IN THE COURT OF LVII ADDL.CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU (CCH-58)

Present:
Smt. K.G.Shanthi, *B.Com, LL.M.,*
LVII Addl.City Civil & Sessions Judge
Mayohall Unit, Bengaluru.

Dated this the 29th day of December, 2021.

Criminal Appeal No.25016/2021

Appellant/ Accused:	***Smt.Navya Nateshan,*** D/o. Mr.Nateshan, Aged about 23 years, R/at No.1266, Parvathi Nilayam, Vijinapura, Near Union Bank, ATM Doorvaninagar post, Bangalore-560 016. (By Sri.*Mohammed Wazeer,* Adv.)

-Vs-

Respondent/ Complainant:	***Smt.S.Tulasi Bai,*** Aged about 47 years, R/at 2nd Cross, Bazaar Street, Behind TIN Factory, Udaynagar, Bangalore-560 016. (By Sri.*Rajesh Rao. K.,* Adv.)

JUDGMENT

Aggrieved by the judgment passed by XXXIV ACMM, Mayohall Unit, Bengaluru in C.C No. 50077/2017 on 07.01.2021, the accused being an appellant preferred this appeal.

2. The brief facts of the case is that the complainant in order to meet her financial need borrowed a sum of Rs.13,50,000/- from the complainant and in discharge of the said loan she had issued a cheque bearing No.649814, dtd.21.06.2016 for a sum of Rs.13,50,000/- drawn on ING Vysya Bank Limited, Banashankari branch, Bangalore. When the cheque has been presented for encashment by the complainant through her Banker, which has been dishonoured for the reason funds insufficient. Accordingly, endorsement issued on 23.06.2016. The complainant issued a legal notice to the accused on 04.07.2016 calling upon the complainant to pay

the cheque amount. The said notice served on the accused on 08.07.2016, but the accused failed to pay the cheque amount.

3. After taking cognizance, summons has been issued to the accused. Accused appeared through her advocate and got released on bail. Substance of accusation read over to the accused and accused pleaded not guilty.

4. The complainant in order to establish her case, examined as PW1 and got marked Ex.P.1 to Ex.P.5 to prove her case. Incriminating evidence read over to the accused and Statement U/Sec.313 Cr.P.C is recorded.

5. On hearing the arguments, the trial court convicted the accused for the offence punishable U/s 138 of NI Act., and sentenced the accused to pay fine of Rs. 16,50,000/-, out of which Rs.16,45,000/- shall be paid as compensation to the complainant and Rs.5,000/- shall be paid to the state

exchequer as fine and in default of payment of fine the accused shall undergo simple imprisonment for 3 months.

6. Aggrieved by the impugned judgment the appellant being an accused preferred this appeal on following grounds:-

She has contended that the allegation not proved by documentary evidence and also the complaint itself is not in conformity with the provision of law contemplate U/Sec.138 of N.I. Act.

7. The Trial Court ignored the admission given by the complainant that she has no knowledge about the property purchased by the accused for which purpose she has availed a loan from the complainant. She also contended that the complainant not disclosed her source of income and she is running saree selling business and also doing tailoring business and her annual turn over was Rs.2.50 Lakhs to Rs.3.00 Lakhs. Further the complainant do not know where exactly accused

working and she has not produced any documents to show that she was having cash in her house to pay the same to this accused. She do not know what was the income of the accused and place she was working. She has not disclosed her income by filing returns. Further there is no written agreement or promissory note was executed at the time of availing loan. Further PW1 admitted that on demand promissory note was executed with respect to silk saree and she do not know the date, place where the saree purchased and the said promissory note executed for a sum of Rs.40,000/-.

8. Further in the alleged cheque the pen used to write the name, date and amount is different and the pen used for the signature is different and she had given answer that the ink in the pen might not have over.

9. It also contended by the appellant that there was evidence for passing of consideration for the execution of the cheque, so mere admission of signature on the cheque does not

prove a legally enforceable debt, so the complainant failed to prove her case. Hence, accused is liable for acquittal. Accordingly, the appellant pray for call for the records and set-aside the impugned Judgment passed by XXXIV ACMM Court, Bangalore.

10. On filing of the appeal summons has been issued to the respondent and LCR called.

11. The respondent appeared through her advocate.

12. LCR received.

13. Arguments taken as heard.

14. The points arose for my consideration are:-

1. Whether the appellant proves that the impugned judgment passed by XXXIV ACMM, Mayohall Unit, Bengaluru on 07.01.2021 in C.C No. 50077/2017, is illegal and contrary to the law?

