IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II, KOCHI

Present:- Smt. Anisha.S.Panicker, Judicial First Class Magistrate-II, Kochi

Dated : Tuesday the 8th day of October, 2024/16th Aswinam, 1946

ST No. 353/2023

Complainant	Jeffin T. N. S/o.Nelson, Thevankkat house, Pambaimoola Road, Edakochi, Kochi - 682 010 (Rep. By Adv.P.Ravindra Nath)
Accused	Tinu A. J, S/o.Josey, Arakkal house, Saudi, Mundamveli, Ernakulam - 682 507 (Rep. By Adv.Thomas Michael)
Offence	Under section 138 of Negotiable Instruments Act.
Plea	Not guilty
Finding	Guilty
Sentence or Order	Accused is convicted and sentenced to undergo imprisonment till rising of the court and to pay fine of ₹5,86,250 (Rupees five lakhs eighty six thousand and two hundred and fifty only) under section 138 of Negotiable Instruments Act. In default of payment of fine, accused shall undergo simple imprisonment for 2 months. In case of realization of fine, the same shall be paid as compensation to PW1 under section 357(1)(b) of Cr.P.C

Description of the Accused					
Sl. No.	Name	Father's name	Occupation	Residence	Age
1	2	3	4	5	6
	Tinu A. J	Josey	Business	Arakkal house, Saudi, Mundamveli,	---

Date of		
7	Occurrence	07.11.2022
8	Complaint	22.12.2022
9	Apprehension	02.04.2024
10	Release on bail	02.04.2024
11	Commencement of trial	02.07.2024
12	Close of Trial	05.10.2024
13	Sentence/Order	08.10.2024

This case having been finally heard on 05.10.2024 and the Court on the same day delivered the following;

JUDGMENT

1. The complaint is filed under sections 190 and 200 of the Code of Criminal Procedure for offence under section 138 and 142 of the Negotiable Instruments Act, 1881(herein after referred to as “the Act”.)

2. The brief facts of the complaint are stated as below:-

Complainant and accused are known to each other. Accused is involved in fishing business. He owns several fishing boats. In the month of April 2019, accused approached complainant at his residence and requested for an amount of ₹5,00,000(Rupees five lakhs only) and he promised a profit share in his fishing boat. He also promised to return the loan amount of ₹5,00,000(Rupees five lakhs only). Accused received the amount of ₹5,00,000(Rupees five lakhs only) in three installments for an amount of ₹3,00,000(Rupees three lakhs only) via cheque No.2079276 dated

16/4/2019, ₹1,00,000(Rupees one lakhs only) via cheque No. 2079281 dated 26/4/2019 and ₹1,00,000(Rupees one lakh only) again on 29/4/2019 by via cheque No.2079288 of Union Bank of India, Edakochi branch. On 28/10/2022, in discharge of the legally enforceable debt, accused issued cheque No.10296080 for an amount of ₹5,00,000(Rupees five lakhs only) drawn on Federal Bank, MG Road branch Ernakulam with the assurance that the cheque would be honoured. Believing the words of the accused, complainant presented the cheque for payment. But the cheque was returned for the reason account blocked. Intimation was received by the complainant on 07/11/2022. On 17/11/2022 complainant, issued an advocate notice to the accused, directing him to repay the amount and intimating him about the dishonour of the cheque. The notice was received by the accused on 18/11/2022. Despite receipt of notice, accused did not pay any amount and hence, this complaint is filed.

3. After verification, complaint was taken on file as ST 353/2023 and summons was issued to accused. On receipt of summons, accused appeared and he was granted bail. Particulars of offence was read over and explained to him to which he pleaded not guilty.

4. From the side of the complainant, PW1 was examined and Exhibits P1 to

P7 series were marked. After closure of complainant's evidence, accused was examined under section 313 (1)(b) of the Code of Criminal Procedure, to which he denied all incriminating circumstances appearing in evidence against him. From the side of the defence, no evidence was adduced.

5. Heard both sides.

6. The points which arise for consideration are as follows:-

    1. Whether the complainant has complied all statutory requirements?
    2. Whether the accused has executed and issued Ext.P1 cheque?
    3. Whether the benefit of presumption under Section 139 of the Negotiable Instruments Act is available to PW1?
    4. Whether there is probable rebuttal evidence on the side of defence?
    5. Whether the accused has committed offence under Section 138 of the Negotiable Instruments Act?
    6. What is the sentence to be imposed?

7. **Point No.1**:- The complaint is filed by PW1 for offence under section 138 and 142 of the Act. The ingredients of the offence as contemplated under section 138 of the Act are as under;

    i. The cheque must have been drawn for discharge of existing debt or liability.

ii. Cheque must be presented within three months or within period of its validity whichever is earlier.

iii. Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.

iv. Fact of dishonour must be informed to the drawer by notice within 30 days.

v. Drawer of cheque must fail to make payment within 15 days of receipt of notice.

8. Here, accused gave Ext.P1 (cheque) to PW1 for an amount of ₹5,00,000(Rupees five lakhs only). PW1 presented Ext.P1 within the period of its validity. Ext.P1 was returned for the reason 'Account blocked' vide Ext.P2 (cheque return memo) dated 07.11.2022. PW1 issued Ext.P3 on 17.11.2022. Ext.P4 is the postal receipt. The notice was sent to accused within the period of 30 days. Accused received the notice vide Ext.P5. Accused did not make payment within 15 days. PW1 instituted this complaint on 22.12.2022. Hence, all the statutory requirements are complied. Hence, point No.1 found in affirmative.

