

KABI410050882019



**IN THE COURT OF PRL.CIVIL JUDGE & J.M.F.C.,
AT HOSAPETE**

Present : SRI KISHAN B MADALAGI
B.Com., LLB.,
Prl. Civil Judge & J.M.F.C.,
Hosapete.

C.C. No.2607/2019

Dated this the 05th day of July 2023

Complainant : S.Gur Sharan Singh son of Late S.Har Charn Singh Juneja, 44 years, business and transporter R/o Juneja house, Opposite Kamala Apartment, Neharu colony, Hosapete, Ballari district.

(By Sri S.R.S., Advocate)

V/S

Accused : D.Venkatesh, father name not known, 45 years, Civil contractor R/o D.No.131, Panduranga Gudi, Ananthashayana Gudi, Hosapete, Ballari district.

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

ORDERS ON APPLICATIONS U/sec.190 & 216 OF Cr.P.C.

The counsel for the accused has filed application U/sec.190 of Cr.P.C., to take cognizance against Mr.Sachin R.Waghmare, Manager, Indian Bank, and to array him as additional accused to this proceedings.

2. On the ground that, proposed accused has committed an offence U/sec.119, 120, 166, 167, 175, 176, 179, 217, 218, R/w 34 of IPC and negligence as provisioned U/sec.77 of NI Act. Further that complainant has approached Mr.Sachin R.Waghmare, who was Manager of Indian Bank, Near Busstand branch, Hosapete on 12.10.2018 at 11.am., for for encashment of cheque marked as Ex.P.1 in this case, which was alleged to be issued by accused. The said Manager has informed the complainant that there was no balance in the account of accused as on 12.10.2018. Then complainant has insisted the Bank Manager to issue memo regarding no funds in the account of accused. The Manager has illegally refused to issue dishonor memo, but instead the Bank personnels have called the accused to Bank and had a secrete meeting with accused. Then accused along with one Basavaraj in

connivance with Branch Manager Mr. Sachin R.Waghmare, Asst. Branch Manager Miss. Seema and Probationary Officer Mr.Harsha have threatened the complainant that they will lodge false case U/sec.332 and 352 of IPC and to surrender the cheque with ulterior motive. Further accused has also called one Mr. Honnurswamy of Kariganur, who has threatened the complainant with dire consequences and made him not to proceed with the matter. Further this complainant has approached jurisdiction police and S.P., Ballari, but they have not extended their help. After intervention of complainant counsel, Manager has only issued statement of accused account at 1.37 p.m., on 12.10.2018, which shows there is no balance in the account of accused. Then he requested the Manager to issue endorsement of dishonor of cheque on 12.10.2018 at 4.44 p.m. Then complainant has filed complaint U/sec.138 of NI Act against the accused. Then this complainant has filed application U/sec.91 of Cr.P.C., on 10.12.2018, calling upon to issue dishonor of memo to said Bank. Application filed by the complainant was came to be allowed and intimation was

issued to Manager of Indian Bank on 18.12.2018 with direction to furnish dishonor memo on or before 02.01.2019. The Manager has willfully disobeyed the direction of Court and instead of he gave evasive answer stating that as per Banking norms, dishonor memo cannot be issued, in turn this Court pleased to call for the alleged banking norms, which is stated by the Manager and precluded by Manager from furnish. Thereafter, complainant has approached Banking Ombudsman with above issue to RBI on 19.9.2019 and then Manager has furnished dishonor memo to the Court by giving false reason to RBI. Further complainant came in the afternoon for dishonor memo and he did not have address of the complainant, he could not give same to complainant. Thereby, Manager being public servant has illegally omitted to perform his duty by colluding with accused. Thereby, accused has committed the aforesaid offences.

3. Further complainant has filed another application U/sec.216 of Cr.P.C., to add charge against proposed accused on the same grounds.

4. On the other side, counsel for the accused has filed objection to the application, denying all the allegations made by the complainant and, prays to dismiss the applications.

5. Heard the both sides.

6. On basis of the above mentioned averments the following points arise for my consideration:

1. Whether complainant has made out grounds to take cognizance U/sec.190 of Cr.P.C., for the above alleged offences against proposed accused one Mr.Sachin R.Waghmare?
2. Whether complainant has made out grounds to add charge for the above alleged offences against proposed accused one Mr.Sachin R.Waghmare?
3. What order?

