KABC030947452021

Presented on	: 20-12-2021
Registered on	: 20-12-2021
Decided on	: 27-09-2024
Duration	: 2 years, 9 months, 7 days

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

Dated this the 27th day of September - 2024

PRESENT: ***SMT. THENDRALL.K,*** *B.A.L, LL.M.,*
XVIII Addl.C.J.M., Bengaluru City.

C.C.NO.36671/2021

Complainant : Smt.Jayalakshmi.G.H,
R/at No.9, 'Sharada Nivas',
3rd Floor, 4th Cross,
Puttaiah Compound,
Aswathnagar, Bengaluru-94.

(Rep. by Sri.A.J, Advocate)

V/s.

Accused : Sri.Girish Kumar.C,
S/o. Chama,
Aged about 35 years,
R/at No.7/3, 1st Floor,
Puttaiah Compound,

Aswathnagar, MSR Hospital Road,
RMV 2nd Stage,
Bengaluru-94.

(Rep. by Sri.R.K.R, Advocate)

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is ***Convicted***.
DATE OF ORDER	:	27.09.2024.

(*THENDRALL.K*)
XVIII Addl.CJM., Bengaluru.

J U D G M E N T

The instant complaint is filed by complainant against accused under Sec.200 of Cr.P.C. for the offence punishable under Sec.138 of N.I Act to punish the accused in accordance with law in the interest of justice and equity.

2. The brief facts of the case of the complainant is that:

It is submitted that, the accused is known to complainant since 4 years, with this acquaintance, in the 1st week of December 2019, the accused has approached and requested the complainant for hand loan of Rs.5 lakhs to tide over his immediate financial constraints. Considering the request of accused, she agreed to advance the said amount in the last week of December 2019. Owing the request of accused, the complainant paid a sum of Rs.5 lakhs to the accused in the last week of December 2019 by way of cash, while borrowing the said amount, the accused promised to repay the same within 6 months, but he failed to repay the same as agreed for the reasons he had suffered huge loss in his business due to Covid-19 pandemic and postponed the payment till October 2021.

Further contended that, towards discharge of his liability, the accused had issued a cheque bearing No.436668 dated 29.10.2021 drawn on State Bank of India, Sanjaynagar Branch, Bengaluru and promised that the said cheque would be honoured on its presentation. Believing the assurance of accused, the complainant presented the said cheque for encashment through her banker viz., Canara Bank, Sanjaynagar Branch, Bengaluru, the same came to be dishonoured and returned with an endorsement dated 30.10.2021 stating ***"Funds Insufficient"***.

Further contended that, after non-realization of the cheque, the complainant constrained to caused a legal notice to the accused through RPAD on 08.11.2021 and the same was duly served upon accused on 20.11.2011. Despite the same, accused neither paid the cheque amount nor replied to the legal notice. Thus, the accused committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After taking cognizance and registration of the case, process was ordered to issue summons against accused. In pursuance thereof, accused appeared before the Court through his counsel and accordingly, he was enlarged on bail and has recorded the accusation for the offence punishable under Section 138 of N.I.Act, same was explained to accused. Since accused pleaded not guilty and claims to have defence evidence hence, the case has been set down for recording of evidence.

4. To substantiate the complaint averments, complainant got examined herself as PW.1 and got marked 05 documents as per Exs.P1 to P5.

5. As the incriminating circumstances appearing against the accused, the statement of accused under Section 313 of Cr.P.C. is recorded by preparing separate questionnaires. The accused has not explained anything, in order to rebut the case of the complainant, accused got examined himself as DW.1, but not produced any documents.

6. Heard arguments of learned counsel for the complainant and the accused.

7. On considering the facts and circumstances of the case, the following points would arise for determination :

1. Whether the complainant proves beyond all reasonable doubt that the accused has borrowed a sum of Rs.5,00,000/- from her, there is legally enforceable debt and given cheque bearing No.436668 in order to realize the legally enforceable debt?

2. Whether the complainant further proves beyond all reasonable doubt that she has complied provisions of Section 138 of Negotiable Instrument Act?

3. What order or sentence?

8. My findings on the above points as under:

*Point No.1 : In the "**Affirmative**"*

*Point No.2 : In the "**Affirmative**"*

Point No.3 : As per the final order, for the following:

:**<u>R E A S O N S</u>**:

9. <u>Point No.1:</u> This is the complaint filed under Section 200 of Cr.P.C. for the offence punishable under

Section 138 of Negotiable Instrument Act. The case made out by complainant is that, complainant and accused are known to each other since 4 years, in the 1st week of December 2019, accused approached and requested the complainant for hand loan of Rs.5,00,000/- in order to tide over his immediate financial constraints, after considering the request of accused, the complainant has paid a sum of Rs.5 lakhs to the accused in the last week of December 2019 by way of cash and promised to repay the same within six months and towards discharge of his liability, the accused had given the cheque in question to the complainant which has been returned unpaid to the complainant.

