

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE, THANJAVUR.

PRESENT: **Thiru. P. Velmurugan, B.A., B.L.,**
Principal Sessions Judge, Thanjavur.

Tuesday, the 28th day of April, 2026.

(Thiruvalluvarandu 2057 Sri Parabhava Varudam Chithirai Thingal 15th day)

Criminal Appeal No. 65/2024

CNR No. TNTJ01 – 003157 – 2024

Name of the court from which the Criminal Appeal is preferred : Fast Track Court at Magisterial Level, Thanjavur.

Trial Court Case No. : STC No. 165/2021

Criminal Appeal No. : CA No. 65/2024

Name of the Appellant / the Accused : P. Jothimani, aged 40/2026,
D/o. Pachimuthu,
No. 48, 2nd Street, RTP Nagar,
Keelvastha Chavadi,
Pattukkottai Bypass, Thanjavur.

Name of the Respondent / the Complainant : E. Rajeswari, aged 55/2025,
W/o. Elangovan,
No. 6/52, Cauvery Nagar West,
Pudukkottai Road, Thanjavur.

Date of order of the Trial court : 20.02.2024

Result of the Trial court : The appellant herein / the accused was found guilty for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, and convicted under Section 255(2)

of Code of Criminal Procedure, 1973, and sentenced to undergo Simple Imprisonment for one year and to pay a compensation of Rs. 30,00,000/- within one month under Section 357(3) of Code of Criminal Procedure, 1973, in default of such payment, to undergo Simple Imprisonment for two months.

Whether the Criminal Appeal is allowed or modified, or confirmed

: In the result, this Criminal Appeal is allowed. The judgment dated 20.02.2024 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur, in S.T.C.No.165/2021, convicting and sentencing the appellant/ accused to undergo rigorous imprisonment for one year and to pay compensation of Rs. 30,00,000/-, in default to undergo simple imprisonment for two months, for the offence under Section 138 of the Negotiable Instruments Act, 1881, is set aside. Consequently, the appellant/ accused is acquitted of the said offence. The bail bond, if any, executed by the appellant/ accused is ordered to be cancelled.

Date of or on which :

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|----|--------------|---|------------|
| 1. | Presentation | : | 13.03.2024 |
| 2. | Filing | : | 15.03.2024 |
| 3. | Last hearing | : | 30.03.2026 |
| 4. | Judgment | : | 28.04.2026 |

This Criminal Appeal was taken before this Court for final hearing on

30.03.2026 in the presence of Mr.K.Parthiban, Learned Advocate appearing for the Appellant and Mr.R.M.Raj, Learned Advocate appearing for the Respondent, and, upon hearing the arguments advanced on both sides and upon perusing the available records and having stood over for consideration till this day, this Court delivered the following ...

J U D G M E N T

(1) This Criminal Appeal has been filed by the appellant / the accused under Section 374(3) of Code of Criminal Procedure, 1973, to set aside the judgment delivered in STC No. 165/2021 dated 20.02.2024 by the Learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur.

(2) The respondent / the complainant had filed a complaint under Sections 138 and 142 of Negotiable Instruments Act, 1880 (hereinafter referred to as “NI Act”), against the accused. After taking the complaint on file, the Learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur, issued summons. The accused appeared and the Trial was conducted. On the side of the complainant, the complainant and Balaji were examined as PW1 & PW2 respectively and seven documents were marked as Ex.P1 to Ex.P7. After the closure of the evidence, the accused was questioned under Section 313(1)(b) of Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”). The accused denied all such circumstances as false. On the side of the accused, Munusamy and Elavarasan were examined as

RW1 & RW2 respectively and no documents were marked.

(3) After hearing the arguments, the Trial Court holds that the appellant herein / the accused was found guilty for the offence punishable under Section 138 of Negotiable Instruments Act and convicted under Sections 225(2) & 357(3) of CrPC and sentenced to undergo Simple Imprisonment for one year and to pay a compensation of Rs. 30,00,000/- within one month, in default of such payment, to undergo Simple Imprisonment for two months.

(4) Aggrieved by the judgment, the accused preferred this appeal before this Court in CA No. 65/2024.

(5) Heard both sides and perused the records.

