

**IN THE COURT OF THE PRL. JUNIOR CIVIL JUDGE-CUM-
IV ADDL. JUDICIAL MAGISTRATE OF FIRST CLASS,
MEDCHAL-MALKAJGIRI, UPPAL AT LB NAGAR.**

Present: **Smt. K. Sowjanya**
Prl. Junior Civil Judge-cum
IV Addl. Judicial Magistrate of First Class,
Medchal-Malkajgiri District,
Uppal at LB Nagar.

Tuesday, the 18th day of March, 2025.

S.T.C. NI No. 607 of 2022

Between:

Smt K.Aparna W/o K.Anil Kumar
Aged about 44 years, Occ: Housewife,
R/o SV Brindavanam, Flat No. 315,
Keshavanagar, Boduppal, Ranga Reddy.

.....Complainant.

AND

Smt Janga Pavani W/o Kiran Kumar
Aged about 36 years, Occ: Housewife,
TNR Sulakhana, "C" Block, Flat No.120
Lakshmi Narasimhapuram Colony,
Hasthinapuram, Ranga Reddy (District) – 79.

.....Accused.

*This case is coming before me for final hearing in the presence of **Sri Bavandla Satyanarayana, learned advocate for the complainant** and of **Sri Ch. Mohan, learned advocate for the accused** and upon perusal of the entire material on record, on hearing the argument of both sides and having stood over the matter for consideration till this day, this court delivered the following:*

J U D G M E N T

This is a complaint filed under Section 190 and 200 of Cr.P.C. against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. The case of the complainant, in brief, is that the accused is her family friend and out of such acquaintance, the accused requested the complainant to advance hand loan of Rs.4,85,000/- for the purpose of urgent domestic necessities with a promise to repay the same within a period of two years. Due to their long standing friendship the complainant did not hesitate to honour the request of accused and as such she issued cheque bearing No.000010 for Rs.4,85,000/- dated 08.04.2019 and on the same day it was encashed by the accused. After the agreed period of two years, the complainant demanded the accused for repayment of amount and after repeated reminders and personal visits to the house of accused, she issued issued a cheque bearing No.000103 dated 04.04.2022 for Rs.4,85,000/-. The said cheque was returned unpaid for reason "funds insufficient" vide cheque return memo dated 07.04.2022. The complainant informed the accused about dishonour of cheque but of no avail. Therefore, she issued legal notice against the accused on 12.04.2022 but the accused managed the postal department and got it returned with endorsement as 'no such person in the address', on 20.04.2022. The accused in spite of knowledge of the legal notice, has not come forward to repay the amount nor issued any reply. Hence the complaint.

3. The case was taken cognizance against the accused for the offence punishable under Section 138 of Negotiable Instruments Act and thereafter summons was issued to the accused.

4. The accused was examined under Section 251 of Cr.P.C. duly explaining the accusation for the offence punishable under Section 138 of the Act in vernacular language to which she pleaded not guilty and claimed to be tried.

5. In order to substantiate her case, the complainant had examined herself as PW1 and got marked Exs.P1 to P6.

6. On completion of the evidence on the side of the complainant, the accused was questioned under Section 313 Cr.P.C. to the incriminating circumstances found in the evidence of PW1 which she denied as false. DW1 and DW2 examined, Exs.D1 to D4 are marked in support of her defence.

7. Heard arguments of both sides.

8. **Now the point for determination is -**

Whether the complainant has proved the guilt of the accused person for the offence punishable under Section 138 of the Negotiable Instruments Act?

POINT:

9. First of all looking into the evidence adduced on behalf of the complainant, she herself is examined as PW1. In lieu of her chief examination she has filed chief affidavit which is nothing but replica of the complaint. She got marked Ex.P6 – statement of account showing transfer

of amount to the account of accused. Ex.P1 is the cheque purported to have signed by the accused. Ex.P2 is the memo issued by bank authorities saying that Ex.P1 was returned due to insufficient funds. Ex.P3 is the legal notice dated 12.04.2022 sent through Ex.P4 postal receipts dated 16.04.2022 and Ex.P5 is the returned postal cover.

