IN THE COURT OF THE ADDITIONAL JUNIOR CIVIL JUDGE : BAPATLA
Present: **Smt. G. Rukmini**
Additional Junior Civil Judge, Bapatla.
Friday the 14th day of July, 2023.
CALENDAR CASE No.607/2016

Between:
Bolisetty Ramesh Babu, s/o Koteswara Rao, r/o Patel nagar, Bapatla ..**Complainant.**
And

Kondeti Venkata Shiva Sankar, s/o Subba Rao, D.No. 4-1-2014/A, SNP Agraharam, Bapatla ..**Accused.**

This case is coming on 27-6-23 and 5-7-2023 before me for final hearing in the presence of Sri V. Rama Rao, T. Ramakrishna, Advocates for the Complainant, and of Sri B. Leela Krishna and S. Ravindra Babu, Advocates for the Accused and the matter having heard and stood over for consideration till this day, the court delivered the following:

J U D G M E N T

01] The complainant filed this complaint to punish the accused under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act' for the sake of convenience and brevity).

02] The brief averments of the complaint are as follows :

That on 10-8-2015 the accused borrowed a sum of Rs. 1,50,000/- from the complainant for his family expenses agreeing to repay the same with interest at 24% per annum and in evidence of the same on the even date executed a promissory note in his favour, subsequently the accused issued a cheque towards part satisfaction of such promissory note debt drawn on Indian Bank, Bapatla branch in favour of complainant and also made him to believe that his account had sufficient funds to honour the cheque. Believing the words, the complainant presented the said cheque for collection in Indian Overseas Bank, Bapatla branch,, but to his surprise, the same was returned with an endorsement “Balance in the account insufficient ” in the account of the accused. As such he got issued a notice dated 23-7-2016 demanding the accused to pay the cheque amount within 15 days . The accused received the notice on 25-7-2016 and kept quiet. As such the complainant constrained to file this complaint.

03] This case was taken on file under section 138 of Negotiable Instrument Act,1881 against the accused. On appearance of the accused, copies of documents are furnished to him.

04] Subsequently, the accused was examined under section 251 Cr.P.C. The substance of accusation for the offence under section 138 of Negotiable Instrument Act, has been read over and explained in Telugu, to which he denied the offence, pleaded not guilty and claims to be tried.

05] In support of the case, the complainant examined himself as P.W.1 , and got examined the Branch Manager of Indian Bank was examined as PW 2 and marked Exs.P1 to P6 on his behalf. Ex.P1 is the cheque bearing No.306746 drawn on Indian Bank, Bapatla branch, for Rs 1,70,000/- dated 18-7-2016, Ex.P2 is the cheque return memo dated 18-7-2016 of Indian bank, Bapatla Ex.P3 is office copy of legal notice got issued by complainant dated 23-7-2016, Ex.P4 is postal receipt Ex.P5 Postal acknowledgment dated 25-7-2016. Ex.P6 is certified copy of Judgment dt. 11-10-2017 in OS 232/2016 PJCJ Court, Bapatla.

06] After completion of evidence on behalf of the complainant, the accused was examined under section 313 Cr.P.C. The accused having understood the incriminating circumstances appearing against him, once again denied the genuineness of the same. The accused in support of his case himself examined as DW 1 but no document was marked.

07] Heard the learned counsel for complainant . Written arguments filed on behalf of the accused .

08] Now the point for determination is :

"*Whether the complainant is able to prove the guilt of the accused for the offence punishable under section 138 of Negotiable Instruments Act, beyond speak of any doubt?"*

9] **POINT** ; The complainant, in order to discharge the initial legal burden , examined PW1 and PW 2 and demonstrated Ex.P1 to P6.

10] Shortly stated the case of complainant against the accused is that without maintaining sufficient funds into his account the accused issued Ex.P1 cheque towards part satisfaction of debt under promissory note , made it dishonoured to his dismay and he also avoided to receive the statutory demand notice got issued under Ex.P5 to his correct address and as such it is alleged by the complainant that the accused is liable for punishment under penal provisions of section 138 of the Act.

11] The case of the accused is one of the total denial.

12] It is also his specific defence of the accused, the address mentioned in Ex. P3 is incomplete and in Ex.P5 also the particulars of address not mentioned. PW 1 admitted in his cross examination that he shown the pronote amount in his Income Tax Returns but not the cheque amount. PW 1 admitted in cross examination that I can file income returns into court but not filed. PW 1 in his cross admitted that except the pronote, I did not obtain any security from the accused at the time of lending money. Promissory note was not filed and not explained about it. Complainant is a money lender and criminal case was pending against him

13] This court has carefully gone through entire material on record to see whether the same is sufficient enough to connect the accused for the offence indicted by the complainant against him.

14] In order to substantiate its case, the complainant himself examined as PW1 and marked Ex.P1 to P6. He also examined the Bank Manager of Indian Bank as PW 2 , who supported the evidence of PW1 about presentation of cheque and bouncing of cheque . The accused himself examined as DW 1 but no documentary evidence was adduced.

