



Crl.A.(MD)No.388 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.11.2025

Pronounced on : 09.01.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.388 of 2022

T.Seenivasan

... Appellant/
Complainant

Vs.

P.Chandrasekaran

... Respondent/
Accused

Prayer : This Criminal Appeal filed under Section 378(4) of the Criminal Procedure Code, to call for the records and set aside the judgment of acquittal dated 28.02.2018 made in C.C.No.91 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court, at Palani and convict the respondent.

For Appellant : Mr.S.C.Herold Singh

For Respondent : Mr.D.Venkatesh



Crl.A.(MD)No.388 of 2022

WEB COPY

JUDGMENT

The Criminal Appeal is directed against the judgment made in C.C.No.91 of 2015 dated 28.02.2018 on the file of the Fast Track Court (Judicial Magistrate Level), Palani, in acquitting the respondent / accused for the offence under Section 138 of the Negotiable Instruments (hereinafter referred as 'NI') Act.

2. The appellant, who is the complainant, filed a complaint under Section 200 Cr.P.C. against the respondent / accused for the alleged offence under Section 138 r/w 142 of the NI Act.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the complainant is that the accused is a friend of the complainant for more than 10 years. The accused approached the complainant and requested for a loan of Rs.11,25,000/- for his urgent family expenses and for business development and also to clear the sundry



Crl.A.(MD)No.388 of 2022

debts during the last week of February-2015 and the complainant advanced loan of Rs.11,25,000/- on 01.03.2015. The accused having received the loan amount gave a cheque dated 05.04.2015 for Rs. 11,25,000/- drawn on State Bank of India, Coimbatore Ganapathy Branch and requested the complainant to present the cheque and encash the same. Believing the words of the accused, the complainant presented the cheque for collection on 11.04.2015 through his banker IDBI Bank, Palani Branch but the same was returned dishonored as funds insufficient. The complainant immediately contacted the accused and informed about the dishonor of the cheque and the accused expressing his regrets requested the complainant to present the cheque again on 16.06.2015 promising that the cheque would be honored. Accordingly, the complainant presented the cheque for collection on 16.06.2015 through IDBI Bank, Palani Branch but the same was dishonored again as funds insufficient through banker's memo dated 23.06.2015. The complainant sent a legal notice dated 17.07.2015 to the accused demanding him to pay the amount covered by the cheque. The accused having received the notice on 20.07.2015 sent a reply notice dated 31.07.2015 with false and untenable allegations. Since the accused has not paid the cheque amount within the stipulated period,



Crl.A. (MD)No.388 of 2022

the complainant was constrained to file the above complaint for the offence under Section 138 r/w 142 of the NI Act.

5. The learned Judicial Magistrate, upon receiving the complaint, recorded the sworn statement of the complainant and on perusing the records, upon satisfied that there existed a *prima facie* case took the case on file in C.C.No.91 of 2015 for the offence under Section 138 of the NI Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.

6. During trial, the complainant examined himself as P.W.1 and exhibited 27 documents as Ex.P.1 to Ex.P.27.

7. After closure of the complainant's side evidence, the accused was examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects found as against him and the accused denied the same as false and



Crl.A. (MD)No.388 of 2022

further stated that a false case has been foisted against him.

WEB COPY

8. The accused examined himself as D.W.3 and 2 other witnesses Tmt.Subashini and Thiru.Jeevan Mohandas as D.W.1 and D.W.2 respectively and exhibited 3 documents as Ex.D.1 to Ex.D.3.

9. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 28.02.2018 holding that the complainant failed to prove the offence under Section 138 of the NI Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

10. Whether the impugned judgment of acquittal passed in C.C.No. 91 of 2015 dated 28.02.2018 on the file of the Fast Track Court (Judicial Magistrate Level), Palani, is liable to be set aside? is the point for consideration.



Crl.A.(MD)No.388 of 2022

WEB COPY

11. It is evident from the records that the above appeal was posted for final hearing on two earlier occasions. On 07.11.2025, at the request of the learned counsel appearing for the appellant, the matter was adjourned to 14.11.2025 as a last chance. When the case was taken up on 14.11.2025, the learned counsel appearing for the appellant submitted that he was not ready to advance arguments. Consequently, this Court heard the learned counsel appearing for the respondent. Having regard to the opportunities already granted, this Court was not inclined to adjourn the matter any further. Moreover, considering the nature of the case, the impugned judgment, and the grounds raised in the appeal, this Court was of the view that there was no necessity to appoint a legal aid counsel for the appellant. Accordingly, the matter was reserved for judgment, granting liberty to the appellant to file written submissions, if any, within three days. Pursuant thereto, the learned counsel appearing for the appellant has filed his written arguments.

