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

Thursday, this the 11th day of June 2026

Criminal Appeal No.136 of 2022

against

S.T.C.No.52 of 2020

From which Court this appeal is preferred	Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur.
Case Number of Trial Court	S.T.C.No.52/2020 dated 20.10.2022
Appeal No.	Criminal Appeal No.136/2022
Name of the Appellant/Accused	B.Suguna, W/o Baskar, residing at No.1/22 J.N.Road, Tiruvallur Town and District – 602001.
Name of the Respondent/Complainant	M.Latha, W/o P.Nagarathinam, residing at No.226, Karthikeyan Nagar, Manavu Village & Post, Tiruttani Taluk, Tiruvallur District.
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.2,01,400/- (Rupees two lakhs one thousand four hundred only) i.e the amount due upon the cheques, to the complainant u/s 357(3) of Cr.P.C., within one month. In default to pay the above mentioned compensation amount, the accused is directed to undergo a further period of two months simple imprisonment. No fine imposed.

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Whether the conviction and sentence of Lower Court, Confirmed or setaside or modified.	In the result, **the Criminal Appeal is dismissed. The Judgment of conviction and sentence dated 20.10.2022 passed in STC No.52 of 2020 by the learned Fast Track Court (Magisterial Level), Thiruvallur, is hereby confirmed. The Appellant/accused shall undergo the sentence imposed by the learned Trial Court. The bail bond, if any, executed by the Appellant shall stand cancelled. The learned Trial Court is directed to take appropriate steps after the expiry of appeal time, so as to secure the presence of the accused and commit her to prison for undergoing the sentence, if the sentence has not already been undergone.**
Date of Judgment	11.06.2026

This Criminal Appeal is coming on 04.06.2026 before me for final hearing in the presence of Tr.M.Thamilselvan, Learned Counsel for the Appellant/Accused and Tr.A.R.Poovannan, 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

Criminal Appeal filed by the appellant/accused under Section 374(3) of Cr.P.C., to set aside the judgment of conviction and sentence passed by the learned Judicial

Magistrate, Fast Track Court at Magisterial Level, Tiruvallur in STC No. 52 of 2020 dated 20.10.2022.

2. <u>Case of Complainant in the trial court in brief</u> :-

The case of the Complainant, in brief, is that the Complainant was working in a private chit company and was acquainted with the accused for more than five years through business transactions. According to the Complainant, during August 2018, the accused approached her seeking financial assistance of Rs.2,00,000/- for meeting her personal and family expenses and agreed to repay the same with interest at the rate of 24% per annum. Believing the representation made by the accused, the Complainant advanced a sum of Rs.2,00,000/- to the accused, for which the accused executed an acknowledgment of debt on 28.10.2019. Thereafter, despite repeated demands made by the Complainant for repayment of the loan amount, the accused failed to discharge the liability. It is further stated that, when the Complainant and her husband insisted upon repayment during the first week of February 2020, the accused lodged a complaint before the Town Police Station, Tiruvallur. However, during the enquiry, the accused admitted the debt and agreed to repay the same.

Towards discharge of the aforesaid liability, the accused issued two cheques drawn on Syndicate Bank, Tiruvallur Branch, namely cheque bearing No.395831 dated 13.08.2020 for a sum of Rs.1,00,000/- and cheque bearing No.395834 dated 25.08.2020 for a sum of Rs.1,01,400/-. The Complainant presented the first cheque through her banker, namely Tamilnadu Mercantile Bank, Tiruvallur Branch, and the same was returned unpaid on 14.08.2020 with the endorsement "Funds Insufficient." Thereafter, upon being contacted, the accused requested the complainant to present the second cheque, assuring repayment. Accordingly, the second cheque was also presented through the complainant's banker and the same was returned unpaid on 27.08.2020 with the endorsement "Funds Insufficient." Subsequently, the Complainant caused issuance of a statutory legal notice dated 07.09.2020 calling upon the accused to repay the cheque amount. Though the accused received the notice on 09.09.2020, she neither issued any reply nor complied with the demand. Hence, alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, the complainant initiated the present private complaint before the trial Court.

Since the accused denied the complaint, the case was subjected to trial. Upon service of summons, the accused appeared before this Court. After granting sufficient opportunity, the substance of accusation under Section 251 Cr.P.C. was explained to the accused, to which he denied the same and pleaded not guilty, thereby claiming trial.

