

**IN THE COURT OF THE II ADDL. JUNIOR CIVIL JUDGE-CUM-II
ADDL. METROPOLITAN MAGISTRATE, AT KUSHAIGUDA.**

PRESENT: **SMT. P. DEVI MANASA,**
II Addl. Junior Civil Judge-cum-
II Addl. Metropolitan Magistrate,
At Kushaiguda.

Thursday, this the 28th day of December, 2023.

CALENDER CASE NO.2014 of 2020

Between:

Smt. P. Venkata Lakshmi, W/o. P. Sitaram Reddy,
Aged about 59 years, Occ: Business,
represented by her Husband/General Power of Attorney
Holder Mr. P. Sitaram Reddy, S/o. Laxmi Reddy,
aged: 70 years, R/o. H.No.19-70/4/1,
Brudavan Colony, Opp: Dr.A.S.Rao Nagar, Hyderabad.

.....Complainant.

A N D

M/s. Chefs Miracles, Rep by proprietor
Mr. Kuthadi Shravan Kumar, S/o. K. Sham Kumar,
aged about 30 years, Occ: Business,
O/o, Fourth Floor, above PSR Laxmi heights,
Pai Electronics, Plot No.29, Rukmini Puri Colony,
Dr. A.S.Rao Nagar, Hyderabad – 500 062, and
R/o. 12-13/1, Annapurna Nagar Colony,
Near Mande Market, Uppal, Medchal-Malkajgiri District.

.....Accused.

*This case came before me on **19-12-2023** for final hearing in the presence of the **Kota Ramchandra Reddy, Counsel for Complainant** and **M/s. B. Rathnakar Rao, Counsel for Accused**, upon hearing the arguments of both sides and having stood over for consideration till this day, this Court delivered the following:*

J U D G M E N T

1. The Complainant filed complaint U/s.190 & 200 of Cr.P.C. for the offence punishable U/s.138 of Negotiable Instruments Act.

2. The case of the complainant in brief as follows:-

The complainant is represented by her husband/General power of attorney holder who has personal knowledge of the transaction between the complainant and accused. He submitted that complainant is absolute owner of PSR Lakshmi heights, Commercial

complex in Sy.No.500, situated at Rukminipuri Housing colony, Kapra Mandal, Medchal-Malkajgiri District and the complainant has given the premises for rent to M/s. Chefs Miracles represented by Accused to run restaurant with terms and conditions. The accused have agreed for the same executed a registered lease deed. Subsequently, the accused have paid monthly rent from January 2016 to December 2016. Later on he was defaulted and irregular in paying rental amounts. The complainant has demanded to pay the rental due as such the accused have issued a cheque bearing No.000123 for Rs.12,05,370/- drawn on HDFC Bank, Sainikpuri Branch and requested to present the cheque after 20 years. On 11-07-2019 the complainant demanded the accused to pay a monthly arrear amounts of Rs.25,65,850/- wherein the accused HR Manager M. Srinivas have executed a undertaking bond to clear the rents and agreed if he failed to pay the arrears he shall vacate the premises by 01-09-2018. Thereafter as the accused failed to pay the rental arrears the complainant demanded to vacate the premises. Wherein the accused had paid Rs.5,00,000/- and assured to clear the remaining dues within 15 days. Subsequently, the accused have issued two cheques bearing No.000533 and 000534 for Rs.5,00,000/- each drawn on ICICI Bank, Kapra Branch and requested to present on 28-09-2018. As the accused failed to clear the dues the complainant had issued a eviction notice, subsequently on 13-09-2020 the accused have issued two cheques bearing No.000535, 000536 for Rs.5,00,000/- and Rs.6,00,000/- dt: 14-09-2020 drawn on ICICI Bank, Kapra Branch. The complainant has presented the cheques with his bank and same were dishonored for “**Funds Insufficient**” vide cheque return dt:17-09-2020. The complainant issued a legal notice on 03-10-2020 and same

was returned as unclaimed. Left with no other option Hence this complaint is filed.

3. This court issued summons to the accused after taking cognizance of the offence under Section 138 of N.I. Act based on the complaint and sworn statement of the complainant. On appearance of accused, she was furnished with copies of case records in compliance to Section 204 Cr.P.C. The accused was examined under Section 251 Cr.P.C. explaining the allegations leveled against the accused in the complaint. Accused denied the prosecution allegation and claimed to be tried.