15] When the entire proceedings were perused, this court did not find any technical defect in terms of the Act to restrain the complainant from maintaining this complaint against the accused. The cheque was presented on the day of issue itself i.e. within Three months. Ex.P3 notice was issued within the prescribed period. The complaint was filed within the period of limitation. So there were no technical defects to restrain the complainant from prosecuting this complaint against the accused.

16] According to the evidence of PW1, pronote was executed on 10-8-2015 . Ex.P1cheque dated 18-7-2016. So, by the date of Ex.P1, the debt under said promissory note was a legally enforceable debt. The accused when disputed his signature on Ex . P1 , did not produce any documentary evidence or to take any steps to send the Ex.P1 cheque for hand writing expert for opinion. The complainant filed Ex.P6 certified copy of Judgment in OS 232/2016 wherein the accused was shown as defendant and the suit was decreed on merits. In that suit the complainant herein was plaintiff. The plaintiff in that suit examined PW 2 as one of attestors of suit promissory note. According to PW2 in OS 232/2016 the attestor of Ex. A1 deposed that defendant therein borrowed a sum of Rs. 1,50,000/- from the plaintiff on 10-8-2015 and executed suit promissory note and the pronote was scribed by the defendant himself with his own hand writing. So also in his written statement in OS 232/2016 defendant in the suit /accused in CC 607/2016 admitted plaintiff obtained a blank cheque without mentioning the amount. In cross examination in OS 232/2016 the defendant in the suit /accused in CC 607/2016 admitted that he is the scribe of Ex. A1. He also admitted that he issued a cheque for Rs. 1,70,000/- to the plaintiff in that suit in respect of suit amount and the suit was decreed on merits. PW 2 also supported the case of complainant that their bank issued Ex.P2 cheque return memo and it contains " Insufficient funds" and they issued cheque book to the accused and accused maintained bank account in their bank bearing No. 6186468337. It is sufficient to hold that accused issued cheque to the complainant for the legally enforceable debt and he is having bank account in that bank for which the accused not produced any documentary evidence to disprove the contention. This testimony of PW 2 remains unrebutted as the accused failed to challenge the same.

17] The accused except a bare denial of his signature on Ex.P1, failed to take any steps to get the document examined by any hand writing expert or by producing any other document containing his admitted signatures so as to enable the court to compare the same with that of his alleged disputed signature on the cheque and requesting the court to exercise its power under Indian Evidence Act., but he did not do so, for the reasons best known to him. Therefore, when the accused is unable to disprove that the signature on Ex.P1 cheque does not belongs to him and on the other hand, the complainant is able to establish the transaction under Ex.P1 , the presumption under section 118[a] of the Act, operates in favour of the complainant that the cheque was issued for legally enforceable debt.

18] It is the specific case of the accused that the signature on Ex.P1 cheque not belongs to him. But the accused herein was examined as DW 1 in OS 232/2016 wherein he admitted that he issued cheque for Rs. 1,70,000/- to the complainant herein towards security for the suit promissory note amount. When the accused admits the instrument /cheque the legal presumption under section 139 of the Act, that the instrument was issued towards discharge of the debt operates in favour of the complainant.

19] The next contention of the accused from the material available on record is that non-compliance of section 138[b] of the Act, that the notice under Ex.P3 was issued to the accused was not received by him and Ex.P5 not contained full address of him and Ex. P3 was received by one Rajiv Gandhi and he also filed postal receipt along with office copy of demand notice. On perusal of demand notice , the address was clearly mentioned on it and also Ex.P4 postal receipt contains the door no. of accused and full address of accused. Ex.P5 acknowledgment contains accused name , SNP nagar , Bapatla and Ex.P3 was received by one K. Rajiv Gandhi. In the cross examination DW 1 admitted that he is residing at house bearing D.No. 4-1-14/A, SNP Agraharam, Bapatla. One Rajendra is his younger brother and he died in the year 2014. He got white ration card and in the ration card it contains the name of his younger brother also. On perusal of Ex.P3 notice and Ex.P4 postal receipt contains full address of the accused as mentioned in his cross examination and Ex.P5 postal acknowledgment contains the name of accused and Address SNP agraharam, Bapatla and it was signed by one Rajiv Gandhi. DW1 admitted that he cannot file death certificate of his younger brother. Except that DW 1 did not file any scrap of paper to prove that the address was not correctly mentioned and the signature on Ex.P5 not belongs to his younger brother. In the absence of any such contra evidence and by taking aid of section 27 of General Clauses Act that once notice is sent by registered post by correctly addressed to the drawer of the cheque, the service of the drawer is sufficient as required under proviso [b] . Regarding service of notice, it was held in **N. Parameswaran Unni Vs. G. Kannan and another at para 13..**

> "...***It is clear from Section 27 of the General Clauses Act, 1897 and section 114 of the Indian Evidence Act, 1972, that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso [b] of Section 138 stands complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption …"***

The accused in order to rebut the said presumption has not produced any piece of paper to show his correct address, other than the address mentioned in the complaint or under

Ex.P3 notice. Therefore, the defence of the accused that no demand is made on him is not proved.