(6) The case of the respondent / the complainant is that:

The accused, who has acquaintance with the complainant, agreed to sell a property for a total consideration of Rs. 30,00,000/- on 13.09.2018. Pursuant thereto, a sale agreement was entered into and the complainant paid a sum of Rs. 2,00,000/- in cash. Thereafter, the complainant paid a sum of Rs.28,00,000/-, comprising Rs.9,60,600/- through bank transaction and the remaining amount of Rs.18,39,400/- in cash. Consequently, a sale deed was executed and registered on 17.10.2018 in favour of the complainant. Thereafter, the complainant came to know that the property was affected by encumbrance and suffered from defects in title. When questioned, the accused assured that he would execute a sale deed for another

property. However, despite such assurance, the accused failed to do so and kept evading the complainant without registering another property. Subsequently, on 28.09.2020, the complainant lodged a complaint before the Superintendent of Police. During the course of inquiry, the accused agreed to refund the sale consideration and, in discharge of his liability, issued a cheque bearing No.000001 dated 30.04.2021 for a sum of Rs. 30,00,000/- drawn on HDFC Bank, New Bus Stand Branch, Thanjavur. When the said cheque was presented for collection on 12.07.2021 through the complainant's account at the State Bank of India, Thanjavur, it was returned unpaid on 13.07.2021 with the endorsement "Insufficient Funds". Thereafter, a statutory notice dated 05.08.2021 was issued to the accused at his Aadhaar address at Chidambaram, at his native place at Karaimeendar Kottai, and at the address of his sister. The accused, having received the statutory notice at his sister's address, issued a reply notice through his counsel dated 18.08.2021, which was received by the counsel for the complainant on 23.08.2021. Hence, this complaint.

(7) On the side of the complainant, the complainant and Balaji were examined as PW1 & PW2 respectively and seven documents were marked as Ex.P1 to Ex.P7.

(8) On the side of the accused, Munusamy and Elavarasan were examined as RW1 & RW2 respectively and no documents were marked.

(9) The case of the appellant / the accused is that:

The conviction and sentence imposed by the Trial Court are contrary to law, evidence, and the overall probabilities of the case. The findings of the Trial Court are legally unsustainable, having been rendered without proper appreciation of the pleadings, evidence, and settled legal principles governing proceedings under Section 138 of the NI Act. The Trial Court has failed to properly evaluate the evidence of the complainant and her witness, and instead selectively relied upon their chief examination, while ignoring crucial aspects brought out during cross-examination. At the same time, the defence evidence adduced through DW1 and DW2 was not given due consideration, resulting in a one-sided and erroneous appreciation of facts. Though the statutory presumptions under Sections 118 and 139 of the NI Act initially operate in favour of the complainant, the appellant successfully raised a probable defence through effective cross-examination and materials on record. However, the Trial Court wrongly concluded against the appellant. The case of the complainant arises out of a property transaction with the appellant's father and not with the appellant directly. The cheque in question was allegedly issued in connection with such transaction, and therefore, does not represent any legally enforceable liability of the appellant. The complainant also failed to produce essential documents, including proof of consideration and the sale deed, and there exist material contradictions regarding the transaction amount, which were not properly appreciated by the Trial Court. Further, the dispute between the parties is essentially civil in nature, arising out of a property transaction and alleged encumbrance. The complainant has

attempted to give a criminal colour to a civil dispute without establishing the necessary ingredients of an offence under Section 138 of the NI Act. The Trial Court failed to consider this fundamental aspect and erroneously proceeded to convict the appellant. In view of the above, the judgment of the Trial Court suffers from serious legal and factual infirmities, including misapplication of law, improper appreciation of evidence, and failure to recognize the appellant's rebuttal. Therefore, the conviction and sentence imposed on the appellant by the trial court should be set aside, and the appellant is entitled to an order of acquittal.

(10) At this juncture, the point that arises for consideration in this Criminal Appeal is that:

Whether this Criminal Appeal is to be allowed as sought for?

Point:

(11) The learned counsel appearing for the appellant / the accused filed a written argument, wherein it is contended that:

(11.1) Although the appellant did not adduce independent documentary evidence, he effectively established his defence through cross-examination of the complainant and supporting testimony of DW1 and DW2.

(11.2) The appellant admitted issuance of the cheque but consistently maintained that it was given only as a security instrument, not towards discharge of

any legally enforceable debt.

(11.3) While the complainant may have discharged her initial burden under Sections 118 and 138 of the NI Act, thereby raising a statutory presumption, the accused has successfully rebutted the same on the standard of preponderance of probabilities, as permitted under Sections 118 and 139 of the NI Act.

