

**IN THE COURT OF JUDICIAL MAGISTRATE NO. I AT TINDIVANAM**

**Present: Smt. M.Elavarasi, M.L.,**

**Judicial Magistrate No. I, Tindivanam**

**Dated on Monday, this the 30<sup>th</sup> day of March 2026**

**S.T.C.No. 323 of 2022**

**(CNR No.TNVP10-000505-2022)**

| <b>SI. NO.</b> | <b>CASE NO.</b>   | <b>STC No. 323 OF 2022</b>  |
|----------------|---|---|
| 1              | Complainant Address   | R. Jayamoorthi,<br>S/o. Rajavel,<br>No. 420, Eswarankoil Street,<br>Singanur Village and Post,<br>Tindivanam Taluk, Villupuram District.  |
| 2              | Name of the Accused   | N. Coby,<br>S/o Natesan<br>No. 61/2, 1st Floor,<br>Vazhudavour Road,<br>Kavoundarpalayam,<br>Pondicherry.   |
| 3              | Offence   | 08.04.2022  |
| 4              | Report of Complaint   | 12.05.2022  |
| 5              | Apprehension of Accused   | -   |
| 6              | Commencement of Trial   | 27.12.2023  |
| 7              | Close of Trial  | 24.02.2026  |
| 8              | Sentence of Order   | This Court held that accused is not found guilty under Section 138 of Negotiable Instrument Act and acquitted U/s. 255(1) Cr.P.C. The Bail bond executed by the accused is ordered to be cancelled. |
| 9              | Explanation of Delay and Remarks                                | ----  |
| 10             | Date of examination in-chief and cross-examination of a witness | PW1 - Chief examination on 21.05.2025 &<br>Cross examination on 04.09.2025  |

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| 11 | Date of examination of the accused under Section 313 of the Code | 19.01.2026 |
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This case came up for final hearing in the presence of Thiru. T.Sabari Selvan, BBM., L.L.B., and Thiru. T.M. Sivakumar, B.A., B.L., Learned Counsel appearing for the Complainant and Thiru.B. Pugazhendhi, B.A., B.L., Learned Counsel appearing for the Accused. After hearing both sides, upon perusing the records having stood over for consideration till this day, this Court delivers the following:

### **JUDGMENT**

#### **1 Gist of Complainant's Case:**

It is stated that the complainant and accused are known to each other. On 05.10.2021 the complainant had given hand loan of a sum of Rs. 4,75,000/- to the accused for his financial crises. The accused assured to repay the amount within a five months or before March 2022. The accused issued a cheque dated 10.03.2022 bearing No.483618 for a sum of Rs. 4,75,000/- drawn on State Bank of India, Tindivanam branch. After informing the accused on 07.03.2024, the complainant presented the cheque on 10.03.2022 in the Indian Bank, Tindivanam and the same was dishonoured as "Funds insufficient". The return memo was intimated on 11.03.2022. In spite of repeated demands, the accused had not repaid the cheque amount. The complainant issued legal notice dated 21.03.2022 to the accused. On 23.03.2022 the accused received the legal notice. The accused neither repaid the amount nor made any reply. Thus the

complainant has filed the present complaint seeking relief to take cognizance and issue summons to the accused and after enquiry convict the accused for the offence under section 138 Negotiable Instrument Act and order to pay the appropriate compensation.

- 2 Upon due consideration of Complaint and other documents filed there with, this Court satisfied that the prima facie case exists and taken cognizance for offence under Section 138 Negotiable Instrument Act against the accused and issued summons to the accused. On appearance of accused before this Court, copy of the complaint along with the documents served of free of cost to the Accused. After sufficient time, substance of accusation for offence u.s 138 Negotiable Instruments Act explained to the accused and questioned, the accused stated as 'இந்த வழக்கிற்கும் எனக்கும் சம்மந்தம் இல்லை. புகார்தாரரை யார் என்றே தெரியாது. எனக்கும் அவருக்கும் எந்த கொடுக்கல் வாங்கலும் இல்லை'. Then case posted for complainant side evidence.

3 **Evidence adduced on both sides:**

The complainant has examined himself as PW-1 and marked documents Ex.P-1 to P-6. No evidence adduced by the accused.

