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.99/2025

Name of the Trial Court	:	Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.
Trial Court Case Number	:	S.T.C.No.223/2021
Appellant/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.
Respondent/Complainant	:	M. Manjunathan, S/o. Muthaiah, Residing at No. 22/1-A, Thiru – Veeka – Street, Venkat Raman Nagar, Korattur, Chennai – 600 080.
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.2,40,000/- within one month, and in default, undergo simple imprisonment for further period of one month. And also ordered for the concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 224/2021 and S.T.C. No. 225/2021.
Order of Appellate Court	:	In the result, this Criminal Appeal is dismissed, confirming the conviction and sentence passed by the trial court in STC No. 223/2021 dated 30.12.2024. The appellant/ accused is convicted for the offence under

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		Section 138 of the Negotiable Instruments Act, 1881. The sentence of six months Simple Imprisonment and the direction to pay compensation of Rs. 2,40,000/- (Rupees Two Lakhs and Forty 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. 224/2021 and S.T.C. No. 225/2021 is hereby confirmed.

This Criminal Appeal came up before this Court for final hearing on 01.06.2026 in the presence of M/s. B. Govindaprabhu, G. Madhan Roy, D. Gopinathan learned counsels for appellant/accused, M/s. K. Murugan, B. Bindhu learned counsels for Respondent / complainant 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 accused in S.T.C.No.223 of 2021 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, has filed this criminal appeal for setting aside the judgment dated 30.12.2024, imposing conviction, sentence and compensation on him.

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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.2,00,000/- 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 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, subtance 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 Respondent/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.2,40,000/- 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 also ordered for the concurrent running of the sentence in this case along with the other two cases in S.T.C. No. 224/2021 and S.T.C. No. 225/2021.

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

The Learned Magistrate committed a grave error by framing charges on the premise that the disputed cheque was issued for a legally enforceable debt, failing to recognize that the Complainant fundamentally failed to prove the factum of lending Rs.5,00,000/- or demonstrate the financial capacity to advance such an amount, which was notably absent from his Income Tax returns. Material contra-dictions in the deposition of PW1 heavily undermine the Complainant's case;

PW1 initially claimed to know the Accused through minor construction material purchases but later alleged a ten-year personal acquaintance to explain why a massive loan was extended completely unsecured and without written documentation, a scenario that is highly implausible for any ordinary businessman. Crucially, the evidence, including bank details visible on the left edge of the cheque dated January 4, 2017, clearly establishes that the actual loan transaction of Rs.2,50,000/- took place in 2017 rather than 2019, rendering the debt legally time-barred by limitation. To bypass this, the Complainant committed fraud on the Court by changing the dates and misusing three blank security cheques given in 2017—specifically Ch. No. 471173 for Rs.2,00,000/-, Ch. No. 471175 for Rs.50,000/-, and Ch. No. 360276 for Rs.2,50,000/- filling them all out with the identical date of April 15, 2021, and presenting them to a single bank on the same day. PW1 failed to explain why three separate cheques would be extracted for a single transaction, while further evidence reveals the cheques were originally given to a third party named Chitra and subsequently misused. Furthermore, the Trial Court completely failed to consider the deposition of DW1 and the accompanying Exhibit D1, consisting of 34 carbon copies of delivery challans from Vinayaga Agencies, which proved that the Accused had already fully repaid the initial loan by adjusting it against the cost of delivered construction materials. Hence, seeking acquittal of the accused.

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6) <u>POINT:</u>

Both sides heard. Records perused.

7) <u>This Court framed the following questions for the independent assessment of this appeal :-</u>

> **1)** Whether the complainant had successfully discharged his initial burden to prove the foundational facts necessary to attract the provisions of Section 138 of the NI Act?
>
> **2)** Whether the presumptions under Sections 118(a) and 139 of the NI Act were rightly invoked by the trial court?
>
> **3)** Whether the cheque in the case has handed over for security?
>
> **4)** Whether the judgment of the trial court suffers from any perversity, illegality, or error in appreciation of evidence warranting interference by this Appellate Court?
>
> **5)** Whether the appeal is to be allowed or dismissed, and what order as to sentence or compensation?

