

KADK320022112019



Presented on : 14-11-2019
Registered on : 14-11-2019
Decided on : 12-08-2024
Duration : 4 years, 8 months, 28 days

IN THE COURT OF PRL. CIVIL JUDGE & JMFC., PUTTUR, DK.

Present: Smt. Archana K Unnithan B.E, LL.B.,
Principal Civil Judge and J.M.F.C.,
Puttur, D.K.

Dated on this 12th Day of August 2024.

C.C./830/2019

Complainant:

M. Gopala Krishna Bhat,
S/o Late M. Shyam Bhat,
Aged about 58 years
R/at:Sai Shri House,
34-Nekkilady,
Bolanthila Village,
Puttur Taluk, D.K.

[By Sri.M.K. Advocate]

V/s.

Accused :

Shivaprasad S,
S/o.Umesh M,
Aged about 46 years,
Proprietor Deepthi Traders
Rajadhani Towers,
N.H.75, Uppinangady,
Puttur Taluk, D.K.

Residing at Deepthi House,
Vivekananda College Road,

Karmala, Bannur,
Puttur Taluk, D.K.

[By Sri.G.J.R. Advocate]

1	Date of institution	14-11-2019
2	Offence complained	U/s 138 Negotiable Instruments Act
3	Date of commencement of evidence	21-09-2021
4	Date of closing of evidence	24-08-2022
5	Name of the complainant	M. Gopala Krishna Bhat
6	Date on which the Judgment was pronounced	12-08-2024
7	Total Duration	<u>Year/s Month/s Day/s</u> 04 08 28
8	Opinion of the Judge	As per the final order

(Archana K Unnithan)
Prl. Civil Judge and J.M.F.C.,
Puttur, D.K.

:: JUDGMENT ::

This complaint is filed by the complainant Under Sec.200 of Cr.P.C for the offence punishable Under Sec.138 of Negotiable Instruments Act.

2. The brief facts of the complaint in nutshell:-

It is the case of the complainant that he was working at Mumbai later shifted his residence Puttur and was working at Endosulphan Victims care center at Kokkada and Koila as a manager. It is the case of the complainant that he was growing bananas and coconut in his compound and used to sell it to the accused. The complainant developed acquaintance with the accused in the year 2016 accused demanded money for business need. The complainant is said to have lent Rs.2,50,000/- to the accused on 13-01-2016 to the tune of Rs 1,50,000/- and on 12-01-2016 to the tune of Rs.1,00,000/-. The accused is said to have returned the amount in the month of June 2017. It is the case of the complainant that considering earlier transaction and acquaintance with the accused. When the accused requested Rs.5,00,000/- he advanced the amount in cash to the accused. It is alleged that though he pressed for repayment from 20-08-2019 to 25-08-2019 the accused only remitted Rs.1,500/- by way of pigmy to the complainant's account. Towards part payment of interest. It is stated that accused voluntarily issued two cheques in discharge of his liability on continuous demand made by the complainant.

3. As per the case of the complainant the accused is said to have issued cheque bearing No.054636 to tune of Rs.2,50,000/- drawn on Corporation Bank, Uppinangady Branch on 11-09-2019 and another cheque bearing

No.054635 for the sum of Rs.2,50,000/- drawn on Corporation Bank, Puttur Branch with an assurance it will be honored on presentation. However, on presentation the cheque was returned as per the memo dated 13-09-2019 for the reasons **“Funds Insufficient”**.

4. The complainant got issued a legal notice to the accused on 21-09-2019 calling upon the accused to pay the cheque amount failing which he will be charged interest @23% p.a. It is the case of the complainant that inspite of service of notice the accused did not pay the amount. Hence, complainant approached this court as accused is alleged to have committed an offence punishable under Sec.138 of N.I. Act and seeks compensation.

5. After cognizance of offence was taken by this court sworn statement of complainant was recorded and summons was issued to the accused. On service of summons the accused appeared through his counsel Sri.G.J.R. advocate and was enlarged on bail. Plea recorded, substance of accusation read over and explained to the accused. The accused pleaded not guilty and claimed to be tried.

6. The complainant filed affidavit in lieu of sworn statement reiterated averments of the complaint and examined himself as P.W.1 and got marked as many as 6 documents and closed his side.

7. 313 statement of the accused was recorded the accused denied all the incriminating evidence against him. The accused prayed time for leading defense evidence. In spite of sufficient opportunities the accused did not chose to lead defence evidence. Hence, defence evidence was taken as nil. The case was posted for arguments.

