

**IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC., KRISHNARAJANAGAR**

PRESENT

**Sri. K.M.Basavarajappa., B.Com.,LL.B.,
Senior Civil Judge, K.R.Nagar**

Dated this the 27th day of May 2019

C C No. 260 /2018

Judgment U/s 355 of Cr.P.C

COMPLAINANT ::

Sri. Shivashankar,
S/o. Late Marishetty,
Age 62 years,
R/at Kamadhenu Nilaya,
Arkanatha Road,
K.R.Nagar Town.
Mysuru District.

[By Sri.G.L.D.Advocate]

ACCUSED ::

V/s

Sri.S.J. Yeshuraju,
S/o. Javaraiah,
Aged about 42 years,
R/at Sarigenagar, Ward NO.12,
Behind K.E.B.
K.R.Nagar Town. Mysuru District.
Office Address:
S.J.Yeshuraju, SDA,
Muzarayee Department,
District Commissioner office,
Mysuru.

[By : Sri.R.M.- Advocate]

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J U D G M E N T

The complainant has filed this complaint against the accused U/Sec 200 of Cr.P.C. for the offense punishable U/Sec 138 of N.I. Act.

2. **It is the case of the complainant that:-**

That the accused having acquaintance with the complainant and he has borrowed a loan of Rs.1,90,000/- on 10.09.2017 from the complainant and to discharge the said debt, on the same day, the accused had issued a post dated cheque pertaining to State Bank of Mysuru, K.R.Nagar Branch, bearing No.105535 dated 10.10.2017 for Rs.1,90,000/- in favour of the complainant. On 10.10.2017 the complainant has presented the said cheque through his bank i.e., Corporation Bank, K.R.Nagar Branch, for en-cashment and the same was dishonored as "Funds Insufficient" in the account of the accused, returned with an endorsement on 26.10.2017. Thereafter, complainant had issued a legal notice on 09.11.2017 calling upon the accused to pay the cheque amount through registered post, which was duly served on the accused. In spite of the same, the accused neither

replied to the said notice nor repaid the loan amount. Hence, this complaint.

3. After registration of PCR, the sworn statement of the complainant was recorded and took cognizance for the offense alleged to have been committed by accused punishable U/s.138 of the N.I. Act and directed the office to register a criminal case against the accused. After registration of criminal case, summons served upon the accused. In pursuance of summons, accused appeared before the court and he was enlarged on bail. After admitted to bail, plea for the offence punishable under section 138 of N.I. Act was recorded read over and explained the same to the accused in the language best know to him, the accused pleaded not guilty and claims to be tried.

4. In the course of trial, the complainant has been examined as PW-1 and 5 documents are got marked as Ex.P1 to P. 5 and closed his side evidence. As the accused has not filed application u/s 145(2) of N I Act, for recalling and seeking permission to cross-examine the PW 1, hence in view of Judgment reported in 2014(5) SCC 590, between Indian Bank Association and another

Vs Union of India, the cross-examination of PW 1 by the accused is taken as nil. Hence, case is posted for defense evidence. Though sufficient time has been granted, the accused neither cross-examined the PW 1 nor stepped into witness box. Hence, case is posted for arguments.

5. Heard arguments.

6. Points arisen for the consideration of the Court:

1. Whether complainant proves that accused in discharge of legally recoverable debt has issued the cheque bearing No.105535 dated 10.10.2017 for Rs.1,90,000/- drawn on State Bank of Mysuru, K.R.Nagar Branch, which came to be dishonoured with an endorsement "Funds In Sufficient" on 26.10.2017; In spite of the issuance of notice, the accused has not paid the cheque amount and thereby committed an offence under section 138 of N.I.Act?

2. What order?

7. My findings on the above points are

POINT No.1 : In the affirmative,
Point No.2 : As per final order
for the following

R E A S O N S

8. **POINT NO.1:-** It is the specific case of the complainant that, he has parted a loan of Rs.1,90,000/-

to the accused on 10.09.2017 and towards discharge of the said debt, the accused has issued a post dated cheque bearing No.105535 dated 10.10.2017 drawn State Bank of Mysuru, K.R.Nagar Branch, for Rs.1,90,000/-. The complainant has presented the same through his banker for en-cashment and the same was dishonored as "Funds Insufficient" in the account of the accused, returned with an endorsement on 26.10.2017. Hence, complainant had issued a legal notice on 09.11.2017 calling upon the accused to pay the cheque amount through registered post, which was duly served on the accused. In spite of the same, the accused neither replied to the said notice nor repaid the loan amount.

9. The complainant in order to prove his case, got examined himself as PW1 and deposed in consonance with the complaint averments. The PW1 further got marked 5 documents at Ex.P1 to P5. Ex.P1 is the cheque bearing No.105535 dated 10.10.2017 in respect of his account maintained at State Bank of Mysuru, K.R.Nagar Branch. Ex.P2 is the endorsement issued by the accused banker to the effect that, Ex.P1 cheque was not honored for want of sufficient funds in the account of the accused. Ex.P3 is the copy of the legal notice dated 09.11.2017

issued by the complainant calling upon the accused to repay the loan amount. Ex.P4 is the two postal receipts and Ex.P.5 is the postal acknowledgement, which clearly discloses that, the complainant has caused the legal notice on the accused.

