**IN THE COURT OF IX METROPOLITAN MAGISTRATE,
AT HYDERABAD**

PRESENT : Goolla Spandana
VII Metropolitan Magistrate,
FAC IX Metropolitan Magistrate,
Hyderabad

Dates this the 8th day of July, 2022

CC – NI No. 363 of 2022
(Old CC No.120 of 2018 on the file of VI Special Magistrate, Hyd)

Between

Syed Gulam Siddiq
S/o. Syed Quaseem Ali,
Aged about 50 years, Occ: Vegetable Vendor,
R/o. H.No.19-5-32/A/12/1/A, Mahmood Nagar,
Kishan Bagh, Hyderabad. ...Complainant

And

Aziz Ahmed, S/o. Abdul Razak,
Aged about 49 years,
R/o. H.No.19-1-436/A/32/B/1,
Osman Bagh, Hyderabad. ...Accused

This Calender Case is coming on this day before me for hearing in the presence of Sri.Mohd Abdul Kareem, Advocate for the Complainant and of Sri.G.Srinu, Advocate for the Accused and upon hearing the arguments on both sides and matter stood over for consideration till this date, this Court delievered the following;

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

1. The Complainant has filed a private complaint U/Sec. 200 of Cr.P.C against the accused alleging the commission of offence punishable under Section 138 of N.I Act.

2. The brief facts of the prosecution/complainant as per the allegations contained in the complaint are as follows;

The Complainant went to Foreign Country (Saudi) and returned to India with small earnings in the year 2015 and running the vegetable shop in Hyderabad. During the Ramzan festival in 2017, complainant put a small stall of cloths at Madina Building, Charminar, Hyderabad where the accused was in Garment Saree business and Complainant got acquainted with accused through the brother-in-law of complainant. Thereafter accused has requested the complainant to invest money in his saree business and assured profits and promised to share profits of business monthly. Believing the words of accused, complainant invested Rs.1,40,000/- with the accused on 27.07.2017 and accused also executed a receipt. In the month of August, 2017 accused gave Rs.10,000/- to the complainant towards profit in business, later accused failed to pay the profits continuously for 2 months to the complainant. The complainant approached the accused and demanded to return the amount for not paying the profits properly and in the first week of October, 2017, the accused issued two post dated cheques bearing No.877586, dt.27.10.2017 for Rs.50,000/- and another cheque No.877585, dt.17.11.2017 for amount of Rs.90,000/- both drawn on Syndicate Bank, Shahibanda branch, Hyderabad issued towards discharge of legal enforceable debt.

The complainant presented the said two cheques in his banker Indian Overseas Bank, Pattergatty branch, Hyderabad on 20.12.2017 but the same were dishonoured for the reason “INSUFFICIENT FUNDS” vide cheque return memo dt.21.12.2017. The complainant informed the same to the accused and demanded the repayment of amount in cash but accused avoiding to repay the debt. The complainant got issued a legal notice, dt.06.01.2018 through his counsel demanding the accused to pay the amount of Rs.1,40,000/- within 15 days but accused failed to do so. Hence, the complainant filed the complaint before the Hon’ble VIII Additional Chief Metropolitan Magistrate, Hyderabad and as per the orders of Hon’ble Metropolitan Sessions Judge, Hyderabad the case is transferred to the Court of VI Special Magistrate, Hyderabad and numbered as CC No.120 of

2018. On appearance of accused, he is supplied with the copy of complaint and other material papers U/s. 207 Cr.P.C and examined U/s. 251 Cr.P.C. He denied, pleaded not guilty and claimed to be tried for the said offence and posted for trial.

3. To prove the guilty of the accused, the complainant got examined himself as PW.1, Mr.Shaik Mahaboob as PW.2, Mr.Syed Sajid as PW.3 and Mr.Mohd Abdul Hannan as PW.4 and got marked Ex.P1 to Ex.P9. After closure of the complainant's evidence, the accused is examined U/Sec.313 Cr.P.C and he denied the incriminating evidence and did not adduce any defense evidence on his behalf. Ex.P1 is the Cheque bearing No.877586, dt.27.10.2017 for Rs.50,000/- drawn on Syndicate Bank, Shahalibanda branch, Hyderabad, Ex.P2 is the Cheque bearing No.877585, dt.17.11.2017 for Rs.90,000/- drawn on Syndicate Bank, Shahalibanda branch, Hyderabad, Ex.P3 is the Cheque return memos (2 Nos) dated 21.12.2017 along with slip dated 21.12.2017, Ex.P4 is the office copy of legal notice, dt.06.01.2018, Ex.P5 is the receipt of postal department for the notice sent, Ex.P6 is the postal tract report, Ex.P7 is the FIR bearing No.226/2017 of PS Bahadurpura, dt.12.11.2017, Ex.P8 is the Business investment agreement got executed in between complainant and accused dt.27.07.2017 and Ex.P9 is the Receipt passed by the accused admitting the receipt of the amount on 27.07.2017.