8. On the basis of materials and record, the following Points arises for my consideration.

POINTS

1. Whether the complainant made out ingredients of Sec.138 of N.I. Act to prove guilt of accused?.

2. What Order?.

9. My findings to the above points are :

Point No. 1 : In the “ Affirmative”

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

::REASONS::

10. Point No.1: It is the case of the complainant that the accused with earlier acquaintance with him requested him for a loan of Rs.5,00,000/- in the month of January 2018. As the complainant had previous transaction to the tune of Rs.2,50,000/- with the accused, which was repaid promptly the complainant is said to have issued Rs.5,00,000/- in cash to the accused. Towards repayment of said debt on repeated request

made by the complainant, accused is said to have issued two cheques. The said cheques on presentation were dishonoured for the reasons "Funds Insufficient". Hence, legal notice was issued. The accused did not make payment inspite of the same. Hence, the accused is alleged to have committed offence punishable under Sec.138 of N.I. Act.

11. To satisfy the requirements of Sec.138 the complainant has to prove ingredients as follows;

1. That the cheque was presented with in 3 months,
2. A notice was made in writing with in 30 days with receipt of information from the banker regarding the return of the cheque.
3. The drawer of the cheque fails make the payment with in 15 days the receipt of notice. For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

12. On this background of law having perused cheques it is date 11-09-2019 and 12-09-2019, were presented on the same day both were returned on 13-09-2019. From the dates on the cheques and Ex.P.3 and 4 it is noticed that the cheques were presented within 3 months and soon after dishonor of cheque on 13-09-2019, notice was issued on 21-09-2019 i.e., within 30 days and the same was served on the accused on 23-09-2019. From these dates it is clearly noticed that notice was issued in time. From the said dates it is noticed that the complainant has satisfied ingredients of 138 of N.I. Act.

13. Once the complainant satisfies the ingredients of 138 NI Act, the presumptions that are available to the complainant are under sec 118 of N.I. Act and Sec 139 of NI Act.

Sec 118 and 139 Negotiable Instrument Act 1881 reads as follows:-

Sec. 118(a) to (g), read as follows:-

Presumption as to negotiable instrument. Until the contrary is proved, the following presumption shall be made:-

(a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date-that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance-that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer- that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements-that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps-that a lost promissory note, bill of

exchange or cheque was duly stamped;

(g)that holder is a holder in due course-that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Sec.139 N.I. Act read as follows;

Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

14. On this background of law having perused the case it is noticed that the complainant has filed affidavit in lieu of chief-examination and reiterated averment of the complaint. The complainant got marked Ex.P.1 to 6. Ex.P.1 is the Cheque bearing No.054636 for a sum of Rs.2,50,000/- dated 11-09-2019, Ex.P.2 is the cheque bearing No.054635 for a sum of Rs.2,50,000/- dated 12-09-2019, Ex.P.3 and 4 are the bank memo issued by State Bank of India, Uppinangady Branch, Ex.P.5 is the copy of legal notice dated 21-09-2019, Ex.P.6 is the postal acknowledgement.

15. Learned counsel for complainant argued that the transaction between the parties is admitted. It is argued that the complainant has complied the ingredients of Sec.138 of N.I. Act as such complainant has proved his case. It is argued that as per the case of the accused, he is said to have repaid the amount borrowed however no documents placed on record. It is argued that the notice was duly served but no reply was given. It is argued that the accused has not placed any material to show that cheque issued as security was misused by the complainant. Hence, prays to convict the accused.

16. Learned counsel for accused argued that the date of Ex.P.6 acknowledgement is altered as such it is argued that the notice was not served on the accused. It is argued that @23% interest claimed by the complainant is exorbitant. It is argued that the cheque belongs to Deepthi Traders and whether the complainant had transaction with Deepthi Traders or with the accused himself is doubtful. It is argued that the amount borrowed by the accused was repaid yet the complainant has misused the cheques given as security. It is argued that four cheques were issued and out of the two cheques is misused. Hence, prays to acquit the accused.

17. Having throughly gone through the case of the parties it is noticed that complainant has alleged that towards the return of Rs.5,00,000/- borrowed from the complainant Ex.P.1 and Ex.P.2 cheque in dispute were issued. It is the case

of accused that there is alteration in date on the face of cheque ie Ex.P.2. On this line of argument having perused the return memo Ex.P.3 it is noticed that the cheque was returned for the reasons "Funds Insufficient" and not for the reasons there is alterations on the cheque. As far as this line of argument is concerned when the cheque is carefully perused it can be noticed that the number 12 was slightly pressed. Which gives impression of an over writing. However, that does not show that there were any material alterations of the date as contended by the accused. Hence, there no merit in the said argument that the cheque was altered.

