

## C.Sreenivasa vs N.Gayathri on 2 December, 2019

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 2nd DAY OF DECEMBER 2019

C.C.NO: 26837/2015

COMPLAINANT: -

C.Sreenivasa  
S/o Late Chinnappa,  
Aged about 48 years,  
R/at No.15/1, 5th Cross,  
Ganesh Block, R.T.Nagar  
Post, Bangalore-560 032.

(Repted by Shri.LKM, Advocate)

V/s.

ACCUSED: -

N.Gayathri,  
D/o Late Narayanaswamy,  
W/o H.V.Gururaj,  
Aged about 48 years,  
R/at D.N.13/8,  
Athmananda Colony Main  
Road, Sulthanpalya,  
R.T.Nagar Post, Bangalore-560 032.

(Repted by Sri.KS, 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 known to each other very well , each other very well, each other shall have an acquaintance as such complainant had paid an amount of Rs.1,21,26,000/- as hand loan in order to meet her legal and family necessities apart from discharging certain existing debts. The complainant having acquaintance with the accused, the complainant by adjusting amount from his friends and relatives and also his own funds in good faith paid the accused a sum of Rs.1,21,26,000/-and pursuant to receipt of above said amount, the accused issued two cheques i.e, cheque bearing No.372063 dated 1/10/2014 and No. 372064 dated 6/10/2014 for

Rs.61,26,000/- both drawn on Vijaya Bank, R.T.Nagar Branch, Bangalore. When the complainant presented the above two cheques for encashment, they were dishonored with an endorsement "Funds Insufficient"

on 11/10/2014 and the same was intimated by the complainant to the accused thereafter negotiation was held between accused and complainant in the said settlement accused has agreed to pay an amount of Rs.1,15,00, 000/- and complainant is also agreed and settled as such accused had issued present two cheques to clear the outstanding amount without fail and entered an Memorandum of Understanding on 30/10/2014 with all terms and condition and accused has issued two cheques for an total amount of Rs.1,15,00,000/- cheque bearing No. 458296 for Rs.60,00, 000/- dated 30/6/2015 and bearing No. 4582976 for dated 30/6/2015 Rs.55,00,000/- both drawn on Vijaya Bank, R.T.Nagar Branch, Bengaluru with a promise that the said cheques were presented for encashment that would be honored without fail. By Considering the accused promise and representation when the complainant presented the two cheques for encashment, they were dishonored with an endorsement "Funds Insufficient" on 25/9/2015. Thereafter the complainant issued legal notice on 28/10/2015 calling upon the accused to make payment of the dishonoured cheque amount and the said notice was duly served on the accused. 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. She was appeared through her counsel and enlarged on bail and all papers were supplied to her. The substance of plea was recorded and read over and explained in Kannada language to the accused, to which she 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.37 documents 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 submits there is no defence evidence to make and in the cross-examination of P.W.1 Ex.D.1 & 2 documents were marked by way of confrontation 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 Negative.

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.37 documents. Ex.P.1 & 2 are the cheques, Ex.P.3 & 4 Bank endorsement, Ex.P.5 Office copy of demand notice, Ex.P.6 Postal receipt, Ex.P.7 Postal acknowledgement, Ex.P.8 Speed postal cover , Ex.P.9 Reply notice , Ex.P.10 MOU , Ex.P.11 to 14 Sale deeds , Ex.P.15 to 17 Financial Statement , Ex.P.18 to 20 IT Returns, Ex.P.21 Lease deed , Ex.P.22 Rental agreement , Ex.P.23 & 24 Lease agreements, Ex.P.25 Agreement of lease , Ex.P.26 Rental agreement , Ex.P.27 to 32 Pass book , Ex.P.33 to 34 Bank statement , Ex.P.35 to 37 Sale deeds

11) On careful perusal of the entire oral and documentary evidence, the admitted facts are that there is no dispute that Ex.P.1 & 2 cheques are belongs to the accused and they were dishonoured as per Ex.P.3 & 4 endorsement and notice has been issued as per Ex.P.5 and it was duly served as per Ex.P.7 postal acknowledgment. The prime dispute in the present case is that Ex.P.10 MOU and existence of debts between the complainant and accused and issuance of cheques by the accused to discharge the legally recoverable debts. To prove the said fact, complainant examined as P.W.1 and he exhibited Ex.P.1 to 37 documents. Per contra, accused submits there is no defence evidence to make.

