

**IN THE COURT OF THE JUDICIAL MAGISTRATE FAST TRACK COURT,
OMALUR, SALEM DISTRICT.**

Present: S. SADHAMHUSAIN B.A, LLB.,
Judicial Magistrate, Fast Track Court, Omalur

Friday, the 27th day of March, 2026

S.T.C. No. 34 of 2023

<u>STATEMENT AS PER RULE 106 OF CRIMINAL RULES OF PRACTICE, 2019</u>		
1	Serial Number of the Case	S.T.C. No. 34/2023
2	Date of Offence	01.12.2022, 06.02.2023
3	Name & Address of the Complainant	Mr. Sanjay Gandhi,(Age 47) S/o. Late. Manickam, Door No.204, Maragoundanpudur, pannapatti Taluk, Salem District.
4	Name & Address of Accused	Mr.Ramesh,(Age 55) S/o Kannan, Door No. 3/5 Kanavaikadu, Nadupatti Village, Kadayampatti Taluk, Salem District.
5	Offence Complained of	Dishonor of Cheque - Offence u/s.138 of the Negotiable Instruments Act.
6	Date of occurrence	01.12.2022, 06.02.2023
7	Date of Complaint	09.03.2023
8	Plea of the Accused	Pleaded not guilty.
9	Apprehension	Nil
10	Release on bail	Nil
11	Date of Commencement of trial	18.06.2025

12	Closure of trial	27.03.2026
13	Judgment	In result, the accused Ramesh S/o Kannan is found “NOT GUIILTY” under section 278(1) BNSS for the offence under section 138 of Negotiable Instruments act and acquitted accordingly.
14	Explanation for delay	Delay due to time taken by the complainant to commence trial.

This case came up for final hearing on 27.03.2026 in the presence of Advocate Mr.M.Thiyagarajan appearing for the Complainant and Advocate Mr. P.Kathiravan, appearing for the accused, having stood over for consideration till this day, upon perusing the records and hearing both side arguments, this Court doth deliver the following:

JUDGEMENT

1. The complainant has filed this complaint U/s. 200 Code of criminal procedure r/w Section 138 and 142 of the Negotiable Instruments Act, 1881 against the accused alleging that, the accused has committed the offence under section 138 of NI Act and prayed for awarding suitable punishment to the accused according to law and for award of compensation to him.

I. GIST OF THE COMPLAINT

2. The complainant and the accused are known to each other for the past 10 years. The accused approached the complainant seeking financial assistance for his business and urgent family expenses. Believing the words of the accused, the complainant lent a sum of Rs.2,00,000/- to the accused on 09.10.2022. At the time of borrowing, the accused issued a post-dated cheque bearing No.900195

dated 01.12.2022 drawn on Indian Bank, Theevattipatti Branch, Salem, in favour of the complainant for Rs.2,00,000/- and assured that sufficient funds would be maintained in his bank account.

3. The complainant presented the cheque for collection through his bank on 01.12.2022, but the cheque was returned unpaid on the same day with an endorsement "Insufficient Balance". Thereafter, the complainant issued a legal notice dated 12.12.2022 calling upon the accused to pay the cheque amount within 15 days and the same was received by the accused on 16.12.2022.
4. Subsequently, the accused approached the complainant and requested him to present the cheque again stating that sufficient funds would be maintained in his bank account by the end of January 2023. Believing the words of the accused, the complainant presented the cheque for the second time on 04.02.2023 through South Indian Bank, Omalur Branch, but the cheque was again returned unpaid on 06.02.2023 with the endorsement "Funds Insufficient".
5. Thereafter, the complainant issued a second legal notice dated 08.02.2023, which was received by the accused on 10.02.2023. Despite receipt of notices, the accused neither sent any reply nor paid the cheque amount. Hence, alleging that the accused intentionally issued the cheque without maintaining sufficient funds and committed offence under Section 138 of Negotiable Instruments Act, the complainant filed the present complaint seeking punishment and compensation under Section 357 Cr.P.C.

II. THE CASE OF THE ACCUSED IS AS FOLLOWS:

6. The accused never borrowed any amount from the complainant. The accused denied the liability as well as issuance of subject cheque for its discharge.

III. SUBSTANCE OF ACCUSATION

7. On receipt of the complaint, affidavit and allied documents, prima facie case made out, cognizance was taken and summons was sent to the accused. The accused appeared on summons and the copies were furnished to him. When the substance of the accusation was explained to him he understood the same and denied it and claimed to be put on trial.

