KABC030302232023

Presented on : 12-07-2023

Registered on : 12-07-2023

Decided on : 30-01-2025

Duration : 1 years, 6 months, 18 days

IN THE COURT OF XXXVI ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU CITY

Dated this 30th day of January 2025

Present: SRI. NITIN YESHWANTH RAO
B.Com. L.L.B(Spl.),
XXXVI Addl. Chief Judicial Magistrate,
Bengaluru.

C.C.No.17163/2023

Complainant : M/s. Muthoot Pappachan
Chits (I) Pvt. Ltd.,
Branch Office No.39,
FFK Towers, I Floor,
30th Cross,

Tilaknagar Main Road,
Jayanagar 4th Block,
Bengaluru.
Rep. by its Authorised
Manager/Foreman:
Sri.Manjunath N.

(By Sri.PPJ Adv.,)

V/S

Accused : : Sri.Srinatha K.
S/o Krishnappa,
Ward No.3,
Vapasandra Sam Building,
Chikkaballapur,

(By Sri.MH Adv.,)

Date of Institution of case	2023
Nature of case	Private complaint
Date of recording of evidence	19/6/2023
Date of Judgment	30/1/2025
Offences complained of	U/Sec.138 of Negotiable Instrument Act.

J U D G M E N T

This is a case arising out of the private complaint filed by the Complainant Chit Company represented by its Authorised Manager/Foreman U/Sec.200 Cr.P.C. against the accused alleging the offence punishable U/Sec.138 of Negotiable Instruments Act.

2. It is the case of the Complainant that the Complainant Company is a reputed Chit Company registered under the Company's Act 1956, having registered office at Jayanagar IV Block, Bengaluru and branch office at: Tilak Nagar, Bengaluru. The Complainant Company is in the business of promoting and conducting Chits as per the provisions of Chit Funds Act 1982.

The accused had subscribed to a chit bearing No.A2/113/2020/13, for chit value of Rs.10,00,000/- payable at the rate of Rs.25,000/- pm. for a total period of 40 months. The accused participated in the Chit Auction and was declared prize bidder and he also received prize money of Rs.7,00,000/-. The accused along with other guarantors executed and On Demand Promissory Note, Surety Form, Guarantee Bond and other relevant documents in favour of the Complainant Company for the amount received by him.

The accused was not regular in payment of the chit installments. He paid only 14 installments and thereafter he became a defaulter. Therefore, Complainant Company was forced to issue letters/legal notice to the accused and the other guarantors. At that point of time, the accused came forward and issued a cheque bearing No.837217 dated: 13/2/2023 for a sum of Rs.6,51,022/- drawn on SBI Bank, Doddajala Branch, Bengaluru with respect to payment of installments No.15 to 26 and requested the complainant not to proceed with the legal notice.

The Complainant Company presented the cheque for collection through its banker, i.e. AXIS Bank, Jayanagar Branch, Bengaluru on 14/2/2023. However, the said cheque was dishonoured and returned with an endorsement 'Exceeds arrangements'. Therefore, the complainant issued Legal Notice to the accused on 13/3/2023 and called upon the accused to pay the cheque amount within 15 days from the date of the receipt of the notice. Though the legal notice was duly served on the accused, he neither came forward to pay the cheque amount nor did he issue any reply. Constrained by the same, complainant came up with this complaint against the accused.

3. After recording the sworn statement of the Complainant Company's Authorised Manager and on perusal of the documents produced by him, the presence of the accused was secured. Plea was recorded. As the accused pleaded not guilty and claimed to be tried, the case was posted for cross examination of PW1.

4. Sworn statement of the Complainant Company's Authorised Manager is treated as his examination in chief. In order to prove its case, complainant company examined it's Authorised Manager as PW1 and got marked 13

documents as Ex.P1 to 13. The accused on the other hand neither cross examined PW1 nor did he adduce any evidence on his behalf.

5. On completion of complainant evidence, when the case was posted for recording the statement of accused U/Sec.313 Cr.P.C, the accused remained absent and despite sufficient opportunity did not appear before the Court. Though this Court accorded fullest opportunity to the accused to participate in the trial, he with the intention of protracting the proceedings remained absent. The counsel appearing for the accused also did not appear before the Court and the presence of the accused could not be secured despite repeated issuance of warrants. Hence, 313 statement of the accused was dispensed with and the case was posted for arguments.

6. Heard the arguments of learned Counsel for the complainant. As the accused and his counsel did not appear to submit their arguments, defence argument was taken as

heard. Meticulously perused the materials available on record.

7. The following points arise for my consideration:

POINTS

1) Whether the complainant proves that the accused committed an offence punishable U/Sec.138 of N.I. Act?

2) What order ?

8. My findings on the above points are as following:

Point No.1:- **In the AFFIRMATIVE**

Point No.2:- **As per final order for the following:**

REASONS

9. **Point No.1:-** In support of it's case, the Complainant Company got it's authorised Manager examined as PW1 and got marked 13 documents as Ex.P1 to P13. Sri.N.Manjunath who is examined as PW1 reiterated the complaint averments in his affidavit filed in lieu of chief-examination. The Authorisation letter is marked as Ex.P1. The SBI

Bank cheque bearing No.837217 dated: 13/2/2023 for Rs.6,51,022/- is marked as Ex.P2. The Bank memo is marked at Ex.P3. The office copy of the Legal Notice dated:13/3/2023, postal receipt and acknowledgement card are marked as Ex.P4 to 6 respectively. Receipt, Demand Promissory Note, Guarantee Bond and surety form executed in favour of the Complainant Company are marked as Ex.P7 to 10 respectively. The Account Statement, Chit Agreement and the Certificate U/s.65(B) of Indian Evidence Act are marked as Ex.P11 to 13respectively.

