



FORM NO.72
DISTRICT OF GUNTUR
CALENDAR CASES TRIED BY THE V ADDL. JUNIOR CIVIL JUDGE, GUNTUR
Judgment in Calendar Case No.423/2017
Nature of offence U/Sec.138 of NI Act
Date of Judgment : 11.06.2021

Date of Offence	Report	For Apprehension of the accused	Release on bail	Commencement of trial	Close of trial	Sentence or order
12.06.17	12.07.17	25.01.18	--	26.02.2020	15.02.2021	11.06.2021

Explanation for delay:

The delay is due to non appearance of accused and non production of witnesses.

Complainant

: Mamidala Murali Krishna, son of Perumallaiah, aged 49 years, R/o D.No.7-16-732/5, 7/7th lane, Srinagar, Guntur.

Accused

: Dulipalla Maha Lakshmi, wife of Venkateswara Rao, Aged 49 years, R/o Flat NO.502, Tirumala Grand, 3/5th lane, Vidya Nagar, Guntur.

Finding

: Guilty

Sentence

: Accused is found guilty for the offence U/Sec.138 r/w. 142 of N.I Act and she is Convicted U/Sec.255(2) of Cr.P.C for the same.

The accused is questioned about quantum of sentence for the offence punishable u/sec.138 r/w.142 of NI Act for which she pleaded as follows

She is a widow aged about 60 years and senior citizen. Her husband was expired recently due to COVID-19 and she is suffering with BP and old age ailments. She also affected with COVID-19 disease, therefore, prayed the court to show mercy upon her.

In the facts and circumstances of the case, I feel that it is not a fit case to invoke provisions of Probation of Offenders Act or Section 360 Cr.P.C. No satisfactory evidence is placed by the complainant to award compensation. Hence, no compensation ordered.

Considering the facts and circumstances of the case and also the above submissions of the accused as she issued cheque to the complainant and failed to discharge the same debt I am not inclined to take any lenient view. But this court feels that following sentence would meet the ends of justice as imposing fine is not sufficient.

In the result the accused is sentenced to undergo Simple imprisonment for a period of **SIX MONTHS** and ordered to pay fine of Rs.5,000/- (Rupees Five Thousand only) for the offence punishable u/sec.138 r/w.142 of NI Act, in default of payment of fine amount she shall undergo simple imprisonment for a period of **ONE month**. No remand period is undergone by accused for passing an order under Sec. 428 of Cr.P.C.

Appraisal of right to prefer appeal: Convict/ Accused is appraised of her right to prefer appeal against the judgment of this court. When questioned with regard to means to engage the counsel at appellate stage, she submitted she has means.

Property order:- No order as to property as required under Rule 227 of Cr.R.P is passed as no property marked.

Sd/-BRR
V ADDL. JUNIOR CIVIL JUDGE
GUNTUR.

Note:

Fine amount of Rs.5,000/- paid as per orders in Cr.M.P.No.361/2021 period of suspension is extended till 09.07.2021.

Copy submitted to :

The Hon'ble Chief Judicial Magistrate, Guntur.

TRUE COPY
B. R.
VAJCJ
GUNTUR

IN THE COURT OF THE V ADDITIONAL JUNIOR CIVIL JUDGE, GUNTUR.

PRESENT:: **SMT. B.RADHA RANI,**

V ADDITIONAL JUNIOR CIVIL JUDGE, GUNTUR .

Friday, the 11th day of June, 2021.

Calendar Case No.423/2017

Between:

Mariudala Murali Krishna, son of Perumallaiah, aged 49 years,
R/o.D.No.7-16-732/5, 7/7th lane, Srinagar, Guntur. ...Complainant

And

Dulipalla Maha Lakshmi, wife of Venkateswara Rao,
Aged 49 years, R/o Flat NO.502, Tirumala Grand,
3/5th lane, Vidya Nagar, Guntur. .. Accused.