- 4 After complainant side evidence completed, the accused was questioned about the incriminating materials under section 313(1)(b) of CrPC, the accused replied as "**காசோலையை புகார்தாரரிடம் கொடுக்கவில்லை, பாண்டிச்சேரியில் ஆசைதம்பியிடம் கொடுத்தேன். புகார்தாரரிடம் எனக்கு கொடுக்கல் வாங்கல் இல்லை**" The accused has not adduced any evidence even after provided sufficient time, then the defence side evidence has been closed.

## **5 Points for Determination:**

The points to be determined in this case are:-

- i Whether the complainant is entitled to claim the benefits of presumptions provided under sections 118 and 139 of Negotiable Instrument Act ?**
- ii Whether such presumptions are rebutted by the accused ?**
- iii If rebutted, Whether the complainant prove his case beyond reasonable doubt ?**

## **6 Arguments advanced on both sides:-**

6.1 The Learned counsel appeared for the complainant submitted that the complainant gave evidence that he knows the accused. The complainant has given the hand loan for which the accused gave cheque. It has been returned for insufficient funds, within statutory period the complainant gave legal notice. The father name of the accused is correct as per the knowledge of the complainant. The father name of the accused is incorrectly mentioned that does not invalid the demand notice and the same is curable defect. The accused received legal notice and received. The accused has taken a defence that the complainant has no sufficient financial capacity to advance the loan amount. However, the complainant in the cross examination has clearly mentioned all the sources of income. Unless the defence giving any concrete evidence, the complainant has no onus to prove his financial capacity as per Basapalinga case. The accused taken inconsistent defence and the same has not been proved through proper evidence. Hence the accused has not rebutted the statutory

presumptions and prays the Court to held the accused liable for offence under section 138 Negotiable Instruments Act and provide compensation of double the cheque amount.

6.2 The Learned Counsel for the accused has submitted that the proceedings under the Negotiable Instruments Act are partially civil and partially criminal in nature. Till issuance of statutory legal notice, the issues are civil in nature. After issuance of demand notice, if payments not made within 15 days of receipt, Then the issues are criminal in nature. The statutory presumption under Section 118, 139 of Negotiable Instruments are in regard to the date, time, amount drawer of the cheque only and not the existence of legally enforceable debt. The onus is upon the complainant to prove that existence of debt. PW1 stated that he knows the accused through his uncle Asaithambi, the said Asaithambi was listed as witness in the complaint. However, not been examined by the complainant. Hence, adverse inference has to be drawn against the complainant. The Complainant has no financial capacity to advance such loan amount. The Complainant doesn't know when the cheque has been presented for encashment. The date of issue of cheque is contrary to the complaint and the evidence of PW1. The pronote which has been allegedly obtained from the accused has not been filed before this Court. Hence, the complainant failed to prove the advancement of loan amount. Actually the accused has given this cheque to Asaithambi, uncle of the complainant for other purpose which has been misused

by the complainant. The accused need not get into the witness box to rebut the presumption, he can rebut by cross examination of complainant side witnesses. In this case, statutory presumption is rebutted. Thus, prays for acquittal. The accused relied upon the following decisions in support of his defence: [2017 (1) TLNJ CRL 12], [2013 (3) SCC 86], [2007 CRL L J 1285 (Kerala High Court)], [AIR 2016(1) Kar R 211], [2015 (1) SCC 99].

6.3 Heard both side submissions and perused the materials placed before this Court.

## **7 Appreciation of Evidence:**

### **Whether the complainant is entitled to claim the benefits of presumptions provided under sections 118 and 139 of Negotiable Instrument Act ?**

The complainant Tr. Jayamoorthi had examined himself as PW1 and exhibited the cheque dated 10.03.2022 bearing No.483618 for a sum of Rs.4,75,000/- drawn on State Bank of India, Gandhinagar Branch signed by the accused in favour of the complainant as Ex.P1. The accused had not disputed his signature in the cheque. The defences taken by accused is that in cheque given to Asaithambi and not the complainant. Once the execution of cheque is admitted, the statutory presumptions can be granted. Thus the statutory presumptions in regard to date, amount, drawer and drawee and other endorsements in the cheque, it is issued for legally enforceable debt is to issued in favour of the complainant as per S:118, 139 of Negotiable Instruments Act.