3. <u>Evidence and Exhibits by both sides</u> :-

On the side of the complainant, the complainant examined herself as PW1 and filed proof affidavit reiterating the averments made in the complaint. Through PW1, Ex.P1 to Ex.P8 were marked. Ex.P2 and Ex.P4 are the cheques bearing Nos.395831 and 395834 drawn on Syndicate Bank, Tiruvallur Branch, for sums of Rs.1,00,000/- and Rs.1,01,400/- respectively. Ex.P3 and Ex.P5 are the respective cheque return memos issued by Tamilnadu Mercantile Bank, Tiruvallur Branch, evidencing dishonour of the cheques for the reason “Funds Insufficient.” Ex.P6 is the statutory legal notice dated 07.09.2020 issued by the complainant to the accused and Ex.P7 is the postal acknowledgment card evidencing service of notice upon the accused on 09.09.2020. In order to further substantiate the complainant’s case, one Mr. Karthickeyan, Senior Branch Manager of Tamilnadu Mercantile Bank, Tiruvallur Branch, was examined as PW2 and Ex.P9 was marked through him. Further, one Mr. Aravind Sekar, Assistant Manager of Canara Bank, Tiruvallur Branch, was examined as PW3 and Ex.P10 was marked through him. Thus, on the side of the complainant, three witnesses were examined and ten documents were marked.

4. On the side of the accused, no oral or documentary evidence was adduced. The accused neither entered into the witness box nor marked any document in support of her defence.

5. <u>Final Findings of the trial Court</u> :-

After hearing both sides, the trial court held that the accused found guilty of the offences and the accused was convicted under Section 138 of the Negotiable Instruments Act and is convicted under Section 255(2) Cr.P.C. The accused is sentenced to undergo six months simple imprisonment and is further directed to pay compensation of Rs.2,01,400/- (Rupees Two Lakhs One Thousand Four Hundred only), being the cheque amount, to the complainant under Section 357(3) Cr.P.C. within a period of one month from the date of this order. In default of payment of compensation, the accused shall undergo a further period of two months simple imprisonment. No separate fine is imposed.

6. Aggrieved by the said findings, the accused filed this appeal on the following grounds:-

1. The judgment of conviction and sentence passed by the learned Trial Court is contrary to law, facts, probabilities of the case, weight of evidence and the settled principles governing prosecution under Section 138 of the Negotiable Instruments Act.

2. The learned Trial Court failed to properly appreciate the oral and documentary evidence adduced on the side of the appellant/accused.

3. The learned Trial Court failed to appreciate that there existed greater probability for the complainant to have come into possession of the cheque belonging to the accused.

4. The learned Trial Court further failed to properly appreciate the defence evidence adduced by the appellant/accused.

5. The learned Trial Court failed to properly appreciate the evidence of

Complainant admitting that she obtained second time cheque on 25.08.2020 in Cheque No.395834 under Ex.B4. The trial court failed to consider that the complaint given by the defacto complainant prior to the cheque shows that the cheque was not given by the accused and obtained voluntarily by the police.

6. The trial court failed to note that the defacto complainant is working in Chit Fund and the Accused is regular customer joined three chits and for the purpose of paying the chit amount the defacto complainant used to obtain cheques. The trial court failed to note that demand was wrongly mentioned by the defacto complainant as 28.10.2018 and in cross stated as 28.10.2019.

7. The learned Trial Court erred in improperly shifting the burden of proof entirely upon the accused, despite the accused having discharged his initial burden by raising a probable defence through oral and documentary evidence.

8. The learned Trial Court failed to appreciate that the complainant had not satisfactorily established the lawful custody and possession of the cheque and had also failed to prove the existence of a legally enforceable debt by reliable and independent evidence.

9. The learned Trial Court erred in imposing compensation without properly appreciating the distinction between fine and compensation under Sections 138 of the Negotiable Instruments Act and 357(3) Cr.P.C. The sentence imposed by the Trial Court is legally unsustainable and liable to be set aside.

Hence, the appellant / accused prays to set aside the judgment of the trial court in STC No.52 of 2020 dated 20.10.2022 and to acquit the accused from the charges.

7. <u>The Points for determination in this criminal appeal are</u> :-

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?**

8. <u>On Points No.1 to 4</u> :-

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. 52 of 2020 dated 20.10.2022 on the file of Judicial Magistrate, FTC, Thiruvallur 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, as stated supra. 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.

9. The learned counsel appearing for the Appellant/accused would vehemently contend that the Judgment of conviction and sentence passed by the learned Trial Court is contrary to law, facts, evidence, probabilities of the case and settled principles governing prosecution under Section 138 of the Negotiable Instruments Act and therefore liable to be set aside. It is contended that the learned Trial Court failed to properly appreciate the defence evidence adduced by the appellant and mechanically proceeded to convict the appellant solely on the basis of statutory presumption without scrutinizing the inherent improbabilities and material contradictions in the complainant's case.

10. The learned counsel appearing for the Appellant/accused would contend that the Judgment of conviction and sentence passed by the learned Trial Court is contrary to law, weight of evidence, and probabilities of the case. It is argued that the Trial Court failed to properly appreciate the defence put forth by the Appellant that the cheques in question were not issued towards discharge of any legally enforceable debt, but were issued only as security in connection with chit transactions conducted by the Complainant's chit fund company. The learned counsel would submit that the Complainant herself admitted in her cross-examination that she was working in a chit fund company and that the Appellant was a subscriber in the said chit transactions. Therefore, according to the Appellant, the possession of the cheques by the

Complainant stands sufficiently explained and the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act stood rebutted on the basis of preponderance of probabilities.

