

Lokesh.R vs Mr.Subbaiah.B.M on 7 February, 2020

IN THE COURT OF THE XVIII ADDL. CHIEF
METROPOLITAN MAGISTRATE, BENGALURU

PRESENT: MANJUNATHA.K.P, B.A.L, LL.B.
XVIII ADDL.C.M.M., BENGALURU

DATED : THIS THE 7th DAY OF FEBRUARY 2020

C.C.NO: 14219/2015

COMPLAINANT: -

Lokesh.R.
S/o Ramaraju.N.
Aged about 35 years,
R/at No.756, Govt.School Road,
Sahakaranagar Post,
Kodegehalli, Bangalore-560 092.

(Repted by Shri.SKV., Advocate)

V/s.

ACCUSED: -

Mr.Subbaiah.B.M.,
S/o Mittu Medappa,
Aged about 30 years,
R/at TAPAS, Flat No.2,
1st floor, Indian Express Layout,
Kodigehalli, Sahakaranagar Post,
Bangalore-560 092.

Also at

Sri.Subbaiah.B.M,
S/o Mittu Medappa,
Nariyanda Village,
Cheyandane Post,
South Coorg-571218

(Repted by Sri.VKRS, Advocate)

JUDGMENT

The complainant has presented the complaint under Section 200 of Cr.P.C against the accused for the alleged offence punishable under Section 138 of N.I. Act.

2) The brief facts of the complainant's case is that:-

The complainant and accused are close friends since several years. During April 2011 the accused had approached the complainant claiming that, the accused is in the process of purchasing of property near Nelamangala and the accused is in need of funds/money to make payment to the vendor of the said property and accused

requested the complainant to arrange for hand loan to pay the sale consideration to the vendor of the said property. He with a good view and to help the accused in purchasing the said property has paid a sum of Rs.27,00,000/- on installment basis on different occasions in the year 2011 by availing loan from his acquaintances and accused also assured the complainant he would repay the said amount within eight to ten months. After lapse of ten months, the complainant requested the accused to repay the said amount as he had intention to repay the same but accused has giving one or the other evasive reasons and kept on prolonging to repay the same. After much persuasion to repay the said amount, the accused has issued two cheques bearing No. 073091 , dated 31/1/2015 for Rs.20,00,000/- and another dated 17/6/2014 for Rs. 5,00,000/- drawn on Axis Bank, Sanjayanagara Branch, Bengaluru and the said cheque was issued towards party payment of the total monies paid by the complainant to the accused. When the complainant presented the cheque for bearing No. 073091 for encashment, it was dishonored with an endorsement "Funds Insufficient" on 2/4/2015 and complainant brought to the notice of the accused about dishonour of the cheque on the same day and request the accused to make payment of the cheque amount of Rs.20 lakhs and accused promised to make the payment within one week from the date of the intimation by the complainant about the dishonour of the said cheque. Despite giving several opportunities the accused failed to make the payment of the aforesaid cheque/amount. Thereafter the complainant issued legal notice on 29/4/2015 calling upon the accused to make payment of the dishonoured cheque amount and the said notice was duly served on the accused and same have been Duly served on 21/7/2013 and another notice issued to the 2nd address of the accused it was returned with postal endorsement "door locked" . In spite of service of notice, the accused has not complied the same. Hence, complainant is constrained to file this private complaint for the said relief.

3) After receipt of complaint, this court has taken cognizance of the alleged offence and sworn statement of complainant was recorded and process was issued to the accused. He was appeared through his counsel and enlarged on bail and all papers were supplied to him. The substance of plea was recorded and read over and explained in Kannada language to the accused, to which he pleads not guilty and claims to be tried. Hence, posted the case for complainant evidence.

4) In order to prove the complainant case, complainant was examined as P.W.1 and he exhibited Ex.P.1 to Ex.P.22 documents and he also examined two witnesses by name K.R.Nagaraja @ Nagesh and Ashwathnarayana H. @ Ashwath and Shankar K.R. as P.W.2 to 4 and closed his side.

Thereafter, the statement of accused under Section 313 of Cr.P.C is recorded, read over and explained in Kannada language to which accused has denied the entire incriminating evidence which appears against him. Per contra, accused examined as D.W.1 and he exhibited Ex.D.1& 2 documents and thereafter posted the case for arguments.

