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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-09-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP Nos.16109 and 16399 of 2026
and
CRL MP Nos. 10837, 10838 and 10604 of 2026

CRL OP No. 16109 of 2026

1. M/s. Attharv Sai Flexipack Private Limited
   Represented by its Authorised Signatory,
   Mr. Ashwinikumar Parmanand Hemdev
   Site No.302, Thandya Industrial Area,
   Opp. Balaji Granites, Nanjangud Taluk,
   Mysore-570 020.

2. Mr. Ashwinikumar Parmanand Hemdev
   (Director)
   Authorised Signatory,
   M/s. Attharv Sai Flexipack Private Limited,
   101/A, 6th Main, 1st Stage,
   Brindavan Extension, Yadavagiri,
   Mysore-570 020.

3. Ms. Renu Nischaldas Chugh
   Director, M/s. Attharv Sai Flexipack Private Limited,
   101/A, 6th Main, 1st Stage,
   Brindavan Extension, Yadavagiri,
   Mysore-570 020.

..Petitioner(s)

Vs

M/sKotak Mahindra Bank Limited,
Represented by its Vice President,
Mr. Ponraj Thangadurai,
5th Floor, Samson Towers, 402 L,
Pantheon Road, Egmore,
Chennai-600 008.

..Respondent(s)

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CRL OP No.16399 of 2026:

M/s. Krriyan Kontainers Pvt. Ltd.,
Represented by its Director,
Mr. Vybhav Ashwini Kumar Hemdev,
Plot No.268-A (Part), Hebbal Industrial Area,
Hebbal, Mysore-570 016.

..Petitioner(s)

Vs

M/s Kotak Mahindra Bank Limited.
Represented by its Vice President,
Mr. Ponraj Thangadurai,
5th Floor, Samson Towers, 402L,
Pantheon Road, Egmore,
Chennai-600 008.

..Respondent(s)

CRL OP No. 16109 of 2026

PRAYER: Criminal Original Petition filed under Section 528 of B.N.S.S, praying to call for the records and to quash the complaint in STC No.619 of 2026 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George town, Chennai.

CRL OP No. 16399 of 2026

PRAYER: Criminal Original Petition filed under Section 528 of B.N.S.S, praying to call for the records and to quash the complaint in S.T.C.No.619 of 2026 pending on the file of the learned Metropolitan Magistrate, FTC-IV, George Town, Chennai insofar as it relates to the petitioner 4th accused and pass such further or other orders.

For Petitioner(s): Ms.K.V.Babu,
for Ms.Dipthi Munoth. A [in both OPs]

For Respondent(s): Mr.M.Arunachalam [in both OPs]

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COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.619 of 2026 pending on the file of the learned Metropolitan Magistrate, FTC-IV, George Town, Chennai for the offence under section 138 of the Negotiable Instruments Act.

2. The petitioners in Crl.O.P.No.16109 are arrayed as A1 to A3 and the petitioner in Crl.O.P.No.10399 is arrayed as fourth accused in the complaint lodged by the respondent herein.

3. The respondent lodged a complaint for the offence punishable under section 138 of the Negotiable Instruments Act alleging that the first accused is the company and the accused A2 and A3 are Directors of the first accused company and the fourth accused stood as a guarantor while the first accused company availed the loan from the complainant. The accused availed various financial facility from time to time to the tune of Rs.15,25,00,000/- by producing security document including guarantee documents by executing guarantee deed. The first accused also hypothecated the property in favour of the complainant to secure the payment through deed of hypothecation in respect

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of existing and current assets with minimum insurable value of the Rs.26.37 Cr. of the borrower. Thereafter, the accused have been irregular in repayment of the loan amount and they committed default in repayment of loan and other dues in respect of financial facilities. Therefore, the loan account of the first accused was classified as Non performing Asset as on 09.06.2025. Thereafter, the complainant issued loan recall notice dated 22.09.2025 to all the accused. On receipt of the notice, towards payment of outstanding dues payable under the said loan facility, the first accused issued a cheque for a sum of Rs.9,80,50,659/- towards repayment of the loan. When the cheque was presented for collection on 17.10.2025, it was returned dishonoured for the reason 'account blocked'. After causing statutory notice, the complainant lodged the complaint and the same has been taken cognizance by the trial Court in STC.619 of 2026.

