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 Thursday the 13th day of August, 2026
Calender Case.No.136 of 2025
CNR No. TNSV12 –000353 – 2025

Karthick, (35/2026),
S/o.Azhagiri,
D/No.2745, Jayasri Residence,
Thilagar Nagar,
Thiruviga Street,
Karaikudi Taluk,
Sivagangai District. .... Complainant

\Vs/

Shajakhan, (51/2026),
Mohammed Serief,
D/No.59, 1st feet,
Mela Urani Road,
Karaikudi Taluk,
Sivagangai District. …….. Accused

This case was taken on file before this court and numbered as C.C.No.136 of 2025 and came up for final hearing before me on 05.08.2026 in the presence of Thiru.T.Karthikeyan the learned counsel for the complainant and Thiru.K.Duraisivan 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:

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JUDGMENT

1. The Complainant has filed the present complaint against the accused for the offence arising out of the dishonour of cheque bearing No.657072 dated 09.05.2025, drawn on Indian Overseas Bank, Managiri Branch, for a sum of Rs.5,00,000/-. 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 have a good relationship. On the basis of this the accused has requested a loan of Rs.5,00,000/- also agreed to give the loan to the accused on the basis of his trust in the accused. Accordingly, the complainant has given the accused Rs.5,00,000/- in cash at home as a loan on 09.02.2025. The accused also promised to pay interest at the rate of Rs.1/- per month on the above loan amount and to repay the principal amount within 3 months. On the same day, the complainant was given a cheque No.657072 of Indian Overseas Bank Managiri Branch, in which the accused has an account, dated on 09.05.2025 for the principal amount of Rs.5,00,000/- and paid it to the complainant as due collection. He has promised to pay the interest monthly. But the accused did not pay the interest

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monthly as promised. Therefore, the complainant contacted the accused on 11.05.2025 and asked for the loan back.

ii) Accordingly, the complainant presented the said cheque on 14.05.2025 through his banker, IDBI Bank, Karaikudi Branch. But said cheque was returned on the same day unpaid with an endorsement Account closed. Thereafter, the complainant caused a statutory legal notice dated 17.05.2025 by registered post on 19.05.2025 about the cheque given by the aforesaid accused and the details of the dishonour given on the ground of account closed. The lawyer notice was served to the accused on 20.05.2025. Hence, the accused has wilfully committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Therefore, the complainant has filed the present complaint seeking to punish the accused in accordance with law and to grant such other reliefs.

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 24.10.2025 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 with No.657072 dated 09.05.2025 drawn on Indian Overseas Bank, Managiri Branch, for Rs.5,00,000/- as Ex.P1

b) Return Memo dated 14.05.2025 as Ex.P2.

c) Legal Notice dated 17.05.2025 as Ex.P3.

d) Postal Receipt dated 19.05.2025 as Ex.P4.

e) Acknowledgment Card as Ex.P5

The complainant was cross-examined by the Learned Counsel for the accused and the complainant's evidence was closed.

5. The Statement of accused was recorded under Section 351 read with Section 316 of the Code on 30.06.2026 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.

6. Then the matter was listed for defence evidence. Then, this court has closed the defence side Evidence. Arguments heard from both the parties.

7. Final arguments have been heard on behalf of both the parties. The matter was then reserved for judgment. The submissions made on behalf of both the parties and the judgments relied on by both the parties have been considered. The records of the case has 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 “Account closed” 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.

<u>Presumption in favour of the Complainant:-</u>

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. Learned Counsel for defence submitted the following defences:-

(i) The Accused had issued blank cheque for security to one Mr.Shanmuga Sundaram.

(ii) The Accused dont know the Complainant and Complainant had misued the case cheque.

(iii) The Accused is not legally liable to pay the case cheque amount.

24. This Court has to consider whether the defence taken by the Accused rebutts the presumption which favors the Complainant. To deal with the same this court discusses the issue one by one, as follows

25. Issue as to "Account closed":-

25.1 It is pertinent to look at the observation of Hon'ble Supreme Court of India in "**Nepc Micon Ltd and Others vs Magma Leasing Ltd (1999) 4 SCC 253"** while dealing with the issue of "Account Closed" was held:

7. Further, the offence will be complete only when the conditions in provisos (a), (b) and (c) are complied with. ***Hence, the question 1s, in a case Where a cheque is returned by the bank unpaid on the ground that the "account is closed", would it mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque"? In our view, the answer. would obviously be in the affirmative because the cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time apart from it being closed.*** *Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the* *amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a specie. After issuing the cheque drawn on an account maintained, a person, if he closes "that account" apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in "that account". Further, the cheque is to be drawn by a person for payment of any amount of money due to him "on an account maintained by him" with a banker and only on "that account" the cheque should be drawn. This would be clear by reading the section along with provisos (a), (b) and (c).*

8. Secondly: proviso (c) gives an opportunity to the drawer of the cheque to pay the amount within 15 days of the receipt of the notice as contemplated in proviso (b). Further, Section 140 provides that it shall not be a defence in prosecution for an offence under section 138 that the drawer has no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section. ***Dishonouring the cheque on the ground that the account is closed is the consequence of the act of the drawer tendering his account to a cipher. Hence, reading Sections 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that the account is closed would be covered by the phrase "the***

amount of money standing to the credit of that account is insufficient to honour the cheque".

