

**IN THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR, TAMILNADU**

Present:- **Tmt. S. TASNEEM, M.L.**,
I-Additional District and Sessions Judge, Tiruvallur

Tuesday, dated the 07th day of April 2026

Criminal Appeal No. 11 of 2024

against

S.T.C.No. 4 of 2023

From which Court this appeal is preferred	Learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur
Case Number of Trial Court	S.T.C.No.4/2023
Appeal No.	Criminal Appeal No.11/2024
Name of the Appellant/Accused	Roslind Kayalvizhi, Director of Hope Ever Foundation Charitable Trust.
Name of the Respondent/Complainant	Christ College of Art and Science, Rep by its Secretary Fr.Harry Williams
Conviction and sentence of the Lower Court	The accused is found guilty for the offence u/s 138 of NI Act and is convicted and sentenced to undergo six months simple imprisonment u/s 255(2) of Cr.P.C and is directed to pay the compensation of Rs.35,10,000/- (Rupees thirty five lakhs ten thousand rupees only) i.e the amount due upon the cheque, to the complainant u/s 357(3) of Cr.P.C., within two month. In default to pay the above mentioned compensation amount, the accused is directed to undergo a further period of three months simple imprisonment. No fine is imposed.
Whether the conviction and sentence of Lower Court,	In the result, the Criminal Appeal is dismissed. That the judgment of

Confirmed or setaside or modified.	conviction and sentence passed by the learned Judicial Magistrate, Fast Track court at Magisterial Level, Tiruvallur in STC No.04 of 2023 dated 13.12.2023 is hereby confirmed. The Trial Court is directed to take appropriate steps for securing the presence of the accused and to enforce the sentence in accordance with law. The parties shall bear their respective costs.
Date of Judgment	07.04.2026

This Criminal Appeal is coming on 12.03.2026 before me for final hearing in the presence of Tr.M.Nithiyanantham, Learned Counsel for the Appellant/Accused and M/s Mumtaj Surya, Learned Counsel for the Respondent/Complainant, upon hearing both sides arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following :-

JUDGMENT

This Criminal Appeal filed by the appellant/accused as against the judgment of the Judicial Magistrate, Fast Track Mahila Court at Magisterial Level, Tiruvallur, dated 13.12.2023 in STC No.4/2023.

2. Brief facts of the complaint filed in S.T.C.No.4/2023:

The complainant states that, Christ Arts and Science college was established in the year 2008 to promote higher education among rural poor. Accused approached complainant in the year 2018 and claimed to have good contacts with the Government and thereby, he can arrange funds by way of grant from government.

Thus, in the pretext of getting funds from the Ministry of higher education and the National skill development corporation (NSDC) in the name of “Mutual grant scheme for the students” complainant and accused entered into a memorandum of understanding on 29.10.2019. Thus, as per mutal agreement complainant has deposited Rs.3,00,000/- on 25.10.2019, Rs.9,00,000/- on 30.10.2019, Rs.7,00,000/- on 13.11.2019, Rs.16,10,000/- on 14.11.2019 in the accused account through RTGS. Totally, the complainant has deposited Rs.35,10,000/- believing that college will get Rs.35,00,000/- from government as grant and also accused agreed that Rs.35,10,000/- will be refunded within eight months from the date of receiving amount along with additional amount of Rs.35,00,000/-. Further, in case of delay the amount will be refunded with interest. On believing the accused, complainant was waiting to get funds but even after waiting for a year complainant did not receive any payment therefore, complainant demanded accused to repay the deposited amount through letter dated 22.07.2021. Complainant further submits that on 29.07.2021 accused issued a letter to complainant stating that she has applied for mutual grant project in the year 2019 and also stated that Government is delaying to release the fund. Also promised to pay the deposit amount with interest on 05.08.2021. As the accused failed to do so, complainant issued notice on 10.11.2021 requesting to pay the amount with interest and also issued second notice on 25.11.2021. For which the accused have sent letter on 03.12.2021 promising to pay the deposit amount. Further, requested time till 31.12.2021 to make full payment and also she issued post dated cheques drawn on State bank of India, Perungudi Branch.

In spite of several reminders, accused have not taken any step to repay the amount. On 15.05.2022 legal notice was issued by the complainant but accused failed to pay the amount and therefore, complainant presented the four post dated cheques leaves bearing Nos.403700, 403702, 403698, 403701 totally for Rs.35,10,000/- dated 01.08.2022 in his account holding Indian Bank, Mappedu branch. The said cheques were returned as “insufficient funds” on 18.08.2022. So complainant issued legal notice dated 29.08.2022 and the said notice was received by the accused on 01.09.2022. As the accused neither sent reply for the legal notice nor repaid the amount, the complainant has filed this complaint for offence of dishonour of cheque. Hence, this Appeal.

