



WEB COPY

CRL.A.(MD).No.869 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.09.2025

PRONOUNCED ON : 17.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.869 of 2022

G.Saravanan

.. Appellant/Complainant

Vs.

Selvam

.. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C, to call for the records in S.T.C.No.46 of 2017, on the file of the Judicial Magistrate Fast Track Court (ML), Uthamapalayam, dated 25.03.2022, set aside the same by convicting the respondent/accused and directing him to pay twice the amount of cheque as fine.

For Appellant : Mr.T.Nithes
for Mr.K.Prabakaran

For Respondent : Ms.Bhavatharani
for Mr.S.Sundarapandian



JUDGMENT

WEB COPY

The Criminal Appeal is directed against the judgment made in S.T.C.No. 46 of 2017, dated 25.03.2022, on the file of the Judicial Magistrate Fast Track Court (Magistrial Level), Uthamapalayam in acquitting the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

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

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

4. The case of the complainant is that the accused, who had acquaintance with the complainant as a friend, obtained a loan of Rs.2,50,000/- from the complainant on 20.06.2016 for his urgent family expenses and to clear the sundry debts and issued a cheque dated 13.01.2017 drawn on Karur Vysya Bank Limited, Koodalur Branch and requested the complainant to present the cheque on that day and get the amount. The complainant presented the cheque for collection on 13.01.2017 through his banker Tamil Nadu Mercandile Bank, Cumbum Branch, but the cheque was returned with reason “Need Ref. To



Drawee Br-Closed Due to Holiday/Issu". When the return of cheque was informed to the accused, he expressed his regrets and requested the complainant to present the cheque again on 25.01.2017 and as stated by the accused, the complainant presented the cheque again on 25.01.2017 through his bank for collection, but the cheque was again returned vide bank memo dated 01.02.2017 with the very same reason. Hence, the complainant sent a legal notice dated 28.02.2017 to the accused directing him to pay the amount covered by the cheque and the accused having received the legal notice dated 01.03.2017, neither sent any reply nor complied with the notice demand. Hence, the complainant was constrained to file the above complaint for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments 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 S.T.C.No. 46 of 2017 for the offence under Section 138 of the Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of the 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 examined the Bank Managers of his Bank as well as the bank of the accused as P.W.2 and P.W.3 respectively and his wife Tmt.Ramani as P.W.4 and exhibited seven documents as Exs.P.1 to P.7. The accused adduced neither oral or documentary evidence.

7. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 25.03.2022, holding that the complainant has not proved the offence under Section 138 of the Negotiable Instruments 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.

8. Whether the impugned judgment of acquittal passed in S.T.C.No.46 of 2017, on the file of the Judicial Magistrate Fast Track Court (Magistrial Level), Uthamapalayam, is liable to be set aside? is the point for consideration.

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



“118. ...

(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 ;

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.”

10. It is the specific case of the complainant that the accused being a friend borrowed a sum of Rs.2,50,000/- on 20.06.2016 to meet out his urgent family expenses and to clear the sundry debts and issued a post dated cheque dated 13.01.2017 under Ex.P.1 drawn on Karur Vysya Bank, Koodalur Branch requesting the complainant to present the cheque on that date and get the amount, that since the cheque which was presented for collection on 13.01.2017 was returned as dishonoured, at the request of the accused, the complainant presented the cheque again for collection on 25.01.2017 through his bankers Tamil Nadu Mercandile Bank Ltd., Cumbum branch, but the cheque was again returned with the same endorsement “Need Ref. To Drawee Br-Closed Dus to Holiday/Issu”, vide banker's memo dated 01.02.2017 (Ex.P.3), that the complainant has then sent a legal notice dated 27.02.2017 under Ex.P.4 demanding to pay the amount covered by the cheque, that the accused received



the statutory notice vide acknowledgement card under Ex.P.5, that since the accused has neither sent any reply nor complied with the notice demand, the complainant was forced to file the above complaint. According to the complainant, after filing of the above complaint, the accused sent a reply notice under Ex.P.6 with false allegations.

11. The defence of the accused as evident from his reply notice dated 10.04.2017 under Ex.P.6 is that he had business transactions with one P.S.M.Murugan, who was running Maruthi Printers at Cumbum as the accused was also running Chellamalar Printers, that the accused borrowed a sum of Rs.50,000/- from the said Murugan 7 years back and as a security for the said loan, he gave a signed blank cheque, signed unfilled Rs.20 stamp papers and concur paper, that the accused had been paying interest at Rs.3/- till March 2016 and at that time, he paid Rs.35,000/- towards principal, keeping the balance of Rs.15,000/-, that since the accused has not paid interest for one year, the said Murugan demanded to pay interest at Rs.5 and raised issues and thereafter, he set up the complainant as a benami and issued the legal notice, that he is ready to pay Rs.15,000/- along with one year interest to the said Murugan and that the accused never received any loan from the complainant nor issued any cheque in his favour.



