

**III ADDITIONAL DISTRICT & SESSIONS COURT,
TIRUVALLUR AT POONAMALLEE.**

Present : Thiru.C.VIJAYAKUMAR, B.A., B.L.,
III Additional District & Sessions Judge

Tuesday the 30th day of June 2026

Criminal Appeal No.24/2025

Name of the Trial Court	:	Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.
Trial Court Case Number	:	S.T.C.No.225/2021
Appellant/Complainant	:	M. Manjunathan, S/o. Muthaiah, Residing at No. 22/1-A, Thiru – Veeka – Street, Venkat Raman Nagar, Korattur, Chennai – 600 080.
Respondent/Accused	:	B. Arumugam, Proprietor Sri Vinayaga Agencies, having registered Office at, No.31, Menambedu Road, Kanchnakuppam, Pillayar Kovil street, SIDCO, Ambattur Estate, Chennai–600 098.
Order of Trial Court	:	Accused was convicted U/s 138 of N.I Act and sentenced to undergo 6 months simple imprisonment and to pay a compensation of Rs.3,10,000/- within one month, and in default, undergo simple imprisonment for further period of one month. And the order of concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021.
Order of Appellate Court	:	In the result, the Criminal Appeal is dismissed and confirming the conviction passed by the trial court in STC No. 225/2021 dated 30.12.2024. The appellant/accused is convicted for the offence under

	Section 138 of the Negotiable Instruments Act, 1881. The sentence of six months Simple Imprisonment and the direction to pay compensation of Rs.3,10,000/- (Rupees Three Lakhs and Ten Thousand only) to the complainant under Section 357(3) Cr.P.C., and in default of payment of compensation, to undergo a further period of one month Simple Imprisonment, are hereby confirmed. And the order of concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021 is hereby confirmed.
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This Criminal Appeal came up before this Court for final hearing on 01.06.2026 in the presence of M/s. K. Murugan, B. Bindhu learned counsels for appellant/complainant, M/s. B. Govindaprabhu, G. Madhan Roy, D. Gopinathan learned counsels for Respondent / accused and upon hearing the arguments of both sides, on perusal of case records, written arguments stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

The complainant in S.T.C. No. 225 of 2021 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, has filed this criminal appeal for modification/enhancement of the imprisonment and for imposition of adequate sentence passed in the judgment dated 30.12.2024.

2) The complainant contends that the accused herein was running a business of supplying raw materials for construction under the name and style of M/s. Sri Vinayaga Agencies and well known to him. On such acquaintance the accused approached the complainant and sought hand loan by cash to a tune of Rs.5,00,000/- for his business and family needs. Since the accused is well known to the complainant, he lent a sum of Rs.5,00,000/- to the accused on 10.09.2019 as cash. The accused assured to repay the availed loan within a period of one year with one percent interest per month. When the complainant approached the accused to repay the loan along with interest the accused delayed payment. Finally the accused to discharge his enforceable debt in part has issued the subject cheque herein to a tune of Rs. 2,50,000/- towards repayment. Thereafter the complainant has presented the cheque herein with his banker canara bank, korattur branch for encashment but the same was returned with an endorsement as "Funds Insufficient". Consequent to the same the complainant has issued the statutory legal notice to the accused calling upon him to pay the dishonoured cheque amount and for which the accused even after receipt of legal notice has neither chosen to send a reply notice nor paid the dishonoured amount. Since the accused has issued the subject cheque with dishonest intention the complainant has no other go approached this court by presenting this present complaint. Since the accused has issued the subject cheque with dishonest intention the Complainant

lodged a private complaint against the accused under Section 138 of the N.I. Act before the learned Judicial Magistrate, Fastrack Court (Magisterial Level), Ambttur.

3) After taking cognizance of the case the accused appeared and the copies furnished, substance of accusation read over and explained to him the accused denied the accusation and the case is posted for trial.