3. The complaint was filed on 11.10.2022 and on 23.01.2023 being satisfied with the prima facie material available on record the cognizance for the offence u/s 138 of NI Act has been taken and after examining the accused u/sec.251 of Cr.P.C, and on his denial, examined the complainant as PW1 and Ex.P1 to Ex.P12 marked through his side. After questioning the accused u/sec.313 (1) (b) Cr.P.C, the accused denied the same and chosen to remain silent. D1 to D8 marked during the course of cross examination of PW1. On hearing both sides, the Learned Magistrate found that “the accused is found guilty for the offence u/s 138 of NI Act and is convicted and sentenced to undergo six months simple imprisonment u/s 255(2) of Cr.P.C and is directed to pay the compensation of Rs.35,10,000/- (Rupees thirty five lakhs ten thousand rupees only) i.e the amount due upon the cheque, to the

complainant u/s 357(3) of Cr.P.C., within two months. In default to pay the above mentioned compensation amount, the accused is directed to undergo a further period of three months simple imprisonment. No fine is imposed”.

4. Grounds of Appeal:

The judgment of the trial court is wrong, contrary to law, weight of evidence and probabilities in the case. The trial court failed to see that the complainant has no source of income to lend such a huge amount of Rs.35,10,000/- to the accused and not filed any documents to prove the lending amount by way of memorandum of understanding Ex.P6. There is no record or bank statement or RTGS produced and no bank witness examined and also there is no witness to prove the money transaction between the complainant and accused. The trial court erred to note that the cheque in question is not issued for discharge of legally enforceable debt or liability. The trial court did not taken into consideration the legal principle that whether the material adduced by the complainant is sufficient to prove that on various dates accused received moeny from the complainant without any evidence for alleged loan and financial proximity between them except signature, return memo etc, and no evidence adduced by complainant that cheque was in fact given to him for discharge of debt and other liability. Therefore, the Appellant prayed to set aside the conviction and sentence passed against the Appellant by the Learned Fast Track Court, (Magisterial Level), Tiruvallur.

5. Point for consideration:-

The Points for consideration in determination of this Criminal Appeal are :-

- 1. Whether the complainant has proved that the accused issued the cheque in question towards discharge of a legally enforceable debt or liability?**
- 2. Whether the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act operates in favour of the complainant, and if so, whether the accused has successfully rebutted the said presumption by raising a probable defence?**
- 3. Whether the judgment of conviction and sentence passed by the trial court suffers from any illegality, infirmity, or perversity warranting interference by this appellate court?**
- 4. To what relief, if any, the appellant/accused is entitled?**

6. On Points No.1 to 4 :-

This Criminal Appeal has been filed by the appellant/accused challenging the judgment of conviction and sentence passed by the learned trial court in STC No. 4 of 2023 dated 13.12.2023 on the file of Judicial Magistrate, FTC, Tiruvallur instituted under Section 200 Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. By way of impugned judgment stated supra, the trial court found the appellant / accused guilty and convicted him under Section 138 of the N.I. Act, sentencing him to undergo six months' simple imprisonment and directing him to pay compensation of Rs. 35,10,000/- to the complainant under Section 357(3) Cr.P.C., with a default sentence. Aggrieved by the said conviction and

sentence, the present appeal has been preferred by the accused, calling in question the correctness, legality, and propriety of the findings rendered by the trial court.

7. The parties herein are herein after called as per their original calling in the trial court.

8. The Complainant has filed the Private Complaint before the trial court against the accused for the offence of dishonour of cheques, namely: Cheque No. 403700 dated 01.08.2022 for a sum of Rs.7,00,000/-, Cheque No. 403702 dated 01.08.2022 for a sum of Rs.16,10,000/-, Cheque No. 403698 dated 01.08.2022 for a sum of Rs.9,00,000/-, and Cheque No. 403701 dated 01.08.2022 for a sum of Rs.3,00,000/-, aggregating to a total sum of Rs.35,10,000/-.

9. The brief Facts of the Complainant case in trial court is that the accused approached the complainant representing that she would arrange financial assistance by way of Government grant and, in that regard, entered into a Memorandum of Understanding dated 29.10.2019 with the complainant. Pursuant thereto, the complainant transferred a total sum of Rs.35,10,000/- to the account of the accused on various dates through RTGS, which was duly acknowledged by the accused in the said Memorandum of Understanding. It is the further case of the complainant that the accused undertook to either secure the grant or refund the said amount within a stipulated period. However, despite repeated demands and exchange of correspondence, the accused failed to fulfil her obligation, while at the same time acknowledging her liability and seeking extension of time for repayment towards discharge of the said legally enforceable liability, the accused issued four cheques

bearing Nos.403698, 403702, 403701 and 403700, all dated 01.08.2022, for a total sum of Rs.35,10,000/-. When the said cheques were presented for encashment, they were returned unpaid on 18.08.2022 for want of sufficient funds. Thereafter, the complainant caused a statutory legal notice dated 29.08.2022 to be issued to the accused, calling upon her to make payment of the cheque amount. Though the notice was duly served, the accused failed to comply with the demand within the stipulated period. Hence, the complainant was constrained to initiate proceedings under Section 138 of the Negotiable Instruments Act.

