KABD020027572022

ABDUL
KHADAR

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IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC., AT BIDAR

PRESENT: **Abdul Khadar,** B.A. LL.B.,
Addl. Senior Civil Judge & JMFC.
Bidar.

Dated this the 05th day of January, 2024

C.C. No: 1311/2023

Complainant:	Abdul Masood Mohammed S/o Mohammed Ahmed Age: about 35 years, Occ: Business R/o H.No 5-4-109 Maniyar Taleem Bidar.

(By Sri.M.L.I Advocate)

-VS-

Accused	Mohammed Haji S/o Mohammed Sulemansab Age: about 59 years Occu: Business R/o H.No 18-2-130/B Haq Colony (Amrayi) behind Choice hotel, Chidri, Bidar.

(Sri.Kamble Murlidhar Advocate)

J U D G M E N T

The complainant has filed the private complaint U/sec. 200 of Cr.P.C., against the accused for having committed an offence punishable under Sec.138 of Negotiable Instruments Act.

2. The complainant submits that, the accused being the owner of Sy. No 1 of village Zamistanpur Tq. Bidar had formed is own private layout and sold 5 plots bearing No. 201 to 205 each measuring 30 x 40 feet to the complainant for total consideration amount of Rs. 9,00,000 and received the same from the complainant put him in possession of those 5 plots and executed and agreement of sale Dated 30-05-2015. The Sy.No.1 of which the plots are part and parcel is not converted into non Agriculture , and it is still entered in revenue records as agricultural land, and the layout is not approved by any competent authority, the complainant could not acquire perfect title to these plots despite

payment of entire sale consideration amount. Accordingly, the Complaint demanded the accused for cancellation of agreement of sale and refund of entire amount with damages. Hence a settlement was made between the Complainant and the accused, wherein accused agreed to pay total sum of Rs. 10,20,000/- (Rupees Ten Lakhs Twenty thousand only) to him in lieu of Rs. 9,00,000/- received by him in June, 2005, In pursuance of it, the accused issued two cheques bearing No. 018950 dated 31-03-2020 for Rs. 9,20,000/- and another cheque bearing No.018944 dated 15-04-2020 for Rs. 1,00,000/- both payable in his account at Central Bank of India Br. Sheshadri Road, Gandhi Nagar, Bengaluru.

3. The complaint further submits that out of these two cheques, he deposited the cheque bearing No. 018944 dated 15-04-2020 for Rs. 1,00,000/- in his account at IDBI Bank Ltd. Branch Bidar for collection, but this cheques came to be returned unpaid for Insufficient Funds by

cheque return memo dated 04-06-2020. The complainant through his Advocate, got issued a Demand Notice dated 25-06-2020 to the accused on 25-06-2020, as required under the provision of section 138 of Negotiable Instruments Act, calling upon the accused to pay the amount involved in the said unpaid cheque along with incidental charges and it is served upon the accused on 27-06-2020 from the date of service of notice, the grace period of 15 days stood expired on 12-07-2020. So the complainant have been fully convinced that respondent have committed offence p/u/ Sec 138 and 142 of NI Act. Accordingly, he has filed the present complaint to take action against the accused in accordance with law.

4. Being satisfied with the complaint averments, this Court has taken cognizance and after recording sworn statement being satisfied with the prima-facie case, issued summons to the accused compelling him appearance. He appeared through his counsel before this Court and got

enlarged on bail. Substance of accusation was read over to the accused. He pleaded not guilty for the offence punishable U/s.138 of NI Act. Hence, this Court called upon the complainant to prove his case.

5. The complainant himself examined as PW-1 and got marked 5 documents at Ex.P1 to P7. When the case was posted for cross of PW1, the complainant and accused have filed joint memo and prayed to pass judgment on the basis of terms and conditions enumerated in the joint memo.

6. I have heard the arguments canvassed by the counsel for the both parties and perused the materials available on record.

7. The points that would arise for my determinations are:

1. Whether the complainant proves that the accused has issued cheque bearing No. 018944 dated 15-04-

2020 for Rs. 1,00,000/- drawn on Central Bank of India Br. Sheshadri Road, Gandhi Nagar, Bengaluru, towards discharge of his legal liability and when the said cheque presented for encashment, on IDBI Bank Ltd. Branch Bidar it was dishonored with an endorsement **“Funds Insufficient”**, after issuance of legal notice, he fails to pay cheque amount and thereby the accused has committed an offence punishable under Sec.138 of N.I. Act?

2. What order?

8. My findings to the above points is as under:

Point No.1 : Offence compounded

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

REASONS

Point No.1 :

9. This court already issued a process to the accused and in response to it, he appeared and proceeded with the trial, as such there is no need to go

back again to reconsider the compliance of provisions of Section 138 of NI Act.

10. It is pertinent to note that, whenever a private complainant is filed seeking prosecution of the accused for an offence punishable under section 138 of Negotiable Instrument Act, if the issuance of cheque and the signature on the cheque is accepted and admitted by the accused, an initial presumption has to be raised by the Court in favour of the complainant, that the cheque in question was issued towards legally recoverable debt or liability. Of course, this presumption is rebuttable presumption. Such rebuttable evidence has to be placed before the Court by the accused. It is well known that, the accused can rebut the said legal presumption either by cross-examination of complainant or by leading evidence.

11. It is significant to note that, when case is posted for further chief of PW.1, the complainant and accused have filed joint memo and prayed to pass the judgment as per the terms and conditions enumerated in the joint memo. The parties to the complaint entered into full and final settlement, accused has agreed to settle the matter for a sum of Rs.1,00,000/- as full and final settlement and paid Rs.25,000/- cash before the Court to the complainant. The complainant has received and acknowledged the same. The accused agreed to pay balance agreed amount of Rs. 75,000/- on 25-02-2023. The accused under takes to pay the amount as agreed above without committing any delay or default in payment, In case of default, the complainant is at liberty to recover a sum of Rs.1,00,000/- or to take necessary action in accordance with law against him.

12. The complainant has agreed to receive the said amount in the above said manner and he has no further

claims. The complainant under takes to file memo for receipt of the balance amount before the court or to issue necessary receipt to the accused and if he promptly paid the above amount to the complainant shall have no further claims against the accused. In view of compounding of offence by the complainant and accused, the above point is answered accordingly.

Point No.2

13. In the light of above discussed facts and circumstance of the case, I proceed to pass the following:

ORDER

Acting under Section 255(2) of Cr.P.C, the accused is directed to pay a sum of Rs.75,000/- (Rupees Seventy Five thousand only).

In case of default to pay the amount, accused shall undergo simple imprisonment for a period of three month.

The bail bond of the accused and surety stand canceled.

(Dictated to the stenographer directly over computer, typed by her, corrected and then pronounced by me in the open court on this the 05th day of January -2024)

(Abdul Khadar)
Addl. Senior Civil Judge and JMFC,
Bidar