IN THE COURT OF METROPOLITAN MAGISTRATE, FAST TRACK COURT AT MAGISTERIAL LEVEL - IV, GEORGE TOWN, CHENNAI –01

PRESENT: Tmt.A.K.N.CHANDRA PRABA, B.Sc., M.L.,

METROPOLITAN MAGISTRATE, FAST TRACK COURT NO - IV

Monday, this the 09th Day of September, 2024

STC. No.2747 of 2022

CNR.No.TNCH0B-014322-2022

JUDGMENT UNDER SECTION 355 of Cr.P.C

A	**Serial Number of the Case**	STC.No.2747 of 2022
B	**Date of Offence**	01.09.2022
C	**Name of the Complainant & Address**	Mr.A.Prakash, S/o.S.Annamalai, Old No.2/1, New No.3, Shanmugarayan Street, (Near Stanly Hospital), Chennai-600001.
D	**Name of the Accused and address**	Mr.Vasanth, S/o.A.Vasudevan, No.8835, EWS 'B' Type, Phase I & II, Tamil Nadu Housing Board, Ayappakkam, Chennai-600 077.
E	**Offence Complained of**	Dishonor of Cheque –U/s.138 of the Negotiable Instruments Act.
F	**Plea of the Accused and his Examination in Brief**	Not guilty.
G	**Final Order**	**In the result,** The accused is found guilty for the offence u/s.138 of N.I.Act and the accused is convicted for the said offence u/s.255 (2) of Cr.P.C. On considering reply of accused and fact and circumstance of the case, this court has imposed sentence of simple imprisonment for 6 months to the accused and as per u/s.357 of Cr.P.C, this court has imposed compensation of Rs.5,00,000/- (cheque amount) along with 3% per annum for the said cheque amount from the date of dishonor of case cheque to till date to the accused for the offence u/s.138 of N.I.Act and directed the accused to pay the said compensation amount to the complainant

		within one month from this date and in default of payment of said compensation then the accused shall undergo one week simple imprisonment. The accused is in custody from 20.03.2024 to till date and the said period is set off from the punishment imposed for the said offence u/s.438 of Cr.P.C.
H	**Judgment Reserved on**	28.08.2024
I	**Judgment Pronounced on**	09.09.2024

PART-B – A brief statement of reasons for the decision
(As mandated u/s.355(1) of the code of criminal procedure,1973)

This case has come up for final hearing before this court on 28.08.2024, M/s.N.Kumar, is the learned Counsel for the complainant and Mr.P.Babu, is the learned Counsel for the accused upon hearing arguments of both sides and on considering all the materials on record, having stood over for consideration till this day and today this court delivers the following:

JUDGMENT

The complainant has filed this complaint U/s.200 of Cr.P.C punishable U/s.138 of the Negotiable Instruments Act 1881 (referred herein as N.I.Act) to the accused and for compensation to the complainant.

1) Gist of Complaint filed by complainant:-

The complainant has stated in his complaint as the accused is well known to complainant for past 5 years and the accused has borrowed a sum of Rs.5,00,000/- as hand loan in the month of March 2022 and the accused promised to repay the same on demand. On repeated demands made by the complainant, the accused has issued a cheque no.774618 dated 01.08.2022 for a sum of Rs.5,00,000/- in Canara Bank, Specialized SME Branch, Ambattur, II, Chennai-600053 to the complainant. Then the complainant has presented the said cheque in his banker Indian Bank, Mannady

Branch and the same was returned as “Drawers Signature Differs” and on 04.08.2022, return memo for the said cheque was given to complainant by his said banker. On 10.08.2022, the complainant has issued notice to the accused to call upon the accused to repay the said cheque amount to the complainant within 15 days as per u/s 138 of N.I. Act. On 16.08.2022, the said notice received the legal notice by the accused. The accused has not repaid the said cheque amount to the complainant or no reply was sent for the same. So, the complainant has filed this complaint against the accused before this Court.

2) **Cognizance :-**

The complainant has filed this complaint along with proof affidavit before this Court and the same was verified with original documents submitted by the complainant. On perusal of entire records, there is prima facie case made out against the accused u/s 138 of NI Act. This Court has taken cognizance of the said offence against the accused and issued summon to the accused**.** The proof affidavit of complainant is replica of the fact mentioned in complaint in this case.

3) Substance of complainant side evidence:-

The complainant side has examined PW1 by proof affidavit was taken as in lieu of complainant side evidence and Ex.P1 to Ex.P5 were marked as per u/s 145(1) of NI Act by this Court. The PW1 has deposed as the replica of the complaint which was filled by the complainant in this case. The Bank Manager of accused and examined as PW2 and Ex.P6 was marked on the complainant side. So, the complainant was examined as PW1 and PW2 were examined and Ex.P1 to Ex.P6 were marked in his evidence.

