



C.C .No.162 of 2024

IN THE COURT OF FAST TRACK AT MAGISTERIAL LEVEL, KARAIKUDI.
PRESENT: THIRU.J.KARMEGAKANNAN, B.A., B.L.,
Judicial Magistrate,
Fast Track Court at Magisterial level,
Karaikudi (FAC),
Dated this the 23th day of March, 2026
Calender Case.No.162 of 2024
CNR No. TNSV12 – 002759 - 2024

K. Anbu Meyyappan,

S/o. Kailasam,

D/No. 68A, Radha Street,

South Street,

Karaikudi Town,

Sivaganagai District.

..... Complainant

\Vs/

1. K. Sambath,

Smart Builders Properator,

D/No. 13/1, Arunachalam Chettiyar Street,

Income Tax Office Road,

Karaikudi Town,

Sivagangai District.

2.M/s. Smart Builders,

D/No. 13/1, Arunachalam Chettiyar Street,



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Income Tax Office Road,

Karaikudi Town,

Sivagangai District.

..... Accused's

This case was taken on file before this court and numbered as C.C.No. 162 of 2024 and came up for final hearing before me on 23.03.2026 in the presence of Mr.R.Abdul Sithikqe, the learned counsel for the complainant and Mr.M.Sangeetha, 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:

JUDGMENT

1. The complainant has filed the present complaint against the accused for the offence arising out of the dishonour of cheque bearing No.022073 dated 18.07.2024, drawn on South Indian Bank, Karaikudi Branch, for a sum of Rs.1,48,000/-. 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;-

The 1st accused is the Proprietor of the 2nd accused company and is engaged in the business of construction. Being an engineer, the 1st accused agreed to construct a house for the complainant's brother, namely Backiya Narayanan. In pursuance of the said agreement, the 1st accused received a total sum of Rs. 6,58,061/- as advance from 17.04.2024 to 29.05.2024. The 1st accused further agreed to complete the construction within forty days, i.e., on or before 09.06.2024. However, the accused failed to complete the construction within the stipulated time. Subsequently, the accused himself calculated the expenditure incurred from the advance amount of Rs. 6,58,061/- and admitted that a sum of Rs. 1,48,000/- remained as excess. Thereafter, the 1st accused agreed to refund the said excess amount and also undertook to complete the entire construction work on or before 18.06.2024 in the presence of panchayatdars. As the complainant's brother intended to go abroad for employment, he introduced the complainant to the 1st accused, and the accused agreed to repay the said amount to the complainant. In discharge of the said liability, the 1st



accused, being the Proprietor of the 2nd accused company, issued a cheque dated 18.07.2024 bearing No. 022073 drawn on South Indian Bank, Karaikudi Branch, for a sum of Rs. 1,48,000/- in the presence of one Kannan, and requested the complainant to present the same for encashment. The complainant presented the said cheque through his bank, City Union Bank, Karaikudi, for collection. However, the cheque was returned unpaid on 25.07.2024 with the endorsement Payment Stopped by Drawer. Thereafter, the complainant issued a legal notice dated 12.08.2024 to the accused, which was duly received by the accused on 17.08.2024. However, even after receipt of the same, the accused had not taken any steps to repaid the amount. 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.

3. On receipt of the complaint, the sworn statement of the complainant was recorded, and cognizance was taken for the offence under Section 138 of the Negotiable Instruments Act, 1881. Summons were issued to the accused under Section 204(3) Cr.P.C. Upon receipt of



summons, the accused appeared before this Court. On their appearance, copies of the complaint and all relevant documents were furnished to them. The substance of the accusation was explained to the accused, who denied the charges and stated that a false case had been foisted against them, and claimed to be tried.

4. The complainant examined himself as PW1 and filed his proof affidavit, which was received and accepted in evidence in accordance with Section 145 of the Negotiable Instruments Act, 1881. On the side of the complainant, a cheque bearing No. 022073 dated 18.07.2024 drawn on South Indian Bank, Karaikudi Branch was marked as Ex.P1. The bank return memo dated 25.07.2024, evidencing the dishonour of the cheque, was marked as Ex.P2. The legal notice issued by the complainant to the accused dated 12.08.2024 was marked as Ex.P3. The postal receipt evidencing dispatch of the legal notice was marked as Ex.P4. The online consignment tracking report evidencing service of the legal notice upon the accused was marked as Ex.P5.