11. The learned counsel further argued that the Trial Court failed to consider the material inconsistencies and contradictions in the evidence of the Complainant. Though the Complainant alleged execution of acknowledgment of debt, there was discrepancy regarding the date of such acknowledgment, as the Complainant referred to the date as 28.10.2018 at one stage and as 28.10.2019 during cross-examination. According to the Appellant, such contradiction strikes at the very root of the Complainant's case and creates serious doubt regarding the alleged loan transaction. It is further submitted that the evidence on record would show that the second cheque bearing No.395834 dated 25.08.2020 was obtained only during the course of police enquiry and not voluntarily issued by the Appellant. The learned counsel would point out that the complaint lodged before the police was prior to the issuance of the said cheque and, therefore, the circumstances probabilise the defence that the cheque was obtained under coercion and misuse. The Trial Court, according to the Appellant, failed to properly consider these surrounding circumstances. The learned counsel would further contend that the Complainant failed to produce any independent documentary evidence to establish the alleged advancement of Rs.2,00,000/- or the source for such huge amount. It is argued that mere production of cheques and return memos would not automatically prove the existence of legally enforceable debt, particularly when the defence raised by the accused appears probable and consistent with the circumstances of the case. Hence, it is prayed that the Judgment of conviction and sentence passed by the Trial Court be set aside and the Appellant be acquitted of the charge under Section 138 of the Negotiable Instruments Act.

12. The learned counsel appearing for the Respondent/Complainant would strongly support the Judgment of conviction and sentence passed by the learned Trial Court and contend that the Trial Court, upon proper appreciation of both oral and documentary evidence, rightly convicted the Appellant/accused for the offence punishable under Section 138 of the Negotiable Instruments Act. It is submitted that the Complainant had clearly established all the mandatory ingredients required under Sections 138 and 142 of the Negotiable Instruments Act by producing cogent, convincing and corroborative evidence before the Trial Court.

13. The learned counsel appearing for the Respondent/Complainant would submit that the Trial Court, upon proper appreciation of both oral and documentary evidence, rightly convicted the Appellant/accused for the offence punishable under Section 138 of the Negotiable Instruments Act and that the jJudgment does not warrant any interference by this Court. It is argued that the Appellant had admittedly issued the cheques in question and had also not denied her signature found therein. Therefore, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act automatically arises in favour of the Complainant that the cheques were issued towards discharge of legally enforceable debt or liability. The learned counsel would further contend that the defence taken by the appellant that the cheques were issued only as security for chit transactions is a bald and unsupported plea. Except making suggestions during cross-examination, the Appellant neither entered into the witness box nor produced any oral or documentary evidence to substantiate the said defence. It is submitted that the appellant failed to rebut the statutory presumption even on the basis of preponderance of probabilities.

14. The learned counsel would also submit that the Complainant had clearly established all the ingredients required under Section 138 of the Negotiable Instruments Act by marking the dishonoured cheques, bank return memos, statutory notice, postal acknowledgment, and bank records through PW1 to PW3. The alleged discrepancy regarding the date of acknowledgment of debt is only a minor inconsistency and does not in any manner affect the core case of the complainant. Hence, it is prayed that the appeal be dismissed and the judgment of conviction and sentence passed by the trial Court be confirmed

15. The Complainant further argued that the Complainant has successfully established the essential foundational facts namely:-

(i) issuance of cheque by the accused,

(ii) presentation of the cheque within the statutory period,

(iii) dishonour of the cheque,

(iv) issuance and service of statutory demand notice within the prescribed period, and

(v) failure of the accused to repay the cheque amount within fifteen days from the date of receipt of notice.

Once these foundational facts stood proved, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act automatically arose in favour of the complainant, thereby creating a legal presumption that the cheque was issued towards discharge of a legally enforceable debt or liability.

16. At this stage, the burden shifted upon the accused to rebut the said statutory presumptions by raising a probable defence on the standard of preponderance of probabilities. However, unless and until such rebuttal is made by the accused through acceptable evidence, the Complainant cannot be compelled to further prove the transaction beyond the initial burden already discharged by him. In the considered view of this Court, the complainant has satisfactorily discharged his initial burden and successfully laid the factual and legal foundation necessary for invoking the penal provisions under Section 138 of the Negotiable Instruments Act.

17. Complying of mandatory provisions by the Complaint (Foundational facts):-

In order to constitute an offence punishable under Section 138 of the Negotiable Instruments Act, the complainant is required to establish the foundational facts constituting the statutory ingredients contemplated under Sections 138 and 142 of the Negotiable Instruments Act. The complainant must initially prove that the cheque in question was drawn by the accused on an account maintained by him, that the cheque was issued towards discharge of a legally enforceable debt or liability, that the cheque was presented within its period of validity, that the cheque was dishonoured for insufficiency of funds or for reasons contemplated under the Act, that a statutory demand notice was issued within thirty days from the date of receipt of information regarding dishonour and that the accused failed to make payment within fifteen days from the date of receipt of such notice. Only upon proof of these foundational facts would the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act arise in favour of the complainant.

