IN THE COURT OF JUDICIAL MAGISTRATE NO.1, SRIVAIKUNTAM

Present : Thiru. B.Dharaneether. B. A., L L M.,
Judicial Magistrate No.1,
Srivaikuntam.

Dated : Tuesday, the 21st day of July 2026

S.T.C.No.1214 of 2022

(CNR No. TNTT09-017402-2022)

N. Thiyagaselvan,
S/o. K. Nainar,
No.49/60, Perumbathu Street,
Srivaikuntam,
Thoothukudi District. … Complainant

Versus

P. Alagar,
S/o. Palani Velar,
Kulalar Street,
Ponnankurichi,
Srivaikuntam Taluk,
Thoothukudi District. … Accused

This case having come up for final hearing before this Court in the presence of Tr.S.Ragunath B.A.,B.L., appearing for the complainant and advocate Tr.B.Perumal Prabhu B.A., B.L., appearing for accused, and upon perusing the records and connected materials and having stood over for consideration till date, this Court delivers the following:

JUDGMENT

This complaint has been filed by the complainant against the accused alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

Case of complainant in brief:

2. The complainant and the accused were known to each other. According to the complainant, during the last week of June 2022, the accused approached him seeking a hand loan of Rs.2,00,000/- for his family expenses. Believing the representation of the accused, the complainant paid a sum of Rs.2,00,000/- to him on 05.07.2022. The accused promised to repay the amount within one month. At the time of borrowing, the accused issued cheque bearing No.899878 dated 05.08.2022 for Rs.2,00,000/-, drawn on the State Bank of India, Srivaikuntam Branch, in favour of the complainant. On 05.08.2022, the complainant presented the cheque for collection through his account maintained with Canara Bank, Srivaikuntam Branch. The cheque was returned unpaid under bank return memo dated 09.08.2022 for the reason “Funds Insufficient”. Thereafter, the complainant caused a statutory demand notice dated 16.08.2022 to be issued to the accused calling upon him to pay the cheque amount. The notice sent to the accused was returned on 24.08.2022 without service, as the accused had not received it. As the accused failed to pay the cheque amount within the statutory period, the complainant filed the present complaint u/s 138 NI Act.

3. The complaint was taken on file as S.T.C.No.1214 of 2022 and summons was issued to the accused. The accused appeared before this Court and copies of the complaint and connected documents were furnished to him.

4. The substance of accusation under Section 138 of the Negotiable Instruments Act was read over and explained to the accused as per section 251 Cr.P.C. The accused pleaded not guilty and claimed to be tried.

Evidence adduced by the complainant

5. On the side of the complainant, the complainant examined himself as P.W.1. He adopted his proof affidavit and reiterated the allegations contained in the complaint.

6. During cross examination, P.W.1 stated that he had known the accused for about four or five years. He admitted that there had been no previous financial dealings between them. He stated that he was an agriculturist owning about three acres of land in which banana and paddy were cultivated and that he earned approximately Rs.3,00,000/- per annum.

7. P.W.1 further stated that the sum of Rs.2,00,000/- was kept in his house and was paid to the accused as a hand loan. He admitted that no separate promissory note or receipt was obtained and that the cheque was the only document issued by the accused.

8. P.W.1 admitted that he was not an income-tax assessee. PW1 also stated that the accused had brought the cheque after filling up its particulars and signed it in his presence.

9. However, P.W.1 denied the suggestion that the cheque had originally been handed over by the accused to one Kumar and that Kumar had misused the cheque through the complainant. He also denied knowing Kumar. P.W.1 admitted that the writings found in the body of the cheque might not have been made by the accused. He nevertheless maintained that the accused had signed and delivered the cheque towards repayment of the amount borrowed from him.

10. P.W.2, the Manager of the State Bank of India, Srivaikuntam Branch, was examined to prove the account particulars relating to the cheque. P.W.2 stated that the cheque had been issued in respect of the savings bank account maintained in the name of the accused. He also stated that the discrepancy in the initial printed on the cheque was due to a printing error and that the cheque belonged to the accused’s account.