5. After completion of the evidence on the side of the complainant, the accused was examined under Section 313(1)(b) of the



Code of Criminal Procedure with regard to the incriminating circumstances appearing against him in the evidence. The accused denied the same as false. On the side of the defence, no oral evidence was adduced and no witness was examined. However, one document, namely Ex.D1 – CSR No. 655 of 2024 dated 10.10.2024 issued by the Karaikudi South Police, was marked during the cross examination of PW1 on the side of the defence.

6. Points for Consideration is as follows;-

1. Whether the cheque bearing No.022073 dated 18.07.2024 for Rs.1,48,000/- was issued by the accused to the complainant towards discharge of a legally enforceable debt or liability?
2. Whether the said cheque, when presented for encashment, was dishonoured for the reason Insufficient Funds and whether the statutory requirements under Section 138 of the Negotiable Instruments Act were duly complied with by the complainant?
3. Whether the accused has successfully rebutted the statutory presumption under Sections 118 and 139 of the Negotiable



Instruments Act by raising a probable and acceptable defence?

4. Whether the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and if so, what sentence or relief is the complainant entitled to?

7.The points are answered as follows;-

Point No.1: -Whether the cheque bearing No.022073 dated 18.07.2024 for Rs.1,48,000/- was issued by the accused to the complainant towards discharge of a legally enforceable debt or liability?

8.This court carefully considered the entire evidence and submissions made on both sides. Before appreciating the evidence, it is important to mention the ingredients required for constituting an offence under Section 138 of the Negotiable Instruments Act are as follows:

(a) The cheque must have been drawn by the accused on an account maintained by him.

(b) The cheque must have been issued for the discharge, in whole or in part, of any legally enforceable debt or other liability.

(c) The cheque must have been presented to the bank within the



period of its validity, i.e., within three months from the date on which it is drawn.

(d) The cheque must have been returned unpaid by the bank, and a statutory demand notice must be issued by the complainant within thirty days from the date of receipt of information regarding the dishonour of the cheque.

(e) The drawer of the cheque must have failed to make payment of the cheque amount within fifteen days from the date of receipt of the said statutory notice. Upon such failure, the complainant must file the complaint before the competent court within thirty days after the expiry of the said fifteen days.

(f) When all the above-mentioned ingredients are satisfied, the drawer of the cheque is deemed to have committed an offence punishable under Section 138 of the Negotiable Instruments Act.

9. The case of the complainant is that the 1st accused, who is engaged in construction business, agreed to construct a house for the complainant's brother namely Backiya Narayanan and received a sum of Rs.6,58,061/- between 17.04.2024 and 29.05.2024.

10. According to the complainant, the accused failed to complete the construction work within the stipulated period and later admitted



that a sum of Rs.1,48,000/- remained as excess amount and agreed to return the same. It is further stated that since the complainant's brother intended to go abroad, the accused issued the cheque in favour of the complainant. In order to prove his case, the complainant has produced Ex.P1 to Ex.P5. Ex.P1 cheque and the signature therein have not been denied by the accused. Therefore, statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act arises in favour of the complainant.

11. However, it is a settled principle of law that such presumption is rebuttable. The accused can rebut the same either by adducing defence evidence or by eliciting contradictions in the cross examination of the complainant. In this context it is very essential to refer the judgement of the Hon'ble Apex Court in Rangappa vs Sri Mohan, wherein it has been held as follows;-

“14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast



doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. 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 accused/defendant cannot be expected to discharge an unduly high standard or proof. 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."

Hence, from the above said dictum, it is clear that the accused is entitled to rebut the said presumption by raising a probable defence either through effective cross examination of the complainant or by adducing independent evidence.