8) <u>Point No. 1:</u>

8-1) This Criminal Appeal is preferred against the judgment of conviction and sentence dated 30.12.2024 in STC No. 223/2021 on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur. The learned Magistrate convicted the appellant/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "the NI Act") and sentenced him to undergo six months of simple imprisonment and directed him to pay a compensation of Rs. 2,40,000/- to the complainant under Section 357(3) Cr.P.C., within a period of one month and in default, to undergo a further period of one month of simple imprisonment.

8-2) The complainant's initial burden is to prove the foundational facts for an offence under Section 138 of the NI Act: (i) that the accused issued the cheque; (ii) that the cheque was presented within its validity; (iii) that it was dishonoured for "insufficient funds"; (iv) that a statutory notice was sent within the prescribed time; and (v) that the accused failed to pay within 15 days of receiving the notice. (vi) After that the complainant filed the preent complaint within the period of one month.

8-3) In the present case, the complainant examined as PW1 and ExP1 to ExP6 were marked through him. The accused has admitted his signature on the cheque. The return memo (Ex.P-2) proves the dishonour. The legal notice (Ex.P-3) and postal acknowledgment (Ex.P-4) prove the service of notice.

8-4) To succeed in a complaint under Section 138 of the Negotiable Instruments Act, 1881, the complainant must, as a foundational requirement, establish compliance with the strict statutory timeline prescribed under Sections 138 (a), (b), and (c) of the Act. To file a successful complaint, the process begins when the drawer issues a cheque that is subsequently presented to the bank within its three-month validity period. If the cheque is dishonoured and returned unpaid, the payee must issue a statutory written notice to the drawer within 30 days of receiving the return memo. Legal action is triggered if the drawer fails to make payment within 15 days of receiving that notice. Finally, the payee must adhere to the limitation period, filing the formal complaint in court within one month from the date the cause of action arose. This Court has meticulously examined the records to verify compliance with these mandatory requirements.

8-5) In the instant case, the cheque in question, Cheque No. 471173 (Ex.P-1), is dated 15.04.2021 for Rs.2,00,000/-. The complainant presented this cheque through his banker, Canara Bank, Korattur Branch on 17.04.2021. The cheque was returned dishonoured on 19.04.2021 (Ex.P-2) with the remark "Funds Insufficient." This date is well within the three-month validity period from the date of the cheque, which would have expired on 18.07.2021. Therefore, the foundational requirement regarding the validity of the cheque is satisfied.

8-6) Regarding the statutory notice required under Clause (b) of the proviso to Section 138 of the N.I. Act, the record shows that the dishonour of the cheque occurred on 19.04.2021. In response, the complainant issued a statutory legal notice through his Counsel dated 05.05.2021, which has been marked as Ex.P-3. An examination of the timeliness of this notice reveals that it was issued on 05.05.2021. Counting the period from the dishonour on 19.04.2021, the notice was issued on the 16th[5] day. Thus, the notice was issued well within the statutory limit of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid, thereby fulfilling the mandatory requirement under the clause.

8-7) With regard to the service of the statutory notice and the subsequent failure to pay, the following aspects are examined. The complainant dispatched the legal notice to the correct address of the Accused. The notice was served on the Accused on 06.05.2021, as evidenced by the postal acknowledgment card marked as Ex.P-4. The accused himself has admitted before the trial court during questioning stage that he received the pre-case legal notice. Consequently, the Accused was granted a period of 15 days from the receipt of notice, i.e., from 06.05.2021, to make the payment. This deadline for payment expired on 21.05.2021. The Accused failed to make any payment or send a reply to the notice. Accordingly, the cause of action for filing the complaint arose on 22.05.2021.

8-8) Upon the failure of the accused to make payment within the statutory period, the cause of action for filing the complaint accrued to the complainant. As established earlier, the statutory notice was served upon the accused on 06.05.2021. The accused was required to make payment within 15 days thereof, and the deadline for payment expired on 21.05.2021. Consequently, the cause of action for filing the complaint arose on 22.05.2021. In accordance with Clause (c) of the proviso to Section 138 of the Negotiable Instruments Act, 1881, and section 142(b) of the NI Act the complainant was required to file the complaint within one month from the date of arising of the cause of action, i.e., on or before 22.06.2021.

8-9) Upon examination of the records, it is observed that the complainant has filed the present complaint on 07.08.2021. This Court notes that the complaint was filed beyond the period of limitation prescribed under law. However, the trial court has rightly observed that filing of this complaint comes under the Covid-19 limitation and is not barred by limitation and hence deemed to be filed in time.

