TNTR270011362023

IN THE COURT OF JUDICIAL MAGISTRATE No.II AT PONNERI

Present: Mrs.S.Manjula M.L

Judicial Magistrate No.II, Ponneri

Thursday, on this 23rd day of July 2026

STC.No.906/2023

Mr.M.Premnath
S/o.Manoharan
No.117/33, V.P.Sindhan Street,
PT Moorthy Nagar, Padiyanallur,
Redhills, Chennai- 600052 ...Complainant

Vs

Mr.A.Rose
S/o.E.Arumugam
No.287, Railway Station Road,
Kavarapettai, Gummidipoondi Taluk
Thiruvallur -601206 ...Accused

Counsel on record

For Complainant: M/s.K.P.Gnanasekaran

For Accused :M/s.V.Thirumalai

This case came up before me on 06.06.2026 for final hearing in the presence of learned counsels for both side and having stood over for consideration till this day and upon hearing the arguments advanced on complainant side and no arguments advanced on side of accused, on perusal of records, this court delivered the following...

JUDGMENT

The complainant has filed this complaint against the accused, for an offence of dishonour of Cheque bearing No.000002 for a sum of Rs.4,50,000/- which is punishable under Sec.138 of Negotiable Instrument Act (in short referred as N.I Act) through a private complaint under Sec.200 Cr.P.C.

The sum and substance of the complaint:

2.(i) Complainant states that accused is the complainant's father friend and well known person to the complainant for the past 10 years. Due to sudden family financial emergency and other expenses, the accused requested the complainant to arrange some financial assistance to meet out the immediate requirements. Based on the accused specific request, the complainant had given a hand loan of Rs.4,50,000/- in the month of May 2022 and the accused promised to repay the same within 3 months. After 3 months, the complainant requested the accused to repay the amount but the accused failed to repay it.

ii) The complainant repeatedly called upon the accused on various occasions personally and through correspondences to repay the amounts. The accused had assured the complainant to repay the amount at the earliest and was seeking time on one pretext or other. After getting sufficient time, the accused failed to repay and after continuous follow up, the accused had issued cheque for the value of Rs.4,50,000/-

dated 23.01.2023 bearing Cheque No. 000002 drawn on Andhra bank, now Union bank of India, Uthukottai Branch.

iii) The complainant had presented the cheque through his banker ICICI Bank, Redhills Branch for encashment on 22.02.2023, and it was dishonoured on 23.02.2023 for the reasons “Stopped in Clearing”. The complainant states that accused issuing cheque for legally enforceable debt and issuing stop payment to the bank and allowing the cheque to be dishonoured will amount to an offence punishable under sec.138 N.I Act.

iv) The complainant had sent a legal notice dated 13.03.2023 upon the accused by way of registered post with acknowledgment card due, thereby demanding him to repay the cheque amount within 15 days from the date of receipt of notice. After receiving the same, the accused neither made any payment nor sent any reply to the complainant till date. The complainant have presented this private complaint within 30 days of expiry of 15 days of statutory period as provided in law. Thus the complainant has filed this complaint for offence of dishonour of Cheque.

3. This complaint was filed on 27.04.2023 and being satisfied with the primafacie materials available on record, the cognizance for the offence under Sec.138 N.I Act has been taken by this court on 09.06.2023 Summon was sent to accused. After receipt of the summon, he was present before this court. Copies served

to the accused. After giving reasonable reflection time, on 01.03.2024 under Sec.251 CrPC, the substance of accusation made by the complainant was put to the accused. The accused denied the same as false case, pleading not guilty, stating " பொய் வழக்கு, நான் அவருக்கு காசு கொடுக்க வேண்டியதில்லை" and claimed for trial.

4. The trial commenced on 25.03.2024, when the complainant filed his proof affidavit and examined as Pw1. ExP1 to ExP5 came to be marked. Upon closure of the complainant's side evidence, under Sec.313(b) CrPC incriminating evidences brought out in the complainant's case was put to the accused. He denied the same as false stating it is false case. No evidence was adduced on the side of accused.

<u>5. The points for consideration are,</u>

1. Whether the ingredients of Sec.138 N.I Act has been complied and whether the presumption has been raised in favour of the complainant?

2. Whether the accused issued the cheque in question to the complainant for discharge, in whole or part of any legally enforceable liability? If so, whether the accused is able to rebut the presumption raised in favour of the complainant?

