

TNTP010040112022



IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,

TIRUCHIRAPPALLI

**Present : Thiru S.Gopinathan, B.Sc., B.L.,
II Additional District & Sessions Judge,
Tiruchirapalli.**

Tuesday, the 16th day of June 2026

Criminal Appeal No.49/2022
CNR.No:TNTP01-004011-2022

From which court the appeal is preferred	District Munsif Cum Judicial Magistrate, Srirangam.
Number of the case of the Trial court	STC.No.75/2019
Name of the Appellant	Kuzhandaivel S/o Nallu,
Name of the Respondent	Prabhakaran S/o Subbaiyan
Findings of the Trial Court	The accused found guilty of the offence under section 138 of the NI act. He is convicted under section 255(2) of Cr.P.C. and sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) to the complainant within a period of one month from the date of this judgment under section 357(3) of the Cr.P.C read with section

	138 of the NI act in default, the accused shall undergo a further period of three months simple imprisonment. No fine imposed. No case property produced in this case.
Whether confirmed or set aside.	In furtherance of the aforesaid discussions and the reasons ascribed thereof, the present challenge to the aforesaid impugned judgment of conviction and sentence passed by the trial court in STC.No:75/2019 dated 25.05.2022 by the Learned District Munsif Cum Judicial Magistrate, Srirangam does not need any interference by this court and the judgment is hereby confirmed . Accordingly this appeal is deserves to be dismissed and stands dismissed . The trial court is requested to execute the warrant of conviction issued in this case against the accused as soon as possible.
Date of presentation	21.06.2022 at Principal District and Sessions Court, Tiruchirappalli and received by transfer over to this court on 22.06.2022
Date of hearing Arguments	04.09.2025
Date of Judgment	16.06.2026

This Criminal Appeal came up before me on **16.06.2026** for final hearing in the presence of **Thiru.B.Palaniyappan**, counsel appearing for the appellant, and of **Thiru.V.Lakshmi Narasiman** counsel appearing for the respondent, upon hearing the arguments of both sides, upon perusing order of Lower Court, upon perusing the material papers on record, and having stood over till this date for consideration, this court delivers the following...

J U D G M E N T

The appellant is the **accused** in **STC.No: 75/2019**. This criminal appeal is preferred by the appellant under section 138 of Negotiable Instrument Act against the judgment of conviction and sentence passed by the **District Munsif Cum Judicial Magistrate, Srirangam** in **STC.No: 75/2019** dated **25.05.2022**.

The Grounds of Criminal Appeal under section 374 of Cr.P.C. :

1. The judgment of the trial court is against the law and probabilities of the case.
2. The trial court has convicted the appellant/accused on the basis of surmises and conjectures.
3. Further, the trial court came to the conclusion that the appellant/accused has failed to rebut the presumption. Without referring to the principles contained in sections 118 and 139 of NI act.

The points raised by the appellant to rebut the presumptions of the complainant's case are as follows,

- a. The complainant returned the 2 promissory notes to the appellant even before repaying the loan amount. It is nothing but unnatural conduct of a prudent man.

- b. There was no averment about the return of promissory notes in legal notice and the cheque number was not mentioned in the legal notice. No interest fixed by the complainant for the loan amount and no reasons adduced by the respondent before trial court.
- c. As per the legal notice as well as in complaint only one cheque was issued as collateral security to the respondent. Whereas, as per the proof affidavit two cheques were issued at the time of borrowing the money and also yet another cheque was issued the after returning the 1st cheque. This material contradiction was not properly appreciated by the trail court.
- d. The earlier cheque as well as return memo was not produced before the trial court to prove the averments in complaint. The earlier cheque number was presented for collection creates serious doubt on complainant's case.
- e. No witness has been examined and no supportive document produced on the side of complainant to prove the alleged money transaction with accused.
- f. The complainant has not produced any document to prove the source of income. Especially when his capacity is questioned, he is obliged to prove his capacity.

The trial court committed error:-

It is humbly submitted that in point number VIII in page number of 3 of it's judgment the trial court mentioned that the accused not disputed the Ex.P-1 promissory note. But in this case no promissory note has been marked by the complainant.

It is further submitted that the trial court expected that the accused has to be disproved the financial capacity of the complainant by way of producing the document. It is against the law.

A) Sec 118 of N.I.Act:

The section 118 of N.L. Act is defined as the presumption is against the maker, drawer or endorser only. At the same time the presumption is not in favour of payee, holder, or holder in due course.

B) Sec, 139 of N.1. Act:

The section 139 of N.I. Act is defined as the presumption is infavour of complainant but, existence of legally recoverable debt is not a matter of presumption.

These are the basic principles of law in Negotiable Instruments Act 1881. But the lower court is totally failed to consider the above said aspects.

Source of Income

The complainant has not stated anything in the complaint or in his examination in chief about his financial capacity or source of income.

It is settled position of law that there is no need to lead the negative evidence to disprove the prosecution case.

It is humbly submitted that the appellant need not prove his case in it's entirety and creating the preponderance of probabilities and making a reasonable doubt is itself enough to disprove the complainant's case. The doubts that exist in the case of the complainant are not fanciful doubts. But are reasonable doubts and they have come out of evidence.