4. The PW.1 deposed in chief examination what all stated in the complaint and got marked Ex.P1 to Ex.P9.

5. In the Cross Examination by the Defence Counsel he deposed that since past three years, he is doing business and the amount of Rs.1,40,000/- was given in respect of Saree Business as assured by the accused and he did not visit the shop of accused at any time. He denied the suggestion that

he was visiting the shop of the accused since he invested the amount and intentionally deposing false and also accused did not fill the contents of the subject cheque under Ex.P1 and Ex.P2 since the name of the payee is written differently in both the cheques under Ex.P1 and Ex.P2 and also that he used to visit the shop of the accused and took blank cheques available in the shop of the accused and by misusing the same, filed this false complaint against the accused.

6. PW.2 Shaik Mahaboob a witness supported the case of the PW.1 and spoken about the transaction in chief affidavit.

7. In the cross examination by the defence counsel, PW.2 deposed that he knew PW.1 since past four to five years and no acquaintance with the accused and he purchased the lorry which is in the name of PW.1 for Rs.6,00,000/- and after receiving the amount from him, PW.1 gave to the accused. He denied the suggestion that he did not pay any amount to PW.1 and that in order to help PW.1 deposing false against the accused.

8. PW.3 Syed Sajid a witness to Ex.P8 supported the case of the PW.1 and spoken about Ex.P7 FIR in chief affidavit.

9. In the cross examination by the defense counsel, PW.3 deposed that he know both PW.1 and accused and both of them got typed Ex.P8 document and he put his signature at serial No.5. He denied the suggestion that he do not know anything about the transaction and that in order to help PW.1 deposing false.

10. PW.4 Mohammed Abdul Hannan a witness to Ex.P1 and Ex.P2 cheques, also supported the case of PW.1 in his chief and deposed about Ex.P1 and Ex.P2.

11. In the cross examination by the defence counsel, PW.4 deposed that he know both PW.1 and accused and he was present when the accused

handed over two cheques to PW.1 and he was not present when agreement was executed in between PW.1 and accused. He denied the suggestion that no cheques are given in his presence and in order to support the case of PW.1, intentionally deposing false.

12. As per the proceedings of the Hon'ble Metropolitan Sessions Judge, Hyderabad, this case is again transferred to this Court and this case is re-numbered as CC-NI No.363 of 2022.

13. Heard the arguments on behalf of both sides and perused the records. The advocate for accused filed written arguments U/s. 314 Cr.P.C along with some citations and the same are taken into consideration. After having heard the arguments on both sides, now the point for consideration is that whether the complainant has proved the case as set up by him against the accused and thereby brought home the guilty of the accused of the offence punishable U/Sec. 138 of NI Act beyond all reasonable doubt.

14. As can be culled out from the record of the case and the oral and documentary evidence that has come on record before the Court on behalf of both sides, there appears to be dispute regarding the complaiance of service of legal notice by complainant to the accused and no dispute regarding the other essential ingredients of Sec.138 of Negotiable Instruments Act and Sec.142 of Negotiable Instruments Act. Here the complainant has presented the Ex.P1 and Ex.P2 within the period of its validity, bouncing of Ex.P1 and Ex.P2 cheques for the reasons "Insufficient Funds" under Ex.P3 cheque return memos.

15. Here comes the answer for the question that accused has raised that complainant failed to establish that legal notice Ex.P4 has been served to accused. It is evident from Ex.P5 and Ex.P6 that complainant has sent the Ex.P4 through RPAD which was served to the accused in Ex.P6 on

08.01.2018, which shows as “item delivery attempted door locked – intimation served” and on 09.01.2018, it shows as “item delivery attempted unclaimed”.

As per judgment of Hon’ble Supreme Court in **V.Raja Kumari Vs. P.Subbarama Naidu AIR 2005 SC 109** it was held that if notice is returned with door locked / refused / intimation served Unclaimed, then it shall be presumed that notice is duly served.

Same in this case Ex.P6 shows as deemed service.

16. Complaint was filed within limitation and coming to the territorial jurisdiction, compliance of Sec.142 of NI Act, Ex.P1 and Ex.P2 were presented in the Indian Overseas Bank, Pathergatty branch, Hyderabad which comes under this Court jurisdiction.

