

IN THE COURT OF THE FAST TRACK COURT (MAGISTERIAL LEVEL),
THOOTHUKUDI.

Present: Selvi. B.A. Jalathi, B.A.B.L (Hons)

Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi

Thursday, the 13th day of April, 2023

C.C. No. 34/2022

CNR No. TNTT0B0053292019

Complainant	: Mr. A. Kalimuthu, S/o. Mr. Arunachalam, No. 23, Thiraviyapuram, 5 th Street, Thoothukudi.
Accused	: Mr. A. Thanga Kumar, S/o. Mr. Alwar Nadar, No. 68/1, BoopalRayapuram, 5 th Street, Thoothukudi.
Offence	: U/s 138 of The Negotiable Instruments Act.
Finding	: எதிரி மாற்றுமுறை ஆவணங்கள் சட்டம் பிரிவு 138-ன் கீழ் குற்றவாளி இல்லை என்று இந்நீதிமன்றம் முடிவு செய்கிறது.
Sentence	: In result , the accused is found not guilty for the offence under Sec.138 of N.I. Act, and therefore he is acquitted under Sec.255(1) of Cr.P.C. The bond, if any, executed shall stand cancelled.

Sl. No.	Description of the accused					
	Name	Father's Name	Caste/race	Occupation	Residence	Age
1.	Mr. A. Thanga Kumar	Mr. Alwar Nadar	Hindu	-	Thoothukudi	47/20 20

Date of							Explanation for delay
Occurrence	Complaint	Appearance	Release on bail	Commencement of trial	Close of trial	Sentence of Order	Parties were not taking effective steps to let in evidence.
08.11.2019	10.12.2019	25.07.2022	-	30.03.2023	13.04.2023	13.04.2023	

This case came up before this court for final hearing on 13.04.2023 in the presence of Mr. Ka. Ramakrishnan, B.A.B.L., the Learned counsel for the Complainant and Mr. K. Jegan, B.A.L.L.B., the Learned counsel for the Accused, upon perusal of the documents, after hearing the arguments on both the sides and having stood over for consideration till this date, this Court delivers the following,

JUDGMENT

The complainant has filed this complaint under section 200 of Code of Criminal Procedure, read with sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “N.I. Act”) against the accused.

Brief averments in the Complaint:

1. The Complainant and the accused are friends and based on the relationship, the accused approached the complainant on 05.09.2019 and borrowed a hand loan of Rs. 2,00,000/- and promised to repay the same within one month. When the complainant demanded the loan amount, the accused issued a cheque dated 23.10.2019 bearing No. 000001 drawn on City Union Bank, Thoothukudi, to and in favour of the complainant. When the complainant presented the

impugned cheque for encashment before his banker Canara Bank, Mattakadai Branch, Thoothukudi on 07.11.2019 and the same were dishonoured for the reason “funds insufficient”. The complainant was intimated through return memo dated 08.11.2019 and subsequently, the complainant has issued a statutory notice to the accused on 21.11.2019 demanding the impugned cheque amount. After receiving the statutory notice on 22.11.2019, the accused has failed to repay the cheque amount. Hence, this complaint has been filed.

Chronology of the proceedings:

2. Initially, this complaint was filed on 10.12.2019 before this court and this court took cognizance of the offence under Sec.138 of N.I. Act on 24.05.2022, and issued process to both the accused under Sec. 204 of Cr.P.C and the same was duly served. The accused appeared upon summons on 25.07.2022 and the substance of the accusation levelled against the accused was explained to him according to Section 251 of Cr.P.C. The accused denied the accusation levelled against him, and pleaded not guilty. On 23.09.2022, the complainant filed his proof affidavit and examined himself as PW1 and, Ex. P1 to Ex. P5 were marked as complainant side documentary evidences. Subsequently, the Complainant side evidence was closed on 30.03.2023. On the same day, when the accused was questioned under Sec. 313(1)(b) of Cr.P.C. regarding the incriminating evidences made against him, he has prayed to compound the offence and both the parties jointly filed a petition under section 147 of the N.I. Act to compound the offence.

3. Points for determination:

- (i) Whether the mandates of sections 138 and 142 of the N.I. Act are fulfilled?
- (ii) Whether the presumptions under sections 118 and 139 of N.I. Act lies in favour of the Complainant?
- (iii) Whether the mandates of Section 147 of the N.I. Act. is fulfilled?

Appreciation of evidence on record and findings:

(i) Whether the mandates of sections 138 and 142 of the N.I. Act are fulfilled?

4. As per the provision of section 138 of the N.I. Act. the following ingredients are essential in order to lodge a complaint:
- (a) The cheque must be drawn by the accused in favour of the Complainant.
 - (b) The cheque must have been issued for the payment of any legally enforceable debt or other liability.
 - (c) The cheque must have been returned by the bank dishonored.
 - (d) The holder in due course must have issued the statutory notice within 30 days from the date of receipt of information of dishonor.
 - (e) The drawer of the cheque must have paid the cheque amount within 15 days from the receipt of the statutory notice.
 - (f) Failing which the Complainant must have approached the court within one month from expiry of said 15 days. (Section 142 (b) of N.I. Act)
5. Upon perusal of case records, this court finds that the Complainant examined himself as PW1 and Ex. P1 to Ex. P5 were marked through him as complainant side documentary evidences. On perusal of the Complaint, Proof affidavit and the exhibits, this court ascertains that the **Ex. P1** is the disputed cheque dated 23.10.2019 drawn on City Union Bank, Thoothukudi bearing No. 000001 for a sum of Rs.200,000/- executed by the accused in favour of the complainant. The complainant has claimed that the said amount of Rs. 2,00,000/- was obtained by the accused as hand loan.
6. The **Ex. P2** is the Return memo dated 08.11.2019 issued by the Canara Bank, Thoothukudi stating that the impugned cheque was returned for the reasons “insufficient funds”. The Section 146 of the N.I. Act. provides that “*the Court shall presume the fact of dishonor of cheque on production of bank’s slip or memo having thereon the official mark, denoting that the cheque has been dishonored, unless and until such fact is disproved*”. In this case, the Ex. P2

contains the signature of the bank officer which reflects that the impugned cheque was returned as “insufficient funds”.

