



CRL.A(MD).No. 742 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 03.11.2025

Delivered on : 19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 742 of 2025

M/s.Vignesh Enterprises,
Rep.By its Proprietor,
K.S.Dhiyanesh,
S/o.K.S.Subramanian,

: Appellant/Complainant

Vs.

1.K.Vasanthi Ramesh

2.T.D.Ramesh

: Respondents/A1 and A2

Prayer : Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment of acquittal, dated 18.11.2013 in S.T.C.No.336 of 2012 on the file of the learned Judicial Magistrate No.I, Fast Track Court (Magistrate Level) Madurai.

For Appellant : Mr.V.R.Shanmuganathan,

For Respondents : Mr.K.K.Kannan

JUDGMENT

This Criminal Appeal is directed against the judgment made in S.T.C.No.973 of 2017, dated 29.11.2024 on the file of the Court of the



CRL.A(MD).No. 742 of 2025

Judicial Magistrate, Sathankulam, in acquitting the respondent/accused for the offence under Section 138 of Negotiable Instruments Act.

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

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

4.Admittedly, the complainant was doing business in the name and style of 'Vignesh Enterprises' and the second accused had business transaction with the complainant. It is not in dispute that the second accused is the husband of the first accused and the second accused was doing business in selling computer papers.

4.The case of the complainant is :

a) The second accused had business dealing with the complainant and there was a balance amount of Rs.3,32,989/- due by the second accused to the complainant as per agreement entered into between the complainant and the accused 1 and 2, dated 29.12.2010. As per the said agreement, the first



CRL.A(MD).No. 742 of 2025

accused agreed to pay the said amount of Rs.3,32,989/- to the complainant, for which, she issued a cheque for Rs.3,32,989/-, dated 15.05.2011 drawn on Karur Vysya Bank, Tallakulam Branch, Madurai in favour of the complainant.

b) The complainant, presented the cheque for collection through his bank Indian Overseas Bank, Theppakulam Branch and the same was returned as payment stopped by the drawer. Hence, the complainant sent a legal notice, dated 02.06.2011 to the accused demanding them to pay the amount covered by the cheque. Both the accused having received the notice on 03.06.2011, failed to make any payment, but sent a reply notice, dated 15.06.2011 with false and untenable allegations. Since the accused have not paid the cheque amount within stipulated period, the complainant was constrained to file the above complaint against the accused for the alleged offence under Sections 138 r/w 142 of Negotiable Instruments Act.

5. The learned Judicial Magistrate No.II, Madurai, 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.1165 of 2011 for the offence under Section 138 of



CRL.A(MD).No. 742 of 2025

Negotiable Instruments Act and ordered for issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to them under Section 207 of Cr.P.C., on free of cost. When the accused were questioned about the offence alleged against him, they denied the commission of offence and pleaded not guilty.

6. When the case was pending for trial, as per proceedings of learned Chief Judicial Magistrate, Madurai, dated 26.06.2012, the case was transferred to the file of the Court of Judicial Magistrate No.I, Fast Track Court at JM Level, Madurai, and the same was taken on file in S.T.C.No.336 of 2012.

7. During trial, the complainant examined himself as P.W.1 and exhibited 9 documents as Ex.P.1 to Ex.P.9. The accused adduced neither oral nor documentary evidence.

8. 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 18.11.2013 holding that the complainant has not proved the offence under Section 138 of Negotiable



CRL.A(MD).No. 742 of 2025

Instruments Act as against the accused beyond reasonable doubt, acquitted him under Section 255(1) of Cr.P.C. Aggrieved by the impugned judgment of acquittal, the complainant has preferred the present appeal.

9. Whether the impugned judgment of acquittal passed in S.T.C.No. 973 of 2017, dated 29.11.2024 on the file of the learned Judicial Magistrate, Sattankulam, is liable to be set aside ? is the point for consideration.

