

In the Court of the Judicial Magistrate I, Tirupathur

Present: Tr. K.S. Dinesh, B.A., B.L., (Hons.)

Judicial Magistrate I, Tirupathur

Tuesday the 17th day of March 2026

S.T.C. No.364/2022

{ CNR No.TNTU02-003543-2022 }

Shanmugam,(54), S/o.Chokkalingam,
No.70, Thiyagi Chidambaranar Street,
Tirupathur Town &Tirupathur District

... Complainant

//Vs//

Sathyanathan (50), S/o. Namadevan,
No.17, Near Marriamman Koil,
Venkatesawara Nagar, Thiruvannamalai Main Road,
Tirupathur Town &Tirupathur District

...Accused

This case taken on file on 21.04.2022 as STC. No.364/2022. This case came up before me for the final hearing on 17.03.2026 in the presence of Tr.D.Palani, Counsel for the complainant and Tr.Manogaran, Counsel for the accused and on hearing the arguments advanced by either side counsels and on perusal of entire evidence and the documents relied by either side and on available material case records and having stood over for consideration till this day, this court delivered the following.

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JUDGMENT

1) The Complaint has been filed by the Complainant against the Accused under section 138, 142 of the Negotiable Instruments Act (Hereinafter referred as “NI Act”)

2) The contents of the Complaint in brief is as follows:-

The Complainant is known to the accused for long time. The accused approached the complainant in the 1st week of December 2021 and sought for Rs.9,00,000/- (RUPEES NINE LAKHS ONLY) for his urgent business needs and other family necessities and agreed to repay the said amount of Rs.9,00,000/- (RUPEES NINE LAKHS ONLY) within 1 month. The complainant received the said amount in cash from the complainant and gave a post-dated Karur Vysya Bank, Tirupattur Branch cheque bearing number 000135 dated 05.02.2022 for Rs.9,00,000/- (RUPEES NINE LAKHS ONLY) to the Complainant. Hence on 18.03.2022 the Complainant deposited the cheque in his bank account maintained in HDFC Bank, Tirupattur branch for collection. However the same was returned on 18.03.2022 as “FUNDS INSUFFICIENT”. The Accused who very well knew that the cheque would be returned as funds insufficient has issued the said cheque in order to cheat the complainant. Thereafter the complainant issued a legal notice dated 23.03.2022 to the accused through his counsel to his address. The same were received by the accused

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on 24.03.2022 and neither paid the cheque amount nor sent any reply. Hence thereafter the complainant preferred the present complaint against the accused on 11.04.2022 under sections 138 and 142 of Negotiable Instruments Act.

3) On receipt of the complaint, sworn statement of the complainant was taken and cognizance was taken and process was issued against the accused along with copy of the complaint under section 204(3) Crpc. On appearance, the accused appeared and was questioned about the substance of accusation made in the complaint. The accused pleaded not guilty and claimed to be put on trial.

4) The Complainant examined himself as PW-1 and Exb.P-1 to Exb.P-4 were marked. The Manager, Karur Vysya Bank, Tirupattur Branch was examined as PW-2 and Exb.P-5,6 marked through him. The Manager, HDFC Bank, Tirupattur Branch was examined as PW-3 and no documents were marked. The case of the complainant as could be seen from the evidence of the prosecution side is as follows:-

PW-1:- PW-1 is known to the accused for long time. The accused approached PW-1 in the 1st week of December 2021 and sought for Rs.9,00,000/- (RUPEES NINE LAKHS ONLY) for his urgent business needs and other family necessities and agreed

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to repay the said amount of Rs.9,00,000/- (RUPEES NINE LAKHS ONLY) within 1 month. PW-1 received the said amount in cash from PW-1 and gave a post-dated Karur Vysya Bank Tirupattur Branch cheque bearing number 000135 dated 05.02.2022 for Rs.9,00,000/-(RUPEES NINE LAKHS ONLY) to PW-1. Hence on 18.03.2022 PW-1 deposited the cheque in his bank account maintained in HDFC Bank, Tirupattur branch for collection. However the same was returned on 18.03.2022 as “FUNDS INSUFFICIENT”. The Accused who very well knew that the cheque would be returned as funds insufficient has issued the said cheque in order to cheat PW-1. Thereafter PW-1 issued a legal notice dated 23.03.2022 to the accused through his counsel to his address. The same were received by the accused on 24.03.2022 and neither paid the cheque amount nor sent any reply. Hence thereafter PW-1 preferred the present complaint against the accused on 11.04.2022 under sections 138 and 142 of Negotiable Instruments Act.

