KADG320028182020

Presented on : 01-12-2020
Registered on : 01-12-2020
Decided on : 18-07-2023
Duration : 2 years, 7 months, 17 days

IN THE COURT OF
I ADDL CIVIL JUDGE AND JMFC AT , HARIHARA
(Presided Over by SMT. JYOTI ASHOK PATTAR)

Dated this 18th day of July, 2023.
CC.NO.1565/2020

Complainant:

Nagaraja D S/o Devendrappa Anveri
Aged about 40 years,
R/o: Lakkashettihalli village, Kamalapura Post
Tq: Harihar, Dist: Davanagere.

Versus

Accused:
Arun Kumar K.S S/o Late Kamanahalli Shivanna
Aged about 38 years,
R/o: Kurki village,
Tq: Dist: Davanagere District.

Sri.A.N./H.N.M ., Advocate for Complainant
Sri.U.H./D.N.A., Advocate for Accused

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

This is a complaint filed by the complainant U/Sec. 200 of Cr.P.C for the offence punishable U/Sec.138 R/w Section 142 of N.I Act against the accused praying to punish the accused for the said offence.

2. The case of the complainant is that, the accused and the complainant are well acquainted to each other. On that count the accused for his financial crisis, difficulties and necessities approached the complainant during the COVID-19 and requested for hand loan of Rs.5,00,000/-. Accordingly, the accused had borrowed an hand loan amount of Rs.5,00,000/- on 15.06.2020. For the security in order to repay the loan amount accused issued a post dated cheque bearing No.700295 dated: 14.08.2020 for Rs.5,00,000/- in favour of complainant. The said cheque was presented by the complainant for encashment on 15.09.2020 in his bank account at PKGB bank, Harihara. But the same got dishonored and returned with an endorsement dated: 16.09.2020 " Funds Insufficient" in the account of the accused.

3. That the complainant got issued a legal notice dated: 23.09.2020 through a RPAD calling upon the accused to make payment. The notice has been served on the accused

for which the accused has issued false and frivolous reply notice. Thereby, the accused has committed an offence punishable U/Sec.138 of N.I.Act.

4. After recording the sworn statement of the complainant and also verifying the documents, cognizance was taken against the accused for the offence punishable under Sec. 138 R/w 142 of N.I. Act. The accused on receiving the summons appeared before the Court through his counsel and was enlarged on bail and his plea was recorded. He pleaded not guilty. Hence, the case was posted for the evidence of the complainant.

5. The complainant, in order to prove the guilt of the accused has examined himself as PW.1 and got marked documents at Ex.P.1 to Ex.P.5. After completion of complainant's evidence, the statement of the accused U/sec. 313 of Cr.P.C. has been recorded. In reply the accused has denied the incriminating evidence appearing against him. The accused has not entered into witness box neither examined any witness nor cross-examined the P.W.1.

6. Heard the arguments of both the sides. Perused the records.

7. On the basis of above facts, the points that arise for this Court consideration are that:

1. Whether the complainant proves that, the cheque bearing No.700295 dated:14.08.2020, drawn on State Bank of India Tholahunase Branch, for a sum of Rs.5,00,000/- issued by the accused has been bounced on the ground of 'Funds Insufficient ' and even after receiving the intimation regarding the dishonor of cheque accused failed to pay the cheque amount within the stipulated period and thereby accused has committed an offence punishable under Sec.138 of N.I. Act ?
2. What order?

8. Findings on the above points are as follows:-

Point No.1: In the Affirmative
Point No.2: As per final order, for the following:

-: **R E A S O N S** :-

9. Point No.1:- The complainant has filed this complaint

U/Sec. 200 Cr.P.C, against the accused for punishing him for the commission of offence punishable U/S. 138 of N. I Act.

10. The complainant is that, the accused and the complainant are well acquainted to each other. On that count the accused for his financial crisis, difficulties and necessities approached the complainant during the COVID-

19 and requested for hand loan of Rs.5,00,000/-. Accordingly, the accused had borrowed an hand loan amount of Rs.5,00,000/- on 15.06.2020. For the security in order to repay the loan amount accused issued a post dated cheque bearing No.700295 dated: 14.08.2020 for Rs.5,00,000/- in favour of complainant. The said cheque was presented by the complainant for encashment on 15.09.2020 in his bank account at PKGB bank, Harihara. But the same got dishonored and returned with an endorsement dated: 16.09.2020 "Funds Insufficient" in the account of the accused.