This case coming till this day for final hearing before me through Blue jeans in the presence Sri Yarlagadda Ravi, learned counsel for the Complainant and Sri Ch. Nageswara Rao, learned Advocate for accused, and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

1. NATURE OF OFFENCE:- This is a private complaint filed U/Sec.190 and 200 of Code of Criminal Procedure (in short Cr.P.C) by the complainant against accused for the offence U/Sec. 138 r/w 142 of Negotiable Instruments Act, 1882 (In short N.I.Act) which is summons procedure.

2. THE COMPLAINT IN BRIEF AS FOLLOWS:

a) The complainant contended that accused borrowed an amount of Rs.5 lakhs on 20.03.2016 from the complainant for the purpose of her family expenses and executed a promissory note on even date in favour of the complainant agreeing to repay the same with interest @ 24% p.a. either to the complainant or his order on demand.

b) After repeated demands of complainant, the accused issued cheque bearing No.094501 dt.12.06.2017 for of Rs.5,00,000/- drawn at State Bank of India, Commercial branch, Kannavarithota, Guntur towards part payment of the debt due under pronote.

c) The complainant in order to encash the cheque amount, presented the said cheque in his account at Andhra Bank, Srinagar colony branch, Guntur and the same was dishonoured by the drawee bank for the reason that "funds Insufficient". Hence, the complainant received the dishonour cheque through cheque return memo of the drawee bank dt.14.06.2017.

d) For which, the complainant issued legal notice on 16.06.2017 with acknowledgment to the accused demanding payment of debt within 15 days from the date of receipt of notice and the same was received by her on 21.06.2017 and kept quiet. As such the complainant constrained to file complaint against the accused for the offence u/sec.138 r/w.142 of NI Act private complaint which is within the jurisdiction of Arundelpet Police Station.

3. **COGNIZANCE** :- After perusing the record, my learned predecessors cognizance for the offence U/sec. 138 r/w.142 of NI Act, 1881 against accused and issued summons to her by assigning case number as in CC.No.423/2017.

4. **COMPLIANCE OF PROCEDURAL REQUIREMENTS** :- After recording the complainant statement, complaint was taken on file u/sec.138 r/w.142 of NI Act, 1881. The accused after receipt of summons appeared before this court and copies furnished to her. She was examined u/sec.251 Cr.P.C. by explaining the allegations mentioned in the complaint and read over the same in Telugu for which she was denied the same and claimed to be tried.

Consent memo filed to record the evidence of PW.1 and D.W.1 physically in open court by both learned counsels for both parties.

5. **Trail:-** On behalf of the complainant, the complainant himself got examined as P.W.1 besides exhibiting Exs.P.1 to 6 i.e., Ex.P.1 - promissory note dt.20.03.2016, Ex.P.2 - Cheque bearing No.094501 dt.12.06.2017, Ex.P.3 - cheque return memo dt.14.06.2017, Ex.P.4- office copy of Legal notice dt.16.06.2017, Ex.P.5- postal receipt dt.21.06.2017 and Ex.P.6-Certified copy of the decree in O.S.No.305/2017 on the file of I Addl. Senior civil Judge, Guntur dt.12.12.2018 on his behalf.

Then accused herself examined as D.W1. No documentary evidence adduced by the accused.

6. **Sec.313 (1)(b) of Cr.P.C examination** :- Upon closing of the evidence the accused was examined u/sec.313 Cr.P.C. calling upon her, to explain for the incriminating evidence leveled against her from the evidence of PW.1 and the same were read over and explained to her in Telugu for which she denied the same and reported defence evidence.

7. Heard on both sides. Perused the material on record.

8. Now the point for determination is:

Whether the complainant established the essential ingredients of u/sec.138 r/w.142 of NI Act, 1881 beyond reasonable doubt to the satisfaction of this Court?

9. In order to establish the offence u/sec.138 of NI Act, as held by our Hon'ble Supreme court in case of *M/s Kusum Ignots & Alloys Ltd. Vs M/s Pennar Peterson Securities Ltd reported in 2000(2) SCC 745* the

following requirements are necessary to constitute an offence punishable u/sec.138 of NI Act.

