

IN THE COURT OF THE JUDICIAL MAGISTRATE NO.II, METTUR

**Present: Thiru. D.Myl Swamy B.Com., B.L.,
Judicial Magistrate No.II,
Mettur.**

Wednesday, the 11th day of March 2026

C.C.No. 379/2025

CNR No TNSA18-002988-2025

Mathiazhagan, (aged 48 years),
S/o.Chandiran,
No.5/3 H6A, Indira Nagar,
Salem Camp Post,
Mettur Taluk, Salem District.

..... **Complainant**

//vs//

Kannan, S/o.Marimuthu,
No.26-10-A-7, ESI Main Road,
Muthalamman Kadu, Salem Camp Post,
Mettur Taluk, Salem District.

..... **Accused**

The Private complaint filed under section 138 & 142 of N.I Act by the complainant and its taken on file on 30.07.2025, coming for final hearing on 05.03.2026 stood over for consideration, before this court in the in the presence of Mr.K.Deepak Kumar, for the Complainant and G.Rajesh, Advocate for the accused and upon perusal of the case records and hearing both side oral arguments, peruse the written arguments on both sides, this court delivered the following:

JUDGMENT

BRIEF FACTS OF THE COMPLAINANT CASE :

1. The complainant and the accused are friends, the complainant is an auto driver, on such basis the accused request amount of Rs.4,00,000 /- on urgent needs, assure to return within one month, on repeated demands the accused borrowed amount of Rs.4,00,000 /- from complainant on 25.05.2025 and on same date, the accused given post dated cheque bearing no 375505 drawn on state bank of india, salem branch dated 25.06.2025, towards repayment of borrowed amount, the complainant has presented cheque for collection on 25.06.2025 reason stated as Exceeds Arrangements” vide return memo. Then issued legal notice dated 08.07.2025 to the accused, which returned as refused return to sender, hence the accused has not comply the demand. Hence the complaint is filed before this court.

2. After recording of sworn statement and on peruse the complaint with documents, which found prime facie case, the the case has been taken cognizance of the offence under section 138 of N.I act., and issue summon to the accused. On receipt of summon, the accused appeared before this court and comply the requirement of provision under section 207 Cr.P.C free copies furnished and after given time, the substances of the accusation in complaint read over to the accused and he denied the same and claim for trial. Hence, the trial has been ordered.

3. To prove his case, the complainant was examined himself as Pw1 by filing proof affidavit and ExP1 to EX P5 marked and closed complainant side evidence. Upon closure of Complainant side evidence, the accused side summoned bank manager and examined as Dw1 and marked ExD1 and closed his side. After closing the evidence, the accused were questioned under section 313 (1) (b) of Cr.P.C on the incriminating evidence that appeared against him in evidence and the accused denied

the evidence as false. Heard the counsel for the complainant and the counsel for the accused.

4. POINT FOR DETERMINATION:

Whether the accused has succeed to rebut the presumption by taken defence or not ? Whether the complainant has established the case against the accused for offence under section 138 N.I Act? If so, then what is the sentence to be imposed on the accused ?

POINT FOR CONSIDERATION

5. To prove the case, the complainant himself examined as PW1 by filing proof affidavit, marked **ExP1** original cheque dated 25/06/2025, **ExP2** Original cheque Return memo dated 25/06/2025, **ExP3** Legal notice dated 04/07/2025 office copy, **EXP4** Postal cover returned 2 numbers dated 08.07.2025 and further argued by complainant side, that the said issued cheque was presented for collection within 3 months from the date of cheque, the reason for return of the cheque through sent legal notice within 30 days after got return memo, the complaint filed after expiry of 15 days hence all sufficient materials were placed as required under section 138 N.I Act., therefore, the presumption under section 139 of N.I Act and Section 118 (a) of N.I Act is in favour to the complainant. The initial burden shifted to the accused to disprove the case filed against him. The accused has not received demand notice, which returned as refused, which is deemed service, hence complainant comply under section 138 (b) of N.I act.,

6. The complainant side argued that there is no reply sent by the accused to challenge the version in legal notice, further not comply the legal demand. The defence side suggested that in the year of 2017, November month, the accused has

borrowed amount of Rs.20,000 /- from kamadhenu finance for 3 % interest, the accused has given blank cheque with signature and given promissory note with signature by adopted finance rules, which was arranged by complainant's brother. Later in the month of April, 2018 the amount repaid by accused but failed to receive cheque and promissory note, the present cheque misused by complainant.