20] The accused also failed to examine the postman to disprove the endorsement under Ex.P5 postal acknoweldgement that there was no such intimation to him about the notice. Therefore, in the absence of any such evidence from the accused and by taking the aid of section 27 General Clauses Act and the analogy applied in the above said citation it is held that the complainant has established that he made a demand on the accused for the dishonour of cheque demanding the accused to compensate the same as required under proviso [b] of section 138 of the Act. Thus , the said objection of the accused has no legs to stand for legal scrutiny .

21] The learned counsel for the accused also placed reliance on the judgment between **Kanakamedala Venkata Krishna Prasad Vs. Peram Sai Swarupa and another in 2017 [2] ALD [Crl.] 981** ***.*** In the given case the complainant has no sufficient financial capacity to lend the amount to the accused . More over income tax returns does not show that amount lend by appellant to the accused but whereas, in the present case on hand, PW 1 stated in his cross examination that his annual income per acre from cultivation of agricultural land is Rs. 40,000/- to Rs. 50,000/- . and he further admitted he is an income tax assessee and that he shown the pronote amount of Rs. 1,50,000/- in his income tax returns but not the cheque amount. Thus, the facts said case has no application to the present case.

22] It is not in dispute that the cheque drawn relates to the account maintained by the accused, that it was presented to the bank within its valid period and that it was returned by the bank unpaid for sufficiency of funds and that the payee may made a demand in writing within 30 days for the payment of the said amount on the drawer and the drawer fails to make the payment of the said amount to the payee within 15 days and that the complaint was filed within its limitation. Therefore, the required points 1,3,4,5,6 are established by the complainant. Regarding the debt or other liability is concerned, in view of the admissions made by accused about the signature on Ex.P1 cheque coupled with the presumption U/sec.118 of the Act, it is to be held that there exists a legally enforceable debt as on the date of issuance of Ex.P1 cheque.

Therefore,the presumption U/sec.139 under law and on facts is in favour of the complainant.

23] For the foregoing discussion, this court come to conclusion that the complainant is able to bring home the guilt of the accused of the offence under section 138 of Negotiable Instruments Act 1881.

24] In the result, the accused is found guilty of the offence under section 138 of Negotiable Instruments Act, 1881 and accordingly he is convicted of the same under section 255 (2) of Cr.P.C.

Typed to my dictation by Stenographer Gr. I , corrected and pronounced by me in open court this the 14th day of July, 2023.

ADDL. JUNIOR CIVIL JUDGE,
BAPATLA.

25] When the accused is questioned about the quantum of sentence, he submitted that he has two small children and his wife's health is also not good and he is the sole bread winner of his family and he has the only person to take care of his family and prays to take a lenient view.

26] Having heard the submissions of the accused and in view of the guide lines issued by the Hon'ble Apex court from time to time that no lenient view be taken in the cases U/sec.138 of NI Act, this court is not inclined to take any lenient view while awarding the sentence.

27] Taking into consideration the submission of accused, the accused is sentenced to suffer Simple Imprisonment for a period of **SIX MONTHS** and also to pay the cheque amount as fine **of Rs.1,70,000/-(Rupees One lakh Seventy only),** and in default of payment of fine, he shall suffer **Simple Imprisonment** for another ONE **month,** and out of the fine amount, if paid, Rs.1,70,000/-**(Rupees One lakh Seventy thousand only)** is ordered to be given to the complainant towards compensation under section 357 Cr.P.C, after appeal time is over. The accused is informed about his right of appeal against this judgment, if he prefers appeal.

Typed to my dictation by Stenographer Gr. I corrected and pronounced by me in open court, this the `14th day of July, 2023.

Addl. Junior Civil Judge, Bapatla

For Complainant **Appendix of Evidence** **For accused**
Witnesses examined

PW 1 / Bolisetty Ramesh Babu DW1/K. Venkata Siva Sankara Rao

PW2/ M. Bala Krishna

For Complainant **Documents Marked**

Ex.P1/ 18-7-2016 : cheque bearing No.306746 drawn on Indian Bank, Bapatla branch, for Rs 1,70,000/- .

Ex.P2/ 18-7-2016 : cheque return memo of Indian bank, Bapatla

Ex.P3/ 23-7-2016 : office copy of legal notice got issued by complainant

Ex.P4/ – : postal receipt

Ex.P5/25-7-2016 :Postal acknowledgment dated.

Ex.P6/ 11-10-2017: certified copy of Judgment in OS 232/2016 PJCJ Court, Bapatla.

For accused : NIL

II AJCJ, GNT.

Copies to :

1] The CJM cum PSCJ,Guntur

2] The Accused ..1