IN THE COURT OF JUDICIAL MAGISTRATE, FAST TRACK COURT, (MAGISTERIAL LEVEL)- AMBATTUR, TIRUVALLUR– 53.

PRESENT- Tmt.K.MAHASAKTHI,B.B.A.,L.LB(Hons).,

JUDICIAL MAGISTRATE, FAST TRACK COURT, AMBATTUR.

Dated: 8th August 2026

S.T.C.No.249/2025

CNR.NO.TNTR-3500-0639-2025

PARTICULARS UNDER RULE 106 OF CRIMINAL RULES OF PRACTICE, 2019:-

1.	Serial Number	**STC.No.249/2025**
2.	Name of Complainant and Offence	**Mr.T.Vinoth Joshua** U/s.138 NI Act
3.	Accused Name	**Mr.B.Vetrivendhan**
4.	Father / Husband Name	S/o. Balasundaram
5.	Occupation	-
6.	Residence	No.2/5, Thiruvalluvar street, Puthur, Ambattur, Chennai-600053.
7.	Age	-
8.	Date of Occurence	-
9.	Date of Complaint	12.05.2025
10.	Apprehension	-
11.	Release on bail	-
12.	Date of Commitment	-
13.	Commencement of Trial	07.10.2025
14.	Close of Trial	06.07.2026
15.	Sentence or Order	08.08.2026
16.	Service of copy of judgment or finding on accused	ACQUITTAL
17.	Explanation of delay	No Delay

Mr.T.Vinoth Joshua -------Complainant

Vs.

Mr.B.Vetrivendhan --------Accused

JUDGMENT UNDER SECTION 274 BNSS

A	Serial Number of the Case	STC.No.249/2025
B	Date of Offence	11.04.2025 (Date of expiry of 15 days time after legal notice)
C	Name of the Complainant & Address	Mr.T.Vinoth Joshua, No.60, subash chandra bose street, 8th Avenue extension, Banu Nagar, Ambattur, Chennai-600053.
D	Name of Accused	Mr.B.Vetrivendhan
E	Offence Complained of	Dishonor of Cheque- culpable u/s.138 of the Negotiable Instruments Act.
F	Plea of the Accused and his Examination in Brief	Pleaded not Guilty.
G	Final Order	ACQUITTAL
H	Judgment Reserved on	06.07.2026
I	Judgment Pronounced on	08.08.2026

PART-B – A brief statement of reasons for the decision

This case having been taken on file by this court and coming up for final hearing before me today and in the presence of Mr.B.Thomson Durai, Advocate for the complainant and the accused being defended by Advocate, Mr.M.Mohamed Nazar and the case having stood over for consideration till this day and upon the arguments advanced by both side and upon considering the materials on record on merits this court delivered the following

JUDGMENT

1. This Judgment shall decide upon the complaint filed by Mr.T.Vinoth Joshua (hereinafter referred to as the **‘Complainant’**) under Section 138, Negotiable Instruments Act, (hereinafter referred to as the **‘the NI Act’**) against Mr.B.Vetrivendhan (hereinafter referred to as the **'Accused'**).

2. The case of the Complainant, in brief, is that on 01.03.2021 the accused had borrowed a sum of Rs.15,00,000/- from the complainant to register a property in favor of the complainant and executed a sale agreement dated 01.03.2021. On the same day the accused had issued a cheque bearing no.000051 post-dated on 24.02.2025 for a sum of Rs.15,00,000/- drawn on Kodak Mahindra Bank, Anna Nagar Branch, Chennai signed in favor of the complainant for discharge of the legal liability (hereinafter called “**cheque in dispute”**). Then the accused had failed to register the property in favor of the complainant, hence under his instruction the complainant had presented the said cheque in his banker M/s.IDBI Bank, Ambattur branch but the cheque was returned for a reason stated as “Funds Insufficient” and the same was informed to the complainant by way of return memo dated 26.02.2025. Then the complainant had sent a legal notice to the accused demanding the repayment of the dishonored cheque amount on 26.03.2025. The said notice was received to the accused on 28.03.2025. The accused has sent a false reply notice. Even after the said legal notice the accused had not repaid the cheque amount. Hence the accused is liable for the offence, so, this present case was filed under sec.138 of N.I.Act.

3. After recording the sworn statement of the complainant and also upon on the perusal of the documents, having found the *prima facie* case against the accused and this court have taken cognizance of the offence and issued summons to the accused. The accused appeared on summons and the copy of the complaint was served on him and on questioning they pleaded not guilty and claimed for trial.

