IN THE COURT OF THE I ADDL JUDICIAL MAGISTRATE OF I CLASS, KHAMMAM.

Present: Ms.N.Amaravathi,
I Addl. Judl.Magistrate of First Class,
Khammam.

Dated this the 01st day of March, 2017

CC.No.1073/2013

Between:

1. M/s.Share Microfin Limited, rep. by it's Branch Mangaer, by name Jonnalagadda Maha Laxmaiah, R/o.H.No. 4-6-/6, Sriram nagar colony, Sambhani nagar,Khammam.

.... Complainant

And

2. Yalamaddi Uma,W/o.Saidaiah,age: 34yrs, Occu: Business,R/o. M.Venkatayapalem village , Khammam rural,Khammam district.

3. Yalamaddi Saidaiah, S/o.Not known,age:38yrs, Occu: Business, R/o. M. Venkatayapalem, Khammam rural Mandal,Khammam.

....Accused

This case coming on this the 27th day of February , 2017 before me for hearing in the presence of Sri Talluri Dilip, Advocate for the complainant and Sri.Y.Nageswar rao, Advocate of accused, and after having stood over for consideration, the court delivered the following:-

:: JUDGMENT ::

This complaint filed against the accused for an offence committed by him U/sec.138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant as narrated in the complaint in brief are as follows:

The complainant and the accused are acquainted with each other and the accused.No1 and 2 are approached the complainant and borrowed an amount of Rs.50,000/- (Rupees one fifty thousand only) on 29.09.210 for his family necessities, with a promise to repay the same within ten days, and the accused executed promissory note infavour of the complainant agreeing to repay the same with interest @ 1,150/- per week in 50 weeks. Thereafter, the complainant demanded the accused to repay the same, then, the accused issued cheque for sum of Rs.67,067-00 vide Cheque bearing No.300601, dt.28.06.2013 of ING Visya bank, Mayuri center branch, Khammam . Thereafter, the complainant presented the said cheque into his bank for collection, them, the same was returned unpaid on 27.07.2013 with an endorsement that “ACCOUNT CLOSED” and the complainant informed the same to the accused, then the accused promised to repay the said amount, but failed to repay the same, then the complainant got issued legal notice dt:22.08.2013, to the accused and the accused received the same, but failed to repay the cheque amount. Hence, the complaint.

3. On filing of complaint, after recoding the sworn statement of the complainant, the cognizance was taken for an offence punishable U/sec.138 of Negotiable instruments Act, against the accused.

4. On appearance of the accused, case copies furnished to the accused as required U/s.207 of Cr.P.C and the accused was examined U/sec.251 Cr.P.C. for the offence punishable U/se.138 of Negotiable instruments Act, for which the accused pleaded not guilty and claimed to be tried.

5. In order to prove the case of the complainant, the complainant himself is examined as Pw1/Mandapalli Pradeep Kumar and documents marked Ex.P1 to P7, on behalf of the complainant.

6. On closure of the complainant side evidence, the accused was called for examination U/sec. 313crpc for explaining the incriminating material evidence against him, in the evidence of Pw1/Jonnalagadda Maha Laxmaiah coupled

with the documents ExP1 to P5, having understood the same, the accused denied the incriminating material evidence against him and request time for defense evidence.

7. Heard both sides. Perused the entire material on record.

8. Now the point for determination is:

1. Whether the complainant is able to prove the guilt of the accused for an offence punishable U/sec.138 of Negotiable Instruments Act, beyond reasonable doubt?

9. POINT: Perused the evidence on behalf of the complainant i.e. Pw1/Jonnalagadda Maha Laxmaiah and documents marked Ex.P1 to P5 that PW1 who reiterated the averments of the complaint in his examination in chief affidavit and got marked the documents ExP1 to P5 i.e ExP1 Original Cheque dt.30.3.2013, Ex.P2 Cheque returned Memo, dt.2-4-2013, Ex.P3 Office Copy of Legal notice, dt.9-4-2013, Ex.P4. Returned R.P, Ex.P.5 Original Promissory Note, dt. 15.9.2011.

9. Pw1/Jonnalagadda Maha Laxmaiah. testified that the accused A1 and A2 approached the complainant for loan amount of Rs. 50.000/- by executing loan agreement No. MEL No. 40111800392 date. 29.09.2010, and also executed promissory note infavour of the complainant and acknowledge to pay the loan amount in 50 weekly installments @ Rs. 1.150/- and cheques issued by the accused A1 and A2 harassed till 15.10.2010, and thereafter, the accused A2 issued cheque under Ex. P1 for outstanding loan amount with interest Rs. 67,067 date. 28.06.2013 and when the same was presented into the bank then, the said cheque was returned with an endorsement Account closed.

10. In order to shift the evidential burden upon the accused the complainant

Pw1/Jonnalagadda Maha Laxmaiah has to prove that there is legal enforceable debt. According to Pw1 the accused A1 and A2 both approached the complainant company and obtained loan under load agreement No. MEL No. 40111800392 date, 29.09.2010, and executed promissory note. But the complainant failed to file the said loan agreement as well as the promissory note executed by the accused. Pw1/Jonnalagadda Maha Laxmaiah himself admitted that the complainant obtained cheque from accused and the same was honored till 15.10.2010, and thereafter, the accused due of loan installment. That means, the complainant would have obtained the cheques from the4 accused towards security of payment of the allegation loan installment. But the complainant failed to prove the initial burden her upon the complainant to prove that there is legally enforceable debt upon the accused A1 and A2 and towards discharge of the same, the accused A2 issued cheque under Ex. P1.

11. On the other hand, the evidence of Pw1/Jonnalagadda Maha Laxmaiah is silent with respect to that, whether the accused A1 and A2 jointly executed the alleged loan agreement and alleged promissory note in favour of the complainant. Hence, evidence of the complainant Pw1/Jonnalagadda Maha Laxmaiah is not sufficient to prove that there is legally enforceable debt upon the accused A1 and A2 loan amount of Rs. 50.000/- under loan agreement and promissory note date 29.09.2010 beyond reasonable doubt.

12. In view of the above discussion, the prosecution miserably failed to prove the guilt of the accused A1 and A2 for the offence punishable U/sec. 138 of NI Act, beyond reasonable doubt.

13. In the result, the accused A1 and A2 are found not guilty for the offences punishable U/sec. 138 of NI Act and the accused A1 and A2 are

acquitted U/sec. 255(1) IPC. The bail bonds of the accused A1 and A2 shall be in force for Six Months.

Typed to my dictation by Phonographer corrected and pronounced by me in the open court on this the 1st day of March , 2017.

I ADDL JUDL MAGISTRATE OF I CLASS,
KHAMMAM.

Appendix of evidence

Witnesses examined

For complainant:- For Defence:

PW1: M.Pradeep Kumar - NIL-

Exhibits marked

For the Prosecution:

Ex.P1 : Original Cheque bearing NO.548720 dt.26.10.2010 for sum of Rs.1,25,000/-.

Ex.P2 : Cheque return memo dt.27.10.2010

Ex.P3 : Cheque returned memo dt.3.11.2010

Ex.P4 : Office copy of Legal notice dt.11.11.2010.

Ex.P5 : Courier receipts (2) in number
1073
Ex.P6 : Promissory note dt.26.10.2009.

Ex.P7 : True Copy of money lending license of accused (verified with Original)

For defence: Mos.Marked
-Nil- -Nil-

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