TNVL110007482025

IN THE COURT OF JUDICIAL MAGISTRATE, GUDIYATTAM, VELLORE DISTRICT

Present: R.Saranya, B.A.,LLB.,(Hons), LLM
Judicial Magistrate, Gudiyattam.

On Monday, this 03th day of August, 2026

Summary Trial Case (S.T.C) No.243/2025

CNR No.TNVL 11-000748-2025

Statement as per Rule 106 of the Criminal Rules of Practice, 2019		
1	Serial Number	**STC.No. 243 of 2025**
2	Name of the Complainant	**K.N.Nagarajan, age-48, S/o. Boopalan. Katpadi Road, Chendrayanpalli Village, Sethuvandai Post, Gudiyatham Taluk-635 803. Pudupet, Gudiyatham. …..Complainant**
3	Name of the Accused	**A.Fayas Ameer, age-50, S/o. Ameer. No.234, Jagadevi, Jagadevi Palayam, Bargur Taluk-635 203 Krishnagiri District. …..Accused**
4	Occurrence	27.08.2024
5	Date of Filing of Complaint	13.02.2025

6	Date of Apprehension of appearance		--
7	Release on Bail		--
8	Date of Chief examination of witnesses		Cross examination
	PW1	04.11.2025	09.01.2026
	PW2	22.05.2025	22.05.2026
	PW3	22.05.2026	22.05.2026
	DW1	15.06.2026	22.06.2026
9	Date of 1st questioning of the accused		17.06.2025
10	Date of examination of the accused u/s.313 of CrPC		08.06.2026
11	Sentence or order		**In the result the accused is not found guilty and is acquitted of the offence under section 138 of the Negotiable Instruments Act,1881 and is acquitted under section 278(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The bail bond executed by the accused stand canceled after the expiry of the appeal period.**
12	Service of copy of Judgment or Finding on Accused		No copy of Judgment uploaded in CIS.
Paragraphs in the judgment assigned continuous paragraph numbers in due obedience of the direction of the Hon'ble Supreme Court of India in BS Hari			

Commandant vs Union of India and Other (2023 LiveLaw SC 303)

This case came up for final hearing before me on 03.08.2026 in the presence of Mr.S.Aaliya Tabassum, B.A.,B.L., and Tmt.V.V.Meenakshi.,B.S.,LLM., Counsels for the complainant and Mr.N.Kumar.,B.Sc.,B.L., Counsel for the accused. Having heard both sides. Perused the records and having stood over for consideration till this date, this court delivers the following:

JUDGMENT

The present complaint has been filed by the complainant against the accused under section 138 and 142 of the Negotiable Instruments act, 1881 (hereinafter referred to as NI Act)

Brief averments in the complaint:

1. The case of the complainant is that he know the accused Mr.Fayas Ameer for the past 10 years and 6 months before the accused approached him asking a hand loan of Rs.3,50,000 for his urgent needs and to discharge his family needs and the complainant Nagarajan gave a hand loan of Rs.3,50,000 to the accused. It is further stated that the accused came to the complainant's house on 09-02-2024 and borrowed the hand loan of Rs.3,50,000 and assured to pay the loan within 3 months. Thus, the complainant gave loan without any interest. It is further stated that when the complainant approached the accused Fayas Ameer for repayment after 3 months, the accused sought time and he gave a month's time to accused and thereafter gave evasive reply.

2. It is further stated that finally on 24-07-2024 the accused came to the complainant's house and issued his cheque bearing no. 051462 dated 24-07-2024 of Axis bank Ltd, Krishnagiri branch for Rs. 3,50,000. When the complainant presented for collection on 03-08-2024 in his Canara Bank account at Gudiyatham, the cheque was

dishonored with reasons “Funds Insufficient” and the same was intimated to the complainant by his bankers on 05-08-2024.

