

IN THE COURT OF THE JUDICIAL MAGISTRATE NO.I, SIVAGANGAI

**PRESENT : Thiru. P. SELVAM, B.Sc., B.L.,
Judicial Magistrate No.I,
Sivagangai**

Thursday the 26th day of March 2026

CNR.No. TNSV02-008609-2022

C.C.No.327/2022

Balaiya,

S/o.Sethumani,

1443/B3, Pillaivayal Kaliyamman kovil street,

Sivagangai.

... Petitioner/ Complainant

Vs.

Jeyalakshmi,

W/o.V.P.Rajaram,

No.3, Thiruppuvanam Puthur,

Thiruppuvanam Taluk,

Sivagangai.

... Respondent/ Accused

Name of the Petitioner and Offence	Description of the Accused					Date of									Explanation of Delay
	Name	Father's Name	Occupation	Residence	Age	Occurrence	Complaint	Apprehension	Release on bail	Commitment	Commitment of trial	Closure of Trial	Sentence or order	Service of copy judgment or finding on accused	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Balaiya, S/o.Sethumani U/s.138 NI Act	Jeyalakshmi	V.P.Rajaram	House Wife	No.3, Thiruppuvanam Puthur, Thiruppuvanam Taluk, Sivagangai.	43	.	.	.	.	N.A.	22.09.2023	12.06.2025	Conviction	26.03.2026	N.A

This case was taken on file 26.08.2022 by this court and coming before me on this day for final hearing on 17.03.2026 in the presence of Thiru.M.Muthuraman, M.Com.,B.L., Advocate for the petitioner and Thiru.L.Kalaieswaran, M.A.,B.L., Advocate for the accused person and heard and perusal of records and having stood over for consideration till this date and this court delivers the following.

JUDGMENT

This complaint has been filed by the complainant against the accused U/S.138 of the Negotiable Instruments Act (hereinafter referred as “NI” Act).

1) THE CONCISE FACTS OF THE CASE AS PUT FORTH BY THE COMPLAINANT :

The complainant and accused person are relatives. The accused person borrowed sum of Rs.3,00,000/- with 2% interest from the complainant for business development on 12.01.2022 and promised to repay the amount within 4 months from the date of receive the amount. Since, the accused person didn't return the amount and interest within prescribed time, the complainant demanded to repay the amount on 05.05.2022. Hence, the accused had given a post dated Indian Bank, Thiruppuvanam Branch cheque bearing No.696360 on 10.05.2022. As per instruction of accused, the complainant has presented the cheque for collection on 10.05.2022 and same was returned as “Insufficient Fund”. Therefore, the complainant approached the accused for repayment of debt amount and accused asked accused to presented the cheque again for collection. Accordingly, the complainant presented the cheque again before the City Union Bank on 07.06.2022 and same was return as “Fund Insufficient” on 08.06.2022. Since, the accused has failed to repay the amount, the complainant cause notice to the accused on 04.07.2022. The legal notice was received by the accused and sent reply notice to the

complainant on 22.07.2022. Therefore, the Indian Bank cheque bearing No.696360 is dishonour due to “Fund Insufficient”. Hence, the complainant has filed this case against the accused for Dishonour of cheque.

1(ii) Accordingly, the complainant has produced Ex.P1 to Ex.P6 for substantiating the initial burden for which the cheque was given to the complainant for legally enforceable debt and liability. The accused has not paid the cheque amount to the complainant and the debt remains undischarged till date. The accused issued the cheque with the dishonest intention of deceiving the amount from complainant. The accused had issued the cheque knowing that there is no sufficient fund in his account to honor the cheque when presented for collection. The accused shall be punishable u/s. 138 & 142 of the N.I. Act.

2) The complainant has given sworn statement and prima facie case made out against accused for taken on file. After the case was taken file, the summons ordered for accused along with copy of complaint U/s.204(3) of Cr.P.C. On receipt of summons, the accused appeared and questioned about the substance of accusation made in the complaint. The accused pleaded not guilty and claimed for to be tried.

3) The petitioner was examined himself as PW1 and documents marked as Ex.P1 and Ex.P6. On the other hand, accused side no evidence adduced.

4) After completion of complainant side evidence, 313(b) Crpc question made to the accused and same was denied.

Ingredients of U/S.138 of NI Act and the complaint has to prove the following :

Point for consideration are,

- (i). Whether the accused issued the Cheque in question to the complainant for discharge, in whole or part, any debt or liability?**
- (ii). Whether the impugned cheque was issued by the accused in the discharge of a legally enforceable debt?**
- (iii). Whether the accused has been able to dislodge the presumption of liability as well as issuance on the basis of cross- examination of the complainant and through his defence of preponderance of probabilities?**

