Case Citation: (2026) ibclaw.in 2697 HC

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 16.04.2026

ORDER PRONOUNCED ON : 28.04.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP(MD).Nos. 17765, 17767, 17768 & 17770 of 2025
and Crl.MP(MD).Nos.14582, 14584, 14586 and 14587 of 2025

S.Gunasundari ... Petitioner in all Crl.O.Ps.

Vs.

Karthika V.Laxmi ... Respondent in all Crl.O.Ps.

Common Prayer in all Crl.O.Ps. : Criminal Original Petitions filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records and quash the proceedings in S.T.C.Nos.625, 626, 627 & 628 of 2025 on the file of the learned Judicial Magistrate No.II, Kulithalai insofar as the petitioner is concerned.

For Petitioner in all Crl.O.Ps. : Mr.M.Rajaraman

For Respondent in all Crl.O.P.S : Mr.S.Jeyavel

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C O M M ON O R D E R

These petitions have been filed by the accused in STC.Nos. 625 to 628 of 2025 on the file of the Judicial Magistrate No.II, Kulithalai seeking to quash the proceedings initiated under Section 138 Negotiable Instruments Act which have been initiated by the respondent herein.

(A).Facts leading to the filing of these petitions are as follows:

2.The accused (Mrs.Gunasundari)/petitioner is the legally wedded wife of one Senthil Kumar. The defacto complainant claims that she had married the said Senthil Kumar as the second wife without having knowledge about the subsisting first marriage.

3.It is alleged that Senthil Kumar had borrowed a huge sum of Rs.5 crores from the defacto complainant (Karthika V.Laxmi). The said Senthil Kumar is said to have collected huge amount from the complainant and promised to sell an extent of property. The said Senthil Kumar is also alleged to have abused the complainant and took away gold jewellery.

4.The complainant herein had lodged an F.I.R in Crime No.780 of 2024 before the Inspector of Police, Kulithalai Police Station, Karur District as against the said Senthil Kumar and two other persons for the alleged offences under Sections 296 (b), 115(2), 329(4), 303(2), 351(2) of BNS 2023 read with Section 4 of TNPHW Act, 2002.

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5.The said Senthil Kumar and two others had filed Crl.OP(MD).No. 22229 of 2024 before this Court seeking anticipatory bail. The said application was disposed of by this Court on 03.01.2025 granting anticipatory bail to two other accused persons and referring Senthil Kumar and the complainant for mediation.

6.It is alleged that the mediation was not successful. However, at the end of the mediation proceedings, the legally wedded wife of the said Senthil Kumar (accused) is said to have handed over four cheques totally to a value of Rs.5 crores to the complainant on 14.03.2025 at about 6.00 p.m in the campus of Madurai Bench of Madras High Court towards settlement of claim for money taken away by her husband.

7.The cheques were presented by the complainant for collection on various dates and they have been returned on the ground of 'insufficient funds'. The four separate statutory notices have been issued in time and a reply notice was also sent by the accused on 01.07.2025 claiming that she had never handed over four cheques to the complainant but her husband (Senthil Kumar) had stealthily removed the cheques from their position and handed over to the complainant.

8.It was further contended in the reply that there was no legally enforceable debt between the accused and the complainant. In the reply notice, the accused had called upon the complainant to return the bounced

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cheque along with four blank promissory notes. In view of the reply notice, the complainant had initiated proceedings under Section 138 of Negotiable Instruments Act in S.T.C.Nos.325 to 328 of 2025 before the Judicial Magistrate No.II, Kulithalai.

(B).Contentions of the learned counsel appearing on either side are as follows:

9.The learned counsel appearing for the petitioner submitted that the petitioner had never borrowed any amount from the complainant. The cheques that were in her custody have been taken away by her husband and handed over to the complainant in a stealthy manner. The mediation proceedings were only between her husband Senthil Kumar and the complainant and she had never handed over the cheques.

10.The learned counsel appearing for the petitioners had further submitted that when the debts did not crystallize or quantify, the ingredients of Section 138 of N.I.Act would not get attracted. He had further submitted that the character of debt is vague and ambiguous and therefore, it does not satisfy the requirements of the term, debt as contemplated under N.I.Act. According to him, when the debt is not quantified, the complaint filed under N.I.Act is not maintainable in law and on facts. He had relied upon the legal notices issued by the respondent herein wherein the quantum of amount has not been specifically mentioned according to him.

