IN THE COURT OF THE VIII JMFC, BELAGAVI.

AT : BELAGAVI

Present : Smt. BHAGYALAXMI

B.Com., LL.B.,

Dated this the 02nd day of August 2018

C. C. No.394/2018

Complainant. : **New Navhind Multipurpose Multi State Co-op Society Ltd.,** Yallur, Tq & Dist: Belgaum,Represented by its Recovery Clerk, Shri. Sandeep A Desai, Aged about 28 years, Occ.Service, R/o.Vadgaon, Belagavi.

(Represented by Shri. S. R. Sakari, Adv.)

V/s.

Accused : **Mr. Laxman Aba Sutar,** Aged about 40 years, Occ. Business, R/o.H.No.290, Maruti Galli, Anagol, Belagavi.

(Represented by Adv. Shri. S. B. Chavan)

Offence Complained of	:	Under Section 138 of N I Act.
Date of Institution	:	**07-05-2018**
Plea of the Accused	:	Pleaded not guilty
Final Order	:	Accused is Convicted
Date of Order	:	**02-08-2018**

JUDGMENT

The Complainant has filed the Private Complainant Under Section 200 of Code of Criminal Procedure, against the accused for taking action against him for the offence punishable under section 138 of Negotiable Instrument Act.

That, the brief facts of the present case are as under:

2. The complaint is a Multipurpose Multi State Co-operative Society Ltd., registered and functioning under the Multistate Co-operative Societies Act,. The accused is a member of complainant society and he had borrowed a PSL loan of Rs.25,000/- on 10-12-2010 under vide his loan A/c No.17 from the complainant society and Furnish sureties and executed a all necessary documents. The accused is irregular in repayment of installment and finally for discharge of outstanding amount of Rs.28,000/- after the continuous request form the complainant society of the said out standing due amount the accused had issued cheque bearing No.010651 dated 10-03-2018 for a sum of Rs. 28,000/- drawn on The Federal Bank Ltd, Sunflower Apartments, Near 3rd Railway Gate, Khanapur Road, Tilakwadi, Belagavi in favour of the complainant and assured that, the cheque would be honoured on its presentation and as per the assurance made by the accused, the complainant has presented the said cheque for encashment through his banker i.e. Karnataka Vikas Grameena Bank, Belagavi Branch, Belagavi, but it was dishonoured with an endorsement as **"Kindly Cont**

-tact Drawer” on 27-03-2018, the complainant got issued legal notice to accused on 12-04-2018, through his counsel by RPAD, calling upon him to repay the loan amount within 15 days from the date of receipt of this legal notice and it was returned as **“Not Claimed”**. Accused neither replied the notice nor paid the cheque amount within stipulated period, Hence this complainant society.

3. After filing the complaint, sworn statement of the complainant society represented by its Recovery Clerk has been recorded and on perusing the materials on record i.e. cheque, bank endorsement, legal notice and documents having been caused the notice to the accused, the court has been taken the cognizance of offence and issued summons to the accused.

4. In response to the summons, the accused appeared through his counsel Shri. S. B. Chavan and he was on court bail. Plea has been recorded; accused pleaded not guilty and claimed to be tried.

5. On closure of complainant side evidence, the accused statement has been recorded under Sec. 313(1)(b) of Cr.P.C., by placing the incriminating evidence appeared against the accused that are denied by the accused.

6. In this case the complainant adopted his sworn statement as his evidence in view of principle laid down by the Hon’ble Supreme Court in a decision reported in (2014) 5 SCC590 **Indian Bank Association and other V/S Union of India and others**). To prove the case, the Recovery Clerk of the complainant society examined himself as P.W.1 and got marked 6 documents as Ex.P.1 to Ex. P.6.