(11.4) The entire claim arises out of a property transaction between the complainant and the appellant's father, and not the appellant personally. Crucially, the complainant failed to produce foundational documents such as the sale agreement and sale deed, which are essential to prove payment of Rs.30,00,000/- and existence of liability. Mere production of the cheque is insufficient to establish a legally enforceable debt in the absence of proof of the underlying transactions.

(11.5) The property sold by the appellant's father was free from encumbrance. The complainant's allegation regarding encumbrance on the property remains unsubstantiated, as no documentary evidence was produced. There are also material inconsistencies regarding the consideration amount and the timing of the claim, particularly when the sale deed was not cancelled prior to demanding repayment. These gaps significantly weaken the complainant's case and support the accused's defence.

(11.6) The Trial Court erred in drawing adverse conclusions against the accused, wrongly insisting on independent defence evidence and misapplying the

legal presumption. The Trial Court failed to appreciate that the accused had raised a probable and plausible defence, thereby shifting the burden back to the complainant, which she failed to discharge.

(11.7) Additionally, the appellant has sought to produce the sale deed as additional evidence at the appellant stage, contending that it was suppressed by the complainant and is crucial to establish the true nature of the transaction.

(11.8) The appellant has successfully rebutted the statutory presumption by exposing the complainant's failure to prove the underlying transaction and liability, making the conviction unsustainable in law.

(11.9) It is, therefore, prayed to set aside the conviction and sentence imposed by the Trial Court and acquit the accused from the charges.

(12) In support of his argument, the learned counsel appearing for the appellant / the accused relied upon the following judgments:

(12.1) Rajesh Jain v Ajay Singh dated 09.10.2023 of the Hon'ble Supreme Court of India, reported in 2023 INSC 888 – the accused can rebut the presumption of a legally enforceable debt not by proving innocence beyond reasonable doubt but by showing, on a preponderance of probabilities through direct or circumstantial evidence, that no such debt existed, after which the burden shifts back to the complainant to prove the liability.

(12.2) AM. Narayana Babu v J. Geetha dated 24.07.2024 of the Hon'ble High Court of Madras, reported in 2025(1) MWN (Cr.) DCC 186 (Mad.) – Mere dishonour of a cheque does not attract Section 138 of the NI Act, unless the complainant first proves the existence of a legally enforceable debt, and since no such debt was established beyond the cheque itself, especially in the light of the defence that it was issued as security, the presumption under Section 139 of the NI Act stood rebutted.

(12.3) S. Prabhakaran v R. Vadivel dated 28.07.2025 of the Hon'ble High Court of Madras, reported in (2026) 1 MLJ (Crl) 76 – When the debt is lesser than the cheque amount, it cannot be construed that the cheque had been issued for any legally enforceable debt, and, when a portion of the loan amount, which is due under the cheque, is paid and if the payee or drawer failed to adjust the same, no offence can be made out under Section 138 of the NI Act.

(12.4) C. Georland v F. Franklin dated 26.09.2024 of the Hon'ble Madurai Bench of Madras High Court, reported in 2025 (1) MWN (Cr.) DCC 69 (Mad.) – It is not necessary that the accused himself must come to the box and give evidence. It is enough if the presumption is rebutted either by examining any independent witness or by bring on record the circumstances, which are available in his favour.

(12.5) MN. Rangasamy v A. Krishnasamy dated 30.10.2008 of the

Hon'ble High Court of Madras, reported in 2008 (2) MWN (Cr.) DCC 116 –

When the burden is heavily on the complainant to prove that cheque was drawn by the accused only to discharge a subsisting liability or debt, there was no material placed before the Trial Court on the side of the complainant as to show when actually the alleged amount was disbursed to the accused.

(12.6) AL. Kumar v KC. Raveendran of the Hon'ble High Court of Madras, reported in 2025 (2) TNLR 489 (Mad.) – The respondent failed to produce any document to show that such a huge amount was lent to the petitioner.

(13) The learned counsel appearing for the respondent / the complainant filed a written argument, wherein it is contended that:

(13.1) The appeal filed by the accused is baseless and liable to be dismissed. The Trial Court correctly appreciated evidence and applied statutory presumption. There is no illegality or perversity in the judgment of Trial Court. The judgment of the Trial Court is well–reasoned and legally sound.

(13.2) The accused issued the cheque towards a liability arising from a defective property transaction, and, admitted the transaction and relationship. The accused failed to settle the dispute, and, issued a cheque that was subsequently dishonoured.