12. In the present case, even according to the complainant, the underlying transaction was not between the complainant and the accused, but between the accused and the complainant's brother, Backiya Narayanan. During cross examination, PW1 has clearly admitted that he does not know the date of advancement of the amount, the exact amount paid and that the entire transaction was known only to his



brother. The relevant portion of the cross examination is extracted hereunder for better appreciation;-

இவ்வழக்கில் சொல்லியுள்ள பாக்கியநாராயணன் என்பவர் யார் என்றால் எனது தம்பி ஆவார். என் தம்பிக்குத்தான் பொறியாளர் கட்டிடம் கட்டி கொடுத்தார் என்றால் சரிதான். மேற்படி கட்டிடம் யார் பெயரில் உள்ளது என்றால் பாக்கியநாராயணனிடம் கேட்டால்தான் தெரியும். சீரமைப்பு பணி செய்யக்கூடிய கட்டிடம் யார் பெயரில் உள்ளது என்றால் தெரியாது. பாக்கியநாராயணன் என்பவர் எதிரியை என்னிடம் அறிமுகம் செய்து வைத்தார் என்றால் சரிதான். நான் எனது புகாரில் எதிரியை பாக்கியநாராயணனுக்கு நான் தான் அறிமுகம் செய்து வைத்தேன் என்று குறிப்பிட்டிருந்தால் தவறுதான். எதிரிக்கு எந்தெந்த தேதிகளில் எவ்வளவு தொகை கொடுத்தேன் என்று குறிப்பிட்டு சொல்லமுடியுமா என்றால் என் தம்பிக்குதான் தெரியும். அவர்தான் என்னிடம் பொறுப்பை ஒப்படைத்தார்.

13. The PW1 has further admitted that the amount was paid from the account of his brother and his brother's wife. He has also admitted that no power of attorney was executed by his brother in his favour



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authorising him to recover the amount. The relevant portion of the cross examination is extracted hereunder for better appreciation;-

பண பரிவர்த்தனை எந்த வங்கி கணக்கில் நடைபெற்றது என்றால் எனது தம்பி கணக்கு மற்றும் என் தம்பி மனைவியின் கணக்கில் இருந்து எதிரி கணக்கிற்கு செலுத்தப்பட்டது. மேற்படி வங்கி பரிவர்த்தனையை நிரூபிக்க ஆவணம் உள்ளதா என்றால் உள்ளது. மேற்படி ஆவணத்தை தற்போது நான் நீதிமன்றத்தில் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. கண்ணன் என்பவர் மூலமாகத்தான் எதிரிக்கு பாக்கியநாராயணனை தெரியும் என்று சொன்னால் சரியல்ல. கட்டிட வேலை நடைபெறும்போது எதிரிக்கும் பாக்கியநாராயணனுக்கும் மனகசப்பு ஏற்பட்டது என்றால் சரிதான். எதிரி குறிப்பிட்ட காலத்திற்குள் கட்டிட வேலையை முழுமையாக முடிக்காத காரணத்தால் என் தம்பி என் பெயருக்கு காசோலை தருமாறு சொல்லிவிட்டு வெளிநாட்டிற்கு சென்றுவிட்டார். இந்த வழக்கை நடத்துவதற்கு என் சகோதரர் எனக்கு அதிகாரம் கொடுத்துள்ளாரா என்றால் இல்லை. காசோலை எனது பெயரில் இருப்பதால் நான் வழக்கை தாக்கல் செய்துள்ளேன். மேற்படி



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வழக்கை காசோலை எந்த தேதியில் கொடுக்கப்பட்டது என்றால் ஒரு வருடத்திற்கு மேல் ஆகிவிட்டதல் தேதி நினைவில்லை.

14. Hence, these admissions clearly show that the complainant has no personal knowledge regarding the transaction. In cases of this nature, where the complainant is not a direct party to the transaction, his personal knowledge becomes very important to prove the legally enforceable debt.

15. Further, the complainant has stated in his complaint that the cheque was issued in the presence of one Kannan during a panchayat. However, during cross examination, he has not consistently supported the said version, thereby creating doubt regarding the issuance of cheque.

16. Though it is true that even if the underlying transaction was with the complainant's brother, the issuance of cheque in favour of the complainant may amount to discharge of liability, the complainant must prove his entitlement and knowledge regarding the transaction.