18. Learned counsel for accused has taken a contention that Ex.P.6 is altered as 23-09-2019 instead of 13-09-2019 and the same is clearly visible. On this line of argument having perused Ex.P.6 it is noticed that there is a over writing on the number 13 as argued by learned counsel for accused and it is written as 23. It is argument of learned counsel for accused that the date is modified for the purpose of bringing it within the statutory limit of Sec.138 requirements. Considering this line of argument this court proceeds to consider Ex.P.5 annexed postal receipt. The postal receipts goes to show that it was dated 29-09-2019 addressed to the accused. In addition to it also noticed on the face of Ex.P.6 is the date mentioned in it is 21-09-2019. The seal affixed by the postal department of the return of acknowledgement is 24-09-2019. These dates clearly goes to show that at no stretch imagination a notice issued on 29-09-2019 can be returned on 13-09-2019. When

such is the case there is no merit in the argument of learned counsel for accused that the date on 13-09-2019 is over writing as 23-09-2019. The accused has denied his signature on Ex.P.6. The Ex.P.6 is a postal acknowledgement on which the address of the accused is mentioned as Proprietor Deepthi Traders Rajadhani Towers, Uppinangady, Puttur. The same address is shown in the cause title of the complaint. The summons issued by this court was served on the accused. It is not the case of the accused that the said address does not belong to him. The summons issued by this court was served on the accused to the same address.

19. There is a statutory presumptions that the postal authorities have duly served the RPAD to the addressee. If the accused wishes to rebut the presumptions it cannot simply be done by bare denial of service of notice. The accused shall have to lead defence to show that at the relevant point of time he was not in that address. In the case at hand the accused had not led any evidence to that effect. In addition to it the summons issued by this court was also duly served on the accused on the same address. Hence, there is no merit in the argument of learned counsel for accused that the notice was not served on the accused.

20. The acquaintance of the complainant and the accused is not dispute. It is the specific case of the complainant that he lent Rs.5,00,000/- in cash to the accused in the month of January 2018. The complainant in his cross-examination has stood unshaken, that the cheque was issued

to him on 10-09-2019. The accused has not denied his signature in Ex.P.1 and 2 cheque.

21. Learned counsel for accused has set up a defence that the accused repaid the amount borrowed through pigmy. However, the accused has not produced any material on record to show the repayment of amount. The very fact that the accused has admitted borrowing of amount the burden shifted on the accused to show what was the amount borrowed, what was the amount repaid and if the amount was repaid why he did not take any steps against the complainant for having secured the cheques issued as security.

22. In the case of Negotiable Instrument Act the complainant is armed with the presumptions available U/Sec.118 and 139 of N.I. Act. Once the cheque and signature is admitted the presumption U/Sec.139 is in favour of complainant. The accused in this case has failed to rebut the statutory presumptions available in favour of the complainant. Mere, denying the transaction is not sufficient to dispel the statutory presumptions available in favour of the complainant. The accused must be able to create a doubt in the mind of the court about alleged transaction projected by the complainant. As the accused has miserably failed to rebut the presumptions, this court arrives at conclusion that the complainant has made out the case punishable U/Sec.138 of N.I. Act. Accordingly, this court proceed to answer **Point No.1 is answered in the Affirmative.**

23. Point No.2 : The cheques in question were issued on 11-09-2019 and 12-09-2019. Since the date of issuance of cheque the complainant is made to struggle for recovery of the cheque amount. Thus, the circumstance warrants issuance of compensation to the complainant for recovery of amount including litigation expenses. In view of my above made discussion this court proceed to pass the following :-

:: ORDER ::

The accused is found guilty of offence punishable U/Sec. 138 of N.I. Act.

In exercise of power conferred Under Sec.255(2) code of Criminal Procedure the accused is hereby convicted and sentenced to pay fine of Rs.7,10,000/-. In default of payment of fine accused shall undergo simple imprisonment for the period of 6 months.

Out of the fine amount recovered Rs.7,00,000/- shall be paid to the complainant as compensation and remaining amount of Rs.10,000/- shall paid to the state for expenses incurred in prosecution.

The Bail bond and surety bond stands cancelled.

Office is directed to furnish copy of
the judgment free of cost to the accused
immediately.

(Dictated to the Stenographer, typed by her print out taken, corrected by me and then pronounced
in open court on this the 12th day of August 2024.)

(Archana K Unnithan)
Prl. Civil Judge & J.M.F.C.,
Puttur, D.K.

:: ANNEXURE ::

1. Witness examined for the prosecution:

PW.1 : M Gopala Krishna Bhat

2. List of documents exhibited for the prosecution:

Ex.P.1 & 2 : Original Cheques
Ex.P.1(a) : Signature of accused
Ex.P.2(a) : Signature of accused
Ex.P.3 & 4 : Bank memos
Ex.P.5 : Lawyer Notice
Ex.P.6 : Postal acknowledgement

3. Witness Examined for the defence:

-Nil-

4. List of documents exhibited for the defence:

-Nil-

Prl. Civil Judge & J.M.F.C.,
Puttur, D.K.