

KADW050025702022



Presented on : 23-04-2022
Registered on : 26-04-2022
Decided on : 04-07-2022
Duration : 0 years, 2 months,
11 days.

IN THE COURT OF THE IV ADDL.SENIOR CIVIL JUDGE
& JMFC AT DHARWAD

PRESENT:- Sri.AMOL JAYKUMAR HIRIKUDE

B.A., LL.B.

IV Addl. Sr.Civil Judge and JMFC
Dharwad.

Dated this the 4th day of July 2022.

C.C. No.1524/2022

Complainant : Hanjalla S/o Mabubasab Kovlageri
Age: 44 years, Occ: Business
R/o: Rajeevagandhi Nagar,
Dharwad – 580004.

(By Sri.S.G.Nandoor, Adv)

-Vs-

Accused : Smt.Shakhila M.Makandar
Age: 47 years, Occ:Service,
R/o: Om Nagar, Behind O-Zone,
P.B.Road, Dharwad - 580008.

(By Sri.K.T.Hanagi, Adv)

J U D G M E N T

The complainant has filed this complaint under section 200 of Cr.P.C for the offence punishable **U/s 138 of Negotiable Instruments Act.**

1(a). The case of the complainant is that, he is a businessman and accused is acquainted to the complainant through the brother of the accused, who is none other than the neighbour of the complainant. On March 2015 the accused demanded Rs.2 lakh to the complainant for the purpose of construction of her house at Om Nagar, Dharawd and she assured to the complainant that she will repay the said amount within one year. Believing the words of the accused, complainant had given Rs.2 lakh to the accused. After the lapse of 8 months again accused demanded Rs.1,25,000/- for the purpose of performing her children marriage and assured that she will repay the said amount in addition with the earlier dues in total amount of Rs.3,25,000/- to the complainant within 4 months. Again believing the words of the accused, he

had given Rs.1,25,000/- to the accused. After completion of the 4 months, the complainant had asked to the accused for repayment of the entire amount, but the accused sought more time to repay the said amount.

1(b). Thereafter on repeated requests by the complainant, the accused had issued a cheque bearing **No.572230 dated 07-10-2018 for Rs.2,00,000/- of Indian Bank, Hubballi** for encashment of the amount. The complainant presented the said cheque on 07-10-2018 for encashment through his banker Canara Bank, Ramanagar Branch, Dharwad. But the said cheque returned to the complainant unpaid on 11-10-2018 as **“Funds insufficient”** in the account of the accused. Hence, complainant got issued notice through his advocate dated 26-10-2018 demanding the accused to repay the said amount. Though the notice was duly served upon the accused on 31-10-2018, she neither complied nor replied to the notice. Hence, the complainant has presented this complaint.

2. After filing of this complaint, court took cognizance for the offence punishable **U/s 138 of Negotiable Instruments Act** and ordered to register the case as P.C.R. and after recording the sworn statement of the complainant, the Court was ordered to register a criminal case against the accused for the offence punishable **U/s 138 of Negotiable Instruments Act** and ordered to issue summons to the accused. After service of summons, the accused appeared through his Counsel and got herself enlarged on bail.

2(a). This case was initially numbered as **CC No.1341/2018** and the same was pending before the **I Addl. Civil Judge and JMFC Court Dharwad** and on **18-05-2022** this case is transferred to this court and renumbered as **CC No.1524/2022**.

3. The substance of accusation of the offence punishable **U/s 138 of Negotiable Instruments Act** read over and explained in the language known to the accused, she pleaded not guilty. In the sworn statement, the complainant by examining himself as

PW.1 got marked **Ex.P1 to P5** documents and closed his side. The accused though cross examined PW.1, but did not lead any evidence on her behalf.

4. Further despite giving sufficient time as there was no representation from both side the arguments of both side is taken as nil.

5. Now in deciding this case, the points that arise for my consideration are as under :

1.	<i>Whether the complainant proves that the accused has committed an offence punishable U/s 138 of Negotiable Instruments Act?</i>
2.	<i>What Order?</i>

6. My findings on the above points are as follows :

Point No.1 : In the Affirmative.

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

REASONS

7. **Point No.1:-** I have already stated above in nutshell the allegations made in the complaint by the complainant. In order to prove the said allegations the

complainant got himself examined as PW.1 by filing affidavit wherein he has reiterated the complaint averments. Further the P.W.1 has got marked **Ex.P1 to Ex.P5** documents.

8. The Ex.P1 is the cheque dated 07-10-2018 bearing No.572230 drawn for Rs.3,25,000/-. Ex.P2 is the memo of the bank dated 10-10-2018 which recites that, the cheque was returned for "Funds Insufficient". Ex.P3 is the office copy of legal notice dated 26-10-2018. Ex.P4 is postal receipt and Ex.P5 is the Postal acknowledgement.

