IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT, ATTUR.

Present: Tr. N. Mohanasundaram, B.B.A., L.L.B(Hons).,

Judicial Magistrate, Fast Track Court,

Attur.

Saturday 04th Day of July 2026

STC.No:146/2023

CNR.No. TNSA15-000130-2023

1.	Details of the Complainant	A.Balakrishnan(42), S/o.Arumugam, D.No.3/530, Ammampalayam Village and Post, Attur Taluk, Salem District.
2.	Details of the Accused	R.Balamurugan(47), S/o.Ramar, D.No.12/27, Keppachiamman Kovil Street, Attur Town and Taluk, Salem District.
3.	The Offence Complained	U/s.138 and 142 of Negotiable Instruments Act, R/W u/s.200 Cr.P.C.
4.	The Plea of Accused	Pleaded not guilty.
5.	Date of complaint	01.08.2023
6.	Commencement of Trial	18.04.2024
7.	Closure of the Trial	02.04.2026
8.	Judgment	04.07.2026
9.	Reason for delay	Miscellaneous petitions

This case was taken cognizance on 27.09.2023 and came for final hearing before me on 02.07.2026 in the presence of Thiru.T.Subbarayan, B.A., B.L., the learned counsel for the complainant and Thiru.R.L.Jothiram, B.A., L.L.B., the learned

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counsel for the Accused. After hearing submissions and upon perusing all the connected materials on records, having stood over the case for consideration till this day, this court delivers the following.

JUDGMENT

1. This complaint is filed U/s. 200 of Code of Criminal Procedure r/w Section 138 and 142 of the Negotiable Instruments Act, 1881 against the accused alleging that, the accused has committed the offence under section 138 of NI Act and prayed for awarding suitable punishment to the accused according to law and for award of compensation to him.

The case of the complainant is as follows:

2. The complainant and the accused are well known person for the past six years. On that basis, the accused borrowed a sum of **Rs.2,50,000/-** from complainant on 03.07.2022 as for his urgent family expenses, fruit business expenses and agreed to pay 12% interest per annum and also agreed to repay amount within one year. The complainant submits that, the accused issued post dated cheque as **03.07.2023** bearing No.**059108** drawn on TamilNadu Merchantile Bank Ltd, Attur branch. The accused has paid interest, for every month and he did not pay the said borrowed principal amount till 02.03.2023. As per the instruction of the accused the complainant has presented the cheque for encashment with his banker in Canara Bank, Attur branch on 03.07.2023. That on 05.07.2023 the cheque was returned as unpaid for the reason **"Account Closed".** Thereafter, the complainant caused **statutory notice** to accused

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on **10.07.2023**. The statutory notice was received by the accused on **11.07.2023**. The accused issued **reply notice** to the complainant on **19.07.2023**. In spite of demand notice received by the accused, he failed to repay the cheque amount. Hence, this complaint was filed before this court on **01.08.2023**.

3. After filing of the complaint sworn statement of the complainant was recorded. On perusal of records this court satisfied that there are sufficient grounds found to proceed against the accused and took cognizance for the offence punishable u/s. 138 of NI Act by issuing summons to the accused. After appearance of accused, copies of material documents were furnished u/s. **207 of Cr.P.C** at free of cost. Then, the **substance of accusation** explained to accused **u/s. 251 of Cr.P.C** for which the accused pleaded as **"பொய் புகார்"** and therefore, the case was posted for trial.

4. The complainant was examined as Pw1 and **Ex.P1 to Ex.P6** were marked through him. After closing the evidence of complainant's side, this court explained to the accused incriminating circumstances appearing against in the prosecution evidence and he was questioned **u/s 313(1)(b) of Cr.P.C.** for which he claimed as False case and False evidences. The accused was examined as **Dw1** and one Selvamani was examined as **Dw2**. **Ex.D1** was marked.

Heard both sides. Perused the materials and documents available on record.

5. The counsel for the complainant argued that all the ingredients of the offence u/s

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138 of N.I. Act are satisfied as proved through the documents exhibited on the side of the complainant and prayed for awarding maximum punishment and compensation.

<u>Points for consideration in this case are as follows:</u>

5.1. Whether the ingredients of the offence enumerated in section 138 of the Negotiable Instruments Act,1881 have been met?

5.2. Whether the facts and circumstances of this case warrants raising of presumption under section 139 of the Negotiable Instruments Act,1881?