10. On careful perusal of the aforementioned Ex.P1 to 13 documents, it is revealed that the complainant company has complied with all the essentials enshrined in sec.138 of NI Act. It presented the cheque within time for collection and after it's dishonor, it issued legal notice to the accused which was duly served on him. Despite the same, when the accused failed to repay the amount,

it filed this complaint. As the records reveal, complainant is entitled to the presumption available under sec.118(a) and 139 of the NI Act.

11. In **Rangappa Vs. Mohan** reported in **2010 (1) DCR 706 the Hon'ble Apex court has** that ;

> *"The Statutory presumption mandated by sec.139 of the Act, does indeed include the existence of a legally enforceable debt or liability. However, the presumption U/S 139 of the Act is in the nature of a rebuttable presumption and it is open for the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".*

12. Therefore, in view of the above decision, once the cheque is admitted, the statutory presumption would automatically fall in favour of the complainant that, the alleged cheque was issued for discharge of an existing legally enforceable debt or liability against the accused and the burden will shift on to the accused to rebut the same.

13.The learned counsel for the Complainant submitted that as the accused admitted the cheque and his signature thereon and as he neither replied to the notice nor adduced any probable defense evidence, so as to rebut the presumption, he is to be convicted.

14. Let me now consider whether accused has rebutted the presumption available in favour of the complainant with probable and convincing evidence. It is well settled principle of law that, once the cheque is admitted there will be a statutory presumption in favour of the holder or holder in due course U/Ss 118 and 139 of the Act as observed supra. However, as held by our Hon'ble Apex Court and the High Court in a catena of decisions, the presumptions under the said sections are in the nature of rebuttable presumptions and hence, the accused can very well rebut the said presumptions by leading reasonable and probable defense. Let us examine the same on the basis of the materials available on record. The accused has not disputed the issuance of the cheque in question and his signature on the

same. Further Ex.P2 is the Bank memo. Sec.146 of the NI Act provides that bank documents are prima facie evidence in respect of the transaction. The complainant has issued legal notice to the accused as per Ex.P3, which was duly served on him. As such, the accused was having knowledge of the dishonor of the cheque. In spite of the same, he kept mum and did not issue any reply to the legal notice. The order sheet reveals that the accused though appeared before the Court, he could not rebut the presumption available in favor of the complainant. He has not disputed the availing of loan. Also, nothing contrary was elicited from the complainant.

15. Towards rebuttal of the presumption available to the complainant U/Sec.139 of the Act, the accused neither came forward to cross examine PW1 nor did he adduce any defence evidence despite sufficient opportunities.

16. On meticulous perusal of the oral and documentary evidence placed on record, it is noticed that the accused

utterly failed to rebut the presumption available in favor of the complainant.

17. Thus by looking into the totality of the evidence and the materials available on record, it is clearly revealed that the accused issued the cheque in question towards part payment of installment No.15 to 25 payable by him. However, the said cheque came to be dishonoured. Therefore, complainant has specifically and categorically proved its case regarding the existence of the debt and issuance of the cheque for the discharge of the said debt by the accused. Therefore, this Court has come to the conclusion that the accused committed the offence punishable U/s.138 of NI Act. Accordingly Point No.1 is answered in the AFFIRMATIVE.

18. **Point No.2:-** In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

Accused is found guilty of the offence punishable U/Sec.138 of Negotiable Instruments Act 1881.

Acting U/sec.255(2) of Cr.P.C accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instruments Act 1881 and he is sentenced to pay fine of Rs.7,50,000/-. In default, accused shall undergo simple imprisonment for a period of six months.

Out of the total fine amount, a sum of Rs.7,40,000/- shall be paid to the complainant as compensation under section 357 of Cr.P.C. and Rs.10,000/- shall be remitted to the State exchequer.

Further, it is also made clear that in view of proviso to Sec.421(1), the accused persons shall not be absolved of their liability to pay compensation amount of Rs.7,40,000/- awarded U/Sec.357 of Cr.P.C., even if he undergoes the default sentence.

The bail bond of the accused stands cancelled.

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

(Dictated to the Stenographer directly on computer, transcribed and typed by her, then corrected and pronounced by me in the open Court on this the 30th day of January 2025).

(Nitin Yeshwanth Rao),
XXXVI ACJM.,
Bengaluru.

:: ANNEXURE ::

1. List of Witnesses examined on behalf of the prosecution :

P.W1 : Sri.N.Manjunath

2. List of exhibited documents for complainant :

Ex.P1	The Authorisation letter
Ex.P2	The SBI Bank cheque bearing No.837217 dated: 13/2/2023 for Rs.6,51,022/-
Ex.P3	The Bank memo

Ex.P4to 6	The office copy of the Legal Notice dated:13/3/2023, postal receipt and acknowledgement card
Ex.P7 to 10	Receipt, Demand Promissory Note, Guarantee Bond and surety form executed in favour of the Complainant Company
Ex.P11 to 13	The Account Statement, Chit Agreement and the Certificate U/s.65(B) of Indian Evidence Act

3. List of defence Witnesses :

-NIL-

4. List of documents exhibited for defence :

-NIL-

XXXVI ACJM.,
Bengaluru.