

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
CIVIL COURT, RAMGARH

At present;

Mr. Manoj Kumar Ram,
C.J.M. Ramgarh
Date 28-08-2024.

Complaint Case No. 880/2022
CNR-JHRG03 003313 2022

M/S Shriram Transport finance Company Limited through Power of
Attorney Kundan Kumar. ----- Complainant.

Versus.

Manish Kumar. ----- Accused.

O R D E R

1. Case record is put up before me for hearing on the point of issuance of summons against accused person. Attendance is filed on behalf of complainant namely M/S Shriram Transport finance Company Limited through Learned advocate.

2. Heard Mr. Sunil Kumar Pandey, learned advocate, appearing on behalf of the complainant and perused the case record. On perusal of case record, it appears that the instant complaint case has been filed on behalf of M/S Shriram Transport finance Company Limited through Power of Attorney Holder namely Kundan Kumar son of Ganesh Prasad Saw, resident of 3rd Floor, Mookambika Complex No.4, Lady Desika Road, Mylapore, Chennai, hereinafter referred as complainant, on 07-10-2022 against Manish Kumar son of Dinanath Prasad, resident of 23 Bock 25 Ambedkar Nagar Banji Near Shiv Mandir Uttari Banji West Bokaro,

Mandu Ramgarh, hereinafter referred as accused. for offence under section 138 of the Negotiable Instrument Act, hereinafter referred as N.I.Act,

3. In brief case of complainant is as follows:-

“ The complainant company i.e. M/S Shriram Transport finance Company Limited is in the business of providing loans and financial assistance to various customers across India for personal and commercial purpose. Accused person availed loan against vehicle model TATA LPK 2518 Turbo FBT Vehicle No. JH 09 U734 from the complainant company being vehicle loan agreement no. RAMGHO 802220002 on 22-02-2018 as per terms and conditions as per loan agreement. Mr. Lakhan Kumar Bhokta Son of Yogeshwar Singh Bhokta resident of Near Shiv Mandir Uttari Banji, West Bokaro, Mandu, District Ramgarh 825314, Mobile No. 9934166902 became guarantor for the above loan availed by the accused. During course of time the accused person repaid his loan amount to some extent but still there is loan amount due upon him. Accused person issued cheque bearing no. 538267 dated 18-04-2022 of State Bank of India, Branch Ghato West Bokaro for a sum of rupees 1250000/- (Twelve Lakhs Fifty Thousand) only against his outstanding dues. The complainant company deposited the aforesaid cheque for encashment in its ICICI bank, Branch Ramgarh but, same is

dishonoured and returned with remarks "FUNDS INSUFFICIENT" on 21-06-2022. The complainant was subsequently informed through his bank about the dishonouring of aforesaid cheque. On receiving this information, the complainant's company informed the accused through its officer. Then accused person apologized for the same and further assured to clear his dues within a week time but he failed to do so. On failure of accused person to pay the dues, the complainant sent legal notice through his advocate on 14-07-2022 through registered post/speed post no. RJ277853601IN to the accused person and informed him regarding the dishonour of the cheque. The accused person was called upon to make payment of dues within 15 days of receipt of notice, but the accused in connivance with post man never accepted the legal notice and due to this notice was unserved."

4. In support of allegation made in complaint case, evidence of Ravindra Nath Pandey on affidavit has been filed. Besides this, copy of demand notice/vakalatan notice dated 11-07-2022, receipt of registered post/speed post no. RJ277853986IN and RJ277853601IN and tracking report of said consignment/ postal receipts, copy of application given to the post master, Chitarpur and information about RJ277853986IN and RJ277853601IN, copy of power of attorney and letter of Authorization are filed on behalf of complainant.

5. On perusal of demand notice/ vakalatan notice, it appears that the said notice was sent to accused Manish Kumar and his guarantor Lakhan Kumar Bhokta also. From the said notice, it appears that cheque money has not been demanded from accused specially. Postal Receipt No. RJ277853986IN is not concern with this case because it does not concern with accused or his guarantor.

6. On perusal of tracking report of consignment No. RJ277853601IN it appears that item was sent on 14-07-2022 but there is no report regarding service of item mentioned in above mentioned consignment. In this regard, decision of the Hon'ble Jharkhand High Court, Ranchi reported in 2019(3) JLJR 424 HC ; Shyam Sundar Singh. V/s State of Jharkhand and Another is proper. Para 7 of this decision is as follows :-

7. It is a settled principle of law that the period of reckoning of 15 days as required under Section 138(c) read with section 142 of the N.I. Act in a case where the complainant cannot bring on record any evidence as to when the notice of demand of the cheque amount was received by the accused is to start from the 30th day from the date of dispatch of the demand-cum-legal notice hence the complaint at the earliest can be filed only after 45 days from the date of dispatch of demand notice as has been held by the Hon'ble Supreme Court of India in the case of Subodh S. Salaskar v. Jayprakash M. Shah reported in (2009) 3 SCC (Cri) 834

paragraph no. 25 of which reads as under:—

“25. The complaint petition admittedly was filed on 20-4-2001. The notice having been sent on 17-1-2001, if the presumption of service of notice within a reasonable time is raised, it should be deemed to have been served at best within a period of thirty days from the date of issuance thereof i.e. 16-2-2001. The accused was required to make payment in terms of the said notice within fifteen days thereafter i.e. on or about 2-3-2001. The complaint petition, therefore, should have been filed by 2-4-2001.”

7. So, from the above discussion it appears that this case had to file after 45 (Forty Five) days from 14th July 2022 i.e. after 28th August 2022 but before 28th September 2022. Besides this, as per tracking report of consignment no. RJ27785360I3IN, demand notice/ vakalatan notice is returned on 19-07-2022 due to no such person in the address. So, as per tracking report, this case had to be filed after 03-08-2022 i.e. (15 days) but before 03-09-2022.

This case was filed on 07-10-2022. So, there is delay in filing instant complaint case, and no petition has been filed under section 142 N. I. Act.

8. On perusal of case record, it further appears that report of special mediation drive bearing letter No. 86 dated 22-02-2023 is available on

case record. From perusal of Mediation report, it appears that mediation is successful and both the parties have resolved their dispute.

9. On perusal of case record, it appears that a petition dated 17-05-2024 to substitute Ravindra Nath Pandey on the place of Kundan Kumar has been filed on behalf of complainant M/s Shriram Transport Finance company limited but the same has not been pressed till today. So, this petition is also rejected as not pressed. Consequently, affidavit of Ravindra Nath Pandey have no value.

10. Considering the above facts and circumstances mentioned in paras 3, 4, 5, 6, 7, 8 and 9, this complaint case is dismissed due to delay in filing the instant case and defect in demand notice/vakalatan notice.

11. Office clerk is directed to deposit the case record in the Record Room as per the rules.

(Dictated and Corrected by me)

(Manoj Kumar Ram)
JH00608 C.J.M.