4) During trial before the trial court, the Appellant/Complainant was examined as P.W.1 twenty six documents were marked as Ex.P-1 to P-6. After completion of trial, the accused is found guilty for the offence u/s. 138 of Negotiable Instruments Act. After that the accused was convicted under Section 255(2) of Cr.P.C. And the accused sentenced to undergo 6 months simple imprisonment and to pay a sum of Rs.3,10,000/- as compensation within a period of one month, and in default, undergo simple imprisonment for further period of one month. under Section 357(3) of Cr.P.C. And the order of concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021.

5) Aggrieved by the said judgment, the Appellant / Accused preferred this appeal on the following Grounds :

The appellant submitted that the trial court had imposed a lenient punishment despite the appellant having proved the case beyond a reasonable doubt through consistent oral and documentary evidence, and notwithstanding the fact that the

accused had openly admitted to the offense during the trial without presenting any probable defense evidence. Furthermore, the appellant asserted that the lower court failed to note that the respondent completely failed to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act. Consequently, the appellant contended that the learned magistrate erred by failing to consider the maximum punishments incorporated under the Negotiable Instruments Act, which allowed for imprisonment terms extending up to two years and fines up to twice the cheque amount. Because the appeal was preferred strictly against the imposition of an inadequate sentence for a lesser offense, the appellant respectfully prayed that the court would modify the trial court's order in S.T.C. No. 225 of 2021, dated December 30, 2024, to enhance the imprisonment term as prescribed by law and render proper justice.

6) Now the question for consideration before this court is Whether the present appeal is maintainable under Section 372 Cr.P.C.?

6-1) This Criminal Appeal has been preferred by the complainant seeking enhancement of the sentence of imprisonment and imposition of an adequate sentence, challenging the judgment of conviction and sentence dated 30.12.2024 passed in S.T.C. No.225 of 2021 on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur. By the said judgment, the learned Magistrate convicted the respondent/accused for the offence punishable under Section 138 of

the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act"), sentenced him to undergo six months' simple imprisonment, and directed him to pay compensation of Rs.3,10,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure, within a period of one month from the date of the judgment, with a further direction that, in default of payment of compensation, he shall undergo simple imprisonment for a further period of one month. And ordered for concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021

6-2) This appeal has been preferred by the complainant under the proviso to Section 372 of the Code of Criminal Procedure, 1973, corresponding to Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023. In the present case, the cause of action arose upon the issuance of the statutory demand notice dated 05.05.2021 following the dishonour of the cheque. Despite receipt of the statutory notice, the accused failed to make payment of the cheque amount within the prescribed period. Since the cause of action arose prior to the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023, Since the prosecution was instituted and proceeded under the Code of Criminal Procedure, 1973, the present appeal is governed by the provisions of the Cr.P.C. The section 372 crpc reads as follows:

372. No appeal to lie unless otherwise provided.—
No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

6-3) As per the above provision now the initial point for consideration is whether the complainant of a cheque dishonour case comes under the definition of victim or not?.The Hon'ble supreme court in the case of **M/s. CELESTIUM FINANCIAL VS A. GNANASEKARAN ETC. Reported in 2025 INSC 804** held that,

7.8 In the case of an offence alleged against an accused under Section 138 of the Act, we are of the view that the complainant is indeed the victim owing to the alleged dishonour of a cheque. In the circumstances, the complainant can proceed as per the proviso to Section 372 of the CrPC and he may exercise such an option and he need not then elect to proceed under Section 378 of the CrPC.

The Hon'ble Supreme Court, has categorically held that a complainant in a prosecution under Section 138 of the Negotiable Instruments Act is a "victim" within the meaning of the proviso to Section 372 of the Cr.P.C., as the dishonour of the cheque directly causes loss or injury to the complainant.

6-4) The next question that arises for consideration is whether the relief sought in the present appeal falls within the scope of the proviso to Section 372 of the Code of Criminal Procedure, 1973. The proviso confers a right of appeal upon the victim only in three contingencies, namely: (i) against an order acquitting the accused; (ii) against an order convicting the accused for a lesser offence; or (iii) against an order imposing inadequate compensation.

