

IN THE COURT OF THE JUDL. MAGISTRAE OF I CLASS:.
SPECIAL MOBILE COURT::ELURU

Present:- Sri Shaik Abdul Shariff,
Judicial Magistrate of I Class,

Dated, this the 03rd day of March, 2017

C.C.NO.501 of 2016

Between:

Tummala Venkata Krishna Rao

---complainant

-Vs -

Smt.Kappala Pushpalatha

.... Accused

This case coming on before me for final hearing on 02/03/2017 in the presence of Sri K Ajay Kumar garu, Advocate for complainant and Sri K Rambabu garu, Advocate for accused, and having stood over consideration till this day, this court delivered the following:

J U D G M E N T

1. As per the complainant the chain of acts unfolded in the following manner.

That the complainant, Sri.Tummala Venkata Krishna Rao states in the complaint that he lent an amount of Rs.4,00,000/- to the accused on 22/11/2014 for bearing family expenses, evidencing the payment, the accused executed promissory note and some time after payment, he persuaded the accused to pay back the amount, on which the accused issued a cheque for a sum of Rs.3,15,000/- on 21/11/2015 and the same was presented in the bank for encashment, however the cheque was returned on the ground that the account of the accused has insufficient funds, whereupon he got issued a legal notice to the accused on 12/03/2016, however the accused did not receive notice nor tendered the payment and thus, offence is made out under section 138 of N I Act.

2. The II Addl. Junior Civil Judge after satisfying that there are grounds to proceed with, taken cognizance of this case for the offence punishable under Sec.138 of N.I. Act and issued summons for appearance of the accused.

3. When the accused put in appearance before the Court and he is supplied with all copies of documents as contemplated u/sec.207 of Cr.P.C.

4. When the accused is examined U/sec.251 Cr.P.C. with regard to offence alleged against him by explaining the accusation leveled against him, for which, he did not plead guilty of the offence punishable under section 138 of N I Act and claimed trial.

5. When the accused is examined under section 313(1)(a) Cr.P.C. by explaining the incriminating material appearing from the evidence of PW.1 , for which, he denied and reported no defence evidence to be adduced.

6. Basing on the above factual score and on the strength of the arguments addressed by both the counsels, the following core point that germen for consideration:

7. **P O I N T S:**

- 1. Whether the complainant established by cogent, convincing and credible proof that the accused owes legally enforceable adjudicated debt or liability covered under Ex.P.1.**
- 2. Whether the modification made in Ex.P.1 promissory note with respect to the change of year alters the legal identity and character of the instruments and such alteration makes the instrument void?**
- 3. Whether the accused dispelled the presumption as envisaged under section 139 of N I Act by evidential standard of proof i.e., preponderance of probabilities.**

8. **P O I N T NO: 1.**

Whether the complainant established by cogent, convincing and credible proof that the accused owes legally enforceable adjudicated debt or liability covered under Ex.P.1.

P.W.1/complainant, Sri Tummala Venkata Krishna Rao, filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the complaint and in order to buttress his contention got himself examined as P.W.1 and examined P.W.2 and Ex.P.1 to Ex.P.7 marked, while the accused did not enter into the witness box nor marked any documents on his behalf. On this evidential backdrop, it is vehemently canvassed by the learned counsel for the complainant, Sri. K Ajay Kumar garu that when the accused was reeling under cash crunches, P.W.1 without any hesitation extended his helping hand to her to ease herself off from the bad financial phase, however the accused has no amount of gratitude in her, made P.W.1 to land in litigation, the financial worthiness of P.W.1 is not a necessary constituent to bring the accused within the fold of section 138 NI Act, P.W.2 who is the one of the attesor of Ex.P.1 succinctly deposed in his proof affidavit the execution of Ex.P.1 by the accused and passing of consideration contemporaneously, the testimonial assertion of P.W.1 and P.W.2 are tested in the cross examination, however the evidence of P.W.1 and P.W.2 is within the zone of credibility, mere denial of execution of promissory note is not a viable proof, the defence raised by the accused that P.W.1 is the yes man of Venkateswara Rao is illusory and cryptic, the sole essence of section 118 of NI Act is that presumption is not a proof by itself, however in the absence of rebuttal, the presumption gets activated, therefore holding the issue in favor of the complainant is wholly sustainable in law.

