WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2026

PRONOUNCED ON : 15.10.2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL.OP.No.27541 of 2026

Case QR

CNR:{HCMA012293122026}

and

CRL.MP.Nos.18244 and 18245 of 2026

1. M/s.SPR Constructions Private Limited
   Rep. by Authorised Signatory, Mr.Hitesh Kumar Kawad,
   Having its Registered Office at No.57, Narayan Mudali Street, Sowcarpet, Chennai – 600 079.

2. Chetan Bohra
   Director, M/s.SPR Constructions Private Limited,
   No.57, Narayan Mudali Street, Sowcarpet,
   Chennai-600079,
   also at Site Office, No.1, Cooks Road, Perambur,
   Chennai – 600 012.

3. Hitesh Kumar Kawad
   Erstwhile Director and Authorised Signatory,
   OSIAN ONE - SPR Highliving, Ground Floor Bungalow, No.28,
   EVK Sampath Salai, Vepery, Chennai – 600 007.

4. Navin Ranka
   Director and Authorised Signatory,
   M/s.SPR Constructions Private Limited
   No.57, Narayan Mudali Street,
   Sowcarpet, Chennai – 600 079.
   also at Site Office, No.1, Cooks Road,
   Perambur, Chennai – 600 012.

...Petitioner(s)

Vs

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

M/s.Revanza Business India Private Limited,
Rep. by its Authorised Signatory Mr.Sushil Lalwani,
Having its Registered Office at No.23, EVR Salai,
P.H.Road, Periamet,
Chennai – 600 003, also at Digital Zone-I, 2nd Floor,
No.79, Old Mahabalipuram Road, Karapakkam,
Chennai – 600 119.

...Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, to call for the records relating to S.T.C.No.17013 of 2026 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai and quash the said proceedings, insofar as such cheques arise out of the same transactions and the same alleged running account.

For Petitioners 1 to 3	: Mr.J.Ravindran Senior Counsel for M/s.Archana JR.
For 4th Petitioner	: Mr.Hasan Mohamed Jinnah Senior Counsel for M/s.Archana JR.
For Respondent	: Mr.G.Rajagopalan Senior Counsel for M/s.Praveen S.Purohit

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C. No. 17013 of 2026, pending on the file of the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

2. The petitioners are the accused in the complaint lodged by the respondent for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "NI Act"). The case of the complainant is that the accused approached the respondent seeking substantial financial accommodation for the real estate business of the first accused. The complainant agreed to extend continuing structured financial accommodation and a collateral-backed investment arrangement in favour of the first accused. Pursuant to the execution of promissory notes by the accused, the complainant extended the financial accommodation. The accused also executed sale agreements, construction agreements, sale deeds and other collateral documents in respect of several villas, flats and commercial units forming part of their project in favour of the complainant.

3. According to the complainant, after giving credit to the repayments made by the accused, a sum of Rs.44,47,97,000/- remained due and payable as of May 2026. Towards partial discharge of the said outstanding liability, the accused issued several cheques aggregating to Rs.2,20,00,000/-. The said cheques were presented for collection on various dates but were returned dishonoured with the remarks "Payment Stopped by Drawer" and "Exceeds Arrangement". Thereafter, upon issuance of the statutory notice, the

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

complainant lodged a private complaint against the accused and the same was taken cognizance by the learned Trial Court.

4. Mr. J. Ravindran, learned Senior Counsel appearing for petitioners 1 to 3/accused 1 to 3, and Mr. Hasan Mohamed Jinnah, learned Senior Counsel appearing for the fourth petitioner/fourth accused, submitted that the cheques in question were not issued towards the discharge of any legally enforceable debt or liability. They contended that the complaint does not disclose the date on which the alleged loan was borrowed or specify the amount allegedly borrowed by the accused. Instead, the complainant has merely asserted that a sum of Rs.44,47,97,000/- was due and payable by the accused, without furnishing the necessary particulars. They further pointed out that the complaint does not disclose the dates on which the cheques were presented for collection. In such circumstances, they submitted that no cause of action had arisen for initiating proceedings under Section 138 read with Section 141 of the NI Act, particularly when no legally enforceable debt or liability existed against the accused. It is further submitted that, under the Construction Agreement dated 04.05.2023, any dispute arising out of or relating to the terms and conditions of the agreement, including the interpretation and validity thereof and the respective rights and obligations of the parties, was required to be settled amicably through mutual discussion and, failing such settlement, referred to the Adjudicating Officer appointed under the Real Estate (Regulation and Development) Act, 2016.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

Therefore, according to them, the complainant ought not to have initiated proceedings under Section 138 read with Section 141 of the NI Act.