10. Before proceeding further, it is necessary to refer Section 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.”



CRL.A(MD).No. 742 of 2025

11. It is the specific case of the complainant that the second accused had business transaction with the complainant and with regard to the amount due by the second accused, an agreement was entered into on 29.12.2010 under Ex.P.1 between the complainant and the accused 1 and 2, whereunder the first accused agreed to pay the balance amount of Rs.3,32,989/- to the complainant, for which, she issued a cheque, dated 15.05.2011 for Rs.3,32,989/- drawn on Karur Vysya Bank, Tallakulam Branch, Madurai under Ex.P.2; that the complainant presented the cheque for collection through his Bank Indian Overseas Bank, Theppakulam Branch, Madurai, but the same was returned dishonored with an endorsement 'payment stopped by the drawer' vide bankers memo, dated 27.05.2011 under Ex.P.3; that the complainant sent a legal notice, dated 02.06.2011 under Ex.P.4 to the accused directing them to pay the amount covered by the cheque; that the accused 1 and 2 having received the notice on 03.06.2011 under Ex.P.5 postal acknowledgement card, sent a reply notice, dated 15.06.2011 under Ex.P.6 with false and untenable allegations and that since the accused have not complied with the notice demand, the complainant was forced to file the above complaint.



CRL.A(MD).No. 742 of 2025

12. It is not in dispute that on the basis of the complaint lodged, FIR came to be registered in Crime No.101 of 2010 on the file of the CCB, Madurai, against both the accused under Ex.P.7. It is also not in dispute that the first accused sent a lawyer notice, dated 06.05.2011 to the complainant under Ex.P.8 alleging that the cheque in dispute was forcibly obtained with the help of the police and that the complainant sent a reply notice, dated 18.05.2011 under Ex.P.9 denying and disputing the allegations made in Ex.P.8 notice.

13. The defence of the accused, as evident from Ex.P.4 legal notice and Ex.P.6 reply notice is that the second accused was running 'Sabhaa Labh Info Tec' and he was producing computer papers and sell it to the retailers through the complainant; that there is a civil suit in O.S.No.609 of 2009, filed by the complainant for recovery of amount allegedly due under the business transaction, is pending on the file of the Principal Subordinate Court, Madurai; that the accused filed a criminal complaint against the complainant on 03.11.2010, but the same was not enquired due to the complainant's influence; that when the complainant filed a criminal complaint against the accused and on that basis, FIR was registered in Crime No.101 of 2010, CCB, Madurai against the accused; that though the accused



CRL.A(MD).No. 742 of 2025

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were not liable to pay any amount to the complainant, the second accused was compelled to pay Rs.1,10,000/-cash and give a postdated cheque, dated 15.05.2011 from the first accused for realizing the amount of Rs.3,32,000/-; that the complainant and the CCB Inspector received signatures of the accused in a Rs.20/- stamp paper and even after repeated compromise talk made by the complainant's community people, he was not ready to return the money and cheque leaf received; that the first accused filed a criminal complaint against the complainant, CCB Inspector and other police officials for cheating their money and receiving a security cheque forcibly and that since the accused were not liable for any claim of the complainant, the complainant is liable to return the amount received by him.

14. At the outset, as rightly pointed out by the learned counsel for the complainant, it is pertinent to note that the accused in their notice have admitted the issuance of Ex.P.2 cheque by the first accused and her signature found therein. But according to the accused, Ex.P.2 cheque was obtained forcibly by the complainant with the help of CCB Police officials.

15. Admittedly, the second accused did not subscribe his signature in Ex.P.2 cheque. The Hon'ble Supreme Court in the case of **Bijoy Kumar**



CRL.A(MD).No. 742 of 2025

Moni Vs. Paresh Manna and another reported in **2024 INSC 1024**, has specifically held that it is only the drawer of the cheque, who can be held liable for an offence under Section 138 of NI Act. Hence, the finding of the learned Magistrate that no offence of dishonor of cheque is made out against the second accused is liable to be confirmed.

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 second accused and execution of Ex.P.1 agreement by the accused 1 and 2, issuance of cheque by the first accused 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 first 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 Section 118 and 139 of Negotiable Instruments Act.

17. As rightly contended by the learned counsel for the accused, 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



CRL.A(MD).No. 742 of 2025

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.

18. Now the only point to be decided is as to whether the first accused has rebutted the presumption drawn in favour of the complainant under Sections 118 and 139 of Negotiable Instruments Act. As already pointed out, the main defence of the accused is that Ex.P.2 cheque was obtained by the complainant forcibly with the help of CCB Police. It is the admitted case of the complainant as well as the accused that there existed business transaction between the complainant and the second accused.