Examination of the accused and defence evidence

11. After completion of the complainant’s evidence, the accused was examined under Section 313(1)(b) of the Code of Criminal Procedure. The incriminating circumstances appearing against him were put to him. He denied the same.

12. On the side of the defence, a Special Sub-Inspector attached to the Srivaikuntam Police Station was examined as D.W.1.

13. D.W.1 Tmt. Shanmugasundari stated that the accused had lodged a complaint before the Srivaikuntam Police Station on 14.05.2022 and that an enquiry was conducted on 08.06.2022. During the enquiry, the accused, Kumar and certain other persons appeared before the police. The CSR, statements and other enquiry records were produced and marked through D.W.1.

14. In cross-examination, D.W.1 admitted that the accused had sought six months time to repay the amounts borrowed by him on interest. D.W.1 also admitted that the complaint had been lodged against eight persons and that the name of the present complainant, Thiyagaselvan, was not found among those eight persons.

15. The accused examined himself as D.W.2. He stated that during 2020 he had borrowed Rs.2,50,000/- from one Kumar for his business and that he had repaid the principal and interest. According to D.W.2, there was some delay in payment of interest and Kumar demanded compound interest. Therefore, he lodged a police complaint. He stated that, during the police enquiry, Kumar gave a statement that nothing further was due from the accused.

16. D.W.2 further stated that he had earlier handed over an unfilled cheque to Kumar and that Kumar later caused the cheque to be filled up and filed the present complaint through Thiyagaselvan. He denied having borrowed any amount from the complainant.

17. During cross-examination, D.W.2 admitted that the disputed cheque belonged to the account maintained by him with the State Bank of India, Srivaikuntam Branch. He further admitted that the earlier police complaint was not lodged against the present complainant, Thiyagaselvan. Even after institution of the present case, he had not lodged any complaint alleging that Kumar had caused the cheque to be misused through Thiyagaselvan. D.W.2 also admitted that he had paid Rs.15,000/- to the complainant during the pendency of the case. He explained that the amount was paid in deference to the suggestion made by the Court and not in admission of liability.

Points for consideration

18. The following points arise for consideration:

(1). Whether the cheque bearing No.899878 dated 05.08.2022 was issued by the accused towards discharge of a legally enforceable debt or liability?

(2). Whether the accused has rebutted the statutory presumptions arising under Sections 118(a) and 139 of the Negotiable Instruments Act?

(3). Whether all the ingredients necessary to constitute the offence under Section 138 of the Negotiable Instruments Act have been proved?

(4). What order is to be passed?

Discussion and findings

19. It is pertinent to note that the pre-requisites for filing complaint under section 138 NI Act were all met up and the case was filed within the prescribed timeline. The accused does not dispute that the cheque pertains to his bank account. The evidence of P.W.2 also establishes that the cheque had been issued in relation to the savings bank account maintained by the accused. Though the accused questioned the initial printed on the cheque, the bank witness has explained that the discrepancy was a printing error. The accused has not disputed his signature on the cheque in any clear and convincing manner.

20. Once the execution of the cheque and the signature thereon are admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act necessarily arise in favour of the complainant.

21. The Court must therefore presume, unless the contrary is shown, that the cheque was issued for consideration and towards discharge of a legally enforceable debt or liability. The accused is not required to prove his defence beyond reasonable doubt. He may rebut the presumptions on the standard of preponderance of probabilities. However, the defence must be probable and supported by evidence or circumstances. A mere denial or an unsubstantiated explanation is not sufficient.

22. The principal defence of the accused is that the cheque had earlier been given in blank to one Kumar and that Kumar caused it to be misused through the present complainant.

23. The evidence of D.W.1 and the police records establish that there was an earlier monetary dispute between the accused and Kumar. They also establish that the accused had lodged a complaint on 14.05.2022 and that Kumar participated in the police enquiry. The fact that the police complaint preceded the alleged transaction in the present case is certainly a relevant circumstance. However, the existence of a previous transaction between the accused and Kumar does not, by itself, establish that the particular cheque involved in the present case had been issued to Kumar. The accused has not produced any document showing that cheque No.899878 was handed over to Kumar. The police complaint does not appear to contain the number or particulars of the disputed cheque.