10. The accused in her cross-examination has admitted that the complainant has transferred Rs.4,85,000/- into her account. Thus, Ex.P6 stands proved. With regard to the cheque, the accused admits her signature thereon and also its ownership. She denied her handwriting and accordingly questioned PW1 in her cross-examination if she has any objection if the cheque is referred to an Expert for comparison of handwriting and she replied in affirmative. No doubt it is the case of the complainant that the handwriting also belongs to the accused which is denied by the accused. In any event, when signature of accused is admitted on cheque Ex.P1 and it is also admitted that the accused herself has given it to the complainant, it is deemed under Section 20 of the Act that she has authorized the complainant to complete the instrument if it was incomplete while handing over to the complainant. As such the handwriting on the cheque does not affect the merits of the case. Therefore, the cross-examination of PW1 to the extent of handwriting on the subject cheque is of no avail to the case of accused.

LEGAL NOTICE:

11. The other defence of the accused is about non-receiving legal notice saying that the legal notice was sent to wrong address which PW1 had categorically denied. DW1 has specifically deposed that she does not reside in flat No.120 and in her cross-examination clarified that she resided in flat No.103, C-block of Sulakshana Apartment. DW2 has also testified that the accused resided in B-block of TN Apartment. In order to prove her residence, DW1 has got marked Ex.D1 – certified copy of sale deed in respect of flat No.120 in C-block of Sulakshana apartment. This is the address of accused as shown in the complaint and to which address the legal notice was sent. Apparently, the parties to this sale deed are some third parties and nothing appears that they are related to this case in any manner. It further appears that the accused wanted to impress upon the court in support her version that she is not resident of this house and thus the legal notice was sent to wrong address. The date of this sale deed was also stressed upon by the accused saying that Ex.D1 was executed on 24.03.2023 and for this reason also there is no occasion for the accused to reside in this house on the relevant dates of transaction in this case (which is in the year 2021). But it was admitted by DW1 in her cross-examination that the registration of this flat was done in the year 2023 though construction was completed by 06.01.2022 as this flat fell to the share of owner and it was under mortgage.

12. To further support her version in these lines, Ex.D2 – encumbrance certificate and Ex.D3 – occupancy certificate are marked. Ex.D2 shows the transaction under Ex.D1. Ex.D3 shows that the construction was complete by 06.01.2020. DW1 in her cross-examination on this aspect has deposed that in the month of December 2021 she resided in Flat No.103 of B-block. She further clarified that she is residing in the same apartment at present but only two months prior to her date of evidence (on 22.01.2025), she shifted to D-block to a rented premises. Thus, from the above evidence of DW1 it appears that she has been tenant of Sulakshana Apartment admittedly from the year 2021. Her version is that she resided in B-block and so the legal notice addressed to C-block was not received by her.

13. In spite of this clear evidence of DW1 and DW2 about the residence of accused, the summons in this case was also sent to the same address to which the legal notice was addressed and the accused has received the said summons. She testified in this regard that she received through her watchman. If that is so, the same watchman would have handed over the legal notice as well. Yet, the legal notice was returned unserved with some endorsement of the postal authorities which is not clearly legible. The learned counsel for the accused in his written arguments has explained that it is D/L which means “door locked”. In spite of it, it was falsely suggested to PW1 that there is no endorsement of

postal officials on the returned postal cover Ex.P5 which is obviously denied by PW1.

14. The accused has vehemently contested on her place of residence and that she did not receive legal notice, by forgetting the legal principle laid down by the Hon'ble Apex Court in the case of CC ALAVI HAJI VS. PALPETTY MOHAMMED, reported in AIR 2007 SC 1705 wherein it is held by the Hon'ble Apex Court that in case the accused denies receiving legal notice as mandated under Section 138 (b) of the Act, it is for the accused to seek rejection of complaint within 15 days of receiving summons from the court. It is also held that if the accused did not take such recourse at that time, she cannot take this defence at a later point of time. In view of this settled legal principle, the defence taken by the accused about her place of residence and about non-receiving legal notice, is also of no avail.

