

Sri. Kushalappa P.S vs Sri. S.G. Yellappa on 15 March, 2021

IN THE COURT OF THE ADDL. CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY.
(SCCH-5)

DATED THIS THE 15TH DAY OF MARCH 2021

PRESENT: SMT.SHARMILA.S. B.Com., LLB.,
VIII ADDL. SCJ & ACMM,
MEMBER - MACT,
BENGALURU.

C.C No.27018/2012

COMPLAINANT : Sri. Kushalappa P.S.
Aged about 33 years
S/o. P.D.Subbaiah
R/at. No.2061,
'Kusha Nilaya'.
Cheluvaiah Road,
Ramamurthynagar,
Bangalore - 560 016.
(By Sri.C.P.Praveen, Adv.,)

V/s
ACCUSED : Sri. S.G. Yellappa
R/at. No.03, 'Tejeswi',
Behind H.V.Nagaraj Garden,
2nd Main, 6th Cross,
P & T Layout,
Ramamurthynagar,
Bangalore-560 016.
(By Sri.H.S.Sathish Kumar,
Adv.,)

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:: JUDGMENT :

:

The Complainant has filed a private complaint under Section 200 of Cr.P.C., against the Accused for the offence punishable under Section 138 of Negotiable Instrument Act [in short NI Act].

2. The case of the Complainant is that; The Complainant and the son of the Accused by name Mahesh Yellappa are the goods friends and hence themselves and their family members are become

good friends. The Accused and his son running a Granite Business and to develop the same, the Accused and his son approached the Complainant in the month of July 2011 and requested the Complainant for a sum of Rs.16,32,000/- as hand loan. The Complainant being a good family friend has paid a sum of Rs.16,32,000/- to the Accused and the same has been acknowledged by the Accused and promised to repay the same within three SCCH - 5 months. Further it is contended that, after lapse of three months, the Complainant requested to repay the amount borrowed by the Accused, but he pleaded his inability and postponed the issue for few days and finally the Accused issued a cheque bearing No.152898 dated 16.01.2012 for a sum of Rs.16,32,000/- drawn on State Bank of India, Doorvaninagar Branch, Bangalore, for discharge of the amount borrowed by him from the Complainant and assured to Complainant to encash the same by presenting the said cheque. As per the assurance and instructions of the Accused, the Complainant has presented the said cheque for encashment through his banker State Bank of India, Dooravaninagar Branch, Bangalore, but to the Complainant's shock and surprise the said cheque returned unpaid on 17.01.2011 for the reasons 'Funds Insufficient'.

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3. Further after return of the cheque in question, the Complainant has been issued a legal notice to the Accused through his counsel on 09.02.2012 under Registered Post Acknowledgement Due by calling upon the Accused to pay the amount which is due under the cheque in dispute within 15 days as contemplated under law. The notice sent under RPAD has been duly served on 11.02.2012. After service of the notice, the Accused neither paid the cheque amount nor replied to the legal notice. According to the Complainant, the Accused has issued the above said cheque to discharge his legal liability which is bound to pay to the Complainant. The Accused intentionally in order to cheat the Complainant has not maintained the sufficient balance in his account, hence the act of the Accused attracts the offence punishable under Section 138 R/w Sec.142 of Negotiable Instruments Act.

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4. After perusal of the material available on record and on prima facie material grounds, this Court took cognizance and thereafter sworn statement was recorded and summons was issued to Accused. After service of summons, the Accused appeared through counsel and got enlarged himself on bail and substance of accusation was recorded as to the alleged offence under Section 138 of Negotiable Instrument Act. The Accused person pleaded not guilty and claimed to be tried.

5. The Complainant examined himself as PW and got marked Ex.P.1 to Ex.P.17(a) documents on his behalf and closed his side.

6. After completing all these procedures, the statement of the Accused under Section 313 of Cr.P.C. was recorded. The Accused denied all the incriminating SCCH - 5 evidence appearing against him. The Accused himself examined as DW and no documents have been marked.

7. Heard the arguments of both the sides and perused the materials placed before the Court.

8. From the above facts of the case, the points that arise for my consideration are: ☐

1. Whether Complainant proves that the Accused known to him as family members are become good friends, in the month of July 2011 approached and borrowed a sum of Rs.16,32,000/☐as hand loan agreeing to repay the same within three months. After lapse of three months, when the Complainant demanded, the Accused has issued a cheque bearing No.152898 dated 16.01.2012 for Rs.16,32,000/☐drawn on S.B.I, Dooravaninagar Branch, Bangalore and on presentation, it was dishonoured for the reason "Funds Insufficient" and despite receipt of legal notice, the Accused did not make payment of the cheque amount within the stipulated period, thereby the Accused has committed the offence punishable SCCH - 5 under Section 138 of Negotiable Instruments Act?

2. What Order?

9. My findings to the above points are:

Point No.1: ☐In the Affirmative Point No.2: ☐As per final order for the following:☐
::REASONS::

10. Point No.1:☐Existence of legally recoverable debt is a sine qua non for prosecuting the case under Section 138 of Negotiable Instruments Act. For convenient purpose the essential ingredients to constitute offence under Section 138 of N.I.Act is summarized as below:

1. That there must be a legally enforceable debt.
2. That the cheque was drawn from the account of bank for discharge in whole or SCCH - 5 in part of any debt or other liability which presupposes the legally enforceable debt.
3. That the cheque so issued had been returned due to insufficiency of funds

11. It is the core contention of the Complainant that, the son of the Accused and the Complainant are good friends. The Accused and his son approached the Complainant in the month of July 2011 and requested the Complainant for a sum of Rs.16,32,000/☐as hand loan in order to develop the Granite Business and the Accused promised to repay the same within three months. When the Complainant demanded, the Accused has issued a cheque bearing No.152898 dated 16.01.2012 for a sum of Rs.16,32,000/☐drawn on State Bank of India, Dooravaninagar Branch, Bangalore for discharge of the amount borrowed by him from the Complainant and on presentation, it was dishonoured SCCH - 5 for the reason "Funds Insufficient" and despite receipt of legal notice, the Accused did not make payment of the cheque amount within the stipulated period.

