

## Smt.Latha.B.N vs Smt.Prathima on 2 January, 2020

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

Dated this the 2nd day of January 2020

PRESENT: KALPANA.M.S.,  
B.Sc., LL.M.,  
XX ADDL. C.M.M.  
Bengaluru.

C.C.No.27566/2018

Complainant : Smt.Latha.B.N.  
W/o Thimmaiah @ Suresh,  
Aged about 28 years,  
R/at C/o.Venkatesh Building,  
No.78, "B" 14th "A" Cross,  
Mithrarunda Nagar,  
Tigalarapalya Main Road,  
Peenya 2nd Stage,  
Bengaluru - 560 058.

Vs.

Accused : Smt.Prathima,  
W/o Venkatesh,  
Aged about 31 years,  
R/at C/o.Govindegowda,  
Building No.30,  
Ground Floor, 10th "A" Cross,  
Balaji Nagar,  
Tigalarapalya Main Road,  
Peenya 2nd Stage,  
Bengaluru - 560 058.

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C.C.27566/2018

Offence complied of : U/S. 138 of N.I. Act.,

Plea of accused : Pleded not guilty

Final Order : Accused is Convicted

Date of Order : 02-01-2020

## JUDGMENT

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 & 142 of the Negotiable Instruments Act ( in short referred as "N.I. Act") against the accused alleging that, she has committed the offence.

02. The sum and substance of the complaint, is as follows;

The complainant and the accused are well known to each other from past five years and they are family friends. Accused had obtained hand loan of Rs.2,50,000/- from the complainant to meet her legal and family necessities and handed over original office rental agreement and executed On Demand Promissory note in favour of complainant. Accused agreed to repay the same within six months, but not returned the money as agreed upon. After several demands and requests, towards discharge of her liability, accused has issued cheque bearing No.746412 dated 20.07.2018 for Rs.2,50,000/-, which came to be dishonoured on presentation with an endorsement, "Exceeds Arrangement". Thereafter, complainant got issued legal notice, which was duly served to the accused. Accused neither replied the notice nor paid the cheque amount. It is contended that, accused intentionally not maintained sufficient amount in her bank account to honour the cheque issued in favour of the complainant towards discharge of legally enforceable debt. On these allegations, present complaint is filed.

03. After filing of complaint, this court perused the documents and taken cognizance for the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of complainant was recorded. Being satisfied that there are prima- facie materials to proceed against accused, summons was issued. After appearance, accused enlarged on bail and plea was recorded as per section 251 of Cr.P.C. Accused has not stated the defence.

04. Learned Counsel for complainant prays to treat sworn statement as examination-in-chief and to consider the documents marked as Ex.P.1 to 8. In spite of sufficient opportunity, accused has not cross examined PW.1. Statement under section 313 of Code of Criminal Procedure was recorded, read over and explained to the accused person. He denied incriminating circumstances, but not let in oral or documentary evidence.

05. Heard the Learned Counsel for complainant. No arguments addressed on behalf of accused.

06. The points that arise for my consideration are as follows;

## POINTS

1. Whether the complainant proves that, accused issued cheque bearing No.746412 dated 20.07.2018 for Rs.2,50,000/- towards discharge of her liability, which were returned unpaid on presentation and also not complied the notice issued by the complainant and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

## 2. What Order?

07. Now my answer to the above points is as follows;

1. Point No.1: In the affirmative

2. Point No.2: As per final order for the following;

### REASONS

08. POINT No.1: Complainant has filed this complaint alleging that, accused has intentionally not maintained sufficient amount in her bank account to honour the cheque issued by her. Before proceeding further, let us scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. Ex.P.1 is the cheque dated 20.07.2018, which was dishonoured and returned with an endorsement "Exceeds Arrangement", Ex.P.2 & 3 are the bank endorsements dated 27.07.2018, Ex.P.4 is the transaction enquiry, Ex.P.5 is the legal notice dated 10.08.2018, Ex.P.6 is the postal receipt, Ex.P.7 is the Postal acknowledgement and Ex.P.8 is the rental agreement. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act is complied with and this complaint is filed within time. It is worth to note that, accused has not disputed the signature present on the cheque. Thus, statutory presumption enshrined under section 118 read with section 139 of N.I. Act would operate.

09. The oral evidence of complainant is supported by the documentary evidence. There is no ambiguity in the oral and documentary evidence brought on record. The office rental agreement pertaining to the accused person produced by the complainant as per Ex.P.8 fortifies the claim of the complainant. The bank endorsement bearing shara "Exceeds Arrangement" attracts section 138 of the N.I. Act. All the requirements of section 138 of N.I. Act is complied with. Since, accused neither cross examined complainant nor adduced defence evidence, the oral and documentary evidence placed by the complainant left un-challenged.

10. The next point for consideration is, whether presumption could be drawn in favour of complainant. Section 139 of the Act provides that unless contrary is proved, it shall be presumed that the holder of a cheque received the same for discharge of any debt or other liability. The word "shall" indicate that, it is mandatory of the part of the court to draw the presumption in favour of holder of the cheque in due course, unless rebutted. At the cost of repetition, it is worth to note that, accused has not taken any steps to rebut the said presumption.

11. That apart, section 118 of the N.I. Act lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume that the instrument was endorsed for consideration. So also, in the absence of contrary evidence on behalf of the accused, the presumption under section 118 of the N.I. Act goes in favour of the complainant. Therefore, this court can conveniently opine that, complainant proved his case through cogent, convincing and acceptable oral and documentary evidence brought on record.