PW2 :- PW-2 is the Manager of Karur Vysya Bank, Tirupattur Branch who deposed that the accused is maintaining account in their branch and his account number is 163713500009617 (Account Name – Sri Annamalaiyar Rice Mill). The bank statement from 01.04.2020 to 06.02.2023 was marked as Exb.P-5. Account details with photo was marked Exb.P-6.

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PW3 :- PW-3 is the Manager of HDFC Bank Tirupattur Branch who deposed that PW1 deposited the cheque bearing number 000135 in his HDFC bank account bearing number 20531000005586 for collection. However the same was returned as “FUNDS INSUFFICIENT”.

5) After closing of the evidence on the side of the complainant, the incriminating portion of the complainant side evidence were put forth to the accused under section 313(1)(b) Crpc and the same were denied by the accused as false and further stated that he has evidence to lead on the side of the defence.

6) On the side of the Defense, one Nagaraj was examined as DW-1 and Exb.D-1 were marked. One Anbu was examined as DW-2. No documents were marked.

DW-1 :- DW-1 deposed that the complainant and accused is known to him for 10 years. A total a 9 persons including DW-1, the accused jointly were engaged in finance business in the name of “Lakshmi Saraswathi Finance” which was registered on 22.09.2016. The complainant became a partner after he came out of the partnership. Some problem arose in the said finance business in which the complainant was present and the same was closed. Exb.D-1 was marked through him.

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DW-2 :- DW-2 knows the complainant, accused and DW-1. DW-1, DW-2, Complainant and the accused jointly ran a finance firm as partners in the name and style as “Lakshmi Saraswathi finance” and hence they are known to each other. DW-2 further admitted Exb.D-1 certificate. There were a total of 9 partners in the said firm. The said firm was functioning near Tirupathur Sivaraj lodge. The accounts regarding the same were deposited before the District Registrar every month. At the time of establishment of the finance firm, each partner gave 6 cheques as security. The said firm is not functioning anymore. After that there was problem between Shanmugam, Jeevanandham, Vasu and the accused and hence the cheque given as security was utilized and present case has been filed against the accused.

7) Point for Determination:-

"Whether the Complainant has proved the guilt of the accused beyond all reasonable doubt or not?"

Discussions:-

8) After hearing rival arguments on both sides and on perusal of the record, it comes to know that the Complainant and Accused are known to each other since they are friends for a long time. Furthermore the accused denied the signature in the

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cheque at the time of cross-examination. However the accused has not issued any reply notice when he received the legal notice. Furthermore even at the time of first questioning, the accused did not deny the signature found in the cheque. Though the signature was denied by the accused in the cross-examination, the defense side has not taken any steps to send the same for forensic examination. Furthermore it is pertinent to note that the cheque has been dishonoured with the reasons “funds insufficient”. Since the cheque has not been dishonoured for any differences in the signature found in the cheque, mere denial of the signature in the cheque at the time of cross-examination alone will not suffice to prove the case. Furthermore the signature in the cheque has not been denied at the earliest point of time either through a reply notice or at the time of first questioning. Hence it can only be ascertained that the defense side failed to prove that the signature found in the cheque is not that of the accused. Hence it can be ascertained that the signature found in the cheque belongs to the accused.

9) The Hon’ble Supreme Court of India in Rangappa Vs. Sri Mohan reported in 2010 (3) CRIMES 40 (SC), held as follows:-

“ When the signature is admitted by the accused, then the presumption can be drawn in favour of the complainant including the legally enforceable debt and such presumption will be rebuttable in nature”.

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10) In the present case also, as per the discussions supra, it has already been decided that the signature found in the Exb.P-1 signature is that of the accused, the initial presumption can be drawn in favour of the complainant. When the initial presumption is available in favour of the complainant, the duty is cast upon the accused to rebut the presumption available in favour of the complainant.

