IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.06.2026
Pronounced on	25.06.2026

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Crl.A.No.1003 of 2022

K.Manokaran,
S/o.Kaliappa Asari ... Appellant

Vs.

P.M.Krishnamoorthy,
S/o. Late Murugesan ... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, 1973, to call for the records relating to order dated 12.07.2022 made in C.A.No.16 of 2020 on the file of the Principal Sessions Court, Namakkal reversal of the Judgment dated 08.01.2020 made in STC.No.293 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode and set aside the same by allowing the Criminal Appeal.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.A.Nileshram
Legal Aid Counsel

JUDGMENT

The successful complainant before the Trial Court, whose complaint filed under Section 138 of the Negotiable Instruments Act, 1881 was allowed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode *vide* Judgment dated 08.01.2020 in STC.No.293 of 2017, is before this Court. The said Judgment of the learned Judicial Magistrate, Fast Track Court, Tiruchengode was reversed on an appeal filed by the Respondent/Accused in C.A.No.16 of 2020 by the learned Principal Sessions Judge, Principal Sessions Court, Namakkal *vide* Impugned Judgment dated 12.07.2022.

2. Operative portion of the Impugned Judgment dated 12.07.2022, passed by the learned Principal Sessions Judge, Namakkal in C.A.No.16 of 2020, reversing the conviction of the Respondent/Accused by the Trial Court in its Judgment dated 08.01.2020 in STC.No.293 of 2017 reads as follows:-

> *"12. It is to be noted that earlier aforesaid loan transaction of the year 2007 was also not disclosed by the respondent/complainant in his complaint. Thus, the respondent/complainant had not approached the Court with clean hands. No prudent man would lend huge amount viz; Rs.10,00,000/- without obtaining security P.W.1 viz; respondent/ complainant had admitted that he had provided loan of Rs.10,00,000/- without obtaining security. He would further admit that the contents of the cheque were not known to him. The relevant portion of his admission reads as follows:*

காசோலையில் என்ன விபரம் கண்டு எழுதப்பட்டிருந்தது என்ற விபரம் எனக்கு தெரியாது என்றால் சரிதான்.

13. On bare perusal of the impugned cheque would disclose the contents and the signature in it are not that of same person. P.W.1 in his cross examination had admitted the existence of difference in stroke between the signature and the wordings found in the impugned cheque. The relevant portion of his admission reads as follows:

வா.சா.ஆ1ல் எதிரி கையெழுத்து அழுத்தமாகவும் மற்ற வாசகங்கள் லேசாகவும் எழுதப்பட்டுள்ளதா என்றால் அழுத்தி எழுதினால் அவ்வாறு இருக்கும். இரண்டிற்கும் வித்தியாசம் உள்ளது.

14. It is not the case of Respondent/Complainant that the blank cheque with signature was issued by the Appellant/respondent as a security authorizing him to fill the same. The respondent/complainant would state that he had lended Rs.10,00,000/- to the appellant/respondent on availing loan from third party. Further, such loan lender was not examined on the part of Respondent/Complaint to substantiate his contention. Moreover, such plea of availing loan from third party in order to lend money to the appellant/respondent was also not found in the complaint. In contra, the complaint would disclose as through amount of Rs.10,00,000/- was paid by the respondent/complainant by himself.

15. On cumulative analysis of evidence on record, this Court held that the respondent/complainant had not proved the existence of legally enforceable debt against the Appellant/Accused beyond reasonable doubt and hence, the judgement of conviction passed by the trial Court in S.T.C.293 of 2017 dated 08.01.2020 is to be reversed."

3. The challenge to the Impugned Judgment of the Appellate Court is primarily on the ground that the Appellate Court has erroneously reversed the conviction of the Respondent/Accused before the Trial Court.

4. Arguing on behalf of the Appellant/Complainant, the learned counsel submitted that the findings of the Appellate Court are contrary to the law laid down by the Hon'ble Supreme Court in **Bir Singh** Vs. **Mukesh Kumar**, (2019) 4 SCC 197.

