IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE –III, PALAKKAD

Present: Smt. Roshni.H., Judicial First Class Magistrate-III, Palakkad.

Thursday, this the 20th day of November, 2014
29th day of Karthikam, 1936 (S.E.)

Calender Case No: 263 / 2012

Complainant	:	Babujose. S/o.Jose. Age : 39. Kallarakkal House, 31/200, Rajeswari street, Pattikkara, Palakkad. (By:Adv: Sri. A.Induchoodan & G. Abhilash.)
Accused	:	Ramani. W/o. Purushothaman. Age : 41. Door No; 370/A, Kallekkulangara (po), Palakkad. (By: Adv. Sri. C. Sreekumar.)
Offence	:	Punishable under section. 138 of Negotiable Instruments Act.
Plea	:	Not guilty.
Finding	:	Guilty.
Sentence or order	:	The accused is sentenced to undergo imprisonment till rising of court and to pay a fine of Rs. 80,000/-. In default of payment of fine the accused shall undergo simple imprisonment for three months. The fine amount if realised shall be paid as compensation to the complainant u/sec. 357(1) Cr.P.C.

This case having been heard finally and stood over to this day's proceedings, the court passed the following.

JUDGMENT

The above complaint is filed alleging offence punishable u/s.138 of Negotiable Instruments Act.

2. The gist of the complaint is as follows:- The accused borrowed an amount of Rs, 80,000/- from the complainant on 09/09/2011 for her family needs. In discharge of that debt she issued a cheque bearing No: 241299 dated : 10/10/2011 drawn on ING Vysya Bank, Palakkad. But when the complainant presented the cheque for collection through Catholic Syrian Bank, Palakkad, it was returned dishonoured with the endorsement 'account closed'. Intimating the dishonour and demanding payment the complainant issued a lawyer notice to the accused. Though she received the notice, she sent a reply stating false and frivolous contentions. She failed to make the payment within the statutory period. Hence this complaint.

3. After taking cognizance for the offence punishable under 138 of Negotiable Instruments Act, the accused entered appearance and he was released on bail. Copies of all the relevant records were served on him. Thereafter particulars of the offence were read over and explained to the accused to which he pleaded not guilty.

4. From the side of complainant PW1 was examined and Exts. P1 to P5 were marked. After closing the complainant's evidence the accused was examined under section 313 (1)(b) Cr.P.C. He denied all the incriminating circumstances raised against her and stated that she did not borrow any amount from the complainant. She don't know the complainant. Her husband borrowed some money and at that time the complainant compelled for a cheque of this accused as security and her husband has given this cheque. Thereafter the accused was called upon to adduce evidence from his side. No defence evidence adduced.

5. Heard both sides.

6. The following points arise for consideration.

(1) Whether Ext. P1 cheque was drawn, executed and issued by the accused to the complainant in discharge of any legally enforceable debt or liability?
(2) Whether Ext. P1 cheque was dishonored for insufficiency of funds in the account of the accused?
(3) Whether the accused was given a statutory notice as alleged?
(4) Whether the accused failed to pay the amount with in the statutory period?
(5) Whether the accused is guilty of the offence punishable under Sec. 138 of NI Act?
(6) If the accused if found guilty what would be the order as to sentence?

7. Point No : 1 : - The complainant was examined as PW1. He filed proof affidavit in tune with the averments in the complaint. According to him, the accused borrowed the amount of Rs. 80,000/- on 09/09/2011 for her family needs. Later in discharge of that debt, she issued the Ext. P1 cheque which stands dishonored on presentation.

8. According to PW1 he is having an acquaintance of 8 to 9 years with the accused. Though he gave the amount Rs, 80,000/- on 09/09/2011, he has no documents to prove the transaction. According to the learned counsel for the accused the case put forward by the complainant is unbelievable. Because, though he says that he is having 8 to 9 years acquaintance with the accused, PW12 could not say the name of father of accused. Also it is pointed out by the learned counsel that even though PW1 claims a long term acquaintance with the accused, he could not say the exact purpose for which the accused borrowed the amount. But, I could not agree with the argument of the learned counsel for the accused that for the aforesaid reasons the

complainant's case is unbelievable. Because, though PW1 could not give the name of the father of the accused, he has correctly mentioned the name of her husband. Regarding the purpose of borrowal, PW1 deposed that it was for the personal needs of the accused. It cannot always be expected from a person to ask for the exact purpose for which the amount was borrowed, what ever may be the period of acquaintance.