4. The learned counsel appearing for the accused 1 to 3 submits that the cheque was not issued for any legally enforceable debt. The alleged cheque was issued for the purpose of security and the same has been misused by the respondent by presenting the same for collection. The respondent has absolute knowledge that the account of the accused was already classified as NPA and same was blocked by another creditor, namely, Bank of Baroda and the respondent was duly informed about blocking of the petitioner's account. Even after knowing the fact that the accused account has already been blocked, the

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respondent presented the cheque for collection, which was handed over to the them for the purpose of security while availing credit facilities. Therefore, no offence is made out under section 138 of the Negotiable Instruments Act.

5. It is the contention of the learned counsel appearing for the petitioner that, in so far as the fourth accused is concerned, even according to the complaint, the fourth accused stood as a guarantor and she is neither a Director of the first accused company nor a signatory to the cheque. Therefore, no offence is made out as against the fourth accused and the entire proceedings initiated under section 138 of the Negotiable Instruments Act has to be quashed.

6. Per contra, the learned counsel for the respondent would submit that after availing credit facilities to the tune of Rs.15,25,00,000/-, the accused committed default, therefore, the complainant issued demand notice and on receipt of the notice, the accused issued a cheque for a sum of Rs.9,80,50,659/-. Though the account of the accused has been declared as NPA, the complainant had absolutely no knowledge about the blocking of the account. Believing the words of the accused, the cheque was presented for collection and the same was returned for the reason 'account blocked'. Therefore, the offence under section 138 of the Negotiable Instruments Act is clearly made out against all the accused and the grounds raised by the accused have to be raised during trial by letting in evidence and the documents produced by the petitioners before this

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Court can be tested only before the trial Court by letting in evidence and those documents cannot be considered before this Court in a quash petition. So far as the fourth accused is concerned, he is none other than the son of the second accused and the fourth accused is the guarantor to the entire credit facilities availed by the first accused. Therefore, the fourth accused is also jointly and severally liable to be punished for the offence under section 138 of the Negotiable Instruments Act.

7. Heard the learned counsel on either side and perused the materials placed on record.

8. There are totally 4 accused in the complaint lodged by the complainant for the offence under section 138 of the Negotiable Instruments Act. Admittedly, the accused availed credit facilities from the complainant to the tune of Rs.15.25 crores by executing documents. According to the complainant, after receipt of demand notice, the accused issued a cheque for a sum of Rs.9,80,50,659/- and when it was presented for collection, the same was returned for the reason 'account blocked'.

9. In this regard, it is relevant to extract Section 138 of the Negotiable Instruments Act which reads as follows :

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138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the

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holder in due course of the cheque, within fifteen days of the receipt of the said notice.

[Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

10. Thus it is clear that the cheque must be drawn by a person on account maintained by him with the banker for an account to be maintained by a person within the meaning of 138 of the Negotiable Instruments Act. It is legally essential that the drawer is in a position actively to operate the said account. He must be able to deposit money there in and to withdraw therefrom according to his own free will and volition. An account that has been unilaterally blocked, frozen or rendered inoperable by the bank pursuant to its regulatory or recovery action, and from which the account holder is entirely precluded from transacting, cannot in law, be regarded as an account maintained by the drawer. Such an account is, in subsistence and in effect, no longer the account of the drawer in any operative or legally meaningful sense, it is merely an account in his name over which he has no control. In this case, when the cheque was presented for collection, even before it, the current account of the accused in Bank of Baroda was blocked in pursuant to the proceedings initiated under SARFAESI Act, declaring the account as NPA account as early as on 12.02.2025. Therefore, it was an account ceased to be maintained by the accused in any legally congnizable sense. The complainant had specific knowledge of this fact, as admitted by its internal Email dated 04.04.2015 and

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the communication of the accused dated 23.06.25. Therefore, drawer of a cheque had knowledge of the fact that the account was blocked by the bank and it cannot constitute the drawing of a cheque on an account maintained by the drawer within the meaning of the provision under section 138 of the Negotiable Instruments Act. Therefore, the main ingredient is being absent in the present proceedings and the criminal prosecution is without legal foundation and deserves to be quashed.