5) Heard the arguments on both sides and perused the entire papers.

6) Now, the following points that arises for my consideration are:-

1) Whether the complainant has made out all the ingredients of Section 138 of N.I. Act to prove the guilt of the accused person?

2) What order?

7) My answer to the above points are as follows:-

POINT NO.1 : In the Affirmative.

POINT NO.2 : As per final order, for the following:-

REASONS

8) POINT NO.1:- As the brief facts of the complainant's case as already stated above, hence I need not repeat the same facts once again to avoid the repetition of the same facts.

9) To bring home guilt against the accused, the complainant/prosecution must prove the following ingredients of Section 138 of N.I. Act.

i) That there is a legally enforceable debt.

ii) That the cheque was drawn from account of Bank for discharge in whole or in part of any debt or other liability which presuppose a legally enforceable debt;

iii) Cheque so issued had been returned due to insufficiency of funds.

10) To prove the aforesaid ingredients of Section 138 of N.I. Act, the complainant filed his chief affidavit and was examined as P.W.1. In his chief examination affidavit he reiterated the entire averments of the complaint. In support of his case he has exhibited Ex.P.1 to Ex.P.22 documents. Ex.P.1 is the cheque, Ex.P.2 & 3 are the Bank endorsements, Ex.P.4 legal notice, , Ex.P.5 postal acknowledgement, Ex.P.6 RPAD cover, Ex.P.7 to 9 are salary slips, Ex.P.10 to 15 RTC extracts, Ex.P.16 to 18 Rental agreements, Ex.P.19 of loan agreement, Ex.P.20 copy of Power of attorney , Ex.P.21 copy of Joint Development agreement, Ex.P.22 copy of Partition deed .

11) On careful perusal of the entire oral and documentary evidence, the admitted facts are that there is no dispute that Ex.P.1 cheque is belongs to the accused and it was dishonoured as per Ex.P.2 & 3 endorsements and notice has been issued as per Ex.P.4 and it was duly served on accused as per Ex.P.5 postal acknowledgment. The

very fact admitted by the D.W.1 in his cross-examination . Further there is no dispute that Ex.P.6 return cover returned with a shara "door locked". Further, there is no dispute that about earning of salary by the complainant in coffee day as per Ex.P.7 to 9 documents . Further, to substantiate the complainant case i.e, source of income and capacity of the complainant, he exhibited RTC extracts as per Ex.P.10 to 15 documents. The said RTCs are standing in the name of Lokesh.R. i.e, complainant and his brother. Further, complainant also exhibited rental agreement as per Ex.P.16 to 18 documents and Ex.P.19 certified copy of loan agreement, Ex.P.20 copy of Power of Attorney, Ex.P.21 is copy of joint development agreement, Ex.P.22 is copy of partition deed complainant has acquired certain lands and house in his name .

Per contra, accused examined as D.W.1 in his evidence he stated before the court that since 8 to 10 years he know the complainant and at the time of purchase of his car that too for purpose to down payment, he has issued cheque in favour of complainant and he only borrowed Rs.1,50,000/- with the complainant by cash. out of the said amount, Rs. 1 lakhs has repaid to the complainant and he also exhibited Ex.D.1 & 2 documents.

12) During the course of arguments, complainant counsel Sri.SKV vehemently argued that complainant has proved his case by way of oral and documentary evidence and also on admissions in the mouth of D.W.1 and capacity and source of income of complainant has been proved by the complainant by way of marking of rental agreements, partition deed, joint development agreement and RTC extra and there is no reply notice issued by the accused and prays to convict the accused and he also filed written arguments in which he reiterated the aforesaid arguments. Per contra, accused counsel Sri. VKRS resisted the said arguments and argued that absolutely there is no source of income and capacity to the complainant to pay huge amount of Rs.20 lakhs and complainant has not proved the existence of debts between the complainant and accused and Ex.P.19 stamp paper are purchased in the name of Siddaiah not in the name of Subbaiah and complainant has misused the cheques those received at the of purchasing of car i.e, the said cheque was issued for purpose to pay the down payments and prays to acquittal of the accused .