19. It is not in dispute that the complainant has already filed a civil suit in O.S.No.609 of 2009 on the file of the Principal Subordinate Court, Madurai, for recovery of the amount due by the second accused to the complainant and that the second accused was contesting the case. It is also not in dispute that the complainant filed a petition under Section 156(3) of Cr.P.C., before the jurisdictional Magistrate Court to register a case against the accused in C.M.P.No.9260 of 2010 and as per order passed by the

10/24



CRL.A(MD).No. 742 of 2025

learned Magistrate, FIR was registered in Crime No.101 of 2010 on 28.12.2010 against the accused 1 and 2 for the offence under Sections 406, 409, 420, 468, 477 r/w 34 of IPC under Ex.P.7.

20. In Ex.P.8 complaint, the complainant has alleged that the first accused had not credited the amount received from the other companies as agreed by him; that they have forged the signature of the complainant and misappropriated the amounts and that they have cheated him.

21. It is the case of the complainant that the accused by committing forgery, fabrication of accounts and cheating, swindled the complainant's money and after registration of FIR, the accused approached the complainant through Mediators and relatives and entered into a compromise on 29.12.2010 and agreed to pay a sum of Rs.4,42,989/- after deducting a sum of Rs.40,000/-; that the accused have paid a sum of Rs.1,10,000/- in cash and the first accused issued a post dated cheque, dated 15.05.2011 for Rs.3,32,989/- towards remaining balance and that since the cheque was dishonored, the above complaint came to be lodged.



CRL.A(MD).No. 742 of 2025

22.As already pointed out, the complainant has produced and exhibited the agreement, dated 29.12.2010 as Ex.P.1. But, according to the defence, the complainant with the help of CCB Police, who registered the case, threatened the accused that they may be sent to jail and coerced them to pay Rs.1,20,000/- and forcibly obtained the disputed cheque from the first accused and also took the signature of the accused in Rs.20/- stamp paper.

23. As rightly pointed out by the learned counsel for the complainant, the accused in their reply notice or during cross examination of P.W.1 have not denied or disputed the Ex.P.1 agreement. It not their defence that Ex.P.1 was fabricated with the help of signed blank stamp paper obtained from them. Moreover, as rightly contended by the learned counsel for the complainant, FIR was not registered on the basis of the complaint given by the complainant, but as per the directions of the jurisdictional Magistrate, Ex.P.7 FIR came to be registered. During cross examination of P.W.1, he would say “மாஸ்டர் பார்மஸ் என்ற நிறுவனத்திற்கும் எச்சல் இண்டஸ்ட்ரிஸ் என்ற நிறுவனத்திற்கும் கம்ப்யூட்டர் பேப்பர்கள் சப்ளை செய்யப்பட்ட வகையில் வரவேண்டிய பணத்தில் 2வது எதிரியே பெற்றுக்கொண்டார் என்பதற்காக எதிரியின் மீதும் அவரது மனைவியின் மீதும் நகர குற்ற பிரிவில் இரண்டு எதிரிகள் மீது நான் புகாரின் பேரில் முதல் தகவல்

12/24



CRL.A(MD).No. 742 of 2025

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அறிக்கை பதிவு செய்யப்பட்டது என்று சொன்னால் சரிதான். எதிரிகள் மீது பதிவு செய்யப்பட்ட அந்த வழக்கில் போலீசாரால் 2 எதிரிக்கும் விசாரணைக்காக அழைக்கப்பட்டிருந்தார்கள். எதிரிகள்மீது மு.த.அ. பதிவு செய்யப்பட்ட பின்னர் நானும் 2வது எதிரியும் சமாதானம் பேசியவகையில் எதிரியிடமிருந்து எனக்கு வரவேண்டிய தொகையான ரூ.4,82,989/-ல் ரூ. 40,000/- குறைத்துக்கொண்டு மீதத்தொகை எதிரி தருவதாக ஒப்புக்கொண்டு அதில் ரூ.1,10,000/-ஐ நான் ரொக்கமாக 2வது எதிரியிடமிருந்து பெற்றுக்கொண்டு, மீதத் தொகையான ரூ.3,32,989/-க்கு இவ்வழக்கு காசோலை கொடுத்தார். மேற்சொன்ன சமாதானம் ஏற்பட்ட அன்றே எதிரிகளுக்கும் எனக்கும் ஏற்பட்ட உடன்படிக்கையின்படி வழக்கு காசோலை தொகை எனக்கு கிடைத்த பின்னர் எதிரிகள்மீது பதிவு செய்யப்பட்ட வழக்கின் புகாரினை நான் வாபஸ் பெற்றுக்கொள்வதாக உடன்படிக்கை செய்துகொண்டு நான் ஒரு தரப்பாகவும் எதிரிகள் ஒரு தரப்பாகவும் கையொப்பம் செய்துகொண்டோம்.

