

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE,  
TIRUVANNAMALAI.

PRESENT: Thiru.*P. Mathusuthanan, B.A.,B.L.*,  
Principal Sessions Judge,  
Tiruvannamalai.

Saturday, the 02<sup>nd</sup> day of August, 2025

**M.P.No.2/2024 in C.A.No.28/2024**  
**CNR No: TNTM01-000947-2024**

B.Arumugam, S/o.Balakrishnan  
D.No.474/K9, Ponnusamy Nagar  
Main Road (Dr.Nagarajan Ortho House  
Opposite Side), Vengikkal, ... Petitioner/ Appellant /  
Thiruvannamalai. Accused

Versus

V.Sundhararajan, S/o.Varatharajan,  
No.1, Sunnambukara Street, ... Respondent/Respondent/  
Thiruvannamalai. Complainant

This Miscellaneous Petition has come up before me for final hearing on 31.07.2025 and upon hearing the arguments of Mr.K.Alakendran, Learned counsel appearing for the Petitioner and of Mr.T.Prakash, Learned counsel appearing for the Respondent and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

**ORDER**

The petitioner filed this petition under section 391 R/W Sec.311 of Cr.P.C., to call for the Branch Manager of Respondent/Complainant's Bank, Indian Bank, Thiruvannamalai Temple View Branch, to produce Bank Statement for the saving

account No.855366133 of the complainant for the period from 1.1.2021 to 14.08.2022, to call for Arunachalam to be examined as witness and recording of additional evidence and to re-call the evidence of the PW1 / Complainant to produce his pension account bank statement for the period from 1.1.2021 to 14.08.2022 and recording of additional evidence, pending disposal of the above appeal.

2) **Brief averments of the petition are as follows:**

The petitioner/appellant/accused was charged with and tried for the offence punishable u/s.138 of Negotiable Instrument Act and was sentenced to suffer Simple Imprisonment of 6 months and to pay a compensation of Rs.9,27,000/- within 2 months and to pay a compensation of Rs.9,27,000/- within 2 months and in default to undergo further Simple Imprisonment for a period of 2 months by the Judgment passed in STC.No.6/2023, dated 30.01.2024. Now this sentence has been suspended till 28.02.2024 by the order passed in CMP.No.262/2024, dated 30.01.2024.

The petitioner/appellant/accused had filed a Criminal Appeal before this court against the said order of the Judicial Magistrate, FTC, Thiruvannamalai and there is every fair chance of success of prosecuting this Criminal Appeal.

The complainant has not proved his source of income and made oral evidence as the loan was lent out of his savings through pension and rental income but did not furnished any documentary evidence more particularly his bank

statement showing the pension receipts and withdrawals thereof.

Therefore, the Bank statement is a vital evidence for the accused to prove his claim that the complainant had no source of income to lend the alleged loan amount and it is necessary to examine the Bank Manager, Indian Bank, Thiruvannamalai Temple view Branch as a witness with a direction to produce statement of account pertaining to the Saving Bank Account No.855366133 of the complainant for the period from 1.1.2021 to 14.08.2022 and also re-call the PW1/complainant with a direction to produce his pension account bank statement for the period from 1.1.2021 to 14.08.2022.

The complainant has stated that the childhood friend of the appellant/accused and working as BDO namely Arunachalam is important witness in this case who would reveal the fact about actual loan transaction and therefore, it is just and necessary to examine the said Arunachalam to record additional evidence. Hence this petition.

3) **Brief averments of the counter filed by the respondent are as follows:**

The Criminal Miscellaneous petition filed by the petitioner/appellant is not maintainable either in law or on facts and the same is liable to be dismissed in limine.

The respondent denies all the averments and allegations made in the petition against the respondent as frivolous, contrary to truth excepting those that are specifically admitted herein and the petitioner is put to strict proof of the same.

The decision of Hon'ble Apex Court reported in AIR 2019 SC 1876 Rohit Bhai Jivan Lal Patel V/s State of Gujarat, has held that Dishonour of cheque Principles of Presumption Once presumption of existence of legally enforceable debt drawn in favour of complainant, onus is shifted on accused unless onus is discharged by accused that preponderance of probabilities are tilting in his favour, doubt on case of complainant cannot be raised for want of evidence regarding source of funds for advancing loan to the accused. Recently, the Hon'ble Apex Court by accepting the above principles and reiterating the principles of Rohit Bhai Jivan Lal Patel's case has held in case reported in (2021) 5 SCC 283 Kalamani Text. and anr. V/s P.Balasubramanian has further held that the statute mandates that once the signatures of accused on the cheque/N.I. are established, then these reverse onus clauses become operative. So, in view of above dictum case of complainant cannot be doubted.