4. The complainant had examined himself as PW1, he has filed his proof affidavit *in lieu* of chief examination and through him documents-Exhibits P-1 to P-5,Ex.C-1 were marked and his testimony in the chief examination was replica of the complaint. With the above evidence the complainant side evidence was closed. Thereafter, the statement of accused u/s.313 C.r.P.C. was recorded after disclosing the incriminating circumstances and evidence against the accused, to which the accused had denied the evidence as false. In the accused side no witness has been examined and no documents marked then this court had closed the Defense witness and had proceeded the case.

5. Now the point for determination before this court is whether the complainant had established a case against the accused under section 138 of the N.I.Act beyond any doubts, so as to punish the accused for the same?

6. This court have carefully perused the records and the materials available in the case bundle. 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 u/s.138 N.I. Act:

- 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.
- The cheque should have been issued for discharge, in whole or in part, of any debt or other liability;
- 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;
- 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 honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- 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;
- 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 that the person who had drawn the cheque can be deemed to have committed an offence under Section

138 of the Act. In the present case, the Complainant has proved the above-mentioned ingredients on the face of it.

7. The Act raises two presumptions in favor of the holder of the cheque i.e. the Complainant in the present case; firstly, in regard to the passing of consideration as contained in Section 118 (a) and, secondly, a presumption that the holder of cheque received the cheque of the nature referred to in Section 138, for discharge in whole or in part, of any debt or other liability. For the offence under Section 138 of the Act, the presumptions under Sections 118 and 139 have to be compulsory raised as soon as execution of cheque by accused is admitted or proved by the complainant and thereafter burden is shifted to accused to prove otherwise. These presumptions shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability etc. A presumption is not in itself evidence but only makes a *prima facie* case for a party for whose benefit it exists. The presumptions under section 118 and 138 are rebuttable in nature as held

Hiten P. Dalal (Vs) Bratindranath Banerjee [(2001) 6 SCC 16]:

> "Section 118(a) and section 139 of the Act read as under **Sec.118**:- Presumption 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;

<u>Sec. 139. Presumption in favor of holder:-</u>

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."

8. In the present case, the Accused has not denied his signature in the cheque in question Ex.P-1 for a sum of Rs.15,00,000/- but stated as "he had never borrowed any loan from the complainant, the amount given was for the purpose of sale consideration. The accused had repaid the money to the complainant" and he had also not denied the receipt of the legal notice sent by the complainant, at the stage of framing of substance of accusation under Sec 251 Cr.P.C. It was also not disputed that the accused had received the legal notice. It has been observed by the Hon'ble Supreme Court in **<u>Rangappa (Vs) Sri Mohan, [AIR 2010 SC 1898]</u>** that, *"Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption contemplated under Section 139 of the Negotiable Instruments Act has to raise by the Court in favor of the Complainant"*

9. In the case of **<u>M/S Laxmi Dyechem (Vs) State of Gujarat & ors. [2013 CRI.L.J. 3288]</u>** the Hon'ble Supreme Court has observed as follows –

"Therefore, if the accused is able to establish a probable defense which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such defense and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. However, the accused/drawer of a cheque in question neither raises a probable defense nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant".

10. Likewise, in the case of **K.N. Beena (Vs) Muniyappan and another [2002 SCC (CRI) 14]** the Hon'ble Supreme Court has observed as follows:-

"Under Section 118 unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in a complaint under Section 138 the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused".

11. Thus, as soon as the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. The rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defense that the court must either believe the defense to exist or consider its existence to be reasonably probable, the standard of reason ability being that of the prudent man. The same was affirmed by the Hon'ble Supreme Court in **Krishnajanardhan Bhat vs. Dattatraya G. Hegde [2008Crl.L.J. 1172]** wherein it was held that standard of proof on the part of an accused and that of the prosecution in a criminal case is different. The Hon'ble Court also held that prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defense on the part of accused is 'preponderance of probabilities'. Inference of preponderance of possibilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies. While adjudging whether in a case the presumption of consideration has been rebutted, it becomes important to underscore that a mere denial of liability or vague defense of blank cheque as security, cannot be taken at the mere *ipse dixit* of the accused. The accused has to come forth with a convincing defense that appeals to the judicial

conscience. Needless to state that if on a bare denial the presumption is stated to be rebutted, that would defeat the legislative intention of having a presumption in the first place. The reverse onus clause has been introduced further the legislative objective of improving the credibility of negotiable instruments. The presumption that a person would not normally hand over a signed cheque to another unless the same is for a liability has to be respected and given its full play. Only in a case where the accused comes up with a convincing defense to liability, that the presumption can be stated to have been rebutted.