HAND LOAN/ CHIT TRANSACTION:

15. With regard to the actual transaction, it is the case of the complainant that both the parties are family friends and out of such acquaintance the hand loan amount was lent. To this extent of friendship between the parties, DW2 has also supported while deposing that the husband of accused and the husband of complainant are friends. DW1 has also in her cross-examination deposed that due to friendship between her husband and the husband of complainant, she subscribed chit with the

accused. Therefore the acquaintance and the relationship between the parties is established. As observed supra, the amount given by the complainant to the accused is also admitted. Anyhow the purpose is spoken differently. According to the complainant, the said amount was a hand loan and according to the accused it is the chit amount. In view of the oral evidence of PW1 and the documents Exs.P1 to P6 coupled with the presumption under Section 139 of the Act, it is presumed that the cheque was issued for discharge of hand loan.

16. In order to rebut this presumption and to support the defence of chit transaction, the accused has got marked Ex.D4. It is a simple printed card showing that it pertains to Varshit Chit Fund with address as 2-2-1165/C, Durga Residency, Flat No.202, Tilak Nagar, Nallakunta, Hyderabad. This address of complainant is admitted by her in cross-examination. It is also admitted by her that her son's name is Varshit. In view of the admitted relationship between the parties, the residence of the complainant and her son's name shall be within the knowledge of accused and hence these admissions by themselves, cannot be linked to the infer that chit fund company was run by the complainant. Especially because, except details of chit in this printed card, there is nothing to show that it belongs to the complainant and as rightly got admitted in the cross-examination of DW1, there are also no signatures of any person on Ex.D4. There are also no documents – not even a single scrap of paper, to

show that the complainant was running chit or that the accused was subscribing chit with the complainant. Though DW1 has deposed that she has paid the entire chit amount to the complainant, she never whispered the mode of making payment. Further, though according to the accused the chit was for 20 months, she did not file any single receipt for at least one month's payment. She has not examined any of the other subscribers, and explained when questioned during cross-examination, that she has no acquaintance with any of the other chit subscribers.

17. Instead, she got examined DW2 who deposed that the accused was his friend's wife and he has acquaintance with the husband of complainant as well. He further deposed that in the month of December 2022 when he went to the house of accused, he saw there was a galata between both the parties, the husband of complainant and two persons on one side and the husband of accused with two persons on the other side, two other neighbours were also present. They asked all of them not to argue in front of the house and took them to the drive way in the ground floor. There, it was agreed that out of the due amount of Rs.60,000/-, the accused shall pay Rs.40,000/- within three months and if not paid, the cheque which was in possession of complainant shall be encashed. Even if this version of DW2 is accepted to be true, according to the accused the handwriting on Ex.P1 cheque belongs to the complainant and that the cheque was in possession of complainant which was given as

a security. If that is so the cheque would disclose the amount as Rs.40,000/- or Rs.60,000/- but not Rs.4,85,000/-. DW2 though had stick on to his version even in the cross-examination that the amount due was only in chit transaction, the same cannot be accepted in view of the above lapses and discrepancies in the defence taken by the accused. Therefore, the evidence with regard to chit transaction in the form of Ex.D4 and the oral evidence of DW2 is of no avail to the accused.

CONCLUSION:

18. The learned counsel for the accused relies on some citations in support of his defence. The first citation relied by the accused in the case of K.SUBRAMANI VS. K.DAMODARA NAIDU decided on 13.11.2014 by the Hon'ble Supreme Court of India, was in a case where both the parties are government employees and an order of acquittal was recorded when they failed to show their financial capacity and when the complainant has not shown the cheque amount in the income tax returns. The present set of facts are entirely different and hence this citation cannot be made applicable. The second citation is in the case of R.CHENNAKESHA RAO VS. P.LAXMI NARSAIAH decided on 01.06.2017 by the Hon'ble High Court of Andhra Pradesh. In this case the accused was able to rebut the presumption and in those circumstances, an order of acquittal was passed. In the present case the accused is not able to rebut the presumption under Section 139 of the Act, and so this judgment cannot be made applicable to

the case on hand. The third citation also was decided by the Hon'ble High Court of Andhra Pradesh in the case of K.KRISHNA REDDY VS. K.RAJENDER (decided on 19.12.2011) wherein the evidence of complainant was doubtful which is not the case herein. Therefore, with due respect, it is held that the citations relied upon by the learned counsel for the accused are not applicable to the present set of facts.