5. The learned counsel for the Appellant/Complainant further submitted that the presumption under Section 139 of the Negotiable Instruments Act, 1881, had not been rebutted by the Respondent/Accused before the Trial Court resulting in conviction of the Respondent/Accused, which the Appellate Court had erroneously reversed. It is submitted that the Judgment of the Trial Court was a well-reasoned Judgment.

6. It was further submitted that despite the Respondent/Accused having admitted to his signature in Ex.P1-Cheque and the Respondent/Accused having not replied to Ex.P4-Statutory Notice dated 18.03.2015 under Section 138 of the Negotiable Instruments Act, 1881, the Appellate Court had erroneously reversed the well-considered Judgment of the Trial Court.

7. The learned counsel for the Appellant/Complainant also drew the attention to the following Judgments of the Hon'ble Supreme Court in support of his submissions:-

i. **Sri Sujies Benefit Funds Limited** Vs. **M.Jaganathuan**, (2024) 246 Comp Cas 486 : 2024 SCC OnLine SC 1942.
ii. **Sanjabij Tari** Vs. **Kishore S.Borcar and Another**, (2025) 259 Comp Cas 685 : 2025 SCC OnLine SC 2069
iii. **B.M.Basavaraj** Vs. **Srinivas S.Datta** in **Criminal Appeal No.306 of 2016 (arising out of SLP Criminal) No.1587 of 2013,** CDJ 2016 SC 1007.
iv. **Rohitbhai Jivanlal Patel** Vs. **State of Gujarat and another**, (2019) 18 SCC 106.
v. **Bharat Barrel & Drum Manufacturing Company** Vs. **Amin Chand Payrelal,** (1999) 3 SCC 35.

8. Per contra, the learned Legal Aid Counsel for the Respondent/Accused submitted that the Judgment of the Appellate Court is well-reasoned and that the decision of the Trial Court had been rightly reversed. It was submitted that the Impugned Judgment does not warrant any interference by this Court.

9. The learned Legal Aid Counsel for the Respondent/Accused pointed out certain inconsistencies in the evidence of the Appellant/Complainant

before the Trial Court. It was submitted that during Chief-Examination, the Appellant/Complainant had stated that the Respondent/Accused himself had filled up the Cheque incorporating all the particulars, whereas, during Cross-Examination, he has stated to the contrary.

10. Further, it was submitted by the learned Legal Aid Counsel for the Respondent/Accused that the Appellant/Complainant had admitted that there was no subsisting loan liability between the Appellant/Complainant and the Respondent/Accused prior to the date of issuance of the Cheque. Therefore, according to the learned Legal Aid Counsel for the Respondent/Accused, the findings of the Appellate Court do not merit interference.

11. The learned Legal Aid Counsel for the Respondent/Accused further submitted that the Respondent/Accused and the Appellant/Complainant were known and related to each other and that the Respondent/Accused was engaged in a hardware business and the Appellant/Complainant running a lathe shop, and that there had been monetary/loan transactions between them during the year(s) 2006-2007. It was contended that the hand loans availed earlier were secured by two

cheques, one of which was misused and presented for collection on 14.03.2015, which came to be dishonoured.

12. It was further submitted that during Cross-Examination, the Appellant/Complainant had also admitted that he had no independent financial means to advance a sum of Rs.10,00,000/- to the Respondent/Accused. It was only during trial for the first time in Cross-Examination that the Appellant/Complainant stated that the said amount had been borrowed from a third party and advanced to the Respondent/Accused as a hand loan. Therefore, according to the learned Legal Aid Counsel for the Respondent/Accused, the Appellant/Complainant lacked financial capacity as admitted during Cross-Examination.

13. In this regard, reliance was placed on the following answers elicited during Cross-Examination conducted on 26.02.2018:-

Tamil Translation	English Translation
நான் வெளியில் கடன் வாங்கி எதிரிக்கு கடன் கொடுத்தேன். நான் கடன் கொடுத்தவை ரூ.1,000, ரூ.500, 100 நோட்டுகள். அவற்றில் ரூ.1,000 நோட்டுகள் எத்தனை, ரூ.500 நோட்டுகள் எத்தனை என்றால்	I borrowed money from outside and lent it to the Respondent. The money I lent was in Rs.1000/-, Rs.500/- and Rs.100/- notes. I do not remember how many of them were Rs.1000/- notes and how many of them were Rs.500/- notes. I have a

ஞாபகம் இல்லை. நான் லேத் பட்டறை வைத்துள்ளேன். தொழில் கடந்த 3 வருடங்களாக மந்தமாக உள்ளது.	lathe workshop. Business has been stagnant for the last 3 years.