11) In order to rebut the presumption available in favour of the complainant, the Defense side has come forward with the following defenses in the cross-examination and the Defense side evidences.

1. Cheque issued by a company and the said company is not added as a party to the proceedings.
2. There is no transaction between the complainant and the accused and no cheque was issued by the accused to the complainant.
3. About 9 persons including the complainant and the accused jointly were running a partnership firm in the name and style as “Lakshmi Saraswathi Finance” and the present cheque was issued by the accused only as a security.

12) **Defense No.1:- Cheque issued by a company and the said company is not added as a party to the proceedings.**

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It is the case of the Defense side that the cheque has been issued only by a company in the name and style as “Sri Annamalaiyar Rice Mandi” and hence the cheque was not issued in the individual capacity of the accused and hence the said company is a proper and necessary party to the proceedings. Upon perusal of the Exb.P-1 Cheque, the same has been issued by the Proprietor/Authorised Signatory of “Sri Annamalaiyar Rice Mandi”. Hence as per the Exb.P-1 cheque, the same clearly mentions that the said “Sri Annamalaiyar Rice Mandi” is a proprietorship concern and not a company. Specific defense taken by the accused that the said “Sri Annamalaiyar Rice Mandi” is a company and hence a separate entity, the onus of proof is upon the defense side to prove the same. However the defense side has not produced any oral or documentary evidences to show that the said “Sri Annamalaiyar Rice Mandi” was in fact a company and not a proprietorship concern. The Defense side has failed to prove the same. On the contrary, Exb.P-1 cheque clearly mentions that the cheque has been issued by the Proprietor/Authorised Signatory of “Sri Annamalaiyar Rice Mandi”. Thus the Complainant side having clearly established that the said “Sri Annamalaiyar Rice Mandi” is only a proprietorship concern, the said “Sri Annamalaiyar Rice Mandi” is not a separate entity and hence there is no necessity to add the same as a party to the present proceedings in hand. Hence the

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Defense side has failed to prove that the said “Sri Annamaliyar Rice Mandi” was a company. Thus the Defense side has failed to prove the 1st Defense.

13) Defense Nos.2 and 3 :- There is no transaction between the complainant and the accused and no cheque was issued by the accused to the complainant. About 9 persons including the complainant and the accused jointly were running a partnership firm in the name and style as “Lakshmi Saraswathi Finance” and the present cheque was issued by the accused only as a security.

Specific defense taken by the Defense side that there is no transactions between the complainant and the accused and that the present cheque was only given as security while about 9 persons including the complainant and the accused were running a partnership finance firm in the name and style as “Lakshmi Saraswathi Finance”. In order to prove the same, the Defense side has examined DW-1 and DW-2 who are allegedly partners in the said “Lakshmi Saraswathi Finance” partnership firm and marked Exb.D-1. Upon perusal of the said Exb.D-1, the same is the registration certificate of the partnership firm “Lakshmi Saraswathi Finance”. Upon perusal of the said Exb.D-1 certificate, it can be ascertained that the said DW-1 and DW-2 who are Nagarajan and Anbu are also partners in the said “Lakshmi Saraswathi Finance”. The

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Complainant side during cross-examination of DW-1 and DW-2 has not disputed that they are not the partners of the said “Lakshmi Saraswathi Finance”. Furthermore Exb.D-1 lists the accused N.Sathiyathan also as a partner. Thus the Defense side through Exb.D-1 and the oral evidence of DW-1 and DW-2 has clearly ascertained that DW-1, DW-2 and the accused were partners in the said “Lakshmi Saraswathi Finance” partnership firm.

