IN THE COURT OF XVI ADDL.JUDGE-CUM-XX ADDL.CHIEF METROPOLITAN MAGISTRATE AT SECUNDERABAD.

THURSDAY, THE 12th DAY OF APRIL, 2018

Present : Sri P.V.S.Suryanarayana Murthy,
XV Addl.Judge-cum-XIX ACMM,
FAC XVI Addl.Judge-cum-XX ACMM,
Secunderabad

C.C.NO.219 OF 2016

BETWEEN:

The Axis Bank Ltd., having its office at 5-4-124, 3rd Floor, Modi Square, R.P.Road, Secunderabad represented by its authorised signatory Mohammed Yousufuddin S/o Mohammed A.U.Shareef, Age: 33 years, Occ: Manager Legal, Axis Bank Ltd., R/o. Hyderabad.

... Complainant

AND

Srinivas Uppu S/o Narasimha Murthy Uppu, Age: 47 years, Occ: Business, R/o P.No.200 & 201, Dhana Lakshmi Co.Op Housing Society, St.No.8, Mahindra Hills, Secunderabad also at C/o.Amsri Builder's, 9-1-164, 5th Floor, Amsri Plaza, S.D.Road, Secunderabad.

... Accused

This C.C has been coming for final disposal before me on 10.04.2018 in the presence of ***Sri M.Srinivas Reddy,*** Counsel for the complainant and ***Sri BDL.Nirmal Kumar***, Counsel for the accused and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

1. This is a private complaint filed by the complainant against the accused for the offence punishable U/s.138 of the Negotiable Instruments Act.

2. The brief averments of the complaint are as follows:-

The complainant bank is a Banking Company engaged in banking business governed by Regulation Act 1949 and the accused had availed a home loan facility from the complainant bank bearing loan A/c. No.245010600320528 for an amount of Rs.43,20,000/- repayable in 24 equated monthly installments. Towards partial discharge of the said liability the accused has issued cheque bearing No.510101 for an amount of Rs.20,00,000/- and the complainant has presented the cheque through its banker and the same was returned with an endorsement “Refer to Drawer”. Then the complainant issued a legal notice dated 02.07.2015 and the accused received the said notice, but neither paid the amount nor issued reply. Hence, this complaint.

3. This case was taken on file against the accused for the offence punishable U/s.138 of the Negotiable Instruments Act by the XI-Additional Chief Metropolitan Magistrate, Hyderabad. Later as per the orders of the Honourable Metropolitan Sessions Judge, Hyderabad this case is transferred to this Court and renumbered as C.C.No.219/2016.

4. After appearance of the accused copies of the documents furnished to him as contemplated U/s.207 Cr.P.C. Later he was examined U/sec.251 Cr.P.C. by explaining the substance of accusation for the offence U/s.138 of Negotiable Instrument Act, for which he pleaded not guilty and claimed to be tried.

5. During trial, the Branch Manager of the complainant was examined as PW1 and got marked Exs.P1 to P12.

6. After closure of the complainant's evidence, accused was examined U/s.313 Cr.P.C. by explaining the incriminating material found against him, for which he denied and stated that he has availed loan from UTI Bank in 2006 and at that time they have taken signed blank cheques. Subsequently, his counsel reported no defence evidence. Hence, defence evidence closed.

7. Heard the arguments.

The learned counsel for the complainant has submitted that the accused has obtained the loan from the complainant and also executed the loan agreement and subsequently committed default in payment of installments. According to him, the evidence of PW1 coupled with Exs.P1 to P12 proves the version of the complainant. According to him, the UTI Bank changed its name into Axis Bank and to show that he has submitted a letter. He prays to convict the accused.

(a) Per contra, the learned counsel for the accused has submitted that the present complaint filed by the complainant namely Axis Bank Ltd. and Ex.P2 cheque stands in the name of UTI Bank and hence the complaint is not maintainable on that ground. He has further submitted that the accused has issued the blank signed cheques at the time of obtaining loan and subsequently they got materially altered the cheque and filed the complaint and hence Ex.P2 cheque is materially altered. According to him as seen from Ex.P3 the cheque was returned as refer to drawer which is not come within the purview of Section 138 of Negotiable Instrument Act. He prays to acquit the accused.

8. Now the point for determination is that whether the complainant could bring home the guilt of the accused for the offence U/s.138 of Negotiable Instrument Act?

