

KABC020057312020



**IN THE COURT OF THE JUDGE COURT OF SMALL  
CAUSES AND A.C.M.M, AT BENGALURU**

**DATED THIS THE 06<sup>th</sup> DAY OF JUNE 2023**

**PRESENT:**        **SMT.SHILPA K.S (BAL, LLM)**  
VII Addl. SCJ and ACMM,  
Member, MACT-3, Bengaluru.  
C/c of Judge & ACMM,  
Member, MACT, Bengaluru.

**C.C.No.1497/2020**

**Complainant :**        M/s. K.N. Gowdru Provision  
Stores,  
at No.36/752, Cellar Floor,  
N.S.K. Complex,  
Ramanjaneya Road,  
Near Srinagar Bus Stop,  
Srinagar, Bengaluru – 560050.  
Represented by its Proprietor  
Shivaraja N.N. S/o Nanjegowda,  
Aged about 35 years,

**(By Sri. C. Channe Gowda, Adv.)**

**V/s.**

**Accused:**            Smt. Aparna D,  
Aged about 38 years,

at No. 42/2, 2<sup>nd</sup> Main,  
Athiguppe, Vijayanagr II Stage,  
Bengaluru - 560040.

**(By Sri. Amaresha M - Adv.)**

## **J U D G M E N T**

The complainant has filed this complaint against the accused for the offence punishable U/s 138 N.I. Act.

**2. Brief Facts:** It is alleged that the accused is close acquaintance of the complainant for the last 02 years. That the accused approached the complainant in the month of October 2019 and requested him to give groceries to run 'Aparna Man power consultancy' on credit basis. The accused had agreed to pay the amount after he received from the P.G. inmates. Hence the complainant allowed the accused to purchase the items on credit basis for last three months. Then the accused did not bothered to repay the said amount. Hence the complainant had demanded for payment of

amount and at that time the accused had issued a cheque bearing No.125802 dt.20.10.2019 drawn on Vijaya Bank, Chandra layout branch, Bengaluru for a sum of Rs.1,26,500/- for the discharge of the legally recoverable debt. Then the complainant had presented the said cheque for collection through Karnatka Bank, Srinagar branch but it was returned with an reason stating 'funds insufficient' on 16.01.2020. Then the complainant had issued the legal notice on 23.01.2020 calling upon the accused to repay the cheque amount. Even then the accused had not repaid the cheque amount. Hence this case.

3. In respect of this a complaint was lodged by the complainant U/s 200 Cr.P.C against the accused. The court after taking cognizance had issued summons to the accused.

4. After securing the appearance of the accused the court had complied with the provision of section 207 Cr.P.C. The accused then got released him on bail.

5. Thereafter court on 28.12.2022 has recorded the plea by duly explaining the substance of accusation to him. The accused had pleaded not guilty and claims to be tried.

6. In order to prove the case the complainant was got examined himself at PW-1 and got marked Ex.P.1 to 5 and closed his side.

7. By way of rebuttal the accused inspite of several opportunity did not adduced defence evidence.

8. That on 28.12.2022 the statement of accused U/s 313 Cr.P.C was recorded by duly explaining the incriminating circumstances appeared in the evidence of the complainant. The accused had denied the entire statement as false.

9. Heard the counsel for complainant and the argument on accused side is taken as nil.

10. Points for consideration and determination are as under :

1. Whether the complainant proves beyond all reasonable doubt that the accused had issued a cheque bearing No.125802 dt.20.10.2019 for a sum of Rs.1,26,500/- drawn on Vijaya Bank, Chandra layout branch and when it was presented through Karnataka Bank, Srinagar branch it was returned for the reason funds insufficient in the account of the accused, then inspite of service of notice on accused he did not paid the cheque amount within the stipulated time and thus committed an offence punishable U/s.138 of N.I. Act?

2. What order?

11. After careful observations of evidences and after hearing both sides my findings to the above points are as under :

Point No.1 : In affirmative

Point No.2 : As per final order

**REASONS**

12. It is the case of the complainant that the accused without maintaining sufficient balance in his account had issued a cheque for the clearance of the amount due from him. So when the said cheque was presented it was dishonoured and hence the accused had committed an offence punishable U/s.138 of N.I. Act.

13. To prove this the complainant was got examined himself at PW-1 by reiterating all the averments of the complaint in his affidavit. The PW.1 n his cross examination has admitted that "ದೂರಿನಲ್ಲಿ ತಿಳಿಸಿರುವ ವಿಳಾಸ ನಮ್ಮ ಅಂಗಡಿಯ ವಿಳಾಸ ಎಂದರೆ ಸರಿ. ಆರೋಪಿಯು ವಿಜಯನಗರದಲ್ಲಿರುವ ನಮ್ಮ ಬಾಪ್ಪೆದುನನ ತರಕಾರಿ ಅಂಗಡಿಗೆ ಬರುತ್ತಿದ್ದಾಗ ಪರಿಚಯವಾಯಿತು. ಆರೋಪಿ ಯಾವ ಯಾವ ದಿನಗಳನ್ನು ನಮ್ಮ ಅಂಗಡಿಯಿಂದ ಖರೀದಿ ಮಾಡಿದರೆಂದು ದಾಖಲೆಗಳನ್ನು ಹಾಜರು ಪಡಿಸಿಲ್ಲ. ಬಿಲ್ಲನ್ನು ನಾನು ಆರೋಪಿಗೆ ನೀಡಿರುತ್ತೇನೆ. ಆರೋಪಿ ದಿನಸಿ ವಸ್ತುಗಳನ್ನು ಖರೀದಿ ಮಾಡಿದ ನಂತರ ಒಟ್ಟಾರೆಯಾಗಿ ನಿ.ಪಿ.1 ಚೆಕ್‌ನ್ನು ನೀಡಿರುತ್ತಾರೆ. ನಿ.ಪಿ.1 ಚೆಕ್‌ನ್ನು