24. As rightly pointed out by the learned counsel for the complainant, even after the above clear cut evidence of the complainant, Ex.P.1 agreement was not specifically disputed and not even a suggestion was put to P.W.1 disputing the same. No doubt, as rightly pointed out by the learned counsel for the accused, P.W.1 in his further cross examination would admit that he



CRL.A(MD).No. 742 of 2025

was aware about the complaint given to Chief Minister Special Cell by the accused against the Inspector of Police as if he was acting illegally and that the accused sent a legal notice directing the complainant not to encash the cheque and that subsequently, they have sent an intimation to the bank not to honor the cheque.

25. No doubt, while concluding the cross examination, it was suggested by the defence that the cheque in dispute was obtained from the first accused being a woman by threatening her, but the same was denied by the complainant.

26. As already pointed out, in Ex.P.1 agreement, dated 29.12.2010, wherein the post-dated cheque, dated 15.05.2011 for Rs.3,32,989/- issued by the first accused was referred. Admittedly, the first accused sent a legal notice on 06.05.2011 to the complainant alleging that Rs.1,10,000/- cash and disputed cheque were obtained from her forcibly.

27. As rightly contended by the learned counsel for the complainant, the accused have not sent any legal notice immediately after the alleged threatenings and obtaining of Rs.1,10,000/- cash and disputed cheque



CRL.A(MD).No. 742 of 2025

forcibly. Though the accused have alleged that a complaint was sent to the Chief Minister Cell, they have not elaborated anything further.

28. It is not the case of the defence that they have sent a complaint to the higher officials, complaining about the conduct of the Inspector of Police, CCB and that there was no action. It is also not their case that since there was no action from the higher police official, they have approached the jurisdictional Court by filing petition under Section 156(3) of Cr.P.C or private complaint under Section 200 Cr.P.C.

29. As rightly pointed out by the learned counsel for the complainant, just eight days before the cheque date, the first accused sent the legal notice on 06.05.2011 under Ex.P.8 and the above would go to show that the defence of the accused is only an after thought.

30. As rightly pointed out by the learned counsel for the accused, in Ex.P.1 agreement, the complainant has undertaken to withdraw the complaint and also to take necessary steps to refer the case in Crime No.101 of 2010 on the file of the CCB, Madurai. But as rightly pointed out by the learned counsel for the complainant, the complainant after receiving



CRL.A(MD).No. 742 of 2025

Rs.1,10,000/- given in cash and also the post-dated cheque dated 15.05.2011 issued by the first accused has stated that in case of receiving the amount of Rs.3,32,989/- from the second party as agreed, he undertakes to withdraw the criminal case registered in Crime No.101 of 2010 on the file of the CCB, Madurai and to take necessary action for referring the case.

31. The learned Magistrate, by considering the above recitals in Ex.P.1 agreement, has observed that there was an undue influence from P.W.1 and that the undertaking given for taking steps to withdraw the criminal case is against the public policy and on that basis came to a finding, “the execution of Ex.P.1 failed miserably.”

32.As already pointed out, the complaint was for cheating and misappropriation. Even after cognizance, the offence under Section 420 IPC can be compounded with court permission. So, there is no bar to compounding at FIR stage and withdrawing the complaint. Hence the learned Judicial Magistrate's observation lacks substance and is liable to be rejected.



CRL.A(MD).No. 742 of 2025

33. The learned counsel for the accused would submit that the complaint filed under joint liability on both the accused is not maintainable, that there is no infirmity or indivisible liability fixed on the first respondent and hence, the same cannot be stated as legally enforceable debt and that therefore, the dismissal of the complaint against both the accused cannot be faulted.