The petitioner had full opportunity and he has given sufficient time to adduce evidence in trial but despite opportunity he did not file petition to call for witness, have no right to avail opportunity through Section 391 of Cr.P.C.

The petitioner failed to give reasons for not taking steps to called the Manager, Arunachalam for witness in the trial court.

Once signature admitted by the petitioner, cannot have rights to examine the Manager for Account closed cheque. Hence, to call for the Branch Manager, Indian Bank, Tiruvannamalai Temple view Branch to produce Bank Statement for the

saving account No.855366133 of the respondent is liable to be rejected. There are no cogent reasons stated in the petition to call the witness and necessity, in the absence of cogent reasons, no additional evidence can be accepted in appeal against conviction.

When the case instituted otherwise than the police report and the accused called upon to enter his defence and produce his evidence, the provision of Section 243 shall apply to the case. Section 243 is mandatory in nature, provides that after prosecution evidence is over the accused shall be called upon to enter upon his defence. So, for the petitioner failed to adduce the evidence and at present filed the petition to call for Arunachalam to be examined as witness and recording of additional evidence is liable to be rejected.

The after endorsement made by the petitioner counsel before trial court, the evidence of the petitioner/accused side has been closed and in the appeal the petitioner filed the petition under section 391 of Cr.P.C is to conduct retrial, it cannot be allowed without any cogent reasons and the petitioner filed the present petition only to drag the proceedings as well as to fill up the lacunae.

The petitioner had an opportunity before the trial court under section 311 of Cr.P.C to recall the witness to produce the statement of witness. But the respondent failed to take necessary steps to recall the respondent but simply filed the present petition to recall the evidence of Pw-1 to produce his pension account bank statement, the same is liable to be rejected.

In *Ajitsinh Chehuji Rathod Vs. State of Gujarat and Ors* (AIR 2024 SUPREME COURT 787) The Apex Court emphasized that "under Section 391 CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial"

"The appellate Court was not required to come to the aid and assistance of the Appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the Accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the Accused to collect evidence on his behalf". Hence he requested to dismiss the petition.

4) **Point for consideration in this petition is that**

Whether the petition is to be allowed as prayed for?

5) **Point:**

The learned counsel appearing for the petitioner would contend that the respondent herein has filed the case as against the petitioner under 138 of NI Act for dishonour of cheque for a sum of Rs.9,27,000/-. The trial court has found the guilty of the petitioner/accused against which the petitioner herein has preferred the main appeal. He would further contend that throughout the trial it was the specific contention of the petitioner that the cheque leaf issued to one Arunachalam for a hand loan of Rs.2,00,000/- has been misused by the respondent herein eventhough the said Rs.2,00,000/- settled by the petitioner herein to said Arunachalam. He

would further submit that even the respondent also, before the trial court, in the petition filed u/s.143(a) of NI Act has categorically admitted the fact that in the presence of said Arunachalam he gave a sum of Rs.9,27,000/- to the petitioner herein. Hence, the said Arunachalam ought to have been examined on the side of the respondent/complainant herein to elicit the real fact happened and thereby prove his case, but he did not do so. He would further submit that in this regard even in the first question as well as 313(1)(b) of questioning, he has specifically stated the alleged transaction happened between the petitioner as well as one Arunachalam and issuance of the cheque under challenge to the said Arunachalam which has been misused by the respondent herein to file this case. He would further submit that since the respondent himself has specifically admitted the fact that in the presence of said Arunachalam, he gave a loan under challenge, it is the duty cast upon the respondent to examine him to prove the alleged loan transaction but they did not do so. However the learned trial court has erred in holding that the evidence let in on the side of the respondent was sufficient to fix the liability of petitioner to pay the cheque amount u/s.138 of NI Act. He would further submit that infact it was the duty cast upon the respondent/complainant to prove the said money transaction through examining the said Arumugam, but they failed to do so. However, the learned trial court without looking into the said failure on the part of the respondent has committed error in finding guilty of the petitioner herein. However, the petitioner herein who, right from the trial of the case has taken

specific defence of the cheque issued by him to Arunachalam has been misused by the respondent to file this case, has right to take summon to said Arunachalam to prove his defence thereby rebutting the evidence of the respondent/complainant herein. Hence, he argued for allow this appeal.

