

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
CHANNAPATNA**

PRESENT:- MISS.B.T.ANNAPOORNESHWARI,

B.A., LL.B., LL.M.,
ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA.

C.C No.344/2019

DATED: THIS THE 5th DAY OF MAY 2020

COMPLAINANT:-

Sri.Harsha T.K.,
S/o Kapanigowda,
Aged about 36 years,
R/o C.M.C. Layout,
H.No:30, Vidyanagar,
Channapatna Town,
Ramanagara District.

(By Sri.Santhosh B.N., Advocate.)

//Vs//

ACCUSED:-

Sri.Narayana,
S/o late Kullappa,
Age: 32 years,
Mylanayakanahalli village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

(Absent)

J U D G E M E N T

This complaint is filed for the offence punishable Under Section-138 of Negotiable Instruments Act.

2. The case of the complainant is as follows:-

The accused is known to the complainant. The accused borrowed a sum of Rs.3,00,000/- on 04.05.2018 for brick factory agreeing to repay it within eight months. After expiry of said period complainant demanded for repayment, at that time the accused issued cheque bearing No:311465 for a sum of Rs.3,00,000/- dated 31.1.2019 drawn on Syndicate Bank, Channapatna Branch. The complainant presented the said cheque for encashment on 31.01.2019 through his banker Syndicate Bank, Channapatna Branch, which came to be returned unpaid for the reason of "Funds Insufficient" on 31.01.2019. Immediately, complainant informed about dishonor of cheque and demanded him to pay cheque amount. Thereafter the accused failed to repay the amount and therefore, the complainant issued demand notice to the accused on 25.02.2019 calling upon the accused to pay the aforesaid cheque amount. The notice served to the accused on 04.03.2019 and accused failed to repay the loan amount. Therefore, complainant has filed this complaint to take action against the accused under Section 138 of Negotiable

Instrument Act and to award suitable compensation in the interest of justice and equity.

3. Upon considering the complaint averments, sworn statement lead by the complainant this court has taken cognizance of the offence and issued summons to the accused compelling his appearance. After service of summons the accused did not appear to deny the substance of accusation and remained absent. Therefore, this court called upon the complainant to prove his case treating this case as summary trial.
4. In support of the case, the complainant himself has got examined as PW.1 and got marked Exs.P.1 to P.6. The accused did not cross-examine the PW.1 and remained absent. Therefore, the evidence of PW.1 is not at all challenged by the accused.
5. The present case is summary trial and quasi-criminal in nature. Therefore recording of statement of accused under Section 313 of Cr.P.C. is dispensed with and defence evidence of accused is taken as nil.

6. I have relied upon the decision reported in “AIR 2004 SC 2528 Indian Bank Association and others Vs. Union of India and others”, wherein the Hon’ble Apex court given directions to the trial court to follow procedures for speedy and expeditious disposal of cases falling under Section 138 of N.I. Act. Thereby the appearance of the accused is dispensed with and the case posted for arguments.
7. Heard arguments and perused the materials on record.
8. On the basis of the above materials, the following points arise for my consideration;
 1. Whether the Complainant proves beyond reasonable doubt that the accused has issued cheque bearing No.311465 dated 31.01.2019 for Rs.3,00,000/- from his A/c maintained in Syndicate Bank, Channapatna Branch, in his favour towards legally recoverable debt or liability and on its presentation through his banker within the stipulated time said cheque was dishonoured due to “Funds Insufficient” and after receiving endorsement from Bank, he got issued the legal notice to the accused and the accused failed to make repayment within time and hence the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act?
 2. What Order?

