IN THE COURT OF FAST TRACK, KARAIKUDI,SIVAGANGAI DISTRICT.
PRESENT:THIRU.S.A.VALLI MANALAN,B.A.,B.L.,(Hons), L.L.M.,
Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karaikudi.
Dated at this Wednesday the 01st day of July, 2026
Calender Case.No.266 of 2025
CNR No. TNSV12 – 000596 - 2025

L.Gopalakrishnan (70/2025)
S/o.K.V.Lakshmanan,
D/No.3, Gandhipuram 3rd Street,
Karaikudi Taluk,
Sivagangai District. .... Petitioner

\Vs/

A.Vignesh (32/2025),
S/o.Ayyappan
Bee Financial Investment Centre,
MVM Complex 2nd Floor,
Shop No.13, 14, & 15, South Main Street,
Thanjavur District. …….. Accused

This case was taken on file before this court and numbered as C.C.No.266 of 2025 and came up for final hearing before me on 24.06.2026 in the presence of Thiru.Gurukrishna Govindarajan, the learned counsel for the complainant and Thiru. Manikandan the learned counsel for the accused and upon hearing the arguments on either sides and perusing all the connected materials, having stood over for consideration till this day, this court deliver the following:

VALLIMANALAN S A

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Date: 2026.07.01 15:50:43 -0400

JUDGMENT

1. The Complainant has filed the present complaint against the accused for the offence arising out of the dishonour of cheque bearing No.049765 dated 10.11.2025, drawn on ICICI Bank, Tanjore Branch, for a sum of Rs.2,00,000/-. When the complainant presented the aforesaid cheque for encashment, the same was returned unpaid. The dishonour of the cheque and the subsequent failure of the accused to make payment within the statutory period constitute offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

2. **Case of the Complainant in Brief as follows;-**

i) The Complainant and the accused are well acquainted. Accordingly on 10th October 2025, the accused approached the complainant and said that he needed Rs. 2,00,000/- (Rupees two lakhs only) for urgent family and business needs. Since he requested , he immediately took the Rs. 2,00,000/- which he had in cash and took it as a loan and said that he would repay it within a short period of time as soon as possible , and on the same day, the accused agreed to pay the amount.

ii) In order to discharge the said liability, the accused also issued a cheque bearing No. 049765 dated 10.11.2025 drawn on ICICI Bank, Thanjavur Branch for a sum of Rs.2,00,000/- in favour of the complainant. When the complainant demanded payment of interest, the accused instructed the complainant to present the said cheque for encashment.

iii) Accordingly, the complainant presented the said cheque on 10.11.2025 through his banker, ICICI Bank, Karaikudi Branch, The said cheque was returned unpaid on 10.11.2025 with an endorsement Funds Insufficient. The complainant then issued a legal notice dated 13.11.2025 to the accused demanding payment of the cheque amount within fifteen days from the date of receipt of the notice. The accused sent a reply notice dated 21.11.2025, the accused has wilfully committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. On finding a prima facie case against the accused, he was summoned and Consequent to the service of summons, the accused entered his appearance and was questioned under section 274 of the BNSS,2023 on 05.02.2026 to which the accused pleaded not guilty and claimed for trial.

4. To prove his case, the complainant has examined himself as PW1 by way of affidavit and has marked the following documents.

a) Cheque bearing No.049765 dated 10.11.2025 as Ex.P1

b) Return memo dated 10.11.2025 as Ex.P2.

c) Legal Notice dated 13.11.2025 as Ex.P3.

d) Acknowledgment Card dated: 14.11.2025 as Ex.P4.

e) Complainant Aadhar Card as Ex.P5

f) The accused send to the complainant Reply Notice as Ex.P.6

5. Accused had given various chances to Cross-Examine the Complainant, but accused had not come forward to Cross-Examine the Complainant. The Complainant side Evidences was closed and case posted for Section 351 BNSS questioning.

6. The Statement of accused was recorded under Section 351 read with Section 316 of the Code on 11.06.2026 and all the incriminating circumstances

were put to him to enable him to offer an explanation. The accused denied all the evidence as false and stated that it is a false complainant. Then the matter was listed for defence evidence. Then, this court has closed the defence side Evidence after giving sufficient opportunity to the accused.

7. After closing of the Defence side Evidences this matter was then reserved for judgment. The submissions made on behalf of both the parties have been considered. The records of the case have been carefully perused.