ಆರೋಪಿ ಡಿಸೆಂಬರ್ 2019 ರಲ್ಲಿ ನೀಡಿರುತ್ತಾರೆ. ನಿ.ಪಿ.1 ನ್ನು ಆರೋಪಿಯೇ ಬರೆದುಕೊಂಡು ಬಂದಿದ್ದಾರೆ".

14. In the instant case it is the allegation of the complainant that the accused had borrowed the groceries on credit basis and later not repaid the said due. Then he had issued the cheque towards discharge of the due. Even the accused in order to disprove the allegation of the complainant had not produced any documents or evidences on his behalf.

15. Further it is the allegation of the complainant towards discharge of legal debt the accused had issued the cheque got marked at Ex.P.1 for a sum of Rs.1,26,500/- in his favour. The legal debt means a debt which can be legally claimed. In the instant case the complainant had filed this complaint for the due by the accused.

16. Further the PW.1 had got marked the banker's endorsement, copy of legal notice, postal

receipt and acknowledgment as per Ex.P.2 to 5. Further it is not under dispute that the complainant had issued legal notice to the accused demanding repayment of loan amount.

17. Further in order to prove the existence of the debt/loan amount for which the cheque was issued in favour of the complainant by the accused or to show that the complainant is running grocery shop the PW.1 has not produced any documents.

18. So on perusal of Ex.P.1 it is clear that the cheque was issued towards clearance of the due amount to the complainant. Even on presentation of the Ex.P.1 it was not honored and hence the accused has committed the offence punishable u/s 138 of N.I Act.

19. So in absence of any supportive oral or documentary evidence on behalf of the accused it is difficult to disbelieve the contention of complainant.

Hence there is no believable evidence that the Ex.P.1 was not issued by the accused towards existence of legal debt. The accused even not bothered to deny his signature found on Ex.P.1.

20. On bare perusal of the cheque the Ex.P.1 it is clear that it was issued in favour of the complainant. So with the available documents and evidence on record it shows that the accused want to escape from the liability which will be imposed U/s.138 of N.I. Act against him. If a cheque is bounces then the alleged offences is attracted. It cannot be made ground to exonerate penal liability. But the complainant through marking Ex.P.1 to Ex.P.5 is able to prove the case against the accused. The oral evidence of the PW-1 in this regard will suffice the matter in dispute. But the accused is not able to disprove the case of the complainant.

21. At this stage I would like to rely upon the dictum reported in

a. 2010(1) KCCR 176 – Siddappa V/s K.Nanjappa

– It is held that accused issued cheque for repayment and on its presentment dishonoured, issue of notice, demand not complied. Then complaint lodged, blank cheque taken from him and the same misused by complainant. Issue of cheque not denied by accused so also filling up of the amount in it. Burden on accused to explain under what circumstances he issued the cheque. Appreciation of evidence is correct particularly in view of presumption U/s 139. and 180

b. 2004(3) KCCR 1816 – L.Mohan V/s V.Mohan

Naidu – When once the issue of cheque and the signature of it is admitted, court has to presume that the cheque has been issued for discharging of the debt or liability. The burden of proof shifts on the accused to

prove that there was no liability or that the cheque was issued to a different person.

c. AIR 1996 SC 2339 – Electronics T and T.D. Corporation Ltd., M/s V/s Indian T and E Pvt. Ltd., - It is held that object of bringing section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy. Section 138 intended to prevent dishonestly on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Section 139 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment.

d. AIR 2001 SC 2895 (K.N. Beena V/s Muniyappa and others) – It is held by his lordship that the burden to prove the consideration for the cheque lies on the accused. If not rebutted, the presumption is that the cheque was issued for consideration. It is for the accused to prove that the cheque was not issued a debt or liability. He has to lead credible evidence for rebuttal of this presumption. Mere denial of the averments will not suffice to shift this burden on to the complainant.

e. AIR 2010 SC 1898 – Rangappa V/s Mohan – It is held by his lordship that the very fact that the accused had failed to statutory notice under section 138 of the Act leads to inference that there was merit in complainant's version of spending his own money. Once the cheque relates to the account of the accused and he admits the signatures on the cheque then the presumption as contemplated U/s.139 of the Act has to be raised by the court in favour of the complainant.

