

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
NAGAMANGALA

Date of Judgement: This 29th day of November 2019

Present : Sri. Rajkumar S. Amminabhavi
B.Com.,LL.B (Spl.)

Senior Civil Judge & JMFC.,
Nagamangala

C.C. NO.244/2019

Complainant : Khurram Pasha
S/o late Mohammed Khasim,
Aged about 45 years,
R/o Mandya road,
2nd cross,
Nagamangala town and taluk.

(Sri. M.D. Advocate.)

Vs.

Accused : Nor Mohammed (Contractor)
Aged about 50 years,
C/o Mohammed Afthab Ali
(Jameel) Behind
Karnataka Sawmill
Haneef Mohalla,
Mandya road,
Mandya district.

(Sri. JKR. advocate)

| | |
|-----------------------|---|
| Offence complained of | U/s. 138 of the Negotiable Instrument Act |
| Plea of the accused: | Pleaded not guilty |
| Final Order: | Accused is convicted |

| | |
|-----------------|------------|
| Date of order : | 29-11-2019 |
|-----------------|------------|

J U D G E M E N T

This is a complaint filed by the complainant under Sec.200 of Cr. PC., against the accused for the offence punishable under Sec. 138 of the Negotiable Instruments Act.

2. The brief facts of the case of the complainant is that, both complainant and accused are well known to each other, on account of their well acquaintancy, the accused approached the complainant for advancement of hand loan amount of Rs.7,00,000/- on 5-11-2018 for the purpose of family legal necessity- his contract work and he has agreeing to repay the same within 3 ½ months. Complainant believing on the good faith, he has arranged the said loan amount from lease amount and from sale of his land and from his savings and advanced the said loan amount on 5-11-2018 by way of cash in his residence. On the same day accused has issued post dated cheque bearing No.453497, dated 25-2-2019 for Rs.7,00,000/- drawn on MDCC bank, Nagamangala branch. As per the assurance made by the accused, the complainant

presented the said cheque through his banker Canara , Nagamangala branch, Nagamangala. But said cheque was dishonoured with an endorsement as **"Funds Insufficient"** on 1-3-2019. The said fact was informed by the complainant to the accused, but he has not responded, then the complainant got issued legal notice by RPAD on 12-3-2019. The said notice was duly served upon him 13-3-2019. In spite of receipt of legal notice, neither he had repaid the borrowed loan amount nor gave any reply. Hence, the complainant had constrained to file present complaint which is well within time and based on the records available on record cognizance has been taken and registered it PCR.

3. After recording of the sworn statement of the complainant and compliant is registered in C.C. registered and after issuance of summons to the accused, accused appeared through his counsel and enlarged on bail. Plea of the accused recorded on 16-8-2019 in the language known to him. He denied the said accusation and claims for trial.

4. Then the case is posted for cross of PW.1 as per the application filed by the counsel for the accused U/s 145(2) of N.I. Act. On the same day complainant filed as per Sec. 143(A) of N.I. Act. Directing the accused to deposit the 20 % of the cheque amount as interim compensation, that application was allowed. On subsequent the accused fails to deposit the 20 % of the cheque amount.

5. At pre-trial stage the complainant himself examined as PW.1 and got marked 5 documents at Ex.P1 to 5.

6. When case is posted for deposit of 20% of cheque amount as per Sec. 143(A) of NI. Act within 60 days and subsequently on 21-10-2019 counsel for accused files application U/s 145(2) of NI Act for cross of PW.1 and that application was disposed off as per speaking order passed by this court on 25-10-2019 and the accused fails to comply the mandatory provision U/s 143(A) of NI Act. Hence, cross of PW.1 is taken as no cross. case is posted for 313 statement. On that day recording of statement on 2-11-2019 though the accused

present the statement was recorded. He will adduce defence evidence, but he fails to adduce defence evidence and case is posted for defence evidence.