8. In order to ascertain whether the accused has committed the offence under Section 138 of the NI Act, it is deemed fit to examine separately as to whether all the indispensable ingredients constituting the offence have been proved by the complainant. The offence under Section 138 of the NI Act has the following ingredients:-

a) The cheque has been drawn on an account maintained by a person in a bank for payment of a certain amount of money to another person from out of that account;

b) The cheque has been issued for the discharge, in whole or in part, of any legal and enforceable debt or other liability;

c) That cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;

d) That cheque has been returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

e) The payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

f) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

9. Being cumulative, it goes without saying that it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act. Presentation of the impugned cheque for encashment and dishonour of the impugned cheques for the reason “funds insufficient” is not disputed as it is a matter of record proved by the return memo which is Ex.P2. The accused has not disputed that the impugned cheque bears his signature. The legal notice was served upon the accused but no payment was made despite the service. Finally, the complaint has been filed within the limitation period. Therefore, essential ingredients have been duly satisfied.

10. Before proceeding to the merits of the case, it is considered important to lay down the basic provisions of law with respect to section 138 of the Act which are as follows:

Section 138 of Negotiable Instruments Act, 1881 makes dishonour of cheques an offence. It provides that "where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both".

11. Careful reading of section 138 of the Act reflects that there are three key ingredients which need to exist in order to constitute an offence therein. The three ingredients were highlighted by the Hon'ble Supreme Court in the case of "**Krishna Janardhan Bhat v. Dattatraya G. Hegde AIR 2008 SC 1325**" wherein the Apex Court held that the procedural requirements of section 138 are:

i)There is a legally enforceable debt.

ii)The drawer of the cheque issued the cheque to satisfy part or whole of the debt.

iii)The cheque so issued has been returned due to insufficiency of funds.

12. It is a well settled principle of criminal jurisprudence that a criminal trial proceeds on the presumption of innocence of the accused i.e. an accused is presumed to be innocent unless proved guilty. Thus, normally the initial burden to prove the guilt of the accused lies on the complainant/prosecution Also, the standard of proof is beyond reasonable doubt. However, in offences under section 138 of the Act, there is a reverse onus clause contained in sections 118 and 139 of the Act.

Presumption in favour of the Complainant:-

13. Section 118(a) of the Act provides that until the contrary is proved, it **shall be presumed** that "that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration."

14. Further, Section 139 of the Act lays down that "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."

15. On bare reading of these provisions, it becomes clear that the court shall presume the execution of a negotiable instrument for consideration unless and until the contrary is proved. Similarly, the Court shall also draw a presumption in favour of the complainant/holder of the cheque that the said cheque has been issued in discharge of legally enforceable debt or other liability.

Rebuttable Presumption:-

16. There is a statutory presumption under section 139 of the act which arises in the favour of the complainant. This presumption is rebuttable and the accused is required to raise a probable defence. Burden of proof is hence upon the accused in such cases. Reliance can be placed on the decision of the Hon'ble Supreme Court in the case of "**M.S Narayan Menon vs. State of Kerala (2006) 6 SCC 39**", wherein the Hon'ble Court has discussed in detail the scope and ambit of statutory presumption under section 118 read with section 139 of the Act. The relevant extract of the judgment is reproduced below:

"*Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the Complainant could be relied upon*"

Rebuttable standard of proof upon Preponderance of Probability:-

17. Further, it is also a settled proposition of law that the standard of proof which is required from the accused to rebut the statutory presumption under section 118 read with section 139 of the Act is preponderance of probabilities. The accused is not required to prove his case beyond reasonable doubt. This onus on the accused can be discharged from the materials available on record and from the circumstantial evidence. The Hon'ble Supreme Court in **M.S Narayan Menon case (supra)** has inter alia held the following:

"The standard of proof evidently is the preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies"

18. Further as discussed above, it should also be noted that the standard of proof in order to rebut the statutory presumption may be inferred from the materials on record and circumstantial evidences. It is not always mandatory for the accused to examine its own witnesses in order to rebut the said statutory presumption. At this point, reliance may be placed on the decision of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat (supra)**, wherein the Hon'ble Court has categorically held the following:

"*32. accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The accused has a constitutional right to remain silent. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different…*

34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove defence on the part of an accused is "preponderance of probabilities". 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 he relies.*"

