

P.Sailaja vs M/S Adityah Ladies P.G on 31 March, 2022

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C.C.No/7013/2018

IN THE COURT OF THE XIX ADDL. CHIEF
METROPOLITAN MAGISTRATE AT BENGALURU CITY.

Dated this the 31st day of March 2022.

PRESENT: SRI.FAROOQ ZARE, B.A. (Law), LL.B., L.L.M.,
XIX ADDL.C.M.M., BENGALURU.

Case No: :- C.C.No.7013 of 2018

COMPLAINANT :- P.Sailaja
W/o Peddi Venkata Rama Rao
Aged about 39 years,
R/at No. 5, 100ft Road,
Near Jayadeva signal,
BTM II Stage, Bannerghata Road,
Bengaluru.

(By J.S., Advocate)

-V/s-

ACCUSED :- M/s Adityah Ladies P.G.
Rpresented by its Proprietor
Chandramohan Reddy,
S/o Gandipalli Eswar Reddy,
Aged about 35 years,
R/at No.B1, 100ft Main Road,
BTM 1st Stage, Near Udupi
Garden Signal,
Bangalore-560068.
Also R/at No.3-6,
Mamilakuntala Patlli,
Obula Devara cheruvu,

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Thippepalle,
Ananthapur, Andra Pradesh,

Also available at "Neelakanta
Petrol Bunk", Sy No.320-02,
Obuladevara Cheruvu Village,
Ananthapuram District,
Andra Pradesh.

Offence complained of: :-	U/s.138 of N.I.Act.
Plea of accused: :-	Pleaded not guilty.
Opinion of the Judge: :-	Accused found guilty.
Date of order: :-	31st March 2022.

J U D G M E N T

The complainant has filed this complaint U/sec.200 of Cr.P.C. against the accused for the offence punishable U/sec.138 of N.I.Act.

2. The brief facts of the complaint are that;

The accused has been running two Paying Guest accommodations under the name and style of M/s Adityah ladies P.G. and M/s Amrutha Ladies P.G. in

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lease premises at I stage, BTM Layout, Bangalore. Due to financial constraints the accused had proposed to dispose off the running PG's and accordingly invited offers from intending buyers. In the first week of April 2017 complainant as well as her husband who were interested in procuring PG accommodation inspected the running concerns of the accused and accordingly negotiated for the purchase of the same. It was agreed and settled between the complainant and the accused that the complainant should pay a sum of Rs.44,00,000/- in all which amount is inclusive of transfer of the lease hold rights of both the concerns in favour of complainant and his wife. The accused has

represented that he had already paid a sum of
Rs.25,00,000/- and Rs.15,00,000/- towards security
deposit for both the lease hold properties and he further

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assured to get the lease transferred in the name of the
complainant and her husband.

3. Accordingly, the complainant and her husband
had transferred a sum of Rs.44,00,000/- as under;

- a. Rs.18,000/- by way of RTGS on 10.04.2017 from complainant's Account vide transaction No.HDFCR5201704109386658 in favour of Adityah Ladies P.G.
- b. Rs.21,20,000/- by way of cash on 10.04.2017 which amount was procured from complainant's kith and kin in Andra Pradesh.
- c. Rs.4,80,000/- by way of 12GCC TRF on 13.04.2017 from the account of complainant's cousin Smt.Uma Padmavathi Narra in favour of Neelakanta Petrol Bunk having Account No.0035730803509 in state Bank of India. which account is owned and possessed by the accused.

The complainant and her husband have paid
Rs.44,00,000/- to the accused for taking over the
running concerns with the concurrence of the landlord.