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the Cr. Appeal No. : 28/15 Ajay Singhal v. Smt. Meena Tandon Page 7/24 payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

1. Now let us see for the aforesaid requirements have been fulfilled in the present case. To prove the charges u/sec.138 of NI Act the complainant himself examined as PW1. As per record, the accused herself examined as DW1. It is further undisputed that the cheque in question i.e., Ex.P.2 cheque bearing NO.094501 for a sum of Rs.5 lakhs dt.12.06.2017 drawn at State Bank of India, Commercial branch, Kannavarithota, Guntur by the accused. It is admitted fact that Ex.P.2 is joint account cheque leaf. It is also undisputed fact that name of the accused and her husband was printed on the cheque leaf Ex.P.2. It is further clear from the cheque return memo Ex.P.3 dt.14.06.2017 that the complainant had presented the cheque in question for encashment with his bank Andhra Bank, Sri Nagar colony branch, Guntur and it was dishonoured due to insufficient funds in the bank account of the accused. It is further clear from Ex.P.3 cheque return memo that within 15 days of the return of cheque, a Legal notice under Ex.P4 dt.16.06.2017 was issued and dispatched on same day by the counsel for the complainant for the address of the accused by post demanding for payment of the amount of dishonor of cheque. For proof of service of Legal notice on accused the complainant relied upon Ex.P.5 postal acknowledgment dt.21.06.2017. Having admitted the signature of accused on Ex.P.5 postal acknowledgment during course of cross examination she further denied about receipt of mandatory Legal notice which is not at all tenable. However, during course of cross examination accused herself has admitted that her signature is

available on the postal acknowledgement Ex.P.5. Thus, service of Legal notice upon the accused stands proof. Then, as there is no reply from the accused and she failed to pay the cheque amount the complainant is constrained to file this complaint in written on 12.07.2017 within limitation. It is also clear from the record that accused did not pay the cheque amount neither within 15 days of service of Legal notice nor thereafter. In view of the above evidence of PW1 it is clear from the record that all necessary requirements to constitute an offence u/sec.138 of NI Act have been fulfilled. Then, now only the cheque leaf is whether the accused has issued the cheque in question to the complainant and if so, whether the same was issued against the discharge of aforesaid liability of payment on Ex.P.1 promissory note dt.20.03.2016. Here it is admitted that complainant had filed civil suit against the accused for recovery of promissory note amount basing on Ex.P1 vide O.S.NO.305/2017 on the file of Hon'ble I Addl. Senior Civil Judge, Guntur and same was ended on merits wherein the accused contested therein as defendant. Then, said suit was decreed in favour of the complainant and against the accused. For proof of said civil suit proceedings, the complainant filed Ex.P.6 –certified copy of the said decree before this court.

2. Before going to discussion it is necessary to note the relevant provision hereunder. The claim based under the provisions of Negotiable instrument are exceptional to the general rules of law that burden of proof is always on the prosecution. The burden of proof lies on the complainant beyond all reasonable doubt on other hand, on all preponderances of probabilities the accused can rebut the presumption. There are two specific provisions under Negotiable instruments i.e., Sec.118-A and 139 of NI Act which contemplates that a presumption is attached in regard to each and every negotiable instrument when the same was drawn and issued against due discharge of liability and thus whenever, any claim is made on the basis of negotiable instrument, the presumption has to be drawn in favour of the holder of the cheque (drawee) as per Sec.9 of NI Act. The holder of the cheque is entitled to present the cheque for encashment and in case of dishonor of cheque which is presented for encashment then, he is at liberty to initiate the criminal proceedings under NI Act. The law has to be the burden to rebut the presumption on the accused that cheque was not issued by him against discharge of debt or liability. In case the accused is not able to rebut the presumption and fails to prove his defence, the presumption becomes absolute and it has to be assumed that the cheque was issued by the accused in discharge of debt or liability and consequently, the accused has to be assumed guilty of the offence. Till then, the accused is presumed to be innocent. So unless until the case is proved beyond all reasonable doubt by the complainant, the accused always presumed to be

innocent. The court cannot insist the accused to get into witness box and he may maintain silence.