18. In the present case, on the side of the complainant, Ex.P1 to Ex.P10 were marked. Ex.P1 is the acknowledgment of debt dated 28.10.2019 said to have been executed by the accused in favour of the complainant acknowledging the loan liability. Ex.P2 is the cheque bearing No.395831 dated 13.08.2020 drawn on Syndicate Bank, Tiruvallur Branch, for a sum of Rs.1,00,000/- issued in favour of the complainant. Ex.P3 is the cheque return memo dated 14.08.2020 issued by Tamilnad Mercantile Bank, Tiruvallur Branch, showing dishonour of Ex.P2 cheque for the reason "Funds Insufficient." Ex.P4 is the cheque bearing No.395834 dated 25.08.2020 drawn on Syndicate Bank, Tiruvallur Branch, for a sum of Rs.1,01,400/- issued in favour of the complainant. Ex.P5 is the cheque return memo dated 27.08.2020 issued by Tamilnadu Mercantile Bank, Tiruvallur Branch, showing dishonour of Ex.P4 cheque for the reason “Funds Insufficient.” Ex.P6 is the statutory legal notice dated 07.09.2020 issued by the complainant to the accused demanding payment of the cheque amount. Ex.P7 is the postal acknowledgment card evidencing service of the statutory notice upon the accused on 09.09.2020. Ex.P8 is the complaint filed by the complainant before the Court. Ex.P9 is the bank statement/account particulars of the complainant marked through PW2, namely the Senior Branch Manager of Tamilnadu Mercantile Bank, Tiruvallur Branch. Ex.P10 is the bank statement/account particulars of the accused marked through PW3, namely the Assistant Manager of Canara Bank, Tiruvallur Branch.

19. The complaint thereafter came to be filed within the period of limitation prescribed under Section 142 of the Negotiable Instruments Act and though there was a delay in filing the complaint, the same had already been condoned by the learned Trial Court in the appropriate petition. Further, the evidence of PW2 coupled with Ex.P6 to Ex.P8 namely the account statements and certified bank ledger corroborate the presentation and dishonour of the cheque. Ex.P1 loan agreement was also relied upon by the complainant to establish the alleged underlying liability. Thus, on a careful appreciation of the oral and documentary evidence available on record, it appears that the Complainant had prima facie established the foundational facts and complied with the mandatory statutory requirements contemplated under Sections 138 and 142 of the Negotiable Instruments Act so as to attract the statutory presumptions available under Sections 118 and 139 of the Act, subject however to rebuttal by the accused through probable defence.

20. 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 Naidu 2004 (2) CTC 417 and Ajeet Seeds Ltd. v. K. Gopala Krishnaiah.*2014 (2) MLJ (Crl) 561.***

21. 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.

22. Whether complainant discharged initial burden

In a prosecution under Section 138 of the Negotiable Instruments Act, the Complainant is initially required to establish the foundational facts constituting the ingredients of the offence, namely issuance of cheque by the accused, presentation of the cheque within its validity period, dishonour of the cheque, issuance of statutory notice within the prescribed period and failure of the accused to make payment within the stipulated time. Once such foundational facts are established, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act automatically arise in favour of the complainant, thereby shifting the burden upon the accused to rebut the same by raising a probable defence on the standard of preponderance of probabilities.

23. The foremost contention raised on the side of the Appellant/accused is that the Complainant had failed to discharge the initial burden of proving the existence of legally enforceable debt or liability and, therefore, the learned Trial Court erred in drawing the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act. This Court is unable to accept the said contention.

24. In the present case, the Complainant has specifically pleaded that the accused approached her during August 2018 seeking financial assistance of

Rs.2,00,000/- for meeting personal and family expenses and that the said amount was advanced on the promise of repayment with interest. It is the further case of the Complainant that the accused subsequently executed an acknowledgment of debt and, towards discharge of the said liability, issued the cheques in question, namely Ex.P2 and Ex.P4. In order to substantiate the said transaction, the complainant entered into the witness box as PW1 and reiterated the averements made in the complaint through her proof affidavit. The oral evidence of PW1 is supported by documentary evidence marked as Ex.P1 to Ex.P10. Ex.P2 and Ex.P4 are the cheques admittedly drawn from the account of the accused. Ex.P3 and Ex.P5 are the return memos issued by the banker of the complainant showing that the cheques were dishonoured for the reason "Funds Insufficient." Ex.P6 is the statutory legal notice issued within the prescribed period demanding payment of the cheque amount and Ex.P7 acknowledgment card establishes service of notice upon the accused. The complaint has also been filed within the period of limitation contemplated under Section 138 of the Negotiable Instruments Act. Further, PW2 and PW3, who are the officials of the respective banks, were examined to substantiate the banking transactions and dishonour of cheques. Through them, Ex.P9 and Ex.P10 bank records were marked.