14. The learned Legal Aid Counsel for the Respondent/Accused further submitted that as per Section 269SS of the Income Tax Act, 1961, cash transactions beyond Rs.20,000/- are impermissible and therefore, the Appellant/Complainant ought not to have paid the said amount in cash. It is further stated that the Cheque in question bears seven digit Cheque Numbers, whereas, during the period between 2007 and 2015, Cheques generally carried 12 digit Cheque Numbers.

15. I have considered the arguments advanced by the learned counsel for the Appellant and the learned Legal Aid Counsel for the Respondent.

16. Before proceeding to deal with the merits of the case, it will be useful to refer to the following case laws on the subjects.

17. The scope of the Appellate Court has been beautifully explained by the Hon'ble Supreme Court in **Rohitbhai Jivanlal Patel** Vs. **State of Gujarat and another,** (2019) 18 SCC 106.

18. There, the Hon'ble Supreme Court held that the Principles aforesaid are not of much debate. In other words, ordinarily, the Appellate Court will not be upsetting the Judgment of acquittal, if the view taken by the Trial Court is one of the possible views of matter and unless the Appellate Court arrives at a clear finding that the Judgment of the Trial Court is **perverse** i.e., **not supported by evidence on record** or **contrary to what is regarded as normal or reasonable** or **is wholly unsustainable in law.** Such general restrictions are essentially to remind the Appellate Court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a Judgment of acquittal further strengthens such presumption in favour of the accused.

19. The Hon'ble Supreme Court observed that such restrictions need to be visualized in the context of a particular matter before the Appellate Court and the nature of inquiry therein.

20. The Hon'ble Supreme Court also observed that the above rigour cannot be applied to offence under Section 138 of the Negotiable Instruments Act, 1881 in view of the presumption under Section 139 of the Negotiable Instruments Act, 1881.

21. Text of the relevant portion from the Judgment of the Hon'ble Supreme Court in **Rohitbhai Jivanlal Patel case** (referred to *supra*) is extracted below:-

> ***"12. ….. The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused."***

22. Thus, it is evident that the presumption under Section 139 of the Negotiable Instruments Act, 1881 can be rebutted by bringing probable defense and that there was no preponderance of probabilities of the Cheque having been issued by the drawer for discharging any debt or any other liability either in whole or in part as is contemplated under Section 138 or Section 139 of the Negotiable Instruments Act, 1881.

23. Paragraph 20 in **Rohitbhai Jivanlal Patel case** (referred to *supra*), the Hon'ble Supreme Court has also observed as under by referring to Section 118 of the Negotiable Instruments Act, 1881 which deals with presumption:-

> ***"20. ….. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not."***

24. The burden upon the person who has issued the Cheque to prove the non-existence of the consideration can be discharged either directly or by bringing on record the preponderance of probabilities by reference to the circumstances upon which the Respondent/Accused relies.

25. Thus, such a person is entitled to rely upon all the evidence led in the case including that of the Complainant as well.

26. If such a person fails to discharge the initial onus of proof by showing the non-existence of the consideration, then the person who had been issued with the Cheque is entitled to presumption under Section 139 of

Negotiable Instruments Act 1881. Such a person would invariably be held entitled to the benefit of presumption arising under Section 118(a) of the Negotiable Instruments Act, 1881 in his favour.

27. In **Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal,** (1999) 3 SCC 35, the Hon'ble Supreme Court held as under:-

> *"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The Court may not insist upon the defendant to disprove the*

existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. ***The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff****. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."*

28. In **Bir Singh** Vs. **Mukesh Kumar,** (2019) 4 SCC 197, the Hon'ble Supreme Court held as under:-

"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.