12) During the course of arguments complainant counsel Sri. LKM filed written arguments and vehemently argued that complainant has proved his case by way of oral and documentary evidence and admissions of P.W.1 are minor and to be neglected and he placed IT records , MOU i.e, Ex.P.10 corroborates the case fo the complainant about his capacity and source of income to pay huge amount of Rs.1,15,00,000/- to the accused. On the other hand, there is no defence evidence and prays to convict the accused. Per contra, Sri.KS counsel for accused resisted the said arguments and filed written arguments argued that this case is involved huge amount of Rs.1,15,00,000/-. So, the burden lines on complainant as per ratios of the Hon'ble Apex court and Hon'ble High Court of Karnataka to prove the source of income and capacity is concerned and further admittedly except marking of cheques, endorsement, legal notice and MOU and some of the sale deeds complainant has not placed any documents before the court that about owning of Rs.1,15,00,000/- with him prior to the payment to the accused and admissions of P.W.1 have destroys his case and prays to acquittal of the accused. Before going to the merits of the case it is just and necessary to reproduce the admissions of P.W.1 for the sake of convenience.

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©. JÉÄÄßªªªgÀÄ ÉÀÉÄßYÀgÀªÁV DgÉÆÄ|UÉÀ ÉÉÆÄn, ï PÉÆlÖªªQÄ®gÀÄ JAZÀgÉ , Äj.

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vÀAiÀÆj¹ , ÄªªÁUÀ AiÀiÄªªªµÄðZÀ YÉªÉÄAmíªªÄvÄÄÛ AiÀiÄªªGzÉÝÄ±ÀPÁÏV PÉÆEmÉÖ  
ªªÄvÄÄÛ JµÄÄÖ qÄÆª EzÉ JAZÀÄ ÉÀÉÄßªªQÄ®jUÉ °ÉÄÄ¼çÝgÁ JAZÀgÉ , ÄªQë ÉÉÉÄ|®è  
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ÉÀÉÄÄ °ÁdgÄÄYÀr¹gÄªªª ¤|.11 jAZÀ 37 zÁR¯ÉUÄ¼Ä°è DgÉÆÄ|AiÄÄ , Ä» EgÄªªªÄç®è  
JAZÀgÉ , Äj.

So, on perusal of the admissions of P.W.1 clearly indicates to the court that at the time of payment to the accused he has not received any documents from the accused about payment of said amount and he also admitted that he has paid amount of Rs.1,15,00,000/- within a span of 3 years and he also admitted that Ex.D.1 & 2 documents in his cross-examination and he also admitted that he is doing all transactions through account and he also admitted that there is no mention in Ex.P.10 at page No.3 that exactly on what date and time, the amount has been paid to the accused etc., and he also admitted that one of the witness in Ex.P.10 i.e, Ravindranath.B. is his counsel who issued notice to the accused and he also admitted that 2nd witness of Ex.P.10 i., Manjula .R is the wife of his counsel i.e, Ravindranath.B and he also admitted that Ex.P.10 has prepared by his advocate Ravindranath.B and he also admitted that except Ex.P.10 there is no other documents with him to prove the payment of Rs.1 ,21,26,000/-to the accused and he also admitted that in para-10 of MOU i.e, in Ex.P.10 there is no specifically mentioned about how much principal amount and how much is interest amount etc.,. On the other hand, as already stated above accused has not stepped into the witness box though the initial burden lies on the complainant because he desires the court for appropriate reliefs under section 101 to 104 of Indian Evidence Act . As such initial burden lies on him and he also admitted that in his cross-examination dated 17/6/2019 that in Ex.P.11 to 37 documents there is no signature of accused etc., Admittedly, complainant in his complaint and chief examination affidavit stated before the court that, accused is well acquaintance with him, hence, he has paid amount of Rs.1,21,26,000/-, but surprisingly either in complaint nor chief examination nor notice he has not stated exactly on what date he paid the said amount to the accused and when accused has approached for hand loan etc., Further, in para 4 & 5 of the complaint, the complainant has stated that initially accused has issued two cheques for Rs.60,000,00/- and Rs.61,26,000/- and they were dishonoured and thereafter some negotiations she has issued Ex.P.1 & 2 cheques for Rs.1,15,00,000/- etc. To substantiate the complainant case, complainant also exhibited the very significant document i.e, Ex.P10 document memorandum of agreement dated 30.10.2014 held between the complainant and accused. Of course the recitals of Ex.P.10 clearly indicates to the court

