

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE(FTC),  
TENKASI.**

**PRESENT: Thiru. S.MANOJKUMAR, M.A., M.L.,  
ADDITIONAL DISTRICT AND SESSIONS JUDGE, TENKASI**

Friday, the 13<sup>th</sup> Day of March 2026

**CRIMINAL APPEAL NO.19/2023**

(CNR No.TNTS01-000301-2023)

From which Court the Appeal is preferred	District Munsif-cum-Judicial Magistrate Shencottah
Number of the Case in that Court	STC No. 334/2020
Number of the Appeal	CrI.A.No. 19/2023
Name and description of the Appellant/Accused	P. Manickam, Age 52, S/o. Late. Palani Mudaliar, Door No. 49, Sundara Vinayagar Koil Street, Thirumalai Naicken Pudukudi, Puliyangudi Nagr Part, Sivagiri Taluk, Tenkasi District.
Name and description of the Respondent/Complainant	M. Mohamed Hanifa, Age 64, S/o. Meera Pillai Rowther, Door No. 12/4/41, Poolankudieruppu, Pudur, Puliyarai 627 813, Shencottai Taluk, Tenkasi District.
The sentence and law under which it was imposed in the lower court.	The Lower Court convicted the Appellant/Accused u/s 138 of N.I.Act and sentenced to undergo S.I. for two years and further directed to pay Rs.6,00,000/-(Rupees Six Lakhs Only) as compensation to the complainant u/s 357(3) Cr.P.C. within one month from the date of Judgment in default the accused shall undergo S.I. for six months.
Whether confirmed, modified or reversed; and if modified the modification	Confirmed.  In the result, this Criminal Appeal is dismissed and the Judgment rendered by the learned District Munsif cum Judicial

	Magistrate, Shencottah in S.T.C.No. 334/2020 dt. 11.01.2023 is hereby confirmed. The Appellant/Accused is on bail. Hence, the Trial Court shall take steps to secure the presence of Appellant/Accused and commit him in prison so as to serve the sentence imposed.
Date of presentation	06.02.2023
Date of Filing	10.02.2023
Date of Notice issued by Court to appear	14.02.2023
Date of Bail bond of appellant has been let out on, or bail	--
Date on which Appellant ordered to appear	15.03.2023
Date of Hearing	10.03.2026
Date of Order	13.03.2026

This Criminal Appeal came before this Court finally on 10.03.2026 in the presence of Thiru.R.Raju, Advocate for the Appellant/Accused and Thiru.S.Ramachandran and Thiru.N.Thirumalaikumar, Advocates for the Respondent/Complainant and upon hearing the arguments of both sides, and upon perusal of the entire case records and this Criminal Appeal having stood over for consideration till this day, this Tribunal delivered the following

### **JUDGMENT**

This Appeal has been filed by the Appellant/Accused u/s 374(3) of Cr.P.C. against the Judgment delivered by the learned District-Munsif-cum Judicial Magistrate, Shencottah in S.T.C.No. 334/2020 dt. 11.01.2023 wherein the learned Magistrate found the Appellant/Accused guilty u/s 138 of N.I.Act, convicted and sentenced to undergo S.I. for two years and further directed to pay

Rs.6,00,000/-(Rupees Six Lakhs only) as compensation to the complainant u/s 357(3) Cr.P.C. within one month from the date of Judgment in default the accused shall undergo S.I. for six months.

2) For the sake of convenience and understanding, in this Appeal, the Appellant/Accused would be referred as Accused and the Respondent/Complainant would be referred as complainant.

3) The complainant filed a private complaint u/s 200 Cr.P.C. before the Court of learned District-Munsif-cum-Judicial Magistrate, Shencottah alleging that the accused is a known person to the complainant and on that basis the accused borrowed a sum of Rs.3,00,000/- from the complainant as hand loan to meet his urgent needs and agreed to repay the said amount in 16 installments and the accused issued a cheque bearing No. 000051 dt. 26.05.2020 drawn on City Union Bank, Kadayanallur branch for the said amount in favour of the complainant. On 28.05.2020, the complainant presented the said cheque in ICICI Bank, Kadayanallur (Elathur) branch in which he maintained the account. But, the same was returned as “funds insufficient” vide return memo dt.17.06.2020. Therefore, the complainant sent statutory notice to the accused on 17.07.2020 demanding the cheque amount. The accused received the notice on 21.07.2020 and sent reply notice dt. 13.08.2020 with false allegations and not paid cheque amount. Thereby, the accused has committed the offence punishable u/s 138 of N.I.Act.

4) Before the Trial Court, the complainant has been examined himself as P.W.1 and Ex.P1 to Ex.P7 were marked through P.W.1.

5) After the complainant’s side evidence was closed and when the accused was questioned u/s 313(1)(b) Cr.P.C. regarding the incriminating evidence of complainant side evidence, he denied them as false. On the side of accused, no witness was examined and Ex.D1 was marked through the cross examination of

P.W.1.