5. It was also submitted that, even before the issuance of the statutory notice contemplated under Section 138 of the NI Act, the accused had issued a notice dated 18.05.2026, calling upon the complainant to forthwith return all the original security cheques/post-dated cheques, including the 38 cheques subsequently presented by the complainant, along with the remaining cheques, and to furnish a written undertaking that the complainant would not misuse any of the instruments or initiate any wrongful legal proceedings and to comply with the said demand within seven days from the date of receipt of the notice.

6. Despite the aforesaid notice, the complainant proceeded to present the cheques for a total sum of Rs.34,10,00,000/- and initiated proceedings under Section 138 of the NI Act. Apart from the above proceedings, the complainant also lodged a complaint, which was registered as Crime No.133 of 2026 on the file of the CCB, Tambaram, for the offences punishable under Sections 420, 406, 467, 468, 471, 506(ii) and 120-B of the IPC, alleging that the accused had wrongfully retained and misappropriated a sum of Rs.44.47 crores. It is further submitted that, following the registration of the FIR, the investigating agency summoned the accused and, by exerting coercive pressure, compelled them to

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

pay a sum of Rs.10,00,00,000/-. Accordingly, the accused paid the said sum pursuant to a Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026.

7. It is further submitted that the accused No. 1 and 3 have also instituted a suit in O.S. No. 3405 of 2026 before the learned Assistant City Civil Court, Chennai, seeking a declaration that the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026, executed between the accused and the de facto complainant at the police station, is null and void on various grounds. In the meantime, the complainant has also initiated proceedings under Section 138 of the NI Act. In view of the above circumstances, it is submitted that the essential ingredients of the offence punishable under Section 138 of the NI Act are not attracted against the petitioners/accused and that the proceedings are therefore liable to be quashed.

8. Per contra, Mr. G. Rajagopalan, learned Senior Counsel appearing for the respondent, filed a counter affidavit and submitted that, though the complainant had not specifically mentioned the dates on which the cheques were presented for collection, the complaint contains a tabular statement setting out the details of the cheques, the return memos issued by the respective bankers, and the reasons for their dishonour. He further submitted that the

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

complaint categorically specifies the outstanding liability towards which the accused had issued the cheques. All the cheques were returned unpaid with the endorsements "Exceeds Arrangement" and "Payment Stopped by Drawer". Thereafter, upon issuance of the statutory notice, the complainant initiated proceedings against the accused under Section 138 of the NI Act.

9. The learned Senior Counsel further submitted that the grounds raised by the accused could be considered only by the learned trial Court during the trial, upon the parties adducing evidence. He further submits that the issues raised involve mixed questions of fact and law, which cannot be adjudicated in proceedings under Section 482 of the Code of Criminal Procedure. He contended that the complainant had made out a prima facie case for the learned trial Court to take cognizance of the offence punishable under Section 138 of the NI Act. He further submitted that the cheques issued by the accused had been dishonoured by the respective banks and, therefore, the statutory presumption contemplated under Section 139 of the NI Act would arise in favour of the complainant, to the effect that the cheques were issued towards the discharge of a legally enforceable debt or liability. In this regard, he pointed out that the accused had issued a total of 105 cheques, all of which were returned dishonoured.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

10. The learned Senior Counsel further submitted that the accused had also executed a promissory note for a sum of Rs.34,10,00,000/- and, thereafter, issued cheques for the said amount. However, all the cheques were returned dishonoured with the endorsements “Exceeds Arrangement” and “Payment Stopped by Drawer”. He further contended that, after registration of the FIR, the accused themselves came forward to settle the outstanding liability and executed a Memorandum of Understanding-cum-Deed of Settlement, agreeing to pay a sum of Rs.30,00,00,000/-, of which Rs.10,00,00,000/- was to be paid within four days and the remaining sum of Rs.20,00,00,000/- on or before 14.07.2026. Pursuant to the said settlement, the accused paid a sum of Rs.10,00,00,000/- through RTGS transfer but subsequently defaulted in paying the balance amount. It is further submitted that, in order to evade their liability, the accused had instituted O.S.No.3405 of 2026, challenging the very Memorandum of Understanding-cum-Deed of Settlement, on false and vexatious grounds. He contended that the grounds raised by the accused involved disputed questions of fact that could be adjudicated only by the learned trial Court upon appreciation of evidence. Accordingly, he prayed for dismissal of the present petition seeking to quash the proceedings.