that about agree to pay the amount by the accused Rs.1,15,00,000/- to the complainant etc., But surprisingly, in entire case proceedings i.e., in 313 cr.p.c statement and plea and in arguments of accused counsel he denied the genuineness of Ex.P.10 document. In spite of denial complainant has not taken any endeavours to prove the said document in accordance with law as well as under section 68 of Indian Evidence Act. Of course, MOU is not a compulsory attestable document as per under section 68 of Indian Evidence Act. Though, the burden lies on the complainant to prove the said Ex.P.10 document, in accordance with law. Admittedly the witnesses of Ex.P.10 i.,e Ravindranath.B and Manjula R. are the husband and wife and also the said Ravindranath.B is an advocate of complainant. Even though, complainant has not taken endeavours to examine the any one of the witness to prove the Ex.P.10 document before the court i.e., due execution of said document by the accused and acknowledgement of Ex.P.10 document. So, in the absence of witness evidence merely it is marked as Ex.P.10 in the evidence of P.W.1, the proof shall not be dispensed, because the marking of document is nothing but a ministerial acts of the courts and to prove the said document the burden always lies on the person who relied it. But here in this case as stated above, the cheque endorsement, legal notice and reply notice , RPAD covers are not in serious dispute. The dispute is that Ex.P.10 MOU and existence of debts between the complainant and accused and issuance of Ex.P.1 cheque by the accused, to prove the said fact complainant has got marked several documents as per Ex.P1 to 37 documents. But as already stated above P.W.1 in his cross-examination has categorically admitted that accused has not signed to the Ex.P.11 to 37documents, they are sale deeds, Financial statement, Lease deed, IT records and pass book etc. are only confers to the court that about selling of several properties by the complainant and filing of income tax returns and getting of certain lease amount as well as rents but they are not sufficient to believe the case of the complainant i.e, about the existence of debts between the complainant and accused because, as already stated above the present case is involved huge amount of Rs.1,15,00,000/-. Further, admittedly either in complaint nor notice nor chief examination affidavit of P.W.1, he has not specifically stated that exactly on what date and time accused has approached for hand loan and on what date and time he paid the amount to the accused etc. Of course, in the cross-examination of P.W.1 he explained before the court that he has paid the payment is several occasions but it is not the case of the complainant, .Further, admittedly to substantiate the evidence of P.W.1 as well as corroborates his case, complainant has not examined any witness of Ex.P.10 document nor lease holders nor persons who rented the houses as well as properties of the complainant etc., So, in the absence of their evidence, and evidence of P.W.1 is not sufficient to convict the accused. Further, complainant has not produced any documents to prove about payment of Rs.1,21,26,000/-to the accused except Ex.P.10 document, the said document has not proved in accordance with law . So, in the absence of proof of Ex.P.10 document any amount of oral evidence placed by the complainant and arguments of the complainant counsel Sri. LKM are not sufficient to convict the accused. Further, admittedly to the Ex.P.11 to 37 documents accused has not a witness and they only confers to the court about the source of income and capacity of the complainant , but existence of debts between the complainant and accused has not proved in the present case i.e, owning of Rs.1,21,26,000/- with him prior to the payment to the accused has not been proved as per the ratios of the Hon'ble Apex court and Hon'ble High Court of Karnataka. So, in the absence of proof of said fact, merely he is earning certain amount by way of rent and lease and selling of properties etc. are not sufficient to believe his case about the payment of Rs.1,21,26,000/- to the accused as pleaded in his complaint and chief examination of P.W.1. Accordingly, complainant has