13) On perusal of the entire oral and documentary materials, and arguments addressed by the counsels, the admitted facts are that Ex.P.1 cheque is belongs to the accused and it was dishonoured as per Ex.P.2 & 3 endorsements and notice has been issued as per Ex.P.4 and it was duly served on accused as per Ex.P.5 postal acknowledgment. At the stage, it is just and necessary to reproduce the admissions of D.W.1 for the sake of convenience.

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zÀÆgÀÄzÁgÀgÀAzÀ gÀÆ.27/-®PÀè °Àt YÀqÉzÀÄ E®è JAzÀi ,ÄÄ¼ÄÄi °ÀÉÄ¼ÄÄwÛzÉYÄ£É JAzÀgÉ ,ÁjAiÀÄ®è. ¼|.19 g°è gÀÆ.27/-®PÀè YÀqÉzÀ §UÉÎ £ÀªÄÆzÀÄ EzÉ JAzÀgÉ ,Áj. MA"ÀsvÀÄÛ wAUÀ¼Ä M¼ÄUÉ ªÄÄgÀÄYªAw ªAiÀqÀÄvÉÄÛ£É JAzÀÄ £ÀªÄÆzÀÄ EzÉ JAzÀgÉ ,Áj. ,ÁQè ªÄÄÄAzÀÄªÄgÉzÀÄ CzÀPÉI £ÀÄ ,À» °AQ®è JAzÀÄ °ÉÄ¼ÄÄvÁÛgÀÉ. £À£ÀB ΖΕPÀÄ ÌUÀ¼ÄÄ "É£ï DzÀgÀÆ ,À°À ,ÄÄ¼ÄÄi ,ÁQè °ÉÄ¼ÄÄwÛzÉYÄ£É JAzÀgÉ ,ÁjAiÀÄ®è. So, on perusal of the said admissions it is crystal clear that Ex.P.1 cheque is belongs to him and he has not placed any documentary materials about payment of amount to the complainant and he also admitted that after service of notice he has not met to the complainant and he also admitted that about service of notice on him and read the contents of the notice and also not issued reply notice and he also admitted that about filing of present case and another case against him and he also admitted that demand of Rs. 27,00,000/- by the complainant and he also admitted about non repayment of the amount and he also admitted that CC.No. 14219/2015 filed by Rs.20 lakhs and CC.No.23923/2014 filed for Rs.5 lakhs and he also further admitted that about filing of civil cases by

2. Cri.A.No. 2553/2009-B Sudhakar Vs P.Mrithyunjaya

3. 2014 SCC only Del 14472 Santosh Mittal Vs Sudha Dayal

4. 2001(1) MWN (Cr) (DCC) All.28 M/s Krishna Kumar Vinod Kumar & ors Vs State of UP and anr

5. CC No.52120/2014 Sri.R.N.Nanjegowda Vs Sri.Sabu Accused rulings

1. Cr.A.No. 636/2019 of HSC Basalingappa Vs Mudibasappa

2. Cr.A.No. 464/2016 A.Somashekar Vs P.R.Sarveshwar Reddy

3. In the court of Ms.Ruchi Aggarwal Vs Unknown on 28/8/2018

4. AIR 2019 SCC 1983 Basalingappa Vs Mudibasappa

5. (2015) 1 SCC 99 K.Subramani Vs K.Damodaranaidu

6. AIR 2019 SCC 2446 Bir Singh Vs Mukesh Kumar In complainant rulings their lordships laid down the following principles that they are

a) once issuance of cheques as admitted by the accused then presumptions under section 138 & 139 of NI Act are fallen to the case of the complainant.

b) accused must rebut the complainant case otherwise complainant is entitled for the relief under section 138 of NI Act.

c) mere denial of the complainant case is not sufficient to disbelieve the case of the complainant etc., In the accused rulings their lordships laid the following principles that

a) burden lies on the complainant to prove the source of income and capacity to pay huge amount to the accused

b) existence of debts or legally recoverable debts must be proved by the complainant otherwise accused is entitled for benefit of doubt

c) complainant must prove his case in all preponderance of probabilities and including financial capacity otherwise complaint filed under section 138 of is not maintainable etc., So, as per the complainant rulings complainant has proved his case by way of oral and documentary evidence and on admissions in the mouth of D.W.1 i.e, in the cross-examination of D.W.1 he categorically admitted that Ex.P.1 cheque is belongs to him and he also admitted that about demand made by the complainant to repay the amount and he also admitted about mention of Rs.27 lakhs in Ex.P.19 agreement. So, the said admissions of D.W.1 those have referred above have corroborates the complainant case that Ex.P.1 cheques is belongs to him and there is debts between the complainant and accused and towards discharge of debts. he has issued cheque and it was dishonoured and notice has been duly served on accused even though he has not complied hence complainant has