### **8. Whether such presumptions are rebutted by the accused ?**

The Complainant Tr. Jayamoorthi examined as PW1 and examined in chief by filing proof affidavit, in which reiterated the contents of the complaint. The cheque dated 10.03.2022 bearing No.483618 for a sum of Rs.4,75,000/- drawn on State Bank of India, Gandhinagar Branch as Ex.P1, Return memo dated 11.03.2022 issued by the Indian Bank, Tindivanam branch was marked as Ex.P2, Legal notice dated 21.03.2022 along with postal receipt was marked as Ex.P3, acknowledgement card was marked as Ex.P4, Reply Notice was marked as Ex.P5 and Complainant's aadhar card copy was marked as Ex.P6.

9. In the cross examination by the defence side, PW1 stated as " புகாரில் என்ன பரிகாரம் கேட்டு கொடுத்துள்ளேன் என்றால் பணம் கேட்டு கொடுத்துள்ளேன். வேறு எந்த பரிகாரமும் கேட்கவில்லை என்றால் சரிதான். ( சாட்சி பரிகாரம் என்ன என்று கேட்டு பதில் அளிக்கிறார்) எனது ஊர் திண்டிவனம் தாலுக்காவை சேர்ந்தது என்றால் சரிதான். கோபி என்பவரை என்ன ஊர் என்றால் பாண்டிச்சேரியில் கவுண்டன்பாளையம். மேற்படி ஊர் எந்த ஏரியாவில் உள்ளது என்றால் பாண்டிச்சேரியில் தட்டாஞ்சாவடி அடுத்து உள்ளது. கவுண்டன்பாளையம் எந்த தாலுக்காவில் உள்ளது என்றால் தெரியாது. எனது ஊரிலிருந்து எதிரியின் ஊர் எத்தனை கி.மீ. இருக்கும் என்றால் சுமார் 40 கி.மீ. இருக்கும். நானும் எதிரியும் ஒரே ஊர் இல்லை என்றால் சரிதான். கோபி எனது உறவினர் இல்லை என்றால் சரிதான், மாமாவின் மூலம் பழக்கம். கோபிக்கு எனது ஊரில் உறவினர்கள் மற்றும் சொத்துக்கள் இல்லை என்றால் சரிதான். அதனால் கோபி எனது ஊருக்கு வரவேண்டிய அவசியமில்லை என்றால் சரிதான். கோபி என்னுடன் படிக்கவில்லை என்றால் சரிதான். எனக்கும் கோபிக்கும் வயதின் அடிப்படையில் எந்த பழக்கமும் இல்லை என்றால் சரிதான். எனக்கு விவசாய

தொழில் என்றால் சரிதான். எனக்கு சொந்தமாக எத்தனை ஏக்கர் உள்ளது என்றால் <sup>1</sup>/<sub>2</sub> ஏக்கர் உள்ளது, பக்கத்தில் குத்தகை நிலம் உள்ளது. நான் சிறுவிவசாயி என்றால் சரிதான்....எதிரி எனது மாமாவிடம் வாங்கிய கடனை மாமா என்னை வைத்து வழக்கு தாக்கல் செய்துள்ளார் என்றால் சரியல்ல. எதிரி கோபியிடம் கடன் கொடுத்தபோது புரோநோட் எழுதி வாங்கினேனா என்றால் கடனுறுதி பற்று ஆவணம் எழுதிவாங்கினேன். எதிரி எந்த காலத்திலும் புரோநோட் எழுதிகொடுக்கவில்லை என்றால் சரியல்ல. வெற்றுத்தாளில் எதிரி எழுதி கையொப்பம் செய்துள்ளாரா என்றால் இல்லை, எழுதிய பேப்பரில் கையொப்பம் செய்துகொடுத்தார். எந்த தேதியில் எங்கு வைத்து எழுதிகொடுத்தார் என்றால் எதிரியின் டிரான்ஸ்போர்ட்டில் வைத்து 05.10.2021 அன்று எழுதிகொடுத்தார்....ரூ.4,75,000/- தொகை நான் வங்கியில் வைத்திருந்தேனா என்றால் இல்லை, நான் பயிர் செய்த பணமும், எனக்கு திருமணத்திற்கு வைத்திருந்த பணமும் கையில் வைத்திருந்தேன். மேற்படி விவரத்தை புகாரில் சொன்னேனா என்றால் இல்லை. அதிக தொகையை நான் வங்கியில் வைத்திருப்பேனா என்றால் இல்லை. கையில் தான் வைத்திருப்பேன் என்றால் சரிதான்..... காசோலை எந்த தேதியில் கொடுத்தார் என்றால் 10.03.2022 அன்று கொடுத்தார். கடன் கொடுத்த தேதியில் எதிரி காசோலை கொடுக்கவில்லை என்றால் சரிதான். 10.03.2022 அன்று திருப்பி கேட்கும்போது பணம் கையில். பணமாக கொடுப்பார் பணம் இல்லையென்றால் காசோலை கொடுப்பார் என்றால் எதிரி காசோலையை தான் கொடுத்தார். அன்றைய தினம் எதிரியிடம் பணமில்லை என்றால் எனக்கு காசோலை கொடுத்த தேதியில் அன்றையதினமே செலுத்தினோ என்றால் இல்லை. முதல் நிலை சாட்சியத்தில் 10.03.2022 அன்று காசோலை கொடுத்தாக சொல்லியுள்ளேன், அன்றையதினமே வங்கியில் செலுத்தியதாக சொல்லியுள்ளேன் என்றால் இல்லை, மறுநாள் வங்கியில் செலுத்தினேன்.... எதிரி எண்ணிடம் எந்த காலத்திலும் கடன் வாங்கவில்லை என்றால் சரியல்ல. சட்டப்படி எதிரி எனக்கு கடன் கொடுக்கவேண்டியது இல்லை என்றால் சரியல்ல. இந்த வழக்கை தள்ளுபடி செய்யவேண்டும் என்றால் சரியல்ல "