35. .....

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."

29. In **Sri Sujies Benefit Funds Limited** Vs. **M.Jaganathuan,** 2024 SCC OnLine SC 1942, the Hon'ble Supreme Court held as under:-

*"16. ..... **When the respondent does not dispute that he has handed over the cheques or signed on them, it was incumbent upon him, the moment he claims the amounts were repaid to the appellant to have either taken back the cheques or instructed the bank concerned to not honour the concerned cheques**. However, closure of the bank accounts within a few weeks of issuance of the cheque raises serious questions about the conduct and intent of the respondent. The learned trial court, in our view, has meticulously gone into each and every issue while holding in favour of the appellant and the appellate court as also the High Court have only gone by scrutiny of the interest amount mentioned on the*

pronote and effected in the statement of accounts of the appellant and the evidence produced before the appellate court by the respondent to indicate that some repayment(s) was/were made. This, according to us, is erroneous and cannot be sustained."

30. In **B.M.Basavaraj** Vs. **Srinivas S.Datta,** CDJ 2016 SC 1007, the Hon'ble Supreme Court held as under:-

"9. Section 139 of the Act reads as under:-

139. **Presumption in favor 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. Once the appellant files a complaint on the basis that he was holding the aforesaid cheques as holder in due course which were admittedly given by the respondent to the appellant and the said cheques were dishonoured when they were presented for encashment to the Bank and he, further, is able to establish that due notice of the dishonour of the said cheques was given to the respondent as provided in law, there was a clear presumption in favour of the appellant that the money was due under the said cheques. ***It may be noted that there is no defence to the effect that the cheques were not issued by the***

respondent or the cheques do not bear its signatures or they were not presented properly for encashment.

11. .....

12. We are, therefore, of the opinion that the dishonour of the aforesaid cheques in the aforesaid manner clearly establish that the amount was due to the appellant and it is the respondent which has failed to discharge its obligation. This is more so, when in the legal notice, specific averment was made by the appellant that the appellant had discharged its obligation under the contract and only thereupon, the cheques were issued and the respondent had not even replied to the said notice. We, thus, set aside the orders of the courts below and hold that the respondent has committed an offence in terms of the provisions under Section 138 of the Act."

31. In **Rohitbhai Jivanlal Patel** Vs. **State of Gujarat and another,** (2019) 18 SCC 106, the Hon'ble Supreme Court held as under:-

"12. ..... The principles aforesaid are not of much debate. ***In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not***

supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law*. Such general restrictions are essentially to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of inquiry therein.* ***The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused****.*

17. ..... This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the

accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as 9 envisaged under Sections 118 and 139 of the NI Act.

20. *Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant.* ***When such a presumption is drawn, the factors relating to the want of***

documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.

21. On perusing the order of the trial court, it is noticed that the trial court proceeded to pass the order of acquittal on the mere ground of "creation of doubt". We are of the considered view that the trial court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient."

32. In **Sanjabij Tari** Vs. **Kishore S.Borcar and another,** 2025 SCC OnLine SC 2069, the Hon'ble Supreme Court held as under:-

"19. Recently, the Kerala High Court in P.C.Hari v. Shine Varghese has taken the view that a debt created by a cash transaction above Rs.20,000/- (rupees twenty thousand) in violation of the provisions of section 269SS of the Income-tax Act, 1961 (for short "IT Act, 1961") is not a "legally enforceable debt" unless there is a valid explanation for the same, meaning thereby that the presumption under section 139 of the Act will not be attracted in cash transactions above

Rs.20,000/- (rupees twenty thousand).

20. However, this court is of the view that any breach of section 269SS of the Income-tax Act, 1961 is subject to a penalty only under section 271D of the Income-tax Act, 1961. Further neither section 269SS nor 271D of the Income-tax Act, 1961 states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of section 269SS would not render the transaction unenforceable under section 138 of the Negotiable Instruments Act, or rebut the presumptions under sections 118 and 139 of the Negotiable Instruments Act, because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (rupees twenty thousand) is illegal and void and therefore does not fall within the definition of "legally enforceable debt" cannot be countenanced. Accordingly, the conclusion of law in P.C.Hari v. Shine Varghese is set aside.