7. The defence side further suggested that accused has met accident in the year of 2018 august month in omalur puliyampatti area, then he unconscious after accident and taken treatment in Be well hospital more than three months, further accused was missing ATM card during accident, hence he request bank to close account by issue letter. The two major defence taken by accused to lead cogent evidence in this case.

8. From the decisions of the Honble supreme court in **Basalingappa Vs Mudibasappa reported in 2019 (5) SCC P.No. 418** cleared that accused has rely the documents filed by complainant side, no need to let in evidence on defence side. The defence side put suggestion that complainant has no means to lend huge amount to the accused as stated. The defence side suggested that complainant is an auto driver, further pointed the extract portion herewith “ *எனக்கு ஆட்டோ ஓட்டும் தொழில் தவிர வேறு தொழில் உள்ளதா என்றால் இல்லை. ஆட்டோ ஓட்டும் தொழில் வருமானம் எவ்வளவு வரும் என்றால் ரூ.500/- முதல் ரூ.1000/- வரும், வராமலும் இருக்கும். சராசரியாக ரூ.600/- முதல் ரூ.800/- வரை வாடகைக்கு வரும். பராமரிப்பு செலவு போக ரூ.300/-, ரூ.400/- எனக்கு கைக்கு நிற்கும் என்றால் சரிதான். எனக்கு சொந்த வீடு உள்ளது. எனக்கு திருமணம் ஆகவில்லை. நான் தனியாக வசித்து வருகிறேன். எனக்கு சாப்பாடு என் அம்மா செய்து கொடுப்பார். என் தேவைக்கான செலவுகளுக்கு என் அம்மாவிற்கு எவ்வளவு பணம் கொடுப்பேன் என்றால் கையில் இருக்கும் போது கொடுப்பேன். ரூ.10,000/- கையில் இருந்தால் கொடுப்பேன்*“ which reveals that auto driver could not earn such huge amount, hence rely citation **2011 CrI.L J P.No.552 Karnakata high court Amzad Pasha Vs Lakshmana criminal appeal no.**

604/2009 dated 05.04.2010 discussed : Complainant had not placed any evidence to show that he had finance capacity to lend amount- non of the witness presence of whom loan amount paid by complainant. Further cited **Tarun Vs mohamed sajid Delhi high court Crl M.A No.576/2021** the accused in a trial section 138 of N.I act had two options (I) to either show that the consideration and the debt did not exist or (ii) that under the particular circumstances of the case, the non existence of consideration was so probable that a prudent man ought to suppose that no consideration and debt is existed- mere admission of signature on the cheque insufficient to establish liability- Instant case is hand the burden of proof not discharged order of acquittal held (M/s Kumar Experts Vs sharmacar pet reported in 2009 AIR SC 1518 relied on **Pradeep vs masikeem (Punjab and Harayana high court) Crm No.A 520 MA of 2014** Friendly loan of Rs.15 lakhs – sources of amount- complanant stated that money not withdrawn from bank, some amount was lying with him and he borrowed remaining money from his wife family and other persons -held money not given an interest- No document to show loan transaction- acquitted. The complainant side pointed Pw1's answer in cross examination herewith “எத்தனை வருடமாக வரவு செலவு வைத்துள்ளேன் என்றால் 10 வருடமாக வைத்துள்ளேன். எனக்கு செலவு போக மீதம் எவ்வளவு கையிருப்பு இருக்கும் என்றால் மாதம் ரூ.5000/- இருக்கும்” The complainant has been running auto more than 20 years, he has been saving amount for purchase new auto, on such requisition of accused lend amount only believe that accused have employed in government job and earning person. The complainant has stated about his source of income, he has been saving amount for purchase new vehicle, which was handed over to the accused on his urgent needs is satisfactorily. There is no contra evidence let in by defence side to show that complainant has no source of income to lend such huge amount.