10. The defence taken by the accused that the complainant has no such financial capacity to advance the loan amount of Rs. 4,75,000. It is observed that during cross examination of Pw1, he stated that he is an agriculturist doing agriculture in his own land extent of one and half acre land and also the land on lease basis. PW1 stated that he obtained the loan from the cooperative society for the last 2 years, he is earning Rs. 60000/- per month and the family expenses will be Rs. 7000 - Rs. 10,000/- per month, the loan amount is saving on hand.

11. *In the case: Crl.A.No. 1755/2010 Sanjabij Tari -Vs- Kishore S. Borcar and another [2025 INSC 1158], the Hon'ble Supreme Court of India* held that the accused must take defence of financial incapacity of complainant in first instance of reply notice or through probable defence, then only the onus shift to complainant to prove his financial capacity. As per the above decision, it has been held that the accused as to provide the probable defence then the onus shift to the Complainant to prove his financial capacity to advance the loan amount. In the present case in the cross examination of PW1 by the accused various questions in regard to the financial capacity of the complainant has been put and no probable defence putforth by the accused in regard to the financial incapacity of the complainant. The mere suggestion does not probabalize the defence. Hence this Court consider the onus does not shift upon the

complainant to prove his financial capacity. Thus, this contention is not sustained.

12. The next contention raised by the defence side is that is no existence of legal debt and there is no transactions between the accused and the complainant. In this regard, it is observed that Ex.P-3 legal notice dated 21.03.2022 issued by Tr.Subhash, Advocate on behalf of the complainant to the accused. The accused has received the legal notice and acknowledgement card filed as Ex.P4. It is pertinent to know that Ex.P5-Reply notice dated 20.04.2022 issued by Tr.Puratchi Kumar Rodin Advocate to Tr.Subhash Advocate. In the reply notice there is no reference mentioned that it has been issued in reply to the above legal notice. In the above reply notice, complainant name, accused name has not been mentioned. Further, the present cheque number has also not been mentioned in the reply notice. It seems like that it is a reply to the statutory legal notice issued under section 138 Negotiable Instruments Act. However, there are 8 cheque numbers mentioned other than the present cheque No. 483618 in this case. The Complainant has stated that the accused issued this reply notice to his counsel and the same has not been denied by the accused.

13. In the questioning about substance of accusation and questioning under section 313(1)(b) Cr.p.C. the accused stated that he doesn't know the complainant and there is no transaction between them. There is the specific defence taken by the

accused that the present cheque has been given to Asaithambi who is an uncle of the complainant. In the complaint, it is stated that the complainant has informed the accused on 07.3.2022 and deposited cheque on 10.03.2022 for encashment. In the cross examination Pw1 has stated that cheque has been given on 10.03.2022 and the same has been deposited on the next day i.e. on 11.03.2022. It is specially deposed by PW 1 that cheque has been given on 10.03.2022 and on the next day the cheque has been deposited. The date of the cheque is 10.03.2022. In Ex.P2 bank return memo it is mentioned the presentation date is 10.03.2022 and the return date is 11.03.2022. Thus, it is clear that date of the cheque and the date of presentation is 10.03.2022. The date of advancement of loan is of 05.10.2021.