12. Even without the above said presumptions also, the complainant had examined herself as PW-1 and he had marked the unregistered sale agreement dated 01.03.2021 as Ex.C-1, the original cheque as Ex.P-1 which was returned for the reasons "Funds Insufficient" as claimed in the complaint. And the said fact was established by marking the return memo Ex.P-2. Thus, the complainant had established the fact as stated in this complainant that the cheque in Ex.P-3 were returned for the reason of "Funds Insufficient". Moreover, the complainant also marked the copy of the legal notice sent by him as Ex.P-4 and its legal notice delivered to the accused. The complainant IDBI Bank, Ambattur branch, statement of accounts for 31.05.2025 was marked as Ex.P-5. Hence, the receipt of the legal notice sent to the accused is established. On the entire perusal of the records the complainant had substantiated his case and the essential ingredients of the Section 138 of the Negotiable Instruments Act as held by the Apex Court in **Indian Bank Association Case reported in 2014(5)**

<u>SCC 590-</u> in para 18. *"We make it clear that if Provisos (a), (b) and (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defense".*

13. Keeping the above principle of law in mind, now this court must consider the defense taken by the accused. During the cross of PW1, he had admitted that the accused had repaid a sum of Rs.6,00,000/- to the complainant which was not revealed in the compliant and the proof affidavit of PW1. The complainant had claimed that amount of Rs.6,00,000/- was deducted as interest amount to the loan amount of Rs.15,00,000/-. Further the PW1 had marked the Unregistered sale agreement (Ex.C-1) executed by the accused in favor of the complainant for a total sale consideration of Rs.15,00,000/-. Even in the sale agreement it was not mentioned to claim any interest for the sale consideration in case the property cannot be registered. Then it was vague from the evidence of the PW1 with regards to the rate of interest and the interest amount. It was proved that the complainant has concealed the fact that the accused had repaid a sum of Rs.6,00,000/- to the complainant. In the complaint it was stated as the accused had issued the post-dated case filled and signed case cheque on the same day of execution of sale agreement dated on 01.03.2021 but entirely contradictory to the complaint the PW1 had deposed that the date and the Payee name was filled by him in the cheque in dispute Ex.P-1. Even the PW1 had admitted that his evidence was totally inconsistent with the complaint. Further the accused had

defended that the sale agreement was executed on 01.03.2021 and this case cheque Ex.P-1 was issued on 24.02.2025, therefor it was barred by limitation and the complainant having no legal rights to claim relief. At this stage the PW1 has marked additional document of his IDBI Bank statement transaction of Rs.10,000/- on 31.05.2025 by the accused to the complainant. Though the accused had paid a sum of Rs.10,000/- on 31.05.2025 the limitation to proceed against the Ex.C-1 Sale agreement will get terminated as on 01.03.2024. Therefore, it was proved that the sale agreement was barred by limitation and the PW1 has admitted the cheque in dispute was given by the accused at the time of entering into sale agreement Ex.C-1 dated on 01.03.2021. From the evidence of PW1 it was admitted that the Ex.P-1 cheque in dispute was given as security purpose on 01.03.2021 and not issued on 24.02.2025. It was proved that the complainant had used the accused security cheque to file this case, after he having knowledge that civil suit cannot be instituted with Ex.C-1 sale agreement.

14. In this regard, this court relied the decision of Hon'ble Apex Court in **Dashrathbhai Trihambhai Patel Vs. Hitesh Mahendrabhai reported in (2023) 1 SCC 578**,

"It has been held that, for commission of an offence under Sec.138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation and if the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity,

then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque and if there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under sec.138 is not made out. In the present case, it is admitted that the complainant has received the repayments of Rs.7,70,000/- before presenting the cheque hence there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under sec.138 is not made out".

The above citation is squarely applicable to the present case. Here it was proved with the documentary evidence that the case of the complainant is barred by limitation from the date of last transaction to the date of the cheque in dispute. The complainant had approached this court with unclean hands

15. It is necessary to cite the **Hon'ble Madras High Court Judgement in Crl.A.No.520 of 2007 dated 25.04.2018 B.Balakmoji Vs. J.Sathianarayanan,** observed as

"14. If really any loan is availed by the respondent, it is the duty of the appellant to show that on what manner and in which date, the said loan was availed by the respondent. Even assuming that the said due was made during the time of business transaction, it is the duty of the appellant to show the Accounts Books with regard to the said transaction. But, in this case, the appellant has not produced any

document to show that the respondent has to pay Rs.11 lakhs to the appellant.

15. In such circumstances, the trial Court has correctly analyzed the entire facts and come to the conclusion that the alleged cheque was not issued for discharging the legally enforceable debt". The above cited case is relevant to the present case, when the complainant had failed to establish the liability of the accused with material factors.