12. Under the facts and circumstances of this case, it is profitable to refer the decisions of the Hon'ble Supreme Court of India reported in, AIR 2018 SUPREME COURT 3601, in a case of, T.P.Murugan (Dead) Thr.Lrs. V. Bojan, wherein it is held that;

" Negotiable Instruments Act (26 of 1881), Ss.118,138,139- Dishonour of cheque-

Presumption as to enforceable debt-

cheques allegedly issued by accused towards repayment of debt- Defence of accused that 10 cheques issued towards repayment of loan back in 1995- Behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural- Accused admitting his signature on cheques and pronote, presumption under S.139 would operate against him- Complainant proving existence of legally enforceable debt and issuance of cheques towards discharge of such debt- Conviction, proper".

13. In another decision reported in, AIR 2018 Supreme Court 3604, in a case of Krishna Rao Vs. Shankargouda, wherein it is held that;

"Negotiable Instruments Act (26 of 1881), Ss.138, 139-Dishonour of cheque- Presumption as to - Accused issuing cheque of Rs. 2 lacs towards repayment of loan to complainant - Said cheque dishonored on account of insufficiency funds- Complainant proving issuance of cheque having signatures of accused- Accused failing to rebut presumption raised against him and no evidence led by him in his support -Acquittal of accused by High Court in revisional jurisdiction on ground of doubt in mind of court with regard to existence of loan, improper- Accused, liable to be convicted".

The ratio laid down in the cited decisions is aptly applicable to the case on hand.

14. That apart, as far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of the larger bench of the Hon'ble Apex Court is held in a case of Rangappa Vs. Mohan reported in AIR 2010 SC 1898 that, "In the light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by section 139 of the Act does indeed include the existence of the legally enforceable debt or liability".

In view of the law laid by three judges bench of Hon'ble Apex Court, the presumption enshrined under section 139 of the N.I. Act is extendable to the existence of legally enforceable debt.

15. In this case plea of the accused was recorded as per section 251 of Cr.P.C. Accused pleaded not guilty. As per section 251 of Cr.P.C. accused has to state about his defence. Here, except pleading not guilty accused has not stated his defence at the time of recording plea. As per the decision reported in AIR 2014 SC 2528 (Indian Bank Association V/s Union of India), Crl. Petition No.8943/2010 M/s.Mess Transgare Pvt V/s Dr .R. Parvathareddy and in Rajesh Agarwals case, Wherein, it is held

that; " Accused cannot simply say " I am innocent " or " I pleaded not guilty ". The proposition of law laid down in the aforesaid decision is squarely applicable to the facts and circumstances of this case. As such, it cannot be taken that accused has rebutted the presumption of law enshrined under section 139 and 118 of N.I. Act, by mere pleading not guilty.

16. From the discussion made supra, this court is of the firm opinion that, the complainant clearly proved his case both by oral and documentary evidence. Complainant fulfilled all the ingredients of section 138 of N.I. Act. Once the said provision is complied, then the presumption under section 139 of Negotiable Instrument Act supports him. It is rebuttal presumption, but the accused failed to rebut the same. Hence, this court has no hesitation to hold that, complainant has proved that accused has issued the present cheque towards discharge of legally enforceable debt/liability. The complainant has also proved that the accused has intentionally not maintained sufficient amount in his account to honor the disputed cheque. Accordingly, this point No.1 under consideration is answered in the affirmative.

17. POINT NO.2: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable under section 138 of N.I. Act. It is worth to note that, the offence is of the nature of civil wrong. Hence, it is proper to award sentence of fine, instead of awarding sentence of imprisonment. Hon'ble Supreme Court of India in a decision reported in, (2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal, observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount. Considering all these aspects, this court proceed to pass the following;

ORDER

Acting under section 255 (2) of  
Criminal Procedure Code, accused is

hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act and sentenced to pay fine of Rs.3,05,000/- ( Three Lakhs Five Thousand Rupees only). In default thereof accused shall undergo simple imprisonment for 2 (Two) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.3,00,000/- (Three Lakhs Rupees only), there from shall be paid to the complainant as a compensation, remaining fine amount of Rs.5,000/- ( Five Thousand Rupees only) is defrayed to the state for the expenses incurred in the prosecution.

The bail bond of the accused stands cancelled after expiry of six months.

Office to supply the copy of this Judgment to the accused immediately on free of cost.

{Dictated to the stenographer directly on computer, corrected and then signed by me and then

pronounced in the open court on this 2nd day of January 2020}.

(KALPANA M.S.), XX ACMM, Bengaluru.

ANNEXURE List of witnesses examined on behalf of Complainant:

P.W.1 Smt.Latha.B.N. List of documents produced on behalf of complainant:

|             |                          |
|-------------|--------------------------|
| Ex.P. 1     | Cheque                   |
| Ex.P. 1(a)  | Signature of the accused |
| Ex.P. 2 & 3 | Bank endorsements        |
| Ex.P. 4     | Transaction enquiry      |
| Ex.P. 5     | Legal notice             |
| Ex.P. 6     | Postal receipt           |
| Ex.P.7      | Postal acknowledgement   |
| Ex.P.8      | Rental agreement         |

List of witnesses examined on behalf of accused:

-Nil-

List of documents produced on behalf of accused:

-Nil-

XX A.C.M.M., Bengaluru.