5) Answer to the points

The complainant and accused person are relatives. The accused person borrowed sum of Rs.3,00,000/- with 2% interest from the complainant for business development on 12.01.2022 and promised to repay the amount within 4 months from the date of receive the amount. Since, the accused person didn't return the amount and interest within prescribed time, the complainant demanded to repay the amount on 05.05.2022. Hence, the accused had given a post dated Indian Bank, Thiruppuvanam Branch cheque bearing No.696360 on 10.05.2022. As per instruction of accused, the complainant has presented the cheque for collection on 10.05.2022 and same was returned as "Insufficient Fund". Therefore, the complainant approached the accused for repayment of debt amount and accused asked accused to presented the cheque again for collection. Accordingly, the complainant presented the cheque again before the City Union Bank on 07.06.2022 and same was return as "Fund Insufficient" on 08.06.2022. Since, the accused has failed to repay the amount, the complainant cause notice to the accused on 04.07.2022. The legal notice was received by the accused and sent reply notice to the

complainant on 22.07.2022. Therefore, the Indian Bank cheque bearing No.696360 is dishonour due to “Fund Insufficient”. Hence, the complainant has filed this case against the accused for Dishonour of cheque. Accordingly, the complainant has produced Ex.P1 to Ex.P6 for substantiating the initial burden for which the cheque was given to the complainant for legally enforceable debt and liability. The accused has not paid the cheque amount to the complainant and the debt remains undischarged till date. The accused issued the cheque with the dishonest intention of deceiving the amount from complainant. The accused had issued the cheque knowing that there is no sufficient fund in his account to honor the cheque when presented for collection. The accused shall be punishable u/s. 138 & 142 of the N.I. Act.

6) The accused contented that the Indian Bank cheque was not issued to the complainant for not discharging the legally enforceable debt and liability. The complainant stated that the new car was purchased in finance with installment basis. The complainant used to pay the Car loan installment through cheque. Whenever, the complainant come to the Sivagangai Collector office and EB office, he used to have lunch at Annapoorani and Ariyapavan Hotels. When, he went to have lunch, he lost 3 bank cheque in the Ariyapavan hotel. He didn't know the date of losing the cheque in Ariyapavan hotel. Since, he thought the there is no any impact arise for missing the cheque, he didn't give any complaint to the police station and not given intimation to the banker for stop payment. The accused came to know about the cheque only after receiving the legal notice from the complainant. Thereafter, the accused get to know that lost cheque leafs have been misused by the complainant for intending to deceive the

amount.

7) Admittedly, the signature of the cheque bearing No.696360 belongs to accused person under Ex.P1. The complainant has presented the Ex.P1 cheque for Rs.3,00,000/- on 10.05.2022 and same was returned with endorsement as “Fund Insufficient” under Ex.P2. Therefore, the complainant caused legal notice to the accused person under Ex.P4 on 04.07.2022. The accused person sent reply notice to the complainant on 22.07.2022 under Ex.P6. The complainant has proved initial burden through the Ex.P1 to Ex.P6. Hence, the presumption lies with complainant due to prove the allegation for dishonour of cheque. If the initial burden proves that the cheque was issued to the complainant for repayment of debt amount, the presumption is in favour of the holder. According to section 139 NI Act raises the presumption in favour of the holder unless contrary is proved. The court shall presume that the holder of the cheque received the cheque for the discharge in whole or in part of any debt or other liability. Hence, the complainant has successfully drawn the presumption the cheque is valid one and that was given to legally enforceable debt. Therefore, the burden of proof shifted to the accused for disproving the case of complainant.

8) The accused person has successfully rebutted the initial presumption by way of cross examination on the side of defence. Whereas, the accused has not let in evidence before this court during the trial. It is seen that the accused didn't take any steps to deny the allegation through adducing evidence. The reply statement of accused is only the documents to show the denial of the case of complainant. It is stated that the accused didn't borrow Rs.3,00,000/- from the complainant on 12.01.2022 and not

provided cheque for above said amount on 10.05.2022. Whereas, the accused lost his 3 cheques in Ariyapavan Hotel, Sivagangai. The complainant has found the cheque slips in the hotel and misused the same for filling fake complaint against accused. The accused has rebutted the presumption through only the cross examination.

9) Hence, the accused has shifted reverse burden in to the complainant. In order to constitute an offence u/s.138 NI Act, one of the essential ingredients is that the cheque must have been issued for discharge of debt or other liability. In criminal cases the burden of proof is on complainant but the provision of u/s.139 NI Act, there is an initial presumption in favour of the complainant. According to section 139 NI Act introduces an exception to general rule as to the burden of proof and shifts the onus on the accused. It is a reverse burden clause that they have been included in furtherance of the legislative objective of improving the credibility of Negotiable Instruments Act. The accused must rebut the presumption of debt or liability not beyond reasonable doubt but by a preponderance of probabilities. It means the accused shall need to show that no debt existed by using evidence and other records. It was held in the decision of Hon'ble Supreme Court of India in Basalingappa Vs Mudibasappa (Criminal Appeal No.636/2019, dated:09.04.2019). The mere Preponderance of probability is enough for disproving the case of complainant not beyond reasonable doubts.