9. **Point Nos.2 to 5:**- Since all the points are connected, they are discussed together. The complainant was examined as PW1. In order to prove his

case, he filed affidavit in lieu of examination in chief and he reiterated the facts of the complaint. In order to prove his case, he produced Exhibit P1 to P7(a) . As per the case of PW1, accused borrowed an amount of ₹5,00,000(Rupees five lakhs only) from PW1 and agreed to return the same. In discharge of the legally enforceable debt, accused issued Exhibit P1 for an amount of ₹5,00,000(Rupees five lakhs only). Accused assured PW1 that there are sufficient funds to honour the cheque. Believing the words of the accused, PW1 presented the same for encashment, but to the dismay of PW1, it was returned for the reason account blocked. Exhibit P2 is the cheque dishonour memo. Thereafter, PW1 issued Exhibit P3 intimating accused about the dishonour and asking him to repay the amount of ₹5,00,000(Rupees five lakhs only) borrowed. Exhibit P4 is the postal receipt. Via Exhibit P5, accused received the notice. Exhibit P6 is the agreement dated 7/5/2019 entered between PW1 and accused evidencing receipt of ₹5,00,000(Rupees five lakhs only). Exhibit P7 is the statement of accounts of PW1. Ext. P7 (a) is the certificate. In the cross examination, PW1 reiterated that an amount of ₹5,00,000(Rupees five lakhs only) was given to accused in three installments via cheques. He denied receiving blank cheques from the accused. He further stated that Exhibit P1 was dishonoured as the account of the accused was blocked. Learned counsel for accused argued that PW1 has not proved as to on what grounds account of accused was blocked and therefore, offence under section 138 of Negotiable Instruments Act will not be attracted. It is to be noted that the signature in Ext.P1 is not disputed by accused. From the affidavit filed in lieu of examination in chief by PW1 and Ext.P1 to P7(a), by virtue of Section 139 of the Act, the court has to draw a presumption that holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. Here, the presumption in favour of PW1 arises. Then, the burden shifted on accused to show by probable defence that Ext.P1(cheque) was not dishonoured due to insufficient funds and account was blocked due to some other reason. Accused has not discharged the burden. Therefore, the contention that PW1 has not proved the reason of 'account blocked' is not sustainable as since presumption is raised, accused had to prove otherwise by leading probable defence to rebut the presumption. That is not done in this case.

10. PW2 is the Branch Manager of Union Bank of India, Edakochi branch. Through him, Exhibit P7 and P7(a) were marked.

11. The case of PW1 is that accused borrowed an amount of ₹5,00,000(Rupees five lakhs only) from him. In discharge of the legally enforceable debt, accused issued Exhibit P1. PW1 presented the cheque, but

it was returned as the account was blocked. Despite intimation from PW1, accused did not pay the amount. The reason for dishonour of cheque was account blocked. The same would fall within the purview of dishonour of cheque. From the evidence of PW1, the presumption in favour of PW1 arises. Accused had to raise a probable defence to discharge burden of proof, which has not been done. On the contrary, nothing was brought out in the cross examination of PW1 to discredit his evidence. Accused has not proved that the cheque was not issued in discharge of the legally enforceable debt. In view of the above the case of PW1 stands proved. Hence it can be concluded that accused has committed offence under section 138 of the Act. Hence point Nos.2 to 5 are affirmative.

12. **Point No.6 :-** On the basis of above discussion, I reach to a conclusion that accused executed and issued Ext.P7. In discharge of the debt, he issued Ext.P7. It was dishonoured and despite notice, accused did not make any payment. The above would squarely fall under Section 138 of the Act and accused is to be convicted. Considering the dishonour of cheque, I am not inclined to invoke the benevolent provisions of Probation of Offenders Act. The cheque amount is ₹5,00,000(Rupees five lakhs only). Accused has not paid any amount. Considering the same, I am of the view that accused is to be sentenced to imprisonment till rising of the court and

to pay fine of ₹5,86,250 (Rupees five lakhs eighty six thousand and two hundred and fifty only)(interest calculated @9% per annum for 23 months.

13. In the **result**, accused is convicted and sentenced to undergo imprisonment till rising of the court and to pay fine of₹5,86,250 (Rupees five lakhs eighty six thousand and two hundred and fifty only) under Section 138 of Negotiable Instruments Act. In default of payment of fine, accused shall undergo simple imprisonment for two months. In case of realization of fine, the same shall be paid as compensation to PW1 under section 357(1)(b) of Cr.P.C.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me, and pronounced in open Court on this the 8th day of October, 2024)

Sd/-
Judicial First Class Magistrate-II, Kochi

A P P E N D I X

Witnesses for complainant :-		
PW1	:	Jeffin T. N examined on 23.07.2024
PW2	:	Sanjay Raj P. D, examined on 10.09.2024
Exhibits for complainant : -		
P1	:	Cheque bearing number 296080 dated 28.10.2022 proved by PW1
P2	:	Dishonour memo dated 07.11.2022 proved by PW1
P3	:	Advocate notice dated 17.11.2022 proved by PW1

P4	:	Postal receipt dated 17.11.2022 proved by PW1
P5	:	Acknowledgement card proved by PW1
P6	:	Agreement dated 07.05.2019 proved by PW1
P7	:	Statement of account T. N. Engineering Works from 02.04.2019 to 02.05.2019 proved by PW1
P7(a)	:	Certificate u/s2A(b) and 2A(c) of the Banker's Book Evidence Act proved by PW1
Witness for Defence: Nil		
Exhibit for Defence: Nil		

Sd/-
Judicial First Class Magistrate-II, Kochi

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