constrained to file the present case . Per contra, as stated supra accused has stated before the court that he issued Ex.P.1 cheque in blank nature for purpose to down payment etc., But the said fact has not been proved accordingly the documents placed by him as per Ex.D1 & 2 and the rulings submitted as stated supra are not helpful to the accused case. On the other hand, complainant cogently and corroboratively proved his case by way of oral and documentary evidence and on admission in the mouth of D.W.1 hence I am of the opinion that complainant is entitled for the reliefs as sought in the complaint because he has proved his case as per ingredients of section 138 of NI Act about the existence of debts between the complainant and accused and also there is no rebuttal evidence i.e accused has not disproved the complainant case as specified under section 138 of NI Act. As such any amount of oral evidence placed by him and arguments addressed by the accused counsel are not sufficient to believe his case because the materials placed by the complainant i.e, rental agreements, RTC extract, partition deed and joint development and salary slips corroborates his case about his capacity and source of income to pay huge amount to the accused as stated in the complaint and chief examination affidavit of P.W.1 hence, complainant is entitled for the reliefs as sought in the complaint. Accordingly,I am of the considered opinion that accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act as he is found guilty and I answer this Point No.1 in the affirmative.

15) POINT NO.2:- In view of my discussions as stated supra and my findings on Point No.1., I proceed to pass the following.

ORDER

Acting under Section 255 (2) of Cr.P.C,

accused is convicted for the offence

punishable under Section 138 of Negotiable Instruments Act 1881. The accused is sentenced to pay fine of Rs.22,60,000/-

(Rupees Twenty Two Lakhs Sixty Thousand Only) and in default shall undergo simple imprisonment for a period of Two (2) years.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.22,40,000/- (Rupees Twenty Two Lakhs Forty Thousand Only) fine amount as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.20,000/- (Rupees Twenty Thousand Only) is defrayed to the State for the expenses incurred in the prosecution.

(Dictated to the Stenographer, transcribed by her, corrected, revised and signed then pronounced by me in the open court on this the 7th day of February 2020).

(MANJUNATHA.K.P) XVIII A.C.M.M., BENGALURU.

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1	:	Lokesh.R.
P.W.2	:	K.R.Nagaraja
P.W.3	:	Ashwathnarayana.H
P.W.4	:	K.R.Shankar

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1	:	Cheque.
Ex.P.1(a)	:	Signature of the accused.
Ex.P.2&3	:	Bank endorsements.
Ex.P.4	:	Office copy of demand notice.
Ex.P.4	:	Postal receipt.
Ex.P.5	:	Postal acknowledgement.
Ex.P.6	:	RPAD cover,
Ex.P.7 to 9	:	salary slips,
Ex.P.10 to 15	:	RTC extracts,
Ex.P.16 to 18	:	Rental agreements,
Ex.P.19	:	Loan agreement ,
Ex.P.20	:	copy of Power of attorney ,
Ex.P.21	:	copy of Joint Development greement,
Ex.P.22	:	copy of Partition deed .

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

D.W1 : Subbaiah

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

Ex.D1	;	copy of deposing in CC 23923/2014
Ex.D.2	:	Car delivery receipt

XVIII A.C.M.M., BENGALURU.

7/2/2020
Judgment

(Judgment pronounced in Open Court vide a separate Order) ORDER Acting under Section 255 (2) of Cr.P.C, accused is convicted for the offence punishable under Section 138 of Negotiable

Instruments Act 1881. The accused is sentenced to pay fine of Rs.22,60,000/-

(Rupees Twenty Two Lakhs Sixty Thousand Only) and in default shall undergo simple imprisonment for a period of Two (2) years.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.22,40,000/- (Rupees Twenty Two Lakhs Forty Thousand Only) fine amount as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.20,000/- (Rupees Twenty Thousand Only) is defrayed to the State for the expenses incurred in the prosecution.

The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

XVIII A.C.M.M., BENGALURU.