IN THE COURT OF XXI ADDITIONAL CITY CIVIL COURT, ALLIKULAM

Present: Ms.A.Prabavathi, B.Com., M.L.,
XXI Additional Sessions Judge,

Thursday, the 25th day of September, 2025

Criminal Appeal No.694/2025

CNR.No. TNCH01-011268-2025
against
S.T.C.No.9682/2024

1.	Name of the Court against whose Judgment the Appeal is filed	:	Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai-3.
2.	Name and Address of the Appellant/Accused	:	Mrs.AL.P.Santhi, W/o.P.Radhakrishnan, No.8, Kaveri Nagar, Lakshmipuram, Chennai – 600 099.
3.	Name and Address of the Respondent/complainant	:	Mr.V.Ramesh Babu, S/o.A.B.Varadarajan, Rep. by his Power of Attorney Agent, R.Gunasekar, S/o.Ramalingam, No.10, Anandhan Street, Thiruvalluvar Nagar, Pammal, Chennai – 600 075.
4.	Nature of order passed by the Trial Judge	:	The Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai-3 has convicted the accused for the offence u/s.138 of Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for 6 months u/s.255(2) of Cr.P.C and to pay a sum of Rs.6,41,000/- to the complainant as compensation u/s.357 of Cr.P.C., r/w.138

			of N.I. Act within 30 days, in default to undergo 2 months Simple Imprisonment.
5.	In the Appeal finding of the Court	:	In the result, this appeal is dismissed and the conviction and sentence imposed by the Metropolitan Magistrate, Fast Track Court No.II, Egmore @ Allikulam, Chennai in S.T.C.No.9682 of 2024 dated 28.04.2025 is hereby confirmed. The trial court is directed to take necessary steps to secure the accused to undergo the sentence imposed in this case.
6.	Date of Filing of the Appeal	:	26.05.2025
7.	Date of taken on file	:	28.05.2025
8.	Date of Argument	:	17.09.2025
9.	Date of Judgment	:	25.09.2025

This Criminal Appeal came for final hearing on 17.09.2025 before this Court and M/s.A.P.Kannan, P.Venkatesan, P.Surendran and K.Amirtharaj, counsel for the appellant/accused absent and NBW pending against the appellant, and in the presence of M/s.R.Bharathi, counsel for respondent/complainant, upon hearing the arguments of the respondent and on perusing the grounds of appeal, Judgment of the trial court, other relevant documents filed before the trial court and having stood over for consideration till this day, this Court delivered the following:-

J U D G M E N T

1. This is an appeal preferred by the appellant/accused against the Judgment of the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai wherein he has been convicted for the offence u/s.138 NI Act and sentenced to undergo simple imprisonment for 6 months u/s.255(2) of Cr.P.C and to pay a sum of Rs.6,41,000/- to the complainant as compensation u/s.357 of Cr.P.C., r/w.138 of N.I. Act within 30 days, in default to undergo 2 months Simple Imprisonment.

2. The case of the Complainant is as follows:

That the accused had borrowed a sum of Rs.6,30,000/- on 01.01.2024 and on the same day, the accused executed a Demand Promissory Note for the said sum of Rs.6,30,000/- and also agreed to pay the same together with interest at the rate of 24% p.a. The accused paid interest only for two months and a portion of principal amount and thereafter the accused failed and neglected to pay any amount either towards principal or towards interest. As on 15.05.204, the accused is due and liable to pay a sum of Rs.6,42,804/-. After repeated demands, the accused issued a cheque bearing No.000005, dated 18.05.2024 for a sum of Rs.6,30,000/- (Rupees Six Lakhs and Forty One Thousand only) drawn on Karur Vysya Bank, Puthagaram Branch, Chennai – 600 099 as part payment and the said cheque was duly presented by the complainant with his banker for collection on 18.05.2024 and the said cheque was dishonored with an endorsement “Funds Insufficient” on 20.05.2024. Hence the complainant caused legal notice dated 08.06.2024 to her residential address and office address and the notice sent to residential address was returned with postal endorsement as ‘Addressee absent, intimation delivered’ on 11.06.2024 and the notice addressed to the office address was returned with endorsement as ‘refused’ on 10.06.2024 and the accused failed to make payment till date. Therefore the complainant filed the present complaint under section 200 of Cr.P.C for the offence under section 138 of Negotiable Instruments Act. Thus the accused is stated to have committed an offence u/s.138 NI Act.

