

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

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

Tuesday, the 10th day of March 2026

C.C.No. 712/2024

CNR No TNSA18-004684-2024

M/s.Neshmitha TExtiles,
Handloom Pure Silk Sarees Manufacturers,
D.No.93/15, Agilandammal Kovil Street,
Jalakandapuram – 636 501,
Salem District,
Represented by its power agent selvaraj,
S/o.Nagarappan

..... **Complainant**

//vs//

1.M/s Aara Textiles,
Represented by its proprietor/Authorised Signatories
6/209B, Thiruvangadu, Alavaipatti post,
Venanthoor, Rasipuram Taluk,
Namakkal District.
2. Mohanraj, S/o. Velayutham,
No.6-209 B, Thiruvangadu,
Alavaipatti post,
Venanthoor, Rasipuram Taluk,
Namakkal District.

..... **Accused**

The Private complaint filed under section 138 & 142 of N.I Act by the complainant and its taken on file on 06.12.2024, coming for final hearing on 26.02.2026 stood over for consideration, before this court in the in the presence of Mr.M.P Senthil kumar, for the Complainant and Thiru.J.Lenin, Advocate for the accused and upon perusal of the case records and hearing both side oral arguments,

this court delivered the following:

JUDGMENT

BRIEF FACTS OF THE COMPLAINANT CASE :

1. The complainant is doing hand loom pure silk sarees manufacturers in the name and style of M/s Neshmitha Textiles, power agent's wife Jayabharathi is the proprietor, the accused no.2 is doing whole sale saree business styled as M/s Aara Textiles and the accused no.2 is proprietor, on 29.04.2024 the accused no.2 approached complainant and purchased sarees worth Rs.31,82,550 /- vide invoice no.3 dated 29.04.2024 as credit and agreed to pay within one month and the accused no.2 issued post dated cheques towards invoice for Rs.4,00,000 /- , the complainant presented cheque and its was returned on 04.05.2024, further presented on 07.05.2024 but again returned, then instructed 2nd and 3rd cheque presented for collection and its returned on 30.05.2024, hence demand cash on 23.08.2024 for Rs.10,00,000 /- for part payment bearing cheque no. 000086 dated 26.08.2024 drawn on HDFC Bank, Rasipuram branch, the complainant presented for collection on 26.08.2024 and its returned as Funds insufficient on 27.08.2024, the cheque again presented for collection on 19.10.2024 which returned funds insufficient, hence sent legal notice on 30.10.2024 and it was received by accused on 01.11.2024, the sent reply with false allegations. 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 herself as Pw1 by filing proof affidavit and ExP1 to EX P6 marked and summoned Bansislal from GST office at omalur and marked Exp7 to Exp8, then again Pw1 recall and marked Exp9 to Exp11 and closed complainant side evidence. Upon closure of Complainant side evidence, the accused side not let in evidence 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 stated in reply 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 23.08.2024, **ExP2** Original cheque Return memo dated 27.08.2024, **ExP3** Original cheque Return memo dated 19.10.2024, **ExP4** Legal notice dated 30.10.2024 office copy, **EXP5** Acknowledgment card 2 No's dated 30.10.2024, **ExP6** Power of attorney dated 29.11.2024 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.

6. The complainant side argued that there is no reply sent by the accused to challenge the version in legal notice, further no comply the legal demand. The defence side argued that reply is choice to the accused, which is not mandatory. 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 accused did not purchase any textile goods from complainant, the complainant has filed this case using the blank cheque given by the accused 's brother saravana kumar in connection with the interest issue. The present blank cheques given by saravana kumar, in order to gain undue profit from the accused, the present case is filed.