14. It was argued by the learned counsel for the defense side that the complainant was also a partner in the said finance firm and that the present cheque was given only as security for the said firm. It is pertinent to note that Exb.D-1 document lists the accused as a partner. Hence the defense side through the Exb.D-1 document has clearly established that the accused, DW-1 and DW-2 are partners in the said “Lakshmi Saraswathi Finance” firm. However it is pertinent to note that the name of the Complainant has not been mentioned in the said Exb.D-1 document. The Defense side though has produced the oral evidences of DW-1 and DW-2 to ascertain that the complainant was also a partner in the said firm, no documents have been filed to substantiate the same. Though during cross-examination of DW-1 it was mentioned that the complainant was the husband of one Mrs.Revathi who was the partner, the defense side has not produced any oral or documentary evidences to show that the

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said Mrs.Revathi was the wife of the complainant. Hence the Defense side has not produced any evidences to show any tangible link between the complainant and the alleged “Lakshmi Saraswathi finance” firm. Hence the defense side has failed to prove that the complainant was also a partner in the said firm and that the cheque was issued only as security to the said firm and that the defense side has also failed to prove the non-existence of any transactions between the complainant and the accused.

15) The Hon’ble Supreme Court of India in Rajesh Jain Vs. Ajay Singh reported in 2023 INSC 888 has held as follows:-

“ 38. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.”

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16) Thus the above said judgment of the Hon'ble Supreme court will be squarely applicable to the present case. The defense side has merely denied the case. However the Defense side has not produced any substantial oral or documentary evidences to rebut the presumption available in favour of the complainant. Thus the Defense side has failed to establish any defenses to rebut the presumption regarding the existence of the legally enforceably debt between the accused and the Complainant. Furthermore the Defense side has not produced any oral or documentary evidences to substantiate the defenses raised by them. Thus the Defense side has failed to establish any defenses to rebut the initial presumption raised in favour of the Complainant.

17) In view of the above and reasoning stated supra, this court comes to the conclusion that unless and until the contrary is proved, the presumption shall be made of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of endorsement, as to stamps and that holder is a holder in due course and such presumption is available to the complainant under sections 138 and 142 of the NI Act. Though the accused had taken the defence by principle of preponderance of probabilities, the presumption in favour of the complainant was not successfully rebutted by the accused. In the light of above reasoning, this Court comes to the conclusion that the complainant proved the guilt of accused beyond all reasonable

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doubt. The accused is evading the repayment for about 4 years. Hence, this court is inclined to impose 1.5 times the cheque amount of **Rs.9,00,000/- (i.e.,) Rs.9,00,000/- X 1.5 = Rs.13,50,000/- (RUPEES THIRTEEN LAKHS FIFTY THOUSAND ONLY)** as compensation.

19) In the result, the Accused is found guilty of offence under section 138 and 142 of the Negotiable Instruments Act and the Accused is Convicted as per section 255(2) of Cr.PC. and sentenced to undergo simple imprisonment for the period of SIX MONTHS and accused shall pay the compensation of **Rs.13,50,000/- (RUPEES THIRTEEN LAKHS FIFTY THOUSAND ONLY)** as per S.357 (3) of Cr.P.C., payable to the complainant within 2 months from the date of this Judgment, failing which the accused shall undergo default sentence of 2 months imprisonment. No fine is imposed.

Dictated to the Steno-typist, transcribed and typed by her on computer, corrected and pronounced by me in open court on 17th day of march 2026.

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Appendix

Complainant side Witnesses:-

- 1) P.W-1 : Tr. Shanmugam
- 2) P.W-2 : Tr. Dinesh, Manager of Karur Vysya Bank
- 3) P.W-3 : Tr. Kumar, Manager of HDFC Bank

Complainant side Exhibits:-

- 1) Ex.P-1 : 05.02.2022 dated Original Cheque bearing No.000135 for Rs.9,00,000/-drawn on Karur Vysya Bank Tirupattur Branch - original
- 2) Ex.P-2 : 18.03.2022 dated Return memo - Original
- 3) Ex.P-3 : 23.03.2022 office copy of the lawyer notice.
- 4) Ex.P-4 : 24.03.2022 Received Acknowledgment card of the accused

- Ex.P-5 : 01.04.2020 to 06.02.2023 bank statment of the account No.163713500009617
- 5) Ex.P-6 : Account details of the accused (Account Name – Sri Annamalaiyar Rice Mill)

Accused side Witnesses :-

- 1) D.W-1 : Tr. Nagaraj
- 2) D.W-2 : Tr. Anbu

Accused side Exhibits:-

- 1) Ex.D-1 : Registered certificate of Lakshmi Saraswathi finance

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Note:-

- 1) No witness was detained for more than three days without examination
- 2) The case result communicated to parties.

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