Once, there are reasonable doubts in the complainant's case, the benefit of doubts ought to have been given to the accused.

The trial court has totally failed to appreciate the defence evidence.

The Legal precedents submitted in support of the defence were not considered by the trial court. It is against the law and natural justice. As per law due weight should be given to precedents of our Hon'ble High Courts and Supreme Court

C) ROLE OF PRESUMPTION

The presumption is only for issuance of the cheque alone. The quantum of the cheque amount should be proved by the complainant. Especially when the debt is denied and the capacity of the complainant are challenged. This aspect was not appreciated by the trial court.

It is submitted that the presumption can be rebutted by the accused by way of cross examination of Complainant's side evidence or producing documents and adducing evidence or circumstantial.

Once the presumption is rebutted, it is the duty of the prosecution to prove his case beyond all reasonable doubts without any shadows.

The trial court was under the assumption that the complainant is working in wine shop. Hence he has adequate financial capacity, so he is capable of lending money to the appellant. This assumption of lower court is against the law and erroneous. No documents produced by the complainant to prove his oral evidence.

The trial court has failed to appreciate the entire case and evidence. The lower court convicted the accused by appreciating the evidence in a piecemeal manner.

Trial court records were called for. Case records received and perused. Heard the submissions by both side counsels.

The point for consideration in this Criminal Appeal is : Whether the judgment of the trial court is legally sustainable and the reliefs granted by the trial court is justifiable?

The trial court judgment considered with materials on record, depositions, and exhibit marked in this case. The grounds of appeal from 1 to 24 and the trial court Judgment are considered. Both sides arguments heard. The accused has found guilty of the offence under section 138 of the NI act. The accused to undergo simple imprisonment for the period of one year section 255(2) of Cr.P.C and to pay a compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) to the complainant within a period of one month from the date of this judgment under section 357(3) of the Cr.P.C read with section 138 of the NI act in default, the accused shall undergo a further period of three months simple imprisonment. No fine imposed. No case property produced in this case. Negotiable Instrument Act herein after called as NI act. The parties will be called as if they were called in the trial court.

Both sides were heard. In this case, the complainant examined himself as P.W.1 and marked Exs.P1 to P4. The cheque in question, marked as Ex.P1, was drawn on the account maintained by the accused with Axis Bank, Pettavaithalai Branch. The accused has not disputed the signature found in Ex.P1 as his own. On the other hand, the defence taken by the accused is that the cheque had been issued to one Ravi in

connection with a loan of Rs.10,000/- obtained by him and that the present complaint has been falsely instituted by misusing the said cheque.

This Appellate Court finds that the Trial Court has rightly taken cognizance of the complaint under Section 138 of the Negotiable Instruments Act. The Trial Court was also justified in drawing the statutory presumptions in favour of the complainant under Section 118 of the Negotiable Instruments Act. Therefore, this Court holds that the complainant had discharged his initial burden and established a prima facie case before the Trial Court.

A careful scrutiny of the cross-examination of P.W.1 reveals that no material contradiction or circumstance detrimental to the complainant's case has been elicited. Ex.P1 cheque bears the date 19.08.2014 and was drawn on Axis Bank. The accused has failed to substantiate any of the defences raised by him. No independent or reliable evidence has been adduced on behalf of the accused in support of his contentions. Though several suggestions were put to the complainant during cross-examination, the accused has not chosen to adduce any evidence to establish the same.

The accused further contended that cheque leaves in a cheque book are ordinarily issued in serial order and, therefore, when the first cheque allegedly issued by him bore No.018004, it was improbable that the second cheque issued would bear No.018002, as claimed by the complainant. This contention cannot be accepted. The manner in which the cheque leaves were utilised is a fact especially within the knowledge of the accused. Hence, the burden of proving the said contention squarely rests upon him. However, the accused has failed to produce the cheque book counterfoil, cheque book, or any other documentary evidence to substantiate the said defence.

Consequently, the defence put forth by the accused cannot be considered a probable defence capable of rebutting the statutory presumptions available in favour of the complainant.

The complainant has successfully proved the ingredients of the offence and his version inspires confidence. The accused has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act by raising a probable defence. He has neither proved his defence nor displaced the statutory presumptions operating against him.

The Trial Court has meticulously appreciated the oral and documentary evidence available on record and has rendered a well-reasoned judgment in accordance with the principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court. This Court finds no illegality, infirmity, or perversity in the findings recorded by the Trial Court. Accordingly, the judgment of conviction and sentence passed by the Trial Court is found to be just and proper and does not warrant any interference by this Court.

Finally,

In furtherance of the aforesaid discussions and the reasons ascribed thereof, the present challenge to the aforesaid impugned judgment of conviction and sentence passed by the trial court in STC.No:75/2019 dated 25.05.2022 by the Learned District Munsif Cum Judicial Magistrate, Srirangam **does not need** any interference by this court and the judgment is hereby **confirmed**. Accordingly this appeal is deserves to be **dismissed** and stands **dismissed**. The trial court is requested to execute the warrant of conviction issued in this case against the accused as soon as possible.

Directly dictated to the Stenographer in open court, typed by him, corrected and pronounced by me in open court, this the 16th day of June 2026.

II Additional District & Sessions Judge,
Tiruchirappalli.

Date: 16.06.2026