9. The defence side argued that no document was recorded at that time of money transaction, the accused submits that advancement of huge sum of Rs.4,00,000 of loan without execution of any written documents except the alleged ExA1 without charging an interest is a significant circumstance and is not conducive with the conduct of reasonable prudent man. It is unbelievable of the complainant's case because the complainant gave loan of Rs.4,00,000 to the accused on 25.05.2025.

10. This court is of view, as per complainant case is that on that date of borrowing amount from accused, the accused has given post dated cheque to clear borrowed amount, there is no need to record separate document to prove the debt, on that date of borrowing amount, the accused has given cheque to clear the liability. The post dated cheque given at that time of money transaction, fixed the date of repayment thus no need to calculate interest on hand loan.

11. The complainant has been acting as auto driver more than 20 years, he is not married and no family, the said auto belonged to the complainant and he have owned house, by combine all facts, that complainant has earning capacity and chance to save amount. The defence side suggested that complainant is running finance and lend amount for exorbitant interest, which was denied. There is no documentary evidence let in by defence side to prove that complainant is an money lender and he charged exorbitant interest for lend amount.

12. The defence side further suggested that accused met accident and he taken bed rest more than three months during alleged money transaction as mentioned in this case. The accused is government servant and he has taken medical leave during alleged money transaction as mentioned in complaint. The accused has ample chance to prove fact by let in documentary evidence, the accused has ample chance to summon be well hospital and call for medical records to prove that accused has taken

medical treatment during alleged money transaction. Further, the accused has ample chance to call for attendance register to prove that he has taken medical leave during period of alleged money transaction. The complainant side pointed extract portion herewith “ 2018ம் வருடம் ஆகஸ்ட் மாதம் ஓமலூர் புளியம்பட்டி பகுதியில் நடந்த சாலை விபத்தில் எதிரிக்கு கொடுங்காயம் ஏற்பட்டு கோமா நிலைக்கு சென்றார் என்றால் அது பற்றி எனக்கு தெரியாது. ஈரோடில் உள்ள Be well மருத்துவமனையில் சேர்த்து மூன்று மாதம் உள்நோயாளியாக தங்கி சிகிச்சை பெற்று வெளியே வந்தார் என்றால் அது பற்றி எனக்கு தெரியாது. வங்கியில் பரிசீலனை செய்து கணக்கை முடித்து கொடுக்கும்படி சொன்னதன் நம்பிக்கையின் பேரில் எதிரி வந்து விட்ட விவரம் தெரியுமா என்றால் தெரியாது. இன்றைய தேதி வரை எதிரி உடல் நிலை சரியில்லாமல் சிகிச்சை பெற்று வருகிறார் என்றால் சரியல்ல” which reveals that accused met accident, which registered as accident case, the accused has ample chance to call for police records to prove his defence.

13. Further submitted citation, that from the decisions of the Honble supreme court in **Rangappa Vs Sri Mohan reported in 2010 (11) SCC P.No. 441** cleared that once the execution of cheque is admitted section 139 of N.I Act mandates a presumption that the cheque is for discharge of any debt or other liability. The presumptions under section 118 and 139 of N.I Act 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. To rebut the presumption, the accused has lead cogent evidence, the accused has ample chance to call medical records, attendance register to show that accused taken medical leave, further accused call for police records to show that met accident, mere raise suggestion is not enough to disprove the cheque case and it is not comes under cogent evidence.