10. On the side of the complainant, the complainant himself was examined as PW1, and through his oral evidence, he reiterated the averments made in the complaint and substantiated the transaction as well as the issuance of the cheques in question. In support of his case, the complainant marked Exs. P1 to P12, wherein Ex. P1 series consists of the original cheque leaves bearing Nos. 403698, 403702, 403701 and 403700 dated 01.08.2022; Ex. P2 is the bank return memos dated 18.08.2022 evidencing dishonour of the cheques; Ex. P3 is the office copy of the statutory legal notice dated 29.08.2022; Ex. P4 is the postal acknowledgment card evidencing service of notice on the accused; Ex. P5 is the complaint; Ex. P6 is the Memorandum of Understanding dated 29.10.2019; Exs. P7, P9 and P11 are the letters and notices issued by the complainant to the accused; and Exs. P8, P10 and P12 are the reply letters/communications issued by the accused acknowledging liability and seeking time for repayment.

11. On the side of the accused, no oral evidence was adduced, as the accused did not choose to enter into the witness box. However, during the course of cross-examination of PW1, the accused marked Exs. D1 to D8. Exs. D1 to D3 are receipts dated 20.08.2019, 25.09.2019 and 27.09.2019 respectively, pertaining to alleged donations made for a toilet project; Ex. D4 is a receipt dated 21.11.2019 for donation towards MSW internship; Exs. D5 and D6 are receipts dated 06.01.2020 and 15.01.2020 respectively, relating to donation for gym materials and equipment; and Exs. D7 and D8 are the bank account statements of Hope Ever Foundation for the period from 01.01.2020 to 31.03.2021. Through the said documents, the accused sought to contend that substantial amounts had been paid to the complainant under various heads and that there was no subsisting legally enforceable debt corresponding to the cheque amount.

12. The defence of the accused, as projected before the trial Court, was one of total denial of the complainant's claim of legally enforceable debt. It was contended that the cheques in question were not issued towards discharge of any liability, but were given only as security, which have been misused by the complainant. The accused further disputed the alleged transaction of Rs.35,10,000/-, contending that the complainant had not produced any reliable evidence, such as bank statements or proof of RTGS transfer, to establish the passing of consideration.

13. It was also the case of the accused that the Memorandum of Understanding (Ex. P6) was not properly proved, and that the witnesses to the said document were not examined. The accused further contended that there were several financial

transactions between the parties and that she had, in fact, paid substantial amounts to the complainant under different heads, including donations, which were evidenced by Exs. D1 to D8. On that basis, it was argued that the complainant had suppressed material particulars and had not properly accounted for the amounts received. Additionally, the accused raised a contention regarding limitation, stating that the agreed period under the Memorandum of Understanding had expired and that the complaint was not maintainable. It was also contended that relevant persons, such as the Principal or other office bearers connected with the alleged transaction, were not examined or impleaded, thereby creating doubt about the complainant's case. Thus, by raising these contentions and by relying upon the documents marked during cross-examination, the accused sought to rebut the statutory presumption and prayed for dismissal of the complaint and for acquittal.

14. The foundational facts required to invoke the presumption under Section 138 of the Act, namely, the issuance of cheque, its presentation within the period of validity, dishonour, issuance of statutory notice, and failure to pay within the stipulated time, have been duly established by the complainant through Exs. P1 to P4. The accused has, in unequivocal terms, admitted that the cheque leaves belong to her and that the signatures found therein are hers. Such admission, in the considered view of the trial Court, gives rise to a mandatory presumption in favour of the complainant that the cheques were issued towards discharge of a legally enforceable debt or liability.

15. Once the execution of the cheques is admitted, the burden shifts upon the accused to rebut the presumption by raising a probable defence. The Court has relied upon settled principles of law that such rebuttal need not be beyond reasonable doubt, but must at least satisfy the test of preponderance of probabilities. In this context, the trial Court examined whether the accused had succeeded in dislodging the presumption either by leading independent evidence or by eliciting favourable material during the cross-examination of PW1.

16. The principal defence taken by the accused was that the cheques were issued only as security and not towards any legally enforceable debt. However, the trial Court found that the said contention was a mere bald assertion, unsupported by any material particulars. The accused neither specified the purpose for which the alleged security cheques were issued nor disclosed the circumstances under which they were handed over. The Court further noted that even after dishonour of the cheques, the accused had not initiated any legal proceedings to recover the same or to prevent their misuse, which, in the opinion of the Court, militates against the defence now taken. Accordingly, the trial Court rejected the plea of “security cheque” as untenable. The appellant/accused challenges the impugned judgment of conviction and sentence on the ground that the same is contrary to law, facts, and the weight of evidence on record. It is contended that the trial Court has failed to properly appreciate the evidence in its correct perspective and has erroneously held that the complainant had proved the case beyond reasonable doubt. According to the appellant, the findings of the trial Court are based on assumptions and presumptions,

without there being sufficient independent evidence to establish the existence of a legally enforceable debt or liability, as required under Section 138 of the Negotiable Instruments Act.

