KAUKA10002342022

IN THE COURT OF PRL. CIVIL JUDGE AND ADDL. J.M.F.C COURT, SIRSI AT SIRSI, UTTARA KANNADA.

Present: SHRI ABHISHEK RAMACHANDRA JOSHI,
B.A.L., LL.B.
C/c Prl. Civil Judge and I Addl. J.M.F.C.
SIRSI.

CRIMINAL CASE No.74/2022

DATED THIS 03RD DAY OF OCTOBER 2024

Ashok Sheshagiri Shetty,
A/a: 51 years, Occ: Business,
R/o: Ganesha Nagar, Sirsi, U.K. **..........COMPLAINANT**

(Reptd by Shri. S.N.Naik., Adv)

/versus/

Goutam Ambadas Moole,
A/a: 43 years, Occ: Business,
R/o: R.N.S. Road, 3rd cross,
K.H.B. Colony, Sirsi. **.......ACCUSED**

(Reptd by Shri. S.H.Honyal Adv)

Offence complained : U/Sec.138 of Negotiable Instruments Act.

Name of the Complainant : Ashok Sheshagiri Shetty.

Date of recording of evidence : 17.02.2022.

Date of closing of evidence : 07.07.2024.

Opinion of the Judge : Accused found guilty

JUDGMENT

This is a complaint filed by the complainant U/s 200 of Cr.P.C for offence punishable U/s 138 of Negotiable Instrument Act as against the accused and praying to punish the accused for the said offence.

2. The brief facts of the case of the complainant are as hereunder:

The complainant submits that, accused is having acquaintance with the complainant for more than 10-12 years. In the month of August 20221 accused approached the complainant for hand loan of Rs. 6,00,000/- for development of his business. He had assured that, he would repay the loan within one month. The complainant further submitted that, on 02.09.2021 complainant has given above said amount to the accused and accused has given receipt for the same. However, the accused failed to repay the loan as agreed by him. Thereafter, the complainant demanded for the repayment of hand loan and on 01.12.2021 accused issued two cheques for repayment of the loan. The first cheque for Rs. 1,00,000/- was postdated cheque to be encashed on 06.12.2021 and another postdated cheque for Rs. 5,00,000/- to be encashed on 23.12.2021. Against the first cheque seperate proceedings are initiated by the complainant. This case is regarding the second cheque bearing No.5904 dated 23.12.2021 for Rs. 5,00,000/- drawn on Union Bank, Sirsi. When the complainant presented the cheque in question through his banker for encashment, on 23.12.2021, the said cheque was dishonoured for the reason "Account blocked". Later, on 31.12.2021 the complainant through his counsel gave statutory notice to the accused, calling upon the accused to repay the cheque amount within 15 days from date of receipt of that notice. The said notice was served upon the accused on 06.01.2022. The accused neither paid the cheque amount nor issued any reply to the said notice. Hence, the present complaint is filed.

3. After taking cognizance of offence U/s.138 of N.I. Act, and recording the sworn statement of the complainant, summons was issued to the accused. Accused appeared before the court through his counsel and he was enlarged on bail.

4. The substance of accusation was read over to the accused and his plea was recorded. The accused pleaded not guilty and claimed to be tried. In the sworn statement the complainant lead evidence as P.W.1 and Ex.P.1 to P.5 were marked. In view of the ratio laid down by the Hon'ble Apex Court, the sworn statement was treated as chief-examination of complainant. In spite of sufficient opportunity accused has not cross-examined P.W.1. After recording 313 statement of the accused matter was posted for defence evidence. However, in spite of sufficient opportunity accused has not lead his defence evidence. Hence, the matter was posted for arguments.

5. Heard both sides.

6. Therefore, after perusal of available materials in record. Points that would arise for my consideration are as follows:-

1. Whether the complainant proves that the accused towards the discharge of his liability issued cheque bearing No.5904 for Rs. 5,00,000/- dated 23.12.2021 drawn on Union Bank, Sirsi branch, in favour of complainant and on the presentation for encashment, the same was dishonoured for the reason "Account Blocked", then in-spite of issuing demand notice to the accused in compliance with statutory requirement under Negotiable

Instrument Act, accused did not repay the cheque amount and thereby he has committed an offence punishable U/s. 138 of Negotiable Instrument Act?

2. What order or sentence?

7. My answers to the above points are as hereunder:

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

Point No.2: As per final order

for the following:

R E A S O N S

8. Point No.1: I am of the opinion that, I need not repeat the entire case of the complainant here also, since I have already narrated the same at the inception of this judgment.