25. At this juncture, it is relevant to note that the burden cast upon the Complainant at the initial stage is not to prove the transaction beyond all possible doubt independently of the statutory presumption. The complainant is only required to establish foundational facts such as issuance of cheque, presentation within time, dishonour, issuance of statutory notice, and failure of payment. Once these facts are proved and signature is admitted, the statutory presumption comes into operation. In the case on hand, the complainant has satisfactorily established all such foundational requirements through acceptable oral and documentary evidence.

26. Though the learned counsel for the Appellant attempted to contend that there were certain inconsistencies regarding the date of acknowledgment of debt and that the Complainant failed to produce independent proof regarding source of funds, such minor discrepancies do not demolish the core case of the Complainant, particularly when the issuance of cheques and signature therein remain substantially undisputed. It is well settled that minor contradictions or omissions which do not affect the substratum of the prosecution case cannot be magnified to reject an otherwise probable and acceptable case.

27. Further, the defence plea that the cheques were issued only as security for chit transactions also probabilises the fact that the cheques admittedly originated from the accused. Even assuming such defence to be true, the accused has not produced any material to establish that there was no legally enforceable liability on the date of presentation of the cheques. No document relating to the alleged chit transaction was produced and the accused had also not chosen to enter the witness box to substantiate her defence. Therefore, the said plea by itself cannot negate the initial burden already discharged by the complainant.

28. On a careful appreciation of the entire materials available on record, this Court is of the considered view that the Complainant has clearly discharged the initial burden cast upon her under law by proving the issuance of cheques, dishonour of the same, issuance of statutory notice, and non-payment of the cheque amount within the stipulated period. Consequently, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act rightly arose in favour of the complainant and the burden thereafter shifted upon the accused to rebut the same by raising a probable defence.

29. 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 probabilise his defence.

30. 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.

31. 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.

32. 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. 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.

33. Existence of Legally Enforceable debt :-

As far as existence of legally 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.

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

- **Admission of signature by the accused – a crucial and determinative factor.**

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- **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.**

34. The principal contention raised on the side of the appellant/accused is that there was no legally enforceable debt or liability in existence as on the date of issuance of the cheques and, therefore, the provisions of Section 138 of the Negotiable Instruments Act are not attracted. Upon careful consideration of the entire materials available on record, this Court finds no merit in the said contention.

35. In the instant case, the Complainant has consistently stated from the inception that the accused approached her seeking financial assistance of Rs.2,00,000/- for meeting personal and family expenses and that, believing the representation made by the accused, the said amount was advanced. The complainant further stated that the accused executed an acknowledgment of debt in favour of the complainant and thereafter issued the cheques in question towards discharge of the liability. The oral testimony of PW1 remains cogent, consistent, and trustworthy with regard to the loan transaction and issuance of cheques.

36. The documentary evidence produced by the complainant also substantially supports her case. Ex.P1 acknowledgment of debt demonstrates acknowledgment of liability by the accused. Ex.P2 and Ex.P4 are the cheques admittedly drawn from the bank account of the accused. The cheques were presented within the validity period and were dishonoured under Ex.P3 and Ex.P5 for the reason “Funds Insufficient.” Thereafter, statutory notice under Ex.P6 was issued within the prescribed period and the same was admittedly received by the accused under Ex.P7 acknowledgment card. Despite receipt of notice, the accused neither issued any reply disputing the liability nor initiated any legal proceedings alleging misuse of cheques. The silence maintained by the accused after receipt of statutory notice assumes significance and constitutes an important circumstance supporting the case of the complainant.

37. It is pertinent to note that the accused has not denied her signature found in the cheques. The defence put forth by the accused is only that the cheques were issued as security in connection with chit transactions and not towards discharge of loan liability. Once execution of the cheques and signature therein are admitted, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act comes into operation. The law is well settled that the presumption includes not only issuance of cheque but also existence of legally enforceable debt or liability unless the contrary is proved by the accused through acceptable evidence.

38. The accused, in the present case, has failed to place any convincing material before the Court to rebut the said presumption. Except making suggestions during cross-examination of PW1, no independent oral or documentary evidence has been adduced on the side of the accused. The accused did not enter into the witness box nor produce any records relating to the alleged chit transactions. No chit agreement, payment receipts, account statements, or any other supporting materials were produced to probabilise the defence theory. Mere suggestions put during cross examination, without substantive evidence, cannot be treated as proof of defence.

39. Further, the conduct of the accused also probabilises the case of the Complainant. According to the accused, the cheques were issued only as security and were allegedly misused by the complainant. However, admittedly, after dishonour of the first cheque, the accused did not issue any stop payment instructions with respect to the second cheque. Likewise, even after receipt of statutory notice, no reply notice was issued denying the liability or alleging coercion or misuse of cheques. If really the cheques had been misused, the normal conduct expected from a prudent person would be to immediately initiate appropriate legal action or issue a reply disputing the liability. The failure of the accused to take any such steps creates serious doubt regarding the genuineness of the defence plea.