Point 1:

To examine whether the complainant has proved the basic facts of dishonour of cheque so as to constitute the offence under Sec.138 N.I Act, it is important to analyse the ingredients of Sec.138 of N.I Act which reads as follows:

1. The cheque has to be drawn by the accused on a bank account which is maintained by him with a particular banker in a bank;

2. The amount of money mentioned in the cheque is for discharging the liability either wholly or partially; and

3.The cheque has been presented to the respective bank within the period of its validity.

4. The cheque is dishonoured which means it is returned unpaid due to the insufficient funds or is returned because the amount contained in the cheque exceeds the arrangement with the bank. The offence is said to be committed at the exact moment the cheque is returned unpaid to the holder of drawer of the cheque.

5. The payee (person who receives the payment) in due course of the cheque had made a demand for the payment of the amount of money by providing notice or in writing to the person who has drawn the cheque within 30 days.

6.The drawer fails to make the payment of the said amount of money to the respective payee or the person who is to receive the money within 15 days of the receipt of information of the notice received.

6. Thus only when all the above ingredients are satisfied, the person who has drawn the cheque is said to have committed the offence under sec.138 N.I Act.

7. In order to prove the case of the complainant, the complainant examined as Pw1 and marked 5 documents. In this scenario, when scrutinizing the documents relied upon by the complainant in order to examine the compliance of the statutory requirements as envisaged under Sec.138 of N.I.Act, ExP1 is the Cheque bearing No.000002 dated 23.01.2023, drawn on Andhra Bank, now Union Bank of India, Uttukottai Branch for a sum of Rs.4,50,000/-. ExP2 is the return memo dated 23.02.2023 issued to the complainant by his banker stating stopped in clearing. ExP3 is the legal notice dated 13.03.2023 issued on behalf of complainant to the accused addressed to his residential address as well as to his work place. ExP4 is the postal cover returned as unclaimed from his work place address. ExP5 is the original acknowledgment card received from the accused's residential address.

8. ExP5 reveals that it is deemed service of statutory legal notice on the accused. The accused has failed to reply to the said legal notice denying the averments that signature in cheque does not belongs to him or borrowed amount has been already repaid or he is ready to pay the cheque amount to the complainant within 15 days.The date of filing the complainant before this court is on 27.04.2023. A careful scrutiny of the above said documents eventually lead to show that statutory

requirement of Sec.138 of N.I Act is complied with and this complaint is filed within time.

9. The accused had not denied his signature in the cheque, and he had also admitted the instrument belongs to him. At the time of 1 st questioning the accused had not denied his signature in the cheque in dispute nor stated that the cheque was not issued to the complainant but only states that it is only false case. Further at the time of Sec.313(1) (b) Crpc questioning about the cheque, he has stated as follows: **பிரேம்நாத் அப்பா மனோகரன் என்பவருக்கு வழக்கு காசோலை நிரப்பப்படாமல் கொடுத்தேன் மற்றும் 4 வெற்று காசோலைகள் கொடுத்தேன். ரூ. 5 இலட்சம் மனோகரனிடம் வாங்கியிருந்தேன்.** From it is clear that he had issued the cheque and the same was signed by him.

10. Thus, when once the signature and issuance of the cheque are admitted, the statutory presumption contemplated under sec.118 read with 139 of N.I Act shall be raised. The presumption will exist and survive and it shall end only when the contrary is proved by the accused i.e the cheque was not issued for consideration and in the discharge of any debt or liability. A presumption is not in itself evidence, but only make a primafacie case for a party for whose benefit it exists. The use of the phrase until the contrary is proved in Sec.118 of the Act, and use of words unless the contrary is proved in Sec.139 of N.I Act read with the definition of may presume and

shall presume as given in Sec.4 of the Evidence Act make it at once clear that the presumption raised under both the provisions are rebuttable.

As has been observed by the Hon'ble Supreme Court of India in **Rangappa Vs. Sri Mohan, reported in AIR 2010 SC 1898** that *once the cheque relates to the account of the accused and he accepts and admits the signature on the said cheque, then initial presumption contemplated under Sec.139 of Negotiable Instrument Act has to be raised by the court in favour of the complainant.*

Similarly in **M/s.Kalamani Tex & Anr Vs. P.Balasubramanian reported in 2021(1) Civil Court cases 599(SC)**, Hon'ble Supreme Court has held that *the statue mandates that once the signature of the accused on the cheque/negotiable instrument are established, then reverse onus clauses become operative.*

11. Therefore law is clear that when the accused admits the signature and issuance of the cheque, in view of the statutory presumption of law, the burden shift on the accused to prove that there was no liability or debt or that the cheque issued to some other person or the cheque in question is not supported by consideration.