17. The appellant/accused assails the judgment of the trial Court contending that the same is contrary to law, facts, and probabilities of the case. It is argued that the complainant has failed to prove the alleged transaction of Rs.35,10,000/- by producing cogent evidence such as bank statements or proof of RTGS transfers, and that the trial Court has erred in placing undue reliance on the Memorandum of Understanding (Ex. P6) without proper proof of its execution. The appellant further contends that the cheques in question were issued only as security and not towards discharge of any legally enforceable debt, which aspect has not been properly appreciated by the trial Court. It is also urged that the complainant has not examined any independent witnesses connected with the transaction, thereby creating serious doubt regarding the genuineness of the claim.

18. The appellant further submits that the trial Court has failed to properly consider Exs. D1 to D8, which demonstrate that substantial amounts were paid by the accused to the complainant under various heads, thereby disproving the existence of any subsisting liability. It is contended that the Court below erred in holding that the said transactions are unconnected, without appreciating the continuous financial dealings between the parties. The bank statements (Exs. D7 and D8), according to the appellant, clearly establish repayment, but the same have been wrongly brushed aside based on the uncorroborated testimony of PW1. The appellant also raises the plea of

limitation, contending that the complaint is not maintainable in view of the time stipulation under the Memorandum of Understanding.

19. It is further contended that the trial Court has erred in holding that the accused failed to rebut the statutory presumption, whereas, in fact, a probable defence had been raised through cross-examination and documentary evidence. The appellant also challenges the findings relating to non-impleadment of necessary parties and the alleged discrepancies in the cheque entries. Lastly, it is contended that the sentence imposed is excessive and disproportionate, and hence, the appellant seeks setting aside of the conviction and sentence and prays for acquittal.

20. The learned counsel for the respondent/complainant would submit that the judgment of the trial Court is well reasoned and based on proper appreciation of both oral and documentary evidence, warranting no interference by this appellate Court. It is submitted that the complainant has clearly established the existence of a legally enforceable debt through Ex. P6 – the Memorandum of Understanding, wherein the accused has unequivocally acknowledged receipt of Rs.35,10,000/- and undertaken to repay the same. The execution of the said document has not been disputed by the accused. Further, the issuance of cheques (Ex. P1 series) and the signature therein have been categorically admitted by the accused. In such circumstances, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act squarely arises in favour of the complainant.

21. It is further submitted that the complainant has complied with all the mandatory requirements under Section 138 of the Negotiable Instruments Act, as

evident from Exs. P2 to P4, which establish dishonour of the cheques, issuance of statutory notice within time, and its due service on the accused. The accused has failed to make payment within the stipulated period, thereby completing the offence. The learned counsel would emphasize that the accused has not entered the witness box nor produced any independent evidence to rebut the presumption. The defence of “security cheque” is a mere bald plea, unsupported by any material particulars, and has been rightly rejected by the trial Court.

22. With regard to the documents marked as Exs. D1 to D8, it is contended that the trial Court has rightly held that the same do not relate to the transaction in question. Exs. D1 to D6 pertain to independent donations made for different purposes and even precede or are unrelated to the Memorandum of Understanding. Exs. D7 and D8, being bank statements, do not establish that the amounts reflected therein were paid towards discharge of the liability under Ex. P6. On the contrary, the continuous correspondence between the parties, particularly Exs. P8, P10, and P12, clearly demonstrate acknowledgment of liability by the accused and her repeated requests for time to repay the amount. It is also submitted that the plea of limitation raised by the appellant is devoid of merit, inasmuch as the acknowledgments made by the accused extend the period of limitation, and the complaint has been filed well within time. The contention regarding non-impleadment of other persons is equally untenable, since the accused herself has admitted issuance and signature of the cheques and cannot evade liability on such technical grounds. Therefore, it is contended that the accused has failed to raise any probable defence so as to rebut the

statutory presumption, whereas the complainant has proved the case beyond reasonable doubt. The findings of the trial Court are neither perverse nor illegal, and the conviction and sentence imposed are just and proper. Hence, the appeal is liable to be dismissed and the judgment of the trial Court is to be confirmed.