40. The learned counsel for the Appellant attempted to point out certain inconsistencies regarding the date of acknowledgment of debt and the absence of independent proof for source of funds. However, such minor discrepancies are not sufficient to discredit the entire case of the complainant, particularly in a prosecution under Section 138 of the Negotiable Instruments Act where statutory presumptions operate in favour of the holder of the cheque. The core issue to be considered is whether the accused has raised a probable defence sufficient to rebut the statutory presumption. In the present case, the accused has miserably failed to do so.

41. It is also relevant to note that the complainant examined PW2 and PW3, who are bank officials, and through them marked Ex.P9 and Ex.P10 bank records. The evidence of these witnesses clearly establishes presentation and dishonour of the cheques from the account maintained by the accused. Their testimony remained unchallenged on material particulars. The evidence of independent bank officials lends further assurance to the case projected by the complainant.

42. This Court is conscious of the settled legal position that the presumption available under Section 139 of the Negotiable Instruments Act is rebuttable in nature and that the accused can rebut the same on the basis of preponderance of probabilities. However, such rebuttal must be based upon acceptable materials and surrounding circumstances capable of creating reasonable doubt regarding existence of debt or liability. In the case on hand, except a bald plea that the cheques were issued as security for chit transactions, no convincing circumstance has been established by the accused. Therefore, the statutory presumption remains unrebutted.

43. On an overall appreciation of the oral and documentary evidence available on record, this Court is of the considered view that the complainant has successfully established the existence of legally enforceable debt or liability and that the cheques in question were issued by the accused towards discharge of the said liability. The learned trial Court has rightly appreciated the evidence in proper perspective and correctly arrived at the conclusion that the offence under Section 138 of the Negotiable Instruments Act stood proved against the accused.

44. Whether the accused rebutted the presumptions

The principal defence raised by the Appellant/accused throughout the proceedings is that the cheques in question were not issued towards discharge of any legally enforceable debt or liability, but were issued only as security in connection with chit transactions conducted by the complainant's chit fund company. It is further contended that the complainant had misused the cheques and that the learned trial Court failed to properly appreciate the defence evidence and surrounding circumstances. Therefore, the point that arises for consideration is as to whether the accused has successfully rebutted the statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act.

45. At the outset, it is necessary to bear in mind the settled principles governing the presumption under the Negotiable Instruments Act. Once the execution of cheque and signature therein are admitted, a statutory presumption necessarily arises that the cheque was issued towards discharge of legally enforceable debt or liability. The burden thereafter shifts upon the accused to rebut the said presumption. No doubt, the standard of proof expected from the accused is not proof beyond reasonable doubt, and the accused can rebut the presumption even on the basis of preponderance of probabilities. The accused can rely upon materials brought on record by the Complainant and need not necessarily enter into the witness box. However, mere denial or explanation unsupported by acceptable evidence would not suffice to rebut the statutory presumption.

46. In the present case, the accused has not denied the issuance of cheques altogether. On the contrary, the defence of the accused itself is that the cheques were handed over as security in connection with chit transactions. Thus, the execution of the cheques and the signatures found therein substantially stand admitted. In fact, during the proceedings under Section 251 Cr.P.C. as well as during examination under Section 313(1)(b) Cr.P.C., the accused had not specifically denied the signatures found in the cheques. Once such admission is available, the presumption under Sections 118 and 139 of the Negotiable Instruments Act automatically operates in favour of the complainant.

47. The burden therefore squarely rested upon the accused to rebut the said presumption by placing before the Court acceptable materials creating doubt regarding the existence of legally enforceable debt. However, on a careful scrutiny of the entire evidence available on record, this Court finds that the accused has failed to discharge the said burden.

48. The primary defence projected by the accused is that the Complainant was working in a chit fund company and that the accused was a subscriber in three chit transactions conducted by the said company. According to the accused, for securing payment of future installments, signed cheques and bond papers used to be obtained from subscribers and the cheques in question were also issued only in that context. Though such defence was suggested during cross-examination of PW1, absolutely no documentary evidence was produced to substantiate the same. No chit agreement, subscription register, payment receipt, account statement, or any material relating to the alleged chit transaction was produced before the Court. Even assuming that chit transactions existed between the parties, there is absolutely no evidence to establish that the cheques in dispute were issued only as security and not towards repayment of liability.

49. It is a settled proposition of law that a mere plea that the cheque was issued as security would not by itself rebut the statutory presumption unless the accused further establishes that no debt or liability existed on the date of presentation of the cheque. In the present case, the accused has failed to probabilise the non existence of liability through acceptable evidence. Mere suggestions put to PW1during cross examination, in the absence of substantive proof, cannot be treated as rebuttal evidence.