Sec.118-A and Sec.139 of NI Act reads as follows.

Sec. 118. Presumptions as to negotiable Instruments.—Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Sec.139. 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.

It has been held by our Hon'ble Supreme court in the judgment of **Hiten P.Dalal Vs., Bratindranath Banerjee and others** reported in (2001) 6 SCC page 16

"that the presumption mentioned in the Sec.139 of N.I. Act is a presumption of law and not the presumption of fact and thus, this presumption has to be drawn in favour of the drawee and burden to rebut the presumption with the probable defence is on the accused. The relevant para of the aforesaid case law reads as under:

In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists (Sec.3 of Indian Evidence Act).

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonable, the standard of reasonability being that of the 'prudent man'.

In the judgment of **Rangappa vs., Sri Mohan reported in 2010 (2) ALD CrI 734 SC** wherein his lordships held that

"the presumption u/sec138 of NI Act also includes the existence of legally enforceable debt. In light of these extracts, we are in agreement with the respondent- claimant that the presumption mandated by sec.139 of the Act does indeed include the existence of a legally enforceable debt or liability".

The other relevant judgment is **Bharat Barrel v. Drum Manufacturing reported in AIR 1999 SC 1008** wherein in our Hon'ble Apex court hold that

"the accused has to rebut the presumption and mere denial of passing of consideration is no defence".

The same view is also held in the judgment of In judgment of "K.N. Beena vs., Muniyappan and another reported in AIR 2001 SUPREME COURT 2895.

In view of the law laid down by Hon'ble Supreme Court in the aforesaid cases, the presumption as contemplated under section 139 N.I. Act has to be drawn in favour of the drawee that the cheque in question was issued in discharge of legally enforceable liability.

As already said in the judgment of *Rangappa vs., Sri Mohan* reported in 2010 (2) ALD CrI 734 SC wherein his lordships held that "burden to rebut the presumption is on all preponderance of probabilities but not beyond all reasonable doubt".

In the present case, the accused taken some inconsistent and self contradictory defences to the facts on hand. The defences taken by the accused are as follows.

1. The first defence of accused is that relied Ex.P2 joint account leaf which contains the signature of the accused alone without the signature of another joint account holder i.e., her husband cannot be reliable, then, this complaint is not maintainable.
 2. That second defence of accused is that signature in both promissory note and cheque are forged one.
 3. Third defence is that she is unaware of the complainant.
 4. Forth defence of accused is that due to business ill feelings in between her husband and complainant this false case is filed.
 5. The other defence of accused is that about 5-6 years back the complainant attacked their house hence, she lodged report before Pattabhipuram police station, keeping the same in mind, this false case is foisted though no money is borrowed from him by the accused.
3. To prove the defence of the accused she himself examined as DW1. According to her evidence she is unaware of the complainant. Having taken said stand, she again deposed that when complainant attacked and came upon her house, she lodged a report against the complainant about 5-6 years back before Pattabhipuram Police station hence, this false case is filed. So at one stage her evidence about unaware of the complainant and at another stage lodging of report against the complainant about 5-6 years back before Pattabhipuram police station would contradictory her version and it is nothing but self contradictory evidence. The another inconsistent evidence of DW1 is that her husband and complainant did joint business and they got ill feelings, keeping the same in

mind, this false case is filed. What type of business they did is not deposited by her. On which aspect there was ill feelings between them is also unknown to the court as no such facts are revealed. When and where the disputes arise is also unknown to the court. Filing this case for aspect is true is true due to influence of Venkateswara Reddy this case if filed is uncertain. No two things will happen on same aspect. Here DW1 herself went to extent that she does not know whether cheque leaf Ex.P2 belongs to her and her husband joint account. She never stated in her chief evidence that basing on joint account cheque Ex.P.2 this complaint is not maintainable. But suggestion was posed to PW1 by the learned counsel for accused that "obtaining signature of accused alone under Ex.P.2 cheque is insufficient without signature of another account holder and this complaint is not maintainable".