10) The accused has to take probable defence through their own evidence, cross examination are by pointing out inconsistencies in the complainants case, shifting burden to the complainant. The accused person has not denied the signature of the cheque. Whereas, the complainant lost his Indian Bank cheque bearing No.696360 in

the Ariyapavan Hotel, Sivagangai. The complainant find out the cheque in the hotel, when he was working as a Manager in the Ariyapavan Hotel. Even though the accused lost the 3 cheques including Indian Bank cheque bearing No.696360, he didn't take any steps to file complaint before the police station as well as not make any intimation to the Drawer Bank. It is seen that the accused had remained silent after loosing cheques. The accused stated in the reply notice he didn't make any complaint due to not affect the bank transaction. The above defence of accused is not believable one. Moreover, the accused has not proved the Car loan and other installment payment through cheque. Therefore, the story of defence case is going to loose it's credibility.

11) The law of presumption is that signature is duly admitted by the accused and other content of the cheque presumed to be filled up by the accused. The complainant has produced Ex.P1 cheque to prove the transaction of debt amount. Hence, this court considered the Ex.P1 is valid instrument at the time of issuance of cheque. Moreover, the complaint presented the cheque before City Union Bank on 10.05.2022 and same was return as "Insufficient Fund" on 11.05.2022. Similarly the complainant represented the cheque on 07.06.2022 before City Union Bank for collection and the case was return as Insufficient Fund. The transaction has been proved through Ex.P2, Ex.P3 return memos. It is seen that the accused has not maintained sufficient balance for repayment of debt amount of Rs.3,00,000/-. Therefore, the complainant caused legal notice to the accused under Ex.P4 and same was received by the accused under Ex.P5. The accused has sent Ex.P6 reply notice to the complainant. The content of reply notice has not proved through oral and documentary evidence. In early discussion this court found that

the defence taken by the accused was not sustainable. Therefore, the accused has not taken proper steps to disprove the case of complainant, even though, the sufficient opportunity available on the side of defence during the trial.

12) Therefore, this court thought that there is no any contradiction in the issuance of cheque. Moreover, the accused person didn't maintain sufficient bank balance at the time of issuance of cheque. It is seen that the accused intended to deceive the amount by way of giving cheque. Even though, the accused has created preponderance of probabilities, she has failed to prove the reverse burden shifted by the complainant. At the same time, the complainant has proved all the probabilities that the cheque was issued by accused of legally enforceable debt. In the above view, this court thought that the complainant has proved this case through oral and documentary evidence and issuance of cheque and proved the accused has intended to cheat the complainant for giving cheque without sufficient bank balance. Though, the burden of proof lies with accused, she couldn't prove the rebuttance. Even though, the preponderance of probability vested with accused, she miserable failed to establish the case of defence.

13) In the present case in hand, this court views, that the accused has rebutted the presumption by showing the probable defence. Whereas, the accused has not substantiated the transaction was not legally enforceable debt. The complainant has proved the legally enforceable debt and liability with respect to which the impugned cheque has been issued. It is believed that there is legally enforceable debt existed at the time of issuance cheque. The evidence placed on record clearly probablised that,

accused has failed to prove the innocence for issuance of cheque not for discharging of debt amount Rs.3,00,000/-. Hence, the complainant has proved his case beyond all reasonable doubt that the cheque was issued for legally enforceable debt. Thus this court answered to the Points. Therefore, the charges leveled against the accused u/sec.138 NI Act has been proved with proper oral and documentary evidence. Accordingly, this court asked following question of sentence to his as follows.

Accused	Jeyalakshmi, W/o.V.P.Rajaram
Question	Do you want to say anything about the punishment is to be awarded u/s.138 NI Act
Answer	எனக்கு உடல்நிலை சரியில்லை. எனவே குறைந்த தண்டனை வழங்குமாறு கேட்டுக்கொள்கிறேன்.

This court considers the answer to question of sentence and decided to convict the accused person as per sec 138 NI Act.

In the result the charges levelled against accused person is proved beyond reasonable doubts. Hence, the accused is found guilty for the offence u/s.138 of NI Act and accused is sentence to undergo simple imprisonment for one year u/s.255(2) Crpc and pay the compensation of Rs.3,00,000/- to the complainant within 2 months from the date of judgment u/s.357(3) Crpc in default of payment of compensation, the accused shall undergo one month simple imprisonment.

Dictated to the Steno Typist typed by her corrected and pronounced by me in the Open Court on this the 26th day of March 2026.

**Judicial Magistrate No.I
Sivagangai.**

Appendix:

Complainant Side Witnesses

PW1	22.09.2023	Balaiya
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Complainant Side Documents

Ex.P1	10.05.2022	Original cheque bearing No.696360
Ex.P2	10.05.2022	Return Memo Copy of City Union Bank dated:10.05.2022
Ex.P3	07.06.2022	Return Memo Copy of City Union Bank dated:07.06.2022
Ex.P4	04.07.2022	Office copy of Legal notice
Ex.P5	05.07.2022	Acknowledgement card
Ex.P6	22.07.2022	Reply notice

Defence/Accused Side Witnesses, Documents- Nil

**Judicial Magistrate No.I
Sivagangai**