12. As rightly contended by the learned Counsel for the complainant, it is evident from Ex.P.6 – reply notice of the accused that the accused has specifically admitted that Ex.P.1 – cheque was belonging to him and also the signature found in Ex.P.1 – cheque. But according to him, a blank signed cheque was issued to one Murugan at the time of taking loan from him. It is pertinent to mention that the complainant as P.W.1 has given evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonour of the cheque, issuance of the statutory notice and the failure of the accused to pay the amount within the stipulated time. On considering the evidence of P.W.1 and also the admission of the accused with respect to Ex.P.1 cheque and the signature found therein, this Court has no other option, but to draw a presumption under Sections 139 and 118 of the Negotiable Instruments Act.

13. No doubt, the presumptions available under Section 118 and 139 of the Negotiable Instruments Act are always rebuttable in nature. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.



14. As already pointed out, the accused has failed to produce evidence supporting their defence, as pointed out in the reply notice. Despite extensive cross-examination of P.W.1 (complainant), his testimony regarding the loan transaction and cheque issuance remained unshaken. P.W.1 stated he knew the accused for 15 years due to their association with Mangaladevi Kannaki Kovil trust. Although the defence suggested the accused wasn't a member of the Cuddalore branch, P.W.1 denied it. P.W.4, the complainant's wife, corroborated their acquaintance, stating she saw the accused at the Kannaki temple, aligning with the accused's admission in Ex.P.6 reply notice of knowing P.S. Murugan of Cumbum through the Kannaki Trust.

15. During P.W.1's cross-examination, he initially stated that no one else knew about the loan to the accused. Subsequently, he deposed that his wife and son were present during the loan transaction and offered to examine them. P.W. 4, the wife, testified that she was unaware of her husband's external financial transactions but admitted being at home when the accused obtained the loan.

16. The learned Magistrate observed a contradiction in P.W.1's testimony, noting that he initially stated no one was present during the loan transaction, but later mentioned his wife and son's presence. However, the defence's questions



elicited different information, and P.W.1's answers were not contradictory, as rightly contended by the learned counsel for the complainant.

WEB COPY

17. The learned Magistrate, as rightly pointed out by the learned Counsel for the complainant, has commented on the non-production of the bank's return memo for the first dishonour. However, the complainant has produced the memo dated 01.02.2017 issued by Tamil Nadu Mercantile Bank, Cumbum branch, intimating the second dishonour. As rightly contended by the learned Counsel for the complainant, the present complaint is based on the basis of the cause of action arising from the second dishonour of cheque.

18. The Hon'ble Supreme Court's larger Bench in ***MSR Leathers v. S. Palaniappan*** reported in ***(2013) 1 SCC 177***, cited by the learned counsel for the complainant, held that prosecution based on a cause of action arising from subsequent dishonour is permissible. Having produced the banker's memo for the subsequent dishonour, the complainant's case is not affected by non-production of the first dishonour memo. The observation of the learned Magistrate that the complaint and documents don't match lacks elaboration.

19. The accused in his reply notice under Ex.P.6 has alleged that he paid only Rs.35,000/- out of Rs.50,000/- allegedly borrowed from the said Murugan



and he was ready to repay the remaining amount of Rs.15,000/- along with one year interest. But during cross-examination of P.W.1, it was suggested that the accused had paid the entire amount due to the said Murugan and that the said Murugan, with an intention to extract more money, had filed the above false complaint through P.W.1. As rightly pointed out by the learned Counsel for the complainant, the accused has not produced any iota of evidence to show that he obtained loan from the said Murugan and discharged the part of the loan amount and that he had no transaction whatever with the complainant.

20. The learned Counsel for the accused would contend that the signed blank cheque issued to Murugan was misused by him and the complainant. Although the accused claimed the cheque contents were not filled by him and the ink used for signing and writing differed, as rightly pointed out by the learned counsel for the complainant, that P.W.1 and P.W.3, the Bank Manager, found no ink difference. Even assuming a difference, it would not aid the accused's case.

21. At this juncture, it is necessary to refer the decision of this Court in ***Padmavathy Vs. M/s Sri Balaji Networks*** in ***Crl.R.C.(MD)No.523 of 2023, dated 30.06.2023***, while dealing with the scope of Section 20 of the Negotiable Instruments Act, observed as follows:

“7. The learned Counsel for the complainant would submit that as per Section 20 of the Negotiable Instruments Act, the



holder of the cheque either by himself or through any third party can very well fill up the blank cheques and it is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;

“Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder.”

