

Smt.Meenakshi vs Smt.Lakshmi Prabha on 22 February, 2017

IN THE COURT OF THE LVIII ADDL. CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT,
BENGALURU

Dated this the 22nd day of February 2017

PRESENT:

Sri. Nataraj.S. B.A.L, LLB.,
LVIII Addl. Chief Metropolitan Magistrate
Bengaluru.

CASE NO	C.C.No.51192/2015
COMPLAINANTS	1. Smt.Meenakshi, Aged about 55 years, W/o Ramachandra, 2.Sri.Babu, Aged about 34 years, S/o Ramachandra. Both R/at No.8, 16th Cross, G 10th Street, Jogupalya, Bangalore-560 008.
ACCUSED	Smt.Lakshmi Prabha, W/o Subramaniam, Aged about 50 years, R/at No.21 A, Shakthi Villas, 2nd Cross, Appaiah Garden, Halasuru, Bangalore-560 008.
OFFENCE	U/s 138 of Negotiable Instruments Act
PLEA OF THE ACCUSED	Pleaded not guilty
FINAL ORDER	Accused is convicted

(NATARAJ.S.)
LVIII ADDL.C.M.M.BENGALURU
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CC.No.51192/2015

JUDGMENT

The complainant filed a complaint Under Section 200 of Cr.P.C for the offence punishable Under Section 138 of Negotiable Instrument Act.

2. The case of the complainants are that:

Accused husband Sri.Subramaniam is the owner of property No.21A, 3rd Floor, Shakthi Vilas, 2nd Cross, Appaiah Garden, Ulsoor, Bangalore. The complainant No.1 is the mother and complainant No.2 is the son, they were the tenants under the accused husband in respect of above said property and they have entered into an lease agreement dated 10.1.2007 for a period of 3 years and lease amount was fixed as Rs.1,25,000/- . The said amount was paid by the complainants to the accused husband. After lapse of lease period of 3 years, the husband of the accused has not return back the lease amount and he did not let the complainants to vacate premises. Finally the complainants vacated the premises in the month of August 2014. The accused and her husband assured to given Rs.50,000/- and remaining amount thereafter accordingly, the accused gave a cheque for Rs.50,000/- in respect of portion of lease amount in favour of Lakshmi Service Center owned by the 2nd complainant through cheque dated 11.9.2014 drawn on Standard Chartered Bank, M.G.Road Branch, Bangalore. The 2nd complainant presented the cheque with his banker Syndicate Bank the same was returned with endorsement "account closed", after that the complainants issued legal notice to accused on 16.10.2014 which was served upon the accused she did not pay the cheque amount within 15 days from the receipt of notice, after expiry of 15 days thereafter within 30 days the complaint was filed against the accused for the offence punishable under section 138 of NI Act.

3. The Cognizance was taken, summons was issued to the accused. She has appeared through her counsel. The copy of the complaint was furnished to her. The accusation was read over and explained to her, she pleaded not guilty and claimed to be tried.

4. The 2nd complainant in prove of their case examined himself as P.W.1 in his support Ex.P.1 to P.8 documents are marked.

5. The statement of accused Under section 313 Cr.P.C. has been recorded. The accused denied the incriminating evidence appeared against her. The accused examined herself as DW1 and got marked Ex.D1 to D8 documents.

6. Heard argument on both sides.

7. On consideration of contention of both sides and material on records, the following points that arise for consideration are as follows:

1. Whether accused rebuts the presumption under section 118, 139 of Negotiable Instrument Act?
2. Whether the complainant prove that accused committed an offence Punishable Under Section 138 of NI Act?
3. What order?

8. My answers to the above points are as follows:

Point No.1: In the Negative Point No.2: In the Affirmative Point No.3: As per final order For the following;

REASONS:

9. Point No.1:- Both points interconnected to avoid repetitions of fact both points are taken together.

10. The complainants in their complaint that they were tenants under accused husband and entered into lease agreement for a period of 3 years in respect of premises, after expiry of lease period towards repayment of portion of lease amount the accused issued a cheque, on presentation of cheque by the 2nd complainant the same was returned as "account closed". On issuance of notice which was received by the accused, she failed to make payment within 15 days, thereafter within 30 days the complaint was filed.