21. .....

22. .....

23. .....

24. .....

25. .....

26. .....

27. .....

28. .....

29. Furthermore, the fact that the accused has failed to

reply to the statutory notice under section 138 of the Negotiable Instruments Act, leads to an inference that there is merit in the appellant-complainant's version. This court in Tedhi Singh v. Narayan Dass Mahant has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:

> *"10. The proceedings under section 138 of the Negotiable Instruments Act, is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. 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."

30. This court in M.M.T.C.Ltd. v. Medchl Chemicals and Pharma P.Ltd. has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability."

33. The presumption operates against an Accused under Section 139 of the Negotiable Instruments Act, 1881, is however rebuttable subject to the Accused making out a probable defense before the Trial Court by proving that the Cheque issued was neither issued for the discharge of a "debt" whether in whole or in part or for discharge of any other liability of the Accused or any other person.

34. If this initial burden of proof is discharged by an Accused before the Trial Court with proper evidence, the onus to prove the case beyond a reasonable doubt will shift to the Complainant under Section 139 of the Negotiable Instruments Act, 1881.

35. On the other hand, if an Accused fails to shift this initial burden of proof on the Complainant, the Complainant will be entitled to rely on the Cheque for convicting the Accused under Section 138 of the Negotiable Instruments Act, 1881.

36. Therefore, the point for consideration in this case is whether the Respondent/Accused can be said to have successfully shifted the burden on the Appellant/Complainant as required under Section 139 of the Negotiable Instruments Act, 1881, as an initial presumption was there under the aforesaid provision in favour the Appellant/Complainant.

37. The Appellate Court has reversed the decision of the Trial Court, convicting the Accused under Section 138 of Negotiable Instrument Act, 1881 primarily on the following reasons:-

a) Appellant/Complainant has not stated anything about the existence of the loan transaction in 2007 in Ex.P4-Statutory Notice dated 18.03.2015. Thus, it has been concluded that the complainant has not approached the Trial Court with clean hands.
b) No prudent man would lend Rs.10,00,000/- without obtaining security.
c) The Appellant/Complainant did not know the contents of Ex.P1-Cheque dated 03.03.2015.

d) Variance in the handwriting of the content of Ex.P1-Cheque dated 03.03.2015 and the signature are of two different persons.

e) Appellant/Complainant admitted the difference in the stroke between the sign and the wordings in Ex.P1-Cheque dated 03.03.2015.

f) Appellant/Complainant has not examined the persons who have lent the aforesaid amount for being lent to the Respondent/Accused rather Appellant/Complainant has stated in the complaint to having directly lent the Respondent/Accused.

38. The Appellate Court has thus held that the Appellant/Complainant has not proved legally enforceable debt.

39. In Ex.P4-Statutory Legal Notice dated **18.03.2015** issued under Section 138 of the Negotiable Instruments Act, 1881 to the Respondent/Accussed, the Appellant/Complainant has stated that he had lent a sum of **Rs.10,00,000/-** on **03.01.2015** to the Respondent/Accused and that the Respondent/Accused undertook to repay the same within a period of two months and had issued Ex.P1-Cheque dated **03.03.2015**, which, on presentation on **14.03.2015** was returned by the banker *vide* Ex.P2-Return Memo dated **17.03.2015**, resulting in issuance of Ex.P4-Statutory Legal Notice dated **18.03.2015** under Section 138 of the Negotiable Instruments Act, 1881 to the Respondent/Accused.

40. There was, however, no response to Ex.P4-Statutory Legal Notice dated **18.03.2015** from the Respondent/Accused. Thus, the Respondent/Accused took no meaningful steps to extricate himself to shift the initial burden cast under Section 139 of the Negotiable Instruments Act, 1881 on the Respondent/Accused to the Appellant/Complainant.