14. The *Hon'ble Supreme Court of India has held in the cases Basalingappa vs Mudibasappa AIR 2019 SUPREME COURT 1983 and Tedhi Singh vs Narayan Dass Mahant 2022(6) SCC 735* that the standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. It is not necessary for the accused to come in the witness box to support his defence. In the present case that in the legal notice and in complaint there is nothing mentioned about the pronote or any other document that has been obtained at the time of loan. In the cross examination Pw1 stated that the promisory note for amount of Rs.4,75,000 has

been executed by the accused on the date of advancement of loan at the accused transport office. Admittedly pronote has not been filed in this case. Without recording any document, the complainant has advanced the loan of Rs. 4,75,000/- and after about 5 months, i.e on 10.03.2022, cheque has been obtained from the accused, which creates serious doubt over the case of the complainant in regard to the existence of legal debt. No prudent man will advance such huge amount without pronote or such kind of document. Considering the evidence of PW1, the defence taken by the accused is more probablised. The stand taken by the defence that the cheque has not been given to the complainant. Thus, the Accused has rebutted the statutory presumptions in regard to the existence of legal debt. When the statutory presumption is reverted by probable defence the onus of proof shifts to the complainant to prove his case beyond reasonable doubt. In the present case, the complainant has not proved his case beyond reasonable doubt.

**15. Findings:**

It is concluded that the cheque dated 10.03.2022 bearing No. 483618 drawn on State Bank of India, Gandhinagar Branch signed by the accused in favour of the complainant was presented for encashment and returned for the reason cited as insufficient funds. Within the period of 30 days, the complainant has issued legal notice dated 21.03.2022. The accused has received the same and replied by notice dated 20.04.2022. The statutory presumptions in regard to the

endorsements of cheque granted in favour of complainant. The said presumptions are rebuttal one. The standard of proof for rebutting the statutory presumptions is prepondance of probabilities by raising the probable defence. In the present case, the accused has rebutted the presumption of existence of legal debt in the cross examination of PW1. The onus of proof shifts to the complainant to prove his case beyond reasonable doubt. However, the complainant failed to prove the existence of legal debt. PW1 has not proper authorization to depose on behalf of the complainant and he has no knowledge whether he was duly authorised, what documents filed in this case. Thus, the complainant has failed to proved its case beyond reasonable doubt.

**In result, this Court held that accused is not found guilty under Section 138 of Negotiable Instrument Act and acquitted U/s. 255(1) Cr.P.C. The Bail bond executed by the accused is ordered to be cancelled.**

Dictated to Typist, typed by her, corrected and pronounced by me in the open Court on this 30<sup>th</sup> day of March 2026

**Judicial Magistrate No. I,  
Tindivanam**

**List of Complainant Witness:-**

P.W.1 – Tr. Jayamoorthi

**List of Complainant side exhibits:-**

| <b>Exhibit</b> | <b>Date</b> | <b>Description</b>   | <b>Filed by</b> | <b>Marked Through</b> | <b>Nature</b> |
|----------------|-------------|--|-----------------|-----------------------|---------------|
| Ex.P-1         | 10.03.2022  | Cheque No.483618 for a sum of Rs.4,75,000/- drawn on State Bank of India, Gandhinagar Branch | PW1             | PW1                   | Original      |
| Ex.P-2         | 11.03.2022  | Return memo  | PW1             | PW1                   | Original      |
| Ex.P-3         | 21.03.2022  | Legal notice along with receipt  | PW1             | PW1                   | Office Copy   |
| Ex.P-4         | -           | Acknowledgement card   | PW1             | PW1                   | Original      |
| Ex.P-5         | 20.04.2022  | Reply Notice   | PW1             | PW1                   | Office Copy   |
| Ex.P-6         | -           | Copy of complainant's Aadhar card  | PW1             | PW1                   | Xerox copy    |

**List of Defence Witness and exhibits:-** Nil

**Judicial Magistrate No. I,  
Tindivanam**