The above presumption is mandatory presumption and not a neral presumption.

f. ILR 2000(2) KAR 1570 – Burden of proving that the cheques are issued in discharge of debts or other liability cannot be put on the complainant. There is legal presumption under section 139 of the N.I. Act that the cheque was issued for discharging an antecedent liability. The aforesaid presumption is in favour of the holder of the cheque. It is not mentioned in the section that the said presumption would operate only against the drawer. After all the presumption is only for casting the burden of proof as to who should adduce evidence to rebut the said presumption. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. The section 139 of the Act enjoins on the

court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption.

22. The presumption U/s.139 of the Act is a presumption of law, it is not a presumption of fact. This presumption has to be raised by the court in all the cases once the factum of dishonour is established. The onus of proof to rebut this presumption lies on the accused. The standard of such rebuttal evidence depends on the facts and circumstances of each case. Such evidence must be sufficient, cogent and should prove beyond all reasonable doubt. Therefore mere explanation is not enough to repel this presumption of law. So mere issue of cheque by not maintaining sufficient amount in the account is an offence if it bounces.

23. If we come to the real crux of this complaint i.e., provisions of section 138 of N.I. Act then this complaint is filed for the case of dishonour of cheque given by the accused. The most crucial point to be considered is that the accused never disputed about the cheque standing in his name. The silence of the accused amounts to estoppel and from this admission the necessary ingredient to constitute an offence punishable U/s.138 of N.I. Act is attracted.

24. In a case like this in hand the initial burden shifts on the complainant and the standard of proof initially cast upon the complainant and they have proved their case of legally enforceable debt beyond all preponderance of probabilities. This complaint being filed for the alleged offence punishable U/s.138 of N.I. Act no needs to apply strict interpretation to discard the case of the complainant. Hence I am of opinion that the complainant is able to prove that the Ex.P.1 was

issued for the existence of legally enforceable debt. The section 138 of N.I. Act clearly says that the cheque has to be issued towards legally enforceable debt. Therefore the Ex.P.1 was issued towards the dues by the accused in favour of the complainant and so it is termed as legally enforceable debt. Thereby it is clear from the settled principles of law that the burden of proving that the cheque was issued for the existence of legally enforceable debt lies on the accused and from the above finding he had not discharged it.

25. Further as per the settled principles of law according to section 118 and 139 of N.I. Act the presumption lies in favour of the holder of the cheque i.e., the complainant. Therefore in the instant case the accused had not rebutted the presumption that the cheque was not issued for the discharge of any legal debt and at the same time the complainant had proved that Ex.P.1 was issued to them towards existence of

legal recoverable debt. So the presumptions under section 139 and 118 of the Act will hold the hand of the complainant.

26. On my above finding it is clear the fact of existence of legally enforceable debt is proved as required to attract the section 138 of N.I. Act. The accused has not rebutted the case of the complainant that he had not issued the cheque for the legally existence debt to the complainant. The complainant has satisfy the court with this regard. As it is the case of the complainant and the burden lies on them to prove the case beyond all reasonable doubt. It is for the complainant to prove his case and from the above finding it is clear that he had proved that the cheque was issued for legally enforceable debt. So it will attracts the basis ingredients of section 138 of N.I. Act. But the accused is not successful in rebutting the same. Hence the complainant had made out a case

punishable U/s.138 of N.I. Act. Hence I answered the point No.1 in affirmative against the accused and in favour of the complainant.

27. **Point No.2:** In view of my above finding on the above point I found the accused as guilty and I proceed to pass the following

**ORDER**

Acting U/s 255(2) of Cr.P.C the accused is convicted for the offence punishable U/s.138 of N.I. Act.

The accused is directed to undergo simple imprisonment for a term of six months and to pay a fine of Rs.10,000/-.

In default to pay the above said fine the accused is further directed to undergo simple imprisonment for a term of 3 months.

Acting U/s.357(3) of Cr.P.C. the accused is directed to pay compensation of Rs.2,50,000/- to the complainant.

The bail bonds and surety bonds shall stand cancelled.

Supply a free copy of judgment to the accused.

Issue conviction warrant.

(Dictated to the stenographer directly on system, corrected, initialed and then pronounced by me in open court on **06<sup>th</sup> June, 2023**)

**(Shilpa K.S.)**  
VII ASCJ & ACMM,  
Court of Small Causes,  
C/c of Judge & ACMM,  
Court of Small Causes,  
Bengaluru.

**ANNEXURES**

**1. List of Witnesses examined for the complainant**

P.W.1 Sri.Shivaraja N.N.

**2. List of witnesses examined for the accused:**

Nil

**3. List of documents marked for the complainant:**

Ex.P.1 Cheque

Ex.P.2 Bank endorsement

Ex.P.3 Notice

Ex.P.4 Postal receipt

Ex.P.5 Postal acknowledgement

**4. List of documents marked for the accused:**

Nil

**(Shilpa K.S.)**

VII ASCJ & ACMM,  
Court of Small Causes,  
C/c of Judge & ACMM,  
Court of Small Causes,  
Bengaluru.