3. The accused faced trial before the Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai. Before the trial court, the Power Agent of the complainant had been examined as PW1 and Exhibits P1 to P6 had been marked and no oral or documentary evidence adduce on the side of the accused. After conclusion of the trial, the trial court found the accused guilty and convicted her for the offence u/s.138 NI Act and sentenced the accused to undergo simple imprisonment for 6 months u/s.255(2) of Cr.P.C., and to pay a sum of Rs.6,41,000/- to the complainant as compensation within 30 days, in default to undergo 2 months Simple Imprisonment.

4. Aggrieved by the decision of the trial court the accused preferred the appeal among the following grounds.

5. Grounds of Appeal

That the conviction and sentence passed against the appellant by the trial court is opposed to law, facts evidence and justice in the case. That the trial court has neither correctly read nor properly appreciated the oral and documentary evidence in the case. The findings of the trial court and the conclusion arrived at there on are illegal, improper and liable to be set aside. That the trial court has not properly analyzed the legal aspects of the evidence and has failed to come to proper conclusion and thus caused great prejudice to the appellant. That the respondent has not supported his case on the ground of friendly loan through any other documents i.e., Bank Statement as the same was given in cash or any other documents like Promissory Notes etc., That the appellant had rebutted the presumptions u/s.118 and 139 of N.I. Act not only by examining his own witnesses but also through the cross examination of the complainant who is the only complainant witness. In order to rebut the legal presumption in question, the accused need not require direct evidence to disprove the existence of consideration. On the above grounds the accused prayed that the Judgment of the trial court be set aside.

6. <u>Points for consideration:</u>

For convenient sake the parties are referred to in this appeal as per their rank in the trial court.

1. Whether the trial court erred in finding that the accused has not rebutted the presumption in favour of the complainant?
2. Whether the trial court erred in convicting the accused u/s.138 NI Act?
3. Whether the Judgment of the trial court passed in S.T.C.No.9682/2024 is liable to be set aside?

7. Points No.1 and 2:

7(i). Heard. Records perused. The case of the complainant is that the accused had borrowed a sum of Rs.6,30,000/- on 01.01.2024 and on the same day, the accused executed a Demand Promissory Note for the said sum of Rs.6,30,000/- and also agreed to pay the same together with interest at the rate of 24% p.a. The accused paid interest only for two months and a portion of principal amount and thereafter the accused failed and neglected to pay any amount either towards principal or towards interest. As on 15.05.204, the accused is due and liable to pay a sum of Rs.6,42,804/-. After repeated demands, the accused issued a cheque bearing No.000005, dated 18.05.2024 for a sum of Rs.6,30,000/- (Rupees Six Lakhs and Forty One Thousand only) drawn on Karur Vysya Bank, Puthagaram Branch, Chennai – 600 099 as part payment and the said cheque was duly presented by the complainant with his banker for collection on 18.05.2024 and the said cheque was dishonored with an endorsement "Funds Insufficient" on 20.05.2024. Hence the complainant caused legal notice dated 08.06.2024 to her residential address and office address and the notice sent to residential address was returned with postal endorsement as 'Addressee absent, intimation delivered' on 11.06.2024 and the notice addressed to the office address was returned with endorsement as 'refused' on 10.06.2024 and the accused failed to make payment till date. Therefore the complainant filed the present complaint under section 200 of Cr.P.C for the offence under section 138 of Negotiable Instruments Act. Thus the accused is stated to have committed an offence u/s.138 NI Act.

