Case Citation: (2026) ibclaw.in 5107 HC

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.06.2026
Pronounced on	18.08.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Crl A.No.731 of 2022

Mr.R.Senthilkumar,
S/o. G. Ramachandran,
Plot No.2, Jain Nagar,
Mittinamalli, I.A.F., Avadi,
Chennai – 600 055. … Appellant / Complainant

Vs.

Mr.K.Chandran,
No.37, Kalaingnar Nagar,
Kovilpathagai, Avadi,
Chennai – 600 062.

... Respondent / Accused

Prayer : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, praying to set aside the judgment of acquittal dated 11.02.2022 in C.C.No.228 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, (Magistrate level), Ambattur.

For Appellant : Mr.V.Jaishankar

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For Respondent : Ms.Manne Ramya,
Legal Aid Counsel

JUDGMENT

In the present Criminal Appeal the appellant is aggrieved by the judgment dated 11.02.2022 passed by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Ambattur in C.C.No.228 of 2018.

2. By the said judgment, the Trial Court has dismissed the complaint filed by the Appellant under Section 138 of the Negotiable Instruments Act, 1881, whereby the respondent / accused was acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 in the above case.

3. Before the Trial Court, the appellant examined himself as P.W.1 and was cross examined by the respondent / accused. The appellant has also marked the following documents as exhibits:-

Sl.No.	Exhibits Details
Ex.P1	Cheque bearing number 869874 dated 29.09.2017 for Rs.7,00,000/-
Ex.P2	Cheque bearing number 869875 dated 10.10.2017 for Rs.3,00,000/-
Ex.P3	Return memo dated 11.10.2017
Ex.P4	Return memo dated 04.12.2017
Ex.P5	Legal Notice dated 21.12.2017
Ex.P6	Returned Postal Cover

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4. Before the Trial Court, the respondent neither adduced any oral nor documentary evidence. However, after the conclusion of the trial, the respondent filed written submissions. In the said written submissions, the respondent relied upon certain judicial precedents and pointed out alleged contradictions in the case of the appellant.

5. The records reveal that Ex.P1 and Ex.P2 are cheques bearing the signature of the respondent. The particulars of the cheques are as follows:-

Sl. No.	Date of Cheque	Cheque No.	Amount	Exhibit
1	29.09.2017	869874	Rs.7,00,000/-	Ex.P1
2	10.10.2017	869875	Rs.3,00,000/-	Ex.P2

6. The appellant presented the aforesaid cheques for collection with the banker, namely, State Bank of India, HVF Avadi Branch, Avadi. These cheques were dishonoured and returned under return memos *vide* Ex.P3 and Ex.P4 both dated 11.10.2017.

7. In this background, the appellant issued a Ex.P5-Statutory notice dated 21.12.2017 under Section 138 of the Negotiable Instruments Act, 1881. Ex.P5-Statutory Notice was received by the Respondent. However, the Respondent

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sent no reply to Ex.P5-Statutory notice dated 21.12.2017 issued under Section 138 of the Negotiable Instruments Act, 1881.

8. During the course of trial, the respondent during cross-examination of P.W.1, attempted to establish that the appellant and the respondent were friends and had jointly invested in a business venture and that profits from the venture were to be shared between them. According to the respondent, the cheques in question were issued only as security in connection with the said business transaction between them. It was further contended that the business suffered losses and, there was no legally enforceable debt or liability *inter-se* which existed on the date of presentation of the cheques.

9. The learned counsel for the respondent submitted before this Court that there is no specific averment regarding the date of the alleged Loan Transaction. It was further submitted that there is no documentary evidence to substantiate the alleged financial transaction between the appellant and the respondent.

10. According to the respondent, there are several inconsistencies in the case of the appellant and, therefore, the Trial Court was justified in dismissing

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the complaint. It is therefore contended that a well considered impugned judgment of Trial Court does not warrant an interference in the hands of this Court and prayed for dismissal of the appeal.

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

12. 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*

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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."*

13. 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***

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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."

14. 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*

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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."

15. 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

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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."

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

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"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***

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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

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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."]

17. Having considered the submissions made by the learned counsel for the petitioner and the learned Legal Aid Counsel for the respondent, and keeping the above principles in mind, I shall proceed to give the reasons for my ultimate conclusion in this order.

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18. 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*

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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*

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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."

19. The Trial Court has dismissed the complaints filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881, by the impugned judgment primarily on the ground that during cross examination, the appellant, who was examined as P.W.1 had contradicted himself.

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20. In Paragraph 16 of the impugned judgment of the Trial Court, it has been stated that during cross examination, P.W.1 (appellant herein) had deposed that when he demanded repayment of the loan in July 2017, the respondent had not issued any cheque, and that subsequently cheques were issued on 25th and 26th of September, 2017.

21. In Paragraph 16 of the impugned judgment, the Trial Court also observed that during the same cross examination, the appellant deposed that the respondent / accused issued a Cheque dated **29.09.2017** (Ex. P1) for **Rs.7 lakhs** and assured that he would pay the remaining 3 lakhs upon receiving funds, and that when the appellant later approached the Respondent for the remaining amount, the respondent issued another cheque dated **10.10.2017** (Ex. P2) for **Rs.3 lakhs**.