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11.The learned counsel appearing for the petitioner had relied upon a decision of the Hon'ble Supreme Court reported in ***(2008) 2 SCC 321 (Rahul Builders Vs. Arihant Fertilizers and Chemicals and another)*** and contended that when the demand did not only represent the unpaid amount under the cheque but also other incidental expenses by costs and interests, notice could only be treated as a vague notice and therefore, he prayed for quashing of the proceedings.

12.Per contra, the learned counsel appearing for the respondent/complainant submitted that the said Senthil Kumar had got married to the complainant at Malaysia in December 2019 and they are living together in the same street where the petitioner herein has been living. He had further submitted that the specific amount has been mentioned in the cheque and the statutory notices have been issued in strict compliance with Section 138 of N.I.Act. According to him, the issuance of cheque, dishonour of cheques, notice demanded and payment of cheques and intimation of liability as against the cheque and non-payment of cheque have been found by the Judicial Magistrate and he has proceeded to take cognizance. In such circumstances, the defence of the petitioner that she had not handed over the cheque or it was stealthily removed from the petitioner by the husband, are all matter of factual dispute and they have to be proved only during trial by

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letting in evidence by the petitioner herein. He also relied upon the decisions of the Hon'ble Supreme Court reported in ***2026 SCC Online SC 533 (Renuka Vs. State of Maharashtra and another)*** and ***2025 SCC Online SC 2897 (Sri Om Sales Vs. Abhay Kumar Alias Abhay Patel and another)*** in support of his contentions.

13.Heard both sides and perused the material records.

(C).Discussion:

14.The four cheques issued by the petitioner, four legal notices and reply notice of the petitioner have been filed before this Court. A perusal of the same reveals that the accused is alleged to have handed over four cheques on 14.03.2025 at about 6.00 p.m in the campus of the Madurai Bench of Madras High Court after failure of the mediation proceedings. The statutory notice further points out that this amount reflects the amount received by the husband of the accused namely Senthil Kumar. The notice further reveals that the cheques were presented and they were dishonoured on the ground of insufficient funds.

15.A consolidated reply notice has been sent by the petitioner/accused on 01.07.2025.Paragraph Nos.16 and 17 of the said reply notice are extracted as follows:

> *"16.My client states that the above being the position, the second of you had convinced that first of you, during the period*

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of mediation, informing that she would relieve the first of you from the case for which she demanded blank cheques and promissory notes from my client. The first of you, given his cunningness and craftiness, had demanded a whopping sum of Rs.2 lakhs from my client towards court expenses. Since my client did not have such a staggeringly huge amount readily on hand at that time, she wanted and asked for a week's time for arranging the said sum through her siblings. But the first of you senselessly and without understanding the real difficulties involved in mustering such a huge amount, had urged my client to somehow muster the said sum since the said sum is to be paid to the mediation centre.

17.My client states that when she was in a fix without knowing what to do, the first of you, who is more clever than wise, had come out with his devilish idea, saying that he has a friend who is lending monies and if only my clients parts with 4 undated blank cheques and 4 undated blank promissory notes, he would manage to muster the amount required. As usual, gullibly believing the words of the first of you, on 20.03.2025, my client had given him her 4 undated blank cheques and 4 undated blank promissory notes. As if he was waiting only for this act on the part of my client, the first of you vanished from the scene. True to his criminal nature, the first of you had changed his phone number so as not to be contacted by my client, as his devilish purpose was served."

16.From the reading of the reply notice, it is clear that the petitioner is said to have handed over four undated blank cheques and four undated

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promissory notes to her husband on 20.03.2025. Now the contention of the learned counsel for the petitioner is that the debt has not been quantified or crystallized and there is no legally enforceable debt and therefore, the summary trial proceedings under Section 138 N.I.Act have to be quashed. A perusal of the cheque and the statutory notice issued under Section 138 of N.I.Act clearly reveal that specific amounts have been mentioned. Whether there was any legally enforceable debt for which those cheques were issued or not is a matter of trial.

