

KABC030779342018



Presented on : 26-10-2018
Registered on : 26-10-2018
Decided on : 12-08-2022
Duration : 3 years, 9 months, 17 days

**IN THE COURT OF XXVII ADDL. CHIEF
METROPOLITAN MAGISTRATE, BENGALURU**

**Present: Sri. H. Satish B.A.L, LL.B., LL.M.,
XXVII A.C.M.M Bengaluru.**

Dated: This the 12th day of August 2022.

C.C. NO.28617/2018

Complainant

**M/S. SINDHU CARGO SERVICES PVT
LTD.,**

A Company incorporated under the
provisions of the Companies Act, 1956
Having its Corporate Office at
Block No.3, Sindhu Logistics Park,
No.34, Nellakunte, Near MVIT college,
Bettahalasuru, Hunsemaranahalli (Post),
Bengaluru North Taluk,
BENGALURU 562157.

Having Branch Office,
At No.111 & 114,
Connection point 1st Floor,
Airport Exit Road (H.A.L),
BENGALURU 560017.

Represented by its
Authorized Person
Sri. K.V. Narasimha,
S/o. K. Vishnu,
Manager – Legal

(Rep by Sri. S.H, Adv)

V/s.

Accused

1. M/S. TESNI SOLAR PRIVATE LIMITED

A Private limited company
Having its Office at
No.24, 6th Main,
10th Cross Pillappa,
Gangangar, R.T. Nagar,
Bengaluru 560032.

Represented its by Directors

Sri. Arun Kumar Srinivas
Renu Bothra

2. SRI. ARUN KUMAR SRINIVAS

Director
M/s. Tesni Solar Private Limited
A private Limited Company
Having its office at
No.24, 6th Main,
10th Cross Pillappa,
Gangangar, R.T. Nagar,
Bengaluru 560032.

3. RENU BOTHRA

Director
M/s. Tesni Solar Private Limited
A private Limited Company
Having its office at
No.24, 6th Main,
10th Cross Pillappa,
Gangangar, R.T. Nagar,
Bengaluru 560032.

(Rep by Sri. Syed Abrar, Adv)

Offence

**U/s.138 of Negotiable
Instruments Act.**

**Plea of the
accused**

Claims to be tried

Final Order

CONVICTED

Judgment Date

12/08/2022

J U D G M E N T

The Complainant company has filed complaint U/Sec.200 of Code of Criminal Procedure against the Accused No.1 to 3 for the offence punishable U/Sec.138 of Negotiable Instrument Act.

2. The facts germane for disposal of the instant complaint can be summarized as per following:-

It is the case of the Complainant company that the complainant is engaged in the business of Customs Approved shipping, clearing, forwarding and Transporting agents and also provides air and sea freight warehousing and other allied services and the accused No. 1 to 3 availed services of the complainant company and the complainant company was maintaining running account and as per the same, the accused No.1 to 3 were due to the complainant company to the tune of Rs.1,43,345/- and towards discharge of the liability due and payable the accused No.1 to 3 issued 2 cheques bearing No. 422846 dated: 04/05/2018 for a sum of

Rs.43,345/- and Cheque No.422845 dated: 04/06/2018 for a sum of Rs.1,00,00/- both drawn on Yes Bank Ltd., Ground Floor, Batra Chambers, No.1/3, Cunningham Road, Bengaluru and assured the complainant the same would be honoured on its presentation.

3. It is also stated that the complainant presented the said cheques for encashment through its Banker, HDFC Bank Ltd., Richmond Road Branch, Bengaluru and the same got dishonoured and returned with an endorsement dated: 15/06/2018 & 06/06/2018 stating “**STOP PAYMENT**”. Thereafter, the complainant got issued legal notice dated: 30/06/2018 through RPAD calling upon the accused No. 1 to 3 to pay the amount covered under the aforesaid cheque and the said legal notice was returned on 12/07/2018 with the shara “Not claimed hence return to Sender” and thereby the accused No. 1 to 3 have committed

offence punishable U/Sec.138 of Negotiable Instrument Act. Hence, this complaint.

4. The sworn statement of the Manager of the complainant company by name **K.V. Narasimha** was recorded. As the complainant company had complied the mandatory requirements of Section 138 of Negotiable Instrument Act, the Court issued summons to the Accused No.1 to 3. After service of summons, Accused No.1 to 3 entered appearance and were enlarged on bail.