11. The learned counsel for complainant argued that the receipt of lease amount of Rs.1,25,000/- by the accused husband and execution of lease agreement for period of 3 years is admitted. After expiry of 3 years the husband of accused again collected Rs.1,00,000/- from the complainant. At the time vacated the premises the accused husband did not pay the lease amount. However, the accused issued a cheque in the name of Lakshmi Service center maintained by the 2nd complainant as part of lease amount. It is further argued that on presentation of cheque, as per Ex.P.8 came to be returned with bank endorsement " account closed". The documents relied by the accused namely the notices which were issued prior to issuance of cheque the said documents are not at all relevant. It is further argued that the accused admitted the cheque belongs to her, the dishonour of cheque is not disputed, the receipt of notice is admitted and within 15 days no payment has been made. The accused committed an offence U/s 138 of NI Act. The defense of accused is not tall probable and acceptable. There is no observation and reference in the judgment in Ex.D8 in respect of issuance of Ex.P.2 cheque by the accused in favour of one J.Subramaniam. In absence of such observations the contention of accused that the cheque in question was handed over to J.Subramaniam who is known to the complainant and misuse the cheque by the complainants cannot be acceptable. It is further argued that the accused being wife of Subramaniam, towards discharge of part lease amount cheque has been issued which was dishonoured, the accused not rebutted the presumption, the complainant proved the existence of legally enforceable debt and prayed for conviction and order for double the compensation amount.

12. Learned counsel for accused argued that the averments in the complaint and evidence of PW1 is inconsistent, the complainants have suppressed the notices issued by the accused husband Ex.D.1 to D3 were admitted by the complainant No.2 and marked through him. There is no transaction between complainant and accused. On the other hand even after expiry of lease period there was understanding between the complainant and accused husband, the lease agreement was converted into rental agreement with monthly rent of Rs.3,000/-, two months rents was paid the complainants. Thereafter they did not pay the rent and vacated the premises in the year 2014 August. The lease amount was adjusted towards monthly rental due amount. The complainants

themselves are due sum of Rs.1,15,000/- to the accused husband as stated in Ex.D.1 notice. It is further argued that the complainant not established the additional lease amount of Rs.1,00,000/- paid to the accused husband. The accused has not at all issued cheque in question to the complainant. There was no transaction between them, the accused husband issued cheque in favour of one J.Subramaniyam who is known to the complainant No.2. The said Subramaniyam filed compliant against accused husband in CC.No.35841/2010 on the file of 14th ACMM, after enquiry the said case was ended in acquittal. Thereafter the said J.Subramaniyam in collusion with complainant No.2 handed over the cheque in question and filed present case. It is further argued the accused rebutted the presumption, the complainants failed to prove legally enforceable debt. The accused is entitled for acquittal.

13. On careful consideration of submissions of learned counsels for both sides, I perused records as well as oral and documentary evidence on records. The complainants produce Ex.P.2 the cheque dated 11.9.2014 drawn on standards chartered Bank for Rs.50,000/-. Admittedly the said cheque is belongs to accused bank account. Ex.P.2(a) is signature of accused is not in dispute. Ex.P.3 is the bank endorsement issued by the Syndicate Bank dated 17.9.2014 for the reason 'account closed'. After dishonour of cheque legal notice dated 16.10.2014 issued by the complainants within one month from the date of the receipt of information about dishonour of cheque from the bank. Ex.P.6 is the acknowledgment dated 17.10.2014 having received the notice. The accused in her evidence did not dispute about receipt of notice sent by the complainants after dishonour of cheque. In the cross examination of PW1 also the accused not disputed Ex.P.5 postal acknowledgment having received the notice. After expiry of 15 days from receipt of notice, thereafter within one month as per section 142 of NI Act complaint has been presented before the court. Thus, the complainants fulfilled the conditions Under section 138(a) to (c) of NI Act. Once the above said conditions are fulfilled, mandatorily the court has to raise presumption U/s 118 and 139 of NI Act. The accused rebutted the presumption either by entering witness box or by effective cross examination of PW1. The proof is on the basis of preponderance of probabilities. If the accused rebut the presumption, then burden shifts on the complainant to prove the transaction and existence of legally enforceable debt. With above said principle, the consideration of material on records is necessary.