9. To substantiate his case, the complainant has examined himself as P.W.-1 and got marked Ex.P.1 to 5 documents. In support of his testimony, he has produced the cheque issued by accused and the same is marked as Ex.P.1, signature of the accused on the cheque is marked as Ex.P.1(a), copy of bank memo showing the reason for dishonour of the cheque as **"Account Blocked"** is marked as Ex.P.2, office copy of the demand notice dated: 31.12.2021 is marked as Ex.P.3, track consignment for having issued legal notice and showing that, legal notice was duly served to the accused is marked as Ex.P.4, the receipt issued by accused regarding obtaining loan amount from the complainant is marked as Ex.P.5.

10. In the affidavit filed along with the complaint, the complainant has reiterated his entire case and also about the issuance of cheque towards repayment of legally enforceable debt by the accused. When the testimony of the complainant and supporting documents like Ex.P.1 and 2 are looked into, it prima-facie appears that the accused has issued cheque in discharge of his legally enforceable debt and when the same was presented, it was dishonoured as account blocked. Ex.P.3 is demand notice, which was issued by the complainant to the accused, in compliance with statutory requirement U/s.138 of Negotiable Instrument Act, calling upon the accused to repay the cheque amount. When Ex.P.4 is looked into, it shows that, the demand notice was duly served on the accused. Ex.P.5 is clearly shows that, accused has obtained the hand loan from the complainant.

11. On perusal of the documents relied by the complainant, it goes to show that, statutory requirements of sec. 138 of Negotiable Instrument Act is complied with. Thus, complainant relied on the statutory presumptions enshrined U/s. 118 read with sec. 139 of Negotiable Instrument Act.

12. Section 118 reads as follows:- " That every negotiable instrument was made or drawn for consideration and that, every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration".

13. Further sec. 139 of the Negotiable Instrument Act provides for presumption in favour of a holder. It reads as follows:- "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in sec. 138, for the discharge, in whole or in part, or any debt or other liability.**"**

14. Combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability. However, it is settled principle of law that, the presumption available U/s. 139 of Negotiable Instrument Act can be rebutted by the accused by raising a probable defence but in this case the accused has not made any efforts to rebut the presumption drawn against him by cross-examining P.W.1 or leading his own evidence. Thus, the accused has failed to rebut the presumption that, he had issued the cheque for payment of legally recoverable debt. Accordingly I hold that, the accused has committed an offence punishable U/s 138 of NI Act and I answer point No.1 in the affirmative.

15. **POINT NO.2**:- In view of the above finding it requires to compensate complainant. Therefore in view of the facts and circumstances of the case and considering the year of transaction, I hold that the accused has to pay fine of Rs.5,30,000/- and out of fine amount Rs.5,25,000/- shall be paid to the complainant as compensation U/s 357(3) of Cr.P.C. remaining amount of Rs.5,000/- shall be paid to the state as defraying expenses. Accordingly in light of foregoing discussion and for the reason stated above this court proceeds to pass the following:

O R D E R

In exercise of powers conferred U/s. 255(2) of Cr.P.C, the accused is convicted for the offence punishable U/s. 138 of Negotiable Instruments Act.

Acting under Section 255(2) of Cr.P.C the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act, and he is sentenced to pay fine of Rs. 5,30,000/. In default of payment of aforesaid amount of fine, the accused shall undergo simple imprisonment for a period of six months.

Acting U/s 357(1)(b) of Cr.P.C accused is ordered to pay the fine amount of Rs.5,25,000/- to the complainant as compensation and remaining Rs. 5,000/- to defray the expenses of the state.

Further, it is made clear that in view of proviso to section 421(1) of Cr.P.C, the accused shall not be absolved of his liability to pay compensation amount of Rs. 5,30,000/- awarded, even if he undergoes the default sentence.

The bail bond and surety bond of the accused and surety respectively stand canceled. Office is directed to supply copy of the judgment to the accused free of cost forthwith.

(Dictated to the stenographer, directly on computer, then corrected by me and pronounced in open court on this the 03rd day of October 2024)

Sd/-
(Abhishek Ramachandra Joshi)
II Addl. JMFC, Sirsi.

A N N E X U R E S

I. List of witness examined on behalf of the complainant:-

PW-1 : Ashok Sheshagiri Shetty.

II. List of Witness examined on behalf of the Defence:-

– NIL –

III. List of documents marked on behalf of the complainant:-

Ex.P.1	:	Cheque bearing No.005904.
Ex.P.1(a)	:	Signature of the accused.
Ex.P.2	:	Bank memo dated 24.12.2021.
Ex.P.3	:	Office copy of the demand notice dated 31.12.2021.
Ex.P.4	:	Postal track consignment.
Ex.P.5	:	Receipt issued by the accused regarding the amount received from the complainant.

IV. List of documents marked on behalf of for the Defence:

--NIL--

Digitally signed by ABHISHEK RAMACHANDRA JOSHI
Location: Addl. Civil Judge & II Addl.JMFC., Sirsi