

**In the Court of Sh. Manu Singla, PCS, Judicial Magistrate, 1st
Class, Sangrur. (UID No.PB0600)**

Complaint Filing No.4108 of 11.11.2021

CNR No.PBSG-03-004125-2021

NACT-1282-2021

Date of Decision: 05.08.2024

Maharaja Finance Company near bus stand, Sangrur through its partner Sh. Rakesh Kumar Goyal son of Chiranjilal Goyal, Resident of Street No.32, House No.108, near Vishal Mega Mart, Sangrur.

.....Complainant

Versus

Navpreet Kumari D/o Late Sh. Rajinder Kumar, Resident of Quarter No.C-3, Civil Hospital, Sangrur.

.....Accused

**Complaint Under Section 138 of Negotiable Instrument Act 1881
amended up to date.**

Present :- Sh. Udit Goyal, Adv., counsel for complainant.
Accused on bail with counsel Sh. Ritesh Jindal, Adv.

JUDGMENT:-

1. The complainant has filed the present complaint under section 138 of Negotiable Instrument Act, 1881 against the above named accused.
2. The brief facts of the complaint are that accused obtained loan of Rs. 41,000/- from the complainant on 05.08.2020 @ 1.5% interest per month and accused

promised that she will return the said amount within 4-5 months. It is further submitted that accused in discharge of her legal liability, issued a cheque bearing No.037991 dated 09.09.2021 for sum of Rs.41,000/- drawn on Bank of India, Branch Sangrur out of her bank account without interest in favour of the complainant company. The complainant has presented the said cheque with its bank for its realization and collection of said amount but the said cheque was dishnoured vide memo dated 30.09.2021 with remarks 'Account Blocked'. Thereafter, complainant through its counsel issued a legal notice dated 30.09.2021 vide postal receipt dated 30.09.2021 to the accused calling upon her to make the payment of the above said cheque from the receipt of notice by the accused but accused has failed to make the payment of the above said cheque and has committed the offence as punishable under Section 138 of Negotiable Instruments Act. Hence, in the present complaint it is prayed that the accused is liable to be prosecuted and punished as per law.

3. Subsequently, on the basis of preliminary evidence adduced by the complainant, accused was ordered to be summoned to face trial under Section 138 of the Negotiable Instrument Act, vide order dated 11.11.2021.

4. Upon the issuance of notice accused appeared in the court and she was released on bail. On finding a prima facie case, notice for commission of offence under section 138 of Negotiable Instrument Act was served upon the accused to which she pleaded not guilty and claimed trial.

5. To discharge onus, Sh. Rakesh Kumar Goyal, partner in complainant

company stepped into the witness box as CW1 and relied upon his duly sworn affidavit Ex. CW1/A which is entirely to the tune of factual matrix of the complaint. He also relied upon documents i.e. original cheque in question as Ex. C1, memo as Ex. C2, copy of legal notice as Ex. C3 and postal receipt as Ex. C4. In view of law laid down by **Hon'ble Supreme Court I authority of Indian Bank Association & Ors. Vs. Union of India & Ors. 2014(5) SCC 590**, at the time of serving notice of accusation upon accused, accused opted for cross-examination of the complainant witness already examined. Perusal of the file shows that after serving notice of accusation upon the accused on 05.05.2022, complainant did not turn up to conclude his cross-examination. Further, perusal of the file shows complainant has availed numerous effective opportunities to conclude his evidence but failed to put in his appearance to conclude his cross-examination. Even cost of Rs. 200/- was imposed upon the complainant vide order dated 13.05.2023 passed by this court to conclude his evidence but complainant has not explained the exceptional circumstances which prevented complainant from adducing evidence in the court. Under said circumstance, the court did not deem it proper to adjourn the case pertaining to year 2021, time and again for the same purpose. Therefore, the evidence of the complainant was closed by order. Since, complainant had failed to examine any witness fully, there is virtually no evidence led on record by complainant. Therefore, recording of statement of accused under Section 313 Cr. PC was dispensed with.

6. The arguments of learned counsel for the complainant is that accused

obtained loan of Rs. 41,000/- from the complainant on 05.08.2020 @ 1.5% interest per month but he failed to return the same. Accused in order to discharge her lawful liability had issued the cheque in question with the assurance that it will be honoured on its presentation. However, on presentation of the cheque to the bank, it returned back dishonoured with the remarks "Account Blocked". Upon this, the complainant got issued a legal notice upon the accused under Section 138 of N.I. Act through a registered post calling upon her to make the payment of the above said cheque within 15 days from the receipt of notice by the accused but accused has failed to make the payment of the above said cheque. Since the case of the complainant stands duly proved on record, thus, counsel for the complainant prayed for conviction of the accused for being liable under Section 138 of Negotiable Instrument Act, 1881.