WEB COPY

11. In support of his contention, the learned Senior Counsel for the respondent relied upon the following judgments of the Hon'ble Supreme Court of India:-

(i) In the case of ***Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and others*** reported in ***(1983) 1 SCC 1***, in which the Hon'ble Supreme Court of India held as follows:-

> *"8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of s. 482 should exercise the inherent power in so far as quashing of criminal q proceedings are concerned. This matter was gone into in greater detail in* ***Smt. Nagawwa v. Veeranna Shivalingappa Konjalji*** *where the scope of ss. 202 and 204 of the present Code was consider ed and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC para 5, p. 741 : SCC (Cri) pp. 511-12]*
>
> *"Thus, it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:*
>
> *(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
>
> *(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can*

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash Proceedings."

(ii) In the case of ***Rajendra Bihari Lal and another vs. State of Uttar Pradesh and others*** reported in ***(2026) 7 SCC 339***, in which the Hon'ble Supreme Court of India held as follows:-

"74. The power to quash criminal proceedings is guided by the principle of preventing the abuse of the process of law or miscarriage of justice, and of securing the ends of justice. It can be done by the High Court in exercise of its extraordinary power under Article 226 of the Constitution or by exercise of its inherent powers under Section 482 of the Cr.P.C. (Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, "the B.N.S.S.")) and even by the Supreme Court under Article 32 of the Constitution, if the circumstances so require.

84. The decision in Neeharika, inter alia, held as follows:-

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

84.1. First, the police have the statutory right and duty under the relevant provisions of the Cr.P.C. to investigate into cognizable offence. As a matter of rule, the courts should not interfere at the stage of investigation of a cognizable offence, however, in cases where no cognizable offence is disclosed in the FIR, the court should not permit an investigation to continue. The power of quashing should be exercised sparingly with circumspection. The courts should not interfere at the stage of investigation of offences except where non-interference would result in miscarriage of justice.

84.2. Secondly, the decision of Bhajan Lal, in so many words, holds that the courts should not interfere at the stage of investigation except in cases where non-interference would result in miscarriage of justice. The High Courts are well within their jurisdiction to quash an FIR/complaint with due regard to the restraints imposed by law, more particularly, the parameters laid down in R.P. Kapur v. State of Punjaband Bhajan Lal.

84.3. Thirdly, where the initiation of criminal proceedings amounts to an abuse of the process of law, or in exceptional cases where non- interference would result in a miscarriage of justice, the High Court, in exercise of its powers under Section 482 of the Cr.P.C. and/or Article 226 of the Constitution, may quash the FIR, complaint, or criminal proceedings, and may even stay the proceedings."

12. Heard the learned Counsel appearing on either side and perused the materials placed on record.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

13. Upon perusal of the records and consideration of the submissions made by the learned Senior Counsel appearing on either side, the following issues arise for consideration:

(i) Whether the cheques in question were issued towards the discharge of a legally enforceable debt or liability, particularly when the complaint does not specify the date of borrowal or the total amount allegedly borrowed by the accused?

(ii) Whether the proceedings initiated by the complainant under Section 138 of the Negotiable Instruments Act, 1881, are maintainable in view of the execution of the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026 and the payment of Rs.10,00,00,000/- pursuant thereto?

14. The petitioners are arrayed as accused Nos. 1 to 4 in the complaint. The first accused is the company, while accused Nos. 2 to 4 are its former directors. The crux of the complaint is that the accused approached the complainant seeking financial assistance for carrying on their real estate business, including the construction of villas, flats, and other properties. The complainant extended the financial assistance sought by the accused. According to the complaint, after giving credit to the repayments made by the accused, a sum of Rs.44,47,97,000/- remained outstanding. Towards partial discharge of the said subsisting liability, the accused issued 14 cheques aggregating to

WEB COPY

Rs.2,35,00,000/-. However, when the cheques were presented for collection, they were returned unpaid with the endorsements "Payment Stopped by Drawer" and "Exceeds Arrangement". Thereafter, upon issuance of the statutory notice, the complainant lodged the present complaint.