17.The Hon'ble Supreme Court in a decision reported in ***2022 SCC Online SC 513 (Rathish Babu Unnikrishnan Vs. State (NCT of Delhi) and another)*** in Paragraph Nos.17,18 and 19 has held as follows:

> *17. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.*
>
> *18. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is*

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ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

18.The Hon'ble Supreme Court in a judgment reported in ***2025 SCC Online SC 2897 (Sri Om Sales Vs. Abhay Kumar Alias Abhay Patel and another)*** in Paragraph Nos.12, 13 and 18 has held as follows:

"12. In the instant case, the complaint clearly spells out the necessary ingredients for commission of an offence punishable under Section 138 of the N.I. Act. It is also alleged in the complaint that the cheque was issued in the discharge of liability qua goods supplied by the complainant. The cheque was brought on record along with the dishonor memo of the bank concerned which indicated that it was returned unpaid for

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insufficient funds in the drawer's account. The complaint also indicated that complainant had served notice of demand within the specified period and despite service of notice of demand, no payment was made. In such circumstances, the necessary ingredients of an offence punishable under Section 138 of N.I. Act, were disclosed by the complaint warranting issuance of process to the accused (i.e., the first respondent).

13. However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section 139 of the N.I. Act, there is a presumption 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. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/ revisional court.

18. Having regard to the aforesaid decisions of this Court as also the provisions of Section 139 of the N.I. Act, we are of the considered view that the High Court committed an error by conducting a roving enquiry, at the pre-trial stage, as regards the cheque being issued for the discharge of debt or liability. Such an exercise, in our view, was not merited in exercise of power under Section 482 of the Code more so when the complaint allegations disclosed that the cheque was issued for discharge of liability. As fulfillment of the necessary ingredients

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of Section 138 N.I. Act are prima facie made out from the complaint allegations, in our view, neither the summoning order nor the complaint could have been quashed by the High Court at the pre-trial stage."

19.The Hon'ble Supreme Court in a judgment reported in ***2026 SCC Online SC 533 (Renuka Vs. State of Maharashtra and another)*** in Paragraph No.8 has held as follows:

"8.*It is to be borne in mind that at the stage of issuance of process by the learned Metropolitan Magistrate, what is prima facie required to be seen is the issuance of cheque by the drawer in favour of the complainant, its dishonour on presentation by the payee, issuance of statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. If the drawer does not dispute issuance of such a cheque nor does he deny his signature on the dishonoured cheque, the statutory presumption as contemplated under Section 139 of the N.I. Act comes into play. As a result, the burden would shift on the drawer of the cheque to prove that the cheque was not issued for any legally enforceable debt or liability. This exercise has to be undertaken during the trial either by relying upon the material brought on record by the complainant or by the drawer leading evidence in rebuttal. At the stage of issuance of process, the statutory presumption under Section 139 of the N.I. Act cannot be dislodged in a summary manner merely by contending that the cheque issued was not for any legally enforceable debt or liability."*

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20.In view of the judgments of the Hon'ble Supreme Court cited supra, when the issuance of the cheque in favour of the complainant, the dishonour, issuance of statutory notice and filing of the complaint within the prescribed statutory period have been satisfied, the statutory presumption under Section 139 of N.I.Act comes into play. Therefore, the burden would automatically get shifted to the drawer of the cheques to prove that the cheques were not issued for any legally enforceable debt or liability. In such circumstances, the issue relating to legal enforceability of debt has to be decided only during trial, by letting in evidence. Therefore, such a contention cannot be considered for quashing of the criminal proceedings at the pre-trial stage.

(D).Conclusion:

21.In view of the above said deliberations, there are no merits in the petitions and all the Criminal Original Petitions stand dismissed. The trial Court is directed to dispose of the proceedings without being influenced by any one of the observations made by this Court. Consequently, connected miscellaneous petitions are closed.

28.04.2026

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR,J.

After pronouncing orders of this Court, the learned counsel appearing for the petitioner made a request that the presence of the petitioner may be dispensed with and the time frame may be fixed for completion of the trial.

2. Considering the above said facts, the personal appearance of the petitioner/accused shall be dispensed with by the trial Court unless specifically directed by the trial Court and the trial Court is directed to dispose of the petitions on or before **31.10.2026**.

28.04.2026

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R.VIJAYAKUMAR, J.

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To

The Judicial Magistrate No.II, Kulithalai

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