7(ii). Per contra the case of the accused as seen from questioning u/s.251 of Cr.P.C is that she denied to have received the amount mentioned in the cheque and that she had given the cheque towards security purpose when she obtained loan and when she was questioned U/s. 313(1)(b) of Cr.P.C, she has stated she has returned the amount and the cheque given towards security purpose has been misused and the case is false and hence the accused is seen to have disputed the existence of a legally enforceable debt only during the trial of this case as the accused has not sent any reply notice to the legal notice sent by the complainant under Ex.P4.

7(iii). Ex.P2 is admitted to have been issued by the accused but it was contended to be issued towards security purpose. As the accused has admitted the issuance of the cheques and her signature in the cheques the complainant is entitled to draw the presumption U/Sec.118 and 139 of the Negotiable Instrument Act which is extracted below.

Section 118 of Negotiable Instrument Act is as follows:

"118. Presumptions as to negotiable instruments. - Until the contrary is proved, the following presumptions shall be made: The Accused issued the cheque for

(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, endorsed, negotiated or transferred for consideration.

(b) as to date:− that every Negotiable Instrument bearing date was made or drawn on such date;

Section 139 of Negotiable Instrument Act is as follows:

"139. Presumption in favour of holder.– 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."

7(iv). On plaint perusal of the provisions under Section 118(a) and 139 of the N.I.Act., as extracted herein above, it can be seen that initially the presumptions constituted under these two provisions are in favour of the complainant. However, it is open to an accused to raise a defence to rebut the statutory presumption by questioning the existence of legally enforceable debt or liability.

7(v). It is settled law that the accused can rebut the presumption drawn in favour of the complainant either by producing evidence or from the materials and evidence adduced by the complainant himself. In this case the accused did not enter the witness box and depose evidence. Therefore, it has to be seen whether from the evidence and materials available on record the accused was successful in rebutting the presumption drawn infavour of the complainant by preponderance of probabilities.

7(vi). On perusal of enter records, it is seen that the complainant has deposed evidence that the accused borrowed a sum of Rs.6,30,000/- from the complainant and agreed to repay the same with interest at the rate of 24% per annum and had executed the promissory note dated 01.01.2024 marked as Ex.P1. The said document has not been denied by the accused. Further the accused had issued the cheque Ex.P2 for a sum of Rs.6,41,000/- towards part discharge of the debt and the same has been dis-honoured for the reason funds insufficient intimated under return memo dated 20.05.2024 in Ex.P3 and thereafter the complainant had also issued the statutory legal notice on 08.06.2024 under Ex.P4 and the same as been returned. Thereafter the complainant had filed this complaint wherein she has stated that the accused issued a Cheque for Rs.6,30,000/- instead of Rs.6,41,000/-. However, in Ex.P2 – the cheque the amount is mentioned as Rs.6,41,000/- both in numerals and words and in the legal notice Ex.P4 also the complainant has demanded a sum of Rs.6,41,000/- from the accused being the cheque amount and also has provided the details of the cheque. The learned counsel for the complainant submitted that the mentioning of Rs.6,30,000/- as the cheque amount in the complaint is a typo-graphical error as the cheque amount in word has been correctly stated as Rupees Six Lakhs and Forty One Thousand Only and this does not affect the case of the complainant. On perusal of the legal notice Ex.P4 the complainant has clearly stated the cheque Ex.P2 was issued for Rs.6,41,000/- only and also in the complainant though there is a mistake in numerals (instead of stating Rs.6,41,000/- it is stated as Rs.6,30,000/-) the cheque amount in words has been correctly stated as Rs.6,41,000/- . Therefore, this Court accepts the submission of the learned counsel for the complainant that this error is not fatal to the case of the complainant nor it has caused any pre-judice to the complainant since the accused had the knowledge of what the case of the complainant is and infact she had defended her case too.