6) **Per contra**, the learned counsel appearing for the respondent would contend that the petitioner herein has not taken any such steps before the trial court only before this court alone has taken such a plea with intend to protract the proceedings and he would further submit that since the petitioner herein has categorically admitted the signature found in the cheque leaf under challenge, the question of examining the said Arunachalam on the side of the respondent does not arise. Hence, the petitioner herein cannot taken a plea that since the respondent herein has not examined the said Arunachalam, now the petitioner has come forward with this application to establish his rebuttal evidence with regard to the loan under challenge. The learned counsel appearing for the respondent would further contend that, infact, even during the pendency of the case before the trial court, the petitioner sent a legal notice to the said Arunachalam with regard to alleged misusing of said cheque under challenge of this case, for which the said Arunachalam has also given a detailed reply denying the allegation levelled in the said notice sent by the petitioner and also said notice as well as reply has also been marked on the side of the petitioner herein before the trial court as Ex.D3 & D4 respectively. Wherein in Ex.D4, the said Arumugam admitted the alleged case of

the respondent/complainant and his presence at the time of lending the loan under challenge to the petitioner herein. Hence, in order to disprove the respondent's case, there is no need to examine the said Arumugam.

**7) Heard. Perused the Records.**

8) From the submission of the learned counsel appearing for the petitioner/accused, from the day one of his presence before the trial court he has taken a defence that the cheque leaf issued by him for discharging of loan a sum of Rs.2,00,000/- to one Arunachalam has been misused by the respondent/complainant herein, eventhough the said loan was settled by him. In other words, from the first questioning, the question u/s.313(1)(b) of Cr.P.C., as well as while examining himself as DW1, he has taken an above defence to rebut the legal presumptions stands in favour of the respondent/complainant u/s.139 of NI Act. Admittedly the respondent/complainant has also in the averments found mentioned in the petition filed by him u/s.143(a) of NI Act has admitted the factum of the presence of said Arunachalam, while lending a loan under challenge to the petitioner herein. That being so, the examination of said Arunachalam may bring certain material things to resolve the issue on hand and to arrive a better conclusion on the issue under challenge. Of course, as rightly pointed out by the counsel appearing for the respondent, the petitioner herein ought to have taken an attempt of examining the said Arunachalam before the trial court itself, but, he did not do so. However, while clarifying for not taking such attempt on the side of the petitioner before the

trial court, the counsel appearing for the petitioner would contend that since the respondent himself admitted the fact of lending money in the presence of said Arunachalam, he was under bonafide impression that it should be by the respondent who project said Arunachalam as a witness of the alleged transaction, to prove the same by examining the latter, as the burden of proof regarding the alleged loan of Rs.9,27,000/- allegedly lend by the respondent lies him, but he did not do so. However, the learned trial court ignoring the non discharging of said initial burden lies on the respondent, has found the guilty of the accused, that is why now he has come forward with this petition, the fact of which, in my considered opinion, seem's to be acceptable one to consider his plea. To put it differently, the reason for get examine the said Arunachalam on the side of the respondent is on the ground that the trial court has observed as if non examination of said Arunachalam on the part of the petitioner/accused was fatal in disproving the case of the respondent/complainant. Therefore, they have become necessary for the petitioner/accused to file the present application to get examine the said Arunachalam. Hence, having considered the defence of the petitioner in this regard taken from the day one of his appearance entered into in the trial court and also in order to give a one more fair opportunity to prove his rebuttal evidence and ensure the complete justice in the above said case, this court in the interest of justice, inclined to allow this application.

**In the result, this petition is allowed. No costs.**

This Order is dictated by me to the Steno-Typist Grade-III of this Court, typed by her directly in Computer, corrected and pronounced by me in open court, this the 02<sup>nd</sup> day of August, 2025.

**Principal Sessions Judge,  
Tiruvannamalai.**

Order  
M.P.No.02/2024  
in C.A.No.28/2024  
Date : 02.08.2025