19. It is a general principle that in cases filed under the provisions of the Act, the law leans in favour of the complainant in view of the presumptions under Sections 118 and 139 of the Act. According to Section 139 of the Act, the court shall presume that there was a legally enforceable debt and for discharge of which the cheque/ Ex.P1 was issued. It is also provided that the accused can rebut this presumption by adducing sufficient evidence. This being the general principle, in the case on hand, the accused had in her cross-examination admitted to have received the cheque amount of Rs.4,85,000/- from the complainant, though her case is that it was during a chit transaction. As such in the present case, the burden to rebut the presumption under Section 139 of the Act becomes double. The evidence adduced by the accused in the form of Exs.D1 to D3 about house address and about the legal notice does not render any aid to the case of accused in view of the legal principle in the case of CC ALAVI HAJI VS. PALPETTY MOHAMMED. The main defence about chit transaction fails because of absence of at least a single piece of

paper supporting this version. And the oral evidence of DW2 is found not sufficient to rebut the presumption. In view of the above discussion, it is held that the accused has failed to rebut the presumption raised in favour of the complainant and therefore the accused is liable for punishment.

20. In the result, the accused is found guilty for the offence punishable under Section 138 of Negotiable Instruments Act and she is accordingly convicted under Section 255 (2) Cr.P.C.

*Typed to my dictation, corrected and pronounced by me in the open Court on this the 18th day of **March, 2025**.*

**Sd/-
Prl. Junior Civil Judge -cum -
IV Addl. Judicial Magistrate of First Class,
Medchal- Malkajgiri District,
Uppal at L.B.Nagar.**

21. The accused is not entitled to the benefit of Probation of Offenders' Act having regard to the fact that she failed to stand to the trust reposed in a family friendship and taken false pleas in this case. Hence proceeded to hear the accused on the quantum of sentence.

22. Heard the accused on the quantum of sentence to be imposed on her. She submitted that she has small children and she has to look after them, who would suffer if she is sent to jail. She prayed to take lenient view while imposing sentence against her. In view of the above submission of the accused and also considering the facts and circumstances of the case, the accused is sentenced to undergo simple imprisonment for a

period of one year for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to pay compensation as observed by the *Hon'ble Apex Court in the case of SUGANTHI SURESH KUMAR VS. JAGADEESHAN reported in AIR 2002 SC 681*, under Section 357 (3) Cr.P.C. of Rs.9,70,000/- (which is twice the amount covered under Ex.P1/ cheque) within two months from this date. In default of payment of the same, the accused shall undergo simple imprisonment for a period of six months. The remand period if any undergone by the accused shall be set off under Section 428 of Cr.P.C. The accused is apprised of her right of appeal.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 18th day of March, 2025.

Sd/-
Prl. Junior Civil Judge -cum -
IV Addl. Judicial Magistrate of First Class,
Medchal- Malkajgiri District,
Uppal at L.B.Nagar.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

PW1 : Smt K.Aparna

For Defence:

DW1 : Smt Janga Pavani

DW2 : N. Jayanand Reddy

EXHIBITS MARKED

For Prosecution:

- Ex.P1 : Cheque bearing No.000103 dated 04-04-2022 for Rs.4,85,000/- (Rupees four lakhs eighty five thousand only) drawn on HDFC Bank, Saleem Nagar, Malakpet, Hyderabad.
- Ex.P2 : Cheque return memo.
- Ex.P3 : Office copy of legal notice dated 12-04-2022.
- Ex.P4 : Postal receipt dated 16-04-2022.
- Ex.P5 : Returned postal cover dated 20-04-2022.
- Ex.P6 : is Bank Account statement obtained online.

For Defence:

- Ex.D1 : Certified copy of sale deed document No.2722/2023, dated 24.03.2023.
- Ex.D2 : Encumbrance Certificate.
- Ex.D3 : Online copy of Occupancy Certificate, dated 02.08.2022 (marked subject to objection that it is filed without 65B certificate)
- Ex.D4 : Details of chit from 01.04.2019. (Marked subject to objection as there is no signature of anybody).

MATERIAL OBJECTS MARKED

-Nil-

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