11. That the complainant got issued a legal notice dated: 23.09.2020 through a RPAD calling upon the accused to make payment. The notice has been served on the accused for which the accused has issued false and frivolous reply notice. Thereby, the accused has committed an offence punishable U/Sec.138 of N.I.Act.

12. That now on the basis of the materials available on record it is required to examine whether the complainant has complied with the provisions of Section 138 of N.I Act to get cause of action to file this complaint. The complainant besides his oral testimony has relied on the documents at Ex.P1 to Ex.P5 to support his contentions Ex.P1 is the cheque alleged to have been issued by the accused, Ex.P.2

is the Bank return memo, Ex.P.3 is the postal receipt, Ex.P.4 is the Copy of legal notice, Ex.P.5 is the Postal acknowledgement and Ex.P.6 is the xerox copy of the cheque.The complainant in support of his case examined himself as P.W.1 and got marked Ex.P.1 to Ex.P5 and relied on the said exhibits to prove his contention. As the cheque at Ex.P.1 and remaining Ex.P.2 to Ex.P5 corroborated the version of the complainant which is stated in the complaint as well as in the affidavit filed in lieu of examination in chief. There are no grounds to disbelieve the documents at Ex.P.1 to Ex.P.5. Thus, the complainant has duly complied with the provisions of Sec.138 of NI act and established his case against the accused to get the benefit of statutory presumption U/sec. 139 of N.I.Act. Thus, the complainant with the help of Ex.P.1 to Ex.P.5 has proved to have complied the provisions of Section 138 i.e., presentation of cheque within the statutory period for encashment, issue of legal notice within prescribed period to the accused and filing of complaint within limitation period as per section 142 of the Act.

13. In view of the present legal position as held by our Hon'ble High Court as well as Apex Court of India in a catena of decisions as well as relevant provisions of the Act, this Court has to see whether the complainant has complied

all the requirements as contained in Sec.138 of N.I Act so as to prove the guilt of the accused for the alleged offence. If so, whether the accused is able to rebut the legal presumption available to the complainant under Sec.139 of the Act by adducing probable defence evidence or not. However, it is held by the full bench of our Hon'ble Apex Court in the case of **Rangappa Vs. Mohan reported in 2010 (1) DCR 706** that ;

> " the Statutory presumption mandated by sec.139 of the Act, does indeed include the existence of a legally enforceable debt or liability. However, the presumption U/S 139 of the Act is in the nature of a rebuttable presumption and it is open for the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".

14. The primary burden of course is on the complainant. Then only the onus shifts to the accused. With regard to the case in hand the complainant has produced original cheque at Ex.P.1 and deposed his oral evidence in support of the same. Thus, the complainant has discharged his primary burden and shifted the onus on the accused to rebut the presumptions.

15. The cheque at Ex.P.1 is a negotiable instrument. The complainant is the holder in due course of the same. As such the complainant takes the shelter U/Sec.139 of NI Act, which gives presumption in favour of the holder in due course of the cheque i.e., the complainant, has a said negotiable instrument in discharge of legally enforceable debt. Sec.139 of the Act enjoins on the court to presume that the holder of the cheque received it in discharge of any debt or liability. The onus is on the accused to rebut the aforesaid presumption. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged U/Sec.118 of the NI Act can be legally inferred that cheque was drawn for the consideration on the date which the cheque bears. The very issuance of the cheque by the accused is itself sufficient to make him liable for the contents of the cheque therein. The accused cannot later take a defence that he had not issued the cheque for the purpose of borrowing loan as alleged by the complainant, whether it be in blank or filled form or the contents of the cheque were not written by him.

16. Therefore, in view of the above decision once the cheque is issued the statutory presumption would automatically fall in favour of the complainant that, the alleged cheque was issued for the discharge of an existing

legally enforceable debt or liability against the accused and the burden will shift on to the accused to rebut the same.