4. Though such suggestion is posed to PW1, neither it is spoken by the accused DW1 nor any documentary proof is filed in support of said contention.

5. It is manifest from the expression of words used u/sec.138 of NI Act, "such person shall be deemed to have commit an offence" relates to the person who is drawn the cheque in favour of the payee and if the said cheque is returned and obtained in the account of the condition mentioned u/sec.138 of NI Act. Said person alone is liable for punishment but not other except in the contingency imposed u/sec.141 of NI Act. So Sec.138 of NI Act is evident that it is drawer of the cheque who is liable for the punishment or conviction in case cheque issued by him or her is dishonoured. Third party cannot be prosecuted for the offences punishable u/sec.138 o NI Act.

6. From glance at the provision of Sec.138 and 141 of NI Act it is obvious that the act as agreed deemed offence, whenever a cheque drawn by a person of a account maintained by the person is bounced either for insufficient funds or had exceeds arrangement made. It is apparent that the person who is drawn a cheque on account maintained by him alone is liable in the event of bouncing of the cheque constitute to commit such offence. No one than the person who is drawn on account maintained by him is made liable. However, the circumstances where the person happened to be company has been taken according to Sec.141 of NI Act. Mere fact that joint account can be maintained by both the accused and the husband cannot be precluded her from the provisions of Sec.138 of NI Act. However, Ex.P.2 did not contains the signature of the joint holder i.e., husband of the accused hence, he cannot be prosecuted because he is not signatory in the disputed cheque Ex.P2.

7. On this aspect it is necessary to note the judgment of **Aparna A.Shah vs M/S Sheth Developers P.Ltd.& Anr in CRIMINAL APPEAL No.**

813 OF 2013 Arising out of S.L.P. (Crl.) No. 9794 of 2010) dt.01.07.2013
 our Hon'ble Apex court held in para No.22 as follows.

Para NO.22: "In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque".

8. So in view of the settled legal position when a joint cheque leaf is signed by only one signatory who had joint account with another person can be entertained and to be presented for encashment and on its dishonor case u/sec.138 of NI Act shall be initiated against the person who signed in it. On the ground that another joint holder i.e., husband of the accused not contributed his signature in cheque leaf Ex.P.2 the accused is not entitled for benefit of doubt because she alone issued the cheque and she went to extent that she does not know whether Ex.P.2 is belongs to joint account cheque leaf or not. Such evidence of accused is sufficient to hold that to escape from criminal liability she denied her cheque.

9. Here existence of legally enforceable debt is clearly established by the complainant by making reliance upon Ex.P6. Basing on Ex.P.1 promissory note dt.20.03.201, the complainant approached the civil court and obtained decree in his favour. Then existence of legally enforceable debt under Ex.P.1 promissory note should be accepted. Passing of decree in favour of the complainant is clearly admitted by the accused. Such is the case clear debt in between accused and complainant is existed and proved by the complainant by placing Ex.Ps.1 and P6 before court. Unless until the execution of promissory note is proved, decree cannot be passed in favour of the complainant in Civil Court on merits, so existence of legally enforceable debt should be accepted.

10. In view of the above discussion and settled legal position, this court holds that contention of accused about non maintainability of this complaint basing on the Ex.P.2 cheque which containing the signature of accused alone without the signature of her husband cannot be considered.

Accordingly point is answered.

11. The another defence of accused is that signature on Exs.P1 and P2 are forged one. Basing on those forged documents this false complaint is not maintainable against her. When accused has taken a defence of forgery onus was on her to prove her claim of forgery with all relevant details as to how and under what circumstances forgery has to be committed by the complainant in view of the provisions u/sec.101 of Indian Evidence Act. But no such facts stated by

accused. She failed to state how her cheque leaf went into the hands of the complainant under what circumstances. Be that it may be, if really Ex.P.1 is not true Ex.P.6 decree may not pass in favour of the complainant. So the contention of the accused that promissory note is forged document cannot be accepted as already the Civil decree was passed on merits.