9. Learned counsel for the appellants, however, submitted that Section 138 being a penal provision, it should be strictly interpreted and if there is any omission by the legislature, a wider meaning should not be given to the words than what is used in the section. In our view even with regard to penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be averted. ***If the interpretation, which is sought for, were given, then it would only encourage dishonest persons to issue cheques and before presentátion of the cheque close "that account" and thereby escape from the penal consequences of Section 138.***

25.2 It is clear from the above observation of Hon’ble Apex Court in **Nepc(supra)**, that the Cheque dishonoured for “Account Closed” also falls under the purview of dishonor as under Section 138 of Negotiable instrument Act.

<u>26. Issue as to issuance of blank cheque:-</u>

26.1 It is pertinent at this point to have a look at the following judgment of the Hon'ble Supreme Court. Hon'ble Supreme Court in the case of “**<u>Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197”</u>** wherein the Apex Court while upholding the validity of blank signed cheque and post-dated cheque in a proceeding u/s 138 of the Act has inter alia held the following:

"*36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be* ***post dated does not absolve the drawer of a cheque of the penal consequences of Section 138*** *of the Negotiable Instruments Act.*

37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, ***Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains*** *liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.* ***It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer****. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

38. If a ***signed blank cheque is voluntarily presented to a payee, towards some payment****, the payee may fill up the amount and other particulars. This in* ***itself would not invalidate the cheque****. The onus would* *still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*"

26.2 Accused had not disputed his signature in the cheque. It is established law that the presumption of legally enforceable debt as under section 139 will not be affected for the reason that the accused had issued a blank cheque without disputing signatures on it. Blank cheque can also be accepted as under section 20 of Negotiable Instrument Act.

27. Issue as to issuance of Cheque for security purpose:-

27.1 Learned Counsel for the Accused argued that the impugned cheque is issued for security purpose. It is pertinent to refer the judgment of Hon'ble Supreme Court in "**Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr 2022 LiveLaw (SC) 830"**, where the Hon'ble Apex Court dealt with the issue of issuance of cheque for surety purpose as follows:

"*12. It must be noted that when a part-payment is made after the issuance of a post-dated cheque, the legally enforceable debt at the time of encashment is less than the sum represented in the cheque. A part-payment or a full payment may have been made between the date when the debt has accrued to the date when the cheque is sought to be encashed. Thus, it is crucial that we refer to the*

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law laid down by this Court on the issuance of post- dated cheques and cheques issued for the purpose of security. In ***Indus Airways Private Limited v. Magnum Aviation Private Limited (2014) 12 SCC 539****, the issue before a two-Judge Bench of this Court was whether dishonour of post-dated cheques which were issued by the purchasers towards 'advance payment' would be covered by Section 138 of the Act if the purchase order was cancelled subsequently. It was held that Section 138 would only be applicable where there is a legally enforceable debt subsisting on the date when the cheque is drawn. In* ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited (2016)10SCC 458****, the respondent advanced a loan for setting up a power project and post-dated cheques were given for security. The cheques were dishonoured and a complaint was instituted under Section 138. Distinguishing* ***Indus Airways (supra)****, it was held that the test for the application of Section 138 is whether there was a legally enforceable debt on the date mentioned in the cheque. It was held that if the answer is in the affirmative, then the provisions of Section 138 would be attracted. In* ***Sripati Singh v. State of Jharkand 2021 SCC OnLine SC 1002****, this Court observed that if a cheque is issued as security and if the debt is not repaid in any other form before the due date or if there is no understanding or agreement between the parties to defer the repayment, the cheque would mature for presentation:*

"17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. ***If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same.*** *On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.*

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, ***the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that***

manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. *These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."*

(emphasis supplied)

Based on the above analysis of precedent, the following principles emerge:

*(i) Where the borrower agrees to repay the loan within a specified timeline and **issues a cheque for security but defaults in repaying the loan within the timeline**, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, **Section 138 of the Act will be attracted;***

(ii) However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and

(iii) If the loan has been discharged before the due date or if there is an 'altered situation', then the cheque shall not be presented for encashment".

27.2 From the Judgment of the Hon'ble Apex Court in **Dashrathbhai Trikambhai Patel (supra)** it is clear that the Section 138 of NI Act will be attracted even if the cheque was issued for security and if the amount was left unpaid.

<u>Whether the Accused is liable for the case cheque amount is decided as follows:-</u>

28. The complainant and the accused have a good relationship. On the basis of this the accused has requested a loan of Rs.5,00,000/- also agreed to give the

loan to the accused on the basis of his trust in the accused. Accordingly, the complainant has given the accused Rs.5,00,000/- in cash at home as a loan on 09.02.2025. The accused also promised to pay interest at the rate of Rs.1/- per month on the above loan amount and to repay the principal amount within 3 months. On the same day, the complainant was given a cheque No.657072 of Indian Overseas Bank Managiri Branch, in which the accused has an account, dated on 09.05.2025 for the principal amount of Rs.5,00,000/- and paid it to the complainant as due collection. He has promised to pay the interest monthly. But the accused did not pay the interest monthly as promised. Therefore, the complainant contacted the accused on 11.05.2025 and asked for the loan back.