50. Further, the conduct of the accused before and after dishonour of the cheques assumes considerable significance. Ex.P2 cheque was dishonoured on 14.08.2020 for the reason “Funds Insufficient.” Thereafter, Ex.P4 cheque was also dishonoured on 27.08.2020 for the same reason. If really the cheques had been issued only as security and were allegedly misused by the complainant, the natural conduct expected from the accused would have been to issue stop payment instructions to the bank or to initiate appropriate legal proceedings against the complainant. No such steps were admittedly taken by the accused. Similarly, after receipt of statutory legal notice under Ex.P6, the accused neither issued any reply notice disputing the liability nor alleged misuse or coercion. The unexplained silence maintained by the accused after receipt of statutory notice creates a strong adverse inference against the defence now projected before this Court.

51. The learned counsel for the appellant attempted to contend that the second cheque bearing No.395834 dated 25.08.2020 was obtained during police enquiry and therefore it cannot be treated as voluntarily issued towards discharge of debt. This contention also does not merit acceptance. Even assuming that the cheque was issued during the course of police enquiry, the same would only indicate acknowledgment of liability by the accused and cannot automatically negate the legally enforceable nature of debt. Moreover, except making such allegation, no independent evidence whatsoever has been produced to establish coercion, threat, or illegal procurement of cheque. No complaint was lodged against the complainant or the police officials alleging forcible obtaining of cheques. Therefore, the said contention remains a bald allegation without evidentiary support.

52. The accused also attempted to rely upon certain inconsistencies regarding the date of acknowledgment of debt, wherein the complainant referred to the date as 28.10.2018 at one stage and as 28.10.2019 at another stage. In the considered view of this Court, such minor discrepancy relating to date does not affect the substratum of the complainant's case, particularly when the issuance of cheques and signatures therein are substantially admitted. Minor contradictions and omissions which do not go to the root of the matter cannot be magnified to discard the entire prosecution case.

53. Another important circumstance which weakens the defence of the accused is that the accused had not chosen to enter into the witness box. Though an accused cannot be compelled to depose, when specific factual pleas are raised such as issuance of cheques for security purpose, existence of chit transactions, coercion during police enquiry, and misuse of cheques, the burden lies upon the accused to probabilise such defence through acceptable evidence. In the absence of any oral or documentary evidence on the side of the accused, the statutory presumption available in favour of the complainant remains unrebutted.

54. This Court is also guided by the settled legal position laid down by the Hon'ble Supreme Court that mere plausible explanation or bald denial is insufficient to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act. The accused must bring on record such facts and circumstances which would render the non-existence of debt so probable that a prudent person would act upon such supposition. In the present case, the accused has failed to create such probability.

55. On the contrary, the complainant has consistently established the loan transaction, issuance of cheques, dishonour of cheques, issuance of statutory notice, and failure of repayment through cogent oral and documentary evidence. The evidence of PW1 is duly corroborated by the testimony of PW2 and PW3, who are independent bank officials, and by Ex.P1 to Ex.P10 documents. Nothing substantial has been elicited in their cross-examination so as to discredit the Complainant's version.

56. Therefore, on an overall appreciation of the entire materials available on record, this Court is of the clear view that the accused has miserably failed to rebut the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act even on the touchstone of preponderance of probabilities. The learned trial Court has rightly appreciated the evidence and correctly concluded that the defence put forth by the accused is neither probable nor believable. Accordingly, this Court holds that the accused has failed to rebut the statutory presumption raised in favour of the complainant.

57. Final Findings :-

At the outset, it is pertinent to note that the complainant had established the foundational facts necessary to maintain the prosecution under Section 138 of the Negotiable Instruments Act. In the present case on hand, Ex.P4 cheque admittedly belongs to the bank account of the appellant/accused and the appellant, categorically admitted the signature found in as his own. The complainant further established through Ex.P5 cheque return memo that the cheque was dishonoured for the reason "Funds Insufficient", statutory notice dated 07.09.2020 and Acknowledgment card establish issuance of statutory notice within the prescribed period and refusal of notice by the accused, which amounts to deemed service under law. The complaint was thereafter filed within the prescribed period after condonation of delay by the competent court. Thus, the mandatory statutory requirements contemplated under Sections 138 and 142 of the Negotiable Instruments Act stood substantially complied with by the complainant.

58. Once issuance of cheque and signature therein are admitted, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act automatically arise in favour of the complainant regarding existence of legally enforceable debt or liability. The legal position in this regard is no longer res integra in view of the principles laid down by the Hon'ble Supreme Court in ***Hon'ble Supreme Court in Rangappa vs. Sri Mohan (2010) 11 SCC 441 and Kalamani Tex vs. P. Balasubramanian C.A.No.123/2021 Arising out of special leave petition (crl.) No.1876/2018***, wherein it has been consistently held that once execution of cheque and signature are admitted, the burden shifts upon the accused to rebut the statutory presumptions by raising a probable defence on the standard of preponderance of probabilities. Therefore, the core issue requiring consideration in the present appeal is whether the appellant/accused had successfully rebutted the statutory presumptions operating in favour of the complainant.