17. Keeping in view of the submissions made while advancing of arguments on both sides by the learned counsel, the main points now that arise for consideration on the other remaining aspects and ingredients of the offence punishable U/Sec. 138 of NI Act as as follows;

1) Whether the complainant has complied with the requirement of giving of notice to the accused interms of clause (b) of Proviso to Sec.138 of NI Act ?

2) Where there existed any legally enforceable debt or liablity of Rs.1,40,000/- in between complainant and the accused ?

3) Whether Ex.P1, Ex.P2 were issued by the accused in favour of the complainant towards discharge of any debt / liability ?

4) Whether any criminal liability of the offence punishable U/s. 138 of NI Act in respect of said cheques on its bouncing can be fastened on the accused ?

POINT NO.1

18. The complainant as PW.1 on Oath has deposed that on bouncing of Ex.P1 and Ex.P2 cheques under Ex.P3 cheque return memos for the reason "Insufficient Funds", he got issued Ex.P4 Statutory Legal Notice dt.06.01.2018 by Post through RPAD to the accused to his residential address, Bahadurpura, Pincode – 500064, under Ex.P5 and Ex.P6 – Postal Tract Report of RPAD postal receipts dt.06.01.2018 which was returned as Unclaimed and it is evident in Ex.P6 and as such contended that the complainant has complied with the requirement of giving of the notice to accused in terms of clause (b) of Proviso to Sec.138 of NI Act. Accordingly, this point is answered in favour of the complainant.

POINT No.S 2 & 3 :

19. For convenience sake I feel it desirable to discuss these two points together to avoid repetition in discussing the evidence that has come on record before the Court on behalf of both the parties.

To prove these two points, the complainant is relying upon the evidence given by him as PW.1 to PW.4 coupled with Ex.P1 to Ex.P9. Per contra the accused is relying upon the material submitted by the complainant and the statements elicited from him during the course of cross examination as PW.1, PW.2 to PW.4. But however, he did not adduce any oral or documentary evidence on his behalf as pointed out herein.

20. The complainant as Pw.1 has reiterated his case as detailed and accordingly his case is nutshell to the effect that the accused had requested to complainant to invest money in his saree business and assured profits and promised to share profits of business monthly, based on this complainant invested an amount of Rs.1,40,000/- for which Ex.P8 was

executed on 27.07.2017 and upon the payment, accused has given receipt which is marked as Ex.P9. Accused in the month of August 2017 has given Rs.10,000/- to the complainant towards the profits of the business. Later, the accused failed to pay profits of business continuously approached accused and demanded the return of amount since accused is not paying the profits properly, on persistent demand by the complainant, in the month of October 2017 accused has issued two post dated cheques Ex.P1 and Ex.P2 in favour of the complainant and on such prayed to raise the presumption envisaged U/Sec. 118, 139 of NI Act in his favour.

In **(2019) 16 SCC 83 between Shree Daneshwari Traders Vs.Sanjay Jain**, once cheque is issued by drawer, a presumption under Section 139 arises in favour of holder, Section 139 creates a statutory presumption that cheque received of the nature referred to under Section 138 is for the discharge in whole or in part of any debt or other liability. Initial burden lies upon complainant to prove the circumstances under which cheque was issued in favour and that same was issued in discharge of a legally enforceable debt. It is for accused to adduce evidence of such facts and circumstances to rebut the presumption that such debt does not exist or that the cheques are not supported by consideration.

In **(2019) 5 SCC 418 between Basalingappa Vs. Mudibasappa,** principles summarized regarding leaving of presumption under and how said presumption can be rebutted, while prosecution must establish its case beyond reasonable doubt, accused to prove a defence must only meet standard of preponderance of probabilities.

21. In Sec.251 Cr.P.C Examination, accused has denied all the accusations and even in 313 Cr.P.C examination, he denied all the statements made by PW.1 to PW.4 and he further stated that “PW.1 used to visit my shop and

without knowledge took away the cheques and misused the same. PW.1 has filed a false police case when I requested him to give the cheques. I did not commit any offence nor I am due any amount to PW.1".

22. Here the complainant has to prove his case beyond all reasonable and he relied upon documentary and oral evidence of him as PW.1 and PW.2 to PW.4.

23. PW.2 stated in his evidence in chief and cross that he has purchased Ashok Leyland vehicle bearing No. TS 12 UB 3125 from the complainant on 27.07.2017 and same after receiving the sale consideration, out of that PW.1 has paid amount to accused in his presence and then Ex.P8 was executed and Ex.P9 receipt was given and PW.2 stood as witness to this transaction and execution. PW.3 stated that he was witnessed the transaction between PW.1 and the accused, in his presence document was typed and he stated that he stood as the witness in Ex.P8 at Serial No.5. PW.4 stated that he was present when the accused had handed over two cheques to the complainant.