4. The complainant examined himself as PW.1 got marked Ex.P.1 to P.10 documents. After complainant reported his evidence as closed, accused was examined under Section 313 Cr.P.C. explaining the incriminating evidence that appeared against him in the prosecution evidence. Accused denied prosecution evidence as being false and reported no defence evidence.

5. Matter is treated as heard on behalf of the complainant, heard the learned counsel for accused. Perused the written arguments.

6. Now the points arise for determination in this case are:

1) Whether complainant is able to bring home the guilt of accused for offence under Section 138 of NI Act ?

2) To what findings?

Point No.1:

7. Initially burden lies on the complainant to establish the existence of legally enforceable debt of Rs 11,00,000/- and issuance of Ex.P1 & Ex.P3 cheques in discharge of said debt.

8. The complainant himself got examined as PW.1 and he reiterated the contents of complaint in his chief examination affidavit. Whereas the defence of the accused is that the cheques Ex.P1 & Ex.P3 does not belong to the accused as such there is no legally enforceable debt between PW1 and accused.

9. **Admitted Facts:**

The complainant is the owner and accused is the tenant, Accused has obtained the premises to run the restaurant under name and style as Chefs Miracles under Ex.P9.

10. **Disputed Facts:**

Accused never issued Cheques to the complainant and never executed Ex.P8.

11. Now coming to appreciation of evidence:

In the cross-examination of PW-1 he admitted that there is no signature of accused on Ex.P8 i.e., undertaking letter and it belongs to one Srinivas. Further the PW-1 admitted that under Ex.P8 there is no reference that accused agreed to clear the dues in installments.

12. The learned counsel for complainant submitted that Srinivas is looking after the business affairs of the accused, whereas the learned counsel for accused submitted that as per Ex.P9 the accused is running proprietorship business and not partnership business as such the question of partnership does not arise. Adding to it the complainant has admitted that signatures on Ex.P1 and Ex.P3 does not belong to accused and accused never issued any cheques to the complainant. Further PW-1 admitted that legal notice was not sent to the residential address as mentioned in Ex.P9.

13. The complainant primarily failed to establish the ingredients U/sec.138 Negotiable Instruments Act i.e., Ex.P1 and Ex.P3 belongs to the accused. Prima-facie the cheques and signature on it issue belongs to third person and same is admitted by the complainant. In the cross-examination of PW1 it clearly establishes that the cheques and signatures pertains to third persons. Further no material is brought on the record to show that said M. Srinivas is concerned with business affairs of the accused in such course the M. Srinivas has issued cheques at the instance of the accused. There is no evidence brought on the record to show that the M. Srinivas and accused are running partnership business. Hence the complainant primarily failed to establish the ingredients U/sec.138 of Negotiable Instruments Act. Accordingly point is answered against the complainant.

Point No.2:

14. In the result, accused is found not guilty for the offence under section 138 of Negotiable Instruments Act, and accordingly he is acquitted under Section 255 (1) Cr.P.C., accordingly complaint is dismissed.

*(Typed to dictation, after corrections pronounced in the open Court, on this the **28th** day of **December, 2023.**)*

II Addl. Junior Civil Judge-cum
II Addl. Metropolitan Magistrate
At Kushaiguda.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

PROSECUTION:

PW-1 : P. Sitaram Reddy

DEFENCE:

-Nil-

EXHIBITS MARKED FORPROSECUTION:

- Ex.P1 : is Original Dishonored cheque bearing No.000535 for Rs.5,00,000/- dt: 14.09.2020, both are drawn on ICICI Bank, Kapra Branch.
- Ex.P2 : is Original Cheque returned Memo dt: 17.09.2020.
- Ex.P3 : is Original dishonored cheque bearing No.000536 for Rs.6,00,000/- dt: 14.09.2020, both are drawn on ICICI Bank, Kapra Branch.
- Ex.P4 : is Original Cheque returned memos dt: 17.09.2020.
- Ex.P5 : is Office copy of the legal notice dt: 03.10.2020.
- Ex.P6 : is Original Postal receipt No.RN0170527581N, Dt: 03.10.2020.
- Ex.P7 : is Original Postal return cover dt: 13.10.2020.
- Ex.P8 : is CC of undertaking Letter dt: 11.07.2019.
- Ex.P9 : is CC of Registered Lease Deed vide Doct.No.168/2016 dt: 18.01.2016.
- Ex.P10 : is CC copy of GPA dt: 01.10.2020.

DEFENCE:

-Nil-

MATERIAL OBJECTS MARKED FORPROSECUTION:

-Nil-

DEFENCE:

-Nil-

II Addl. Junior Civil Judge-cum
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