3.Therefore the complainant sent a statutory notice on 10-08-2024 and the same was received by the accused on 12-08-2024 and the accused sent a false, frivolous and imaginary reply dated 14-8-2024. Hence, the present complaint has been filed against the accused for the offence punishable under section 138 read with 142 of the NI Act and prayed to grant Rs.3,90,000 as compensation.

Appearance of the accused and trial:

4.Upon perusal of the complaint, this court was satisfied that a prima facie case was made out against the accused. Accordingly, this court took cognizance of the offence under 138 r/w 142 of the NI Act and issued summons to the accused. Upon receipt of the summons, the accused Mr.Fayas Ameer appeared before the court and the substance of accusation under section 138 NI act explained and he pleaded not guilty and the claimed to be tried.

Evidence of the complainant

5. The complainant filed his chief affidavit and examined as PW1. The branch manager, Central bank, Gudiyatham and Axis bank Ltd examined as PW2 and PW3. Ex. P1 to P7 marked. Ex. D1 marked in the cross-examination of PW1.

Questioning under section 351(1)(b) BNSS

6. After completion of the complainant’s evidence, the accused was questioned under section 351(1)(b) of the BNSS. The incriminating circumstances appearing in the evidence of the complainant were put to him and he denied as false evidence and stated that he has witness to examine on his side.

Evidence of the defence

7.The accused examined himself as DW1 and Exhibits D2 and D3 were marked on his side.

Arguments advanced on behalf of the complainant

8.The learned counsel for the complainant contended that all the essential ingredients constituting the offence under section 138 of the NI Act have been duly established. It is further argued that the basic ingredients of the section 138 stand admitted by the accused himself and once the drawing of the cheque and the signature thereon are admitted and dishonor for insufficiency of funds is proved, the first and third ingredients of the section 138 NI Act conclusively established. The counsel for the complainant further contended that once the signature of the drawer on the cheque is admitted, presumption arises under section 118 and 139 NI Act was proved. the counsel for the complainant relied on the Judgment of Hon'ble Supreme Court in, ***"Rangappa Vs. Sri Mohan".***

9.Counsel for the complainant also placed reliance on the Judgment in ***K.N.Beena Vs. Muniyappan*** which hold that mere denial in the reply notice or in the 313 statement unaccompanied by cogent evidence does not discharge the burden on the accused. placing reliance on the Judgment in ***Basalingappa Vs Mudibasappa*** which reiterated that the rebuttal need not be conclusively proved but must at least be probabalized on the totality of the material on record.

10.The learned counsel further contended that the defence version set up by the accused is inherently improbable, uncorroborated and self contradictory. It is argued that the alleged insurance transaction is inherently improbable. The complaint to the police was a reactive afterthought and not a contemporaneous act. It is contended that the accused gave complaint only on 16-08-2024 i.e., after the receipt of legal notice.

11.The learned counsel further contended that if the defence version is true that the accused would have lodged a police complaint immediately upon receipt of the bank's SMS alert or at the latest immediately upon dishonor. It is further argued that the accused at the time of cross-examination failed to state the date in which he took treatment in the hospital. The learned counsel further argued that the accused failed to state the CSR number. With regard to the complaint in individual name, the counsel for the complainant contended that the finance is a sole proprietorship and the has no separate legal entity from its proprietor i.e., the complainant Nagarajan. further the counsel for the complainant in ***Sanjabji Tari Vs. Krishore S. Borcar and Another (2025 Livelaw (SC) 952)*** breach of income tax provisions or non-production of IT returns does not render a debt legally unenforceable under section 138 act once the signature on the negotiable instrument is admitted. Hence, it was prayed that the accused be convicted for the offence under section 138 r/w 142 of the NI Act.

Arguments advanced on behalf of the Accused

12.Per contra, the learned counsel for the accused contended that the standard of proof expects from the accused to rebut statutory presumptions is not proof beyond reasonable doubt but merely that of a civil proceeding namely Preponderance of probabilities and placed reliance on the Judgment of ***Kumar Exports Vs. Sharma Carpets*** holding that an accused can disprove the presumption through admissions in cross-examinations, circumstantial evidence or independent defence evidence.