15. Upon perusal of the entire complaint, it is evident that the complainant has not specified the date on which the accused allegedly borrowed the loan amount. The complaint is also silent as to the dates on which the alleged borrowings were made and the respective amounts borrowed by the accused. It is stated that the cheques were issued towards partial discharge of the alleged subsisting liability, aggregating to Rs.2,35,00,000/-. Further, though the complainant has furnished the dates on which the cheques were returned, along with the corresponding return memos, the complaint does not specifically disclose the dates on which the cheques were presented for collection. Though the dates of presentation may be ascertainable from the cheques and the corresponding bank return memos, the same assumes significance in the present case in view of the subsequent developments, including the issuance of notice by the accused, presentation and dishonour of the cheques, execution of the Memorandum of Understanding-cum-Deed of Settlement, payment of Rs.10,00,00,000/- by the accused pursuant thereto, and institution of the civil suit challenging the said settlement. These circumstances necessitate an

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

examination of the sequence of events in order to ascertain the nature and subsistence of the alleged liability when the cheques were presented for collection. Furthermore, the complaint does not set out the complete particulars of the alleged independent inter-corporate deposit (ICD) transactions corresponding to the cheques in question. In particular, it does not contain a transaction-wise statement setting out the alleged advances, the corresponding repayment obligations, or the manner in which the alleged outstanding liability of Rs.44,47,97,000/- was computed.

16. Even according to the complainant, the cheques were obtained in the course of commercial transactions between the parties. However, the complainant subsequently sought to characterise the underlying relationship as a loan accommodation, as though the cheques had been independently issued towards the discharge of a loan liability. The complainant later decided that it no longer wished to retain the units booked by it and sought cancellation of the bookings and refund of the amounts paid. Accordingly, several Cancellation Deeds were executed between the parties, including those dated 30.06.2023 and 05.05.2025. The parties agreed to cancel the bookings and effect the refund in a phased manner through instalments. According to the accused, the total refundable amount was approximately Rs.23,96,74,415/-, out of which a sum of Rs.22,28,99,716/- had already been refunded. As the balance amount was

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

payable in instalments, the first accused handed over several post-dated cheques purely as security for the refund arrangement, with the specific understanding that the cheques would be presented for collection only when the corresponding instalments fell due and would be returned upon payment of the respective instalments.

17. It is further revealed that, though the complainant referred to 38 cheques aggregating to Rs.34,10,00,000/-, the complaint in question was lodged only in respect of 14 cheques aggregating to Rs.2,20,00,000/-. According to the accused, the cheques were issued as security in connection with the refund arrangement between the parties and not towards any independent or subsisting loan liability. Most of the cheques were returned dishonoured with the endorsement "Payment Stopped by Drawer", while the remaining cheques were returned with the endorsement "Exceeds Arrangement". During the course of presentation of the cheques, the accused issued a legal notice dated 18.05.2026, subsequent to the execution of the Cancellation Deeds dated 30.06.2023 and 05.05.2025. The said notice was duly received by the complainant. In the notice, the accused stated that, up to March 2026, a total sum of Rs.20,08,76,244/- had been refunded to the complainant and that the actual net balance refundable was only Rs.3,03,78,827/-. It was further stated that the said

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

balance would be refunded in instalments, corresponding to the cancellation of the agreements relating to the remaining units.

18. Further, the accused called upon the complainant to forthwith return all the original security cheques, including the 38 cheques that had already been presented for collection, as well as the remaining cheques. The accused also called upon the complainant to furnish a written undertaking that the instruments would not be misused and that no wrongful legal proceedings would be initiated on the basis of those instruments, within seven days from the date of receipt of the notice. The said notice was duly received by the complainant. Despite receipt of the notice, the complainant once again presented the cheques for collection, and the same were returned unpaid with the endorsements “Payment Stopped by Drawer” and “Exceeds Arrangement”. Immediately upon issuance of the notice by the accused, instructions were issued to the bank to stop payment, pursuant to which the cheques were returned dishonoured. Even after issuance of the statutory notice contemplated under Section 138 of the NI Act, the complainant lodged a complaint, which was registered as Crime No.133 of 2026 on the file of the Inspector of Police, CCB, Tambaram, for the offences punishable under Sections 420, 467, 468, 471 and 506(ii), r/w. Sections 120B and 34 of the IPC.