10. In order to prove her case, the complainant got examined herself as PW.1 and got marked 05 documents as Exs.P1 to P5. She has reiterated the averments of complaint in her examination-in-chief. The documents at **Ex.P1** is the cheque, **Ex.P1(a)** is the signature, **Ex.P2** is the Return memo, **Ex.P3** is the office copy of Legal notice, **Ex.P4** is the Postal receipt and **Ex.P5** is the Postal acknowledgment card.

11. The counsel for complainant argued that, the accused had borrowed a sum of Rs.5,00,000/- from the complainant. He has given the cheque in question to realize the legally enforceable debt which returned unpaid. The complainant had issued notice and same

was duly served. Despite the same, the accused neither paid the cheque amount nor issued reply, thereby the accused has committed an offence punishable under Section 138 of N.I.Act. Further argued that the complainant has complied the provisions of the Act and prayed to convict the accused.

12. Per contra, the learned counsel for accused has argued that, the accused is an auto driver since 10 years, complainant was known to accused through his wife, during the year 2020 the wife of accused had borrowed amount of Rs.50,000/- from the complainant, at that time she had given the signed blank cheque of accused to the complainant as security, thereafter she repaid the said amount of Rs.50,000/- alongwith interest to the complainant on daily basis of Rs.500/- within three months. Thereafter, he sought for return of his signed blank cheque, but without returning the signed blank cheque of accused, the complainant by misusing the same filed the instant false case against the accused.

Further argued that the accused had not obtained Rs.5 lakhs from the complainant at any point of time as alleged in the complaint and the accused has not issued the alleged cheque to the complainant for discharge of legally enforceable recoverable debt. The complainant has filed this false case against the accused. Therefore, there is no legally enforceable debt and the complainant has not complied the provisions of N.I.Act.

13. In the light of the above oral and documentary testimonies placed by the both parties and the arguments advanced by the both counsels let me examine the oral and documentary testimony produced by the complainant. It is pertinent to note that unlike the other cases, in the case of an offence punishable under the Negotiable Instruments Act, the paramount duty of the complainant is to prove that there is legally enforceable debt and the cheque has been given for realizing the legally enforceable debt.

14. In order to establish the transaction between complainant and accused, PW.1 has deposed in her evidence that the accused was known to her since 4 years, in the 1st week of December 2019, accused approached and requested the complainant for hand loan of Rs.5,00,000/- in order to tide over his immediate financial constraints, after considering the request of accused, the complainant has paid a sum of Rs.5 lakhs to the accused in the last week of December 2019 by way of cash and promised to repay the same within six months and towards discharge of his liability, the accused had given the cheque in question to the complainant. Though PW.1 was cross-examined by counsel for accused, but nothing has been elicited from

her mouth to disprove the case of complainant. The main defence of accused is that, he has not borrowed any amount from the complainant as alleged in the instant complaint and there was no monetary transaction between them, during the year 2020, his wife had borrowed a sum of Rs.50,000/- from the complainant and towards security of the said amount his wife had issued the cheque in question to the complainant and thereafter she repaid the entire amount of Rs.50,000/- alongwith interest to the complainant within 3 months on daily basis of Rs.500/-, the accused has not borrowed the amount from the complainant as alleged in the complaint at any point of time and there was no monetary transaction between them, the cheque in question was misused by the complainant and filed this false case against him.

15. During the course of cross-examination, the advocate for accused has suggested to PW.1 that the wife of accused towards improvement of her flower business had borrowed loan of Rs.50,000/- from him and towards security of the said amount she gave the cheque in question to the complainant. Further suggested that his wife has repaid the said amount to the complainant and after repayment of the said loan amount of Rs.50,000/- by the wife of accused, the complainant without returning the security cheque has misused and filed this

false case against the accused. The said suggestions was strongly denied by the complainant. If this was to be true the accused ought to have lodged complaint against the complainant for misuse of the cheque either to the police or to the bank, but he has not done so. In order to substantiate his version accused has not examined his wife before the court. Therefore, he cannot say that his wife has given the Ex.P1-cheque to the complainant for security of loan transaction.