7. The defence side suggested that accused's brother saravana kumar has borrowed amount from complainant, due to interest issue the said saravana kumar handed over cheque belonged to accused, which is misused. It is admitted that saravana kumar and mohanraj are own brothers. There is no necessity to discuss how the cheque goes into the hands of complainant. The complainant side argued that in 6th para of Pw1 cross examination, the Pw1 denied that saravana kumar put signature of accused and handed over to Pw1 is not correct, which means that defence side want to suggest that saravana kumar put signature of the accused in cheque and handed over to the complainant, the extract portion of Pw1 herewith “ *அதற்காக சரவணகுமார் எதிரியினுடைய காசோலை கையொப்பம் மட்டும் செய்து நிரபடாத*

6 காசோலைகளை கொடுத்திருந்தார் என்றால் இல்லை “ The defence side pointed that read over substances of accusation before accused during first questioning and he admitted the signature in cheque. Further argued 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.

8. In this case, the signature found in the cheque admitted by the accused, but denied the particulars of cheque filled by him and raised plea of defence. 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. Thus no need to go further, the cheque was issued for discharge of existence of debt or not. The accused himself admitted signature in cheque and admitted bank cheque leaf belonged to him.

9. 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.

10. During cross examination of Pw1, the defence side pointed that who filled particulars in cheque, the Pw1 answered that mohankumar and selvaraj fulfilled

particulars in cheque, which reveals that on that date of issuance of cheque, the said saravana kumar was present. The whole transaction existed between complainant and the accused, why did accused's brother fulfilled cheque particulars, when accused was present. The said single point collapsed the case, the defence side succeed to rebut the presumption. By heard both side submission, this court is of view, that defence side suggested that cheque in question was signed by saravana kumar, the defence side has ample chance to disprove the signature. Further, the defence side not let in saravana kumar as witness and not speak about interest issue, mere suggestion is not need to prove the defence.

11. Though the Pw1 admitted that cheque particulars was filled by saravana kumar, in the presence of mohanraj and his direction, any one filled cheque particulars, it is not hindrance to fulfill the cheque particulars by any one except the account holder direction. In this case, the Pw1 answered that after accused put signature in cheque and then, the cheque particulars filled by saravana kumar, it is not issue to decide in this case. The defence side asked Pw1 why not added agent as party in this case, there is no necessity to add agent in cheque case.

12. The defence side denied entire transaction and rely defence that cheque was given by saravana kumar without knowledge or anything, but on interest issue the cheque handed over to complainant. The defence side not examined saravana kumar as witness and not corroborate the said suggestion, on such failure the accused has failed to rebut the presumption on basis of cogent evidence. The entire cross examination relating to handed over cheque by saravana kumar, the defence side denied entire transaction with complainant. The complainant side examined GST officer to prove the invoice, the Pw2 bansilal rely invoice including in GST, thus there is no contra evidence let in by defence side to disprove the invoice raised. Mere denial of entire transaction is no need to consider, because defence side not let in

cogent evidence to prove defence. Therefore, the present cheque in question given to the complainant for transaction. The defence side has not raised financial capacity to lend the huge amount and other defences.

13. 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 not issued for business transaction. **Therefore, the point is answered in favour of the complainant.**

14. 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.10,00,000 /- as compensation as per section 357 (3) Cr.P.C. In case of default to pay remaining 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 10th day of March 2026.

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

COMPLAINANT SIDE WITNESSES:

1.	Thiru. Selvarj	PW1
2.	Thiru.Bansilal	PW2

COMPLAINANT SIDE EXHIBITS:

1.	23.08.2024	Cheque	Original	-Ex-P1
2.	27.08.2024	Original cheque return memo	Original	-Ex-P2
3.	19.10.2024	Original cheque return memo	Office copy	-Ex-P3
4.	30.10.2024	Legal notice	Office copy	-Ex-P4
5.	1.11.2024	Acknowledgement card 92 No's)	Original	-Ex-P5
6.	29.11.2024	Power of attorney	Original	-Ex-P6
7.	-	Authorization letter	Original	-Ex-P7
8.	-	GST Account register	Certified copy	-Ex-P8
9.	29.04.2024	Tax Invoice	Original	-Ex-P9
10.	2.04.2024	E way Bill	Original	-Ex-P10
11.	16.10.2024	Legal notice issued by saravana kumar	Office copy	-Ex-P11

DEFENCE SIDE WITNESSES : Nil

DEFENCE SIDE EXHIBITS : Nil

**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.