14. It is an admitted fact the complainants were the tenants under accused husband Subramaniyam in respect of property No. 21A, 3rd Floor, Shakthi Vilas, 2nd Cross, Appaiah Garden, Ulsoor, Bangalore. It is also an admitted fact there was a lease agreement as per Ex.P.1 between complainants and accused husband. It is also not in dispute under the agreement the accused husband had received Rs.1,25,000/- as a lease amount. The lease period of 3 years was fixed as per above said lease agreement. The lease was commenced from January 2007. The accused in the cross examination of PW1 and also in her evidence contended that after expiry of 3 years lease period, there was an understanding between the complainants and her husband that the lease agreement was converted into rental agreement, the monthly rent was fixed for Rs.3,000/-. The complainants had paid Rs.3,000/- for 2 months, thereafter they did not pay the rent , for which they have issued Ex.D.1 notice for vacating premises to the complainants. So according to accused after deducting the arrears of rent, electricity and water charges, cost of repairs and damages and painting of premises totally amount was Rs.2,26,500/- was due from the complainants, out of said amount lease amount of Rs.1,25,000/- was adjusted and the balance amount of Rs.1,01,500/- is due from the

complainants. PW1 in his cross examination disputed the Ex.D.1 notice and also the defense taken by the accused. The complainant No.2 denied the defense of the accused in the cross examination of DW1, it is elicited in the cross examination of DW1 after cancellation of lease agreement the rental agreement was entered into orally. But no agreement was executed. DW1 admitted that having received 2 months rent from the complainants no receipts were issued. It admitted lease period was commenced in the year 2007 and ended in the year 2010 but no rental agreement was entered into between them as contended by the accused no such material are placed about an understanding between the complainants and accused husband about converting lease agreement as rental agreement on monthly rent Rs.3,000/- and 2 months the complainants have paid rent accused husband. Regarding alleged oral understanding about converting lease agreement into rental agreement the husband of the accused has got knowledge he is the proper person to depose before the court. Without examining the husband of accused the defense taken by the accused in this regard cannot be acceptable and improbable.

15. On the other hand it is an admitted fact the lease amount of Rs.1,25,000/- was received by the accused husband. It is the case of the complainants after expiry of 3 years lease period the husband of accused did not return lease amount and did not let them to vacate the premises, after persistent demand and request the accused husband issued a Ex.P.2 cheque belongs to accused towards repayment of part lease amount. The accused denied issuance of Ex.P.2 cheque towards repayment of part lease amount. There is no material that Rs.1,25,000/- lease amount collected from the complainants was repaid them. On the other hand Ex.P.1 admitted lease agreement para 11 recitals disclose as bellow;

" 11.In the event of the Lessor fails to refund the Lease amount at the time of expiry of the lease period, then the Lessee shall be at liberty to reside on the same terms and conditions of this agreement, till refund of the lease amount by the Lessor"

16. From the above said recitals of lease agreement that in the event of lessor fails to repaid lease amount at the time of expiry of lease period, then the lessee shall be at liberty to reside on the same terms and conditions till refund of lease amount by the lessor. Even though the lease period of 3 years was expiry in the 2010, by virtue of above said clause the complainants continued to stay in the premises till August 2014 on same terms and conditions. There is no material defense to establish the lease agreement was converted into rental agreement on monthly rent of Rs.3,000/-. Therefore, there was a legally enforceable debt by the landlord/accused husband to the complainants in respect of lease amount.

17. The accused admitted Ex.P.2 cheque and signature thereon belongs to her. It is her defense that the said cheque was issued by her husband to one J.Subramaniyam who is known to the complainant No.2. The said J.Subramaniayma had filed criminal case U/s 138 of NI Act against accused husband in CC.No.35841/2010 on the file of 14th ACMM, Bangalore, as per Ex.D.8 after enquiry the said case was ended in acquittal. It is further contended by the accused after acquittal of case , the said J.Subramaniyam colluding with complainant No.2 the present complaint is filed. In order to appreciate the contention of accused I have peruse the judgment in Ex.D8 wherein there is not contention in the said case by the accused husband stating that Ex.P.2 cheque herein was issued

by him to the said J.Subramaniyam complainant of that case nor there was any observation or finding by the court about issuance of Ex.P.2 cheque herein by accused husband in favour of J.Subramaniyam Therefore, the defense taken by the accused that Ex.P.2 cheque was issued by her husband to J.Subramaniyam is not probable and acceptable. It appears the above said defense was taken only to escape from criminal liability and also payment of compensation. Moreover it is stock defense taken by the accused without any substance same is rejected.