13.The learned counsel for the accused contended that the absence of basic transactional evidence that is that the complainant failed to produce any loan agreement, promissory note or cash receipt and failure to examine any independent witness or any bank entry showing withdrawal of Rs.3,50,000 on or around 09-02-2024.

14.Placing reliance on the Judgment of Hon'ble Supreme court in ***John K.Abraham Vs. Simon C.Abraham and Another*** for the proposition that the burden lies heavily on the complainant to show that he had the required funds, that he actually advanced the loan to the accused and that the cheque was issued toward the discharge of such debt. It if further contended by the learned counsel for the accused that the non-production of documentary proof such as ITR and bank statements is fatal to the complainant's case.

15.It is the further contention of the learned counsel for the accused that the accused admitted during cross-examination that he runs a licensed finance business in the name of Sri selva vinayagam finance and the alleged loan was advanced from and through his finance business and he did not file the complaint in the name of finance business. The learned counsel further argued that the complainant admitted during cross-examination that he do not correctly remember the date on which the accused request money and further admitted that the Ex.P1 cheque was not filled up by the accused and he gave the cheque to someone else and got it written. Further contention of the defence is that the accused gave the cheque to one Sathish for payment of insurance policy premium and the same was misused by this complainant.

16. The learned counsel further contended that they have marked Ex.D2 and D3 which shows that on the alleged date accused was at clinical examination at Narayani's Hospital at Bangalore and it is not physically possible for the accused to be physically present at both place. It was argued that Ex.D1 was the police complaint lodged by this accused Fayas Ameer at Bargur police station. According to the learned counsel for the accused, the defence version probablises the case of the accused and sufficiently rebuts the statutory presumption arising under the NI Act. Hence, the learned counsel prayed that the accused be acquitted by extending the benefit of doubt.

Points for determination

i. Whether the ingredients of the offence under section 138 of the NI Act have been established by the complainant?

ii. Whether the complainant has proved the case beyond all reasonable doubt as against the accused?

Appreciation of evidence and discussion

17.To avoid repetition and to ensure coherence, points number (i) and (ii) are taken up together, as they arise from a common factual and legal substratum. Before delving into the factual merits of the case, it is essential to reiterate the ingredients that must be satisfied to constitute an offence under section 138 of the NI Act.

a) The cheque must be drawn by a person on an account maintained by him for the payment of money and it must be presented within the period of its validity or within 3 months from the date it is drawn, whichever is earlier.

b) The cheque must have been drawn for the discharge, in whole or in part of any other debt or other legally enforceable liablity.

c) The cheque must be returned unpaid by the bank due to insufficient funds or because it exceeds the arrangement made with the bank

d) A statutory demand notice must be issued by the payee within thirty days of receipt of the bank's intimation regarding dishonor.

e)The drawer must fail to make payment within fifteen days from the receipt of the notice.

18. The accused can be held guilty of the offence under section 138 of the NI Act only if all the all the above said ingredients are proved by the complainant. In the present case, the complainant has produced the Banker's return memo dated 05-08-2024 evidencing the dishonor of cheque Ex.P1 with an endorsement "Funds Insufficient." Under section 146 of the NI Act, the court shall presume the fact of dishonor upon production of such Bank's return memo, unless them presumption is rebutted by the accused. Ex.P2 duly marked through PW1 shows that the third ingredient stands duly proved.

19. The complainant has also produced statutory notice dated 10-08-2024 and the acknowledgment card which shows that service of notice upon the accused and consequently compliance with the requirement under section 138 (b) of the NI Act.

Further it is not the case of the accused that the cheque amount was paid within fifteen days from the date of receipt of the statutory notice. No oral or documentary evidence has been adduced to show that the accused made payment within the statutory period. Hence, this court finds that the fourth and fifth ingredients under section 138 NI Act stand duly established.

