	Serial Number	Accused No.1
2.	Name of the Complainant	Mrs. P.M. Parimala
3.	Name of Accused	Mr. K.R. Periannan
4.	Father's name of Accused	Mr. Ramasamy
5.	Occupation of Accused	Agricultural
6.	Residence of Accused	Arasiramani bit – 2 village, Alaththur, Reddypalaiyam Post, Karattupalaiyam, Sankari Taluk, Salem District.
7.	Age of Accused	48/2021
8.	Date of Occurrence	03.02.2021
9.	Date of Complaint	05.04.2021
10.	Date of Apprehension	Nil
11.	Date of Release on bail	Nil
12.	Date of Commencement of Trial	08.11.2021
13.	Date of Closure of Trial	27.04.2026
14.	Date of Sentence or Order	27.07.2026
15.	Date of Service of copy of judgment or finding on Accused	27.07.2026
16.	Explanation of Delay	Nil

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Judicial Magistrate No.II,
Sankari.

Judgment uploaded online on: 27.07.2026.