6-5) Applying the above provision to the facts of the present case, it is evident that the learned Judicial Magistrate has convicted the respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, sentenced him to undergo six months' simple imprisonment, and directed him to pay compensation of Rs.3,10,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure within one month, with a default sentence of one month's simple imprisonment. And ordered for concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021

6-6) The present appeal has not been preferred against an order of acquittal, nor does it challenge a conviction for a lesser offence or the adequacy of the compensation awarded. On the contrary, the sole relief sought by the appellant is enhancement of the substantive sentence of imprisonment imposed upon the respondent/accused.

6-7) A plain reading of the proviso to Section 372 of the Cr.P.C. makes it clear that the right of appeal conferred therein is confined to the three contingencies specifically enumerated therein. Since the present appeal seeks only enhancement of the sentence of imprisonment, a relief which does not fall within any of the three categories contemplated under the proviso to Section 372 of the Cr.P.C., the appeal is beyond the scope of the said provision and is, therefore, not maintainable under Section 372 of the Cr.P.C.

6-8) In these circumstances The Hon'ble Supreme Court in the case of Parvinder Kansal vs The State Of Nct Of Delhi on 28 August, 2020 reported in AIR 2020 SUPREME COURT 4044 wherein held that,

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.” A reading of the proviso makes it clear that so far as victim’s right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While

it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of National Commission for Women v. State of Delhi & Anr. (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable.

6-9) The ratio laid down by the Hon'ble Supreme Court squarely applies to the facts of the present case. Although the appellant, being the complainant in a prosecution under Section 138 of the Negotiable Instruments Act, is entitled to be treated as a "victim" for the purpose of invoking the proviso to Section 372 of the Code of Criminal Procedure, such right of appeal is not absolute but is confined to the contingencies expressly enumerated in the proviso. The statutory right of appeal is available only where the trial Court has acquitted the accused, convicted the accused for a lesser offence, or awarded inadequate compensation.

6-10) In the present case, the respondent/accused has been convicted for the offence under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo six months' simple imprisonment. Further, the learned trial Magistrate has awarded compensation of Rs.3,10,000/- under Section 357(3) of

the Code of Criminal Procedure. The appellant has not questioned the adequacy of the compensation awarded, nor has the appeal arisen out of an order of acquittal or conviction for a lesser offence. The sole grievance of the appellant is that the substantive sentence of imprisonment imposed upon the respondent is inadequate and requires enhancement. Hence in the present appellant has no statutory right under the proviso to Section 372 of the Code of Criminal Procedure to maintain an appeal seeking enhancement of sentence. Under Section 377 Cr.P.C., the statutory right to seek enhancement of sentence is conferred upon the State Government. No corresponding right is conferred upon the victim under the proviso to Section 372 Cr.P.C.

6-11) Since the appellant seeks only enhancement of the substantive sentence of imprisonment, which is not one of the contingencies contemplated under the proviso to Section 372 Cr.P.C., the appeal is not maintainable. The statutory right to seek enhancement of sentence is vested exclusively in the State under Section 377 Cr.P.C. Accordingly, the appeal is liable to be dismissed as not maintainable.

7) In the result, this appeal is dismissed and confirming the conviction passed by the trial court in STC No. 225/2021 dated 30.12.2024. The appellant/accused is convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881. The sentence of six months Simple Imprisonment and the direction to pay compensation of Rs. 3,10,000/- (Rupees Three Lakhs and Ten Thousand only) to

the complainant under Section 357(3) Cr.P.C., and in default of payment of compensation, to undergo a further period of one month Simple Imprisonment. And the order of concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 223/2021 and S.T.C. No. 224/2021 is hereby confirmed.

Dictated to the Steno-typist, typed by him directly in the computer, and corrected and pronounced by me in the open court on this, the 30th day of June 2026.

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**