

**IN THE COURT OF JUDICIAL MAGISTRATE, 3rd COURT AT
HOWRAH**

PRESENT:- YESMIN ARA KHATUN JO CODE WB01335
JUDICIAL MAGISTRATE, 3RD COURT
AT HOWRAH

COMPLAINT CASE NO: 616C/2016 (T.R. No.295 of 2016)

CNR NO. WBHW04-006419-2016

***SURESH CHANDRA SHARMA.....COMPLAINANT
REPRESENTED BY LD. ADVOCATE VIJAY KUMAR SINGH***

-VS-

***RENU GUPTAACCUSED PERSON
REPRESENTED BY LD. ADVOCATE SPANANDAN BISWAS***

DATE OF DELIVERY OF JUDGMENT: 23/12/2022

U/S 138 OF NEGOTIABLE INSTRUMENT ACT

JUDGMENT

1. This is a case under section 138 of the Negotiable Instrument Act 1881 which has been initiated on the basis of a complaint lodged by the complainant viz., Suresh Chandra Sharma against the accused person viz. Renu Gupta before the Court of the Ld. Chief Judicial Magistrate, Howrah.
2. Shorn off unnecessary details, the case of the complainant as narrated in the complaint is that the accused, Renu Gupta in part discharge of her existing legal debts and liability towards the complainant issued and tendered an account payee Cheque in favour of the complainant being No.032655 dated 05/06/2016 for the amount of Rs.4,97,000/-. The complainant deposited the said cheque for encashment at Oriental Bank of Commerce, Liluah Branch, Howrah and the bank authority vide their Memo dated 07/06/16 returned the cheque with remarks 'funds Insufficient'. Thereafter, the complainant sent a demand notice through his Learned

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Advocate Mr. Ajit Pandey on 18/06/2016 to the accused. The said notice was duly received by the accused as per the Track Consignment Report. In spite of service of notice the accused failed to make the payment within the stipulated time period and resultantly the present complaint was filed.

3. After taking cognizance of the case Ld. CJM, Howrah pleased to transfer the case to this Court for trial and disposal on 30/07/2016. On receiving the record, the complainant was examined under section 200 of Code of Criminal Procedure, 1973 and on being satisfied summons was issued upon the accused person under section 204 of Code of Criminal Procedure for allegedly committing offence under section 138 of the Negotiable Instrument Act. The accused entered appearance and was enlarged on bail.

4. At the commencement of trial, on 15.01.2019 after hearing the Ld. Counsel for the complainant as well as Ld. Defence Counsel, the substance of the accusation under section 138 of Negotiable Instrument Act in accordance with section 251 of the Code of Criminal Procedure was read over and explained to the accused person to which she pleaded not guilty and claimed to be tried. Hence, the record is placed for trial.

EVIDENCE ON RECORD

5. In order to prove the case of the complainant, the complainant has examined the following witness :

1. Suresh Chandra Sharma (complainant).....P.W-1.

6. The complainant has also marked the following documents as exhibits for cementing his case:

i. The original cheque being no. 032655 dated 05/06/2016...Exhibit-1.

ii. The original deposit slip of Oriental Bank of CommerceExhibit-2.

iii. The original Return Memo dated 07/06/16 of Oriental Bank of CommerceExhibit-3.

iv. The Demand Notice to the accusedExhibit-4.

v. The Postal Receipt of Demand Notice.....Exhibit 5.

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vi. The Track Consignment of Postal Depart Exhibit 6.

vii. The Original AD card Exhibit – 7.

7. After the completion of the oral examination of the sole witness, the Ld. Advocate for the complainant prayed for closing the evidence. Hence, considering the prayer of the Ld. Advocate for the complainant, the evidence on the part of the complainant was closed.

8. On closure of the evidence for the complainant, statement of the accused person was recorded in terms of Section 313 of the Code of Criminal Procedure. The accused was not willing to adduce any witness and hence the case record was fixed for argument.

9. From the trend of cross-examination and statement of accused recorded under section 313 the defence case appears to be that the impugned cheque was not issued by the accused with her signature in discharge of her legal liabilities but rather issued as a security blank cheque for the purpose of tenancy let out to her and the complainant manufactured the impugned cheque by putting huge amount of money and filed this false case.