23. Complying of mandatory provisions by the Complaint

In order to attract the offence under Section 138 of the Negotiable Instruments Act, the complainant must establish that the cheque was presented within its period of validity, that the same was returned unpaid by the bank, and that the complainant issued a statutory demand notice to the drawer of the cheque within the prescribed time demanding payment of the cheque amount. The cheques in question, namely cheque bearing Nos. 403698, 403702, 403701 and 403700, all dated 01.08.2022, were issued by the accused for a total sum of Rs.35,10,000/- towards discharge of liability. The said cheques were presented for encashment within their period of validity and were returned unpaid on 18.08.2022, as evidenced by the bank return memos, on the ground of insufficiency of funds. Thereafter, the complainant caused issuance of a statutory legal notice dated 29.08.2022 to the accused, demanding payment of the cheque amount within the prescribed period. The said notice was duly served on the accused on 01.09.2022, as evidenced by the postal acknowledgment card. Despite receipt of the notice, the accused failed to make payment within the stipulated period of 15 days. Consequently, the complainant has filed the present complaint within the period of limitation as contemplated under the Act. Thus, the sequence of events, supported by Exs. P1 to P4, clearly establishes due compliance

with the statutory requirements relating to issuance of cheque, presentation within time, dishonour, issuance and service of legal notice, and failure to pay within the stipulated period. Hence, this Court holds that the mandatory ingredients of Section 138 of the Negotiable Instruments Act have been fully satisfied. Despite such deemed service of notice, the accused failed to make payment of the cheque amount within fifteen days from the date of receipt of notice, thereby giving rise to the cause of action for filing the complaint. The complaint has been instituted on 05.04.2022, well within the period of limitation prescribed under Section 142 of the N.I. Act. Thus, the sequence of events clearly establishes that the complainant has strictly adhered to all the statutory requirements, including presentation of cheque within validity, issuance of notice within time, deemed service of notice, and filing of the complaint within the stipulated period. Accordingly, this Court holds that the complaint is perfectly maintainable and not vitiated on account of any non-compliance with the mandatory provisions of law.

24. Whether the complaint is in time

Another aspect to be considered is whether the complaint has been filed within the time prescribed under the provisions of the Negotiable Instruments Act. With regard to the question of limitation, this Court, upon a careful scrutiny of the entire materials on record, finds that the complaint has been instituted strictly in compliance with the time frame prescribed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881.

25. The cheques in question dated 01.08.2022 were presented within their validity period and were dishonoured on 18.08.2022. Thereafter, the complainant issued the statutory legal notice on 29.08.2022, which was duly served on the accused on 01.09.2022. The accused failed to make payment within 15 days from the date of receipt of notice, and hence, the cause of action arose thereafter. The complaint has been instituted within one month from the date on which the cause of action arose, as mandated under the Act. Therefore, the statutory timelines have been strictly adhered to. In view of the same, the contention of the accused that the complaint is barred by limitation is unsustainable.

26. Accordingly, this Court holds that the complaint is filed within time and is legally maintainable.

27. The Hon'ble Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510** and **C.C. Alavi Haji v. Palapetty Muhammed(2007) 6 SCC 555** has categorically held that when a notice is sent to the correct address and returned as "unclaimed", service is deemed to have been effected under Section 27 of the General Clauses Act, 1897. The said position has also been reiterated by the Hon'ble High Court of Madras in **V. Raja Kumari v. P. Subbarama Naidu2004 (2) CTC 417** and **Ajeet Seeds Ltd. v. K. Gopala Krishnaiah.2014 (2) MLJ (Crl) 561**.

28. Further, in view of the admitted signature on the cheques, the statutory presumption under Sections 118 and 139 of the N.I. Act comes into operation in favour of the complainant. The Hon'ble Supreme Court in **Rangappa v. Sri Mohan,**

(2010) 11 SCC 441 has held that such presumption includes the existence of a legally enforceable debt or liability, and that the burden lies on the accused to rebut the same on the standard of preponderance of probabilities. This principle has been further reiterated in **Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; AIR 2019 SC 2446** wherein it has been held that even a blank signed cheque, if voluntarily handed over, would attract the presumption under the Act. Thus, both on the aspect of limitation and the statutory presumption, the complainant has fully satisfied the legal requirements. Accordingly, this Court holds that the complaint is not barred by limitation and has been filed in strict compliance with the statutory mandate.

29. Whether complainant discharged initial burden

At the outset, it is to be examined whether the complainant has discharged the initial burden cast upon him to attract the offence under Section 138 of the Negotiable Instruments Act. With regard to the discharge of the initial burden, this Court finds that the complainant has successfully established the foundational facts necessary to invoke the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act.

30. The complainant, examined as PW1, has clearly deposed with regard to the transaction between the parties, the execution of the Memorandum of Understanding (Ex. P6), and the transfer of a sum of Rs.35,10,000/- to the accused. The said document, which remains undisputed by the accused, contains a clear acknowledgment of receipt of the amount and an undertaking to repay the same,

thereby constituting a strong piece of evidence establishing the foundational facts of the transaction.

31. Further, the complainant has produced the original cheques (Ex. P1 series), which have admittedly been issued and signed by the accused. The dishonour of the said cheques is evidenced by Ex. P2, the statutory notice by Ex. P3, and proof of service by Ex. P4. These documents cumulatively establish not only the issuance and dishonour of the cheques, but also compliance with the statutory requirements under Section 138 of the Negotiable Instruments Act. Once the execution of the cheques is admitted, the presumption under Sections 118 and 139 of the Act automatically comes into play in favour of the complainant, to the effect that the cheques were issued towards discharge of a legally enforceable debt or liability.

