

KAMS0C0073762022



Presented on : 29.07.2022

Registered on : 28.10.2022

Decided on : 28.10.2024

Duration : 02 years, 02 month, 29 days

IN THE COURT OF THE V J.M.F.C. AT: MYSURU**DATED THIS 28TH DAY OF OCTOBER, 2024****-. PRESENT :-****SMT.SUSHMA C. B.A. L.L.B (Spl.)**

V J.M.F.C., Mysuru

C.C.No.6903/2022**COMPLAINANT:****Sri. Ramakrishna K.,**

S/o Kullegowda,

Aged about 34 years,

R/at. No.4, Ashrama Road,

Behind Kempegowda Building,

Hinkal, Mysuru.

(By Sri.A.S.Y., Advocate,)**V/s****ACCUSED****:****Sri. K.Somaiah,**

S/o. Late Kariyaiah,

Aged about 53 years,

R/at No.921, 6th Cross,2nd Stage, Srirampura,

Mysuru.

Working at:

Office of the Assistant Director,

Director, Department of Women
and Child Development,
1st Floor, Sthree Shakthi
Bhavan, Krishnadevaraya Circle
(K.D.Circle), Vijayanagara 2nd
Stage, Mysuru.

(By Sri.H.M., Advocate)

:: J U D G M E N T ::

This case arise out of the complaint filed by the complainant alleging that, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act (in short referred as “N.I. Act”).

2. The factual matrix of the complaint is summarized as under;

That the accused being a employee of Women and child Development Department, office of the Assistant Director assured the complainant to get a job in the Government Department and received a sum of Rs.3,50,000/- (Rupees three lakhs fifty thousand only), Rs.10,000/- via phone pay on 06.11.2021 and Rs.3,40,000/- by way of cash. Further it is stated that after noticing that the accused is not capable of getting and securing any job to the complainant, the complainant started to pressurize the accused to return the amount, which he received from the

complainant. At that point of time, the accused paid a sum of Rs.50,000/- on 28.01.2022, Rs.25,000/- on 29.01.2022 and Rs.25,000/- on 22.03.2022 through phone pay. In all the complainant has received a sum of Rs.1,00,000/- and acknowledged the same. For remaining balance of Rs.2,50,000/- out of Rs.3,50,000/-, the accused has issued a cheque bearing No.000006, dated 28.02.2022 drawn on HDFC Bank, Vijayanagara Branch, Mysuru for a sum of Rs.2,25,000/- (Rupees two lakhs twenty five thousand only) and for remaining Rs.25,000/-, the accused has paid Rs.10,000/- through phone pay on 07.06.2022. Since the accused has to pay a sum of Rs.25,000/- in addition to cheque amount, Rs.10,000/- is returned back to the accused. Thereby the accused is also liable to pay Rs.25,000/- in addition to cheque amount. The complainant has presented the cheque through his banker i.e., Karnataka Bank, Hootagalli Branch, Mysuru, but the said cheque has been returned unpaid with the Bank endorsement dated 23.05.2022 as **“Funds Insufficient”**.

3. Thereafter the complainant got issued the legal notice dated 20.06.2022 and the said notice was served to the accused on 23.06.2022. Subsequently the accused has caused reply notice through his counsel on 28.06.2022. But the accused has not paid any amount

towards the amount mentioned in the cheque. Hence, the accused has committed the offence punishable under Section 138 of N.I. Act. By contending so the complainant has prayed to punish the accused as per law.

4. On filing of complaint, this court has taken cognizance for the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, accused enlarged on bail and plea was recorded as per section 251 of Cr.P.C. Accused has not stated the defense.

5. The sworn stated of the complainant is considered as evidence per the decision of the Hon'ble Supreme Court rendered in the case of **Indian Bank Association and others versus Union of India and others (2014) 5 SCC 590** and also as the observation made by the Hon'ble High Court in the case of **M/s Mesh Trans Gears Private Limited Versus Dr.R.Parvathreddy (Criminal petition No.8943 of 2010 dated 22.03.213)** and complainant was treated as PW.1 got marked 9 documents as Ex.P.1 to Ex.P.9 and closed his side. Counsel for accused has not filed application

U/sec.145(2) of Cr.P.C. Hence, cross-examination of PW.1 was taken as nil.

6. When the matter was posted for defense evidence, both parties and their counsels filed Joint memo and submitted that, matter is settled for Rs.1,80,000/- and accused has agreed to pay the amount in three installments on or before 25.05.2024. On 06.05.2024 accused has paid Rs.50,000/-. Thereafter accused has not paid the agreed amount. Since accused has not complied the terms of joint memo, counsel for complainant prayed to pass judgment in accordance with the joint memo.

7. Heard counsel for complainant and perused the materials on record.

8. The points that arise for my consideration are as follows.

1. Whether the complainant proves beyond all reasonable doubts that, the accused has issued a cheque bearing **No.000006** dated **28.02.2022** for sum of **Rs.2,25,000/-** to discharge legally enforceable debt due to the complainant and on presentation it was dishonored and reported with an endorsement as **“Funds Insufficient”** and accused has not made any payment within the stipulated time after issuance of statutory notice and thereby committed an offence punishable under Section 138 of N.I. Act?