12. Before entering into further discussion, it is necessary to refer Sections 118(a) and 139 of the Negotiable Instruments Act, which deal with statutory presumptions,



WEB COPY



Crl.A.(MD)No.388 of 2022

“Section 118 : Presumptions 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;”

“Section 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.”

13. It is the specific case of the complainant that the accused having acquaintance with the complainant approached him and requested for a loan of Rs.11,25,000/- for his urgent expenses, business development and to clear the sundry debts during the last week of February-2015 and on that basis, the complainant gave Rs.11,25,000/- on 01.03.2015 to the accused and the accused having received the same, issued a cheque dated 05.04.2015 for Rs.11,25,000/- drawn on State Bank of India, Coimbatore Ganapathy Branch under Ex.P.1, that the complainant presented the



Crl.A. (MD)No.388 of 2022

cheque for collection through his IDBI Bank, Palani Branch vide challan dated 11.04.2015 under Ex.P.2 but the cheque was returned dishonored as funds insufficient vide banker's memo dated 15.04.2015 under Ex.P.3, that the complainant informed the accused about the dishonor of the cheque, for which, the accused expressing his regrets requested the complainant to present the cheque again on 16.06.2015 and accordingly, the complainant presented the cheque for collection again through his IDBI Bank, Palani Branch vide challan dated 16.06.2015 under Ex.P.4 but the cheque was returned dishonored again for want of sufficient funds in the bank account of the accused through banker's memo dated 23.06.2015 under Ex.P.5, that the complainant sent a legal notice dated 17.07.2015 under Ex.P.6 directing the accused to pay the amount covered by the cheque, that the accused having received the notice on 20.07.2015 vide Ex.P.7 postal acknowledgement sent a reply notice dated 31.07.2015 under Ex.P.8 with false and untenable allegations and that since the accused has not complied with the notice demand, the complainant was forced to file the above complaint.

14. The defence of the accused, as evident from Ex.P.8 (reply notice) and the evidence of D.W.1 to D.W.3, is that the accused joined a



Crl.A. (MD) No. 388 of 2022

WEB COPY

chit floated by the complainant in 2009, that the accused had taken chit amount for Rs.5 lakhs and payments were made through bank for some months and directly for some months, that on 01.04.2011, the accused gave two cheques including the cheque in dispute to the complainant as security for the chit transactions, that the complainant filled up the cheque bearing No.395857 for Rs.8 lakhs in 2013 and after dishonor of the cheque, issued a notice, that the accused, after receipt of the notice, met the complainant and warned him and as a result, the complainant had not taken any further action, that the complainant after some months issued a notice, as if, the accused's wife obtained a pro note loan of Rs.8 lakhs and the accused, after receiving the same, again met the complainant and warned him for his illegal activities, that the accused never borrowed any amount of Rs.11,25,000/- on 01.03.2015 as the accused was not in need of any such amount at that time and that the complainant filled up the other cheque and filed the above false complaint.

15. As rightly contended by the learned counsel appearing for the complainant, it is evident from the reply notice and the evidence adduced by the accused that the accused has specifically admitted that Ex.P.1



Crl.A. (MD) No. 388 of 2022

(cheque) was belonging to him and the signature found therein. But according to the accused, the said cheque along with another cheque were issued as security for the chit transactions he had with the complainant.

16. It is pertinent to mention that the complainant as P.W.1 gave evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonor of cheque, issuance of statutory notice and the failure of the accused to pay the amount within stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with regard to Ex.P.1 (cheque) and the signature found therein, this Court has no other option but to draw a presumption under Sections 118 and 139 of the NI Act in favour of the complainant.

17. No doubt, the presumption available under Sections 118 and 139 of the NI Act are rebuttable in nature. It is settled law that the accused, in order to rebut the presumption drawn in favour of the complainant under Sections 118 and 139 of the NI Act, is not required to adduce any evidence and he can very well prove his probable defence through the evidence



Crl.A.(MD)No.388 of 2022

adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

18. At this juncture, it is also necessary to refer the decision of the Hon'ble Supreme Court in **Rangappa Vs. Sri Mohan** reported in (2011) 11 SCC 441,

“27. Section 139 of the 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 by 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. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof.



WEB COPY



Crl.A.(MD)No.388 of 2022

28. *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 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.*

19. The Hon'ble Supreme Court, in ***Tedhi Singh Vs. Narayan Dass Mahant*** reported in (2022) 6 SCC 738, has observed that the accused is not expected to discharge an unduly high standard of proof and the principle has developed that all which the accused needs to establish is a probable defence and as to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist and the relevant portion is extracted hereunder:



Crl.A.(MD)No.388 of 2022

“It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence..”