19. This principle has been reiterated by the Hon'ble Supreme Court [3 Judge Bench] in the case of "**Rangappa Vs. Sri Mohan (2010) 11 SCC 441**" wherein the Apex Court dealt about the rebuttable presumption and Preponderance of Probability in Cheque dishonour proceeding:-

"*27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions In such a scenario,* ***the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard or proof****.*

*28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of *preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations,* ***the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own"****.*

20. Thus, section 139 of the Act puts the burden on the accused to prove his defence. However, the accused has to prove his defence on the balance of probabilities and not beyond reasonable doubt. Accused can prove his defence by drawing inferences from the materials already on record (including complainant's evidences), circumstances of the case and also leading his own evidences. If the accused successfully creates doubts in the complainant's claim about the existence of legally enforceable debt then the burden of proof shifts back to the complainant who is required to prove the guilt of the accused beyond reasonable doubt. Reference can be taken from the decision of the Hon'ble Supreme Court in the case of "**Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Pyarelal 1999 (3) SCC 35"**, wherein it has held the following:

"*12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument.* ***The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well****. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour.* ***The court may not insist upon the defendant to disprove the***

existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated *and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff.* ***To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.***"

21.As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own. Also to disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.

22. Thus, as laid down in the catena of decisions, it is an established law that onus lies upon the accused to rebut the presumption and to establish that the cheque in question was not given in respect of any debt or liability, with the standard of proof being preponderance of probabilities. Therefore, it is critical to examine whether the explanation of the accused coupled with the evidence on record is sufficient to dislodge the presumptions envisaged by Sections 118 and 139 of the NI Act.

23. From Complaint it is clear that the accused is liable to repay the legally enforceable debt. In furtherance of the same the accused had issued Ex.P1 cheque to

the Complainant for Rs.2,00,000/-.The accused had given various chances to Cross Examine the Complainant after the Complainant side Evidence, but the accused had not come forward to cross Examine the Complainant. The accused had barely denied the evidence of the Complainant, when questioned about the same under Section 313 Cr.P.C questioning. Even after final questioning, the accused had not come forward to Cross Examine the Complainant. No submissions were made by the Parties that the matter was settled out of court and no withdraw petition was filed. Mere denial of evidence of the Complainant, without providing any evidence nor through any circumstances, will not rebut the initial presumption favoring the Complainant. Moreover the accused had not come forward to Cross Examine the Complainant nor produced any evidence for the defence to substantiate his defence. Therefore initial presumptions favouring the Complainant have not been rebutted by the Accused.

24. In the result, the accused is found guilty under Section 278(2) of The Bharatiya Nagarik Suraksha Sanhita,2023. for the offence under section 138 of the Negotiable Instruments Act and the accused is sentenced to undergo one year simple imprisonment and by considering the interest for the period of trial, financial loss to the Complainant this Court directed to pay a compensation of Rs. 3,00,000/- (Cheque amount is Rs.2,00,000/-) to the complainant under Section 395 of The Bharatiya Nagarik Suraksha Sanhita,2023., within one month and in default of payment compensation the accused shall undergo a further period of one week simple imprisonment as default sentence.

Typed, corrected and pronounced by me in the open Court, this the 01st day of July 2026.

VALLIMANALAN S A

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Date: 2026.07.01 15:52:56 -0400

Judicial Magistrate,
Fast Track Court at Magisterial level,
Karaikudi.

Chart for prosecution side witnesses:		
Witnesses	Name of Witness	Description
PW-1	L.Gopalakrishnan	Complainant
Defence Side Witness – NIL		
Chart Complainant for Exhibited Documents :		
Exhibit No.	Description of the Exhibit	Proved by / Attested by
EX.P1	The Cheque bearing No.049765 dated 10.11.2025	PW -1
EX.P2	The Return Memo dated 10.11.2025	PW -1
Ex.P3	The Legal Notice under section 138 of NI Act dated: 13.11.2025	PW -1
Ex.P4	The Acknowlegment Card dated 14.11.2025	PW -1
Ex.P5	The Complainant Aadhar Card	PW -1
Ex.P6	The accused send to the complainant Reply Notice	PW -1
Defence Side Exhibits - NIL		
Material Objects Submitted by Prosecution - NIL		
Material Objects submitted on the side of the Defence -NIL		

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Judicial Magistrate,
Fast Track Court at Magisterial level
Karaikudi.

<u>Note:</u>

1. During the period of trial the accused were enlarged on bail.
2. No witnesses were held more than three days without examination.
3. Judgment Date : 01.07.2026