41. The defense of the Respondent/Accused during the course of Cross-Examination of the Appellant/Complainant was that the Appellant/Complainant desperately wanted his son Prabakaran to be married with the Respondent/Accused's sister-in-law, (i.e., the Respondent/Accused's wife's younger sister) and that the request was turned down by the father-in-law of the Respondent/Accused and therefore to pressurize the family of the Respondent/Accused to get the latter's sister-in-law to get married to Appellant/Complainant's son, the Appellant/Complainant presented Ex.P1-Cheque **03.03.2015**.

42. During the Trial, Respondent/Accused further deposed that after Ex.P4-Statutory Notice dated 18.03.2015 was issued, he approached the Appellant/Complainant along with his relatives and questioned him about the

threat in Ex.P4-Statutory Notice dated 18.03.2015, and that the Appellant/Complainant had allegedly replied and stated that the said Notice was a trick/subterfuge to pressure the Respondent/Accused and his father-in-law to approve the marriage proposal between the Appellant/Complainant's son and the Respondent/Accused's sister-in-law.

43. Mere assertion of an event without any independent evidence of a corroborating witness is not an evidence of fact. Such a statement was made for the first time during Trial. It has not been corroborated by an independent witness. Therefore, such assertion is not sufficient to distance himself from the presumption under Section 139 of the Negotiable Instrument Act, 1881. Therefore, such defense is to be disbelieved. Therefore, the decision of the Appellate Court reversing the decision of the Trial Court is to be set aside.

44. If according to the Respondent/Accused, Ex.P1-Cheque dated **03.03.2015** was indeed presented with a view to coerce the family of the Respondent/Accused in agreeing to the matrimony between his son and the sister-in-law of the Respondent/Accused, it was incumbent on the part of the Respondent/Accused to have not only replied to Ex.P4-Statutory Notice

dated **18.03.2015** but also produced independent evidence to establish the factum of alleged coercion.

45. Thus, before the Trial Court, the Respondent/Accused had not established a probable defense, *i.e.,* a possible case of misuse of the Ex.P1-Cheque dated **03.03.2015** by bringing independent witnesses to establish that the Respondent/Accused or his father-in-law were forced by the Appellant/Complainant to agree for a marriage between the Appellant/Complainant's son Prabakaran and the sister-in-law of the Respondent/Accused and that Ex.P1- Cheque dated **03.03.2015**, which was issued earlier in 2007, was misused by the Appellant/Complainant to coerce the family to agree for marriage between them.

46. That apart, the defense that the Cheques were given in the year 2007 and were not collected and were presented only to coerce the marriage, at best can be considered to be an afterthought as it ought to have been the basis of defense in the Ex.P4-Statutory Notice dated **18.03.2015** to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881.

47. The Respondent/Accused has merely relied on a few past Bank Transactions which were marked as Ex.D3 and Ex.D4 to show that there were prior transactions with the Appellant/Complainant and his son respectively. This, on the other hand, would give an impression that the parties had money transactions in the past.

48. Mere production of Ex.D1-Cash Deposit Pay-in-Slips for the past period merely indicates that both the Respondent/Accused and the Appellant/ Complainant had past money transaction. However, that would not mean that the Respondent/Accused has successfully rebutted presumption under Section 139 of the Negotiable Instruments Act, 1881.

49. The defense of the Respondent/Accused before the Trial Court that although the Cheque was issued way back sometime in 2007 by the Respondent/Accused to the Appellant/Complainant, when the Respondent/Accused and the Appellant/Complainant had regular transaction of lending and borrowing and that the Respondent/Accused misused the same to get the Appellant/Complainant's son, namely, one Prabakaran with the

Sister-in-law of the Respondent/Accused, is not sufficient in absence of any credible evidence before the Trial Court.

50. Even if this was a defense, it should have been reflected immediately in a reply to Ex.P4-Statutory Notice dated **18.03.2015**. Therefore, mere production of Ex.D3 and Ex.D4 for the past transactions in 2007, during the Trial is of no significance.

51. There is no dispute that the signature in Ex.P1-Cheque dated **03.03.2015** is that of the Respondent/Accused. This has been admitted by the Respondent/Accused before the Trial Court which was affirmed by the Appellate Court.