ARGUMENT ADVANCED BY BOTH SIDES AT LENGTH

10. After conclusion of evidence of the parties, the learned Advocate for the complainant advanced his argument by submitting that -

-The accused in part discharge of her existing legal debts and/or liability towards complainant paid a cheque of Rs.4,97,000/- and the complainant has produced all the original documents before this Court. No objection was raised by the accused person at the time of marking of the documents produced by the complainant and all the documents as well as oral evidence for PW-1 proves the case. The onus shifted on the accused but she failed to discharge the onus and is liable to conviction. Ld. Advocate for the complainant has submitted that the complainant has proved the case against the accused and prayed for conviction.

11. After conclusion of argument on the part of the complainant, the learned Advocate for the accused person advanced his argument by submitting that -

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- The complainant has failed to prove his legal entitlement of the claim before this Court and the complaint is totally silent about the same. The complainant has to state the nature of legal liability of the accused towards the complainant before this Court and for which the cheque was issued.

-The complainant has admitted of having many cheques of the accused with him during cross-examination. Those blank security cheques containing the signature of the accused were issued by the accused for the purpose of tenancy and that the contents of the cheque was not written by the accused.

- The complainant has failed to prove his case and the accused is entitled to be acquitted from this case.

:POINTS FOR CONSIDERATION

12. Upon considering the materials on record the following points are noted for discussion to arrive at a definite conclusion:-

1) Whether the accused person had a legal debt and liability to the complainant ?

2) Whether the accused person had issued the cheque in discharge of her legal debts and liability ?

3) Whether the impugned cheque issued by the accused person presented in the Bank within due time and got dishonoured ?

4) Whether a valid demand notice was sent to the accused within one month from the date of knowledge of dishonour of impugned cheque ?

5) Whether the accused had not made the payment within stipulated time period even after receipt of the said demand notice ?

6) Whether the accused person is guilty of the offence under section 138 of Negotiable Instrument Act ?

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DECISION WITH REASONS

All the points are taken up together for discussion for the sake of brevity, convenience and for avoiding unnecessary repetition.

13. Before appreciation of evidence on record, it is apt to voyage through the relevant provisions of law. A proceedings under section 138 of Negotiable Instrument Act is quasi criminal in nature and the proof beyond all reasonable doubt is subject to presumption as laid down in the said Act. The essential ingredients of Section 138 of Negotiable Instruments Act are as follows:

1. Existence of legally enforceable debt or liabilities and issuance of cheque in discharge of such debt or liabilities.
2. Cheque shall be presented for payment within its validity period.
3. The cheque was dishonored on the ground of insufficiency of fund.
4. The holder shall issue notice demanding payment in writing to the drawer within one month from the date of receipt of information of the dishonour of the cheque.
5. The drawer fails to make payment within 15 days of receipt of the notice.

14. Further more the Negotiable Instruments Act, 1881, contains provisions raising presumptions as regards negotiable instruments u/s 118(a) and also u/s 139 whereby it shall be presumed, unless the contrary is proved, that the holder of the 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. Be it mentioned that section 20 of the Act provides that if a person signs and delivers a paper stamped in accordance with the law and either wholly blank or have written thereon an incomplete negotiable instrument, such person 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.

15. It is pertinent to note that section 139 of the Negotiable Instrument Act provides a statutory presumption that the cheque was handed over in respect of

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a debt or other liability. Under section 118 of the Act, every negotiable instrument is presumed to have been drawn and accepted for consideration. In a catena of decisions decided by the Hon'ble Apex Court, it was held that the Court has to presume that a cheque had been issued for a debt or liability. This presumption is rebuttable. When an accused has to rebut the presumption under section 139 of N.I. Act, the standard of proof for doing so is that of 'preponderance of probabilities' and he may rely only upon the evidence adduced by the complainant.

16. In **(2015) 8 SCC 378** the Hon'ble Supreme Court has observed that *"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. This Court has held in its three Judge Bench Judgment in Rangappa vs. Sri Mohan reported in (2010)11 SCC 441 that the presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the court to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Therefore, in the present case, since the cheque as well as the signature has been accepted by the accused, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability"*.

