IN THE COURT OF JUDICIAL MAGISTRATE No. II, TINDIVANAM

PRESENT: TMT.M.ABINAYA.,B.A.,B.L.,
JUDICIAL MAGISTRATE No-II.
TINDIVANAM.

On Friday, 29th day of May 2026.

STC.No:268 of 2022

CNR NO.TNVP11-000394-2022

<table>
<tr><th>Sl.No.</th><th>Explanation</th><th>:</th><th colspan="2">Details</th></tr>
<tr><td>1</td><td>Complainant Name and Address.</td><td>:</td><td colspan="2">Shriram Transport finance Co Ltd.,
Rep by its Deputy Manager,
K.Arulraj,
S/o.Kasiraja,
No.99/1, 1st Floor, Mailam Main Road,
Tindivanam-604 001,
Villupuram District.</td></tr>
<tr><td>2</td><td>Accused name and Address</td><td>:</td><td colspan="2">Kumaravel,
S/o. Dhakshnamoorthy,
No.4/8, East cost Road,
Marakkanam -604 303.</td></tr>
<tr><td rowspan="2">3</td><td rowspan="2">The Period of remand of the Accused</td><td rowspan="2">:</td><td>Date of Arrest</td><td>Date of Release.</td></tr>
<tr><td>----</td><td>----</td></tr>
<tr><td>4</td><td>Occurrence Date</td><td>:</td><td colspan="2">----</td></tr>
<tr><td>5</td><td>Taken on filed Date.</td><td>:</td><td colspan="2">13.04.2022</td></tr>
<tr><td>6</td><td>Appearance of Accused.</td><td>:</td><td colspan="2">15.12.2022</td></tr>
<tr><td>7</td><td>Date of filling complaint in Court</td><td>:</td><td colspan="2">---</td></tr>
<tr><td>8</td><td>Date of Questioning of the Accused U/s.241 of Cr.P.C</td><td>:</td><td colspan="2">06.07.2023</td></tr>
<tr><td>9</td><td>Filing of Miscellaneous Petitions and their result including the results on challenge before Superior Court</td><td>:</td><td colspan="2">1.205 of Crpc – 17.10.2023
Result: Allowed.
2. 311 of Crpc -08.08.2024
Result: Allowed.
3. Reopen Petition – 08.08.2024
Result: Allowed.</td></tr>
</table>

10	Date of Examination in Chief and Cross.	:	**Witness**	**Chief**	**Cross**
			PW1	12.10.2023	21.09.2024
11	Material Objects.	:	Nil		
12	Date of examination of the accused U/s.313(1)(b) Cr.P.C	:	21.04.2026		
13	Date of Closing for Examination	:	21.04.2026		
14	Details of abscondence of an accused and his appearance	:	Nil		
15	Grant of Stay and Orders by Superior Court and the results there of	:	Nil.		
16	Charges Facing of Accused.	:	U/s.138 NI Act.		
17	Offences.	:	U/s.138 NI Act.		
18	Judgment	:	In the result, Accused found guilty U/s.138 NI Act. Hence, accused acquitted U/s.255(i) of Cr.P.C.		

This case was taken on file on 13.04.2022 and coming on today for final hearing in the presence of the Thiru. C. Rajkumar., B.A., B.L., Advocate for the complainant and advocate Thiru. C.Johnson., B.Pharm., M.B.A., B.L., for the accused and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

1. Gist of the complainant:

The complainant alleges that the accused obtained a loan of Rs.10,00,000 on 30.11.2017 under a term loan agreement for his water supply business and agreed to repay it in 72 monthly installments of Rs.1,13,114 each. However, the accused became irregular in making payments. To discharge part of the outstanding liability, the accused issued Cheque No. 125864 dated 20.10.2021 for Rs.10,00,000 drawn on Indian Bank, Marakkanam Branch. When the cheque was presented through ICICI Bank, Tindivanam, it was dishonoured on 27.10.2021 due to "Funds Insufficient."The complainant then issued a statutory demand notice dated 02.11.2021 under Section 138 of the Negotiable Instruments Act, 1881, demanding payment within 15 days. The notice was reportedly refused by the accused on 15.11.2021, and no payment was made thereafter. Consequently, the complainant filed the present complaint under Section 138 of the Negotiable Instruments Act.

2. After the accused was served with the copy of the complaint and other material documents, the substance of the accusation made against her under section 138 of N.I. Act was explained to him. However, he has not pleaded guilty and claimed to be tried.

3. Complainant side witnesses and documents:

During the trial, PW1 was examined as complainant side witnesses. Ex.P1 to Ex.P4 was marked on the side of the complainant. To substantiate his case following documents were marked:

a. Ex.P1 is the disputed cheque bearing No.125864 dated 20.10.2021 drawn at Indian bank, Marakkanam branch for Rs.10,00,000/-.

b. Ex.P2 is the banker's return memo dated 27.10.2021 stating the reason for dishonour of cheque as " Funds Insufficient".

c. Ex.P3 is the copy of legal notice issued to accused on 02.10.2021

d. Ex.P4 is the Retuned Postal Cover on 15.11.2021.