5.3. Whether the accused has rebutted the said presumption (if raised) in favour of the complainant?

5.4. Whether the complainant has proved this case against the accused beyond all reasonable doubts?

<u>Point No.5.1:</u>

5.1.1. In order to attract offence punishable under section 138 of Negotiable Instruments Act, 1881 the following ingredients must have been satisfied:

1. The alleged cheque should have been drawn by the accused from the account maintained by him for discharging the liability arise out of the cheque.
2. The alleged cheque should have been presented for enchasement within a period of three months or before its validity whichever is earlier, from the date on which, it was drawn.
3. The cheque presented must have been returned for insufficiency of funds in the

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drawers account or for exceeding arrangements made with drawers account or for any reason prescribed in law

4. The complainant must have issued notice to accused informing the dishonour of cheque and demanding to pay the amount for which cheque was issued
5. The accused, even after receiving the demand notice have not paid the amount within 15 days of receipt of notice.

Taking into consideration above aspects, on careful perusal of case, it transpires that, the complainant has examined himself as **PW1** witness and marked through him **cheque** dated **03.07.2023** as **Ex.P1**. The **deposit receipt** dated **03.07.2023** marked as **Ex.P2**. The **return memo** dated **05.07.2023** issued by the Bank marked as **Ex.P3** which shows that the cheque was dishonoured. **Ex.P4** is the **statutory notice** dated **10.07.2023** sent by the complainant to accused within 30 days from the date of return of cheque, demanding him to pay the cheque amount within 15 days from the date of receipt of statutory notice. **Ex.P5** is the **acknowledgement card** which shows that the accused received the statutory notice on **11.07.2023. Ex.P6** is the **Reply Notice** dated **19.07.2023**. Thus on considering the evidence of Pw1 along with **Ex.P1 to Ex.P6**, it is satisfied that the ingredients enumerated under section 138 of NI Act, stands established accordingly. Therefore, point no.5.1 is answered in favour of the complainant.

<u>Point No.5.2:</u>

5.2.1. The complainant does have the benefit of presumption in his favour as per section 139 under certain circumstances in respect of liability of the accused to him. Section 139 says as follows:

Sec. 139 – Presumption in favour of the holder:

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

In so far as the presumption is concerned, it comes into play when the accused has categorically admitted the signature on the cheque is that of him. In the present case, the accused explicitly admitted his signature on the cheque during cross examination. On the aspect of presumption, the Hon'ble Supreme Court of India held in ***Triyambak S Hegde Vs Sripad Crl.A.No.849850/2011*** that if the signature on the cheque is admitted, the presumption under section 139 shall be raised that the cheque was issued in discharge of debt or liability. In the present case, since the signature has been admitted by accused, the presumption u/s.139 of the Act raised in favour of the complainant. Hence, point no.5.2 is answered in favour of the complainant.

<u>Point No.5.3:</u>

5.3.1. The presumption envisaged Under section 139 of the NI Act, is a rebuttable presumption, such presumption can be rebutted proving contrary by providing evidence by the accused. At this point, the Hon'ble Supreme Court of India laid down in ***Rangappa vs. Sri Mohan (2010) 11 SCC 441*** as, when the accused has to rebut the

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presumption under section 139, the standard of proof is that of establishing preponderance of probabilities not the strict proof. Similarly, Hon’ble Supreme Court of India in ***Basalingappa vs. Mudibasappa (2019) 9 SCC 418*** held that, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the complainant in order to raise probable defense. It is not necessary for the accused to get into the witness box in support of his defense.

5.3.2. As far as **acquaintance between complainant and accused** is concerned, the complainant claims that, he knew the accused for the past six years, prior to alleged transaction. The accused did not deny the acquaintance of complainant at any stage. Therefore, prior acquaintance between complainant and accused, is not in dispute.

5.3.3. In so far as **circumstances of lending and issuance of cheque** is concerned, the accused commenced his defense from the reply notice, which was marked as **Ex.P6.** In reply notice the accused stated that, the complainant was employed in Vaigai finance. While so, he borrowed amount of Rs.32,000/- in the year 2020, interest at rate of 3% per month from the finance and on demand, he issued his blank unsigned cheque, which is the present subject matter. Subsequently, the accused repaid the amount in full with interest and closed that account. However, the accused says that, when he asked to return the cheque, he was told by finance that, no proceedings would be initiated upon that cheque as the loan amount was repaid by him. Believing that, the accused kept silence.