IV. EVIDENCE ADDUCED BY THE COMPLAINANT

8. The complainant examined himself as P.W.1. Indian Bank, Theevattipatti Branch Cheque bearing No:900195 dated 01.12.2022 for Rs.2,00,000/- was marked as Ex.P:1, , Office Copy of the legal notice dated 12.12.2022 was marked as Ex.P:2, The online postal tracking of legal notice was marked as Ex.P:3, the return memo dated 06.02.2023 was marked as Ex.P:4, Office Copy of the legal notice dated 08.02.2023 was marked as Ex.P:5 And postal acknowledgement card was marked as Ex.P:6 and Indian bank branch manager of Theevattipatti was examined as PW.2 and account statement of the accused from 10.11.2022 to 10.02.2023 was marked as Ex.P:7.

V. EXAMINATION UNDER SECTION 351 of BNSS

9. The evidence on the complainant's side was closed with P.W.2. When the incriminating circumstances were explained to the accused under Section 351of BNSS 2023, the accused denied the same as false evidence. No witnesses have been examined on behalf of the accused.

VI. EVIDENCE OF THE ACCUSED

10. During the cross-examination of P.W.1, documents were marked on the side of the accused as Exs.D1 to D6. Ex.D1 is the pamphlet relating to Sangamam Cooperative Society in which the name of the complainant is mentioned as Secretary and the same was admitted by P.W.1. Ex.D2 is the identity card issued to the son of the accused namely Sathish by Sangamam Cooperative Society and the authorised signature found in the said identity card belongs to P.W.1 and the same was admitted by him. Ex.D3 is the savings account passbook of the accused's son Sathish maintained in Sangamam Cooperative Society.

11. Ex.D4 and Ex.D5 are the Accused copies of legal notices issued by the complainant on two occasions after dishonour of cheque, in which the date of loan is mentioned as 03.10.2022, whereas in the complaint, proof affidavit and documents filed on the side of the complainant, the date of loan is mentioned as 09.10.2022 and the said correction was admitted by P.W.1 during cross-examination. Ex.D6 is the cheque deposit receipt in which the name of the complainant is written as Sanjay Gandhi and the amount of Rs.2,00,000/- is mentioned and the same was marked on the side of the accused during cross-examination. No oral evidence was adduced on the side of the accused.

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

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

awarding maximum punishment and compensation. On the other hand, the defence counsel argued that the complainant has not established the existence of a legally enforceable debt or liability as on the date of issuance of the cheque and no independent witnesses has been examined to prove the delivery of cheque. It was further argued that the complainant has failed to prove his financial capacity to advance the alleged amount and that the statutory presumptions under Sections 118 and 139 of the N.I. Act stands rebutted by the circumstances brought on record during cross- examination. The learned defence counsel therefore prayed that the accused be acquitted of the charge under Section 138 of the N.I. Act.

VII The points for consideration are as follows:

- I. Whether the complainant is entitled to initial presumption under section 139 and 118 of NI Act?
- II. whether the accused has rebutted the presumption under sections 118 and 139 NI Act?
- III. whether the accused is guilty of offence under section 138 NI Act?

Point No.1:

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

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

- The said cheque should have been drawn for the discharge, in whole or in part, of any debt or other liability.
- The alleged cheque should have been presented for encashment within a period of three months or before its validity whichever is earlier, from the date on which it was drawn.
- The cheque should have been returned by the bank unpaid, either because the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the agreed arrangements made with the drawer account or for any other reason prescribed by law.
- After the dishonour, the complainant should have made a demand in writing for the payment of the amount mentioned in the cheque, within thirty days of receipt of information by him from the bank regarding the return of the cheque as unpaid.

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

14. Complainant examined himself as PW1 and marked Ex.P1 to Ex.P6. on the face of the record, the complainant has satisfied the basic foundational facts necessary to draw the statutory presumption under Section 139 of the Act. Thus, on considering the evidence of PW1 along with Ex.P1 to Ex.P6, the complainant has established the basic foundational facts necessary to draw the statutory presumption under Sections 118 and 139 of the N.I. Act. **Thus, the point No.1 is answered in favour of the complainant.**

Point No.2:

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

Sec. 139 – Presumption in favour of the holder:

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

16. Once the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act arises in favour of the complainant, the burden shifts upon the accused to rebut the said presumption by raising a probable defence.

17. The Hon'ble Supreme Court in **Rangappa Vs. Sri Mohan [(2010) 11 SCC 441]** has held that the presumption under Section 139 of the Negotiable Instruments Act includes the presumption of existence of legally enforceable debt or liability. Therefore, once the issuance of cheque is established, the burden shifts upon the accused to rebut the presumption.

18. It is well settled that the accused is not required to prove the defence beyond reasonable doubt. The accused can rebut the presumption by raising a probable defence on the standard of preponderance of probabilities. In this regard, the Hon'ble Supreme Court in **Kumar Exports Vs. Sharma Carpets [(2009) 2 SCC 513]** has held that the accused must bring on record such facts and circumstances which would make the non-existence of consideration or debt so probable that a prudent man would act upon the same.