9. The learned counsel for the accused, Sri.K.Rambabu garu, assailed the arguments advanced by the learned counsel for the complainant and canvassed very emphatically that it is the settled canons of criminal jurisprudence that the original onus to establish the existence or non existence of fact-in-issue always lies with the prosecution it will not be shifted, a lesser amount of proof than is usually required may be availed by the accused, consideration is the very ingredient of the negotiability, however in the case on hand, P.W.1 dismally failed to prove by positive and dependable material that Ex.P.1 promissory note is supported by cash consideration, P.W.1, the scribe, the attestors and Venkateswara Rao are one mind gang and brought into existence Ex.P.1 with a sinister design to obtain pecuniary advantage from the accused, therefore, in view of this feeble material, the accused is entitled to seek exculpation from criminal liability.

10. Basing on the law and the facts canvassed, now at this juncture, I think it apt to advert to the synopsisized evidence available on record.

11. **Whether the financial affluence of the complainant is the sine quo none to bring home the offence under section 138 N I Act.**

The main plank of the argument of the learned counsel for the accused is that P.W.1 did not cite any credible proof to show that he has financial worthiness and can part with the amount covered under Ex.P.1 and P.W.1 has indigent status and he categorically admits in the cross examination that he holds white ration card, thus, the case of P.W.1 flaps on that score. In this background, it is imperative to extract the material portion of the deposition of P.W.1. During cross examination P.W.1 affirms that ***“I did not mention either in sworn proof affidavit or in the complainant the avocation of mine, I***

am a white ration card holder". Nonetheless, P.W.1 pleaded his financial potentiality verbally, however, he failed to advance any proof to show that he had amount on the date of alleged Ex.P.1. In the backdrop of this argumentative issue, it is not out of context for me to revisit the judicial pronouncement of our Hon'ble High Court reported in 2010 (1) ALT (CrI.) 347 (A.P.) in between M.Vidyavathi Vs. Chandraiah @ Chandra Babu and another. From the aforesaid exposition of law, it is quite vivid that the financial capacity of P.W.1 is not necessary parameter to bring the accused within the net of 138 N I Act.

12. *Whether the testimony of P.W.2 adds credibility to the efficacy of Ex.P.1 promissory note.*

P.W.1 and P.W.2 cogently spoke in their proof affidavits with respect to the execution of Ex.P.1 by the accused and the payment of consideration simultaneously with the execution.

13. The ordinary presumption is that when the witness testifies the facts on oath before the court, it shall be presumed that he/she is trustworthy, unless he is demonstrated in the cross examination that he/she is unworthy. In spite of cross examination the evidence of P.W.1 and P.W.2 remained positive and is undisturbed in the cross examination. Therefore, this material gives a strong feed back to the court that Ex.P.1 was executed by the accused for consideration.

14. *Whether the suggestion given to P.W.1 during cross examination is a just suggestion without any clarity.*

It is suggested to P.W.1 during cross examination that P.W.1 is the die hard loyalist of one Venkateswa Rao and he is instrumental in lodging the complaint against the accused, on which P.W.1 went in denial mode.

15. The fundamental object of law of evidence is to prove the points in issue and to create some sort of sureness and certainty in the mind of the court with respect to the existence or non existence of the fact in issue. In the case on hand, the suggestion given to P.W.1 does not provide any formidable material to show what transpired in between the accused and Venkateswara Rao. Therefore, I hold that the suggestion given to P.W.1 is just suggestion without any comprehensibility thus, it cannot be accepted.

16. **Now turning to the other collateral issues.**

17. **As to what motivated the accused to put her signature on Ex.P.1 when she did not borrow the amount.**

The accused endeavored to negate and nullify her liability on the ground that Ex.P.1 is fabricated. However, in this circumstance, no ostensible explanation emanated from the side of the accused how her signature appeared on Ex.P.1 promissory note.

18. **Whether the basic facts of the case as presented triggers the legal presumption as engrafted under section 118 of N I Act.**

There is no serious quarrel in the cross examination of P.W.1 with respect to the signatures of the accused on Ex.P.1. In the absence of serious challenge, it can be deduced that Ex.P.1 bears the signature of the accused. Now at this juncture, I think it apt to recapitulate section 118 of NI Act. The presumption contemplated under section 118 of NI Act is one of the law which obliges the court to presume, inter alia that the negotiable instrument was made for consideration and the accused need not adduce evidence on all conceivable modes of consideration for establishing that the promissory note is not supported

by consideration, however he has to establish his case by preponderance of probabilities. It is the case of the accused that Ex.P.1 bears her signature. It is the settled law that the burden on the accused to rebut presumption is not that much severe as in case of prosecution. However, in the case on hand the accused could not rebut the presumption by producing some convincing material.