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5.3.4. As such, the accused deposed in his chief examination, that the complainant owns finance. Therefore, he borrowed from complainant sum of Rs.50,000/- in the year 2020 and repaid the same. Subsequently, he borrowed from complainant another sum of Rs.32,000/- and he repaid the same on payment of daily basis. Likewise, the accused his cheque blank unsigned cheque, at the time of seeking aforesaid loan of Rs.50,000/-. As per the defense of accused, he repaid the entire the amount borrowed from complainant. In spite of repeated demands made by accused to return the cheque, the complainant did not return the same. Therefore, the accused defends that, this complaint is filed with intention to gain wrongful advantage. In support of his defense, he examined his spouse as Dw.2. As per the evidence of Dw2, she handles repayment of amount borrowed by her husband accused. Dw2 deposed the same as what has been deposed by accused.

5.3.5. The accused further defends that, he spoke to complainant over phone, after receipt of legal notice from complainant. The accused says that, on phone call, he enquired to complainant that, why the complaint is filed based upon the cheque, even after repayment of all loan availed by him. The complainant replied that, as if he did not know about issue of legal notice; that, he was instructed to present the cheque for collection prior to four days of issue of legal notice; that, partners of finance might have issued legal notice using his name; that, there already four cases filed by complainant; that, he will to talk to partners of finance in that regard. The accused further says that, over the same phone call, the complainant admitted that there was pending transaction between him and accused. The accused further says that, the complainant told as if the partners of finance might have decided to file case against accused. Because, initiation of legal proceedings is determined by the partners of finance. Therefore, the Ld. Counsel for accused argued that, there was transaction pending on the part of accused towards complainant and the cheque was misused by the partners of finance using the name of complainant, based on the compulsion of finance partners. In order to substantiate the phone call conversation, the accused produced **Ex.D1- pen-drive,** in which call conversation between complainant and accused stored as transmitted. Originally, the call conversation was recorded in the mobile of accused, which is the primary evidence not produced. Subsequently, the conversation seems to be transmitted to Ex.D1, which is the secondary evidence, produced along with 65B certificate, certifying the authentication, as mandated in Indian Evidence Act. However, the Ex.D1- conversation was vehemently denied by complainant on the aspects of its authenticity, integrity and identification. The accused was put question in cross examination, whether he can say the date of conversation, he deposed as not remember the date. The accused in cross examination deposed that, the conversation took place prior to issuing of reply notice. At this point, the Ld. Counsel for complainant argued that, if the conversation was true, the accused would have stated the same in reply notice itself. But nothing was stated in reply notice relating to call conversation. In fact, on perusal of reply notice, there is no statements found regarding call conversations and statements made by complainant during phone call. The accused also have no proper explanation as to why the call conversation statements was not stated in reply notice, as the call conversation alleged to have been took place prior to issuing of reply notice.

5.3.6. Further, the Ld. Counsel for complainant, strongly opposed to Ex. D1- Call conversation. The counsel argued that, Dw-2, had not deposed anything about call conversation in her testimony. Because Dw2 being spouse of accused and as she already deposed about repayment of loans, what prevented her from deposing the call conversation. Since Dw-2 deposed as she handles all the loan repayments to complainant, it is expected that she would definitely know about call conversation with complainant. Therefore, the counsel argued that, silence of Dw2 about call conversation, raised doubts over the call conversation.

5.3.7. Moreover, the Ld. Counsel argued that, the alleged voice of complainant in the call conversation, was not referred to forensic voice comparison. The counsel says that, the alleged voice of complainant in Ex.D1, should have compared with admitted voice sample of complainant, so as to ensure voice identification, tampering of voice, authenticity and alterations. The counsel argued that, the burden lies upon the accused to send for forensic voice comparison. Merely because, call conversation was produced alleging that, it was between complainant and accused, the voice of complainant cannot be held as it is. In fact, in this highly developed technical era, anything can be achieved with use of electronic gadgets. Furthermore, Law does not permit electronic evidence for being taken as it is. Per contra, the Ld. Counsel for accused, replied that, the burden to disprove the voice lies upon the complainant and not upon accused. The counsel argued in the sense that, since the voice is disputed by complainant, the burden to disprove the same lies upon him. At this juncture, it is relevant to refer **Section.101** of **Indian Evidence Act,** which is reproduced here:

> **101. Burden of proof.** — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. **When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

In the case on hand, the accused asserts that, the voice of call conversation is of the complainant. Thereby, he desires the court the court to believe the fact that, the voice is of the complainant. In that case, the burden lies upon him to prove to the court with necessary materials that, the alleged voice is that of the complainant. Merely, on production of voice call conversation, it cannot be said that, the authenticity is proved. Furthermore, in the case on hand, the complainant heavily disputed for comparing the voice call conversation with forensic voice comparison. When such a dispute is raised by complainant, the accused is bound to prove the voice identification, integrity of the alleged voice call conversation. However, the accused had not taken steps to prove the voice identification, integrity of Ex.D1- alleged conversation. Being such, Ex.D1 is not proved as to its accuracy.