4) **Recall complainant witnesses by accused :-**

The accused has recalled the complainant’s witnesses for cross before this

Court and during cross examination of PW1 and PW2 were cross examined by defense side. After that, the complainant has not taken any steps to produce witness to prove his case and the complainant side evidence closed.

5) <u>The incriminating evidence explained to accused:-</u>

On appearance of accused, this Court has explained about the incriminating evidence u/s 313 of Cr.P.C to the accused and denied as false evidence and further stated by accused as the accused has borrowed money from complainant's friend namely Ramesh and handed over case cheque to said Ramesh and the same was misused by the complainant and this Court has ordered to produce the witness on the defence side. No oral or documentary evidence produced by the defence side. So, this court has closed the defence side evidence.

6) In order to prove the case, the complainant side examined PW1 and PW2 were examined and Ex.P1 to Ex.P6 were marked by the complainant and no oral or documentary evidence were produced by the defense side in this case.

7) Heard both sides. The complainant and accused counsels have submitted their oral arguments and both side has filed written arguments.

<u>8) Points for determination:-</u>

1) Whether the complainant has established the presumption infavour of complainant as per u/s 118 and 139 of NI Act beyond all reasonable doubts ?
2) If the complainant has established his case then the accused has rebutted the said presumption infavour of the complainant as preponderance of probabilities or not?

3) If the accused has failed to rebut or rebutted the established case of complainant then what are the reliefs the parties are entitled and if the accused is not rebutted then what are the quantum of punishment can be imposed to the accused ?

9) Decision:

Point No:1:-

The complainant has to prove the case as per section 138 of N.I.Act and the complainant has produced Ex.P1 to Ex.P6 to prove the compliance of ingredients as mentioned in section 138 of N.I.Act. So, the complainant has proved the offence u/s 138 of N.I.Act by the Ex.P1 to Ex.P6 and the ingredients for an offence u/s 138 of N.I.Act was attracted against the accused. The accused has not repaid the money as stipulated in the statutory legal notice to accused and also the accused has admitted the signature in the case cheque and the presumption u/s 118 of N.I. Act and 139 of N. I. Act are attracted infavour of the complainant. This court has looked into object of the N.I. Act and the presumption u/s 118 and 139 of N.I.Act and well settled principles in the presumption and rebuttal of presumption by our Honb'le Supreme Court in

Krishna

vs.

Dattatraya 2008(4) Mh.L.J.354

Held: The object of this amendment Act is to regulate the growing business, trade, commerce and Industrial activities and to promote greater vigilance in financial matters and to safeguard the faith of creditors in drawer of cheque.

Hence this Court has decided that the complainant has proved his case as the accused has admitted his siganture in the case cheque and the presumption u/s 118 and 139 of N.I.Act are attracted infavour of the complainant in this case. Hence this Court has decided the point No.1 is infavour of the complainant.

10) Point No. 2 and 3:

The accused has to rebut the presumption infavour of the complainant as per Our Hon'ble Supreme Court dictum in the well settled law that mere denial by the accused would not rebut the statutory presumptions u/s 138 and u/s 118 of NI Act which arises in favour of the complainant under NI act and presumption will still arise in favour of complainant. As per the scheme of the NI Act, once the accused admits signature on the cheque in question, certain presumptions are drawn, which result in shifting of onus. Section 118(a) of the NI Act lays down the presumption that every negotiable instrument was made or drawn for consideration. Another presumption is enumerated in Section 139 of NI Act. The provision lays down the presumption that the holder of the cheque received it for the discharge, in whole or part, of any debt or other liability."

As per the dictum of our Hon'ble Supreme Court in,

Hiten P. Dalal

vs.

Bratindranath Banerjee (2001) 6 SCC 16.

Rangappa

vs.

Sri Mohan (2010) 11 SCC 441 (three-judge bench)

Held: " the presumption contemplated under Section 139 of NI Act
includes the presumption of existence of a legally enforceable debt. Once the presumption is raised, it is for the accused to rebut the same by establishing a probable defence."

The principles pertaining to the presumptions and the onus of proof were recently summarized by the Hon'ble Apex Court in Dilip Kumar v. Ramesh Aggarwal and in,

Basalingappa

vs.