29. Important portion of the cross-examination of the Complainant as follows:-

1* எதிரி என்னிடம் கேட்டதாக கூறும் கடன் தொகையை எங்கு வைத்து எப்போது கேட்டார் என்றால் எதிரி என் கடைக்கு வருவது வழக்கம். என் கடையில் வைத்து பணம் கொடுத்தற்கு 10 நாட்களுக்கு முன்பு பணம் கேட்டார் 09.02.2025 ல் பணம் கொடுத்தேன்.

2* எதிரியிடம் இருந்து கடனிற்காக எந்த ஒரு ஆவணமும் பெறவில்லை என்றால் சரியல்ல. பணம் கொடுக்கும்போது காசோலை பெற்றேன். நான்தான் காசோலையை கேட்டேன் என்றால் சரிதான்.

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3*வட்டி தொகை செலுத்தினாரா என்றால் இல்லை. எவ்வளவு வட்டி என்றால் மாதம் ரூ.5,000/- தற்போது வரை எந்த வட்டியும் தரவில்லை. வழக்கு காசோலையை வங்கியில் செலுத்தும்போது எவ்வளவு வட்டி நிலுவை என்றால் 3 மாதத்திற்கு ரூ.15,000/- நிலுவை ரூ.15,000/-, நிலுவை இருக்கும்போது வட்டியை பற்றி காசோலைய வசூல் செய்யும்போது கேட்டேனா என்றால் அசல் தொகையை காசோலை மூலம் பெற்றுக்கொள்ளவும் வட்டி தொகையை அதன்பின்னர் தருவதாக கூறினார்.

30. From the complainant and the cross examination of the Complainant it is clear that the Accused had borrowed Rs.5,00,000/- from the Complainant on 09.02.2025 and on the same day itself accused issued Ex.P1 cheque for Rs.5,00,000/- as post dated as 09.05.2025 to the Complainant. The interest for 3 months not paid by the Accused. The cheque is only for the principal amount.

<u>31. Reliability of witness:-</u>

31.1 It is pertinent to look at the observation of judgment of Hon'ble Supreme Court of India in "**Vadivelu thevar vs State of Madras 1957 AIR 614**" relating to the reliability of the witness, as follows:-

"*Generally speaking, oral testimony in this context may be classified into three categories, namely:*

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial".

31.2 The Complainant left unrebutted during the cross examination. The deposition of Complainant was in consonance with the Complaint and corroborates with the same. The complainant witness is satisfied to be wholly reliable.

32. The Accused had not produced any documentary evidence to show that the Accused had issued the Ex.P1 case cheque to one Mr. Shanmuga Sundaram. Moreover, the Accused would have directed for stop payment, requested to return the cheque back through a notice, or would have made a

complaint against the party for not returning the cheque, if the Amount for the same was paid as alleged by the Accused. But no such act was done by the Accused.

33. Moreover the Accused had received Ex.P3 Statutory Legal notice and left silent without replying the same. From which it is clear that the Accused has knowledge about the issuance of the case cheque and about the liabilty. The Accused had knowledge about the issuance of the cheque to the Complainant for his liabilty as stated in the Complaint. The Accused is legally liable for the Ex.P1 case cheque amount of Rs.5,00,000/- during the dishonour of the said cheque.

34. The Complainant was left unrebutted in his Cross Examination. Mere denial of evidence of the Complainant, without providing any evidence nor through any circumstances, will not rebut the initial presumption favoring the Complainant. None of the allegation of the accused was substantiated nor created any circumstance in order to rebut the initial presumption favoring the Complainant. The case cheque amount is legally enforceable debt and the accused is liable to pay the legally enforceable debt to the Complainant.

35. 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 of simple imprisonment and by considering the interest for the period of trial, financial loss to the Complainant this Court directs the Accused to pay a compensation of Rs.7,00,000/-(Cheque amount is Rs.5,00,000/-) 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 month simple imprisonment as default sentence.

Typed, corrected and pronounced by me in the open Court, on the 13th day of August 2026.

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Judicial Magistrate,
Fast Track Court at Magisterial level
Karaikudi.

Complainant side Witness;	
1. PW-1	Karthick (Complainant)
Complainant Side Exhibits;	
1. Ex. P-1	The Cheque with No.657072 dated 09.05.2025 drawn on Indian Overseas Bank, Managiri Branch, for Rs.5,00,000/-
2.Ex. P-2	The Cheque Return Memo dated 14.05.2025

3.Ex. P-3	The Legal Notice dated 17.05.2025
4.Ex. P-4	The Postal Receipt dated 19.05.2025
5.Ex. P-5	The acknowledgment Card dated: 20.05.2025
Defence Side Witnesses; NIL	
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.

Note:

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 : 13.08.2026