11. In this regard it is relevant to refer the judgment of this Court in ***Amit Manipuria and others Vs. Kotak Mahindra Bank Limited and others reported in MANU/TN/7103/2023***, wherein, it has been held as follows :

> *"12. It is also seen that pursuant to the sanction of cash credit facilities, there had been no disbursement of fund. On and from 04.06.2016, the account of the company was freezed by first respondent and it is still continuing, despite the standing order dated 11.11.2016 of the National Company Law Tribunal, to defreeze the frozen account of the company. Another point arised in this petition is that whether any cause of action arose to initiate the proceeding under Section 138 of the NI Act. It is relevant to extract the provisions under Section 138 of the NI Act.*
>
> *"138 Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge,*

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in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless —

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

13. It explains the meaning of the expression for discharge of any debt or other liability for the purpose of the provision under Section 138 of the NI Act. It means legally enforceable debt or other

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liability. It treats dishonoured cheque as an offence, if the cheque is issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract the offence under Section 138 of the NI Act, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheuqe. The cheques were issued for the purpose of security which was to be invoked in case of contingencies and there was no subsisting liability at the time of entrusting the cheques. The alleged cheques were obtained by the first respondent prior to the disbursement of the fund in the cash credit facilities. Therefore, the cheques were not issued for any leagally enforceable debt or other liability.

12. The above judgment is squarely applicable to the case on hand. Even according to the complainant, the account of the accused was not blocked or freezed on the instructions of the accused. The cheque was returned for the reason 'account blocked'. Though the complainant had knowledge that the account of the accused was blocked, they presented the cheque for collection. Therefore, no offence under section 138 of the Negotiable Instruments Act is made as against the accused and the present complaint is clear of abuse of process of law.

13. In so far as the petitioner/fourth accused in Crl.O.P.No.16399 of 2026 is concerned, even according to the complainant, the fourth accused stood as a guarantor for the loan availed by A1 to A3. The fourth accused is neither Director of the first accused nor signatory to the cheque and he cannot be held

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liable under section 138 of the Negotiable Instruments Act and the present complaint cannot be maintained against such person. The alleged cheque was drawn by the first accused and not from the account of the fourth accused. Further, the fourth accused cannot be held liable for the liability of the first accused who is not in overall control of the day to day business of the company when the offence was committed and vicarious liability is attracted only when the offence is committed with the consent, connivance or is attributable to the neglect on the part of the first accused. In order to fasten vicarious liability as contemplated under section 141 of the Negotiable Instruments Act, the complaint has to contain specific averment that the accused was responsible for the conduct of the business of the first accused company at the time of the alleged offence was committed. Bald and vague allegations are insufficient to attract the offence under section 141 of the Negotiable Instruments Act. In the entire complaint, there is not even a single specific factual averments to establish or even allege that the fourth accused was in charge or responsible for the day to day conduct of the business of the first accused company.

14. In view of the above discussions, entire allegations as against all the accused are liable to be quashed.

15. Accordingly, these Criminal Original Petitions are allowed and the proceedings in STC.No.619 of 2026 pending on the file of the Metropolitan

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Magistrate, Fast Tract Court IV, George Town, Chennai is hereby quashed.

Consequently, connected miscellaneous petitions are closed.

11-09-2026

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

vrc

To

The Metropolitan Magistrate,
Fast Track Court-IV,
George Town,
Chennai.

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G.K.ILANTHIRAIYAN J.

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