4. The incriminating evidence on record let in by the complainant was put to the accused U/s. 313(1)(b) Cr.P.C to which he has stated that a false case has been filed against him.

5. Accused side Witnesses and Documents:

The accused has not come forward to examine any witness and mark documents and hence the accused side evidence was closed.

6. The Point for determination is whether the accused is guilty U/s.138 of N.I.Act or not?

7. The case of the complainant is that the accused has borrowed a sum of Rs.10,00,000/- under a loan agreement dated 30.11.2017 and later defaulted on repayment. To clear part of the outstanding dues, the accused issued a cheque for Rupees 10 lakh dated 20.10.2021, which was dishonoured due to insufficient funds. Despite a legal notice issued under Section 138 of the Negotiable Instruments Act, the accused failed to make payment. Therefore, the complainant has filed a case seeking punishment of the accused and recovery of the cheque amount.

8. The defence of the accused is that the cheque in question was not issued towards legally enforceable debt, but it was obtained as a security cheque at the time of availing loan. It is further contended that the complainant has not produced any loan agreement, statement of account, promissory note or any other loan related documents to prove the legally enforceable liability. The accused also disputed the authority of the complainant's representative to institute the complaint.

9. The learned counsel for the complainant has not come forward to adduce his arguments inspite of the sufficient opportunities given. Per contra, the learned counsel for the accused in addition to his oral arguments has filed his written arguments. Further the learned counsel for the accused argued that the ingredients under section 138 of NI Act itself not satisfied to file this complaint before this court. The cheque in question was not issued towards legally enforceable debt, but it was obtained as a security cheque at the time of availing loan. The accused has raised a probable defence which creates reasonable doubt in the case of the complainant. Hence, the complainant has not proved his case beyond reasonable doubt and argued to dismiss the case.

10. Discussion and Appreciation of Evidence:

Heard. This court has carefully perused the records and the materials available in the case bundle. The learned counsel for the accused contended that the Arulraj has no locus standi to file this case since he has not filed any ID proof that he is the deputy manager or the authorisation letter to show that he has locus standi to file this suit on behalf of the complainant company i.e., M/s. Sriram Transport Finance Company Ltd. Hence this complaint itself is not maintainable.

11. This court is of the view that since the maintainability of the complaint goes to the root of the matter, this Court first considers the point relating to authorization. The complaint has been filed by one Arulraj describing himself as Deputy Manager of the complainant company. However, admittedly, no board resolution, authorization letter or power of attorney has been produced before this Court authorizing the said person either to institute the complaint or to depose on behalf of the company.

12. During cross-examination, PW1 has admitted that authorization documents will be issued by the complainant company for filing case against the defaulting party. The relevant portion of the evidence of PW1 is elucidated hereunder:

"நாங்கள் நிர்வாகத்தினால் வழக்கு பதிவு செய்ய வேண்டும் என்றால் நிர்வாக இயக்குனரிடம் இருந்து அதிகாரமும் அந்த நபர் யாராக இருக்க வேண்டும் என்ற உத்தரவும் வழங்கப்படும் என்று சொன்னால் ஆமாம். எதிரியின் மீது வழக்கு போடுவதற்கு நிர்வாக அதிகாரிகள் ஏதேனும் தீர்மானம் போட்டார்களா என்றால் இல்லை. தனியாக போட மாட்டார்கள் அனைவருக்கும் சேர்த்து ஒரு பொது அதிகார பத்திரம் கொடுத்து விடுவார்கள்".

13. On perusal of the above evidence, it is evident that the Power of attorney has been issued to the complainant for filing the case. However, despite sufficient opportunity, no such document has been produced before this Court. When a complaint is filed by a company, the person representing the company must establish due authorization in the manner known to law. Mere designation as "Deputy Manager" by itself does not automatically confer authority to prosecute criminal proceedings. In the absence of any documentary proof regarding authorization, this Court is constrained to hold that the complainant has failed to prove that PW1 was competent to institute and prosecute the complaint on behalf of the company. This creates a serious doubt regarding the very maintainability of the complaint.

14. For properly appreciating the facts of the case and the legal aspects to be determined, a reference is necessary to the relevant statutory provisions. The following are the essential ingredients for constituting the offence under section 138 of Negotiable Instruments Act.

a. The Person must have drawn a cheque on an account maintained bank for payment of certain amount of money to another person from out of that account.

b. The cheque should have been issued for discharge, in whole or in part, of any debt or other liability.

c. That cheque has been presented to the bank within a period of three months from the date of which it is drawn or within the period of its validity whichever is earlier.

d. That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to dishonour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

e. The payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

f. The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

It is only when all the above mentioned ingredients are satisfied, the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the Negotiable Instruments Act.