10. As the accused has not filed application u/s 145(2) of N I Act, for recalling and seeking permission of Court to cross-examine the PW 1, in view of the guidelines issued in the Judgment reported in 2014(5) SCC 590, between Indian Bank Association and another Vs Union of India, the cross-examination of PW 1 by the accused is taken as nil and case is posted for defence evidence. At this juncture, it is relevant to extract here the guidelines of the supra decision reported in **2014(5) SCC 590**, for the better appreciation of the case, which reads thus:-

The Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defense and fix the case for defense evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

The Court concerned must ensure that examination-in-chief, cross-

examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

It is further observed that, we, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

11. As stated above, the accused neither cross-examined the PW 1 nor stepped into witness box in order to disprove the case of the complainant or to prove his defense if any. Therefore, the oral evidence of PW1 coupled with the documentary evidence produced by PW1 at Ex.P1 to P.5 are remains un-rebutted by the accused. In other wards, the accused has not stepped into witness box to disprove the claim of the complainant. Therefore, a valid presumption would arise that the case set up by the accused if any is not correct. As such an adverse inference can be safely drawn against the accused and court can safely accept the oral and documentary evidence of complainant.

12. Admittedly, the cheque is bearing the signature of the accused and it is not disputed by the accused. Though, it is settled principle of law that, merely because, signature in cheque is admitted it cannot be said in all cases that, the drawer of the said cheque is liable for punishment U/s 138 of the N.I.Act. The accused has not disputed the transaction with the complainant and his signature on the alleged cheque. Therefore, once this fact has been acknowledged, section 139 of N.I. Act mandates a presumption that the cheque pertains to legally recoverable debt or liability. This presumption is of a rebuttal in nature and the onus is on the accused to raise a probable defense with regard to the facts of the case. Further, once issuance of cheque is established, presumption under Section 118 and Section 139 of the Negotiable Instruments Act come into play and it is for the Accused to rebut the said presumption by leading positive evidence. As such, the accused has failed led evidence, to rebut the said legal presumption before this court.

13. Since the accused has admitted his signature on the cheque is him, the statutory presumption comes into play and the same has not been rebutted by the

accused even with regard to the materials produced by the complainant. Therefore, at this juncture, I would like to rely on the decision reported in **2018 (8) SCC 469, between T.P. Murugan(Dead) Through Lrs vs Bojan,** it is held that,

Debt, Financial and Monetary Laws- Negotiable Instruments Act, 1881-Ss. 138 and 139 - Complaint as to dishonour of cheque-Presumption under section 138 and 139 of NI Act in favour of holder of cheque- Invocation of, and how may be Rebutted- Rebuttal of said presumption must be adducing credible evidence-Mere raising a doubt sans cogent evidence, with respect to the circumstances, presumption under section 139 of NI Act cannot be discharged.

It is further held that,

Under Section 139 of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability¹. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.

(The above ratio is also laid down in the decisions reported in Rangappa vs. Shri Mohan [(2010) 11 SCC 441], K.N. Beena vs. Muniyappan and Anr. [(2001)8 SCC 458]; and T. Vasanthakumar vs. Vijayakumari [(2015)8 SCC 378])

14. Further, as per Section 118(a) of the Act, until the contrary is proved, it is the presumption of law that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred for consideration. Thus, in accordance with the law laid down it is to be presumed that when a cheque is drawn and delivered it is for consideration and irrespective of the truth as to its receipt or non-receipt, which is again a matter of evidence; it would be for the accused to rebut the statutory presumption arising under section 118. Section 139 of the Act incorporates a rule of presumption to the effect that until the contrary is proved, it shall be presumed by the Court that the holder of the 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. It is the legislative mandate that the court should proceed with the assumption that such cheque was received for the discharge of a legally enforceable debt or other liability until the drawer proves that it is not so. Ordinarily the presumption has to be rebutted by the accused-drawer only during the course of trial by proving that the cheque was not issued towards the

discharge of the liability. As such, in a prosecution under Section 138, unless the contrary is proved, the court must statutorily presume that;

- * the cheque was drawn on an account maintained by the drawer with the banker;

- * that it was for the purpose of paying money to any other person out of that account;

- * that it was for discharge, in whole or in part, of any debt or any other liability; and

- * that it was received by the holder in discharge of any debt or any liability.

The above said ingredients are aptly applicable to the instant case and hence this court safely drawing the presumptions under section 139 of the N.I Act. As stated above, the accused fails to rebut the above said presumption during the course of trial by proving that the cheque was not issued towards the discharge of the liability.

15. Admittedly, the complainant got issued a legal notice to the accused through RPAD to the given address. Even after service of notice, the accused has neither replied to the said notice nor repaid the cheque amount. However, from the oral evidence of PW 1

coupled with Ex.P1 to P.5 and on careful scrutiny of averments made in the complaint, it is clear that the complainant has proved his claim against the accused. Moreover, the complainant has complied with all the mandatory requirements of provisions of Negotiable Instrument Act. Therefore, when a person issued cheque for payment of any debt or liability and it is dis-honored for insufficient of funds or for any legal reasons which are permissible under the N.I. Act to proceed against the accused under Section 138 of N.I. Act, the drawer of the cheque is deemed to have been committed an offense U/S 138 of the Negotiable Instrument Act, which is punishable with sentence or fine. In view of my above reasons, Point No.1 is answered in the **Affirmative**.

16. **POINT NO.2:-** In view of my findings on Point No.1, I proceed to pass the following:

O R D E R

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

The accused is sentenced to pay a fine of Rs.2,30,000/- (Rs. Two Lakhs Thirty Thousand only). In default of