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5.3.8. Finally it is observed that, the accused had not produced any evidence with respect to repayment of loans availed from the finance in support of his defense. Further the accused had not proved the authenticity, voice identification and integrity of Ex.D1 evidence.

5.3.9. <u>List of Judgment relied upon by the Complainant:</u>

i. The Hon'ble Supreme Court of India held in ***T.Vasanthakumar Vs Vijayakumari, 2015(2) DCR 11***

ii. The Hon'ble High Court of Madras held in ***Murgesan Vs Arumugham and others, 2018 (1) MWN (Civil) 306***

iii. The Hon'ble High Court of Madras held in ***Murthy @ Daniel Murthy Vs P.Selvaraj, 2022 (1) WMN (Cr.) DCC 70 (Mad.)***

iv. The Hon'ble High Court of Madras held in ***Dr.M.Sudheer Vs M.Kamaraj, 2023(1) MWN (Civil) 208***

v. The Hon'ble High Court of Rajasthan held in **Ishak Mohammad** ***Vs State of Rajasthan, 2024 (2) MWN (Cr) DCC 143 (Raj.)***

5.3.10. <u>List of Judgment relied upon by the Accused:</u>

i. The Hon'ble High Court of Madras held in ***K.Loganathan Vs A.Elango, 2023 (4) TLNJ 250***

ii. The Hon'ble Supreme Court of India held in ***Basalingappa Vs Mudibasappa, 2019 (5) SCC 418***

iii. The Hon'ble Supreme Court of India held in ***M/s.Kumar Exports Vs***

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M/s.Sharma Carpets, 2009 (2) SCC 513

iv. The Hon'ble High Court of Madhya Pradesh held in **Javed Vs Kalusingh, CDJ 2021 MPHC 534**

v. The Hon'ble Supreme Court of India held in John K.Abraham VS Simon C.Abraham & another, 2014 (2) SCC 236

5.3.11. In light of the forgoing discussion, this court is of the view that, the accused has failed to rebut the presumption raised against him under section 139 of Negotiable Instruments Act, 1881 in the standards of preponderance of probabilities. Further this court holds that, there is existing legally enforceable debt on the part of accused towards complainant. Accordingly, this point is answered in negative.

<u>Point No.5.4:</u>

5.4.1. As discussed in Point.No.5.3, the accused failed to rebut presumption by preponderance of probabilities. In light of the above discussion, this court concludes that the cheque has been issued in favour of complainant for discharging legally enforceable debt. Hence, this point is answered in favour of the complainant.

5.4.2. In the result, the accused is found guilty for the offence under section 138 of the Negotiable instruments Act,1881 and is convicted and sentenced to undergo six months simple imprisonment u/s.255(2) of Cr.P.C / 278(2) of BNSS and is directed to pay a compensation of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) i.e., the amount due upon the cheque, to the complainant U/s.357(3) of Cr.P.C /395(3) of BNSS within a period of two months from today (04.07.2026). In default to pay the

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aforesaid compensation amount, the accused is directed to undergo further simple imprisonment for a period of one month.

Dictated by me to the Steno Typist and Directly typed by her in the Court Computer, pronounced by me in open court, on the 04th day of July 2026.

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Complainant side witness: -

PW1 : Balakrishnan (Complainant)

Complainant side exhibits:-

1.	Ex.P1	TamilNadu Merchantile Bank, Attur Branch, cheque bearing No.059108, dated 03.07.2023.
2.	Ex.P2	Deposit Receipt, dated 03.07.2023.
3.	Ex.P3	Cheque return memo, dated 05.07.2023.
4.	Ex.P4	Legal Notice (Office copy), dated 10.07.2023.
5.	Ex.P5	Acknowledgment Card, dated 11.07.2023.
6.	Ex.P6	Reply Notice, dated 19.07.2023.

Defense side witness: -

DW1 : Balamurugan (Accused)

DW2 : Selvamani

Defense side exhibits:-

1.	Ex.D1	Neelmax 8GB Pendrive

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