(13.3) The complainant, on the other hand, successfully proved the payment, established the issuance of and dishonour of the cheque, and complied with the

statutory notice requirements.

(13.4) The accused failed to produce any documentary evidence, and, did not rebut the statutory presumption and raises a false defence.

(14) In support of his argument, the learned counsel appearing for the respondent / the complainant relied upon the following judgments:

(14.1) Rangappa v Sri Mohan, reported in (2010) 11 SCC 441 – Presumption includes existence of legally enforceable debt.

(14.2) Kumar Exports v Sharma Carpets, reported in (2009) 2 SCC 513 – Bare denial is not sufficient.

(14.3) Bir Singh v Mukesh Kumar, reported in (2019) 4 SCC 197 – Even blank cheque voluntarily given attracts presumption.

(14.4) Laxmi Dyechem v State of Gujarat, reported in (2012) 13 SCC 375 – Even technical dishonour attracts liability.

(14.5) KN. Beena v Muniyappan, reported in (2001) 8 SCC 458 – accused must prove defence; mere denial is insufficient.

(15) This Court has heard the arguments advanced on both sides and perused the records.

(16) The complainant has filed the complaint under Section 138 of the NI Act against the accused stating that the cheque had been issued by the accused for a sum

of Rs. 30,00,000/- was dishonoured, and even after, the issuance of the notice, the accused did not come forward to settle the amount. At this juncture, this Court relied upon the judgment delivered in **Jugesh Sehgal v Shamsher Singh Gogi reported in (2009) 14 SCC 683**, wherein it is stated as follows:

“9. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

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

(iv) That cheque is 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;

(v) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank

regarding the return of the cheque as unpaid; and

(vi) 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”

(17) In view of the aforementioned judgment, the complainant, in order to discharge the initial burden cast upon him, must establish the fundamental facts mentioned above. In this case, to prove his claim, the complainant and one Balaji, friend of complainant’s husband have been examined as PW1 & PW2 and submitted seven documents, which were marked as Ex.P1 to Ex.P7. The issuance of the cheque drawn on the bank account maintained by the accused is established through Ex.P1 – Cheque No. 000001 dated 30.04.2021. The complainant has proved that the said cheque was presented for encashment within six months through Ex.P2 – Pay-in-Slip dated 12.07.2021, and that the cheque was returned unpaid, as shown in Ex.P3 – Bank Return Memo dated 13.07.2021. It is also established that the complainant sent a written statutory notice to the accused, which is evidenced by Ex.P4 – Office Copy of Legal Notice dated 05.08.2021. Through Ex.P5 – Postal Acknowledgment Card, it is established that the accused received the one of the notices on 10.08.2021. Other three notices were returned as “Left”, which is evident through Ex.P6 – Returned Notices with Postal Cover. Ex.P7 – Reply Notice dated 18.08.2021 was issued by the accused.

(18) The complainant has established all the essential ingredients constituting an offence under Section 138 of the NI Act, as laid by the Hon'ble Supreme Court in *Jugesh Sehgal v. Shamsheer Singh Gogi*, except the second ingredient that is "The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability". The explanation for the Section 138 of the NI Act states that: "*debt of other liability*" means "*a legally enforceable debt or other liability*".

(19) The defence of the accused is that there was a property dispute, the matter was not adjudicated before any competent civil court, and the parties were taken before police where a panchayat was conducted outside the police station. It is the main contention of the appellant/accused is that the cheque in question was not issued towards discharge of any legally enforceable debt, but was obtained as a security pursuant to a compromise arrived at during a police-mediated panchayat.

(20) In the present case, it is an admitted fact that the transaction between the parties arises out of a property sale. The complainant claims that the property was affected by encumbrance and defective title. However, admittedly, the sale deed dated 17.10.2018 has not been cancelled and continues to stand in the name of the complainant. During the cross examination of PW1 before the trial court, the complainant stated as follows:

“ கடந்த 17.10.2018 தேதியில் எதிரியின் தகப்பனார் பேச்சிமுத்துவிடம் நான் காலிமனை ஒன்றை கிரையம் வாங்கியிருந்தேன் என்றால் சரிதான். மேற்படி சொத்து வில்லங்கமானது என்று எனக்கு பின்னர் தெரிய வந்தது. யார் சொன்னார்கள் என்றால் அந்த இடத்திற்கு