7. My answer to the above points are as follows:

- POINT NO.1** : In the Negative.
POINT NO.2 : In the Negative.
POINT NO.3 : As per final orders for the Following;

REASONS

8. POINT NO.1 :- On going through materials on record, complainant has filed complaint U/sec.200 of Cr.P.C., for the

offence punishable U/sec. 138 of NI Act. On the ground that, accused has approached complainant for financial assistance of Rs.25,000/- on 08.04.2018 and complainant has lend Rs.25,000/- to accused and accused has agreed to repay the same with interest at the rate of 2% per month. Then on 15.07.2018, accused has issued cheque for Rs.26,600/- under cheque No.863002 to discharge his liability. Then on 12.10.2018, complainant has presented the cheque for encashment, but Bank Manager by name Mr.Sachin R.Waghmare, has declined to issue dishonor of memo and called the accused and have secrete meeting with him. When complainant has insisted to issued dishonor memo, Manager Mr.Sachin R.Waghmare along with one Seema and one Mr.Harsha have threatened the complainant that they will file case against complainant U/sec. 332 and 352 of IPC. Thereby complainant contended that for above said facts that Mr. Sachin R. Waghmare has committed the aforesaid offences and to array him as accused in this case.

9. The Counsel for the complainant in support of his argument he has relied on the decision of **Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad in Crl.Petition No.101614/2017, between Gurupadappa Ravana Siddappa Shindur vs State of Karnataka. Another decision reported in Asif Ahmad Siddiqui Vs State of UP., in Application U/sec.482 No.5500 of 2023 order dated 26.4.2023.**

10. By relying the decision of Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad, learned counsel for the complainant has argued that when this Court took cognizance U/sec.138 of NI Act, for dishonor of cheque, the Court can take cognizance against the proposed accused and Court array any accused in proceedings U/sec.138 of NI Act. Further on going through Section 190 of Cr.P.C., Court can take cognizance against a person upon police report, complainant and upon information received from any persons, other than police officer. On going through decision relied by complainant in Crl.Petition No.101614/2017, he has

argued that proposed accused has committed above alleged offence and he has not issued dishonor memo, which is mandatory provision since he is public servant. Further he has argued that since Manager has not issued dishonor memo and after intervention of his counsel, Manager has issued statement of accused. On the basis of document, complainant has filed complaint U/sec.200 of Cr.P.C., for the offence punishable U/sec.138 NI Act. Then this Court has taken cognizance for the offence punishable U/sec.138 of NI Act against accused. Further complainant has moved an application U/sec.91 of Cr.P.C., summoning to produce dishonor of memo to the Bank Manager. Further complainant has argued that even though he has requested the Bank Manager, but the Bank Manager has given evasive answer and declined from issuing dishonor of memo by stating that there is no provision under banking norms. Hence, learned counsel for the complainant has argued that when cheque is presented for encashment, when it has dishonored, Manager has to issue dishonor memo. But in this case Mr.Sachin R.Waghmare, who was Manager of Bank

has not issued dishonor of memo. Further complainant has argued that when this Court has given direction to Manager, he has not complied the direction of this Court. Thereby complainant has sought this Court to take cognizance for the above alleged offence and arrayed him as accused.

11. On going through decisions relied by the complainant in supra of Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad, wherein that case wife has issued cheque of her husband with intention to cheat the complainant. After dishonor of cheque, complainant has filed complaint U/sec.138 of NI Act against wife. Further complainant has filed application U/sec.190 of Cr.P.C., and U/sec.216 of Cr.P.C., to take cognizance against the husband and to add charges for the offence punishable U/sec.420 of IPC. Wherein in that case, wife has issued cheque of her husband. Hence, there is chance of cheating the complainant in that case. Further above decision relied by the complainant was case rising from the dishonor of cheque given by wife. Hence, her husband was made accused in that case. But in

this case, cheque was issued by accused. After dishonor complainant has filed complaint against the accused. Further issuance of cheque and dishonor of cheque are same transaction, but denial of issuing of dishonor of memo by the Bank Manager and after issuance of direction from this Court to produce dishonor of memo and Bank Manager has not produced the same before the Court is separate transaction. Because, present complainant was filed U/sec.138 of NI Act. Hence, omission in issuing dishonor of memo by the proposed accused is not same transaction. Hence, decision relied by the applicant/ complainant, facts and circumstances are different. Hence, decision relied by the complainant is not applicable to the present case. Hence there should be same transaction for the issuance of cheque by the accused which has given cause of action to file complaint. But non-issuance of dishonor of memo by proposed accused is not same transaction for the dishonor of cheque issued by the accused. Hence, complainant has not made out grounds to array the proposed accused as accused and to add charge for the above alleged offences. Hence, for the above reasons, complainant

has not made out grounds. **Hence, from above discussion, I answered this point No.1 and 2 in the Negative.**

12. POINT NO.3 : In view of the findings on the above points, the following order is passed :-

ORDER

Application filed by complainant
U/sec.190 and 216 of Cr.P.C., are
hereby rejected with cost of Rs.1,000/-
each.

(Dictated to the stenographer, transcribed and typed by
her, corrected and then pronounced by me in the open court
on this the 05th day of July 2023).

(SRI. KISHAN B MADALAGI)
Pr. Civil Judge & J.M.F.C.,
Hosapete.