16. In order to substantiate his version the accused has neither produced ocular or documentary evidence, nor has lodged any complaint against the complainant for having misused the cheque in question. Further the accused has not given any intimation to the bank to stop the payment and also with regard to misuse of his cheque. Another interesting aspect is that during the cross-examination of DW.1, the accused voluntarily deposed that his wife took his cheque and gave the same to the complainant and same is misused by the instant complainant. Therefore, meaning thereby accused is not disputing the issuance of cheque to the complainant. But only contention of accused is that, the cheque in question was misused by complainant. In order to substantiate his version he has not produced either ocular or documentary evidence. In the Cross-examination, DW.1 has admitted that Ex.P1 cheque and

signature Ex.P1(a) are belongs to him. Therefore, meaning thereby accused is not disputing the issuance of cheque. The another contention of the accused is that the handwriting on cheque does not belong to him, ***in this regard this court thought it fit to quote Section 20 of Negotiable Instrument Act which reads thus:-***

> **Sec.20 Inchoate stamped instruments.** – Where one *person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1 (India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima-facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*

17. If a cheque or instrument which inchoate given to the holder in due course then the giver is permitted to subscribe the instrument. Under these circumstances as admittedly accused has given cheque he cannot take a contention that he has not written on the cheque. However, he has admitted that the cheque in question and signature appears thereon as belong to him. Under these circumstances the defence taken by the accused with respect to handwriting on Ex.P1 is concerned holds no good. If at all the accused has denied the signature over the Ex.P1 then definitely the Bank authority would have given an endorsement in that regard. But in the present case on hand Ex.P2 which has been issued by the banking authority clearly discloses that the cheque in question Ex.P1 has been returned unpaid to the complainant due to insufficient of fund. Under these circumstances the defence taken by the accused in that regard cannot be taken into consideration. In view of the above detailed discussion, the accused utterly failed to rebut the presumption and to adduce acceptable rebuttal evidence.

18. The counsel for accused argued that, the cheque was issued by the wife of accused to complainant for other transaction not to the instant transaction, same was misused by the complainant and had filed this false case, thereby it does not create any liability, therefore

the instant case is not maintainable, in this regard this court would rely on the decision reported by Hon'ble Apex Court in **Appeal No.123/2021, LL 2021 SC 75, between M/s. Kalamani Tex/P.Balasubramanian, it has held that :**

> *"Even a blank cheque leaf would attract presumption under section 139 of the Negotiable Instruments Act, when the signature is voluntarily signed is admitted".*

19. At this juncture this court is relying upon a decision reported in ***(2018) 8 Supreme Court Cases 165 in the case between Kishan Rao V/s Shankargouda, it is held that :***

> ***"A. Debt, Financial and Monetary Laws Negotiable Instruments Act, 1881S.139 - Presumption under*** *– When may fail Ingredients and scope of S.139 Principles summarized*
>
> ***B. Debt, Financial and Monetary Laws Negotiable Instruments Act, 1881 Ss 138 and 139 -*** *Dishonour of cheque Presumption in favour of holder of cheque under S.139 Not rebutted by accused by leading any evidence – No sufficient ground mentioned by High Court to enable it to exercise its revisional jurisdiction for setting conviction aside Conviction under S.138, restored."*

20. This court relies upon another decision reported by Hon'ble Apex Court **in *2022 SCC Online SC 1131 in Crl.Appeal.No.1233-1235/2022 (Arising out of Slp Crl.Nos.7430-7432/2022 @ D.No.13470/2019 between P.Rasiya V/s Abdul Nazer & Another has held that :***

> *"Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the*

> *accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."*

21. I have gone through the said decision, wherein the Hon'ble Apex court held that, accused may adduce evidence to rebut presumption under S.139, but mere denial regarding existence of debt nor with respect to the source of income of complainant shall not serve any purpose. In the event accused is able to raise a probable defence which creates doubt with regard to existence of a debt or liability, the presumption may fail. Section 139 of the Negotiable Instruments Act provides for drawing the presumption in favour of holder.

22. At this juncture, it is worthwhile to refer Section 139 of NI Act, which reads as under: ***Section 139 of Negotiable Instruments Act:- Presumption in favour of holder*** ; It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque

of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability".

23. On reading of Section 139 of the NI Act, it is very much clear that, there shall be a presumption, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. The presumption will have to be drawn that, every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. Once the complainant discharges the burden of proving the instrument, then the burden shifts upon the accused to rebut the same.

24. Further, until the contrary is proved as provided under Section 118 of NI Act, presumption will have to be drawn in favour of complainant. In order to rebut the contentions taken by the complainant, accused may adduce direct evidence to prove that, there is no debt or liability to be discharged by him. To disprove the presumptions, accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist. But in the present case, accused utterly failed to disprove the presumptions. Therefore,

this court is of considered opinion that, there are no contradictions or variances in the contention taken in the complaint and evidence of PW1. Moreover, accused has neither produce ocular or documentary evidence to rebut the evidence of PW1 and to disprove the liability and issuance of cheque. Hence, the law laid down by the Hon'ble Apex court in the aforesaid decision is aptly applicable to the present case on hand.