59. The complainant has satisfactorily proved that the cheques were drawn from the account maintained by the accused and that the same were dishonoured due to insufficiency of funds. The statutory notice was admittedly served upon the accused within the prescribed period and despite receipt of notice, the accused neither issued any reply denying the liability nor repaid the cheque amount within the statutory period. Thus, the complainant has duly complied with all the mandatory requirements contemplated under Section 138 of the Negotiable Instruments Act.

60. Most importantly, the accused had not denied the signatures found in the cheques. In fact, the defence put forth by the accused is only that the cheques were issued as security in connection with chit transactions. Once issuance of cheques and signatures therein are admitted, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act automatically arises in favour of the Complainant that the cheques were issued towards discharge of legally enforceable debt or liability. Thereafter, the burden shifts upon the accused to rebut the said presumption by raising a probable defence.

61. In the present case, the accused has failed to rebut the statutory presumption even on the basis of preponderance of probabilities. Though it was contended that the Complainant was working in a chit fund company and that the cheques were issued only as security for chit transactions, absolutely no documentary evidence was produced to substantiate the same. No records relating to the alleged chit transactions were marked before the Court. The accused had also not chosen to enter into the witness box to explain the circumstances under which the cheques came into the possession of the complainant. Mere suggestions put during cross-examination, in the absence of supporting evidence, cannot be treated as sufficient rebuttal to the statutory presumption.

62. Further, the conduct of the accused also probabilises the case of the complainant. If really the cheques had been misused by the complainant, the accused would have taken immediate steps by issuing stop payment instructions to the bank, lodging complaint before the competent authorities, or issuing suitable reply notice disputing the liability. Admittedly, no such steps were taken by the accused. Even after receipt of statutory notice, the accused maintained silence and did not dispute the liability at the earliest point of time. Such conduct creates serious doubt regarding the genuineness of the defence now projected before this Court.

63. The learned counsel for the appellant heavily relied upon certain discrepancies regarding the date of acknowledgment of debt and the circumstances surrounding issuance of the second cheque. However, this Court finds that such minor inconsistencies do not go to the root of the matter and are not sufficient to discredit the otherwise consistent and probable case projected by the Complainant. It is a settled proposition that minor contradictions or omissions which do not affect the substratum of the case cannot be magnified to reject the prosecution case in its entirety.

64. The learned Trial Court has meticulously appreciated both oral and documentary evidence in proper perspective and has arrived at a well-reasoned conclusion that the accused failed to rebut the statutory presumption available in favour of the complainant. This Court does not find any perversity, illegality, or misappreciation of evidence in the findings rendered by the learned trial Court. On the contrary, the conclusions arrived at by the learned Magistrate are fully supported by evidence available on record and are in consonance with the settled principles governing prosecutions under Section 138 of the Negotiable Instruments Act.

65. This Court is also conscious of the limited scope of interference in an appeal against conviction where the findings of the trial Court are based upon proper appreciation of evidence and where no material irregularity or miscarriage of justice is shown. In the case on hand, the appellant has failed to establish any valid ground warranting interference with the judgment of conviction. The defence projected by the accused remains unsupported by evidence and appears to be only an afterthought intended to escape criminal liability arising out of dishonour of cheques. Further, considering the nature of transaction, the amount involved, and the conduct of the accused in failing to honour the cheques despite statutory demand, this Court is of the view that the sentence imposed by the learned Trial Court cannot be said to be excessive or disproportionate. The direction issued by the Trial Court for payment of compensation equivalent to the cheque amount is also just and reasonable in the facts and circumstances of the case.

66. Accordingly, this Court is of the considered opinion that the Complainant has proved beyond reasonable doubt that cheque was issued by the Appellant/accused towards discharge of legally enforceable debt and that the cheque was dishonoured for insufficiency of funds. The Appellant has failed to rebut the statutory presumptions even on the standard of preponderance of probabilities. Hence, the judgment of conviction and sentence passed by the learned Trial Court does not suffer from any infirmity or illegality warranting interference and the Criminal Appeal is liable to be dismissed confirming the conviction and sentence imposed by the learned Trial Court.

In the result,

(i) **the Criminal Appeal is dismissed.**

(ii) **The Judgment of conviction and sentence dated 20.10.2022 passed in STC No.52 of 2020 by the learned Fast Track Court (Magisterial Level), Thiruvallur, is hereby confirmed.**

(iii) **The Appellant/accused shall undergo the sentence imposed by the learned Trial Court. The bail bond, if any, executed by the Appellant shall stand cancelled.**

(iv) **The learned Trial Court is directed to take appropriate steps after the expiry of appeal time, so as to secure the presence of the accused and commit her to prison for undergoing the sentence, if the sentence has not already been undergone.**

Dictated to the Steno-typist directly typed by her in the computer, corrected and pronounced by me in the open court on the 11th day of June 2026.

S TASNEEM Digitally signed by S TASNEEM

I-Additional District and Sessions Judge,
Tiruvallur.

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