(7vii). The defence of the accused is that she had stated in her questioning Section 313(1)(b) of Cr.P.C that she had repaid the amount and the cheque issued towards security purpose has been misused. When it is so, it is for the accused to prove that she had repaid the amount. The accused has not produced any scrap of paper to show that she had repaid the debt. The very fact that the accused has not given reply to the statutory notice in Ex.P4 and not taken any action for the alleged misuse of the cheque Ex.P2 and not having denied her signature in Ex.P1 and Ex.P2 has made the defence of the accused highly improbable and as an afterthought to overcome this case. Therefore the accused has only made a mere denial and has not proved her case as narrated above by any concrete and acceptable evidence. Further, from the evidence of PW1 no piece of evidence is available in favour of the defense taken by the accused leading to rebuttal of the presumption drawn in favour of the complainant. Even if the cheque has been issued for security purpose, the accused cannot be absolved from her liability in discharging her debt as the non honouring of a cheque issued even for security purpose while the debt subsists amounts to commission of offence u/s.138 of the N.I Act. Therefore the accused has failed to prove her case as projected by her and has not established her case from the evidence on record and hence the case of the accused is unbelievable and thus rejected. Hence this court is of the considered view that the complainant has discharged her initial burden of proof and the accused failed to rebut the presumption drawn against her.

7(viii). When once the signature and execution are admitted, statutory presumption is that the cheque was issued only for discharging the legally enforceable debt. The complainant has established the foundational fact that the accused borrowed a sum of Rs.6,30,000/- and she executed Promissory Note Ex.P1 and issued cheque Ex.P2 for Rs.6,41,000/- towards part discharge of the said loan and when it was presented for collection, the same was returned with an endorsement

"Funds insufficient". Statutory notice was also issued. The complaint has also been filed in time. Therefore, when once the foundational fact had been established, the complainant is entitled for the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Then, it is for the accused who has to rebut the presumption. On a reading of the entire materials and also the entire evidence, it is found that the accused has not rebutted the statutory presumption. Therefore in the absence of any evidence in favour of the accused this court has to necessarily hold that the accused has failed to rebut the presumption drawn against her as mere denial is not sufficient to rebut the presumption drawn against the accused.

7(ix). Therefore, from the evidence on record the accused has not proved the defence version as put forth by her even by preponderance of probabilities and therefore the trial court has rightly held that the accused had failed to rebut the presumption drawn against her Under Sec.139 of the Negotiable Instrument Act.

7(x). In view of the discussion made supra this court concludes that the cheque in Ex.P2 was issued towards a legally enforceable debt and that the complainant has proved his case and the accused miserably failed to rebut the presumption drawn against her and thereby it is proved that the accused has committed the offence punishable under Sec.138 of the Negotiable Instrument Act.

Hence points No.1 and 2 are answered against the appellant.

8. Point No.3:

In the light of the discussion and reasoning made supra this court concludes that the Judgment of the trial court does not require any interference by this court and the appeal is devoid of merits. Hence the Judgment of the trial court passed in S.T.C.No.9682 of 2024 dated 28.04.2025 is hereby confirmed.

Hence point No.3 is answered accordingly.

9. It is noticed that there is a cash transaction involving more than rupees two lakhs and totalling Rs.6,30,000/- (Rupees Six Lakhs Thirty Thousand Only) in this case and hence the complainant has acted in violation of Sec.269 ST of Income Tax Act corresponding amendment to Sec.271 DA. The said transaction is to be reported to the jurisdictional Income Tax Department for the violation of Sec.269 ST of the Income Tax as directed by the **Hon'ble Supreme Court of India in the case of The Correspondence, RBANMS Educational Institution Vs. B.Gunashekar & another reported in 2025 INSC 490**.

In the result, this appeal is dismissed and the conviction and sentence imposed by the Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai in S.T.C.No.9682 of 2024 dated 28.04.2025 is hereby confirmed. The trial court is directed to take necessary steps to secure the accused to undergo the sentence imposed in this case.

Directly dictated to the typist and computerized by him, corrected and pronounced by me in open court, this the 25th day of September, 2025.

A PRABAVATHI

Digitally signed by A PRABAVATHI
Date: 2025.09.25 16:28:26 +0530

XXI Additional Sessions Judge,
Chennai.

Fair copy : Judgment
C.A.No.694/2025
Dated: 25.09.2025
XXI Addl. Sessions Court,
Chennai.