7. As per order sheet dated : 25-10-2019: The application filed by the counsel for accused files U/s 145(2) of NI Act. Since, he fails to comply the mandatory provision U/s 143(3)(A) of NI Act. Hence, their prayer is hereby rejected. Counsel for complainant submits that they have not further evidence as the complainant evidence is closed. For statement of accused U/s 313 of Cr. P.C. if any.

8. In spite of giving sufficient opportunity, he fails to deposit 20% of cheque amount. Therefore, the defence evidence is also taken no evidence. Since the present complaint is summary trial quasi-criminal in nature in that contest I am relying citation reported in AIR 2014 SC 2528 Indian Bank Association and others V/s Union Bank of India and others N.I. Act (26 of 1881), Section 138, 143, 145 - dishonour of cheque - summary rial - directions given to trial court to follow

speedy and expeditious disposal of cases falling under 138 of N.I. Act. Hence, case is posted for arguments.

9. Heard the arguments.

10. The following points would arise for my consideration;

1. Whether the complainant proves that the accused had issued the cheque bearing No.453497, dated 25-2-2019 for Rs.7,00,000/- drawn on MDCC bank, Nagamangala Branch, and it was presented for encashment and it was dishonoured with an endorsement **Funds Insufficient**, after issuance of the legal notice, it was duly served upon him, in spite of legal notice he fails to repay the cheque amount and thereby, the accused committed the offence punishable U/s 138 of N.I.Act?

2. What order?

11. My answer to the above points are;

Point No.1 : In the Affirmative

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

: R E A S O N S :

Point No.1 :

12. On perusal of evidence of PW.1, complainant has reiterated the averments made in the complaint. He has got marked 5 documents i.e., Ex.P1 - cheque, P1(a)- signature, P2 - Bank endorsement, P3- Office copy of legal notice, P4-postal receipt, P5- postal acknowledgement.

13. When case is posted for deposit of 20% of cheque amount as per Sec. 143(A) of NI. Act within 60 days and subsequently on 21-10-2019 counsel for accused files application U/s 145(2) of NI Act for cross of PW.1 and that application was disposed off as per speaking order passed by this court on 25-10-2019. case is posted for 313 statement. On that day

recording of statement on 2-11-2019 though the accused present the statement was recorded. He will adduce defence evidence, but he fails to adduce defence evidence and case is posted for defence evidence.

14. As per order sheet dated : 25-10-2019: The application filed by the counsel for accused files U/s 145(2) of NI Act. Since, he fails to comply the mandatory provision U/s 143(3)(A) of NI Act. Hence, their prayer is hereby rejected. Counsel for complainant submits that they have not further evidence as the complainant evidence is closed. For statement of accused U/s 313 of Cr. P.C. if any.

15. As per the amended provision U/s 143(A) of N.I. Act it reads like;

U/s 143(A) of NI. Act :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant -

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complainant; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent, of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the

Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

16. *The provision U/s 143(A) (1) (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complainant. Hence, the said provision applicable from the date of recording of plea.*

Therefore in the instant case the plea of the accused was recorded on 16-8-2019. Hence, the said provision aptly applicable since the said provision amendment came into force 2-9-2018. Therefore the accused fails to comply the mandatory provision. If the said provision is not complied, the very object of the legislature will defeated, since it is an Central Act.

17. On perusal of averments made in the complaint, documents produced by the complainant, it is an admitted fact that, the prior filing of the said complaint, the complainant has complied all the necessary ingredients of Sec. 138 of N.I. Act. The said notice was duly served upon him . In spite of legal notice was duly served he fails to gave any reply. The accused has not challenged the cognizance taken by this court. He fails to cross-examine the PW.1. Further, as per Sec.20

of N.I. Act there is no dispute at Ex.P.1 cheque belongs to his own bank account cheque, and Ex.P.1(a) is his own signature. Therefore the complainant at initial stage he has proved his case, the accused was issued the cheque in question for discharge loan amount in question. If the accused was not at all the borrowed the loan in question. He ought not have challenged the cognizance taken by this court, he ought not have gave reply notice. He ought not have lodged the complainant against the complainant by misuse of the cheque in question. For trial of the case in hand, conduct of the parties is to be considered. The accused is not a layman. On perusal of Ex.P1 cheque there is no ambiguity. He know the cause and consequences of issuance of cheque to any other persons without having monetary transaction. It can be presumed that, the accused knowing fully well to defeat the claim of the complainant, he has

issued the cheque in favour of the complainant without having sufficient funds in his bank account. Therefore, the probability of preponderance is higher on side of the complainant rather than the accused.