8. As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank promissory note and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by



the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.

9. *The learned Counsel for the revision petitioner/accused has relied on the decision of the Division Bench of the Hon'ble Supreme Court in **T.Nagappa Vs. Y.R.Muralidhar** reported in 2008(2) Crimes 219 (SC) and the relevant passages are extracted hereunder:*

“ Code of Criminal Procedure 1973 – Section 243(2) r/w Article 21 of the Constitution of India – An accused has a right to fair trial and to adduce evidence for that purpose – Ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

Negotiable Instruments Act 1881 – Section 20 – Only a prima facie right, that too conditional, had been conferred upon the holder of the negotiable instrument – Request of the appellant for referring the cheque to Forensic examination was bona fide.”

10. *At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in **Oriental Bank Of Commerce vs Prabodh Kumar Tewari** reported in 2022 Live law SC 714, wherein it has been held as follows:*



“ Negotiable Instruments Act, 1881 – Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability. ”

11. In that decision, another judgment of the Three Judges Bench of the Hon'ble Supreme Court in **Kalamani Tex Vs. Balasubramanian** reported in **2021(5) SCC 283** was referred and wherein the Hon'ble Apex Court has reiterated the legal position settled in **Bir Singh Vs. Mukesh Kumar** reported in **(2019)4 SCC 197**, wherein it has been held as follows:

“14. In [Bir Singh v. Mukesh Kumar](#), after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:

33. A meaningful reading of the provisions of the [Negotiable Instruments Act](#) including, in particular, [Sections 20, 87 and 139](#), makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been



issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of [Section 138](#) would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under [Section 139](#) of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

(emphasis supplied)”

12. The above decisions are clearly applicable to the case on hand. In the present case, according to the petitioner, she has not written the contents of the cheque. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served, if the disputed cheques are sent for expert opinion. Even assuming for argument sake, that the expert gives his opinion that the writings found in the cheque are not that of the petitioner, that by itself



WEB COPY



would not advance the case of the petitioner further. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability and that the cheque presumption arises under Section 138 of the Negotiable Instruments Act. Section 139 of the said Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it for the discharge, in whole or in part, of any debt or other liability. In case if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. The standard of proof for rebuttal of presumption under Section 139 of the Negotiable Instruments Act is guided by preponderance of probabilities. For deciding the above, the fact that the details in the cheque have been filled up not by the drawer, but by some other person, would be immaterial.”

22. Even assuming the cheque contents were not filled by the accused, it's irrelevant. During cross-examination of P.W.1, the accused raised doubts about the cheque's presentation, claiming it was not presented twice, and questioned the authenticity of Ex.P.2 challan and Ex.P.3 return memo, due to lack of bank officials' signatures. However, P.W.2 Tamil Nadu Mercantile Bank Manager and P.W.3 Karur Vysya Bank Manager would categorically confirm that the cheque was presented twice through Ex.P.2 challan and the second dishonour led to



Ex.P.3 memo. Notably, the accused did not take any action against Murugan for alleged misuse or attempt to retrieve the cheque.

23. In light of the foregoing, it is evident that the accused has failed to discharge the burden of rebutting the presumption under Section 138 of the Negotiable Instruments Act. The trial court's judgment, having overlooked crucial aspects and relied on immaterial factors, is unsustainable. Consequently, the impugned judgment is hereby set aside, and the accused is held guilty of committing an offence punishable under Section 138 of the Negotiable Instruments Act.

24. Now turning to the punishment to be awarded, the Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta* reported in (2017)3 MWN (CrI) DCC 161 SC, has observed that the offence under Section 138 of the Negotiable Instruments Act related to a civil wrong and the same was a regulatory offence and that the object was described as punitive as well as compensatory. It is very much clear that the intention of the provision is not only to punish the accused, but at the same time, the aggrieved party is to be compensated.



25. Taking into account the nature of the offence and the cheque amount, this Court sentences the accused to simple imprisonment for a period of one year and to pay a compensation of Rs. 3,00,000/-, in default to undergo simple imprisonment for three months. The accused shall deposit the compensation amount and surrender before the trial court within one month from the date of receipt of this judgment, failing which the Magistrate shall take coercive steps to enforce the sentence.

26. The Criminal Appeal is accordingly allowed.

17.10.2025

Index : Yes/No

Internet : Yes/No

SSL

To

1. The Judicial Magistrate Fast Track Court (ML), Uthamapalayam,

2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.A.(MD).No.869 of

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.869 of 2022

17.10.2025