7. In support of the case of the complainant, he adduced his oral evidence as PW.1, filed by way of affidavit, in which, he has reiterated as per the

the averments made in the complaint and has got marked 6 documents namely:

1. Cheque which is marked as Ex. P.1,
2. The signature of the accused therein which is marked as Ex. P.1(a),
3. Bank Return Memo which is marked as Ex.P.2,
4. The Office Copy of the legal notice which is marked as Ex.P.3,
5. Postal Receipt which is marked as Ex.P.4,
6. Unserved Postal Cover which is marked as Ex.P.5,
7. Unserved Postal Cover Opened in the Open Court and Notice their Marked which is marked as Ex.P.5(a),
8. Resolution which is marked as Ex.P.6,

All these documents sufficiently disclose that, the complainant society has paid Rs.25,000/- to the accused, due to an outstanding amount to discharge the liability of the accused, he has issued cheque for a sum of Rs.28,000/-. The cheque has been presented for encashment in time. The legal notice has been issued in time even the complaint has been filed in time. As such the initial presumption under Sec.139 of N.I.Act has to be drawn as the complainant complied the mandatory requirements contemplated under Sec. 138 (a) to (c) of N.I.Act.

9. On closure of complainant side evidence, the case is posted for cross examination of PW-1.

10. At the stage the complainant society through its Recovery Clerk and accused along with their respective counsel arrived for conclusion and filed joint memo and submitted that, in view of joint memo to dispose of the case.

11. Heard both side and perused the materials on record and contents of joint memo

12. The points that arise for my consideration as under:

1. Whether the complainant has proved that the accused has committed the offence punishable U/s 138 of Negotiable Instrument Act?

2. Whether the accused is liable to pay the amount as per the joint memo dated 02-08-2018?

3. What order?

13. The above points are answered as under:-

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

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

REASONS

14. Point No.1 And 2 :

These two points are inter linked and to avoid repetition they are taken together for discussion.

15. As already stated in support of the claim of the complainant, the complainant society through its Recovery Clerk in a sworn statement reiterated the complainant averments in which itself is treated as examination-in-chief in view of the decision of the Hon'ble Apex Court in **Indian Bank Association and others V/S Union of India and others-**(W.P.(civil)No.18/2013). In addition to that, the complainant has produced Cheque dt : 10-03-2018, Bank endorsement dt:27-03-2018, Office copy of the legal Notice dt:12-04-2018 Postal Receipt and Postal Acknowledgement through RPAD and Resolution as per Ex.P.1 to P.6 respectively. As already stated the accused has not opted to cross-examine PW-1 in view of settlement arrived between himself and the complainant. The contents of Ex.P.1 to P.6 are analyzed, that clearly support the version of the complainant. The contents of complaint revels that, the accused had borrowed Rs.25,000/- from the complainant society as put up by the complaint. Similarly the contents of Ex.P.1 and P.2 are analyzed, it is clear that the accused has issued cheque dt: 10-03-2018 for a sum of Rs. 28,000/- in favour of the complainant society and the complainant had presented the same through his banker for encashment and the said cheque came to be dishonoured for the reason **"Kindly Contact Drawer"** on 27-03-2018 as put up by the complaint. Further the contents of Ex.P.3 to P.6 are looked into, it is clear

that after dishonoured of the cheque has found in Ex.P.1 the complainant got issued legal notice dt: 12-04-2018 by RPAD and it was returned as **“Not Claimed”**. The complainant presented the complaint on 07-05-2018 ie., after lapse of 15 days from the service of notice on the accused and within 30 days there after. Hence, on perusal of these aspects it is clear that prima facie the complainant had presented the cheque in question within its validity and got issued statutory notice within statutory time and filed the complaint within the prescribed the period. Admittedly in spite of service of notice the accused has neither complied with the demand made in the notice nor issued any reply the said notice. Therefore on going through these documents their remains no doubt that the complainant had complied with all the technical requirements as per Sec.138 of N.I.Act in filing the present complaint. As already stated the evidence of PW-1 also remained unchallenged. There are no grounds to disbelieve of the case of the complainant as to existence of legally recoverable debt and also issuance of cheque by the accused towards discharge of debt in favour of the complainant as put up by the complaint. Hence, it is clear that the complainant has proved all the necessary ingredients of section 138 of N.I.Act and thereby the commission of the offence punishable under the said section as contended.