19. In the present case, the defence of the accused is that there was no personal loan transaction between the complainant and the accused and that the accused's son namely Sathish was working in Sangamam Cooperative Society in which the complainant was functioning as Secretary and the cheque was given in connection with the said transaction and the same has been misused by the complainant.
20. In order to substantiate the said defence, during the cross-examination of PW1, the accused has marked Ex.D1 to Ex.D6. Ex.D1 is the pamphlet relating to Sangamam Cooperative Society in which the complainant is shown as Secretary and the same was admitted by PW1. Ex.D2 is the identity card issued to the accused's son Sathish by Sangamam Cooperative Society and the authorised signature found in the said identity card belongs to PW1 and the same was admitted by him. Ex.D3 is the savings account passbook of the accused's son Sathish maintained in Sangamam Cooperative Society.
21. From Ex.D1 to Ex.D3 and the admission of PW1, it is clearly established that the complainant was functioning as Secretary of Sangamam Cooperative Society and the accused's son was working in the said society. This admission creates a probability that the complainant and the accused were connected through the said society and not through any independent personal financial transaction as alleged in the complaint.
22. Further, Ex.D4 and Ex.D5 are the copies of legal notices issued by the complainant on two occasions. In Ex.D4 and Ex.D5, the date of loan is mentioned as **03.10.2022**, whereas in the complaint, proof affidavit and documents marked on the side of the complainant, the date of loan is mentioned as **09.10.2022** and the correction was admitted by PW1 during cross-examination. The complainant has not offered any satisfactory explanation for

the said material discrepancy regarding the date of loan. This contradiction creates serious doubt about the very origin of the alleged loan transaction.

23. Ex.D6 is the cheque deposit receipt in which the name of the complainant is written as Sanjay Gandhi and the amount of Two Lakhs is mentioned. Though this Court does not place sole reliance on the said document, the same creates a doubt regarding the manner in which the cheque was handled and presented and it adds to the cumulative circumstances probalising the defence version.
24. Further, PW1 has admitted during cross-examination that the accused's son was working in Sangamam Cooperative Society. The defence version that the cheque was given in connection with the work of the accused's son in the said society and later misused by the complainant appears probable in the light of Ex.D1 to Ex.D3 and the admissions of PW1. It is also pertinent to note that except the interested testimony of PW1, no independent witness has been examined to prove the alleged loan transaction and no document has been produced to establish the demand and acceptance of Rs.2,00,000/-. The complainant has also not produced any material to show the source of funds for advancing such amount.
25. In this regard, the Hon'ble Supreme Court in **Basalingappa Vs. Mudibasappa [(2019) 5 SCC 418]** has held that the accused can rebut the statutory presumption by raising a probable defence through cross-examination of the complainant and by relying upon the materials brought on record and once such probable defence is established, the burden shifts back to the complainant.
26. Further, in **John K. Abraham Vs. Simon C. Abraham [(2014) 2 SCC 236]**, the Hon'ble Supreme Court has held that when the complainant fails to prove the source of funds and the circumstances under which the cheque was issued, the presumption under Section 139 stands rebutted.

27. On cumulative consideration of Ex.D1 to Ex.D6, admissions of PW1, contradiction in the date of loan and absence of proof regarding demand and acceptance of money, this Court is of the considered view that the accused has successfully raised a probable defence and rebutted the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act by preponderance of probabilities.
28. Once the presumption is rebutted, the burden shifts upon the complainant to prove the legally enforceable debt beyond reasonable doubt. However, the complainant has failed to discharge the said burden. Accordingly, **Point No.2 is answered in favour of the accused.**

Point No.3:

29. In view of the findings recorded under Point No.2, this Court is of the view that the complainant has failed to prove the existence of legally enforceable debt and the accused has successfully rebutted the statutory presumption available under Sections 118 and 139 of the Negotiable Instruments Act.
30. To attract the offence under Section 138 of the Negotiable Instruments Act, the complainant must prove that the cheque was issued for discharge of legally enforceable debt or liability. In the present case, the complainant has failed to establish the said essential ingredient.
31. When the legally enforceable debt itself is not proved, the question of holding the accused guilty under Section 138 of the Negotiable Instruments Act does not arise. Therefore, this Court holds that the offence under Section 138 of the Negotiable Instruments Act is not made out against the accused. Accordingly, **Point No.3 is answered in favour of the accused.**

VIII. DECISION:

32. In the result, this Court finds that though the complainant has established the foundational facts to draw the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, the accused has successfully rebutted the said presumption by raising a probable defence through the cross-examination of PW1 and by marking Ex.D1 to Ex.D6.
33. The materials available on record, particularly the admissions of PW1, the documents relating to Sangamam Cooperative Society, the contradiction in the date of loan and the absence of satisfactory proof regarding demand and acceptance of Rs.2,00,000/-, create serious doubt regarding the existence of legally enforceable debt. The cumulative effect of these circumstances probalises the defence version and shifts the burden back upon the complainant.
34. However, the complainant has failed to discharge the reverse burden and has not established the legally enforceable debt beyond reasonable doubt. Hence, this Court holds that the complainant has failed to prove the guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act.