20. It is also necessary to refer a decision of the Hon'ble Supreme Court in ***Rajesh Jain Vs. Ajay Singh*** reported in ***(2023)10 SCC 148***, wherein, the Hon'ble Apex Court has dealt with the standard of proof required for the accused to rebut the presumption and the relevant passages are extracted hereunder:

“39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of ‘preponderance of probabilities’, similar to a



WEB COPY



Crl.A.(MD)No.388 of 2022

defendant in a civil proceeding. [Rangappa vs. Mohan (AIR 2010 SC 1898)]

40. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513

41. In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by



WEB COPY



Crl.A.(MD)No.388 of 2022

referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was 'no debt/liability'. [Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]

42. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

43. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon



Crl.A.(MD)No.388 of 2022

circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act.

44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441] ”



Crl.A.(MD)No.388 of 2022

WEB COPY

21. As already pointed out, the main defence of the accused is that he subscribed a chit for Rs.5 lakhs with the complainant and he paid the chit subscriptions through bank and directly and that Ex.P.1 (cheque) along with another cheque were issued as security for the chit transactions. No doubt, the complainant has completely denied and disputed the chit transactions and according to him, he never conducted any chits.

22. The accused has also taken a stand that the complainant had no wherewithal to lend Rs.11,25,000/- to the accused. But the complainant during trial produced and exhibited the documents evidencing sales and purchases made by him under Ex.P.9 to Ex.P.25 and Ex.P.27 and copy of patta under Ex.P.26. The complainant, in his evidence, would say that he is owning 4 acres of land and his wife 20 acres of land and that he has been cultivating cauliflower, onion and chili and is getting good income. He would say that he is also doing real estate business and is getting Rs.30 to Rs.40 lakhs per year. Considering the evidence available on record, the learned Magistrate has rightly come to a decision that the complainant had necessary sources and means to lend Rs.11,25,000/- as loan to the accused and such a finding cannot be faulted.



Crl.A. (MD)No.388 of 2022

WEB COPY

23. The only point to be decided is as to whether the accused during the evidence of complainant and through his side evidence has shown a probable defence and thereby rebutted the presumption drawn under Sections 118 and 139 of the NI Act.

24. The accused summoned and examined the Assistant Manager, State Bank of India, Kannakkanpatti Branch (complainant's bank) as D.W.1 and the Assistant Manager, State Bank of India, Coimbatore Ganapathy Branch (accused's bank) as D.W.2. D.W.1 would admit that the complainant is having savings bank account in their branch in account No. 11519555657 and amounts were credited to his account, which was sent through State Bank of India, Ganapathy Branch. She would say that she does not know as to who sent the above payments.

25. As rightly pointed out by the learned counsel appearing for the accused, D.W.2, in his evidence, would say that the accused had remitted amounts on 19 occasions, which were credited to the complainant's bank account at the Kanakkanpatti Branch and produced 8 challans under Ex.D.2 series. D.W.2 would further say that the remaining challans were

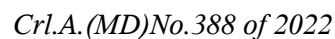


Crl.A. (MD)No.388 of 2022

not traceable. It is pertinent to note that the receipt of the above amounts by the complainant from the accused's bank account is neither denied nor disputed by the complainant. However, the complainant has attempted to explain that the accused used to remit certain amounts to his bank account with a request to hand over the same to his relatives, who were residing near Ambilikkai village. During cross-examination of D.W.3, it was suggested,

□நான் புகார்தாருக்கு பல்வேறு காலக்கட்டங்களில் வங்கியில் மூலம் செலுத்தியதாகச் சொல்லும் பணத்தை எனது அம்பிளிக்கை கிராமத்தை சுற்றியுள்ள சொந்தக்காரர்களுக்கு பணத்தைக்கொடுக்கச் சொல்லி அந்த காரணத்திற்காகத்தான் வங்கியில் பணத்தை செலுத்தினேன் என்று சொன்னால் அது சரியல்ல.□

26. As rightly pointed out by the learned counsel appearing for the accused, according to the evidence of D.W.1, the complainant received 23 payments during the period from 06.06.2009 to 13.06.2011. It is further contended on behalf of the accused that the complainant's assertion that the above amounts were sent merely for disbursement to his relatives residing near Ambilikkai is highly improbable. In view of the said payments, the defence theory that the amounts were remitted towards chit



subscriptions appears to be substantially probable.