17. The second aspect of the case is whether the accused has successfully rebutted the presumption available in favour of the complainant with probable and convincing evidences? It is a well settled principle of law that once the cheque is issued there will be a statutory presumption in favour of the holder or holder in due course U/Ss 118 and 139 of the Act. However, as held by our Hon’ble Apex Court and the High Court in a catena of decisions, the presumptions under the said sections are in the nature of rebuttable presumptions and hence, the accused can very well rebut the said presumptions by leading reasonable and probable defence evidence. Let us examine the same on the basis of the materials available on record.

18. Per contra, even though accused appeared through his counsel neither cross-examined P.W.1 nor lead any evidence to disprove the case of the complainant even though this Court has give sufficient opportunities to the accused to put forth his case before the Court and thereby failed to rebut the presumption raised in favour of complainant

19. In the case on hand, the presumption arise under sec. 118 and 139 of NI act is a rebuttal presumption and same is

to be rebutted by the accused by leading his evidence. However, the accused has neither lead any other evidence to rebut the same nor cross examined PW.1.

20. It is well settled proposition of law that the standard of proof to rebut the presumption is only preponderance of probabilities and not proof beyond reasonable doubt. Therefore, it has to be seen that whether the accused has taken a defence and probabalised the same to shift the burden again on the complainant to establish the guilt of the accused. But in the case on hand the accused has not made any effort to put forth his case and disbelieve the version of complainant.

21. That in the case on hand no doubt, the complainant has established his case against the accused. But it is to be noted that, the complainant in his complaint has stated that, the accused has given false and evasive reply to his legal notice i.e. Ex.P.3. But on perusal of the records no such a reply notice is got marked by the complainant in his evidence. However, the complainant has proved his case through Ex.P.1 to Ex.P.5 and same is not rebutted by the accused. Hence, complainant has established his case against the accused.

22. In view of all the above discussion it can be concluded that the complainant has established through cogent and convincing evidence the fact of issuance of the cheque for discharge of legally enforceable debt, which is dishonored for want of sufficient funds, issuance of legal notice within stipulated time, failure on the part of accused to repay the amount within stipulated period. On the other hand, the accused failed to rebut the presumption available to the complainant through probable evidence that would preponder upon the evidence led by the complainant. Therefore, the Accused is held to have committed an offence punishable under Sec. 138 of N.I. Act. Accordingly point No.1 is answered in the AFFIRMATIVE.

23. Point No.2:- Having regard to the facts and circumstances of the case, amount of the cheque, duration of the trial and also considering the prevailing rate of interest in the Nationalized Banks, the contemporary litigation expenses and the mental and physical strain suffered by the complainant, this Court proceed to pass the following:-

-: O R D E R :-

Acting U/s 255(2) of Cr.P.C. the accused is hereby convicted and sentenced to pay fine of

Rs.5,10,000/-, in default of payment of fine, he shall undergo simple imprisonment for a period of six months.

Acting U/s 357(1)(b) of Cr.P.C the accused is hereby directed to pay Rs.5,00,000/- to the complainant towards the compensation, and the remaining fine amount of Rs.10,000/- shall be paid to the State.

The bail bond and surety bond shall stands canceled.

(Dictated to the Stenographer , transcribed by her, corrected, signed and then pronounced by me in open Court this 18th day of July, 2023)

Sd/-

(JYOTI ASHOK PATTAR)
I Addl.Civil Judge & JMFC.,
Harihara.

-: A N N E X U R E :-

Witnesses examined for the Complainant :

PW1	:	Nagaraj D

Witnesses examined for the accused:
-None-

Documents exhibited by the Complainant:

Ex.P1	:	original Cheque
Ex.P1(a)	:	Signature of the accused
Ex.P2	:	Bank Return memo

Ex.P3	:	Copy of Legal notice
Ex.P4	:	Postal receipt
Ex.P5	:	Postal acknowledgment

Documents exhibited by the Accused:
NIL

SD/-
I Addl.Civil Judge & JMFC.,
Harihara.