18. The accused having received the notice, did not reply the notice, no reasons are stated for not issuing the reply to the notice of complainants. If really there was no transaction between the complainants and accused, no ordinary prudent man would keep quiet without taking legal action against the complainants. Herein no such action has been taken against the complainants having misused the cheque. Ex.D1 to D4 documents relied by the accused not at all helpful to her case. On the other hand accused on behalf of her husband towards discharge of part lease amount she had issued a cheque in favour of M/s Lakshmi Service centre owned and managed by the complainant No.2 and this fact is clear from Ex.P.8 certificate issued by the Syndicate Bank. Ex.P.2 cheque was presented by the 2nd complainant through his current account in respect of M/s Lakshmi Service centre. The said cheque was dishonoured as per Ex.P.3 as account closed. The accused from the date of receipt of notice within 15 days she did not make payment. Though there was no direct transaction between complainant and accused the accused issued a cheque on behalf of her husband towards repaid the lease amount so it is also legally enforceable debt as per the accused being drawer of the cheque she is liable committed offence U/s 138 of NI Act. As per recent Hon'ble Supreme Court 2016 (3) SCC 1 Don Ayengia Vs State of Assam & another - any debt or other liability U/s 138 need not to be only a person who has directly /primarily enjoyed benefit thereof like the principal debtor. The person who is secondarily liable, such as surety or guarantor may also be convicted under section 138 of NI Act if the ingredients thereof are satisfied.

Therefore, the cheque issued by the accused on behalf of her husband towards discharge of said debt, on dishonour of said cheque, the accused failed to pay the cheque amount within 15 days from the date of receipt of notice. Therefore, the accused committed an offence punishable U/s 138 of NI Act.

19. Under Section 138 of NI Act the punishment prescribed for the offence is imprisonment for a period which may be extended to 2 years or with fine which may be extended by twice the cheque amount or both. Considering the transaction in question was taken place in the year 2014, there is no material on record that the accused is habitual or repeated offender. Therefore, it is not proper to impose imprisonment. On the other hand with fairness would be required for imposition of fine of Rs.75,000/- out of which the Rs.70,000/- is ordered to be paid to 2nd complainant who is owned and managing the business of M/s Lakshmi Service centre in whose name the cheque was issued by the accused, as a compensation Under section 357 (1) Cr.p.c in default of payment the said fine 3 months simple imprisonment would suffice. Accordingly, I answer Point No.1 in the negative and Point No.2 in the affirmative.

20. Point No.3: For the aforesaid reasons and findings I proceed to pass the following;

ORDER Acting Under Section 255(2) of Cr.P.C accused is hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act ;

and she is sentenced to pay a fine of Rs.75,000/-, out of which Rs.70,000/- shall be paid as compensation to the 2nd complainant in term of section 357(1) of Cr.P.C.

In the event of default of payment of fine by the accused she shall suffers simple imprisonment for a period of 3 months The bail bond of accused stand cancelled after payment of fine amount and cash security of Rs.1,000/- deposited by the accused on 20.3.2015 is ordered to be refund to the accused (if not forfeited) after payment of fine amount.

Supply the free copy of this judgment to the accused forthwith.

(Dictated to the stenographer, transcribe and typed by her, corrected by me and pronounced in the open court on this 22nd of February 2017) (NATARAJ.S.) LVIII ADDL.C.M.M.BENGALURU ANNEXURE Witness examined for the complainant:

P.W.1: Babu Witness examined for the defence:

D.W.1 : Smt.Lakshmi Prabha Document marked by the complainant:

Ex.P.1	Lease Agreement
Ex.P.2	Cheque dated 11-9-2014
Ex.P.3	Bank endorsement
Ex.P.4	Legal notice
Ex.P.5	Postal receipt
Ex.P.6	RPAD Acknowledgment
Ex.P.7 & 8	Bank certificate
Document marked by the defence :-	
Ex.D.1	Notice
Ex.P.2	Notice
Ex.D.3	Rejoinder reply notice
Ex.D.4	Complaint
Ex.D.5 to 7	Three postal receipts
Ex.D.8	Certified copy of the judgment in CC 35841/2010

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