27. As already pointed out, it is the specific case of the accused that he issued two cheques bearing Nos.395857 and 395865 (Ex.P.1) as security. But the complainant, in his cross-examination, would admit that he sent a legal notice to the accused demanding payment of Rs.8 lakhs covered by the cheque bearing No.395857. But according to the accused, one Dhayalan Suresh and his wife Theivanai Ammal, who were introduced by the accused to the complainant, had also subscribed a chit and since payment was not made by them, the complainant filled up the cheque bearing No.395857 for Rs.8 lakhs and issued a legal notice to the accused and the relevant portion is extracted hereunder;

□எதிரி என்னிடம் பொறுப்பிற்காக கொடுத்த
காசோலை எண்.395857 என்ற காசோலையை ரூ.
8 இலட்சத்திற்கு நான் நிரப்பி அதனை வசூலுக்குத்
தாக்கல் செய்து வங்கியில் அது திருப்பப்பட்ட பின்பு
எதிரிக்கு வழக்கறிஞர் அறிவிப்பு அனுப்பினைன் என்றால்
சரிதான். அதன் பேரில் எதிரி அதற்குண்டான
பணத்தைக்கொடுத்து முடித்துவிட்ட காரணத்தினால் நான்
மேல் நடவடிக்கை எடுக்கவில்லை. நான் சொல்வது பொய்
என்றும் தயாயளு சுரேஷ் மற்றும் தெய்வாணம்மாள்
பணத்தைக் கட்டாத காரணத்தினால் எதிரிக்கு வழக்கறிஞர்



Crl.A. (MD)No.388 of 2022

அறிவிப்பு அனுப்பினேன் என்றும், அதனை எதிரி சொன்ன காரணத்தினால் நான் மேல் நடவடிக்கை எடுக்க வில்லை என்று சொன்னால் அது சரியல்ல.□

28. The complainant would also admit that he sent a legal notice to the accused's wife Renuka Devi, as if, she borrowed a promissory note loan under Ex.D.3. P.W.1 would say,

□நான் எதிரியின் மனைவி ரேணுகா தேவி என்பவர் மீது பிராமிசரி நோட்டீஸ்பேரில் வழக்கறிஞர் அனுப்பினேனா என்றால் அனுப்பினேன். அது சம்மந்தமாக நீதிமன்றத்தில் நடவடிக்கை ஏதேனும் எடுத்தேனா என்றால் எடுக்கவில்லை. அந்த வழக்கறிஞர் அறிவிப்பின் பேரில் ஏன் எதிரியின் மனைவியின் மீது ஏன் நடவடிக்கை எடுக்கவில்லை என்று கேட்டால். அவர் பணத்தை கொடுத்துவிட்டதினால் அவர் மீது நடவடிக்கை எடுக்கவில்லை.□

29. Though the complainant has alleged that the cheque debt as well as the promissory note debt were settled by the accused and his wife, he did not take any further action. Even after denial of the same by the accused, the complainant has not chosen to produce any documents evidencing the repayment of the said amounts.



Crl.A. (MD)No.388 of 2022

WEB COPY

30. It is pertinent to note that the complainant, by Ex.D.3 notice dated 24.06.2014, alleged that the accused's wife had borrowed a sum of Rs.8 lakhs on 01.05.2012 by executing a promissory note. However, in the present case, the complainant contends that the accused borrowed a sum of Rs.11,25,000/- on 01.03.2015. As rightly contended by the learned counsel appearing for the accused, when the complainant had already sent a legal notice to the accused demanding payment of Rs.8 lakhs—the amount covered by cheque No.395857—and another notice to the accused's wife directing her to pay the promissory note debt of Rs.8 lakhs under Ex.D.3, the present claim that he lent an additional sum of Rs.11,25,000/- on 01.03.2015 is highly improbable. Further, as rightly argued by the learned counsel appearing for the accused, when earlier loans were still pending and despite the issuance of legal notices, no prudent person would have lent such a substantial amount without obtaining any document other than the disputed cheque.

31. On a consideration of the evidence on record, this Court has no hesitation in holding that the accused, by establishing the chit payments and the corresponding chit transactions, has successfully rebutted the



Crl.A. (MD)No.388 of 2022

presumption drawn in favour of the complainant. Consequently, the burden shifted to the complainant to prove that the accused had borrowed a sum of Rs.11,25,000/- on 01.03.2015 and issued Ex.P.1 cheque. As already observed, the complainant has not produced any evidence to substantiate this claim. In view of the same, this Court is compelled to hold that the complainant has miserably failed to prove the liability of the accused and the issuance of the cheque in question. Accordingly, this Court concludes that the judgment of acquittal passed by the learned Judicial Magistrate is perfectly legal and cannot be found fault with. The Criminal Appeal, being devoid of merit, is therefore liable to be dismissed.

32. In the result, this Criminal Appeal is dismissed confirming the judgment made in C.C.No.91 of 2015, dated 28.02.2018, on the file of the Fast Track Court (Judicial Magistrate Level), Palani in acquitting the respondent under Section 138 of the Negotiable Instruments Act.

09.01.2026

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



WEB COPY



Crl.A.(MD)No.388 of 2022

K.MURALI SHANKAR,J.

csn

To

1. The Judicial Magistrate,
Fast Track Court, Palani.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
Crl.A.(MD)No.388 of 2022

Dated : 09.01.2026