20.Thus, the only dispute in the present case revolves around the second ingredient namely whether the cheque in question was issued towards discharge of a legally enforceable debt or liability either in whole or in part. In this regard, the complainant has produced the original cheque marked as P1 and has deposed as PW1 that the accused has borrowed a sum of Rs.3,50,000 on 09-02-2024 and towards the repayment he issued a cheque bearing No.051462 dated 24-07-2024.

21.And on perusal of the legal notice marked as Ex.P3 it is stated that the complainant know the accused for the past 10 years and the accused approached the complainant at his house and obtained a hand loan of Rs.3,50,000 on 09-02-2024. This being so, in the cross-examination, the complainant admitted that he gave loan to the accused only through his registered finance namely "Sri selva vinayagam finance." The relevant portion is extracted below,

"நான் பைனான்ஸ் தொழில் செய்து வருகிறேன். நான் உரிமம் பெற்று முறையாக பைனான்ஸ் செய்து வருகிறேன். இந்த வழக்கிலும் பைனான்ஸ் மூலமாகதான் எதிரிக்கு பணம் கொடுத்ததாக சொல்லியுள்ளேன் என்றால் சரிதான்".

22.Though the learned counsel for the complainant argued that the aforesaid is a licensed sole proprietor concern and has no separate legal entity, the concealment of the above said fact that he runs a licensed finance and gave loan to the accused only through the registered finance. In Ex.P3 legal notice and the complaint filed by him and the chief-affidavit filed by him, the complainant never stated that he gave money to the accused through his finance. For the very first time, the complainant stated that he gave loan to accused only through his licensed Sri selva vinayagam finance in his cross-examination.

23.The complainant further admitted he along with one Sathish and Magesh appeared at Barkur police station in regard to the complaint given by the accused. In his cross-examination, PW1 Nagarajan also rightly identified his signature in the document written and given at Barkur police station and the same was marked as Ex.D1. When the complainant was confronted by the defence that in Ex.D1 he stated that he received the cheque from Sathish, he denied it. However, on perusal of Ex.D1, written by this complainant, he stated that he obtained the cheque of Mr.Fayas from Sathish and gave a sum of Rs.3,50,000 and in the event of his failure to return the amount he will proceed as per law through court. Thus, Ex.D1 clearly probablise the version of defence that the cheque was given to Sathish for payment of insurance premium.

24. Further PW1 admitted in his cross-examination that in the statutory notice Ex.P3 and in the complaint filed by him, he stated that the accused approached him on 09-02-2024 at his residence. The relevant portion is extracted below:

"ஆஜர் எதிரி என்னிடம் 09.02.2024 அன்று எனது வீட்டில் வந்து பணம் கேட்டதாக சொல்லியுள்ளேன் என்றால் சரிதான்."

25.But the accused Mr. Fayas ameer when examined as DW1 marked Ex.D2 and Ex.D3 which shows that on the alleged date 09-02-2024 the accused was in treatment at Narayani Hospital, Bangalore. On perusal of Ex.D2 and D3, the date was clearly mentioned as 09-02-2024. Thus, it is evident on the alleged date 09-02-2024, it is not physically possible for Mr.Fayas Ameer to be present at residence of the complainant at Gudiyatham and at Narayani Hospital, Bangalore. This creates doubt to the existence of a legally enforceable debt by the accused towards the complainant Mr.Nagarajan.

26. Further in the cross-examination of PW1, the complainant Nagarajan himself admitted that the body of the cheque was filled by some third party. But the complainant

didn’t stated the name of the person who filled the cheque. the relevant portion is extracted below:

"வழக்கு ம.சா.ஆ.1 காசோலையை எதிரி பூர்த்தி செய்யவில்லை என்றால் சரிதான். ம.சா.ஆ.1 காசோலையை நான் வேறு ஒருவரிடம் கொடுத்து எழுதினேன்."