பக்கத்தில் உள்ளவர்கள் சொன்னார்கள். மேற்படி சொத்து வில்லங்கம் என்பதை காட்ட நான் இந்த வழக்கில் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை. நான் கிரையம் பெற்ற சொத்தில் வில்லங்கம் இருந்தது தொடர்பாக பலமுறை எதிரியின் தகப்பனாரிடம் கேட்டிருந்தோம். நாங்கள் கிரைய தொகையை திரும்ப கேட்டு எதிரியின் தகப்பனார் எங்களுக்கு செலுத்தி வைக்காத பட்சத்தில் நாங்கள் காவல் துறையில் புகார் செய்தோம் என்றால் சரிதான்.

2) நான் கொடுத்த புகாரில் காவல் துறையினர் விசாரணை செய்து கட்டாயப்படுத்தி எதிரியின் காசோலையை எனக்கு வாங்கி தந்தார்கள் என்றால் கட்டாயப்படுத்தி வாங்கி தரவில்லை. இடப்பிரச்சினை எதிரியின் தகப்பனாருக்கும் எனக்கும் என்ற நிலையில் நான் எதிரியிடமிருந்து காசோலை வாங்கவோ, அவர் மீது வழக்கு போடவோ முகாந்திரம் எதுவும் இல்லை என்றால், வரவு செலவு கணக்குகளை எதிரி தான் பார்த்து வந்தார். அதனால் எதிரி தான் காசோலை கொடுத்தார். எதிரிதான் அதற்கு பொறுப்பு. எதிரி தாமாக முழுமனதோடு காசோலை வழங்கவில்லை என்றாலும், காவல் துறையை வைத்து மிரட்டி தான் காசோலை வாங்கப்பட்டது என்றாலும், காவல் துறையில் புகார் கொடுத்தபோது இருதரப்பையும் வெளியில் வைத்து பேசிக்கொள்ள சொன்னதன்பேரில் எதிரி தாமாக முன்வந்து தான் கடந்த 30.04.2021 தேதியில் காசோலை வழங்கினார்.

PW2 Balaji who is the friend of PW1's husband and both are working at professors at Sarforji Government College, who deposed during cross examination is as follows:

“ எதிரியின் தகப்பனாரை எனக்கு தெரியும். எப்போது தெரியும் என்றால் மனை வாங்குவதற்கு பேச ஆரம்பித்த போது உன் இருந்தேன்... .. காசோலை திருப்பப்பட்ட விவரம் எனக்கு தெரியும்.

2. எதற்காக காசோலை எதிரி புகார்தாரருக்கு கொடுத்தார் என்று எனக்கு தெரியாது என்றால், தெரியும். ரூ.30,00,000/-த்திற்கு எதிரியின் தகப்பனார் இடம் விற்ற வகையில் அவர்களுக்கு, சொந்தம் இல்லாத இடத்தை விற்றதாக சொல்லியிருந்ததால் அவர்கள் வாங்கியிருந்த பணத்திற்காக காசோலை கொடுத்தார்கள். இடப்பிரச்சினை ஏற்பட்டால் சிவில் வழக்கு தான் தொடரமுடியும் என்றாலும், காசோலை மோசடி வழக்கு போடமுடியாது என்றாலும், சரியல்ல. இந்த வழக்கில் எதிரியின் தகப்பனார் எழுதி கொடுப்பதாக சொல்லி வாங்கியிருந்த பணத்தை கொண்டு எதிரியின் சகோதரி திருமண ஏற்பாடு செய்துள்ளதால் மாரியம்மன் கோவில் அருகேயிருந்த இடத்தை விற்றுவிட்டு பணம் தருவதாக சொல்லியிருந்தும் அது நடக்காத காரணத்தால் நானும், புகார்தாரர் கணவரும் சென்று கேட்டபோது காசோலை கொடுத்தார்கள்.

3. நான் மேலே சொல்லியுள்ள விவரங்கள் அனைத்தும் பொய்யாக சொல்கிறேன் என்றாலும், அவ்வாறு இடம் விற்று பணம் தருவதாக யாரும் சொல்லவில்லை என்றாலும் சரியல்ல.”

(21) From the evidence of PW1 and PW2, it is evident that there are material contradictions and inconsistencies regarding the nature of the transaction, the alleged defect in title, and the circumstances under which the cheque was issued. While PW1 admits that no documentary proof has been produced to establish encumbrance over the property and that the dispute arose based on hearsay information, she also admits that the cheque was ultimately issued during police intervention and subsequent discussions between the parties.