16. As stated earlier, in this case when the case was posted of Cross-examination, the parties have settle the matter between them and accordingly filed joint memo on 02-08-2018 praying for Judgment in terms of their settlement. As per Section 147 of Negotiable Instrument Act the offence U/S 138 of negotiable Instrument Act is also compoundable. The contents of the same read over and explained to the parties. They admit that the contents of the said

memo are true and correct. I have gone through the contents of the memo. As per the terms and conditions of joint memo the accused has agreed to pay cheque amount Rs. 28,000/- in 9 monthly installment to the complainant society in respect of cheque bearing No. 010651.

(a) The accsued has agreed to pay Rs.3,000/- on or before 10-08-2018.
(b) The accsued has agreed to pay Rs.3,000/- on or before 10-09-2018.
(c) The accsued has agreed to pay Rs.3,000/- on or before 10-10-2018.
(d) The accsued has agreed to pay Rs.3,000/- on or before 10-11-2018.
(e) The accsued has agreed to pay Rs.3,000/- on or before 10-12-2018.
(f) The accsued has agreed to pay Rs.3,000/- on or before 10-01-2019.
(g) The accsued has agreed to pay Rs.3,000/- on or before 10-02-2019.
(h) The accsued has agreed to pay Rs.3,000/- on or before 10-03-2019.
(i) The accsued has agreed to pay Rs.4,000/- on or before 10-04-2019.

Both parties submitted in their joint memo that, the terms and conditions stated in the joint memo binds them. Hence, there is no legal impediment to permit the parties to compound the offence and also it is an economic offence and regulatory offence. The accused has to pay the money in terms of the joint memo. The same are part and parcel of this order. Accordingly, I proceed to answer the Point No.1 and Point No.2 in the
“ Affirmative”.

17. **Point No 3** :- I proceed to pass the following

ORDER

Acting Under Section **255(2)** of Criminal Procedure Code, the accused is hereby convicted for the offence punishable Under Section 138 of Negotiable Instrument Act and is sentenced to pay a fine of Rs.28,000/-(Rs.Twenty Eight Thousand Only). In Default thereof he shall undergo simple imprisonment for a period of 1 year.

Acting under section 357(1)(b) of Code of Criminal Procedure, it is ordered that, Rs.28,000/-(Rs.Twenty Eight Thousand Only), shall paid to the complainant as a compensation.

The Accused is directed to pay the said amount of Rs.28,000/- in 9 monthly installments as per terms and conditions agreed by the accused set out in the joint memo.

Bail bond of the accused shall continued till the payment of amount as stated in the Joint Memo.

Office to supply the copy of this judgment to the accused immediately of free of cost.

(Dictated to the stenographer directly on computer, corrected and then signed by me and then pronounced in the open court on this 02nd day of August 2018)

(Smt. BHAGYALAXMI)
VIII JMFC, Belgavi.

ANNEXURE

List of on behalf of complainant witnesses examined:

P.W.1 . Shri. Sandeep A Desai

List of documents produced on behalf of complainant:

1. Cheque which is marked as Ex. P.1,
2. The signature of the accused therein which is marked as Ex. P.1(a),
3. Bank Return Memo which is marked as Ex.P.2,
4. The Office Copy of the legal notice which is marked as Ex.P.3,
5. Postal Receipt which is marked as Ex.P.4,
6. Unserved Postal Cover which is marked as Ex.P.5,
7. Unserved Postal Cover Opened in the Open Court and Notice their Marked which is marked as Ex.P.5(a),
8. Resolution which is marked as Ex.P.6.

List of on behalf of accused witnesses examined:

Nil

List of documents produced on behalf of accused:-

Nil

(Smt.BHAGYALAXMI)
JMFC VIII,Belagavi