19. In the final analysis, I am of the unhesitant opinion the promissory note covered under Ex.P.1 is valid and binding.

20. **P O I N T No.2:**

Whether the modification made in Ex.P.1 promissory note with respect to the change of year alters the legal identity and character of the instruments and such alteration makes the instrument void?

On this point, it is emphatically contended by the learned counsel for the accused that the parties to the proceedings cannot be permitted to blow hot and cold, to play fast and loose and approbate and reprobate, the plea propounded by the accused that Ex.P.1 suffers from the evil of material alteration is a plea of despair and not worth of any credence, further it is not the case of the accused that Ex.P.1 is barred by limitation, thus in the teeth of this material, the plea of material alteration does not hold much water.

21. In emphatic refutation, the learned counsel for the accused argued in *extenso* that the probability of the prosecution does not depend upon the improbability or falsity of the defence, it is the settled canons of criminal jurisprudence that the prosecution has to swim or sink on the strength of its own case and the falsity of the defence cannot be called in aid to transfix the accused

for the commission of offence and the case of the prosecution suffers from incurable legal infirmities and Ex.P.1 was substantially and materially altered by P.W.1 without the consent of the drawer i.e., accused and the sole essence of section 87 of N I Act is that, if any alteration is made in the Negotiable instrument without the consent of the party to the instrument, the instrument becomes void and it cannot be enforced, P.W.2 who testifies on behalf of P.W.1 is a dubious witness and he is a stooge at the hands of P.W.1, therefore, the court must be very much circumspect while evaluating the testimony of P.W.2, thus, holding the issue in favour of the accused is wholly sustainable in law.

22. In order to appreciate the rival stances, now at this juncture, I think it just and right to scan the material forth came from the testimony of P.W.1 and the recitals of Ex.P.1.

23. **Whether section 87 of N I Act can be pressed into service as against the case of the prosecution.**

A retaliatory onslaught over the case of the prosecution by the defence is that a over writing occurred in Ex.P.1 with respect to the year which act constitutes material alteration and comes within the mischief of section 87 of N I Act. In this regard the legitimacy of Ex.P.1 is open to question. Now at this juncture, I turn to the material emerged out from the cross examination of P.W.1. P.W.1 faced a searching question in this regard that a over writing occurred in Ex.P.1 with respect to the year i.e., 2014, on which P.W.1 candidly admits.

24. A careful perusal of Ex.P.1 makes it manifest that the scribe of Ex.P.1 written figure “4” twice or thrice. It appears to me that this has happened due to in-advertence or accidental slip. Further, it is not the case of the accused that “1” is altered as “4” nor it is his case that Ex.P.1 is barred by time. Therefore, in

the light of this material, I hold that Ex.P.1 is doesn't suffer from the vice of material alteration.

25. P O I N T NO.3:

Whether the accused rebutted the presumption as contemplated under section 139 of N I Act by preponderance of probabilities.

On this point, the learned counsel for the complainant canvassed the arguments with vehemence that when once the signature on the cheque is admitted by the accused, in such a case the presumption as envisaged under section 139 of N I Act comes into operation and mitigates the burden lies on the complainant, thus, the onus of proof gets shifted from prosecution to the accused, it is for the accused to place such material in the form of oral and documentary evidence which is adequate to neutralize or dislodge the presumption, it suffices, if the accused proves by preponderance of probabilities and she need not prove to the hilt, the accused could not discharge the burden of proof, thus, the presumption will haunt the accused, the defence raised by the accused is cryptic and it falls within the realm of hypothesis, in view of this material, it can safely be said that the accused could not rebut the presumption by preponderance of probabilities.

26. The learned counsel for the accused resisted the arguments advanced by the learned counsel for the complainant and contends emphatically that the presumption contemplated under section 139 of N I Act makes only a *prime* case in favor of the complainant and it is not a conclusive proof, Venkateswara Rao is a fake person and he played gigantic fraud against the accused with a sinister design to obtain monitory advantage, therefore in the light of the emerging circumstances, it cannot be said at any stretch of reasoning the accused could not rebut the presumption.

27. In order to appreciate the disputative issues, now at this juncture, I think it apt to refer to the material emerged out from the cross examination of P.W.1.

28. As to why the accused maintained delightful silence without getting issued any legal notice to Venkateswara Rao for return of blank promissory notes and blank cheques from him.

It is the case of the accused that Venkateswara Rao is the mischief maker and he got the false case framed through P.W.1 by taking advantage of blank promissory notes and blank cheques. If that be sad scenario, what precluded the accused not to get issued any legal notice for returning of blank pronotes and cheques. This circumstance purports to convey a message that the accused raised a false plea in order to extricate himself from the clutches of law.