9. My findings to the above points are as under:

Point No.1: In the affirmative,

Point No.2: As per the final order

for the following:

REASONS

10. **Point No.1:-** To constitute offence under Section 138 N.I. Act, the cheque should have been issued towards discharge of legal liability and its dishonor. In the present case the complainant clearly averred in the complaint that the accused is known to the complainant. The accused borrowed a sum of Rs.3,00,000/- on 04.05.2018 for brick factory agreeing to repay it within eight months. After expiry of said period complainant demanded for repayment, at that time the accused issued cheque bearing No:311465 for a sum of Rs.3,00,000/- dated 31.1.2019 drawn on Syndicate Bank, Channapatna Branch. The complainant presented the said cheque for encashment on 31.01.2019 through his banker Syndicate Bank, Channapatna Branch, which came to be returned unpaid for the reason of "Funds Insufficient" on 31.01.2019. Immediately, complainant informed about

dishonor of cheque and demanded him to pay cheque amount. Thereafter the accused failed to repay the amount and therefore, the complainant issued demand notice to the accused on 25.02.2019 calling upon the accused to pay the aforesaid cheque amount. The notice served to the accused on 04.03.2019. In pursuance of the notice, the accused not repaid amount covered under the cheque.

11. To prove the case of the complainant, he himself examined as PW.1 by filing affidavit in support of his examination-in-chief and reiterated the averments of complaint. The complainant has produced documents at Exs.P.1 to P.6. They are, Ex.P.1 is the cheque bearing No:311465 dated 31.01.2019 for a sum of Rs.3,00,000/- drawn on Syndicate Bank, Channapatna Branch. The signature of accused is marked at Ex.P.1(a). Ex.P.2 is the endorsement issued by the Bank, Ex.P.3 is the copy of legal notice and Exs.P.4 and P.5 are the postal receipts and Ex.P.6 is the postal acknowledgement. The Ex.P.2 clearly show that the cheque returned for the reason of "Funds Insufficient".

12. Ordinarily in cheque bounce cases, the courts have to consider the ingredients of offence stipulated under Section 138 of negotiable instruments Act is proved by the complainant, then presumption under Section 139 of N.I. Act is available and to consider whether the said presumption is rebutted by the accused.
13. It is pertinent to note the decision reported in “AIR 2001 SC 3897 in the case of Hiten P Dalal Vs. Bratindranath Banerjee”, wherein the Hon’ble Apex Court observed that Sections 138 and 139 of N.I. Act are introduced exceptions to the general rule as to the burden of proof in the criminal cases and shifted the onus on the accused as under;

“Because, both sections 138 and 139 require that the court “shall presume” the liability of the drawer of the cheques for the amounts for which the cheques are drawn. It is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. Such a presumption is a presumption of law, as distinguished from a presumption of fact, which describes provisions by which the court “may presume” a certain state of affairs. Presumption are rules of evidence and do not conflict with the presumption of innocence, because by the latter all

that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the presumption may be discharged with the help of presumption of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.”

14. In the light of the above principles, the presumption mandated by Section 139 of the N.I. Act does indeed include the existence of the legally enforceable debt or liability. In the present case, the accused did not plead and take any stand in respect of his defence.
15. It is settled position of law that if the accused did not enter the witness box to adduce the rebuttal evidence or to produce any documents, then, an adverse inference can be drawn. In this regard I rely upon the decision reported in “AIR 1999 SC 1341 in the case of Eshwar Bai C. Patel Vs. Narihar Behara” and “(1999) 3 SCC 573 in the case of Vidhyadhar Vs. Manik Rao and Another”, wherein, the Hon’ble Apex court has observed that;

“When a person fails to enter into witness box to state his case on oath, the adverse inference can be drawn as per Sec.114 of Indian Evidence Act, against such person”. “Evidence Act,

1872 – S.114 III (g) – Presumption – If a party abstains from entering the witness box, an adverse inference would arise against him. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set-up by him is not correct.”

16. The accused did not choose to cross-examine the PW.1 and lead defence evidence and later the accused did not turn up. Though NBW issued the accused is not secured. Hence, cross-examination of PW.1 is taken as nil. This being summary proceedings the statement of accused as required under section 313 of Cr.P.C. is dispensed with and the defence evidence is also taken as not lead. After hearing arguments on merits from the counsel for the complainant, the case is posted for judgment.