9. The P.W.1, in the sworn statement and in his affidavit filed in lieu of examination in chief has deposed that, on presentation of the cheque dated 07-10-2018 issued by the accused, the same returned dishonoured on 10-10-2018 and the complainant issued notice on the accused on 26-10-2018, the same was served on accused on 31-10-2018, but the accused did not make arrangement to pay the amount

mentioned in the cheque within 15 days from the date of receipt of notice.

10. Therefore, the complainant has presented this complaint on 17-11-2018, which is well within time. On perusal of **Ex.P1 to P5** it appears that, the complainant has complied with all the formalities as contemplated **under section 138 of Negotiable Instruments Act.** In the cross examination of PW.1, it has suggested to PW.1 that the accused had borrowed an amount of Rs.2,50,000/- from her friend namely Smt.Shobha Gopal Naik and she had repaid the entire amount to the said Smt.Shobha and only a meager amount i.e., Rs.5,000/- was required to be paid by the accused to the said Smt.Shobha and for the said repayment the said shobha had obtained the cheque of the accused i.e., Ex.P1 and the same has been misused by the complainant herein by colluding with the said Smt.Shobha Naik and infact there is no any due to the complainant from the accused, but the said suggestions have been denied by complainant. Even

the accused did not prove her contentions by leading evidence or by eliciting the same from the mouth of PW.1. Under such circumstances, in the absence of any contrary evidence on record in favour of the accused and against the complainant, on perusal of the **EX.P.1 to P5** it can be inferred that the accused has issued a cheque of this case mentioned above for the legally recoverable debt availed by her from the complainant and the same is returned unpaid as **“Funds Insufficient”**. Despite providing sufficient opportunity the accused did not choose to lead evidence to substantiate her defence and despite due service of notice on the accused prior to the filing of the complaint, she did not chooses to reply to the same, it gives rise to draw the inference that the complaint allegations against the accused regarding the debt as true.

11. Further there is a presumption **under section 139 of Negotiable Instruments Act** that, cheque was drawn for the discharge of legally enforceable debt or

liability and there is also presumption under section 118 that, every negotiable instrument bearing a date was made or drawn on such date and it has been so drawn for consideration both these presumptions are available to the complainant. In the instant case, the accused has failed to rebut the presumption **under section 139 and 118 of Negotiable Instruments Act.**

Moreover, the evidence of PW.1 and **Ex.P1 to P5** clearly establishes that, the accused issued **Ex.P1 cheque** in discharge of legally recoverable debt and the said cheque was dishonoured for **funds insufficient** and the accused has failed to pay the cheque amount within the stipulated period and thereby committed an offence punishable **U/s 138 of Negotiable Instruments Act.**

Hence the version of the complainant will have to be accepted and consequently I hold that, the complainant has proved issuance of the cheque as per **Ex.P1 by the accused for the discharge of debt of Rs.3,25,000/-.**

Hence, for the above stated reasons I answer **point No.1 in the Affirmative.**

12. **Point No.2:-** The complainant has filed this complaint in respect of dishonour of cheque for Rs.3,25,000/-. For the offence punishable **U/s 138 of Negotiable Instruments Act**, the Court may sentence the accused to undergo imprisonment upto 2 years or with fine which may extend to twice the amount of the cheque or with both. The imposing of sentence of imprisonment can be exercised if the accused is habitual offender and the object of the Negotiable Instrument Act is not to put the drawer of the cheque behind the bars, but to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in certain cases while at the same time providing adequate safeguards to prevent harassment of honest drawers. Therefore, in that object in view, I feel it proper to impose fine only and consequently, I proceed to pass the following ;

ORDER

**Acting U/s 255(2) Cr.P.C. the
accused is convicted for the offence**

punishable U/s 138 of Negotiable Instruments Act and she shall pay a fine of Rs.3,30,000/-. In default of payment of fine, the accused shall undergo simple imprisonment for four months.

Out of the total fine amount, an amount of Rs.3,27,000/- shall be paid to the complainant towards the compensation. The rest of the amount shall be remitted to the state.

Bail bonds of the accused and surety shall stands cancelled.

Office is directed to supply a free copy of this Judgment to the accused.

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in the open court on **4th day of July 2022.**)

(Amol.Jaykumar. Hirikude)
IV Addl.Sr.Civil Judge & JMFC,
Dharwad.

A N N E X U R E

WITNESSES EXAMINED FOR COMPLAINANT :-

PW1: Hanjalla M. Kovlageri.

DOCUMENTS MARKED FOR COMPLAINANT :-

Ex.P.1 : Cheque.

Ex.P.1(a) : Signature of accused.
Ex.P.2 : Memo
Ex.P.3 : Legal notice.
Ex.P.4 : Postal receipt.
Ex.P.5 : Postal acknowledgement.

WITNESSES EXAMINED FOR DEFENCE:-

N I L

DOCUMENTS MARKED FOR DEFENCE:-

N I L

(Amol.Jaykumar. Hirikude)

IV Addl.Sr.Civil Judge & JMFC,
Dharwad.

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