14. Further, the accused has raise defence that he has repaid the amount with interest in the year of 2018, after repayment of amount the accused has neither taken

steps to issue stop payment to bank nor lodge complaint before police against financier. After some period, the accused is a government servant, he know all consequences about return of cheque. The accused has not acting probably to sent legal notice to finance to call for empty cheque and promissory note, further accused has failed to lodge complaint before police station taken steps to secure the cheque from misusing, without taken legal steps to secure the cheque, mere raise suggestion is not enough to rebut the statutory presumption. The extract portion herewith "*பைணான்சில் கொடுத்த காசோலை ஸ்டாட் பாங்க் ஆப் இந்தியா 2018 ஏப்ரல், மே மாதத்தில் வட்டியுடன் சேர்த்து பணத்தை கொடுத்துவிட்டார் என்றும் பாதுகாப்பிற்காக கொடுத்த காசோலையை மற்றும் புரோநோட்டை எதிரி வாங்க தவறிவிட்டார் என்றால் அது பற்றி எனக்கு தெரியாது*" which means that accused known all consequences, but not taken steps to secure cheque.

15. The complainant side relied the citation submitted by him, as per dictum in aforesaid citation, once the signature is admitted the statutory presumption raised in favour of the complainant, the accused has burden to shift the presumption by probable defence. The accused himself admitted signature in cheque and admitted bank cheque leaf belonged to him. In **K.N Beena Vs Muniyappan and another reported in 2009 (2) SCC P. No.513** , this court held that in view of the provisions of section 139 of N.I Act., r/w section 118 thereof, the court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebuttable by the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. The accused has to prove in the trial by leading cogent evidence that there was not debt or liability. In **Narayannan Menon 's case reported in 2007 (2) SC (cri) P.No.318** the Honble apex court has observed that the onus of the accused is not as heavy as that of the prosecution and it is only needed to rebut the presumption by probable defence. Section 139 of N.I act.,

provides for the initial presumption in favour of the complainant unless the contrary is proved. In the present case, the initial presumption has not been rebutted by the accused by raising the probable defence in the scale of preponderance of probability. In so as far discussion, the accused has failed to prove that cheque was issued for borrowing debt from kamadhenu finance.

16. Further pointed that two views possible, the view in favour of the accused would merit consideration held by the Honble supreme court in **Arulvelu Vs state by the PP reported in 2009 (10) Sec 206. and 2014 (4) MLJ (Crl) 608 K.Subramani vs K.Damodhara Naidu, 2018 (1) TNLJ Crl 49 Justice P.N Prakash** dated 04.01.2018 madurai bench of Madras high court, in this case, there is no two views raised. Thus no need to discuss in this case. **Therefore, the point is answered in favour of the complainant.**

17. In the result, the complainant has proved the case against the accused for the offence under section 138 of N.I act., The accused is found guilty for the offence under section 138 of N.I act., and convicted the accused for one year simple imprisonment as per section 255 (2) Cr.p.c. This court ordered the accused to pay cheque amount of Rs.4,00,000 /- as compensation as per section 357 (3) Cr.P.C. In case of default to compensation amount, the accused is undergo two month simple imprisonment and both sentence will runs consecutively. The probation of offenders act not apply to the cheque case.

Directly typed by me and corrected by me and pronounced by me in open court on this the 11th day of March 2026.

**Judicial Magistrate No.II,
Mettur.**

COMPLAINANT SIDE WITNESSES:

1.	Thiru.Mathiazhagan	PW1
2.	Thiru.Raju (Bank Manager)	PW2

COMPLAINANT SIDE EXHIBITS:

1.	25.06.2025	Cheque	Original	-Ex-P1
2.	25.06.2025	Original cheque return memo	Original	-Ex-P2
3.	04.07.2025	Legal notice	Office copy	-Ex-P3
4.	08.07.2025	Postal cover returned (2 No's)	Office copy	-Ex-P4
5.		Aadhar card	Xerox	-Ex-P5

DEFENCE SIDE WITNESSES :

1. Raju Bank Manager Dw1

DEFENCE SIDE EXHIBITS :

1.	01.12.2020 to 24.11.2020	Account Statement	True copy	-Ex-D1
----	--------------------------------	-------------------	-----------	--------

**Judicial Magistrate No. II,
Mettur.**

Note:

1. The result of the case is intimated to the complainant.
2. No witnesses were detained for more than 3 hearings.
3. Copy of this Judgment is given to the accused free of cost.