WEB COPY

19. Upon perusal of the FIR, it is revealed that the accused had allegedly dishonestly induced the complainant to extend financial assistance and thereafter cheated the complainant to the tune of Rs.44,47,97,000/-. On the basis of the said FIR, the accused were summoned for enquiry by the investigating agency. During the course of the investigation, the accused were allegedly compelled to execute the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026, i.e., on the very next day after the registration of the FIR. Pursuant to the said settlement, the parties agreed to settle the entire liability for a sum of Rs.30,00,00,000/-, out of which the accused paid a sum of Rs.10,00,00,000/-. As regards the remaining sum of Rs.20,00,00,000/-, the accused agreed to pay the same on or before 14.07.2026, for which Cheque No.000005, dated 14.07.2026, drawn on Indian Overseas Bank, Cathedral Branch, was issued. However, the complainant did not present the said cheque for collection.

20. On the other hand, the complainant initiated proceedings under Section 138 of the NI Act in respect of the cheques that had already been presented for collection and returned dishonoured with the endorsements “Payment Stopped by Drawer” and “Exceeds Arrangement”. It is, therefore, evident that, notwithstanding the execution of the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026, the complainant

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

proceeded to present the cheques which had been issued only as security in connection with the refund arrangement between the parties. In these circumstances, the accused instituted a suit in O.S. No. 3405 of 2026 before the learned Assistant City Civil Court, Chennai, seeking a declaration that the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026 is null and void, along with a permanent injunction restraining the complainant from enforcing any claim under the said settlement. The suit is still pending adjudication. Notwithstanding the pendency of the said suit, the complainant has also initiated the present proceedings under Section 138 of the NI Act. A cumulative consideration of the transactions between the parties and the averments in the complaint reveals that the particulars necessary to ascertain the nature and extent of the alleged liability have not been clearly set out. In particular, the complaint does not disclose the principal amount allegedly advanced by the complainant, the dates and amounts of the respective advances, or the rate of interest, if any, charged on such advances. The manner in which the alleged outstanding liability of Rs.44,47,97,000/- was arrived at is also not explained through a transaction-wise account. These omissions assume significance in the light of the rival claims concerning the nature of the underlying transactions, the alleged security cheques, the refund arrangement and the subsequent settlement between the parties.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

21. Further, the interest claimed by the complainant may attract the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In this regard, Section 3 of the said Act prohibits the charging of exorbitant interest on any loan. Therefore, unless the nature and legality of the interest claimed are established, the amount demanded by the complainant cannot be treated as a legally enforceable debt. Hence, the complaint does not satisfy the requirements contemplated under Section 138 of the NI Act. The specific case of the accused is that they have not committed any offence punishable under Section 138 of the NI Act, as the amount actually payable to the complainant on the dates on which the cheques were presented for encashment was less than the amounts mentioned in the respective cheques. It is also not in dispute, according to the respondent's own case, that, pursuant to the execution of the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026, the accused paid a sum of Rs.10,00,00,000/- through a banking transaction. The effect of the said payment on the subsisting liability, particularly in relation to the amounts covered by the cheques and the dates of their presentation, therefore, assumes significance in determining whether the essential ingredients of the offence under Section 138 of the NI Act are satisfied.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

22. Where part-payment is made after the issuance of a post-dated cheque but before its presentation for encashment, the legally enforceable debt subsisting on the date of presentation may be less than the amount specified in the cheque. A part-payment or even full payment may be made between the date on which the debt accrues and the date on which the cheque is presented for encashment. In such circumstances, the cheque may not represent the legally enforceable debt subsisting on the date of its presentation. In this regard, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and another,*** reported in ***(2023) 1 SCC 578,*** wherein the Hon'ble Supreme Court held as follows:

> *"19. This Court in NEPC Micon Ltd. v. Magna Leasing Ltd.6 held that the Courts must interpret Section 138 with reference to the legislative intent to suppress the mischief and advance the remedy. The objective of the Act in general and Section 138 specifically is to enhance the acceptability of cheques and to inculcate faith in the efficacy of negotiable instruments for the transaction of business. Section 138 criminalises the dishonour of cheques. This is in addition to the civil remedy that is available. Through the criminalisation of the dishonour of cheques, the legislature intended to prevent dishonesty on the part of the drawer of a negotiable instrument.8 The interpretation of Section 138 must not permit dishonesty of the drawee of the cheque as well. A cheque is issued as security to provide the drawee of the cheque with a leverage of using the cheque in case the drawer fails to pay the debt in the future. Therefore, cheques are issued and received*

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

as security with the contemplation that a part or the full sum that is addressed in the cheque may be paid before the cheque is encashed.