27. The accused in his chief stated that he received message from bank that someone deposited his cheque for collection and immediately he stopped payment. He further stated that immediately after receiving the statutory notice he sent a reply notice and lodged police complaint with Barkur police station and the complainant along with one Magesh and Suresh were enquired by the police. He also marked Ex.D2 and D3 to show that on the alleged date of rendering hand loan, he was in treatment at Narayani hospital, Bangalore. He further stated that the cheque given by him to Magesh for payment of Insurance premium was given to Sathish and misused by this complainant.

28.As already stated the complainant has concealed the fact he gave loan to the accused through his licensed finance and the complainant himself admitted that on 09-02-2024, the accused came to his residence and obtained hand loan. The complainant admitted that Ex.D1 was written and given by him at Barkur Police station and in Ex.D1 he stated that he received the cheque of Fayas from Sathish. Further the complainant also admitted that the cheque was filled up by some other person.

29. These material aspects relating to the nature of the transaction, the persons involved and the surrounding circumstances were conspicuously absent in the statutory notice, the complaint and the chief examination of PW1. In ***K.K.D.Pandiyan Vs. S.Tamilselvi*** the Hon’ble Madras High Court has held that suppression of the true nature of a transaction disentitles a complainant from benefit of statutory presumptions under the Negotiable Instruments act. Applying the above-said to the facts of the present case, the omissions and the inconsistencies noticed above materially undermine the

probability of the transaction as pleaded and weaken the statutory presumptions sought to be drawn in favour of the complainant.

30. In consideration of the entire evidence on record, this court finds that while the execution of the cheque is admitted and the statutory presumptions under sections 118 and 139 of the NI Act,1881, initially operate in favour of the complainant, the accused has been able to probabilise his defence by relying upon the circumstances emerging from the cross-examination of PW1 and the documentary evidence brought on record. The defence raised by the accused rests substantially on the inconsistencies, contradictions and material omissions elicited from the complainant himself.

31. In the present case, the inconsistencies and omissions highlighted together with the probability based defence raised by the accused, sufficiently rebut the statutory presumptions under section 118 and 139 of the NI Act on the touchstone of preponderance of probabilities. Further, the Hon'ble Supreme court in ***Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983)*** has held that the accused is not required to disprove the existence of a legally enforceable debt beyond reasonable doubt but only to raise a probable defence.

32. In view of the foregoing discussions, this court holds that the complainant has not proved the second essential ingredient of the offence under section 138 of the Negotiable Instruments Act, 1881. Accordingly, Points no.1 and 2 are answered in negative.

Result:

33. In the result the accused is not found guilty and is acquitted of the offence under section 138 of the Negotiable Instruments Act,1881 and is acquitted under section 278(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The bail bond executed by the accused stand canceled after the expiry of the appeal period.

This order is dictated by me to the Typist, corrected and pronounced by me in open court on this the 03th day of August 2026.

S/d-R.Saranya.,
Judicial Magistrate,
Gudiyatham.

Appendix:
List of Complainant side Witnesses:-

PW-1 Nagarajan.

PW-2 Srinivasan.

PW-3 Karunanithi.

List of Complainant side documents :-

Ex.P1	24.07.2024	Original cheque bearing No.051462 of Axis Bank Ltd, Krishnagiri Branch, Krishnagiri for Rs.3,50,000/- in favour of the Complainant.
Ex.P2	05.08.2024	Cheque return memo issued by the Axis bank Ltd. Krishnagiri Branch, Krishnagiri.
Ex.P3	10.08.2024	Office copy of the notice affixed along with the postal Receipt.
Ex.P4	12.08.2024	Served Acknowledged Card on the accused.
Ex.P5	14.08.2024	Reply Notice issued by the accused to the complainant.
Ex.D1		Letter given by complainant at Bargur Police Station.

List of Accused side Witnesses:-

DW1 Fayas Ameer.

List of Accused side and Documents :

Ex.D2 Hospital scan report of DW1.

Ex.D3 Diagnosis and Plan of the accused done by Narayana Nythralaya at Bangalore.

//True Copy//

R SARANYA Digitally signed by R SARANYA

Judicial Magistrate,
Gudiyatham.