17. On perusal of averments made in the complaint and also documents produced by the complainant, it is clear that it is an admitted fact that even after issuance of legal notice by the complainant to the accused prior to filing of this complaint, the accused has not

made payment of cheque amount. Therefore, prior to filing this complaint the complainant had complied the all necessary ingredients under Section 138 of NI Act. Though, the accused has not appeared before the court either to deny the case or to prove his defence if any. Therefore, the evidence of PW.1 is remained unchallenged.

18. The complainant has proved his case by adducing cogent and corroborating evidence. The accused has failed to rebut the presumptions drawn in favour of complainant. If the accused did not issue Ex.P.1 for legally recoverable debt then he would have taken necessary action against the complainant after issuance of legal notice to him. There is no any ambiguity in Ex.P.1. Therefore, it can be presumed that the accused issued the Ex.P.1 cheque to the complainant with knowing fully well without having sufficient funds in his bank account with an intention to defeat the claim of the complainant.
19. Further, it can also be presumed that no any ordinary prudent man will issue signed blank cheque to any other persons without having

monetary transactions between them. Therefore, the complainant has proved issuance of Ex.P.1 for legally recoverable debt. Mensrea is not essential in an offence under section 138 of NI Act but stipulates strict liability. The accused in this case fully knowing well to repay the legally recoverable debt issued Ex.P.1 to the complainant and hence the evidence of PW.1 inspires the confidence of this court to believe the case of complainant. The complainant has proved his case beyond reasonable doubt against the accused. Since the present complaint is summary trial and quasi criminal in nature, it is like a recovery proceedings and punishment is fine or in default of it simple imprisonment. In this context it is pertinent to rely on the decision reported in "AIR 2009 NOC 404(Kerala) in the case of babu Vs. K. J. Joseph". It is evident from Section 353(6) of Cr.P.C. that in case of judgment is one of acquittal or fine only, the personal presence of accused is not necessary to receive the copy of judgment. Hence in this case also in absence of accused the court passes the judgment.

Therefore, I answer the above point in the affirmative.

20. **POINT NO.2:** In the light of the foregoing discussion and finding, I proceed to pass the following;

ORDER

By exercising powers conferred under Section-255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Section-138 of Negotiable Instruments Act.

The accused shall pay fine of Rs.3,05,000/- in default of payment of fine amount, the accused shall undergo simple imprisonment for six months.

In fine amount so realized, the accused shall pay a sum of Rs.3,00,000/- to the complainant as compensation under Section 357(1)(b) of Cr.P.C. and the remaining amount of Rs.5,000/- is to be deposited to the State.

The bail bond of the accused and his surety stand cancelled.

Office is directed to furnish free copy of this judgment to the accused.

(Typed by me directly on the laptop, on computerized by the Stenographer, corrected, signed and then pronounced by me in open Court, dated this the 5th day of May 2020).

Sd/-

**(B.T.ANNAPOORNESHWARI),
ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA.**

: ANNEXURE :

List of witnesses examined on behalf of the complainant:-

PW.1: Sri.Harsha T.K..

List of Exhibits marked on behalf of the complainant:

Ex.P.1: Cheque

Ex.P.1(a): Signature of accused

Ex.P.2: Endorsement of Bank

Ex.P.3: Copy of legal notice

Exs.P.4&P.5: Postal receipts

Ex.P.6: Postal acknowledgement.

List of Witnesses marked on behalf of the defence:

- NIL -

List of exhibits marked on behalf of the defence:

- NIL -

Sd/-

**ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA.**

Accused is absent since beginning.

(Judgment pronounced u/Sec.353(6) Cr.P.C.
in the open court vide separate Judgment)

ORDER

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Office is directed to furnish free copy of this judgment to the accused.

Sd/-
ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA.

Issue conviction warrant against accused
By 30.06.2020.

Sd/-
ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA.