KABC0A0009882022

IN THE COURT OF THE LXXII ADDL. CITY CIVIL & SESSIONS JUDGE AT MAYO HALL BENGALURU, (CCH-73)

Present:
Sri. P. G Chaluva Murthy,
M. A. L.L.M
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 11th day of January 2024

Crl. Appeal. No.25032/2022

Appellant/ Accused:-	***Mrs. Shailaja R,*** *W/o Sathish R,* *Aged about 48 years,* *Residing at No.59/2* *Pillion Nursery,* *Siddapura,* *Jayanagara 1st Block,* *Bengaluru-560 011.* ***for Soorya*** *Rep. by its Proprietor,* *Mrs. Shailaja R,* *W/o Sathish R,* *Aged about 48 years,*

Residing at No.59/2,
Pillion Nursery,
Siddapura,
Jayanagara 1st Block,
Bengaluru-560 011.

[By Sri. V.T -Adv]

V/s

Respondent/ Complainant: ***M/s Reddy's Chits Private Limited,***
Registered office at No.85,
South End Road, Basavanagudi,
Bengaluru-560 004.
Represented by its
Managing Director/Forman,
Sri. Rajeev Reddy.V

[By Sri. V.R.T - Adv]

JUDGMENT

This appeal is by the accused before the Trial Court, who suffered the judgment of conviction for the offence punishable U/Sec.138 of NI Act passed by XV Addl. Small Causes Judge & XXIII ACMM, Mayohall Unit, Bengaluru, in CC.No.59393/2018, dtd. 10.2.2022, challenging the validity of the judgment.

2. For the sake of convenience the parties hereinafter will be referred to with their ranking assigned before the trial court.

*3. **The facts of the case:-***

The Complainant initiated the proceedings against the Accused for the offence punishable under Section 138 of Negotiable Instruments Act on the ground that the Complainant Company is a reputed chits company registered under the Companies Act 1956 and the Accused has subscribed the chit bearing No.R2W5-45 in his company for a chit value of Rs.5,00,000/- payable at Rs.10,000/- for 50 months. The Accused participated in the chit auction held on 15.12.2016, she was declared as the prize bidder in the said auction and received the prize money of Rs.3,00,000/-, after deducting the bid amount and standard deduction on 15.12.2016. on the said date, the Accused had executed an On Demand Promissory Notice, Surety Form, Guarantee Bond and other relevant documents in favour of the Complainant Company for the amount received by the Accused.

4. The further case of the Complainant is that the Accused after receiving the prize amount was not regular in payment of the chit installments. The Accused has paid only R.1,67,546/- as against Rs.5,00,000/- as per the Chit Agreement. Therefore, the Complainant was forced to issue Legal Notice on 23.6.2018 to Accused. At that time, the Accused issued a Cheque bearing No.000389 for Rs.2,50,000/- dtd: 17.7.2018 in favour of the Complainant Company drawn on ICICI Bank, Jayanagara Branch and on its presentation, the Cheque came to be dishonoured for want of sufficient funds in the account of the Accused. Inspite of Demand Notice on 21.7.2018, the Accused failed to pay the amount outstanding towards the Cheque and thereby the accused committed an offence punishable U/Sec.138 of NI Act. Thereafter the Complainant approached the trial court for appropriate legal action against the accused.

5. Pursuant to summons the Accused entered appearance through his Counsel before the Trial Court. The substance of the accusation was read over and explained to the Accused in the language *known to him. The Accused pleaded not guilty and claimed to be tried. The Complainant got himself examined as PW1 and got marked 14 documents and closed his side. The Accused got herself examined as DW.1 and no documents are marked on his behalf.*

6. The trial court after hearing the counsel for both the parties, convicted the Accused for the offence punishable U/Sec.138 of NI Act vide Judgment dtd. 10.2.2022.

7. Feeling aggrieved by the said judgment of conviction, the Accused is in appeal on the following grounds.

1. *The Learned Magistrate has committed grave error in law in taking cognizance of the offence and as such the conviction is bad in law.*

2. *The impugned judgment and sentence passed by the Court below is against law and all probabilities of the case. Hence, the impugned judgment and sentence is liable to be set aside.*

3. *The Court below had been misdirected by the Respondent and came to the wrong conclusion that the Appellant has*

committed an offence punishable under Section 138 of the Negotiable Instruments Act.

4. *The Appellant further submits that, the order of conviction is not maintainable as per Ex.P.1.*

5. *The burden of proof was not proved by the Respondent as per Ex.P.12.*

6. *The Appellant further submits that, the order of conviction is not maintainable as per Ex.P.13.*

7. *The Court below had not given sufficient opportunity to the Appellant to establish her defence and the judgment passed by the Learned Magistrate is one sided one.*

8. *The impugned order passed by the Learned Magistrate is nothing but one sided order and the defense of the Appellant was not considered at all.*

9. *There are number of discrepancies and contrary statements made by the Respondent in the Court below and the Trial Court without given any proper reasons convicted the Accused which against to law and all probabilities of the case.*

10. There are no legally enforceable debt and as such the question of conviction under Section 138 of Negotiable Instruments Act does not arise. The Learned Magistrate has come to a wrong conclusion that the Cheque was issued to discharge the legally enforceable debt and wrongly convicted the Accused.

11. The Learned Magistrate erred in law in accepting and acting upon the evidence of PW.1 which is being inadmissible.

12. Under the above grounds the Appellant sought for acquittal by allowing the appeal.

8. Pursuant to the notice, the Respondent entered appearance through his counsel. I secured the records from the Trial Court.

9. Heard the Counsel for both parties. The Learned Counsel for the Respondent filed written arguments. Perused the evidence, documents on record and also impugned Judgment of conviction passed by the Trial Court.

10. On re-appreciation of the evidence, documents on record, the following points would emerge for the consideration of this court.

1. ***Whether the Appellant proves that the cheque in question was not issued towards any legally recoverable debt?***

2. ***Whether the Judgment of conviction passed by the Trial Court calls for interference by the hands of this court?***

3. ***What Order?***

11. My finding on the above points are as under:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

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

R E A S O N S

12. ***POINT NOS. 1 and 2:***-

Since the above two points are interlinked, in order to avoid repetition of facts the above points have been taken up together for consideration.

13. The Learned Counsel for the Appellant during the course of arguments attacked the case of *the Complainant on the authority of the PW.1 to depose before the Court. According to the Learned Counsel, the PW.1 had no proper authority to prosecute the case before the Trial Court, since the document at Ex.P.1 produced by the Complainant do not indicate the number of Directors of the Company and there is no proper resolution passed by the Company to appoint PW.1 to prosecute the case. The Learned Counsel also submitted that the Accused has been able to rebut the presumption available in favour of the Complainant by raising probable defense. The Cheque in question was not issued as security at the time of becoming member of chit business with the Complainant and even after payment of entire chit amount the Complainant not chosen to return the Cheque and misused the same. Therefore, as on the date of presentation of the Cheque there was no legally enforceable debt.*

14. Per contra, the Learned Counsel for the Respondent tried to defend the judgment of the Trial Court contending that the Accused admitted the transaction between the parties and admittedly the Accused had taken price amount of Rs.5,00,000/-

out of which only a part amount was paid and for the remaining amount the Cheque in question was issued by the Accused for Rs.2,50,000/- and therefore, the Trial Court has justified in convicting the Accused. None of the grounds urged by the Appellant are tenable and there is no reasonable to interfere with the judgment of conviction passed by the Trial Court. Therefore, the Learned Counsel for the Respondent sought for confirmation of the judgment of the Trial Court in his written arguments.

15. Before appreciating the arguments canvassed by the Counsels for both the parties and before re-appreciating the evidence on record, it is necessary to refer the important rulings of the Hon'ble Apex Court as to the presumption available in favour of the Complainant U/Sec.118(A) and 139 of NI Act and the manner of rebuttal of the presumption by the Accused by raising probable defense. In a ruling ***reported in 2019 (3) KCCR 2473(SC) (Basalingappa V/s Mudibasappa),*** *the Hon'ble Apex Court, at Para 23 was pleased to observe as follows:*

23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the Complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Sec.139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

16. In one more ruling ***of the Hon'ble Apex Court reported in AIR 2010 SC 1898 (Rangappa V/s Mohan),*** *it is observed as under:-*

"Existence of legally recoverable debt or liability- The presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused 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. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139, is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled

> *position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the Complainant and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."*

17. Keeping in view the broad principles laid down by the Hon'ble Apex Court, let me reappreciate the evidence and documents on record.

18. At the outset, it is made clear that the Appellant in none of the grounds disputed the compliance of mandatory provisions contemplated under Section 138 of Negotiable Instruments Act before initiating proceedings against the Accused. Even otherwise, the Cheque in question is dtd: 17.7.2018 and the same is dishonoured on 20.7.2018, Demand Notice is issued on 21.7.2018 as per Ex.P.4. Ex.P.6 is the unserved Postal Cover. Ex.P.5 is the Postal Receipt. Ex.P.6(a) is one more unserved Postal Envelope and Ex.P.7 is Postal Receipt. The address mentioned on Ex.P.6 and

Ex.P.6(a) is that of the Accused. The address mentioned at Ex.P.6 is as follows:

Mrs. Shailaja R,
W/o Sathish R,
Aged 45 years,
R/at No.59/2, Pillion Nursery,
Siddapura, Jayanagara, 1st Block,
Bangalore-560 011.

On Ex.P.6(a) the Office Address of the Accused is reflected as :

For Soorya,
By its Proprietor,
Mrs. Shailaja R,
W/o Sathish R,
Aged 45 years,
R/at No.59/2, Pillion Nursery,
Siddapura, Jayanagara, 1st Block,
Bangalore-560 011.

19. It is not the case of the Accused that she was not residing in the said address. Even the above appeal is filed from the very same address by the Accused. Therefore, in the cross-examination the Accused admitted that she was residing in the address mentioned in the cause title in the year 2018. The Demand Notice is issued on 21.7.2018. Therefore, as on the date of issuance of Notice the Accused was residing in the very same address. Even the appeal is filed in the year 2022 form the *very same address. Therefore, it appears that the Accused is not disputing the compliance of mandatory provisions by the Complainant, before initiating the proceedings against the Accused.*

20. Coming to the merits of the case, the issuance of the Cheque is not disputed by the Accused and her signature on the Cheque. Therefore, the initial presumption requires to be drawn in favour of the Complainant under Section 118(A) and 139 of the Negotiable Instruments Act. Now the burden is on the Accused to rebut the presumption by raising probable defense, so as to doubt the very existence of legally enforceable debt. What is the probable defense of the Accused has to be gathered from the Reply Notice, from the evidence of Accused and from the line of cross-examination of PW.1.

21. In order to find out the defence of the Accused the Court has to see the defence taken by the Accused at an earliest point of time. There is a Reply Notice dtd: 7.7.2018.

22. Therefore, the Court has to find out the defense of the Accused from the examination-in-chief *of the Accused. The Accused in her examination-in-chief admitted that she knew the Complainant and she had a chit transaction with the Complainant. Of course, the Accused has stated that the Complainant by arriving at house had obtained signature on the blank documents and also obtained blank Cheques from the Accused. It is also her evidence that every month the Complainant was collecting Rs.20,000/- from the Accused. The witness admitted that chit price money was for Rs.5,00,000/- and according to the witness she had taken Rs.3,00,000/- from the Complainant and the remaining Rs.2,00,000/- was not paid by the Complainant. It is also her evidence that no receipt was issued by the Complainant for having received the chit amount every month. Only after arrival of Police to their house, she came to know about the filing of the Complainant by the Complainant. From the examination-in-chief of Accused, it could be gathered that the Accused is not disputing the transaction between the parties. The Accused admitted that she had chit transaction with the Complainant and received Rs.3,00,000/- as price money out of Rs.5,00,000/- and she has paid*

Rs.20,000/- every month and she has repaid the entire amount to the Complainant.

23. Coming to the cross-examination of PW.1, similar suggestion could be found in the cross-examination of PW.1. From the line of cross-examination it could be gathered that the Learned Counsel for the Accused concentrated mainly on the manner of chit business and not disputed that the Accused was member of the chit business and it is also not disputed that she has taken chit price money from the Complainant. In a marathon cross-examination it is only suggested to the PW.1 that without authority and in violation of the licence the Plaintiff was running the chit business etc. All these suggestions were denied by the PW.1. No where it is suggested to the PW.1 that the Accused was not the member of the chit business or she had repaid the entire price money to the Complainant. At Page 13, Para 1, there is a suggestion that the Complainant was running a chit business illegally and he misused the Cheque which was issued as security and filed a false complaint against the Accused. The said suggestion is denied by the PW.1.

24. In the cross-examination, the Accused in unambiguous terms admitted that Ex.P.2 Cheque belongs to her account and she also admits her signature on Ex.P.2. Of course, the witness stated that the contents are written in the handwriting of the Accused. The Complainant produced several documents to establish that the Accused was the member of the Complainant business with the Complainant. Ex.P.7 is the Promissory Notice executed by both Accused and her husband. The Accused is reflected against prized subscriber and her husband is reflected against guarantor name. Ex.P.8 is the Chit Agreement entered into between the Complainant and the Accused. Ex.P.9 is the Agreement of Guarantor executed by the husband of the Accused and signatures of the Accused and her husband are found on Ex.P.9. Ex.P.10 is also Surety Agreement between the parties and it is also containing the signatures of both Accused and her husband. Ex.P.11 is the Cash/ Bank Voucher for having received Rs.3,00,000/- by the Accused on 16.11.2016. It contains the signature of the Accused.

Ex.P.13 is the licence issued by the Assistant Registrar in favour of the Complainant to run the chit business. Ex.P.14 is the Reply Notice issued by the Accused to the Demand Notice of the Complainant. Through out the Reply Notice the Accused only denied the averments made in the Demand Notice and nowhere pleaded that she had taken chit prize money of Rs.3,00,000/-. Except denying the Demand Notice averments in toto, no specific defense has been taken by the Accused in the Reply Notice.

25. In fact, at Para No.4, Page-5 of the cross-examination the Accused in unequivocal terms admitted her signature on Ex.P.8 to Ex.P.10 which are the Chit Agreement and the receipts for having received Rs.3,00,000/- from the Complainant. When it was suggested to the witness that the Complainant has issued notice before filing the Complainant, though the witness stated that she was unable to remember the same, but in the further cross, she admitted that she had replied to the said notice as per Ex.P.14. When it was questioned as to how much amount was paid by the Accused and her husband towards total chit amount of Rs.5,00,000/-, the *witness answered that there is no balance to be paid by the Accused and she is not in a position to say how much amount was paid by her. When it was suggested that chit was registered agreement, she put the signature after knowing the contents, the witness stated that she was not aware anything and her husband knowing the same. For obvious reasons, the witness stated that she was not aware whether the prize money of Rs.3,00,000/- was received by her or not. When it was suggested that the prize money of Rs.3,00,000/- was paid to her through Cheque, once again the witness pleaded ignorance, without denying the same specifically. Ex.P.11 Bank Voucher indicate that out of total bid amount of Rs.5,00,000/- in the auction held on 16.11.2016, the Accused being the highest bidder had taken Rs.3,00,000/- from the Complainant. Now for the reasons best known to her, pleaded ignorance regarding the same. The remaining cross-examination are only stock suggestions which have been denied by the PW.1.*

26. From the evidence of DW.1 coupled with Ex.P.7 to Ex.P.11 it could be seen that the Accused *was a member of the chit business with the Complainant and she had taken Rs.3,00,000/- from the Complainant. Now the burden was on the Accused to establish that she had in fact repaid the entire chit amount in terms of the agreement with the Complainant. The Accused produced no material worth its name to substantiate her contention that she had repaid the chit prize money to the Complainant except contending that the Cheque in question was issued as security for the prize amount, no other document is produced by the Accused for having repaid the prize money to the Complainant.*

*27. At this stage, it is necessary to refer a ruling of the Hon'ble Apex Court reported in **(2019) 4 SCC 197 (Beer Singh V/s Mukesh Kumar),** wherein it is categorically observed thus:-*

> *"37. A meaningful reading of the provisions of the Negotiable Instrument Act including, in particular, Secs.20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to a payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of liability. It is immaterial that the cheque may have been*

> *filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Sec.138 of NI Act would be attracted."*
>
> *38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque."*

28. The principle laid down in the aforesaid ruling is squarely applicable to the facts of this case. As stated above, the Accused is not disputing the issuance of Cheque in favour of the Complainant and her signature on the Cheque. Though the Accused has stated that the Cheque was issued as security, the Complainant was at liberty to fill up the Cheque and encash the same and it is presumed that the Cheque in question was issued towards the legally enforceable debt.

29. Therefore, the burden was heavy on the Accused to rebut the presumption by raising probable defense. The defense raised by the Accused that the Cheque which was issued as security has been *misused by the Complainant is not all probable and acceptable.*

30. It is significant to note that even after issuance of notice, no action has been taken by the Accused against the Complainant for the alleged misuse of the Cheque by the Complainant. In the absence of any material for having repaid the amount to the Complainant, the Accused has failed to rebut the presumption available in favour of the Complainant by raising probable defense, so as to doubt the genuineness of the legally enforceable debt as on the date of presentation of the Cheque.

31. The main limb of the arguments of the Learned Counsel for the Appellant is that the PW.1 had no authority to depose before this Court and the Learned Counsel has relied on 05 following rulings of the Hon'ble Apex Court and the Hon'ble High Court of Karnataka:

1) ***2009 (1) Bankmann 18 Annasaheb Chougule Urban Co-Operative Bank Ltd., V/s Narayan Pandurang Korgaonkar.***

2) ***2005 AIR SCW 2663 Shubh Shanti Services Ltd., V/s Manjula S. Agarwalla & Ors.***

3) (2005) 1 SCC 212 Dale & Carrington Invt. (P) Ltd., & An., V/s P.K. Prathapan & Ors.