4. In spite of the payment of the full amount the
accused did not come forward in surrendering the

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possession to the complainant along with concurrence
letter from the landlord. The accused conveyed that the
owner was not inclined to execute a concurrence letter

in favour of the complainant. On 27.04.2017 the accused had conveyed that the amount so parted by the complainant was utilized for the procurement of the wine shop in Madannapalli, Andra Pradesh thereby the accused did not have any liquid funds to return the amount paid. In view of the persistent demand the accused had issued two posted dated cheques for a sum of Rs.23,00,000/- vide cheque bearing No.238616 dated 27.08.2017 drawn on Canara Bank, Koramangala Branch, Bengaluru in favour of the complainant and another cheque bearing No.238617 for a sum of Rs.21,00,000/- dated 30.09.2017 drawn on Canara Bank, Koramangala Branch, Bengaluru in favour of complainant's husband towards discharge of liability.

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5. As per promises and assurance of the accused, the complainant had presented the cheque for a sum of Rs.23,00,000/- bearing No.238616 dated 27.08.2017 drawn on Canara Bank, Koramangala Branch, Bengaluru for encashment through his banker Canara Bank, Koramangala Branch, Bengaluru and same was returned unpaid on 13.11.2017 because of "Funds Insufficient". The complainant had got issued demand notice on 12.12.2017 to the accused in three different addresses through registered post acknowledgment due and same were duly served on the accused on

15.12.2017, 16.12.2017 and 19.12.2017 respectively.

However, the accused has not complied with the demand made in the statutory notice.

6. On presentation of the complaint, the cognizance was taken of the offence punishable
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U/sec.138 of N.I.Act and registered it as P.C.R.No.954/2018. The sworn statement of the complainant was recorded. Since there were sufficient materials to proceed against the accused, it was registered as criminal case in register No.III and the process was issued to the accused.

7. On receipt of the summons, the accused appeared before the court through his counsel and secured bail. He was furnished with the prosecution papers. The substance of the accusation was read over and explained to him. He pleaded not guilty and claimed to tried.

8. The complainant has himself got examined as PW1 and got marked documents at Exs.P1 to Ex.P6.

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During the cross examination of DW1 Exs.P8 to Ex.P14

were marked on confrontation.

9. The statement of the accused U/sec.313 of Cr.P.C., was recorded. He denied the incriminating evidence appearing against him. In his defence he has himself got examined as DW1 and got marked documents at Ex.D2 while Ex.D1 was marked during cross examination of PW1 on confrontation.

10. Heard the arguments of both the sides. The learned counsel for the complainant has also submitted written arguments and he has relied upon the following decisions;

1.

(2007) 6 Supreme Court Cases 555 C.C.Alavi Haji v/s Palapetty Muhammed And Another.

2. (2012) 1 Supreme Court Cases 260 R.Vijayan v/s Baby And Another.

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3. (2010) 11 Supreme Court Cases 441 Rangappa v/s Sri.Mohan.

4. (2019) 18 Supreme Court Cases 106 Rohitbhai Jivanlal Patel v/s State of Gujarat and Another.

The leaned counsel for the accused has relied upon following decisions;

1. AIR 2019 Supreme Court 1983 Basalingappa v/s Mudibasappa.

2. Criminal Appeal No.404/2011 Smt. Sumithra v/s B.S.Sudhir.

3. Criminal Appeal No.200008/2016 Veerappa v/s B.A.Chadramoul.I

11. The points that arise for my consideration are as under;

1. Whether the complainant proves that the accused has issued the cheque at Ex.P1 for Rs.23,00,000/- in his favour towards discharge of his liability.?

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2. Whether the complainant further proves that the said cheque got dishonoured as "Funds Insufficient"

when it was presented for
encashment.?

3. Whether the complainant further proves that he has complied with the mandatory provisions of Section 138 of N.I.Act.?

4. What order ?

12. My findings to the above points for consideration are as under:

Point No.1:- In the Affirmative. Point No.2:- In the Affirmative. Point No.3:- In the Affirmative. Point No.4:- As per final order for the following;

:: R E A S O N S ::

13. Point No.1:- As regards legally enforceable debt or liability the Hon'ble Supreme Court in the case of C.C.No/7013/2018 Rangapa v/s Sri. Mohan reported in (2010) 11 SCC 441 has held that "The presumption mandated by Sec.139 of the Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and its open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the complainant. When an accused has to rebut the presumption U/sec. 139, the standard of proofs for doing so is that of preponderance probabilities. Therefore, when the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the presumption can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable C.C.No/7013/2018 that in some cases the accused may not need to adduce evidence of his/her own".