7. Contrary to this, learned counsel for the accused has controverted the arguments addressed by learned counsel for the complainant to the effect that the testimony led by complainant is incomplete. Accused neither taken any financial assistance from the complainant nor issued the cheque in question in discharge of any liability and complainant has failed to prove that it was issued by accused in discharge of her legally recoverable debt/liability.

8. Perusal of the file reveals that to prove the contents of the complainant filed by the complainant against the accused under Section 138 of N.I. Act, Partner in complainant company stepped into witness box as CW1 and in his examination in chief vide his affidavit Ex. CW1/A proved on record various documents Ex. C1 to Ex. C4 as

mentioned above. Thereafter, complainant did not appear in the court for concluding his cross-examination despite availing numerous opportunities and thereafter the evidence of the complainant was closed by order. It is settled preposition of law that only examination in chief or part cross-examination cannot be read into evidence if witness has not afforded opportunity to other party to fully cross-examine him. So, in the present complaint also the incomplete testimony of the complainant cannot be read into evidence. Complainant has not examined any other witness to corroborate his testimony despite availing numerous opportunities to lead his evidence. As such before this court there is no incriminating evidence against the accused.

9. In view of the discussion above, no offence under Section 138 of N.I. Act is made against the accused. As such, point of determination is decided in favour of accused and against the complainant.

10. Since no offence under Section 138 of N.I. Act is made out against the accused consequently, the present complaint is dismissed and the accused is acquitted of the notice of accusation served upon her. Accused is directed to furnish bail bonds and surety bonds in the sum of Rs. 50,000/- with one surety in the like amount in compliance with Section 437-A of Cr. P.C/481 of The Bharatiya Nagarik Suraksha Sanhita, 2023 in order to ensure the presence of accused in appeal or revisional Court as the case may be, in case any appeal or revision is preferred by the complainant. Accused suffered a statement that she will produce surety bonds within 10 days as required under Section 437-A of Cr. PC/481 of The Bharatiya Nagarik Suraksha Sanhita, 2023. Request heard and allowed. Personal

bonds furnished by accused, which are accepted and attested. Accused is directed to furnish her surety bonds on or before 14.08.2024. File be consigned to the record room after necessary compliance by the Ahlmad.

Pronounced in open Court.
Dt. 05.08.2024

(Manu Singla),
Judicial Magistrate 1st Class,
Sangrur.

Rajbir, Stenographer-II

Present :- Sh. Udit Goyal, Adv., counsel for complainant.
Accused on bail with counsel Sh. Ritesh Jindal, Adv.

Today, the case was fixed for evidence of complainant. No CW is present. Perusal of file shows that notice of accusation has been served upon accused on 05.05.2022 and thereafter, the case was adjourned for evidence of complainant. Thereafter, several opportunities have been granted to the complainant to conclude his evidence. Perusal of file further shows that complainant has availed numerous effective opportunities to conclude his evidence but failed to do so. Learned counsel for the complainant again requested for an adjournment for concluding evidence. Further, perusal of file shows that the cost in tune of Rs. 200/- to be paid to DLSA, Sangrur, was also imposed upon the complainant vide order dated 13.05.2023. However, he failed to deposit the same. It is not the duty of the Court to call upon the complainant to pursue his case and conclude his evidence. One who approaches the Court in order to claim his right must pursue his case diligently so that the Court should come to the conclusion of the case. Till date the evidence of the complainant has not been completed despite grant of the last and final opportunity to the complainant for the same. Hence, the evidence of complainant is closed by order. Vide my separate detailed judgment of even date, the present complaint is dismissed and the accused is acquitted of the notice of accusation served upon him. Accused is directed to furnish bail bonds and surety bonds in the sum of Rs. 50,000/- with one surety in the like amount in compliance with Section 437-A of Cr. P.C/481 of The Bharatiya Nagarik Suraksha Sanhita, 2023 in order to ensure the presence of accused in appeal or revisional Court as the case may be, in case any appeal or revision is preferred by the

complainant. Perusal bond furnished, which is accepted and attested. Accused suffered a statement that he will furnish surety bonds as per provisions of under Section 437-A Cr. PC/481 of The Bharatiya Nagarik Suraksha Sanhita, 2023 within 10 days. Request heard and allowed. Accused is directed to furnish her surety bonds on or before 14.08.2024. File be consigned to the record room after necessary compliance by the Ahlmad.

Pronounced in open Court.
Dt. 05.08.2024

(Manu Singla),
Judicial Magistrate 1st Class,
Sangrur.

Rajbir, Stenographer-II