4) 2017 0 Supreme (Mad) 634 Thiraviyam V/s Thangamariyappan.

5) ILR 2004 KAR 2938 Shashi Prakash V/s B. Krishna Murthy.

32. In fact the Trial Court has considered all these judgments. On going through the rulings referred to by the Accused/ Appellant, this Court is of the opinion that on facts the said rulings are not at all applicable for the reason that the Complainant produced Authorization Letter at Ex.P.1 dtd: 5.6.2018 issued by Reddy Chits Pvt., Ltd., and the same is signed by one of the Directors by name Suma Reddy. Ex.P.1 is accompanied by the minutes of the meeting of the Board of Directors of the Complainant where it is resolved that the PW.1 being the Managing Director was authorized to take any action to file suits etc. The same is also signed by one of the Directors by name Suma Reddy. Therefore, the Appellant cannot be permitted to contend that there is no proper authorization to PW.1 to file the

Complainant and prosecute the same. I am in respectful agreement with the principles laid down by the Hon'ble Courts referred to by the Learned Counsel for the Appellant. On facts the principle laid down by the Hon'ble Courts are not applicable. In the case on hand, as aforesaid the Complainant has produced the Authorization Letter coupled with Board Resolution. Therefore, the PW.1 was having every authority to initiate proceedings against the Accused and to prosecute the private complaint before the Court. Therefore, the contention of the Learned Counsel for the Appellant that PW.1 had no proper authority holds no water.

33. Thus looking from any angle, the Accused has failed to rebut the presumption by raising probable defense so as to doubt the very existence of legally enforceable debt, even on the documents produced by the Complainant. In the marathon cross-examination of PW.1 has not a word palatable to the Accused was elicited except usual stock suggestions which are denied by the PW.1. mere suggestions in the cross-examination do not par take the character of legal evidence. The Complainant was having *license to run the chit business and the Accused admitted that she was the member of the chit business and she availed amount of Rs.3,00,000/- from the Complainant which is evident from Ex.P.7 to Ex.P.11. Therefore, the Accused is estopped from questioning the right of the Complainant to run the chit business and the manner of running business by the Complainant.*

34. In so far as quantum of fine imposed by the Trial Court is concerned, the same is not questioned by the Appellant in the appeal memo. However, the Trial Court considered the duration of litigation, imposed fine of Rs.3,00,000/-, as the transaction was 4 ½ years old. Therefore, awarding interest for 4 ½ years, the Trial Court imposed fine of Rs.3,00,000/- as against the Cheque amount of Rs.2,50,000/-. Therefore, there I no reason to interfere with the quantum of fine imposed by the Trial Court without there being any challenged to the same by the Appellant.

35. Thus, looking from any angle, the Accused failed to establish any probable defence even on the *materials produced by the Complainant. Having regard to the facts and circumstances of the case, the Accused failed to substantiate his defence by producing cogent evidence before this court. The Trial Court by appreciating the evidence and documents in a proper perspective and while referring to the rulings of Hon'ble Apex Court has rightly convicted the Accused for the offence punishable U/Sec.138 of NI Act. In the absence of any perversity or capriciousness while convicting the Accused, there is no reason to interfere with the Judgment of the trial court. Therefore no grounds made out by the Accused to interfere with the Judgment of conviction passed by the trial court. Hence,* ***Point Nos.1 and 2 are answered in the Negative.***

36. ***Point No.3:***

In view of the findings on the above points the appeal filed by the Appellant deserves to be dismissed. Accordingly, I proceed to pass the following:-

ORDER

The appeal filed by the Appellant U/Sec.374 (3) of Cr.PC is hereby dismissed with costs.

The Judgment of conviction passed by the Learned XV Addl. Small Causes Judge & XXIII ACMM, Mayohall Unit, Bengaluru, in CC No.59393/2018, dtd. 10.2.2022, is hereby confirmed.

Send back the records with a copy of this Judgment to the Trial Court.

(Dictated to the Stenographer, typed by her, corrected and then pronounced by me, in the open court on this the ***11th day of January 2024.****)*

P G CHALUVA MURTHY
Digitally signed by P G CHALUVA MURTHY
Date: 2024.01.22 16:22:26 +0530

[P. G Chaluva Murthy]
LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73)