2. What order?

9. My findings to the above said points are as follows:

Point No.1 : In the **Affirmative.**

Point No.2 : As per final order
for the following:

:: REASONS ::

10. Point No.1 : Complainant has filed this complaint alleging that accused has committed offence under section 138 of N.I. Act. He pleads and asserts that, towards discharge of his liability, accused has issued a cheque for Rs.2,25,000/-. The said cheque came to be dishonoured on presentation. Complainant has issued notice within time stipulated calling upon the accused to pay the amount covered under cheque. In spite of service of notice accused has not paid the amount within 15 days, which gave rise cause of action to file this complaint. He further relied on the documents.

11. In this scenario, let us scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. The cheque dated 28.02.2022, the bank endorsements dated 13.04.2022 and 23.05.2022, legal notice dated 20.06.2022, the postal acknowledgment dated 23.06.2022 and the unserved postal cover which discloses that the notice was returned as not claimed by the accused on 25.06.2022

and reply notice dated 28.06.2022. This complaint came to be filed on 29.07.2022. On careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act is complied with and this complaint is filed within time. Thus, complainant relied on the statutory presumptions enshrined under section 118 read with section 139 of N.I. Act.

12. The presumption under sec.118 and 139 of the Act is in favour of the complainant. To rebut presumption, accused neither cross-examined PW.1 nor adduced any evidence on their behalf. Thus, chief-examination version of PW.1 remains uncontradicted.

13. During the pendency of this case, on 16.03.2024 both the parties have agreed and filed a joint memo stating that the matter is settled between them for a sum of Rs.1,80,000/- as full and final settlement. i.e., as per the joint memo accused has agreed to pay amount Rs.60,000/- in three installments on or before 25.05.2024. Accused has paid Rs.50,000/- on 06.05.2024 and thereafter, accused remained absent and his counsel prayed time for compliance of joint memo and not paid remaining amount. Counsel for complainant submitted that, accused is not paying the installments as agreed in terms of joint memo.

Therefore the complainant and his counsel prays to pass judgment on joint memo.

14. On careful perusal of joint memo, it is seen that, both the parties and their counsels have agreed for sum of Rs.1,80,000/- and as per the terms of joint memo accused was supposed clear the agreed amount accused was liable to pay Rs.60,000/- on 25th of every month in three installments but accused has paid Rs.50,000/- on 06.05.2024. Thereafter, accused remained absent and not complied the terms of joint memo.

15. Considering the joint memo and submission of learned counsel for complainant and the accused, I deem it is not proper to grant time to the accused for payment of the amount to the complainant. Further on perusal of the order sheet it is seen that accused has paid Rs.50,000/- out of compromised amount i.e., Rs.1,80,000/-. But accused himself has admitted that, in default of payment as per joint memo, he will pay the entire cheque amount. Hence, this court is considering the same and passing judgment for the cheque amount as agreed by the accused and the amount which is already paid by accused shall be given set off. The cheque amount is Rs.2,25,000/- - amount already paid is Rs.50,000/- = remaining balance amount is

Rs.1,75,000/-. Hence, accused is directed to pay remaining balance i.e., Rs.1,75,000/- to complainant. Thus, material available on record clearly discloses that the complainant has complied all the ingredients of section 139 of Negotiable Instrument Act.

16. It is pertinent to mention that, the same situation was arises in **M/s. Shree Charan Pvt. Ltd., Vs. M/s. V.M.Engineering and another in Criminal Revision Petition No.124/2022 on 17th of March 2022** wherein Hon'ble High Court has held that, judgment passed by the trial court was upheld by the Hon'ble High Court. Further held that:-

“While accepting the joint memo, the liability is accepted and also time bound repayment is agreed in terms of the joint memo and the punishment of six months is awarded in case of default and not the substantive sentence. Only default sentence is passed and not substantive sentence. Hence, the contention of the learned counsel for the respondent cannot be accepted.”

In view of foregoing discussions, I am of the opinion that, the complainant has established that the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. The joint memo filed by the complainant and accused is sufficient to answer point No.1 in the **Affirmative**.

17. Point No.2 : In view of my finding on point No.1 and for the reasons stated above, I proceed to pass the following:

:: ORDER ::

Acting under section 255(2) of Criminal Procedure Code, accused is hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act and is sentenced to pay a fine of Rs.1,75,000 (Rupees one lakh seventy five thousand only) the remaining balance amount.

When the said amount is deposited, same shall be paid to the complainant as compensation.

Terms and conditions of the joint memo becomes part and parcel of this order.

In default of payment of the fine amount as agreed upon, accused shall undergo simple imprisonment for 1 (One) month.

It is clarified that serving on default sentence will not absolve the accused on payment of the fine amount.

The bail bond of the accused stands canceled.

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

(Dictated to the stenographer, transcript thereof is computerized and after corrections pronounced by me in the open Court on this the 28th day of October, 2024)

**(Smt.SUSHMA C.)
V J.M.F.C., Mysuru.**

:: ANNEXURE ::**1. Witnesses examined on behalf of the Complainant:**

P.W.1 - Sri.Ramakrishna K.

2. Documents marked on behalf of the Complainant:

Ex.P-1 - Original cheque
Ex.P-1(a) - Signature of the accused
Ex.P-2 & 3 - 2 Bank endorsements
Ex.P-4 - Legal notice
Ex.P-5 & 6 - 2 Postal receipts
Ex.P-7 - Postal acknowledgment
Ex.P-8 - Unserved postal cover
Ex.P-8(a) - Copy of notice
Ex.P-9 - Reply notice

3. Witnesses Examined on behalf of the Accused:

- None -

4. Documents marked on behalf of the Accused:

- Nil -

V J.M.F.C., Mysuru.