The burden lies on the complainant to prove the debt / liability of the accused to him and the accused issued Ex.P1 and Ex.P2 for Rs.50,000/- and Rs.90,000/- respectively to discharge the debt / liability under Ex.P8 and Ex.P9 executed by accused in favour of PW.1.

15. PW.1 in his examination stated that he invested the amount of Rs.1,40,000/- in Saree Business as assured by accused, for which they have executed Ex.P8 and Ex.P9 for which PW.1 corroborated that PW.2 corroborated that PW.2 has purchased the vehicle from PW.1 for Rs.6 lakhs, after receiving the amount given by PW.2, out of that PW.1 has given amount of Rs.1,40,000/- to the accused for the investment and PW.2 stood as witness to the transaction and execution. Here in Ex.P8 and Ex.P9, the

accused did not dispute the signature on it are not his signature and he did not dispute to the contents of Ex.P8 and Ex.P9 dated 27.07.2017 and in Ex.P8 it was clear that parties have not put their signatures with any force. Even PW.3 corroborated with the prosecution / complainant that he has witnessed the transaction between PW.1 and accused and he further deposed that he signed as witness No.5 on Ex.P8.

So from the above, it is clear that complainant has invested or given money to the accused. PW.1 further stated that when complainant asked for the profit, accused has threatened him to kill by showing sword and abused, for which a FIR was lodged and which is marked as Ex.P9 dt.12.11.2017.

23. To discharge initial burden, the learned counsel for accused cross examined PW.1 to PW.4. In the entire cross examination of PW.s 1 to 4, they did not admit the suggestion made by the counsel for accused in respect of repayment of alleged cheque amount by the accused. Therefore, the accused cannot say that he has discharged his initial burden.

24. In this case complainant/PW.1 says that to repay the investment money, the accused has issued Ex.P1 and Ex.P2, the same was corroborated by the PW.4, PW.4 stated that in his presence accused has handed over two cheques to complainant. Whereas accused stated in his Sec.313 Cr.P.C examination that "PW.1 used to visit my shop and without my knowledge took away the cheques and misused the same". When PW.1 has taken the cheques without his knowledge, for his lost cheques accused did not file any complaint. Here the accused did not dispute the signature of cheque and cheques were signed by the accused, therefore, adverse inference has to be drawn against the accused that the said cheques were issued for discharge of existence of legally recoverable debt. In the case on hand,

there is no cogent and convincing materials on behalf of accused to believe his version and that he has not issued the questioned cheque in favour of complainant for discharge of legally recoverable debt. Therefore, it discloses that the accused has taken plausible defence without any documentary evidence.

As per the Hon'ble Supreme Court Judgment in **Kishan Rao Vs. Shankara goud in (2018) 8 SCC 165,** it was held that accused may adduce evidence to rebut presumption U/s. 139 of NI Act but mere denial regarding existence of debt shall not serve any purpose.

As per Hon'ble Supreme Court judgment in **Bir Singh Vs. Mukesh Kumar (2019) 4 SCC 197 –** Section 139 of NI Act raises presumption of law that cheque duly drawn was in discharge of debt or liability. However, presumption is rebuttable and onus lies on drawer to rebut it by adducing cogent evidence to the contrary.

In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Ltd – (2016) 10 SCC 458,** wherein the Hon'ble Supreme Courst stated that issuance of cheque and admission of signature there on would invoke presumption of legal enforceable debt in favour of holder, accused needs to rebut such presumption.

In view of the facts and circumstances of the case as discussed in forgoing paras, the case in between M.S. Narayan Menon @ mani Vs. State of Kerala and another – 2006 6 SCC 39; 2008 (1) SCC (Crl)200; Jose Pullan @ Joseph P Vs. Uma Jarsasaira; 2013 (3) 246 (SC); (2013) 3 SCC 86; 2008 CRL L.J 434 – John K.Joh Vs. Tom Varghese & Another; 2008 2 SCC (Crl) 166 Krishna Janardhan Bhat Vs. Dattatraya G.Hegde; 2015 (2) ALD (Crl) 510; 2017 (2) ALT (Crl) 279 (A.P); 2017 (1) ALT (Crl) 259 AP; on which the learned defence counsel appearing for the accused placed reliance appears to be not similar to the facts of the case on hand and so also appears to be not similar to the facts of the case on hand and so also appears to be not applicable to the present case since the facts and issues involved in that cases is totally different with that of the facts and issues involved in the present case.