12. Having held so, in the case on hand the accused has not entered into the witness box in support of his defence and also not let in any defence evidence. Hence the next question that arises for consideration is whether the accused, without entering into the witness box and leading the defence evidence, can rebut the

presumption of law. The answer is in affirmative, and in this regard to refer to the Judgment of the Hon'ble Apex court in **Basalingappa Vs. Mudibasapa reported in 2019 SAR (Criminal) 604** wherein it has been held as follows:

Once the execution of cheque is admitted, Sec 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability (ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. (iii) To rebut the presumption, 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 a probable defence. Inference of preponderance of probabilities can be drawn not only from the material brought on record by the parties but also by reference to the circumstances upon which they rely. (iv)That it is not necessary for the accused to come into the witness box in support of his defence.

13. Applying the proposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Sec.139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. The degree of proof expected from the accused is not as rigorous as that of the complainant. He can discharge his onus by making dents in the case of the complainant. An accused for discharging the burden of proof placed upon

him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. The standard of proof on the part of an accused and that of the prosecution in a criminal case is different. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Keeping these principle of law in mind, now it is time to appreciate the evidence on record to see whether the accused was able to dislodge the presumption of liability and the issuance of cheque on the basis of cross examination of the complainant.

14. Point No.2

The contention of the accused is that he has not borrowed any amount from the complainant. He has stated that he has borrowed amount of Rs. 5 lakhs from the complainant's father Manoharan and issued 5 blank cheques. For the loan amount borrowed from the complainant's father, he has issued the 5 blank cheques as security. According to the accused, the complainant has filed this case falsely for a sum of Rs.4,50,000/- with one of the said cheque. To prove the contention of the accused no evidence was adduced and also from the evidence of complainant nothing can be elucidated in favour of the accused to substantiate his case. In case of **Hiten P.Dalal Vs. Bratindranath Banerjee, 2001) 6 SCC 16,** it was held that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he has no debt or liability to issue the said cheque. In the case on hand, the accused has neither elicited his case from the evidence let in by the complainant nor he had adduced any evidence. Hence the above contention does not raise any probable defence to rebut the presumption.

It is not necessary to look out for the source of income of the complainant. It is pertinent to refer the Judgment pronounced by Hon'ble Supreme Court in **Rohitbhai Jivanlal Patel Vs. State of Gujarat & anr. Reported in AIR 2019 SC 1876, in para 17** it is laid as follows:

In the case on hand, even after purpotedly drawing the presumption under Sec.139 of N.I Act, the trial court proceeded to question the want of evidence on the part of complainant as regards the source of funds for advancing the loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant.

15. Applying the dictum in the case on hand, the presumption being raised and no probable defence had been made on the side of the accused to rebut the presumption raised under Sec.139 of N.I.Act in such case, the defence of source of income not proved is not relevant. Thus, until the accused discharge his burden the complainant need not prove the source of income.

16. In view of the aforesaid discussion, this court hereby holds that the complainant has proved and substantiated allegation against the accused and all the ingredients of Sec.138 of N.I Act also stand proved against the accused beyond all reasonable doubt. Whereas, the accused has neither proved his case nor rebutted the presumption raised in favour of the complainant. Accordingly, the accused is hereby convicted for the offence under Sec.138 of N.I.Act. Thus point 1 and 2 are answered accordingly.

In result, the accused is found guilty for the offence under Sec.138 of Negotiable Instruments Act and is convicted and sentenced to undergo nine months simple imprisonment under sec.255(2) of Cr.P.C and is directed to pay the compensation of Rs.4,50,000/- (Rupees Four lakhs fifty thousand only) i.e the amount due upon the cheque, to the complainant under sec.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 three months simple imprisonment. No fine is imposed.

Typed by me in laptop and printed out by steno-typist and pronounced by me in the open court on 23rd day of July 2026.

S. Henri

Judicial Magistrate No.II

Ponneri

Complainant's side Witnesses and documents:

Pw1- Mrs.M.Premnath(Complainant)

Ex P1	23.01.2023	Original Cheque bearing No. 000002.
Ex P2	23.02.2023	Original bank return memo
Ex P3	13.03.2023	Office copy of legal notice issued on behalf of complainant
Ex P4	-	Original Postal cover returned as unclaimed
Ex P5	-	Original acknowledgment card

Accused side Witnesses and documents: Nil

1. Accused absent at the time of pronouncement of judgment, hence NBW issued against him.

S. Henri

Judicial Magistrate No.II

Ponneri