9. Regarding the source of income, PW1 deposed that he used to do works on gold for various shops. He does not own a shop. He is having an income of Rs. 60,000/- per month. He also deposed that he is an income tax payee. According to the learned counsel for the accused, though PW1 deposed that he is earning Rs. 60,000/- per month and is an income tax payee, there is no document evidencing the aspect. It is argued by the defence that PW1 failed to prove the source of his income. But Ext. P5 is the reply notice send by the accused. It is claimed by the accused in Ext. P5 that she has borrowed Rs. 30,000/- from PW1 on spot interest. She has remitted Rs. 1,08,000/- to PW1. While availing the amount of Rs. 30,000/- PW1 has obtained two signed blank cheques, one of this accused and one of her husband. After the settlement, though the accused demanded those cheques, PW1 told her that the cheques were lost. Though he promised to search it out, he failed to do so. Now PW1 has misused one among those cheques. Though this case was suggested to PW1, he denied it. But this case in Ext. P5 goes against the challenge put by the defence regarding the source of income. When the accused challenges the source of income of PW1 to lend the money, on the other side the accused herself admits his capacity to lend the money by saying that she has earlier borrowed Rs. 30,000/- from PW1. The accused has come up with mutually contradictory versions. On the other hand, the case of the accused only goes to show that even though PW1 has not produced any document showing his income or payment of income tax, he was having the sufficient

source of income. The accused could not make out any probability to view the transaction with a suspicion.

10. Now the point to be considered is the execution of Ext. P1 cheque. Complainant has successfully proved the transaction. Accused has no case that she discharged the liability. According to the accused, Ext. P1 cheque was one which she issued as security in the earlier transaction of Rs. 30,000/-. Along with this cheque, PW1 has also obtained a signed blank cheque of her husband. Prima facie, the accused could not probabilize her case regarding the transaction of Rs. 30,000/-. Further it is to be noted that either in the Ext. P5 or in the suggestion, there is no murmur regarding the period of the alleged transaction of Rs. 30,000/-. Moreover, no prudent man will keep mum when the lender of money refuses or evades from returning the signed blank cheques of the borrower lady and her husband.

11. Considering these aspects, I find that case put forward by the accused is not enough to make out a probability in their favour. PW1 has succeeded in establishing the transaction, existence of the debt and the execution of Ext. P1 cheque. Consequently, the complainant is entitled to get the benefit of the statutory presumptions u/secs. 118 and 139 of the Negotiable Instruments Act. The case put forward by the accused does not make out a probability so as to rebut those presumptions. Hence the point is found in favour of the complainant.

12. Point Nos: 2 to 4 :- The complainant presented the Ext. P1 cheque dtd. 10/10/2011 for collection through the Catholic Syrian Bank, Palakkad. But it was returned dishonoured for the reason 'account closed'. Ext.P2 is the dishonour memo dated : 26/11/2011. Ext. P3 is the office copy of the lawyer notice dated: 22/12/2011 and Ext. P3(a) is the postal receipt. The accused received the notice and Ext. P4 is the acknowledgement card. The complainant on receiving the intimation as

to the dishonour of the Ext. P1 cheque, has followed all the statutory formalities and hence the points are found in favour of the complainant.

13. Point No: 5:- In the light of the evidence in point nos.1 to 4, the accused is found guilty of the offence punishable u/sec. 138 of the Negotiable Instruments Act.

14. Point No: 6 :- In view of my finding in point No. 5 the accused is found guilty of the offence punishable u/sec. 138 of the Negotiable Instruments Act and he is convicted there under. Considering the nature and circumstances of the case this is not a fit case to invoke any of the benevolent provisions of the Probation of Offenders Act.

In the result, the accused is sentenced to undergo imprisonment till rising of court and to pay a fine of Rs. 80,000/-. In default of payment of fine the accused shall undergo simple imprisonment for three months. The fine amount if realised shall be paid as compensation to the complainant u/sec. 357(1) Cr.P.C.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 20th day of November, 2014).

Judicial First Class Magistrate – III
Palakkad.

APPENDIX

Witnesses examined for the prosecution:

PW 1 : Babujose. S/o.Jose, Palakkad.

Exts. Marked for the prosecution:

Ext. P1	:	Cheque dated : 10/10/2011
Ext. P2	:	Dishonour memo dated : Nil.
Ext. P3	:	Office copy of the lawyer notice dated : 22/12/11
Ext. P3(a)	:	Postal receipt.
Ext. P4	:	Acknowledgement card.
Ext. P5	:	Reply notice dated : 11/01/12.

Witnesses examined for the defence : Nil

Exts. Marked for the defence : Nil

Judicial First Class Magistrate – III
Palakkad