14. If the facts and circumstances of the case are considered in the light of above said principle of law it is clear that the accused has not disputed during the trial that the cheque in question is drawn on his bank account and it bears his signature. Therefore, the statutory presumption arises u/sec.118(a) and 139 of N.I.Act in favour of the complainant that the cheque in question is issued for consideration in discharge of debt or liability. The burden of rebutting the said presumptions by probable defence is on the accused.

15. The complainant in his examination in chief has reiterated the facts averred in the complaint and has produced cheque at Ex.P1.

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16. The accused by way of cross examination of PW1 and by his examination in chief as DW1 has raised certain defenses to rebut the statutory presumptions available in favour of the complainant.

17. At the outset it is relevant to note here that it is not in dispute that the accused deposited a sum of Rs.15,00,000/- for Amrutha PG and a sum of Rs.25,00,000/- for Aditya PG in favour of owner. It is also undisputed that the complainant transferred a sum of Rs.18,00,000/- to the account of the accused on 10.04.2017.

18. It is the contention of the accused that a sum of Rs.15,00,000/- was given by the complainant on behalf of the owner. It is also contended that the complainant was not sound enough to advance cheque amount to him. He has also contended that the owner C.C.No/7013/2018 has not repaid Rs.15,00,000/- to him. It is the contention of the accused that he is noway concerned to Neelakanta Petrol Bunk.

19. The accused has disputed financial capacity of complainant and he has relied upon decisions in this regard. However, it is relevant to note here that the accused has not denied the fact that he had negotiation with the complainant as well as her husband for letting out his two paying guests. The accused himself has admitted that a sum of Rs.18,00,000/- has been transferred to his bank account from complainant and as such he cannot dispute the financial capacity of the complainant. Therefore, the decisions relied upon by him are not helpful to him.

20. Another contention of the accused that the cheque was obtained in Sudduguntepalya police station C.C.No/7013/2018 Bengaluru under threat. In his cross examination accused has stated that he filed complaint with the police station situated at BTM 1st stage in the month of August 2017 and police have not registered his case. He has denied in his cross examination that as the disputed cheque was obtained under threat in the BTM layout 1 st stage police station which is clear from his examination chief, he could not file complaint with the same police station. It is relevant to note here that the accused has not produced any piece of paper regarding filing of police complaint with the Suddugunteplaya police station as stated by him in his defence. Therefore, his contention that the cheque in question was obtained under threat in the police station cannot be accepted.

21. It is suggested to PW1 in the cross examination that the owner has not given the amount in deposit to the accused to which PW1 has pleaded ignorance. It is to C.C.No/7013/2018 be noted here that if at all the owner has not repaid the amount in deposit, the accused could have taken necessary steps against him in the manner to known to law.

22. It is also the contention of the accused that the amount of cheque is not shown in the Income Tax Returns. Keeping this in mind, I would like to refer to a decision reported in ILR 2019 KAR 493 in the case of Sri.Yogesh Poojari v/s Sri.K.Shankara Bhat and the relevant paragraph of No.11 of the said judgment is extracted herein below;

When the accused in the process of rebutting the presumption existing in favour of the complainant under Section 139 of the N.I.Act apart from making a mere suggestion as to absence of any documentation about the alleged loan transaction and absence of non-disclosure of the loan

transaction in the Income Tax Returns is also required to place more material either in the form of favorable replies elicited in the cross-examination of C.C.No/7013/2018 the complainant or in the form of documents or atleast bringing to the notice of the Court and convincing it that the circumstances of the case warrants for drawing such a conclusion, particularly, mere making a suggestion to the complainant that he has not disclosed the alleged loan transaction in his Income Tax Returns or eliciting the statement from the complainant that he has not disclosed the alleged loan transaction in his Income Tax Returns by itself is not sufficient. It is also required for the accused to establish that the complainant is an income tax assessee or required to be an assessee and that the nature of his income tax assessment and the Income Tax Return which he files, requires him to disclose the alleged transaction or the liability in question. In the absence of eliciting those details, by merely making a suggestion that the alleged debt or liability, has not been reflected in the income tax returns would not by itself suffice to draw an adverse inference and to hold that there was no legally enforceable debt or the presumption standing in favour of the complainant as successfully rebutted by the accused.