12. So far as cheque leaf is concerned it is on the shoulders of the accused to explain how the cheque leaf went into the hands of the complainant. Moreover, when accused has taken plea of forgery. Thus, in view of the provisions u/sec.8 of Indian Evidence Act her conduct subsequent to alleged forgery is also a relevant fact to the matter in issue. It has to be seen as to whether the accused acted diligently after the factum of forgery. It is clear from the record that accused has come to know about alleged forgery. But undisputedly she failed to take any action against the complainant till date for the alleged act of forgery of Exs.P1 and P2. No prudent man would keep silent over a serious offence of forgery is committed against her. Even after coming to know about filing of this case there is every chance to taken steps against the alleged forgery. The accused has not taken any action against the complainant. No Legal notice or steps is taken till date. The accused has admitted the service of notice. As she admitted her signature in postal acknowledgement ExP.5. Then, she will aware about presentation of cheque and its dishonor even prior to receipt of summon from this court. Then neither she gave reply to Ex.P4 Legal notice to the complainant nor any attempt is made or repaid the amount and she kept quiet. No prudent man keep quiet without taking such steps. Without taking steps against the alleged defence her contention of forgery cannot be accepted.

13. Be that it may be, she herself deposed before court that if necessary she will send the impugned documents Exs.P1 and P2 for hand writing expert for examination. Having stated said evidence before court she failed to send the document to the expert. On examination of her signatures in her deposition, memo of appearance, Ex.P.5 postal acknowledgement, returned court summon acknowledgement with that of Exs.P1 and P2 are appears to be one and the same. So silence of accused in taking steps would raise doubt to accept her contention. If cheque was issued without consideration and if complainant had issued the false notice. Then, the accused must have taken appropriate action against the complainant especially the alleged misuse of the cheques on forgery. Then it cannot be assumed that any prudent person would remain silent after he comes to know about serious offence of forgery committed with him. So mere bare allegation without proof on all preponderances of probabilities, the defence of accused that impugned documents as forged documents cannot be accepted

and holds that she failed to place rebuttable evidence on all preponderances of probabilities on said aspect.

Accordingly point NO.2 is answered.

14. Thirdly the accused went to extent that she is unaware of the complainant. Said defence of accused itself untrustworthy and unbelievable because she herself spoken before court that about 5 to 6 years back she lodged report case before Pattabhipuram police station. Moreover, there are business transactions with the complainant with his family members. Such facts are clear that she known the PW1 through her husband. In such circumstances her contention that she is unaware of the complainant has no consideration.

Accordingly point NO.3 is answered.

15. Fourthly in respect of ill feelings in joint business of complainant and her husband is concerned except her oral evidence no other cogent evidence is placed what type of business is dealt by husband of accused and complainant, where and when, from which period to which period such business is done is unknown to the court. On what aspect there are ill feelings is also unaware to the court. Mere stating that due to ill feelings in joint business of complainant and husband of accused this false case is foisted has no consideration. Hence, this point is answered in favour of the complainant.

Accordingly point NO.4 is answered.

16. Fifthly in respect of filing of a case before Patabhipuram police station is concerned, no proof of document is filed before court. Without filing related document before court the contention of the accused about lodging of a case against the complainant about 5- 6 years back before Pattabhipuram Police station has no consideration. Be that it may be, for what purpose the complaint came upon her house whether it is for demanding of repayment of loan amount or otherwise is also not disclosed before court. Without disclosing actual cause for attack on the house of the accused, said contention also appears to be unbelievable and not satisfactory.

17. Here on perusing the suggestions suggested to PW1 the another defence taken by the accused is that Venkateswar reddy belongs to Krishna Nagar is back behind in initiating this case. Further suggested to PW1 that due to previous disputes between Venkateswara Reddy and husband of accused, PW1 colluded with Venkateswara Reddy and forged the signature under Exs.P1 and P2 and got filed this complaint on his influence for wrongful gain. Such suggestion is also self contradictory defence to the case of the accused. Because at one hand, she went to extent that for lodging a report before Pattabhipuram police station this case is filed. At another stage she further went to extent that due to ill feelings in joint business this case is filed against her. Those all inconsistent

defences of accused itself made it clear that only for this case purpose she taken various different inconsistent and self contradictory defences to overcome from the criminal liability. As such this point is also required to be answered in favour of the complainant and against the accused holding that the defence of accused has no consideration.