2. Whether the appellant proves that the interference of this court is required?

3. What order?

15. My findings on the above points are as under:

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : As per the final order for the following:

R E A S O N S

16. **Point No.1 and 2**:- According to the complainant in order to meet the financial need accused borrowed a sum of Rs.13,50,000/- from the complainant and in discharge of the said loan she had issued a cheque bearing No.649814, dtd.21.06.2016 for a sum of Rs.13,50,000/- drawn on ING Vysya Bank Limited, Banashankari branch, Bangalore. When the cheque has been presented for encashment by the complainant through her Banker, which has been dishonoured for the reason 'funds insufficient'. Accordingly, Bank issued an endorsement issued on 23.06.2016. The complainant issued a legal notice to the accused on 04.07.2016 calling upon the accused to pay the cheque amount. The said notice served on

the accused on 08.07.2016, but the accused failed to pay the cheque amount.

17. The complainant produced the cheque and got it marked as Ex.P.1. The signature of accused marked as Ex.P.1(a). Endorsement issued by the Bank is marked as Ex.P.2. According to the complainant she had issued a legal notice the accused calling upon him to pay the cheque amount. The legal notice dtd.04.07.2016 marked as Ex.P.3. The said notice served on the accused. In this regard, complainant produced the postal Acknowledgment card and marked as Ex.P.4.

18. The accused denied that she had issued a cheque as per Ex.P.1 in discharge of debt. The accused admitted her signature found on Ex.P.1, which marked as Ex.P.1(a).

19. According to the accused, the complainant not produced any material document to prove her income and she

has not shown the same in her annual returns. The complainant stated that she is doing tailoring business and her annual turn over was Rs.2,50,000/- to Rs.3,00,000/-. According to the accused, PW1 do not know where accused is working and what was her salary. But PW1 deposed that accused used to visit her house to purchase the saree and also deposed she is having monthly salary of Rs.20,000/-. Merely because she do not know the personal back ground of the accused, it does not mean that she do not know the accused and in my opinion detail back ground of customer will not come in the way of business.

20. Further she deposed that at the time of saree business she came in contact with the accused, then they become friends. In the cross-examination PW1 admitted that she know the mother of the accused and she is having business with her mother, who purchasing the saree from the complainant. But she denied that when the mother of the

accused used to purchase saree from complainant, she used to take the blank cheques from the accused and also from her sister. If it is so there is no impediment either to the accused or to the sister of the accused to ask the complainant to return the cheque. In this case, no material produced by the accused to show that she and her sister issued a blank cheque to the complainant when their mother purchased silk saree from the complainant.

21. The accused taken up a contention that hand writing found on the cheque is in different ink and the date is in different ink. But she admits her signature on the cheque. The circumstances made into issue a cheque is not properly explained by the accused.

22. Section **138 of N.I. Act** reads as under:-

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to*

another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course

of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

*Section **139 of N.I. Act** reads as under:-*

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a 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.

*Section **118 of N.I. Act** reads as under:-*

118. Presumptions as to negotiable instruments. — Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps — that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

23. The accused contended that she had issued a cheque to the complainant at the time of purchasing the saree by her

mother and not in discharge of debt or liability is not sufficiently proved by the accused with cogent material evidence. The presumption is in favour of the complainant and it is a rebuttable presumption. But the accused failed to rebut the presumption with credible evidence and even she also not examined her sister in support of her contention.

24. The complainant presented the cheque within period of three months from its date and within 15 days from the date of dishonour she had issued a Notice calling upon the accused to pay the cheque amount. The said Notice served on the accused, but she has not given any reply. If really the cheque is misused by the complainant she could have raised the issue by giving reply to the Notice and she could have ask the complainant to return the cheque.

25. In this case the court considered all the aspects. I did not find any illegality in the impugned Judgment, so does

not called for interference from the hands of this court. Hence, Point No.1 and 2 answered in ***Negative.***

26. **Point No.3:** in view of the finding on point No.1 and 2, I proceed to pass the following :-

ORDER

The Criminal Appeal filed by the Appellant u/S. 374(3) Cr.P.C. is dismissed.

The Judgment passed by the XXXIV ACMM, Mayo Hall unit, Bengaluru, in C.C.No. 50077/2017 dated. 07.01.2021 is confirmed.

Send back the records to the Trial Court along with the copy of the Judgment.

(Dictated to the Judgment Writer, online through Computer, corrected and then pronounced by me in the open court on this the 29th day of December, 2021.)

(Smt.K.G. Shanthi)
LVII Addl.City Civil & Sessions Judge,
Mayo Hall Unit, Bengaluru.

Judgment pronounced in open court
(vide separate Judgment)

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(Smt.K.G. Shanthi)
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