32. In addition, the continuous correspondence between the parties, particularly Exs. P8, P10 and P12, clearly demonstrates acknowledgment of liability on the part of the accused and her repeated requests for time to repay the amount. Such admissions further fortify the case of the complainant. The contention of the accused regarding non-production of independent proof of transfer cannot outweigh the categorical admissions contained in Ex. P6 and the admitted issuance of cheques. Thus, this Court finds that the complainant has placed before the Court cogent, consistent, and convincing evidence sufficient to establish the foundational facts necessary to invoke the statutory presumption. Accordingly, the initial burden of proving the existence of a legally enforceable debt and issuance of cheques towards its discharge stands duly discharged by the complainant.

33. Once such foundational facts are established, the presumption under Sections 118 and 139 of the Act comes into operation in favour of the complainant. The Hon'ble Supreme Court in *Rangappa v. Sri Mohan* has categorically held that the presumption under Section 139 includes a presumption as to the existence of a legally enforceable debt or liability, and that once the execution of the cheque is admitted, the burden shifts upon the accused to rebut the same on the standard of preponderance of probabilities. The said principle has been reiterated in *Bir Singh v. Mukesh Kumar*, wherein it has been held that even in cases where the cheque is alleged to have been issued as a blank signed instrument, the presumption would still operate unless rebutted by cogent evidence. Further, in ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 = AIR 2009 SC 1518*** the Hon'ble Supreme Court has held that once the complainant proves the foundational facts, the burden shifts to the accused to rebut the presumption by bringing on record probable evidence. Applying the above settled principles to the present case, this Court holds that the complainant has duly discharged the initial burden cast upon him, thereby entitling him to the benefit of statutory presumption under law.

34. Settled position of law in NI Act cases

It is a settled position of law that in a prosecution under Section 138 of the Negotiable Instruments Act, once the execution of the cheque is admitted or proved, a statutory presumption arises under Sections 118 and 139 of the Act that the cheque was issued for the discharge, in whole or in part, of a legally enforceable debt

or liability. The burden then shifts upon the accused to rebut the said presumption. Such rebuttal need not be by direct evidence alone; the accused may rely upon the materials brought on record by the complainant and also the circumstances elicited during cross-examination to probabalise his defence.

35. It is further well settled that the standard of proof required on the part of the accused to rebut the statutory presumption is not proof beyond reasonable doubt, but only on the touchstone of preponderance of probabilities. If the accused succeeds in raising a probable defence which creates doubt regarding the existence of a legally enforceable debt or liability, the presumption stands rebutted. However, if the accused fails to discharge this burden, the Court would be justified in holding that the cheque was issued towards discharge of a legally enforceable debt and the offence under Section 138 of the Negotiable Instruments Act stands established.

36. It is settled position of law that the appellate court may also refer to Section 20 of the Negotiable Instruments Act, which recognizes the validity of inchoate stamped instruments and confers implied authority on the holder to complete a signed but otherwise incomplete instrument. This principle directly answers the defence of “blank cheque,” reinforcing that once the signature is admitted, the filling up of particulars by the holder does not invalidate the instrument. Further, Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act (illustration (f)) may be invoked to draw presumption of due service of notice when it is sent to the correct address, thereby strengthening the finding regarding statutory compliance of notice. Additionally, it may be observed that under Section 146 of the Negotiable

Instruments Act, the bank return memo carries a presumption of correctness, thereby dispensing with the need for formal proof of dishonour unless specifically disputed.

37. It is also relevant to note that the nature of proceedings under Section 138 of the Negotiable Instruments Act is quasi-criminal, primarily intended to ensure credibility of commercial transactions, as observed in various precedents. The standard of proof for rebuttal by the accused is that of “preponderance of probabilities,” but mere plausible explanation without supporting material is insufficient. The appellate court, while exercising powers under Section 386 Cr.P.C., must interfere only when the findings of the trial court are perverse or suffer from material illegality. Now, the following are the questions to be answered before proceeding for further discussion.

38. Thus, the presentation of cheque, issuance of statutory notice within 30 days, and filing of complaint within 30 days from the date of cause of action are all in strict compliance with the mandatory requirements under Section 138 proviso (a), (b), and (c) of the Negotiable Instruments Act.

39. It is the settled position of law that to invoke the penal provisions under Section 138 of the N.I. Act, the complainant is required to establish the foundational facts, namely (i) issuance of cheque, (ii) dishonour, and (iii) issuance of statutory notice. In the present case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P7. The accused has categorically admitted that the cheque belongs to him and that the signature in the cheque is his.

40. Once execution of the cheque is admitted, the statutory presumption under Sections 118(a) and 139 of the N.I. Act automatically comes into operation. The Hon'ble Supreme Court in **Rangappa v. Sri Mohan (2010) 11 SCC 441** has categorically held that such presumption includes the existence of a legally enforceable debt.