52. To make out a formidable defense, the facts as proved before the Trial Court should reveal a preponderance of probability that Ex.P1-Cheque dated **03.03.2015** that was issued was not issued for discharging the liability under a pre-existing debt, as held by the Hon'ble Supreme Court in **Rohitbhai Case** referred to *supra*.

53. Merely because in the complaint before the Trial Court filed under Section 138 of the Negotiable Instruments Act, 1881, the Appellant/Complainant had stated that the Respondent/Accused was required to return the aforesaid amount of Rs.10,00,000/- together with interest at 18% would not lead to an inference that the Ex-P1 Cheque dated **03.03.2015** was not issued for discharge of a debt whether in whole or in part or any other liability as is contemplated in Section 139 of the Negotiable Instruments Act, 1881.

54. Thus, the presumption under Section 139 of the Negotiable Instruments Act, 1881 that Ex.P1-Cheque dated **03.03.2015** acts against the Respondent/Accused in view of the dishonour of the said cheque *vide* Ex.P2-Return Memo dated **17.03.2015**.

55. Merely because there is a difference in the writing in the signature and the content of Ex.P1-Cheque dated **03.03.2015** *ipso facto* would not mean that the Cheque was not issued for discharging any debt or any other liability incurred by the Respondent/Accused. Further, a person need not know the content of the Cheque barring the amount and signature.

56. This is the view of the decision of the Hon'ble Supreme Court in **B.M.Basavaraj case** (referred to *supra*). There, the Hon'ble Supreme Court observed that there was no defense to the effect that the Cheques were not issued by the Respondent therein or the Cheques do not bear its signatures or they were not presented properly for encashment.

57. Merely because the Appellant/Complainant had not stated in Ex.P4-Statutory Notice dated 18.03.2015 regarding the past transaction *ipso facto* would not mean that the Appellant/Complainant either suppressed the fact or had come with an unclean hands before the Trial Court. In fact, it cannot be considered as a criteria for coming to a conclusion that the Respondent/Accused had successfully rebutted the presumption under Section 139 of the Negotiable Instruments Act, 1881.

58. It cannot be also assumed that presumption under Section 139 of the Negotiable Instruments Act, 1881 would stand rebutted merely because the Appellant/Complainant had failed to produce the witnesses who had lent money to the Appellant/Complainant which was in turn lent to the Respondent/Accused as the burden is on the Respondent/Accused. As far as

the lending of an amount in excess of Rs.20,000/- in cash, it may at best warrant a penalty under Section 271D of the Income Tax Act, 1961. It would not however mean that the amount in excess of Rs.20,000/- could not have been transacted. This is also answered by the Hon'ble Supreme Court in **Sanjabij Tari case** referred to *supra.*

59. Even though it was the contention of the Respondent/Accused that the Cheque was of the year 2007 as it carried only 7 digits (actually 6 digits), there is no other evidence to show that Ex.P1-Cheque dated **03.03.2015** was an invalid Cheque. Ex.P2-Return Memo dated **17.03.2015** does not state that Ex.P1-Cheque dated **03.03.2015** was an invalid Cheque.

60. The fact remains that Ex.P1-Cheque dated **03.03.2015** was not dishonoured on the ground that it was invalid Cheque. Ex.P1-Cheque dated **03.03.2015** was dishonoured by Ex.P2-Return Memo dated **17.03.2015** only with an endorsement "Funds Insufficient".

61. In view of the above discussion, I am unable to sustain the view taken by the First Appellate Court reversing the decision of the Trial Court convicting the Respondent/Accused for the offence under Section 138 of the

Negotiable Instruments Act, 1881. Therefore, this Criminal Appeal has to be allowed by upholding the order of the Trial Court.

62. In the result, this Criminal Appeal stands allowed.

25.06.2026

Neutral Citation: Yes / No

av/arb

To:

1.The Principal Sessions Judge,
Principal Sessions Court,
Namakkal.

2.The Judicial Magistrate,
Fast Track Court,
Tiruchengode.

3.The Public Prosecutor,
Madras High Court, Chennai.

C.SARAVANAN, J.

av/arb

Pre-Delivery Judgment in Crl.A.No.1003 of 2022

25.06.2026