6) The learned Magistrate after considering the oral and documentary evidence adduced by both sides, found the accused guilty u/s 138 of N.I. Act and convicted and sentenced to undergo S.I. for two years and further directed to pay Rs.6,00,000/-(Rupees Six Lakhs only) as compensation to the complainant u/s 357(3) Cr.P.C. within one month from the date of Judgment in default the accused shall undergo S.I. for six months. Aggrieved against Judgment of the Trial Court, the Accused has preferred this Appeal on the following grounds:

**7) Grounds of Appeal in Brief are as follows:**

The Judgment of the Trial Court is contrary to Law, weight of evidence and broad probabilities of the case. The Trial Court failed to consider that the alleged cheque has been issued by the accused only for the purpose of security. Hence, it cannot be construed as issuance of the cheque and therefore the presumption is not available to the complainant. The Trial Court did not consider the contents of the reply notice sent by the accused. The conviction and sentence is highly excessive. Hence, the Appeal is to be allowed.

**8) Now the point for consideration is,**

- i) Whether, the Respondent/Complainant has proved the offence against the Appellant/Accused beyond reasonable doubt?
- ii) Whether the Trial Court Judgment warrants interference?
- iii) Whether the Appeal is to be allowed or not?

**9) Point:** Since the points for consideration are interlinked and interwoven, the above points are decided together. It is the case of the complainant that the accused is a known person to the complainant and on that basis the accused borrowed a sum of Rs.3,00,000/- from the complainant as hand loan to meet his urgent needs and agreed to repay the said amount in 16

installments and the accused issued a cheque bearing No. 000051 dt. 26.05.2020 drawn on City Union Bank, Kadayanallur branch for the said amount in favour of the complainant. On 28.05.2020, the complainant presented the said cheque in ICICI Bank, Kadayanallur (Elathur) branch in which he maintained the account. But, the same was returned as “funds insufficient” vide return memo dt.17.06.2020. Therefore, the complainant sent statutory notice to the accused on 17.07.2020 demanding the cheque amount. The accused received the notice on 21.07.2020 and sent reply notice dt. 13.08.2020 with false allegations and not paid cheque amount, thereby the accused has committed the offence u/s 138 IPC.

**10)** The learned counsel for the appellant/accused has argued that the disputed cheque has been issued by the accused only for the purpose of security, therefore it cannot be construed as issuance of the cheque to discharge legally enforceable debt and therefore the presumption is not available to the complainant and the Trial Court did not consider the contents of the reply notice sent by the accused. Hence, the complainant has not discharged the initial burden and so the accused may be acquitted. Per contra, the learned counsel for the respondent/complainant has argued that the complainant has proved his case through oral and documentary evidence and after analysing the same only, the Trial Court convicted the appellant/accused and seeks to confirm the Judgment of conviction of the Trial Court.

**11)** The respondent/complainant has filed private complaint against the appellant/accused u/s 138 of N.I. Act before the Trial Court. Hence, before entering into the discussion, it would be beneficial to look into Section 118, 138 and Section 139 of N.I. Act, which has been extracted hereunder:

**118. Presumptions as to negotiable instruments.**—Until the contrary is proved, the following presumptions shall be made:

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years<sup>7</sup>], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque,

[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

**139. Presumption in favour of 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.

On perusal of the above, it is clear that the burden u/s 139 N.I. Act is shifted to the accused when once it is shown that the accused has executed the cheque in question. The said burden can be discharged by preponderance of probabilities.

**12)** In the case on hand, before the Trial Court, the complainant has entered in the witness box and he has deposed regarding the transaction in which the accused has received Rs.3,00,000/- as hand loan from him and regarding the execution of cheque bearing No. 000051 drawn on City Union Bank, Kadayanallur for Rs.3,00,000/-, subsequent presentation of cheque in ICICI Bank, Kadayanallur(Elathur)Branch which was returned as“funds insufficient” and sending of statutory notice to the accused demanding the cheque amount and the reply notice sent by the accused with false allegations. Thus, the complainant has cogently deposed regarding all the above facts. And in order to substantiate his evidence, the complainant marked the relevant documents i.e the

cheque bearing No. 000051 dt. 26.05.2020 drawn on City Union Bank, Kadayanallur Branch for Rs.3,00,000/- issued by the accused as Ex.P1, deposit slip as Ex.P2, cheque return memo as Ex.P3, copy of legal notice sent by the complainant to the accused dt. 17.07.2020 as Ex.P4, postal receipt as Ex.P5, acknowledgment card for the receipt of the legal notice by the accused as Ex.P6 and the reply notice sent by the accused dt.13.08.2020 as Ex.P7.

**13)** While that being so, the accused has not denied that he has not executed the alleged Ex.P1 cheque based on which this complaint has been filed. But, the accused has made bare denial stating that the cheque was only offered as security. More particularly, it is also seen that the accused has not denied his signature in the cheque or the contents of the cheque. In such position, it is seen that the complainant has discharged the initial burden u/s 139 of N.I. Act and it is for the accused to discharge the burden by preponderance of probabilities.