41. Further, in **Bir Singh v. Mukesh Kumar (2019) 4 SCC 197**, it has been held that even a blank signed cheque voluntarily handed over attracts presumption under Section 139.

42. Existence of Legally Enforceable debt :-

As far as existence of legally enforceable debt or liability is concerned, once the presumption under Sections 118 and 139 of the N.I. Act arises, the burden shifts upon the accused to rebut the same. The existence of legally enforceable debt is to be presumed unless the contrary is proved.

Now coming to the grounds of appeal are concerned, being the First Appellate Court, this Court is duty-bound to re-appreciate the entire evidence both on facts and law, as held in **H. Siddiqui v. A. Ramalingam (2011) 4 SCC 240**.

43. Upon such re-appreciation, the following aspects further strengthen the prosecution case:

- **Admission of signature by the accused – a crucial and determinative factor.**
- **Consistency in complainant's version.**

- **Absence of any contemporaneous protest by the accused.**
- **Failure of the accused to produce best evidence in his possession.**
- **The defence being improbable and unsupported.**

44. The findings of the trial court are well-reasoned and based on proper appreciation of evidence and settled principles of law. No perversity, illegality, or miscarriage of justice is demonstrated warranting interference.

45. This Court now proceeds to examine whether the accused has successfully rebutted the statutory presumption arising under Sections 118 and 139 of the Negotiable Instruments Act. It is well settled that such presumption is rebuttable and that the accused is required to raise a probable defence on the standard of preponderance of probabilities, either by adducing direct evidence or by eliciting material contradictions in the complainant's case. In *Rangappa v. Sri Mohan*, the Hon'ble Supreme Court has held that while the presumption includes the existence of a legally enforceable debt, the accused can rebut the same by raising a probable defence. Similarly, in *Kumar Exports v. Sharma Carpets*, it has been held that mere denial or bald assertions would not suffice and that the accused must bring on record cogent material to probabilise his defence. In the present case, the defence of the accused is that the cheques and loan agreement were obtained under threat in connection with a business transaction involving the complainant and others, and that no legally enforceable debt exists. However, except for such suggestions in cross-examination, no independent or corroborative evidence has been adduced on the side

of the accused to substantiate the said plea. No complaint has been lodged with the police alleging coercion or misuse of cheques, nor has any contemporaneous document been produced to establish the alleged business transaction or loss. Further, the accused has admittedly not taken any steps such as issuing stop-payment instructions or initiating proceedings for recovery of the documents allegedly obtained under duress. As held in *Bir Singh v. Mukesh Kumar*, even a signed blank cheque would attract the presumption unless rebutted by credible evidence. In the absence of any such evidence, the defence put forth by the accused remains a mere *ipse dixit* and does not inspire confidence. Thus, this Court is of the considered view that the accused has failed to raise a probable defence or rebut the statutory presumption in the manner known to law, and consequently, the presumption under Sections 118 and 139 of the Act continues to operate in favour of the complainant.

46. This Court, has independently reappreciated the entire evidence and considered the grounds raised in the appeal. On such reappreciation, this Court does not find any illegality, perversity or material irregularity in the findings rendered by the Trial Court. The conclusions arrived at by the Trial Court are based on proper appreciation of evidence and correct application of the settled principles of law governing cases under Section 138 of the Negotiable Instruments Act. The appellant has not placed any valid or convincing ground to interfere with the well-reasoned judgment of the Trial Court. In view of the foregoing discussion and upon an independent re-appreciation of the entire oral and documentary evidence, this Court finds that the complainant has duly established all the essential ingredients of the

offence under Section 138 of the Negotiable Instruments Act. The statutory presumptions under Sections 118 and 139 of the Act operate in favour of the complainant, and the accused has failed to rebut the same by raising a probable and acceptable defence. The contentions raised by the appellant/accused do not create any reasonable doubt in the complainant's case.

47. This Court has carefully considered the aforesaid grounds of appeal in the light of the entire evidence on record and finds that none of them merit acceptance. The contention that the learned trial Court has mechanically relied upon the statutory presumption is untenable, as the records clearly disclose that the complainant had, in the first instance, discharged the initial burden by proving the execution of the cheque, its dishonour, and compliance with statutory requirements, thereby rightly attracting the presumption under Sections 118 and 139 of the Negotiable Instruments Act, as enunciated in *Rangappa v. Sri Mohan*. The further contention regarding the alleged probable defence of misuse of cheque in connection with a transaction involving one Pon Baskar is found to be wholly unsubstantiated, as no independent or corroborative evidence has been adduced by the accused to probabalise such a defence. Mere suggestions in cross-examination or bald assertions, in the absence of supporting material, cannot rebut the statutory presumption, as held in *Kumar Exports v. Sharma Carpets*.