5. The plea of the Accused No.1 to 3 was recorded and the substance of accusation was read over to the accused No.1 to 3 in the language known to them and the same was explained, to which, accused No.1 to 3 pleaded not guilty and submitted they have defense to make.

6. In order to prove the case, Manager of the complainant by name **K.V. Narasimha** got himself

examined as PW.1 and got marked Ex.P1 to Ex.P22 documents.

7. The statement of Accused No.1 to 3 under section 313 Code of Criminal Procedure was dispensed with. The accused No.1 to 3 have not let in oral evidence and no documents are marked on their behalf.

8. Heard arguments on both the sides. I have perused the materials on record.

9. The following points arise for my determination:

- (1) Whether the complainant company proves that towards discharge of liability due and payable, accused No.1 to 3 issued two cheques bearing No. 422846 dated: 04/05/2018 for a sum of Rs.43,345/- and Cheque No.422845 dated: 04/06/2018 for a sum of Rs.1,00,00/- both drawn on Yes Bank Ltd., Ground Floor, Batra Chambers, No.1/3, Cunningham Road, Bengaluru ?*
- (2) Whether the complainant proves that accused No.1 to 3 has committed an offence punishable U/Sec.138 of Negotiable Instrument Act?*
- (3) What order?*

10. My answer to the above points is as per following:-

Point No.1 & 2 : In the Affirmative

Point No.3 : As per the final order, for the following.

R E A S O N S

11. Point Nos.1 & 2 : In-order to prove the case, the Manager of the complainant by name **K.V. Narasimha** got himself examined as PW1 and the affidavit filed by him in lieu of sworn statement was treated as examination in chief as per the dictum laid down in the ruling of the *Hon'ble Apex Court of India, reported in (2014) 5 SCC 590 (Indian Bank Association & Ors V/s. Union of India & Ors)*. The complainant got marked Ex.P1 to P22 documents.

12. The complainant has exhibited the following Ex.P1 to P22 documents. Ex.P1 is the C/c of Extract of Resolution dt:19/06/2017, Ex.P2 to 9 are the Invoices, Ex.P10 is the Statement of Account,

Ex.P11 & 12 are the Cheques, Ex.P13 to 15 are the Bank Endorsements, Ex.P16 is the Office copy of notice dt:30/06/2018, Ex.P17 to 19 are Postal receipts, Ex.P20 to 22 are the Returned Postal covers, Ex.P20(a) to 22(a) are the Copies of notices contained in Ex.P20 to 22 Postal covers.

13. On careful scrutiny of the documents produced by the complainant, prima-facie it goes to show that the complainant has discharged initial burden of proving presentation of Ex.P11 & 12 cheques, bouncing of cheques, issuance of notice. At this juncture, I find it relevant to quote ruling reported in 2010(11) SCC 441, decided between ***Rangappa Vs. Sri. Mohan*** wherein the Hon'ble Apex Court held that:

Presumption under section 139 of Negotiable Instrument Act, 1881 includes the presumption of the existence of legally enforceable debt or liability. That presumption is required to be honoured and if it is not so done, the entire basis of making these provision will be lost. Therefore, it has been held that, it is for the Accused to explain

his case and defend it once the fact of cheque bouncing is prima-facie established. The brain is on him to disprove the allegations once a prima-facie case is made out by the complainant”.

14. In the aforesaid ruling the Hon'ble Apex court has held that once the complainant establishes the bouncing of cheque, then it is for the accused to disprove the allegations and also it is for him to rebut the presumption as contemplated under section 139 of Negotiable Instrument Act by placing acceptable evidence.

15. It is to be noted that, accused persons have not stepped into the witness box to disprove the case of the complainant. The Hon'ble Apex court in the ruling reported in *2019 SCC Online SC 491 decided between Basalingappa V/s Mudibasappa at para 25(3)(4) and (5) has categorically held that:*

to rebut the presentation, it is open for the accused to rely on evidence led by him or the accused can rely on the material submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the material brought on record by the parties, but

also by reference to the circumstances which they rely and also held, it is not necessary for the accused to come in the witness box in support of defence, section 139 imposes an evidenciary burden and not a persuasive burden.

In the light of the principle laid down above, it is not necessary for the accused persons to step into the witness box to disprove the case of the complainant.