9. **POINT :-** The facts of the case are stated supra. To prove the offence U/s.138 of Negotiable Instrument Act, the following aspects are to be established:-

1. That there is existing legally enforceable debt as on the date of issuance of the disputed cheque.

2. That the cheque was presented in the bank within six months from the date of which it was drawn or within the period of its validity. As per Section 35(A) of Banking Regulation Act, 1949 the validity of cheque is reduced to three months from six months w.e.f. 01.04.2012.

3. Cheque was returned unpaid and the complainant herein gave notice in writing regarding the dishonour of cheque within 30 days from the date of receipt of the information by him.

4. That the accused failed to make payment within 15 days from the date of receipt of notice.

10. Before proceeding further it is beneficial to refer the provision of the Negotiable Instrument Act and Chapter 17 of Negotiable Instrument Act make a civil transaction to be an offence by fiction of law and that certain rebutable presumptions that shall be drawn. The object and intention of these penal provisions are to prevent issuance of cheques in a playful manner or with dishonest intention or that no mind to honour or without sufficient funds in the account maintained by the drawer. The initial presumption lays in favour of the complainant. The rebutable presumption U/s.139 is a devise to prevent undue delay in the course of litigation.

11. The version of the complainant is that the complainant bank is a Banking Company engaged in banking business and the accused had availed home loan of Rs.43,20,000/-, to be paid in 24 equated monthly installments. The further version of the complainant is that the accused has issued a cheque which was bounced. The defence of the accused is that the complainant bank obtained the signed cheques from the accused at the time of granting loan and the said cheque was materially altered and foisted the case.

12. To substantiate the case of the complainant the present bank manager of the complainant examined as PW1. PW1 reiterated the contents of the complaint in his chief examination. Ex.P1 is the copy of special power of attorney. Ex.P2 is the cheque bearing No.510101. No doubt as seen from Ex.P2 the payee name shown as UTI Bank Ltd Power Home. The payee name in Ex.P2 was not written and stamp is affixed.

13. The counsel for the complainant has submitted that the UTI Bank changed its name as Axis Bank and he has submitted a memo dated 30.10.2007 during reply arguments. As seen from the memo dated 30.10.2007 issued by Deputy General Manager reveals that UTI Bank Ltd. has changed its name as Axis Bank Ltd. Though the accused counsel has submitted that the cheque was issued to UTI Bank, it is not the case of the accused that UTI bank has not changed its name as Axis Bank. On the other hand it was suggested to PW1 that the complainant has obtained blank signed cheques at the time of loan. No suggestion given to PW1 that the complainant has no connection with the accused and the accused has borrowed the amount from UTI Bank and he has repaid the same to UTI Bank. Thus, the version of the complainant counsel that UTI Bank changed its name as Axis Bank is tenable. Thus, the UTI Bank Ltd., changed its name as Axis Bank.

14. It is not in dispute that the accused has availed the loan from the bank under the caption of Home Loan by executing the original of Ex.P9 agreement. The accused is not disputing regarding Ex.P9 agreement. On the other hand, during the 313 Cr.P.C. examination

accused has stated that he has availed loan from UTI Bank in 2006 and at that time they obtained signed blank cheques. So, the accused admitted the borrowal of loan from the bank and also issuance of the cheqes. It is not the case of the accused that the signature found on Ex.P2 does not belongs to him. Though PW1 was cross-examined at length nothing could be elicited to discredit his testimony. Thus, the evidence of PW1 coupled with Exs.P7 to P12 proves that the accused had availed home loan from the complainant bank.

15. Ex.P2 cheque is dated 26.06.2015. Issuance of post dated cheque is also valid and the time commences from the date mentioned in the cheque. Ex.P2 cheque is dated 26.06.2015 and Ex.P3 is return memo dated 30.06.2015. In the light of presumption U/s.146 of Negotiable Instrument Act there is no need to examine Bank officials to prove Ex.P3. The cheque was presented within the stipulated period. So, the complainant has to issue notice within 30 days from the date of receipt of Ex.P3. Ex.P3 is dated 30.06.2015. Ex.P4 notice is dated 02.07.2015. Ex.P5 postal receipts are dated 03.07.2015. So, the notice as contemplated U/s.138(b) of Negotiable Instrument Act was issued within the stipulated period. Ex.P6 is the postal acknowledgment. This complaint was filed within one month after accrual of cause of action.