24. The accused contended that, in the police enquiry, Kumar had stated that a person named "Selvam" had discharged the amount due to him and that the said Selvam was actually the present complainant Thiyagaselvan, herein. However, Kumar was not examined before this Court. No witness acquainted with that said Selvam was examined to establish his identity. No document containing the full name, address or other identifying particulars of Selvam was produced to show that he was the present complainant.

25. The Court cannot conclude that Selvam and Thiyagaselvan are one and the same person merely because of some similarity in their names. Such a conclusion would rest on assumption rather than evidence.

26. D.W.1 has specifically admitted that the complainant was not named as one of the eight persons against whom the accused had lodged the police complaint. Therefore, while the earlier police records prove a prior dispute between the accused and Kumar, they do not establish the material link between Kumar, the present complainant and cheque No.899878.

27. The person best placed to establish that link was Kumar. The accused has not offered any convincing explanation for not examining him. In the absence of Kumar's evidence, the allegation that he handed over or caused the cheque to be used by the complainant remains unsubstantiated.

28. The conduct of the accused after the alleged misuse is also relevant. The accused did not issue any stop-payment instruction to his bank. He did not send any written communication informing the bank that a signed blank cheque had been retained or misused by Kumar. The accused did not lodge any complaint against the present complainant either before or after institution of this case.

29. Even after becoming aware that the complainant had presented the cheque, the accused did not lodge a complaint alleging that Kumar and Thiyagaselvan had acted together to misuse it. These omissions are not individually conclusive. However, when considered with the failure to examine Kumar and the absence of any document connecting the disputed cheque with the earlier transaction, they materially weaken the defence.

30. The accused admitted that he paid Rs.15,000/- to the complainant during the pendency of the proceedings. The accused explained that the amount was paid only because the Court suggested payment and that he intended to respect the words of the Court.

31. This payment cannot, by itself, be treated as an unconditional admission of the entire liability. Nevertheless, it is a circumstance which does not support the accused's claim that the complainant was a complete stranger with whom he had no transaction whatsoever.

32. The defence placed reliance upon the admissions of P.W.1 that he did not know the accused's family particulars and could not remember the name of the accused's father. These admissions are relevant while appreciating the nature of acquaintance between the parties. However, they are not fatal to the complainant's case. A person may be acquainted with another through residence, occupation or social interaction without knowing every detail about the other person's family. The failure to remember the father's name or family particulars does not establish that the parties were strangers. More importantly, such omissions do not, by themselves, rebut the statutory presumptions arising from the admitted cheque.

33. P.W.1 stated that he owned about three acres of agricultural land and cultivated banana and paddy. He estimated his annual agricultural income at approximately Rs.3,00,000/-. He admitted that he was not an income-tax

assessee and that the alleged loan was not advanced through a bank. He stated that the money was kept in his house.

34. These circumstances are relevant. However, the cheque amount is Rs.2,00,000/- and the complainant has spoken about his agricultural holding and income. The amount involved is not so disproportionate to the stated means of the complainant as to make the transaction inherently impossible. Mere questioning of financial capacity does not automatically rebut the presumptions. Before the burden can be shifted back to the complainant to independently prove the source of funds, the accused must first bring on record a probable defence regarding non-existence of the debt.

35. In the present case, the defence of cheque misuse has not been established even on the standard of preponderance of probabilities. Therefore, the absence of a bank statement or separate documentary proof of the source of the cash cannot, by itself, result in rejection of the complainant's case.

36. Further, during the cross examination, P.W.1 admitted that the writings in the body of the cheque might not have been made by the accused. The mere fact that the particulars in a signed cheque were filled by another person does not invalidate the cheque. A signed cheque voluntarily handed over by the drawer may be completed by the holder in accordance with the authority given. The accused must establish that the cheque was filled or used without authority. In this case, no reliable evidence has been produced to establish unauthorised filling or misuse. Therefore, the difference between the handwriting

in the body of the cheque and the signature does not rebut the statutory presumptions.