20. The judgments of this Court on post-dated cheques when read with the purpose of Section 138 indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out."

23. The aforesaid judgment is squarely applicable to the facts of the present case. In the case on hand, the complainant has failed to establish that the amount represented by the cheques corresponded to the legally enforceable debt or liability subsisting on the respective dates of their presentation for encashment, particularly in view of the payments allegedly made by the accused pursuant to the refund arrangement and the subsequent Memorandum of Understanding-cum-Deed of Settlement. Therefore, in the absence of a legally enforceable debt or liability to the extent of the amounts covered by the cheques on the dates of their presentation, the essential ingredients of the offence punishable under Section 138 of the NI Act are not satisfied.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

24. Upon perusal of the judgment of the Hon'ble Supreme Court of India in ***Indus Airways Private Limited and Others v. Magnum Aviation Private Limited and Another,*** reported in ***(2014) 12 SCC 539,*** it is evident that the interpretation of the expression "for the discharge of any debt or other liability" occurring in Section 138 of the NI Act is significant in determining the applicability of the provision. The Explanation appended to Section 138 clarifies that the expression "debt or other liability" refers to a legally enforceable debt or other liability. The Hon'ble Supreme Court observed that, to attract the offence under Section 138 of the NI Act, the cheque must have been issued towards the discharge of a legally enforceable debt or other liability. Where a cheque is issued as an advance payment for the purchase of goods, but the transaction does not materialise owing to cancellation of the purchase order or otherwise, and the goods are not supplied, such a cheque cannot be construed as having been issued towards the discharge of an existing debt or liability. The Court further observed that a cheque issued by way of advance payment would not represent an existing liability at the time of its issuance, in the absence of a subsisting obligation to make the payment.

25. In view of the principles laid down in the aforesaid judgment, the question as to whether the cheques in question were issued towards the discharge of a legally enforceable debt or liability assumes significance. In the

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

present case, the cheques were issued only as security in connection with the refund arrangement between the parties and not towards the discharge of any independent loan liability. Since, no corresponding liability existed to the extent of the amounts covered by the cheques, the accused instructed their banker to stop payment, pursuant to which most of the cheques were returned dishonoured with the endorsement "Payment Stopped by Drawer". It is further relevant to note that, pursuant to the execution of the Memorandum of Understanding-cum-Deed of Settlement dated 16.06.2026, the accused paid a sum of Rs.10,00,00,000/-. However, the accused subsequently challenged the said settlement by instituting O.S. No.3405 of 2026 before the learned Assistant City Civil Court, Chennai, and the suit is still pending adjudication. Further, under the terms of the said settlement, the accused had agreed to honour the Cheque No.000005, dated 14.07.2026, drawn on Indian Overseas Bank, Cathedral Branch, towards payment of the remaining sum of Rs.20,00,00,000/-. However, the complainant did not present the said cheque for collection.

26. In the light of the aforesaid circumstances, particularly the nature of the underlying transactions, the alleged security arrangement, the payment of Rs.10,00,00,000/- under the settlement and the subsequent challenge to its validity, the existence and extent of the legally enforceable liability on the dates of presentation of the cheques assume significance. Hence, the complainant has

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

failed to make out a prima facie case for maintaining the proceedings under Section 138 of the Negotiable Instruments Act, 1881, in respect of the cheques in question. Consequently, the proceedings initiated against the accused cannot be sustained and is liable to be quashed.

27. Accordingly, the entire proceedings in S.T.C. No. 17013 of 2026, pending on the file of the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai, are hereby quashed, and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

15.10.2026

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

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

To

The Metropolitan Magistrate, Fast Track Court-II,
Egmore, Chennai.

WEB COPY

G.K.ILANTHIRAIYAN J.

dm

CRL.OP.No.27541 of 2026
and
CRL.MP.Nos.18244 and 18245 of 2026

15.10.2026