22. The Trial Court concluded that the Ex. P5 complaint contained details about the issuance of the cheque, and that during cross examination, the appellant / complainant initially deposed that the cheques were issued on **25th** and **26th of September, 2017**. However, in the latter part of the cross

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examination, the appellant deposed that the cheque for **Rs.3 lakhs** (Ex. P2) was issued a week after the first cheque of **Rs.7 lakhs** (Ex. P1), leading to the conclusion that the appellant contradicted himself.

23. The Trial Court also concluded that if the loan was given between July 2016 and August 2017, there was no possibility of the appellant demanding repayment in July 2017. That apart, the Trial Court concluded that it was highly improbable for a huge loan of Rs.10 lakhs would have been given as an advance or as security, and that the person accused of the offence under Section 138 of the Negotiable Instruments Act, 1881, did not need to establish a case beyond a reasonable doubt, but rather was required to raise a probable defence on a preponderance of probabilities.

24. The Trial Court ultimately concluded that the respondent / accused had raised a probable defense as to the date of the loan, and that the owners had successfully shifted the onus.

25. The Trial Court has considered some of the decisions of this Court, along with the decisions of the Hon'ble Supreme Court in the following cases:

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i. ***Hiten P.Dalal vs. Bratindranath Banerjee,*** *(AIR 2001 SC 3897).*

ii. ***K.Bhaskaran vs. Sankaran Vaidhyan Balan,*** *(1999 (4) RCR (Criminal) 309).*

iii. ***Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal,*** *(AIR 1999 SC 1008).*

iv. ***Sri Sujies Benefit Funds Ltd., vs. M.Jaganathuan,*** *(2020 (3) DCR 409).*

v. ***Angu Parameswari Textiles (P) Ltd., vs. Sri Rajam & Co.,*** *dated 24.01.2001.*

vi. ***K.Dhanabakyam vs. Thirumala Wall Decor & Sun Controls,*** *(2017 (1) L.W. (Crl) 763).*

vii. ***K.Prakashan vs. P.K.Surenderan,*** *(2008 (1) SCC 0258).*

viii. ***Rohitbhai J Patel vs. The State of Gujarat,*** *(2019) 18 SCC 106.*

26. As mentioned above, the respondent, having issued Exs.P1 and P2 Cheques for **Rs.7 lakhs** and **Rs.3 lakhs** dated **29.09.2017** and **10.10.2017** respectively, the respondent ought to have independently produced evidence to show that the Exs.P1 and P2 cheques were not issued for the discharge of any debt or liability, whether in whole or in part and were given as a security.

27. The defence of the respondent was that both the appellant and the respondent were doing business together. However, no evidence was produced

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by the respondent to show that they were actually doing a scrap business together, and that Exs.P1 and P2 Cheques were issued as security, and that the same were misused by the appellant by presenting them with the bank for clearance.

28. The test of probable defence and preponderance of probabilities is correct. However, the question is whether the said test can be said to have been correctly applied to the facts of the case. Thus, the presumption under Section 139 of the Negotiable Instruments Act, 1881 cannot be said to have been successfully shifted by the respondent back to the appellant under Section 138 of the Negotiable Instruments Act, 1881.

29. The conclusion in paragraph 16 of the impugned judgment is contrary to the evidence given during cross examination. All that the appellant had stated during cross examination was that on 25th or 26th September 2017, the respondent had given a cheque for Rs.7 lakhs after a demand was made in July 2017, and that the balance would be given thereafter. During cross examination, the appellant also stated that the second cheque was issued a week later, and that both cheques were presented together.

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30. That apart, Ex.P5 was returned as unclaimed. Thus, there was a deliberate attempt on the part of the respondent to evade receipt of the statutory notice, showing an animus and an intent to evade payment.

31. Mere cross examination on the date of issuance of cheques is not sufficient unless there is evidence to show that the cheque itself was not intended for any debt or liability.

32. Unless the burden under Section 139 of the Negotiable Instruments Act, 1881 is shifted back to the complainant, it will be presumed that the cheques were indeed issued for the discharge of a debt, either in part or whole, or towards the liability.

33. In the given facts and circumstances, there is also no dispute that the cheques bear the signature of the respondent. There is no averment or evidence in the form of any plausible inference to state that blank cheques were issued and were later filled up by the appellant. Mere submission is not sufficient to shift the burden on the complainant.

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34. Therefore, I am of the view that the impugned judgment of the Trial Court, acquitting the respondent of the charges under Section 138 of the Negotiable Instruments Act, 1881 is unsustainable, and the decision of the Trial Court is liable to be set aside and is accordingly the present appeal deserves to be allowed. It is accordingly allowed.

35. Since there is a reversal of judgment of the Trial Court, before imposing sentence, the respondent herein has to be heard. Therefore, the respondent is directed to appear before this Court on 01.09.2026 for determining the quantum of sentence.

36. Post the case on **01.09.2026** at 2.15 p.m. under the caption "For hearing on the question of sentence".

18.08.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
av/raja

To
The learned Judicial Magistrate,
Fast Track Court, (Magistrate level),
Ambattur.

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C. SARAVANAN, J.

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Pre-delivery Judgment made in
Crl A.No.731 of 2022

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