37. The accused has succeeded in proving that he had an earlier monetary dispute with Kumar. However, that circumstance alone is insufficient to rebut the statutory presumptions attached to the disputed cheque. The accused has failed to establish that cheque No.899878 was handed over to Kumar, that the cheque remained in Kumar's possession, that Kumar handed over or caused the cheque to be handed over to the complainant, that the "Selvam" mentioned in the police enquiry was the present complainant, that the complainant and Kumar acted together to misuse the cheque or that any complaint or stop-payment instruction was issued regarding the alleged misuse. Further, the said Kumar, who was the central witness to the entire defence, was not examined. The essential link in the defence story therefore remains unproved.

38. The defence rests mainly upon an inference sought to be drawn from an earlier dispute and the similarity between the names "Selvam" and "Thiyagaselvan". Such an inference is insufficient to constitute a probable defence.

39. The statutory presumptions have therefore not been rebutted. Consequently, the burden does not shift back to the complainant to independently prove the loan as though the case were an ordinary civil action unsupported by statutory presumptions. On an overall appreciation of the oral and documentary evidence, this Court finds that the accused issued the cheque

towards discharge of a legally enforceable debt of Rs.2,00,000/-. The cheque was presented within its period of validity and was returned unpaid for insufficiency of funds. The statutory notice was issued within the prescribed period and the accused failed to make payment within the statutory period. All the ingredients necessary to constitute the offence punishable under Section 138 of the Negotiable Instruments Act have therefore been established.

40. Accordingly, Points Nos.1 and 3 are answered in favour of the complainant. Point No.2 is answered against the accused.

41. In the result, the accused is found guilty of the offence punishable under Section 138 of the N.I Act and is convicted under Section 255(2) of the Cr.P.C.

42. The cheque amount involved is Rs.2,00,000/-. The transaction relates to the year 2022. The object of proceedings under Section 138 of the Negotiable Instruments Act is predominantly compensatory, though the provision also carries a punitive element. Taking into consideration the cheque amount, the duration of the proceedings, the payment of Rs.15,000/- already made by the accused during the pendency of the case and the overall circumstances, this Court is of the view that a sentence combining a short term of imprisonment with payment of compensation would meet the ends of justice.

Accordingly, the accused is sentenced to undergo Simple Imprisonment for a period of three months and to pay a fine of Rs.2,50,000/-.Upon recovery, the fine amount shall be paid to the complainant as compensation under Section

357(1) of the Cr.P.C. In default of payment of the fine amount, the accused shall undergo Simple Imprisonment for a further period of one month.

A free copy of this judgment shall be furnished to the accused forthwith.

Directly typed by me in my computer, corrected and pronounced by me in open Court on this the 21st day of July 2026.

Judicial Magistrate No.1,
Srivaikuntam.

APPENDIX

Witnesses examined on the side of the complainant

Witness	**Name and description**
P.W.1	N. Thiyagaselvan
P.W.2	J. Bakkiyaraj – Manager, State Bank of India, Srivaikuntam Branch

Exhibits marked on the side of the complainant

Exhibit	**Description**
Ex.P1	Cheque bearing No.899878 dated 05.08.2022 drawn on State Bank of India, Srivaikuntam Branch
Ex.P2	Bank return memo dated 09.08.2022
Ex.P3	Office copy of the statutory legal notice dated 16.08.2022
Ex.P4	Postal receipt
Ex.P5	Returned statutory notice along with postal cover
Ex.P6	Copy of the Aadhaar Card of the complainant, compared with the original

Witnesses examined on the side of the accused

Witness	Name and description
D.W.1	Tmt. Shanmugasundari
D.W.2	P. Alagar

Exhibits marked on the side of the accused

Exhibit	Description
Ex.D1 Series	CSR, enquiry records and witness statements relating to the complaint lodged by the accused before the Srivaikuntam Police Station on 14.05.2022

B DHARANEETHER
Digitally signed by B DHARANEETHER
Date: 2026.07.21 19:55:24 +0530

Judicial Magistrate No.I,
Srivaikuntam.