**14)** The learned counsel for the accused has argued that the alleged cheque was not issued for any legally enforceable debt and it was given for a security to the complainant and now the complainant has misused the cheque. But to prove this fact the accused has not entered into the witness box to defend the case of complainant and no witness was also examined on the side of accused. At the same time, when P.W.1 was cross examined by the accused by showing an agreement dt 18.12.2019 which has been marked as Ex.D1, he has clearly deposed that the accused had borrowed a sum of Rs.3,00,000/- from him before the money transaction of Rs.36,00,000/- mentioned in Ex.D1. Further, Hon'ble Supreme Court, in the case of *Sripati Singh (since deceased) Through his son Gaurav Singh ....Appellant Versus The State of Jharkhand & Anr....Respondents* reported in 2022 SAR (Cri) 107, has decided hereunder:

In fact, it would be apposite to take note of the decision of this Court in the case of ***Sampelly Satyanarayana Rao*** (supra) wherein this Court while answering the issue as to what constitutes a legally enforceable debt or other liability as contained in the Explanation 2 to Section 138 of N.I. Act has held as hereunder:

“10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in *Indus Airways* (supra) with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. ***We are of the view that the question whether a post dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.***

11. Reference to the facts of the present case clearly shows that though the word "security" is used in Clause 3.1 (iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. ***It is undisputed that the loan was duly disbursed on 28th February, 2002 which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.***

12. Judgment in *Indus Airways* (supra) is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself at par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in presenti in terms of the loan agreement, as against the case of *Indus Airways* (supra), where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. ***Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan instalment which had fallen due though such deposit of cheques***

*towards repayment' of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.*

*13. Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.”*

(Emphasis supplied)

The said conclusion was reached by this Court while distinguishing the decision of this Court in the case of Indus Airways Pvt. Ltd. Vs. Magnum Aviation Pvt. Ltd. (2014) SAR (Cri) 560 = (2014) 12 SCC 539 which was a case wherein the issue was of dishonour of post dated cheque issued by way of advance payment against a purchase order that had arisen for consideration. In that circumstance, it was held that the same cannot be considered as a cheque issued towards discharge of legally enforceable debt.

15. Further, this Court in the case of *M/s Womb Laboratories Pvt. Ltd.* (supra) has held as follows:

“5. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques.

6. Suffice it to observe, the impugned judgment of the High Court cannot stand the test of judicial scrutiny. The same is, therefore, set aside.”

16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in

its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I Act would flow.

17. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

On perusal of the above, it is clear that a cheque can be issued as security to a financial transaction. If in a transaction, a loan is advanced and the borrower agrees to repay the amount within a time frame and issues a cheque as security

to secure such repayment and the loan amount if not repaid, then the cheque issued as security can be presented for collection. On said presentation, if the cheque is dishonoured, then consequences contemplated u/s 138 of N.I. Act would follow. Therefore, from the evidence of P.W.1 and from Ex.P1 to Ex.P7, it is evident that Ex.P1 was issued by the accused to the complainant only for disbursing the legally enforceable debt. Therefore, this Court is of the considered opinion that the defence of accused that Ex.P1 cheque was issued to security purpose is unsustainable in the eyes of Law. Thus, it is observed that the accused has also not raised any probable defence and the defence of the accused in this case is frivolous and moonshine defence only.

**15)** As discussed earlier, in the case on hand, the complainant has discharged his initial burden to have the benefit of presumption u/s 139 of N.I.Act. and he has also proved the compliance of pre-requisite conditions to constitute the offence u/s 138 N.I. Act through Ex.P1 to Ex.P7. Similarly, the complainant has produced cogent evidence and therefore it is crystal clear that the complainant has proved and established his case beyond reasonable doubt. At the same time, the accused has failed to let in any evidence to rebut the presumption u/s 139 of N.I. Act that Ex.P1 cheque is not issued for discharging a legally enforceable debt and that it was not issued to the complainant. The complainant, who has got the aid of presumption u/s 118 of N.I.Act is entitled to the relief prayed and the accused who has failed to rebut the presumption, has to face the Judgment of conviction. Thus, it is concluded that the conviction and sentence imposed by the Trial Court is completely justified and warrants no interference. Accordingly, the Criminal Appeal is dismissed.

**16)** In the result, this Criminal Appeal is dismissed and the Judgment rendered by the learned District Munsif cum Judicial Magistrate, Shencottah in S.T.C.No. 334/2020 dt. 11.01.2023 is hereby confirmed. The Appellant/Accused is on bail. Hence, the Trial Court shall take steps to secure the presence of

Appellant/Accused and commit him in prison so as to serve the sentence imposed.

Dictated to the steno-typist, taken down by her in shorthand, transcribed by her in the computer, corrected and pronounced by me in the open court on this, the 13<sup>th</sup> day of March 2026.

Additional District and Sessions Judge,  
Tenkasi.

**Copy to:**

The District Munsif cum Judicial Magistrate,  
Shencottah.(with L.C. records).

Additional District and Sessions Court,  
(FTC), Tenkasi.  
Crl.A.No.19/2023  
dt. 13.03.2026  
Judgment  
Draft/Fair