16. The counsel for the accused has submitted that the accused has not received the notice. If a notice is sent to the correct address through registered post acknowledgment due, the presumption U/s.27 of General Clauses Act is that the notice has been duly served. It is not the case of the accused that the address mentioned in Ex.P4 notice is

incorrect. Hence, the presumption U/s.27 of General Clauses Act is that the notice has been duly served.

Reliance is placed on the citation reported in

AIR 2014 SC 3057
In between
M/s.Ajeet Seeds Ltd Vs. K.Gopalakrishnaiah

17. The accused counsel has relied on the citation reported in

2009 (14) SCC 398
in between
M.D.Thomas Vs. P.S.Jaleel and another

In the cited case, the notice was served on the wife of the accused and his lordships has held that there was no proper service. The facts in the above case are not similar to the case on hand and not helpful to the accused.

18. Ex.P12 copy of statement of account which is reflecting the transactions between the bank and the accused. The accused is not disputing his signature found on Ex.P2 cheque. He is not disputing the issuance of the cheque to the complainant. Once the issuance of the cheque and its signature is not disputed the presumption U/s.139 of Negotiable Instrument Act is in favour of the complainant. The burden is on the accused to rebut the said presumption.

19. In the citation reported in

AIR 2010 (SC) 858
in between
Rangappa Vs. Sri Mohan

The Hon'ble Apex Court has held that ***"once the issuance of***

cheque and signature thereon are admitted, the presumption of legally enforceable debt in favour of the holder of the cehque arises. It is for the accuseid to rebut the said presumption".

Thus, the presumption is in favour of the complainant as the accused admitted the issuance of Ex.P2 cheque. So, the accused has to rebut the said presumption. Except giving suggestion to PW1 that they obtained blank signed cheques, nothing could be elicited. Thus, it can be safely concluded that to discharge of part of loan amount Ex.P2 was issued.

20. The counsel for the accused has relied on the citation reported in

2003 (2) ALD (Crl.) 219
In between
Avon Organics Ltd. Vs. Poineer Products Ltd. And others

and submitted that Ex.P2 is materially altered. In the cited case, the complainant filled up the amount portion in words and figures and put the date as per his own choice. In this case accused failed to prove that without his consent complainant filled up the amount in Ex.P2 and materially altered. Hence, above citation is not helpful to the accused.

21. The accused counsel also relied on the citation reported in

1994 (2) ALT Crl. 681
in between
Taher N.Khambati Vs. Vinayak Enterprises and others

In the cited case, the complainant has obtained blank signed cheques from the accused. In the cited case, accused examined

Dws 1 and 2 and proved their version. In the present case PW1 has denied the suggestion that Ex.P2 is the blank cheque and they make use of it. Hence, the above citation is not helpful to the accused.

22. In the citation reported in

2010 (1) ALT (Crl.) 59
In between
D.Atchyutha Reddy Vs. State of A.P. and another

The Hon'ble High Court has held that ***"the body of the cheque need not be written by the maker and no law prescribes that body of the cheque must be written by the signatory of the cheque".***

Thus the accused who is the maker of Ex.P2 cheque need not fill the blanks in it. So the accused has to establish that he did not fill the blanks and it was materially altered. The accused has failed to establish that Ex.P2 is materially altered. Hence, the above citation relied by the accused not helpful to the accused.

23. The accused counsel has relied on the citation reported in

2003 (3) KLJ 721
In between
Lillykutty Vs. Lawrance

In the cited case his lordships has held that ***"by putting the amount and the name there is no material alteration on the cheque U/s.87 of Negotiable Instrument Act. Mere fact that payee name and the amount shown in the cheque are in different handwriting is not a reason for not honouring the***

cheque". Assuming for a while the payee name and amount written by complainant it is not a material alteration. Thus, the above citation is not helpful to the accused.

24. The counsel for the accused has submitted that when the cheque was returned with an endorsement as "refer to drawer" which does not come within the purview of Section 138.

In the citation reported in

2012 (2) Bankmann 591
In between
M/s.Laxmi Dyechem Vs. State of Gujarath and others

The Hon'ble Apex Court has held that ***"the expression amount of money is insufficient appearing in Section 138 of the Act is a genus and dishounour for reasons such as "account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act".***

Thus, though Ex.P2 returned as refer to drawer would constitute a dishonour within the ambit of Section 138 of Negotiable Instrument Act.