34. The learned counsel would rely on a decision of Hon'ble Supreme Court in the case of *Alka Khandu Avhad Vs. Amar Syamprasad Mishra* reported in **AIR 2021 SC 1616** and the relevant passages is extracted herein :

“7. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the



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bank account is jointly maintained and that he was a signatory to the cheque.

8. ..

8.1. Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that “Company” means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within “other association of individuals” and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be “other association of individuals”. Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 r/w Section 141 of the NI Act. The criminal complaint filed against the appellant for the



CRL.A(MD).No. 742 of 2025

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offence punishable under Section 138 r/w Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside.

35. In the above decision's case, the complaint under Section 138 r/w 141 of NI Act was filed against the appellant and her husband alleging joint liability. The appellant therein filed a petition to quash the criminal complaint against her on the ground that the appellant was neither a signatory to the cheque dishonoured nor there was a joint bank account and that since the High Court refused to quash the criminal complaint, she approached the Hon'ble Supreme Court. The Hon'ble Apex Court, by holding that Section 141 of NI Act cannot be made applicable to individuals and since the appellant was not a signatory to the cheque, quashed the complaint as against the appellant.

36. The learned counsel for the accused would further submit that the alleged debt amount is not legally enforceable against the first accused, since no registered agreement was relied and hence, the presumption cannot be drawn against the first accused. He would further submit that it is for the complainant to prove the alleged agreement, dated 29.12.2010, since he relied on the same.



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37.As rightly contended by the learned counsel for the complainant, the agreement under Ex.P.1 is not a document requiring compulsory registration. Moreover, as already pointed out, the accused has not specifically denied or disputed the Ex.P.1 agreement. Moreover, it is legal for a person (drawer) to issue a cheque from their own account to cover another person's liability and the drawer is responsible, if the cheque is dishonored, under Section 138 of NI Act. Issuing a cheque for a third party's debt is considered a legally enforceable liability of the drawer.

38.The learned counsel for the complainant would rely on a decision of Hon'ble Supreme Court in ***ICDS Ltd., Vs. Beena Shabeer and another*** reported in ***(2002) 6 Supreme Court Cases 426*** and the relevant passages is extracted hereunder :

The issue as regards the co-extensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of [Section 138](#) of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of



*application of the provisions of **Section 138** of the Act: 'Any cheque' and 'other liability' are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of **Section 138** of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus does not lend any assistance to the contentions raised by the respondents.*

39. As rightly contended by the learned counsel for the complainant, even assuming that the disputed cheque was given as security for the amount referred in Ex.P.1 agreement, Section 138 of NI Act is very much applicable. The mere labeling of cheque as security does not automatically exempt from the provision of the NI Act.

40. It is pertinent to note that a cheque issued for future liability becomes enforceable under Section 138 of NI Act, if the liability becomes due and the drawer defaults before presentation. The Hon'ble Supreme Court in **Sripati Singh Vs. State of Jharkhan** reported in **2021 SCC Online SC**



CRL.A(MD).No. 742 of 2025

1002, has held that a cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance and that there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque.

41.The learned trial Judge, by observing that the accused raised a probable defence that the complainant, exercising undue influence on the police, obtained the disputed cheque from the accused, held that the first accused has rebutted the presumption. Considering the entire materials available on record and the settled legal position, this Court has no hesitation in holding that the finding of the learned Magistrate is perverse and as such, the same is liable to be set aside. Consequently, this Court concludes that the impugned judgment of acquittal is liable to be set aside and that the first accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act.

42. 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



CRL.A(MD).No. 742 of 2025

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.

43. Taking into account the nature of the offence and the cheque amount, the first accused is sentenced to pay a fine of Rs. 6,65,978/- (twice the cheque amount) within a period of two months from the date of receipt of copy of this judgment, in default, to undergo simple imprisonment for 6 months. Upon payment, the trial court shall disburse the fine as compensation to the complainant under Section 357 Cr.P.C.

44. The Criminal Appeal is accordingly allowed.

19.12.2025

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23/24



WEB COPY



CRL.A(MD).No. 742 of 2025

K.MURALI SHANKAR,J.

das

To

- 1.The Judicial Magistrate No.I,
Fast Track Court (Magistrate Level)
Madurai.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
CRL.A(MD).No. 742 of 2025

19.12.2025