25. This court relies on the decision reported in ***2008(2) Kar L.J 276 by Hon'ble High Court of Karnataka between PKN Caps & Polymers, Bangalore v/s K.Vishnu Prasad has held that :***

> ***"NEGOTIABLE INSTRUMENTS ACT 1881, Section138-*** *The respondent herein filed the I.A. after recording the evidence of parties i.e., at a belated stage. The appellant herein filed a detailed objection. In fact, the objection filed by the appellant discloses that the complaint for an offence punishable under Section 138 of the N.I.Act. Therefore, when once the documents are admitted in evidence, without the objections of the opposite party when once the Court rightly or wrongly admits the documents, the admissibility of these documents cannot be questioned. Therefore, it could be said that*

the respondent fails to place proper rebuttal evidence to hold that the cheques issued by him was not for legally enforceable debt or otherwise. When the respondent admits about the issuance of the two cheques and the receipt of the demand notice and dishonour of the cheques, he cannot now contend and say that it is not for legally enforceable debt."

In the instant case accused counsel during the cross-examination of PW1 has putforth the suggestion that PW1 has misused the cheque issued by the wife of accused to the complainant for other transaction, meaning thereby accused admits the issuance of cheque.

26. Another decision reported by Hon'ble Apex Court in 2021(1) KCCR 545 (SC) between M/s. Kalamani Tex and others V/s P.Balasubramanian it is held that :

"D. NEGOTIABLE INSTRUMENTS ACT, 1881- Sections 118 and 138-Presumption-Reverse onus-Burden of proof shifts on the accused. Preponderance of probabilities. Possibilities. Discussed, Accused not leading proper evidence. Accused has to be convicted. Order of conviction confirmed."

It is settled preposition of law that proving of the case depends upon the preponderance of probability. Therefore, the more probabilities lies in favour of the complainant in the present case on hand. Therefore, under these circumstances the presumption under Section 138 of Negotiable Instrument Act can safely be drawn in favour of the complainant. Under these circumstances this court is of opinion that complainant has successfully established and proved beyond all reasonable doubt that there is legally enforceable debt due to complainant payable by the accused, in order to realize the antecedent/legally enforceable debt the accused has given a cheque in question Ex.P1. Accordingly, point No.1 is answered in the **Affirmative**.

27. **Point No.2:** It is the specific contention of the complainant that the accused has given cheque in question Ex.P1 on 29.10.2021 which has been presented to the bank in time. The said cheque Ex.P1 has been returned to the complainant unpaid due to insufficient of fund on 30.10.2021. The complainant has to issue legal notice to the accused within 30 days from the date of returning of cheque. The complainant had issued legal notice to accused on 08.11.2021 which is also in time, inspite of of service of the same the accused has neither replied nor complied. In the present case the complainant has filed the complaint which is well within time. Therefore, under these circumstances this court is of opinion that the complainant has successfully complied the provisions of Section 138 of N.I.Act. Therefore, the **point No.2 is answered in the affirmative.**

28. So for as the quantum of the sentence is concerned this is being tried as summary trial as contemplated under Section 143 of Negotiable Instruments Act, 1881 and hence, the accused need not be heard on the sentence. It is pertinent to note that the case lodged against accused is under special law and the benevolent provision of the Probation of Offenders Act will not be made applicable.

29. **Point No.3** :- In view of the above discussion and foregoing reasons this court proceed to pass the following;

O R D E R

Acting under Section 255(2) of Cr.PC the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act 1881.

Accused is hereby sentenced to pay fine of **Rs.5,50,000/-** for the offence punishable under Section 138 of Negotiable Instrument Act 1881, in default to undergo Simple Imprisonment for a period of **three months**.

Acting under Section 357(1)(b) of Cr.P.C., a sum of **Rs.5,45,000/-** out of the fine amount shall be paid to the complainant as compensation.

The remaining sum of **Rs.5,000/-** out of the fine amount shall be remitted to the state towards the expenses of the state.

The bail bond and surety bond stands canceled and sureties discharged.

Supply the free copy of the Judgment to the accused.

(Dictated to Stenographer directly on computer typed by him, corrected and then pronounced by me in the open court on this the 27th day of September - 2024)

(THENDRALL.K)
XVIII Addl. Chief Judicial
Magistrate, Bengaluru.

ANNEXURE

List of Witnesses examined on behalf of Complainant:

PW-1	:	Jayalakshmi.G.H

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature
Ex.P2	:	Return memo
Ex.P3	:	Office copy of legal notice

Ex.P4	:	Postal receipt
Ex.P5	:	Postal Acknowledgment Card

List of Witnesses examined on behalf of the defence:

DW.1	:	Girish Kumar.C

List of Exhibits marked on behalf of defence:

- Nil -

XVIII Addl. Chief Judicial
Magistrate, Bengaluru.