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23. In the light of above said decision the testimony of PW1 in the cross examination that the amount given to the accused has not been shown in the Income Tax Returns is of no consequences.

24. The accused has produced rental agreement at Ex.D1 to show that he has entered into rental agreement with the owner. There is no dispute that the accused has entered into rental agreement with the accused. The accused has contended that the contents of the cheque got written by the complainant. It is relevant to note here that the accused has failed to show that the cheque in question was obtained under threat in the police station and as such the contention regarding the complainant filled up particulars of the cheque in question is without any substance.

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25. It is elicited in the cross examination of DW1 that a sum of Rs.18,00,000/- has been transferred to his bank account. However, DW1 hear does not depose that out of Rs.18,00,000/-, a sum of Rs.3,00,000/- for furnitures and a sum of Rs.15,00,000/- as deposit was transferred to his bank account. It is also relevant to note here that in the cross examination of PW1 nothing has been elicited to rebut the statutory presumptions available in favour of the complainant.

26. The accused has raised contention that Neelakanta petrol bunk does not pertain to him. According to the complainant a sum of Rs.4,80,000/- was transferred on 13.04.2017 to the account maintained in the name of Neelakanta petrol bunk. The accused has produced certified copy of certificate issued by State Bank of India, Obuladevaracheruvu Branch, which discloses that the account number to which the C.C.No/7013/2018 complainant claims to have transferred a sum of Rs.4,80,000/- is standing in the name of proprietor of Neelakanta Petrol Fuel Center by name Syed Sahed Dudekula. In the cross examination of DW1 it is elicited that there might be transactions in between him as well as Neelakanta petrol bunk. However, DW1 denies that he is a proprietor of said bunk. It is elicited from the mouth of DW1 that the Neelakanta petrol bunk was inaugurated by then

Information Technology Minister by name Raghunath Reddy and DW1 has admitted his photographs during inauguration ceremony published in Daily local news papers at Ex.P7 to Ex.P10. DW1 has also admitted in his cross examination that he has purchased services in Printo Document Services Pvt. Ltd., and he has admitted the certified copy of invitation card at Ex.P11 and receipt at Ex.P12. If at all the accused is noway concerned to Neelakanta petrol bunk, what made him to participate in the inauguration C.C.No/7013/2018 ceremony of Neelakanta petrol bunk which is evident from above referred to local daily news papers. It appears that the accused only for the purpose of escaping from his liability pertaining to cheque in question, he has taken contention saying that Neelakanta petrol bunk does not pertain to him. From the evidence placed on record by the both sides it is clear that the accused has not rebutted the statutory presumptions available in favour of the complainant U/sec. 118(a) and 139 of N.I.Act, as he has failed to prove his defences raised during the trial. On the other hand the complainant has made out her case that to discharge his liability, the accused has issued cheque in question. Accordingly point No.1 is answered in the Affirmative.

27. Point No.2:- According to the complainant the cheque in question at Ex.P1 was returned unpaid C.C.No/7013/2018 with an endorsement as "Funds Insufficient". The bank memo produced by the complainant at Ex.P2 reveals that cheque was returned unpaid for the reasons "Funds Insufficient". The bank memo at Ex.P2 prove dishonour of cheque for the reasons "Funds Insufficient" by virtue of presumption raised U/sec.146 of N.I.Act and during the trial Ex.P2 went uncontroverted. Hence I answered point No.2 in the Affirmative.