8-10) This Court finds no reason to interfere with this finding of the trial court, as the same is in accordance with the various extensions granted by the Hon'ble Supreme Court during the Covid-19 pandemic. Therefore, the complaint has been instituted within the period of limitation prescribed by law, and the mandatory requirement under Clause (c) of the proviso to Section 138 of the N.I. Act is fully satisfied.

9) <u>Point Nos. 2, 3 & 4:</u>

9-1) I In the present case, the accused admitted the signature in the cheque ExP1 the appellant/accused has taken the defence that the cheque was issued as a blank security cheque and was subsequently misused by the complainant. He has further contended that the alleged loan transaction was time-barred and that the liability

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9-2) A careful scrutiny of the oral and documentary evidence, however, reveals that these defences were primarily suggested to PW1 during cross-examination. The accused examined himself as DW1 and marked Ex.D1 through him. Significantly, the evidence of DW1 substantially proceeds only on the plea that the loan liability had already been discharged.

9-3) When an accused specifically pleads that the debt has been discharged, the burden lies upon him to place satisfactory and reliable material before the Court to substantiate such a plea. In the present case, except for marking Ex.D1, the accused has not produced any independent documentary evidence such as receipts, account statements, ledger extracts, settlement records, or any other document to establish that the alleged liability was in fact discharged. In the absence of such cogent evidence, the plea of discharge remains a mere assertion and cannot be accepted.

9-4) The defence of repayment is founded entirely upon **Ex.D1**, which consists of 34 carbon copies of delivery challans. According to the accused, the value of the construction materials supplied under the said challans was adjusted towards the loan amount. However, a careful perusal of Ex.D1 shows that the documents are merely delivery challans and not invoices, bills or documents evidencing settlement of accounts. Significantly, all the challans are only carbon copies and none of them bears the signature or acknowledgment of the complainant evidencing receipt of the materials. In the absence of such acknowledgment, the very delivery of the materials to the complainant remains unsubstantiated.

9-5) The principal defence put forth by the appellant/accused is that the loan transaction had taken place in the year 2017, that the said debt had become barred by limitation, and that the cheque in question had been issued only as a blank security cheque. In support of this contention, the appellant sought to rely upon the bank particulars printed on the left side of the cheque to contend that the cheque leaf pertained to the year 2017.

9-6) However, the said contention is not supported by any cogent or convincing evidence. PW1 has consistently deposed that a cash loan of Rs.5,00,000/- was advanced to the accused on 10.09.2019 and that the cheque in question was issued towards discharge of a part of the said liability. Except making suggestions during the cross-examination of PW1, the accused has not produced any independent documentary evidence, such as bank statements, account books, receipts, or any other contemporaneous records, to establish that he had borrowed only a sum of Rs.2,50,000/- on 04.01.2017 or that the cheque in question related to an entirely different transaction.

9-7) The mere fact that certain bank particulars printed on the cheque may indicate that the cheque book was issued during an earlier period does not, by itself, establish that the cheque was executed in the year 2017 or that the underlying transaction pertains to that period. The relevant date for the purpose of Section 138 of the Negotiable Instruments Act is the date borne on the cheque, namely 15.04.2021, unless the contrary is established by reliable evidence.

9-8) Further, if the cheque had in fact been issued only as a security in connection with an earlier transaction and had subsequently been misused, it was incumbent upon the accused to explain why no steps were taken to demand the return of the cheque, issue any notice to the complainant. The absence of any such contemporaneous conduct on the part of the accused considerably weakens the defence projected by him and renders the plea of misuse wholly unsubstantiated.

9-9) In the present case, the accused has not only failed to provide cogent evidence but has also admitted the signature on the cheque. The accused has failed to adduce any cogent evidence to rebut the presumption, and therefore, the statutory presumption under Section 139 of the N.I. Act stands firm and unrebutted.

10) <u>Point No. 5:</u>

For the foregoing reasons, this court finds no merit in this appeal. The appellant/accused has failed to make out any ground to interfere with the wellreasoned judgment of conviction and sentence passed by the learned trial Magistrate.

11) In the result, this Criminal Appeal is dismissed, confirming the conviction and sentence passed by the trial court in STC No. 223/2021 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. 2,40,000/- (Rupees Two Lakhs and Forty 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. 224/2021 and S.T.C. No. 225/2021 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.

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III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.