not entitled for any of the relief as sought in the complaint. Of course, accused has not rebut the complainant case in a proper manner as specified under section 138 of NI Act . Though the admissions of P.W.1 those have referred above are destroys his case in toto i.e, first of all complainant has not proved his case as per the ingredients of Section 138 of N.I. Act. The complainant filed following rulings with memo.

1. CrI.P.No.6746/2017 Smt.Gayathri Vs C.Sreenivas
2. CrI.P.No.8437/2015 Smt.Gayathri Vs C.Sreenivas
3. 2019(1) Kar.L.R.171 S.M.Nataraja Vs B.M.Prakash
4. AIR 2018 SCC 3173 Kishan Rao V Shankargouda
5. AIR 2019 SCC 1876 Rohitbhai Jivanlal Vs State of Gujarat and anr.
6. 2019(1) Kar.L.R. 185 Sri.Yogesh Poojar Vs K.Shankara Bhat
7. 2019(1) Kar.L.R.193 Sri.Binod Tater Vs Veerabadra and ors
8. AIR 2018 SCC 3601 T.P.Murugan (dead) Thr.Lrs.V Bojan Posa Nandhi Rp.Thr POA holder Murugan Vs Bojan
9. AIR 2019 SCC 2446 Bir Singh Vs Mukesh Kumar In which their lordships laid down the following principles that ;
  - a) If cheque is dishonored with a shara of account closed or transferred then presumptions under section 138 of NI Act attracts to the said proceedings also.
  - b) Mere denial by the accused is not enough to disbelieve the complainant case
  - c) Once accused has admitted the signature on cheque as well as issuance of cheque in favour of the complainant then presumptions under section 139 of NI Act fallen to the case of the complainant.
  - d) If complainant is income tax assessee and he has not declared the alleged loan in his returns it is not a ground to ignoring that legal presumption under section 139 of NI Act etc.,.

But the said ratios are not helpful to the complainant case because the facts and circumstances involved in the said rulings are entirely different from the present set of facts. Hence, accused is entitled for an acquittal and I answer this Point No.1 in the Negative.

14). 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 (1) of Cr.P.C, accused is hereby acquitted of the offence punishable under Section 138 of Negotiable Instruments Act 1881.

The bail bond executed by the accused and surety bond executed stands cancelled.

(Dictated to the Stenographer, transcribed by her, corrected, revised and signed then pronounced by me in the open court on this the 2nd day of December 2019 ).

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

#### ANNEXURE

##### 1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Sreenivasa.C.

##### 2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1&2 : Two Cheques.

Ex.P.1(a) & 2(a) : Signature of the accused.

Ex.P.3 & 4	:	Bank endorsement.
Ex.P.5	:	Office copy of demand notice.
Ex.P.6	:	Postal receipt.
Ex.P.7	:	Postal acknowledgement.

Ex.P.8	:	Speed postal cover
Ex.P.9	:	Reply notice
Ex.P.10	:	MOU
Ex.P.11 to 14	:	Sale deeds
Ex.P.15 to 17	:	Financial Statement
Ex.P.18 to 20	:	IT Returns
Ex.P.21	:	Lease deed
Ex.P.22	:	Rental agreement
Ex.P.23 & 24	:	Lease agreement
Ex.P.25	:	Agreement of lease
Ex.P.26	:	Rental agreement
Ex.P.27 to 32	:	Pass book
Ex.P.33 to 34	:	Bank statement
Ex.P.35 to 37	:	Sale deeds

##### 3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-



NIL

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

Ex.D1	:	Letter
Ex.D2	:	Letter
Ex.D3	:	Pass book

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