28. Point No.3:- The cheque in question at Ex.P1 was returned unpaid with bank endorsement on 13.11.2017 as per bank memo at Ex.P2. It is clear from Ex.P3 the office copy of legal notice that, the complainant caused demand notice on 12.12.2017 informing the accused about dishonour of the cheque and making demand for repayment of amount covered under the cheque in question. On perusal of Ex.P1 to Ex.P3 it is evident that the complainant has presented C.C.No/7013/2018 the cheques within its validity and it was returned unpaid on 13.11.2017 as well as he caused legal notice within one month from the date of intimation of dishonour of the cheque. During the trial the accused has denied the service of demand notice contending that the notice has not been sent to his correct address. The learned counsel for the complainant regarding service of demand notice has relied upon decision of Hon'ble Supreme Court reported in (2007) 6 SCC 555 in the case C.C.Alavi Haji v/s Palapetty Muhammed and another. The complainant has produced certified copy of copy of Aadhaar card at Ex.P13 of accused. During cross examination accused has admitted Ex.P13 and as such it was marked on confrontation. It is relevant note here that in the cause title of the complaint, the complainant has shown three addresses of the accused. According to the complainant demand notice has been caused to the C.C.No/7013/2018 said three address and same has been served. It is settled law that the notice is deemed to be served if the demand notice was sent to correct address of the addressee. DW1 in his cross examination has admitted that he has been residing in the address shown in the legal notice. Thus from this admission given by DW1 it is clear that the demand notice has been caused by the complainant to the correct address of the accused and as such it is termed as proper service of demand notice upon the accused. Keeping in mind the ratio laid down in the decision of Hon'ble Supreme Court reported in (2007) 6 SCC 555, this court is of the opinion that the demand notice has been properly served upon the accused.

29. The records disclose that after causing demand notice, the accused has not repaid amount covered under cheque Ex.P1 after expiry of fifteen days C.C.No/7013/2018 statutory period from the date of service of notice, the complaint is filed well within the period of limitation. As accused has failed in paying amount covered under cheque at Ex.P1 all the essential ingredients of section 138 of N.I.Act have been complied with and thereby accused has committed the said offence. Accordingly point No.3 is answered in the Affirmative.

30. Point No.4:-In view of my findings on the above points, I proceed to pass the following;

ORD ER Accused is convicted U/sec.255 (2) of Cr.P.C., for the offence punishable u/Sec. 138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.28,10,000/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 1 (one) year. Out of the total fine amount, an amount of Rs.28,00,000/- shall be paid to the C.C.No/7013/2018 complainant as compensation U/sec. 357(1)(b) of Cr.P.C., and remaining amount of Rs.10,000/- shall be remitted to the state.

The bail bond of the accused and his surety bond stands cancelled Office to furnish a free copy of this Judgment to the accused forthwith.

(Directly dictated to the Stenographer on computer, typed by him, corrected by me and then pronounced in the Open Court on 31st March 2022) (FAROOQ ZARE) XIX ADDL.C.M.M., Bengaluru.

ANNEXURE:

Witnesses examined on behalf of the Complainant:

PW.1 :- P.Sailaja.

Documents marked on behalf of the Complainant:

Ex.P1	:-	Cheque.
Ex.P1 (a)	:-	Signature of the Accused
Ex.P2	:-	Bank Endorsement.
Ex.P3	:-	Office copy of the legal notice.
Ex.P4 to Ex.P6	:-	Postal receipts.

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Ex.P7 to Ex.P10 :- Certified copy of Ex.P11& Ex.P12 :- Certified copy of Ex.P13 :- Certified copy of Aadhaar Card. Ex.P14 :- Certified copy of cheque. Witnesses examined on behalf of the Accused:-

DW.1 :- Chandramohan Reddy. Documents marked on behalf of the Accused:

Ex.D1 :- Certified copy of Rental Agreement. Ex.D2 :- Bank Certificate.

(FAROOQ ZARE) XIX ADDL.C.M.M., Bengaluru.