16. It is also required to cite **the Hon'ble Kerala High Court Judgement in Crl.A.No.1610/2006 dated 31.08.2021 V.P. ZACHARIA Vs. SAJEEVAN K.S**. stated as-

"10. I think that this is a case where the respondent/accused has been successful in rebutting the statutory presumption under Section 139 of the Negotiable Instruments Act. The fact that there was an earlier transaction in the year 1995 and that liability had been settled by repayment is a factor which would lend credence to the case of the 2nd respondent/accused that Ext.P1 cheque was one issued as security in the discharge of that liability and such cheque was misused by the appellant/complainant to make it appear that there was a subsequent transaction. In the totality of the facts and circumstance of this case, this Court should not interfere with the findings rendered by the trial court. As held by this Court in Basheer K (supra) when the accused has succeeded in rebutting the presumption, it is for the complainant to prove the existence of Crl. Appeal No.1610/2006 a debt in the discharge of which the subject cheque was issued. I have found that the

respondent/accused has succeeded in showing that the statutory presumption under Section 139 of the Negotiable Instruments Act should not be applied. In other word the respondent/accused has been able to rebut the statutory presumption. The appellant/complainant has not thereafter been able to bring in any evidence suggesting the existence of a transaction resulting in a legally enforceable debt payable by respondent/accused". From the above judgement it is clear that when there was an earlier transaction which was unpaid, in such circumstances it is unbelievable that the complainant had lent a huge amount of Rs.6,00,000/- as hand loan to the accused without getting any security documents in support to the transaction".

17. The Hon'ble Supreme Court in the case of Appeal(crl.) 1433-1434 of 2007 John K John Vs. Tom Varghese & Anr, dated on 12.10.2007 observed as follows:

"The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although huge sum of money was allegedly paid to a respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw it's own conclusion therein. Not only no document had been executed, even no interest has been charged". The above ratio is squarely applicable to the facts of the present case.

18. Therefore, the Ex.P-1 cheque in dispute was executed by the accused for legally enforceable debt is doubtful. Also, it is doubtful from the evidence of the PW1 that the accused is legally liable for the loan amount for a sum of Rs.15,00,000/- with interest to the complainant. No prudent man will lend such a huge amount without any security deposit or documents even after non repayment of earlier loan amount it is highly inconceivable that the complainant had given subsequent loan to the accused after one year of the earlier loan in pendency. This court is of the considered opinion that the said defense of the accused is not mere a possible explanation alone and the cross of the PW-1 by itself and the admissions given by the PW-1 by itself in the minds of the court had raised a serious doubt as to the version of the case as pleaded by the complainant.

19. It is observed by three Judges larger bench of our Supreme Court in **Rangappas case** in 2010 (3) MLJ that Section 139 N.I.Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable under Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. While dealing with the nature and

standard of proof to be adduced by way of rebuttal evidence the Supreme Court observes "in such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clause and the accused cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is the settled legal 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' and therefore if the accused is able to raise a probable defence which create doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. This court is of the considered opinion that the above dictum squarely applicable to the facts of the case.

20. Thus, this court is of the considered opinion that the arguments advanced by the accused is acceptable and the arguments of the complainant does not fit as per the evidence on record as discussed in the earlier paras. And the failure on the part of the complainant to give possible explanation for all the material discrepancies found in the evidence and the non-examination of the material witness would only compel this court to hold that the prosecution fails to prove the case as pleaded in the complaint. As such the mere failure of the accused to enter the witness box will no way affect the merit of the defense raised on the side of the accused.

21. When this court in the preceding paras had found out the inherent weakness in the case of the complainant and which goes to the root of the case, this court is of the considered opinion that the accused is able to raise a probable defense and had created a serious doubts with regard to the very maintainability of the case by the complaint and that the cheque in dispute Ex.P-1 was not supported by any legally enforceable debt and she had successfully rebutted the presumption under section.139 of the Negotiable Instruments Act and the burden shifts back to the complainant, which the complainant failed to discharge. **Hence, the accused in this case namely B.Vetrivendhan acquitted of the offence under Sec.138 of the Negotiable Instruments Act, 1881 under Sec.255(1) Cr.P.C. or U/s.278(1) of BNSS.**

Typed directly by me in my laptop, corrected and pronounced by me in the open court this the 8th day of August 2026.

MAHASAKTHI K

Digitally signed by MAHASAKTHI K

Annexure

Complainant side witness

Pw-1- Mr.T.Vinoth Joshua

Complainant side Documents

Exhibits
Ex.P-1- Original cheque
Ex.P-2- Return Memo
Ex.P-3- Legal Notice
Ex.P-4- Online tracking consignment
Ex.P-5- IDIB Bank statement of accounts

Accused Side Witness & Document : NIL

Court Document:

Exhibits
Ex.C-1- Sale deed (Marked by Pw1)

Note:

1. The result of the case was informed to the complainant.

MAHASAKTHI K

Digitally signed by MAHASAKTHI K