25. In the citation reported in

Criminal Appeal No.867 of 2016

in between

Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited

the Hon'ble Apex Court has held that ***"the dishonour of a post dated cheque given for repayment of loan installment is being discharge of existing liability covered by Section 138 of Negotiable Instrument Act".***

Hence, for the foregoing reasons, this Court is of the considered opinion that the accused has issued Ex.P2 for discharge of loan amount and hence complainant could prove the guilt of the accused and the accused failed to rebut the presumption available in favour of the complainant U/s.139 of Negotiable Instrument Act. This point is answered accordingly.

In the result, the accused is found guilty for the offence punishable U/Sec.138 of Negotiable Instruments Act and accordingly convicted U/s.255(2) Cr.P.C.

Dictated to Personal Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 12th day of April, 2018.

XV Addl. Judge–Cum-XIX ACMM,
FAC XVI Addl.Judge–Cum-XX ACMM,
Secunderabad.

26. The accused is questioned regarding the quantum of sentence that can be awarded to him for the offence U/s.138 of Negotiable Instrument Act for which he has stated that he has not committed the offence.

27. Considering the facts and circumstances of the case and nature of the offence, this Court is not inclined to invoke the provisions of Probation of Offenders Act.

In this case on hand, the accused issued Ex.P2 cheque for Rs.20,00,000/- on 26.06.2015. In the citation reported in

Crl.Rivision No.583 of 2012
in between
Meel Bai Vs. Rameshwara Prasad Chouhan

The Hon'ble Chattisgarh High Court after referring the Hon'ble Apex Court's judgments has held that "the punishment to be awarded in Section 138 of Negotiable Instrument Act cases are meant to ensure payment of money and threat of jail is only to ensure recovery and as such, imposition of jail sentence is not mandatory".

28. In the citation reported in

2012 (1) ALD (Crl.) 803 (SC)
in between
R.Vijayan Vs. Baby and another

The Hon'ble Apex Court has held that "the apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation U/s.357(1)(b) of the Code".

29. In the citation reported in

2014 (1) ALT (Crl.) 145 (SC)

in between

Somnath Sarka Vs. Utpal Basu Mallick and another

The Hon'ble Apex Court has held that "the amount to be paid towards compensation U/s.357 Cr.P.C. to the complainant is not different or separate from the fine amount imposed U/s.138 of Negotiable Instrument Act". So, the compensation has to be awarded to the complainant out of fine amount.

Considering the facts and circumstances of the case and Ex.P2 cheque amount, this Court is of the considered opinion, sentencing the accused to undergo rigorous imprisonment for a period of **six *months*** and shall pay fine of Rs.20,05,000/- would meet the ends of justice. Hence, the accused is sentenced to undergo rigorous imprisonment for a period of ***six months*** and to pay fine of ***Rs.20,05,000/- (Rupees Twenty Lakhs and Five Thousand only).*** In default of payment of fine, he shall undergo simple imprisonment for a period of ***two months.*** Out of the fine amount of Rs.20,05,000/-, Rs.20,00,000/- shall be paid to the complainant towards compensation U/s.357(1)(b) Cr.P.C. after expiry of appeal time. There is no remand period to give set off Under Section 428 of Cr.P.C.

Dictated to Personal Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 12th day of April, 2018.

XV Addl. Judge–Cum-XIX ACMM,
FAC XVI Addl.Judge–Cum-XX ACMM,
Secunderabad.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PROSECUTION :	**FOR DEFENCE:**
PW1 : Mohammed Yousufuddin	-Nil-

DOCUMENTS MARKED

FOR PROSECUTION:

Ex.P1 : Certified copy of special power of attorney

Ex.P2 : Cheque No.510101 for Rs.20,00,000/- dated 26.06.2015

Ex.P3 : Cheque return memo dated 30.06.2015

Ex.P4 : Office copy of legal notice dated 02.07.2015

Ex.P5 : Postal receipts (Nos.2)

Ex.P6 : Postal acknowledgment

Ex.P7 : Copy of loan application

Ex.P8 : Copy of Sanction letter

Ex.P9 : Copy of loan agreement

Ex.P10 : Copy of DP Note

Ex.P11 : Copy of sale deed

Ex.P12 : Copy of statement of account

DEFENCE :

- Nil -

XV Addl. Judge–Cum-XIX ACMM,
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Secunderabad.