IX. RESULT

35. **In the result, the accused is found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and he is acquitted under Section 278(1) BNSS.** The bail bond, if any executed by the accused, shall stand cancelled after the expiry of appeal period. The surety bond, if any, shall stand discharged.

No property was produced on both sides. Hence no order relating to property is made under section 498 of BNSS.

JUDGMENT in S.T.C.No: 34/2023

This judgment was directly typed by me in my official laptop and after correcting the typographical errors, pronounced by me in the open Court on this 27th day of March 2026

Sd/.S.Sadhamhusain,
Judicial Magistrate,
Fast Track Court ,
Omalur.

//True Copy//

Judicial Magistrate,
Fast Track Court,
Omalur.

LIST OF COMPLAINANT SIDE WITNESSES:

S.No	Witness	Name of Witness	Date of Examination
1	P.W.1	Sanjay Gandhi	18.06.2025
2	P.W.2	Karunanithi	25.09.2025

LIST OF COMPLAINANT SIDE EXHIBITS:

S. No.	Exhibit	Date of exhibit	Description of Exhibit	Marked through
1	Ex.P.1	01.12.2022	Cheque No.900195	P.W.1
2	Ex.P.2	12.12.2022	Legal Notice	P.W.1
3	Ex.P.3	16.12.2022	Postal card	P.W.1
4	Ex.P.4	06.02.2023	Cheque No.900195 in Return memo	P.W.1
5	Ex.P.5	08.02.2023	Legal Notice	P.W.1
6	Ex.P.6		Acknowledgment card	P.W.1
7	Ex.P.6	10.11.2022 to 10.02.2023	Bank Statement	P.W.2

LIST OF DEFENCE SIDE WITNESSES:Nil

LIST OF DEFENCE SIDE EXHIBITS: Nil

S. No.	Exhibit	Date of exhibit	Description of Exhibit	Marked through
1	Ex.D.1	14.03.2022	Pamphlet relating to Sangamam Cooperative Society	P.W.1
2	Ex.D.2		identity card issued to the accused's son namely Sathish by Sangamam Cooperative Society and the authorised	P.W.1

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			signature found in the said identity card	
3	Ex.D.3	23.03.2022	Savings account passbook of the accused's son Sathish maintained in Sangamam Cooperative Society.	P.W.1
4	Ex.D.4	12.12.2022	Legal notices issued by the complainant	P.W.1
5	Ex.D.5	08.02.2023	Legal notices issued by the complainant	P.W.1
6	Ex.D.6	01.12.2022	Cheque Deposit Receipt	P.W.1

LIST OF COURT SIDE EXHIBITS:Nil

Anexure: Case Summary

Note: -

- 1.No witness has been retained for more than three times.
2. Accused remained on bail at the time of trial.
3. Result of this case is informed to the concerned complainant.

Sd/.S.Sadhamhusain,
Judicial Magistrate,
Fast Track Court ,
Omalur.

//True Copy//

Judicial Magistrate,
Fast Track Court,
Omalur.

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CASE SUMMARY

S.No.	DESCRIPTION	REMARKS		
1.	Period of remand of the accused	Nil		
2.	The date of filing of the Complaint/final report in the Court	09.03.2023		
3.	The date of committal of the case to the court of Session	Not applicable		
4.	The date of questioning of the accused under Sections 251 of the Code of Criminal Procedure, 1973	21.02.2024		
5.	Filing of all miscellaneous petitions and their results including the results on challenge before superior Courts; except routine petitions like petitions under Section 317 of the code	CMP No	Petition	Result
Nil				
6.	Date of examination in-chief and cross-examination of a witness	Witness	Chief	Cross
		P.W.1	18.06.2025	07.07.2025
		P.W.2	25.09.2025	-
7.	Date of examination of the accused under section 351 of BNSS.	07.10.2025		
8.	Details of abscondence of an accused and his appearance/production, as the case may be	Nil		
9.	Grant of stay by superior Courts and the results thereof	Nil		

Sd/.S.Sadhamhusain,
Judicial Magistrate,
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