18. Ordinarily offence U/s 138 of N.I. Act mensrea is not essential, U/s 138 of N.I. Act is bring into operation rule of strict liability, whereas, mensrea is essential ingredients in criminal cases. Therefore, the complainant has proved his case against the accused, since offence U/s 138 of N.I. Act element of mensrea is excluded in general public interest to curb the instances of dishonouring of cheques and to lend the credibility to the commercial transaction. Therefore, in the instant case the accused knowing fully well he was borrowed the loan in question from the complainant and for discharge

the loan he has issued Ex.P.1 to the complainant. Since the present complaint is summary trial and quasi-criminal in nature, it is like recovery proceedings and punishable is fine or in default of it, simple imprisonment. In that contest, I am relying the citation reported in **AIR 2009 NOC 404 (Kerala) in Babu V/s K.J. Joseph**. It is argued that, it is evidence from the Section 356(6) of Cr. P.C. that, in the case of judgement is one of acquittal or fine. It is not necessary for personal presence of the accused to receive the copy of the judgement. Hence, in this case also in the absence of the accused court will pass the judgement. In the light of above observations, I constrained to hold point No.1 in the affirmative.

19. **Point No.2** : In view of the above reasons and findings on point 1, I proceed to pass the following;

ORDER

Acting U/s 255(2) of Cr. P.C., the accused is convicted for the offence punishable U/s. 138 of N.I. Act.

The accused shall pay a fine amount of Rs.7,00,000/-. In default of payment of said fine amount, the accused undergo simple imprisonment for 6 months.

Further, it is ordered that, out of the said fine amount, Rs.5000/- shall be remitted to the state fine and remaining amount of Rs.6,95,000/- shall be paid to the complainant as compensation, as provided U/s 357 of Cr. P.C.

The bail bond and surety bond of the accused stands cancelled.

Free copy issued to the accused.

[Dictated to the stenographer through on-line computer, corrected and then pronounced by me in the open court on this 29th day of November 2019.]

(Rajkumar S. Amminabhavi)
Senior Civil Judge & JMFC.,
Nagamangala.

A N N E X U R E

List of witnesses examined on behalf of the complainant:

PW.1 : Khurram Pasha

List of documents exhibited on behalf of the complainant:

Ex.P1 : Cheque
Ex.P1(a) : Signature of accused
Ex.P2 : Bank endorsement
Ex.P3 : Legal notice
Ex.P4 : Postal receipt
Ex.P5 : Postal acknowledgement

List of witnesses examined on behalf of the accused:

- Nil -

List of documents exhibited on behalf of the accused:

- Nil -

Senior Civil Judge & JMFC.,
Nagamangala.

Judgement ready and pronounced in the
open court vide separate judgement

ORDER

Acting U/s 255(2) of Cr. P.C., the accused is convicted for the offence punishable U/s. 138 of N.I. Act.

The accused shall pay a fine amount of Rs.7,00,000/-. In default of payment of said fine amount, the accused undergo simple imprisonment for 6 months.

Further, it is ordered that, out of the said fine amount, Rs.5000/- shall be remitted to the state fine and remaining amount of Rs.6,95,000/- shall be paid to the complainant as compensation, as provided U/s 357 of Cr. P.C.

The bail bond and surety bond of the accused stands cancelled.

Free copy issued to the accused.

Senior Civil Judge & JMFC.,
Nagamangala.