17. In order to substantiate the case of the complainant, the complainant examined himself as P.W-1 on dock and identified the accused person. He has corroborated the facts of his case both by filing affidavit in chief as well as oral testimony. No other witness was examined by the complainant on his behalf. During the examination in chief, the cheque being no. 032655 dated 05/06/2016 amounting Rs. 4,97,000/- drawn on Central Bank of India, Salkia Branch has been marked as Exhibit-1, The deposit slip of the cheque of Oriental Bank of Commerce is marked as Exhibit-2, the Original Return Memo of Oriental Bank of India dated 07/06/2016 marked as Exhibit-3, the Demand Notice dated

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18/06/2016 as Exhibit-4, the Postal Receipt of the Demand Notice marked as Exhibit-5, the Track Consignment Report of postal authority marked as Exhibit-6 and the original AD card is marked as Exhibit-7.

18. During cross-examination he deposed that he is owner of three shops situated in the ground floor of his residential house at 105/2, Girish Ghosh Road. He knew the accused for last forty five years and he did not let out any shop room to any person. He further deposed that he has stated the nature of legal liability in his petition for which the cheque was issued by Renu Gupta. He has failed to state in whose handwriting the cheque was written but it contains the signature of the accused. He further stated that other cases will be lodged against accused and he has many cheques of her with him. The other suggestions put to him is denied by the complainant.

19. On careful perusal of the evidence on record, it transpires that the complainant and the accused have known to each other. The complainant has averred that the cheque was handed over to him for discharging the legal liabilities of the accused in part in course of business. It is not in dispute that the impugned cheque i,e Exhibit-1 belongs to the account of the accused person. It further appears that the impugned cheque was issued by the accused and handed over to the complainant. There is also no denial of signature of the accused on the said impugned cheque. With these admissions, a presumption of the cheque having been issued in discharge of a legally enforceable debt or liability and drawn for consideration arises by virtue of section 118 (a) and section 139 of NI Act.

20. In view of drawing of such presumption in favour of the complainant the burden shifts upon the accused to disprove the case of the complainant by rebutting the presumption raised against her. Now, the burden is upon the shoulder of the accused to rebut such presumption by proving that the impugned cheque was not issued for consideration and she has no debt or legal liability towards complainant. The standard of proof is that of preponderance of probabilities by the accused and if the initial burden is discharged by the accused then the onus shifts to the complainant.

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21. For discharging the burden the accused has not examined any witness on her behalf. The accused has made out a positive case during argument as well as by putting suggestion during cross-examination of the complainant that the impugned cheque is a blank security cheque bearing her signature and handed over to the complainant for the purpose of the tenancy created between the rival parties. The accused has taken the plea of complete innocence at the time of recording her statement under section 313 Cr.PC.

22. If the cheque in question was issued by the accused in favour of the complainant as security cheque for the purpose of tenancy the accused could have produced some evidence to show the same before the Court. There is no evidence at all in the record to show that the accused was ever be a tenant under the complainant at any point of time or there is a tenant landlord relationship subsisting between the waring parties.

23. Ld. Advocate for the defence has further argued that the handwriting of the contents of the cheque is of different person. I would like to mention here that it is no more res integra that to fasten the criminal liability upon the accused person, it is necessary that the entire content of the cheque must be written by the accused person. The signature of the accused is sufficient to raise a statutory presumption in favour of the complainant. Hence, this contention of the Ld. Advocate for the accused is merit-less.

24. Further, the accused has made out her case by giving a suggestion at the time of cross-examination that the complainant took the advantage of blank cheque given to him by the accused containing her signature and put the huge amount and thereby the cheque was dishonoured and this simply implies that the accused has the full knowledge of issuance of cheque to the complainant. Though admittedly there are many cheques of the accused with the complainant but nothing is presented before this Court that the accused ever filed any complaint in regard to misuse of her cheque or of using her by the complainant to manufacture the cheque. The reason of silence is best known to the accused and it remains unexplained before the Court.

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25. The accused had even not given any reply of the demand notice. A mere denial or suggestion is not a good defence to convince the mind of the Court and an act on the part of the accused or at least a step should be taken to raise a probable defence in her favour as a man of ordinary prudence.