29. Section 139 of N I Act enjoins the court to presume that the holder of the cheque received it for the discharge of any debt or liability.

30. In view of the above analysis and the statutory scheme laid down in section 139 of N I Act, I conclude and hold that the accused could not discharge the burden as per the standard of proof i.e., proof by preponderance of probabilities and thus, the presumption will chase him without leaving.

31. In view of the aforementioned reasons, the complaint deserves to succeed.

32. In the result, the accused is found guilty for the offence punishable under section 138 NI Act and he is convicted under section 255(2) Cr.P.C.

Prepared on the computer to my dictation typed by Personal Assistant and after correction and pronounced by me in open Court on this the 03rd day of March, 2017.

JUDICIAL MAGISTRATRE OF I CLASS,
SPECIAL MOBILE COURT, ELURU.

33. When the accused is questioned about the sentence which is proposed to be imposed on which the accused states that she has children and they are prosecuting education and so informing she prays the court to take a lenient view.

34. In view of the aforementioned circumstances this court is constrained to take lenient view.

35. The accused is sentenced to undergo Simple Imprisonment for a period of one year (1 year) and shall also to pay a fine of Rs.5,000/- (Rupees five thousand only), in default of payment of fine amount, the accused shall undergo Simple Imprisonment for a period of three months for the offence punishable U/sec.138 N.I. Act. Remand period of accused, if any, shall be set off under section 428 Cr.P.C. The accused is appraised about his right to prefer an appeal against calendar and judgment.

JUDL. MAGISTRATRE OF I CLASS,
SPECIAL MOBILE COURT, ELURU.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED:

For Complainant

P.W.1: T V Krishna Rao

P.W.2: N Venkateswara Rao

For Accused

--NIL--

DOCUMENTS MARKED

For Complainant:

Ex.P.1: Promissory note dated 22/11/14

Ex.P.2: Cheque dated 21/11/2015

Ex.P.3: Cheque return memo dtd.15/02/2016

Ex.P.4: Counter foil of bank of India dt.12/02/2016

Ex.P.5: Office copy of legal notice dt. 12/03/2016

Ex.P.6: Postal receipt

Ex.P.7: Refused legal notice

For Accused:

--NIL--

J.F.C.M. (Spl. Mobile),Eluru.

CALANDAR & JUDGMENT
WEST GODAVARI DISTRICT

CALENDAR AND JUDGMENT IN C.C.NO: 501 of 2016 ON THE FILE OF
JUDICIAL MAGISTRATE OF I CLASS, SPECIAL MOBILE COURT:: W.G.,ELURU

Date of						
Offence	Complaint or report	Apprehension of accused	Release on bail	Commencement of trial	Closure of trial	Sentence of Order
21/11/15	18/04/16	09/11/16	---	30/12/16	02/03/17	03/03/17

Explanation for delay: Received by transfer for this court on 02/09/2016 from
II Additional Judicial Magistrate of I Class, Eluru.

Cr.NO : --

Complainant :

Tummala Venkata Krishna Rao, S/o Pasupathi Rao, Hindu, Male, Aged 55 years,
R/o D.No.20B-7-1/1, Beside Railway Track, Balusuvari Street, 43rd Division, Eluru.

NAME OF THE ACCUSED:

Smt. Kappala Pushpalatha, W/o Srikanth, Hindu, Female, Aged 35 years,
R/o D.No.6C-6-1, Tammavari Street, Yelakayala Sandu, Southern Street, Eluru.

Finding: Found Guilty

Result: In the result, accused found guilty for the offence punishable under
Sec.138 N I Act and accused is convicted under Sec. 255(2) Cr.P.C.

The accused is sentenced to undergo Simple Imprisonment for a period of one year (1 year) and shall also to pay a fine of Rs.5,000/- (Rupees five thousand only), in default of payment of fine amount, the accused shall undergo Simple Imprisonment for a period of three months for the offence punishable U/sec.138 N.I. Act. Remand period of accused, if any, shall be set off under section 428 Cr.P.C. The accused is appraised about his right to prefer an appeal against calendar and judgment.

Seal.

JUDICIAL MAGISTRATE OF I CLASS,
SPECIAL MOBILE COURT, ELURU.

Copy submitted to:

1.The Hon'ble I Addl. District & Sessions Judge, W.G., Eluru.

The accused paid the fine amount of Rs.5,000/- on 03/03/2017.