Mudibasappa (2019) 5 SCC 418

Held: “We having noticed the ratio laid down by this Court in the above cases on Section 118(a) and 139, we now summarize the principles enumerated by this Court in the following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

“The primary onus on the accused was to rebut the presumptions raised under Section 118(a) and section 139 of NI Act. The standard of proof required by the accused to discharge his burden is of preponderance of probabilities and he has failed to discharge his burden of punching holes in the version of the complainant. The Hon'ble Supreme Court in the case of M.S. Narayana Menon @ Mani v. State of Kerala (2006) 6 SCC 39 has observed as under, "32. A Division Bench of this Court in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal [(1999) 3 SCC 35] albeit in a civil case laid down the law in the following terms:

"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration.

Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non- existence of the consideration can be either direct or by bringing on record Dilip Kumar v. Ramesh Aggarwal the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt"

11) Now, this court has applied the said principles in this case and the accused has raised defence as the accused has borrowed money from complainant’s friend Ramesh and the case cheque was returned as sign differ and no legally enforceable debt towards the complainant.

12) In order to disprove complainant case as per said dictum, the accused has raised question to the PW1 about the transaction between the accused and complainant, the complainant has not mentioned the details of money transactions to the accused in the legal notice. As per Ex.P3 and Ex.P4 has revealed that the statutory notice was sent to the accused and the accused has sent reply notice, Ex.P5 to complainant for the same. The accused has put question about the reason for the dishonor of case cheque and Ex. P1 was dishonored as drawer signature differ and the same was admitted by the PW1. PW2 was examined by the complainant who is the bank manager of accused and Ex.P6 has revealed that the case cheque was returned by the banker as insufficient fund in the account of accused. The accused has put question about the same to PW2 and the same was proved by the complainant.

13) The accused has admitted his signature and as per Ex.P2 the return memo was proved there is difference of accused signature in case cheque and Ex.P6 revealed that there is no sufficient fund in the accused account and dishonored by the banker as per Banker Book Evidence Act. The accused has not produced any document or denied the same, Ex.P6 in this case. The accused has not given any complaint for the case cheque was misused by the complainant

which was handed over by the accused to complainant's friend Ramesh. So, the accused has no defence in the initial stage of the case itself. The accused has raised mere defence but not rebutted the complainant case as per complainant evidence or his evidence or by circumstantial fact of the case. The onus of proof has not shifted to complainant but the complainant has proved as per Ex.P1 to Ex.P6. Hence, this court has decided that the point No.2 & 3 are answered infavour of the complainant.

In the result, the accused is found guilty for the offence u/s.138 of N.I.Act and the accused is convicted for the said offence u/s.255 (2) of Cr.P.C.

This court has questioned about the sentence to the accused replied as
" இல்லை "

On considering reply of accused and fact and circumstance of the case, this court has imposed sentence of simple imprisonment for 6 months to the accused and as per u/s.357 of Cr.P.C, this court has imposed compensation of Rs.5,00,000/- (cheque amount) along with 3% per annum for the said cheque amount from the date of dishonor of case cheque to till date to the accused for the offence u/s.138 of N.I.Act and directed the accused to pay the said compensation amount to the complainant within one month from this date and in default of payment of said compensation then the accused shall undergo one week simple imprisonment. The accused is in custody from 20.03.2024 to till date and the said period is set off from the punishment imposed for the said offence u/s.438 of Cr.P.C.

If any bail bond executed by the accused shall cancelled after the appeal period u/s.437A of Cr.P.C. If any deposit made by the accused in this case shall be adjust to the compensation in this case after appeal period.

Typed by the steno-typist in the computer directly to my dictation, after making corrections, pronounced by me in the open court on this the 09th day of September 2024.

//Sd//A.K.N.Chandra Praba.,
Metropolitan Magistrate,
Fast Track Court at Magisterial Level – No.IV,
George Town, Chennai-1.

Annexure

Complainant side witness

PW-1 : Mr.A.Prakash (Complainant)

PW-2 : Mr.Hariramakrishnaprasath (Bank Manager)

Complainant side Documents

Exhibits		
Ex.P1	01.08.2022	Cheque
Ex.P2	04.08.2022	Return Memo
Ex.P3	10.08.2022	Legal Notice
Ex.P4	16.08.2022	Acknowledgment Card
Ex.P5	06.09.2022	Reply Notice
Ex.P6	01.07.2022 to 31.08.2022	Bank Statement of accused

Defence Side Witnesses: **Nil**

Defence Side Documents: **Nil**

//Sd//A.K.N.Chandra Praba.,
Metropolitan Magistrate,
Fast Track Court at Magisterial, Level – No.IV,
George Town, Chennai-1.