26. So far as the defence of non-disclosure of nature of legal liability, I would like to place my reliance on the decision of the Hon'ble Apex Court passed in Criminal Appeal No. 1233-1235 of 2022 wherein the Hon'ble Court has been pleased to observe that *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 the transactions and the source of the fund. However, the High Court has failed to note the presumption U/S 139 of the N.I Act. 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 Hon'ble Court has been pleased to affirm the judgment of the Ld. Session court of convicting the accused.* So, I am of the opinion that non disclosure of nature of liability does not vitiate the case of the complainant.

27. I have further fortified my conclusion from the decision of the Hon'ble Apex Court reported in **(2001) 6 SCC 16** wherein the Hon'ble Court has been pleased to held that *a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.*

28. Being mindful of the substance of the aforementioned legal provisions, it appears that other than raising mere doubt on the ground of non-disclosure of nature of legal liability of the accused towards the complainant the accused have failed to produce any cogent evidence before the Court even by way of cross-examination of the complainant to raise a probable defence in her favour and to rebut the presumption of law under section 139 of NI Act in favour of the

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complainant. Hence, from the above discussed facts it is clear that the accused person had issued the impugned cheque in discharge of her legal debts or liabilities.

29. On perusal of the exhibits, it further appears that the impugned cheque was presented to the bank in due time and was dishonored by the bank due to insufficient fund in the account maintained by the accused and the notice was served upon her. She even had not paid the impugned cheque amount after entering appearance in this case. There is also no argument advanced by the Ld. Advocate for the accused to controvert these facts.

30. On consideration of all the substantive evidences of the prosecution and the defence, the exhibits filed and relied upon, the arguments from both the sides and the citations relied upon it is proved beyond reasonable doubt that

1. The accused had legal debts and liabilities to the complainant.
2. That in discharge of such debts and liabilities the accused had issued one account payee cheque bearing no. 032655 dated 05.06.2016 amounting Rs.4,97,000/- to the complainant.
3. That the said cheque was presented within stipulated time period and got dishonored due to insufficiency of funds.
4. The complainant had given a demand notice to the accused through his Learned Advocate calling her to make payment within 15 days from receipt of notice.
5. That the accused failed to pay within that 15 days thus the cause of action arose from the 16th day of receiving such notice.
6. This complaint has been filed within prescribed statutory limitation period.

31. Thus, the accused has committed an offence u/s 138 of the Negotiable Instruments Act, 1881 and is hereby found guilty of the offence u/s 138 of the Negotiable Instruments Act, 1881 and is liable to be convicted under that section.

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32. On considering the entire facts and on hearing both sides on the point of sentence, I find that the complainant had to file the case against the convict for committing offence u/s 138 of N.I. Act. He has to bear all litigation cost. So far the complainant had to take a long way under the legal recourse to realise the amount, he had to suffer pain with the proceeding of the case in addition to expenses towards litigation cost and deprivation of interest. The conduct of the accused does not entitle her to be released on probation or to entitle her the benefit of section 360 of Cr.P.C. Under such circumstances I find sufficient reasons to award sentence of imprisonment to the convict and he should be directed to pay compensation to the complainant.

33. Hence, it is

ORDERED

that the accused person Renu Gupta is hereby found guilty of committing offence u/s 138 of Negotiable Instruments Act, 1881 and is hereby convicted u/s 255(2) Cr.P.C. and sentenced to suffer S.I. for six months and to pay an amount of Rs. 6,00,000/- (Rupees six lakhs only) as compensation to the complainant in view of section 357(3) Cr.P.C. in default to suffer S.I. for another six months.

The convict is taken into custody after canceling the bail bonds.

The judgment is pronounced in open court in the presence of the complainant and the convict and given under my hand and seal of the Court today.

The convict is made well aware of her right to prefer appeal before the Appellate Court. The convict is also appraised about her right to free legal aid in view of section 12 of the Legal Services Authorities Act. It is pertinent to mention here that the convict do not seek any legal aid at this stage.

The period of detention, already undergone by the convict, during investigation, enquiry or trial of the case shall be set off.

A copy of the judgment be delivered to the convict free of cost.

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The case is thus disposed of on contest on the 23rd day of December, 2022.

Dealing assistant is directed to make necessary entries in the germane registers and Case Information System.

Dictated and Corrected by me.

(Yesmin Ara Khatun)
Judicial Magistrate, 1st Class,
3rd Court, Howrah

(Yesmin Ara Khatun)
Judicial Magistrate, 1st Class
3rd Court, Howrah