From the above discussion upon both oral and documents adduced by complainant, Point No.2 and 3 are considered in favour of the complainant.

POINT No.4:

25. As per the discussion made in the forgoing paras and finding given by me on Point No.s 1 to 3 and for the reasons detailed herein above, it is clear that the complainant has proved the case as set up by him for the offence punishable under Section 138 of NI Act by satisfying all the ingredients of the said offence punishable under Section 138 of NI Act against the accused beyond all reasonable doubt and when that is so, it goes without saying that the criminal liability of the said offence has to be fastened on accused and as such I hold that accused is liable to be punished. Accordingly for the said offence, this point is answered.

26. In the result, the accused is found guilty for the offence punishable under Section 138 of Negotiable Instrument Act and accordingly, accused is convicted under the said offence under Section 255(2) Cr.P.C.

Typed to my dictation by the Copyist of VII MM Court, corrected and pronounced by me in the open Court on this the 8th day of July, 2022.

VII METROPOLITAN MAGISTRATE
FAC IX METROPOLITAN MAGISTRATE
HYDERABAD

When the accused is questioned with regard to the sentence to be imposed against him, he submitted that his family is dependent on him and there is no one to see their welfare and prayed to take a lenient view.

Keeping in view of the nature of the case and the offence involved, this Court is not inclined to invoke the benefit under Probation of Offenders Act, but however the Court is inclined to take a lenient view while awarding the sentence. Accused is explained of his right to prefer appeal against the Judgment of this Court.

In the result, accused is convicted for the offence U/Sec. 138 of the Negotiable Instrument Act, 1881, U/sec.255(2) of the Code of Criminal Procedure and sentenced to undergo simple imprisonment for a period of (**6**) Six months for the said offence. The accused shall also pay a sum of Rs. **2,20,000/-** as compensation to the complainant U/sec. 357(3) of the Code of Criminal Procedure within two months from today, failing which he shall undergo simple imprisonment for a further period of two months.

Typed to my dictation, corrected and pronounced by me in open court on this the 16th day of July, 2022.

X METROPOLITAN MAGISTRATE
FAC IX METROPOLITAN MAGISTRATE
HYDERABAD

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT	**ACCUSED**
PW.1 : Syed Gulam Siddiq	Nil
PW.2 : Shaik Mahaboob	
PW.3 : Syed Sajid	
PW.4 : Mohammed Abdul Hannan	

EXHIBITS MARKED FOR COMPLAINANT

Ex.P1 is the cheque bearing No.877586, dt.27.10.2017.

Ex.P.2 is the cheque bearing No.877585, dt: 17.11.2017.

Ex. P3 is the Cheque return memos (2) dt.21.12.2017.

Ex.P.4 is the Office copy of legal notice dt.06.01.2018

Ex. P5 is the receipt of postal department for the notice sent

Ex. P6 is the Postal track report

Ex.P7 is the FIR bearing No.226/2017 of PS Bahadurpura

Ex.P8 is the business investment agreement got executed in between complainant and accused

Ex.P9 is the receipt passed by the accused admitting the receipt of the amount on 27.07.2017

EXHIBITS MARKED FOR ACCUSED

Nil

X METROPOLITAN MAGISTRATE
FAC IX METROPOLITAN MAGISTRATE
HYDERABAD

IN THE COURT OF THE IX METROPOLITAN MAGISTRATE HYDERABAD.

CALENDER AND JUDGEMENT

C.C. NI : 363/2022

DATE OF :

Offence	: 21-12-2017
Report	: 15-02-2018
Apprehension of accused	: -----
Release of accused	: -----
Filing of Charge sheet	: -----
Taking Cognizance	: 15-02-2018
Furnishing of copies to accused	: 03-01-2019
Plea of Accused	: 17-01-2019
Commencement of trial	: 28-03-2019
Closure of trial	: 14-02-2020
Examination U/S.313 Cr.P.C.	: 28-02-2020
Judgment or Order	: 16-07-2022
Name of the complainant	: Syed Gulam Siddiq
Name of the Accused	: Aziz Ahmed
Reasons for delay	: --
Offences under Secs.	: 138 NI ACT
Finding	: Found guilty.

XMETROPOLITAN MAGISTRATE
FAC IX METROPOLITAN MAGISTRATE
FOR EXCISE CASES: HYDERABAD.

To:
The Hon’ble I Addl. Metropolitan Sessions Judge,Hyderabad.

Remarks :

Calendar Case NI No. : 363/2022

Date of Judgment : 16-07-2022

Dis No. /IXMM/HYD/2022, Dated :