(22) Furthermore, any prudent purchaser of immovable property would ordinarily verify the title and ascertain whether there are any encumbrances over the property prior to purchase. In the present case, the complainant has admitted that no documentary evidence has been produced to establish the alleged encumbrance and that the claim of defect in title is based on hearsay information. This casts serious doubt on the complainant's version regarding the existence of a legally enforceable liability.

(23) Similarly, the testimony of PW2 does not conclusively establish the existence of a legally enforceable debt; rather, his evidence appears to be based on hearsay and assumptions regarding the transaction, and he is unable to clearly explain the exact liability or enforceable obligation giving rise to the issuance of the cheque. Thus, the testimonies of PW1 and PW2, when read as a whole, do not establish with

certainty that the cheque was issued in discharge of a legally enforceable debt or liability. On the contrary, the evidence probalises the defence version that the cheque was issued during settlement discussions as a security arrangement arising out of a civil property dispute.

(24) At this juncture, it is pertinent to note that the appellant has filed CrI.M.P. No.6333/2024 seeking to mark a certified copy of the sale deed dated 17.10.2018 as additional evidence. The said document reveals that the property stands in the name of the respondent/complainant. This Court finds that the said document is a vital piece of evidence necessary for the proper adjudication of the dispute; hence, the same deserves to be taken on record and marked as Ex.D1.

(25) When the sale deed remains valid and subsisting, the question of refund of the entire sale consideration does not arise, unless the said sale is set aside by a competent civil court. If the complainant was aggrieved by any alleged encumbrance or defect in title, the proper course would have been to approach the competent civil court seeking cancellation of the sale deed or other appropriate relief.

(26) In this context, this Court places reliance upon the judgment of the Hon'ble Supreme Court of India in “ *G. Sagar Suri v. State of U.P., (2000) 2 SCC 636* ”, wherein it has been held that

“ criminal proceedings cannot be used as a shortcut to settle civil disputes and that a matter essentially of a civil nature should not

be given a criminal colour.”

In the said decision, the Hon’ble Supreme Court has categorically observed that the machinery of criminal law should not be allowed to be used as an instrument of harassment or coercion in disputes which are predominantly civil in nature. It was further held that where the allegations made in the complaint, even if taken at face value, disclose only a civil dispute without any element of criminality, continuation of criminal proceedings would amount to an abuse of the process of law. Applying the above settled principle to the present case, this Court is of the considered view that the grievance of the complainant, if any, arises out of a transaction governed by civil law, and the appropriate remedy lies before the competent civil court. Therefore, initiation and continuation of criminal proceedings in respect of such dispute is unsustainable in law.

(27) It is evident that instead of approaching the civil court for adjudication of alleged defects, the parties approached the police and a panchayat was conducted outside the police station, wherein a compromise is stated to have been arrived at, and the cheque in question was issued. Such police-mediated settlements in civil disputes have no legal sanctity. In this context, this Court relies upon the judgment of the Hon’ble Madras High Court in “ ***P. Ramasamy v. State*, 2019 SCC OnLine Mad 22431**”, wherein it has been held that:

“the police have no authority to interfere in purely civil disputes or to compel parties to enter into settlements, as such actions

would be beyond the scope of their statutory powers.”

Similarly, in “**S. Rajendran v. Inspector of Police, 2014 SCC OnLine Mad 1045**”, it has been further held that:

“the police cannot assume the role of a civil court in adjudicating disputes relating to property or contractual obligations, nor can they compel or supervise settlements between parties, as such matters fall within the domain of competent civil courts.”

The ratio laid down in the above decisions makes it abundantly clear that any compromise allegedly secured through police intervention in a civil dispute lacks legal enforceability and cannot be treated as a valid foundation for subsequent liability. If there was any allegation of fraudulent conduct, the proper course for the police would have been to register an FIR and proceed strictly in accordance with law, which admittedly was not done in the present case. In these circumstances, the defence version that the cheque was issued only as a security pursuant to a compromise appears to be acceptable on the basis of preponderance of probabilities, and so, it can be accepted.