15. Therefore, Firstly, whether the presumption under section 118 and 139 of N.I.Act lies in favour of the complainant. On perusal of the Complaint, Proof affidavit and the exhibits, the Ex.P1 is the disputed cheque bearing No.125864 dated 20.10.2021 drawn at Indian bank, Marakkanam branch for Rs.10,00,000/- executed by the accused in favour of the Complainant. The Ex.P2 is the banker's return memo dated 27.10.2021 stating the reason for dishonour of cheque as " Funds Insufficient". The Ex.P3 is the copy of legal notice issued to accused on 02.10.2021 which has been sent within the stipulated time as enumerated under the N.I.Act. The Ex.P4 is the returned postal cover on 15.11.2021. Subsequently, this case was filed after providing 15 days statutory period to the accused. Thus, from the above discussion, this court is of the considered view that the ingredients of section 138 of the N.I. Act are fulfilled. On perusal of the records, it is clear that though the accused denies the case of the complainant as false, he has admitted him signature in the Ex.P1 cheque.

16. In a very recent judgment of the Hon'ble Apex court in the case of **"M/s.Kalaimani Tex and Another vs. P.Balasubramanian" (2021(5)SCC**

283), it has been held that, “The statute Mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then ‘reverse onus’ clauses become operative”. In this case, as stated above, since the complainant had clearly proved that the signature in the cheque is that of the accused and has discharged the initial burden of proof to raise the presumption under section 139 read with section 118 in his favour, it is the duty of the accused to rebut the presumption raised against him by means of probable defence. Thus, from the above discussion, this court is of considered view that the presumption under section 118 and 139 of N.I.Act lies in favour of the complainant.

17. Secondly, Whether the accused has rebutted the presumption raised in favour of the complainant by his probable defence. In this connection, the larger bench of the Hon'ble Supreme Court in **"Rangappa Vs. Sri Mohan" (2010 AIR(SC) 1898)** held as follows; “Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of preponderance of probabilities. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.” Therefore, it is clear that the complainant has to prove his case beyond reasonable doubt and accused was expected to prove only the preponderance of probabilities for that purpose he need not come to witness box and examine himself as witness.

18. In order to rebut the presumption, the accused need not prove his case by letting in oral and documentary evidence. By raising a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the complainant can fail and the accused can disprove the case of the complainant.

19. The complainant alleges that the accused borrowed loan and defaulted repayment. However, except production of cheque, bank return memo and legal notice, absolutely no material has been produced to establish the foundational transaction. The complainant, being a finance company engaged in commercial lending transactions, is expected to maintain proper records relating to loan disbursement and repayment. However, the complainant has failed to produce loan application, loan agreement, statement of account, any acknowledgment of liability, etc., No explanation whatsoever has been offered for withholding these material documents.

20. The accused has consistently taken a defence that the cheque was obtained only as a security cheque at the inception of loan transaction. Once such defence is raised and probable circumstances are elicited during cross-examination, the burden shifts upon the complainant to prove the actual legally enforceable liability by cogent documentary evidence. In the present case, the complainant failed to produce the best evidence available in its custody. Merely because a signed cheque has been produced before the Court, it cannot automatically lead to the conclusion that the cheque was issued towards discharge of legally enforceable debt, especially when the very transaction is disputed and foundational documents are withheld.

21. Though presumptions under Sections 118 and 139 of the Negotiable Instruments Act initially operate in favour of the complainant, such presumptions are rebuttable in nature. The accused is not required to prove defence beyond reasonable doubt. The accused can rebut the statutory presumption by establishing a probable defence on preponderance of probabilities. In view of the above discussion, this court is of the view that the defence raised by the accused appears probable and creates a reasonable doubt. Therefore, this Court is of the considered opinion that the accused has successfully rebutted the statutory presumption available in favour of the complainant. Consequently, the burden shifted back upon the complainant to prove the liability independently. The complainant has failed to discharge the said burden.

22. In view of the aforesaid discussion, this court hereby holds that the complainant has failed to prove and substantiate the allegation made against the accused beyond doubt and the accused has successfully rebutted the presumption drawn in favour of the Complainant. Hence, for the reasons stated above this court finds the accused is not guilty of offence under section 138 of N.I. Act.

23. Result:

In the result, the accused is not found guilty under section 255(1) of Cr.P.C for the offence under section 138 of the Negotiable Instruments Act and the accused is acquitted considering the overall facts and circumstances of the case.

Judgment Prepared by me in my laptop and taken print out, corrected and pronounced by me in open court this the 29th day of May 2026.

ABINAYA Digitally signed by ABINAYA Date: 2026.05.29 15:39:21 +0530

Judicial Magistrate No.II
Tindivanam

Complainant Side Witness :-

P.W.1 : Thiru.Arulraj.

Exhibits on behalf of Complainant side

Ex.P.1	20.10.2021	Disputed cheque bearing No.125864
Ex.P2	27.10.2021	Return memo
Ex.P3	02.10.2021	Legal notice
Ex.P4	15.11.2021	Returned postal cover

Material object on behalf of Complainant side- Nil

List of Witness on behalf Accused Side: Nil

Exhibits on behalf Accused Side: Nil

Material object on behalf Accused Side: Nil

ABINAYA Digitally signed by ABINAYA Date: 2026.05.29 15:39:27 +0530

Judicial Magistrate No.II
Tindivanam