16. It is required to be noted that, the complainant has produced Ex.P2 to P9 documents to establish that the accused No.1 to 3 had business transaction with the complainant. It is worth to note that the accused persons have not cross examined PW1 and they have not disputed the documents produced by the complainant and the accused No.1 to 3 have not disputed their signatures at Ex.P11 & 12 Cheques and they have also not disputed that Ex.P11 & 12 cheques does not belongs to them. That apart, no material has been placed on record by the accused persons to disprove the transaction in question. The complainant has issued Ex.P16 Legal notice to the accused No.1 to 3 and the same was returned as ***“Not***

claimed hence returned to sender” as per Ex.P20 to 22 and notably, the accused persons have not disputed issuance of Ex.P20 to 22 notice or that the address mentioned at Ex.P20 to 22 Legal notice does not belongs to them.

17. It is required to be noted that, on 10/08/2022 both the complainant and the counsel for accused No.1 to 3 filed Joint Memo and submitted that parties have settled the matter for a sum of Rs.1,43,345/- and on the said date the counsel for accused No.1 to 3 paid sum of Rs.75,000/- to the complainant and the complainant acknowledged for having received the same. As per the said memo the accused persons have agreed to settle the balance amount of Rs.68,345/- on or before 30/09/2022 and both counsels submitted that they have no objection to pronounce judgment in terms of the memo.

18. That apart, the material placed on record by the complainant company discloses that the

complainant company has complied the mandatory requirements of section 138 of Negotiable Instrument Act and as the accused No.1 to 3 have not cross examined PW1 to disprove the case of the complainant, it could be concluded that the accused No.1 to 3 have failed to rebut the presumption as contemplated U/sec 139 of Negotiable Instrument Act by placing acceptable evidence. However, taking note of the settlement arrived between the parties as per Joint Memo dated: 10/08/2022 and payment made by the accused No.1 to 3 , I find it appropriate to direct the accused to pay the balance amount as agreed by them. Accordingly, I answer the Point No.1 & 2 in the ***Affirmative.***

19. Point No.3 :- In view of my findings to the Points No.1 & 2, I proceed to pass the following:-

O R D E R

In exercise of power conferred U/sec. 255(2) of Code of Criminal Procedure, the accused No.1 to 3 are convicted for the offence punishable U/s.138 of N.I. Act and sentenced to pay fine of Rs.69,345/-.

In default of payment of the said fine amount, the accused No.2 & 3 shall undergo simple imprisonment for a period of Three months.

Out of the said fine amount, an amount of Rs.69,345/- shall be paid to the complainant as compensation as contemplated U/sec. 357(1) of Code of Criminal Procedure.

(Dictated to the stenographer, directly on computer, corrected and then pronounced in open court by me on this the 12th day of August, 2022)

(H. Satish)
XXVII A.C.M.M., Bengaluru.

ANNEXURE

Witnesses examined on behalf of the complainant:

PW1 : NARASIMHA K.V

Documents marked on behalf of the complainant

Ex.P1	:	C/c of Extract of Resolution dt: 19/06/2017
Ex.P2 to 9	:	Invoices
Ex.P10	:	Statement of Accounts
Ex.P11 & 12	:	Cheques
Ex.P11(a) & 12(a)	:	Signatures of the accused
Ex.P13 to 15	:	Bank Endorsements
Ex.P16	:	Office copy of notice dt:30/06/2018
Ex.P17 to 19	:	Postal receipts
Ex.P20 to 22	:	Returned Postal covers
Ex.P20(a) to 22(a)	:	Copies of notices contained in Ex.P20 to 22 Postal covers

Witnesses examined on behalf of the accused:

-Nil-

Documents marked on behalf of the accused:

-Nil-

**XXVII A.C.M.M
Bengaluru.**

12/08/2022

Comp: Sri. S.H Adv.,

Accd: Sri. S.A Adv.

For Judgment.

Complainant and counsel absent.

Accused and counsel absent. By virtue of provision contained in Sec.353(6) of Cr.P.C., judgment can be pronounced in the absence of accused if it is of Acquittal or fine.

(Order typed vide separate sheet)

O R D E R

In exercise of power conferred U/sec. 255(2) of Code of Criminal Procedure, the accused No.1 to 3 are convicted for the offence punishable U/s.138 of N.I. Act and sentenced to pay fine of Rs.69,345/-.

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(H. Satish)

XXVII A.C.M.M., Bengaluru.