(28) Further, this Court places reliance upon the judgment of the Hon’ble Supreme Court in **Indus Airways Pvt. Ltd. v. Magnum Aviation Pvt. Ltd., (2014) 12 SCC 539**, wherein it has been held that for an offence under Section 138 of the Negotiable Instruments Act, the cheque must have been issued in discharge of a legally enforceable debt or liability subsisting on the date of its issuance. It was

further held that where a cheque is issued in respect of a liability which is contingent or has not yet become due, such cheque cannot be construed as having been issued towards a legally enforceable debt, and consequently, the essential ingredients of the offence under Section 138 would not be attracted.

(29) Similarly, in **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**, the Hon'ble Supreme Court has elaborately considered the scope of the presumption under Section 139 of the Negotiable Instruments Act and held that the statutory presumption is rebuttable on the standard of preponderance of probabilities, either by adducing direct evidence or by relying upon the materials brought on record by the complainant. Thus, the law laid down in the above decisions makes it clear that unless the cheque is shown to have been issued towards a subsisting legally enforceable debt, and unless the statutory presumption remains unrebutted, the offence under Section 138 of the Negotiable Instruments Act cannot be said to have been made out.

(30) In the present case, the surrounding circumstances probabilise the defence of the appellant that the cheque was issued only as a security pursuant to a compromise and not in discharge of any subsisting or legally enforceable debt or liability, particularly when the sale deed remains unchallenged and no civil proceedings have been initiated for its cancellation. Therefore, this Court is of the considered view that, as on the date of issuance of the cheque, no legally enforceable

debt or liability existed. Consequently, the appellant has successfully rebutted the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act.

(31) Further, if the accused or his father had indeed acted with fraudulent intent in selling the property, the normal course would have been for the police to register an FIR, conduct an investigation, and proceed in accordance with law. However, admittedly, no FIR has been registered in the present case. This circumstance lends support to the defence version that the dispute is essentially civil in nature.

(32) In such circumstances, this Court finds considerable force in the contention of the appellant that the cheque was issued only as a security instrument pursuant to an informal settlement and not towards the discharge of any subsisting or legally enforceable debt. It is also pertinent to note that the sale deed in question continues to stand in the name of the complainant and has not been set aside by any competent civil court. In the absence of any cancellation or decision by a competent court, the liability, if any, cannot be treated as legally enforceable and remains contingent in nature.

(33) In view of the foregoing discussion, this Court holds that, as on the date of issuance of the cheque, no legally enforceable debt or liability existed and the alleged liability had not crystallised. The cheque in question appears to have been

issued only as a security pursuant to a police-mediated compromise and not towards the discharge of any subsisting liability. The appellant has successfully rebutted the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act on the standard of preponderance of probabilities, while the complainant has failed to establish the existence of a legally enforceable debt or liability beyond reasonable doubt. The learned Trial Magistrate failed to properly consider these material aspects and proceeded on an erroneous assumption regarding the existence of liability, thereby rendering the judgment of conviction unsustainable in law and warranting interference by this Court.

(34) Considering the above facts and circumstances of the case, this Court is of the view that the appellant/accused has succeeded in rebutting the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and in raising a probable defence. Hence, this Court finds that the findings of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur, warrant interference, and the accused is entitled to acquittal. Thus, the point is answered accordingly.

(35) In the result, this Criminal Appeal is allowed. The judgment dated 20.02.2024 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur, in S.T.C.No.165/2021, convicting and sentencing the appellant/accused to undergo rigorous imprisonment for one year and to pay

compensation of Rs. 30,00,000/-, in default to undergo simple imprisonment for two months, for the offence under Section 138 of the Negotiable Instruments Act, 1881, is set aside. Consequently, the appellant/accused is acquitted of the said offence. The bail bond, if any, executed by the appellant/accused is ordered to be cancelled.

This Judgment is dictated to the Stenographer Grade – I of this Court, typed by her in computer directly, corrected and pronounced by me in the open Court, on this 28th day of April, 2026.

Principal Sessions Judge,
Thanjavur.

Document marked on the side of the appellant / accused as per order passed in CrMP No.6333/2024 :-

Ex.D1 17.10.2018 Online certified copy of the registered sale deed bearing Document No. 6045/2018 stands in the name of the complainant, Rajeswari, executed by M. Pechimuthu, the father of the appellant/accused.

Principal Sessions Judge,
Thanjavur.

Copy to:– The Judicial Magistrate, Fast Track Court at Magisterial Level,
Thanjavur.

Draft / Fair Copy of Judgment in
CA No. 65/2024
Prl. Sessions Court, Thanjavur.
Dated: 28.04.2026.