Accordingly point NO.5 is answered.

18. On perusing the total evidence this court holds that the complainant established the case beyond all reasonable doubt by establishing the essential ingredients of Sec.138 r/w 142 of NI Act. Then court can draw the presumption u/sec118-A and 139 of NI Act in favour of the complainant. Then burden shifts on the accused to rebut the presumption. In this case though evidence adduced by the accused it is not satisfactory on all preponderances of probabilities to hold that she placed rebuttable evidence to disbelieve the evidence of the complainant. Such is the case the accused is liable for conviction.

19. In the light of the aforesaid discussion, the complainant established the case beyond all reasonable doubt to the satisfaction of this court for the offences punishable u/sec.138 r/w 142 of NI Act.

Accordingly, all points are answered.

10. Result: In the result the accused is found guilty for the offence punishable u/sec.138 r/w.142 of NI Act and she is convicted for the same u/s.255(2) Cr.P.C.

Dictated to my personal assistant transcribed by her, then corrected by me and pronounced through Blue jeans from the residence of the presiding officer, on this the 11th day of June, 2021.

Sd/-RR
**V ADDL. JUNIOR CIVIL JUDGE,
GUNTUR.**

11. The accused is questioned about quantum of sentence for the offence punishable u/sec.138 r/w.142 of NI Act for which she pleaded as follows

12. She is a widow aged about 60 years and senior citizen. Her husband was expired recently due to COVID-19 and she is suffering with BP and old age ailments. She also affected with COVID-19 disease, therefore, prayed the court to show mercy upon her.

13. In the facts and circumstances of the case, I feel that it is not a fit case to invoke provisions of Probation of Offenders Act or Section 360 Cr.P.C. No satisfactory evidence is placed by the complainant to award compensation. Hence, no compensation ordered.

14. Considering the facts and circumstances of the case and also the above submissions of the accused as she issued cheque to the complainant and failed to discharge the same debt I am not inclined to take any lenient view. But this court

feels that following sentence would meet the ends of justice as imposing fine is not sufficient.

15. In the result the accused is sentenced to undergo Simple imprisonment for a period of **SIX MONTHS** and ordered to pay fine of Rs.5,000/- (Rupees Five Thousand only) for the offence punishable u/sec.138 r/w.142 of NI Act, in default of payment of fine amount she shall undergo simple imprisonment for a period of **ONE** month. No remand period is undergone by accused for passing an order under Sec. 428 of Cr.P.C.

16. Appraisal of right to prefer appeal: Convict/ Accused is appraised of her right to prefer appeal against the judgment of this court. When questioned with regard to means to engage the counsel at appellate stage, she submitted she has means.

17. Property order:- No order as to property as required under Rule 227 of CrI.R.P. is passed as no property marked.

Pronounced through Blue jeans from the residence of the presiding officer on this the 11th day of June, 2021.

Sd/-B.R
V ADDL. JUNIOR CIVIL JUDGE,
GUNTUR.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

P.W.1: Mamidala Murali Krishna (Complainant).

For Defence:

D.W.1: D. Maha Lakshmi (accused)

Documents Marked.

For Prosecution:

Ex.P.1: promissory note dt.20.03.2016

Ex.P.2: Cheque bearing No.094501 dt.12.06.2017

Ex.P.3: cheque return memo dt.14.06.2017

Ex.P.4: office copy of Legal notice dt.16.06.2017

Ex.P.5: postal receipt dt.21.06.2017

Ex.P6: Certified copy of the decree in O.S.No.305/2017 on the file of I Addl. Senior civil Judge, Guntur dt.12.12.2018

For Defence:

--Nil--

M.O. Marked
--None--

Sd/-B.R
V. A.J.C.J., GNT.

TRUE COPY
R. P.
V.AJCJ .
GUNTUR