17. In the present case, the complainant has failed to establish the same. Moreover, the non-examination of the complainant's brother, who is the main person involved in the transaction, further weakens the case of the complainant. Hence, this court finds that the accused has raised a probable defence and rebutted the presumption available under law. Accordingly, this Point is answered in the Negative.

Point No.2: Whether the said cheque, when presented for encashment, was dishonoured and whether the statutory requirements under Section 138 of the Negotiable Instruments Act were duly complied with by the complainant?

18. The complainant has produced Ex.P2 bank return memo, which shows that the cheque was dishonoured on 25.07.2024 with the endorsement Payment Stopped by Drawer. It is well settled that dishonour of cheque on the ground Payment Stopped by Drawer also attracts Section 138 of the Negotiable Instruments Act.

19. The complainant has also produced Ex.P3 legal notice dated 12.08.2024, Ex.P4 postal receipt and Ex.P5 tracking report to show that the statutory notice was issued within the prescribed time and was duly served on the accused. Despite receipt of notice, the accused has not



repaid the amount within the statutory period. Therefore, this court finds that the complainant has complied with all the mandatory requirements under Section 138 of the Negotiable Instruments Act. Accordingly, this Point is answered in the Affirmative.

Point No.3: Whether the accused has successfully rebutted the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act by raising a probable and acceptable defence?

20. As already discussed, the burden lies on the accused to rebut the statutory presumption once execution of cheque is admitted. In the present case, the accused has not entered into the witness box and has not adduced any oral evidence. However, it is a settled principle that the accused can rebut the presumption through the cross-examination of the complainant. During cross examination of PW1, the accused has established that the complainant has no personal knowledge regarding the transaction and that the transaction was entirely between the accused and the complainant's brother. It is also established that no document has been produced to show that the complainant was authorised to receive the amount. Further, the contradictions in the version of PW1 regarding the issuance of cheque also create doubt about



the case of the complainant. Though Ex.D1 (CSR copy) alone is not sufficient, the overall circumstances brought out during cross examination probalilise the defence of the accused. The standard required to rebut the presumption is only preponderance of probabilities. In the present case, the accused has successfully created such probability. Hence, this court holds that the accused has successfully rebutted the statutory presumption. Accordingly, this Point is answered in the Affirmative.

Point No.4: Whether the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and if so, what relief the complainant is entitled to?

21. In view of the findings given in Point No.1 and Point No.3, this court is of the considered opinion that the complainant has failed to prove that the cheque was issued towards discharge of a legally enforceable debt or liability. Though the complainant has proved the dishonour of cheque and compliance of statutory requirements, the existence of legally enforceable debt has not been established. The lack of personal knowledge of PW1, non examination of the complainant's brother and material contradictions in the evidence are fatal to the case



of the complainant. Therefore, the benefit of doubt must be given to the accused.

22. Accordingly, the accused is found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act.

23. In the result, both the accused, namely the 1st accused being the Proprietor and the 2nd accused being the Proprietorship concern, are found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and are acquitted under Section 255(1) of the Code of Criminal Procedure of the charge for the said offence. Consequently, the complaint stands dismissed. The bail bond executed by the accused shall stand cancelled and the sureties shall stand discharged, after the expiry of the appeal period.

Typed by me in my computer, verified by me to be correct and pronounced in open court on 23th day of March, 2026.

**Judicial Magistrate,
Fast Track Court at Magisterial level
Karaikudi(FAC).**



Chart for prosecution side witnesses:		
Witnesses	Name of Witness	Description
PW-1	Anbu Meyyappan	Complainant
Defence Side Witness - NIL		
Complainant Side Exhibits -		
Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex.P1	The Cheque bearing No.022073 dated 18.07.2024	PW1
Ex.P2	The bank return memo dated 25.07.2024	PW1
Ex.P3	The legal notice issued by the complainant to the accused dated 12.08.2024	PW1
Ex.P4	The postal receipt evidencing dispatch of the legal notice	PW1
Ex.P5	The online consignment tracking report	PW1
Defence Side Exhibits -		
Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex.D1	The CSR No.655 of 2024 dated 10.10.2024 issued by the Karaikudi South Police	PW1



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(FAC).**

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 : 23.03.2026.



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