7. The **Ex. P3** is the Statutory notice dated 21.11.2019 issued by the complainant to the accused which shows that the demand notice has been caused within the stipulated time as enumerated under the N.I. Act. The **Ex. P4** is the postal receipt dated 21.11.2019 and the courier receipt dated 21.11.2019. The **Ex. P5** is the Acknowledgment card dated 22.11.2019 which shows that the demand notice had been served to the accused. As the accused has failed to repay the cheque amount within 15 days, the Complainant has filed this Complaint on 10.12.2019 which is well within the stipulated time granted under Section 142 of N.I. Act. Thus, from the above discussion, this court is of the considered view that the ingredients of section 138 and 142 of the N.I. Act. are fulfilled. Thus, the complainant has relied on the statutory presumptions enshrined under 139 of N.I. Act. read with section 118 of the N.I. Act.

(ii) Whether the presumptions under sections 118 and 139 of N.I. Act lies in favour of the Complainant?

8. Section 139 of N.I. Act. provides a statutory presumption in favour of the holder of the cheque. Section 139 reads as “*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.*” Section 118 of N.I. Act. reads as “*Until the contrary is proved, the following presumptions **shall** be made... with respect to the consideration, date, time of acceptance, time of transfer, order of endorsements, stamps and that the holder is a holder in due course*”. Whence the signature and issuance of cheque is admitted, then the presumption stipulated under Sections 118 and 139 of the N.I. Act. can be raised in favour of the Complainant. 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”.

9. The accused has neither cross examined PW1 nor let in any oral evidence on his behalf. The accused has not denied his signature in the impugned cheque. Further, the Ex. P2 which is the banker’s return memo was also not disputed by the accused. Hence, this court finds that the subject cheque was executed by the accused for the amount mentioned in the said cheque which was duly dishonored by the complainant’s banker for the reasons “funds insufficient”. Therefore, this court finds that the Complainant had clearly proved that the signature of the accused in the impugned cheque and has discharged the initial burden of proof to raise the presumption under section 139 read with section 118 in his favour.
10. However, both the complainant and the accused jointly filed a petition under section 147 of N.I. Act to compound the case on 30.03.2023, whereunder it has been submitted that the impugned cheque amount has been duly received by the complainant. It was further submitted that the complainant has no objection to acquit the accused from this case.

(iii) Whether the mandates of Section 147 of the N.I. Act. is fulfilled?

11. This complaint has been filed by the complainant under section 138 of the N.I. Act for the dishonor of the impugned cheque to the tune of Rs. 2,00,000/- issued by the accused. The complainant has categorically proved his case against the accused and raised the statutory presumption in favour of him. As the statute mandates that all the offences under the N.I. Act is compoundable, it is evident that the offence under Section 138 of the N.I. Act is also compoundable. Upon considering the compoundable nature of the offence and the fact that the complainant is willing to compound the case, as the matter has been settled

between them and as the complainant has no objection to acquit the accused from this case, this court is inclined to allow the petition under section 147 of the N.I. Act by compounding the offence.

12. **In result**, the accused is found not guilty for the offence under Sec.138 of N.I. Act, and therefore he is acquitted under Sec.255(1) of Cr.P.C. The bond, if any, executed shall stand cancelled.

This Judgment is directly typed by me in the laptop, corrected and pronounced by me in the open court on this the 13th day of April, 2023.

(Sd/-B.A. Jalathi)
Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

Complainant Side Witnesses:

PW1 - Mr. A. Kalimuthu

Complainant side Exhibits:

Ex. P1:	Cheque dated 23.10.2019 drawn on City Union Bank, Thoothukudi bearing No. 000001 for a sum of Rs.200,000/-
Ex. P2:	Return memo dated 08.11.2019 issued by the Canara Bank, Thoothukudi
Ex. P3:	Statutory notice dated 21.11.2019 issued by the complainant
Ex. P4:	Postal receipt dated 21.11.2019
Ex. P5	Acknowledgment card dated 22.11.2019

Accused Side witness and Exhibit:

Nil

(Sd/-B.A. Jalathi)
Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

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(Sd/-B.A. Jalathi)
Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

**CASE SUMMARY AS PER THE CIRCULAR OF HON'BLE
HIGH COURT, MADRAS IN R.O.C NO.814/2020/RG/F1,
DT.07.04.2021**

(i)	The period of remand of the accused	:	(Private complaint)	
(ii)	The date of filling of the complaint/final report in the court	:	10.12.2019	
(iii)	The date of committal of the case to the Court of Session	:	---	
(iv)	The date of questioning of the accused under Sections 228, 240,246 and 251 of the Code of Criminal Procedure, 1973, as the case may be	:	25.07.2022	
(v)	Filling of all miscellaneous petitions and their results including the results on challenge before superior Courts; except routine petitions like petitions under section 317 of the Code	:	-	
(vi)	Date of examination in-chief and cross-examination of witness	:	Chief	Cross
			PW1	23.09.2022
(vii)	Date of examination of the accused under Section 313 of the Code	:	30.03.2023	
(viii)	Details of abscondence of an accused and his appearance / production, as the case may be	:	-	-
(ix)	Grant of stay by superior Courts and the results thereof.	:	---	

(Sd/-B.A. Jalathi)
Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

//True Copy//

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Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.