48. This Court, upon an independent re-appreciation of the entire evidence on record, finds that the accused has failed to successfully rebut the statutory presumption arising under Sections 118 and 139 of the Negotiable Instruments Act. It

is well settled that once the issuance of the cheque and the signature thereon are admitted, a presumption arises in favour of the complainant that the cheque was issued towards discharge of a legally enforceable debt or liability. In the present case, the accused has unequivocally admitted that the cheques belong to her and that the signatures therein are hers. Therefore, the statutory presumption squarely operates in favour of the complainant.

49. The burden, thus, shifts upon the accused to rebut the said presumption by raising a probable defence, either by adducing direct evidence or by eliciting material contradictions in the case of the complainant. However, in the case on hand, the accused has not entered into the witness box, nor has she adduced any independent evidence to substantiate her defence. The principal contention that the cheques were issued as security remains a mere bald assertion, unsupported by any material particulars such as the purpose, date, or circumstances of issuance. Such a vague and unsubstantiated plea cannot be construed as a probable defence.

50. Further, the documents relied upon by the accused, namely Exs. D1 to D8, do not probalilise her defence. Exs. D1 to D6 pertain to independent transactions in the nature of donations for different purposes and are not connected to the liability arising under the Memorandum of Understanding (Ex. P6). Likewise, Exs. D7 and D8, being bank statements, do not establish that the amounts reflected therein were paid towards discharge of the cheque liability. On the contrary, the continued acknowledgments of liability by the accused through Exs. P8, P10, and P12 clearly demonstrate that the liability subsisted even after such transactions.

51. Thus, the accused has failed to bring on record any cogent material to render the non-existence of debt so probable that a prudent person would act upon such a plea. The defence set up by the accused does not meet the standard of “preponderance of probabilities” and remains a mere possibility without evidentiary backing.

52. Accordingly, this Court holds that the accused has not successfully rebutted the statutory presumption arising under Sections 118 and 139 of the Negotiable Instruments Act, and the presumption in favour of the complainant remains intact.

53. Final Findings :-

In the light of the foregoing discussion and upon a comprehensive re-appreciation of the entire evidence on record, this Court is of the considered view that the complainant has successfully established all the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act. The issuance of the cheques and the signature thereon having been unequivocally admitted by the accused, the statutory presumption under Sections 118 and 139 of the Act squarely arises in favour of the complainant, which includes the presumption as to the existence of a legally enforceable debt or liability.

54. The accused has failed to rebut the said presumption by raising a probable defence. The plea that the cheques were issued as security is vague, unsupported by particulars, and appears to be a mere afterthought. No explanation has been offered as to the purpose or circumstances under which such cheques were allegedly issued. Though the accused is not bound to enter into the witness box, in the facts of the

present case, where the defence rests upon facts especially within her knowledge, failure to adduce cogent evidence or to subject herself to cross-examination warrants drawing of an adverse inference.

55. Further, the admissions made by the accused during the course of proceedings under Sections 251 and 313 Cr.P.C. regarding issuance and signature of the cheques significantly strengthen the case of the complainant. The oral evidence of PW1 has remained consistent, cogent, and unshaken in cross-examination. The documentary evidence, particularly Ex. P6 and the subsequent correspondence marked as Exs. P8, P10 and P12, clearly establish acknowledgment of liability by the accused. The conduct of the accused, in failing to issue any reply denying liability or initiating any action alleging misuse of cheque even after receipt of statutory notice, also militates against her defence.

56. The documents relied upon by the accused do not probabilise her defence and have been rightly rejected by the trial Court. The defence set up by the accused is inconsistent, unsupported by reliable evidence, and does not meet the standard of preponderance of probabilities. On the contrary, the complainant has established his case through cogent and convincing evidence, duly supported by statutory presumptions.

57. This Court further finds that the trial Court has meticulously analysed the entire evidence, both oral and documentary, in its proper perspective and has assigned cogent and convincing reasons for arriving at the conclusion of guilt. The findings of the trial Court are based on sound appreciation of evidence and settled principles of

law, and no perversity or illegality is shown so as to warrant interference by this appellate Court. Accordingly, this Court holds that the appeal is devoid of merits and hence the points 1 to 4 are answered against the appellant and in favour of the Respondent / Complainant.

In the result,

- (i) the Criminal Appeal is dismissed**
- (ii) That the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track court at Magisterial Level, Tiruval-
lur in STC No.04 of 2023 dated 13.12.2023 is hereby confirmed.**
- (iii) The Trial Court is directed to take appropriate steps for securing the presence of the accused and to enforce the sentence in accordance with law.**
- (iv) The parties shall bear their respective costs.**

Dictated to the Steno-typist directly typed by her in the computer, corrected and pronounced by me in the open court on the 07th day of April 2026.

I-Additional District and Sessions Judge,
Tiruvallur.

Copy to :
The Learned Judicial Magistrate,
Fast Track Court at Magisterial Level,
Tiruvallur
(with trial court records)