12. In order to bring home the guilt of the Accused, the Complainant himself examined as PW☐ and got marked Ex.P.1 to Ex.P.17(a) documents i.e., Original Cheque dated 16.01.2012, Signature, Bank Endorsement, Legal Notice, Postal Receipt, Acknowledgement, Rental Agreement dated 06.03.2015, 14.06.2016, 01.07.2014 and 01.10.2016, RTCs in the name of Complainant, Absolute Sale Deed

dated 06.04.2015, General Power of Attorney dated 15.06.2015, Consent Agreement dated 06.04.2013 and Electricity Bills.

13. During the course of cross-examination PW-1 deposed that: "He was doing three project works, first he was doing two projects for Rs.6,00,000/- each and third SCCH - 5 project for Rs.4,00,000/- He was also doing land developing work by purchasing lands from the land owners. From the past four years he was doing work in first source company and earning a sum of Rs.24,000/- per month. The salary was directly credited to his account. Now his monthly income is at Rs.30,000/- and it was not mentioned in the IT returns. He know the Accused from 2005. As per the say of the son of the Accused, the Accused was working as Joint Director at Agricultural Department. He has paid the amount in the presence of one Muniraju, Muthu and himself in the house of Accused. Further it is suggested that, the Accused lodged a complaint for theft of Honda City Car and Laptop, Passbook and cheques, the Complainant and one Ravi have stolen the signed cheques and by misusing the same, they have filed false case against the Accused, for which he denied. Further the Complainant SCCH - 5 denied the other suggestions made by the learned counsel for the Accused.

14. From the above evidence it is the contention of the Accused that, he don't know the Complainant and he is neither his family friend or known to him through any source as of now. The Accused was also the Public Servant in Karnataka Government who has sincerely and dedicatedly served as the Joint Director of Agriculture, Department of Agriculture and retired on 31.01.2008 and later considering his genuinity in discharging the sincere services and also upon satisfactory aspects, he was provided the Ex service men job as Interview Officer in State Bank of India Recruitment Panel and he has been served as the Interview Officer in New Delhi, Mumbai, Patna and other parts of India and he was in the said duty till the end of the year 2013 and he was out of Bangalore through out the year. According to the SCCH - 5 Accused, he has been in the habit of signing the Blank Cheques and to keep in his house for the purpose of receiving the cash by his family members from his account. Accordingly, he has signed many cheques and kept at his home in Bengaluru in order to accommodate his family members to utilize the money thereby depositing the same to the Bank.

15. Further the Accused contended that, his son pursuing his studies in the year 2011 and 2012 and he was doing his Diploma Course in IETE during that time, neither himself nor his son were doing any sort of business muchless the granite business or any other business. He was an official of Government of Karnataka and later doing is ex-servicemen job till the end of the year 2013, hence, they were not in need of an for doing any such business. On 21.05.2011, he was in Mumbai in discharging his deputed services and on the same day, SCCH - 5 his son had gone to his friend's house at Kalyana Nagar by name Mr.Ravikumar by the Honda City Car bearing No.KA-01-ME-5103 and while he had gone to his friend's house, his son kept his bag which contains Lenova Laptop, Sony Ericson Z Peria Mobile Phone, Passport, signed cheque books of himself and his son, debit cards and other documents and the same were in the back seat, while he returned back, he found that the same were not there and somebody stolen it. Later, immediately his son had gone to the Jurisdictional Banasawadi Police Station and lodged complaint which is accepted by the Police and issued endorsement to that effect. Later the Police have been searching the same which could not found to them despite his son has been frequently following up with the Police. Since the

Accused was in Mumbai during that time and his son was a student during that time, they had not approached the SCCH - 5 Bank and given the Stop Payment because they were not aware of the consequences. Later i.e., after long time, he got the legal notice dated 09.02.2012 in the name of the Complainant wherein it is seen that the contents of the cheque has been filled by the Complainant in a different handwriting and different ink pen and mentioned Rs.16,32,000/- in his cheque and presented the same and upon the return of cheque, he issued the legal notice etc., and on the same day, even his son also got the legal notice with the same Advocate and same date through the alleged claimant by name Sri.B.Ravi and immediately, he has gone to the house of Sri.B.Ravi who's address was mentioned in the legal notice and found him there. Upon enquiry, he confronted that he had take away their cheques and with the aid of his friends by name Kushalappa, Nagaraj and others, he has started presenting the cheques etc., the Accused shocked SCCH - 5 to hear from him and they requested him that the son of the Accused is the student and he is the ex-service men who never done any such financial commitments and requested him not to recourse to such illegal claims. The said Ravi has also accepted the same and assured that he would not initiate any legal proceedings against his son and also he would inform the present Complainant not to proceed. After receiving notice from this Court, the Accused and his son have approached the Banasawadi Police and informed them that the bag is stolen by Ravi as he filed the false case against his son and also the present Complainant filed the complaint against him and also he confronted that the same are with him. But the Police did not help the Complainant and told that since the case is pending they cannot help him. According to the Accused, the case filed by the Complainant is false in SCCH - 5 nature and it is by fabricating his cheque and overwriting on it and it is a false claim.

16. In order to substantiate his contention, the Accused himself examined as DW-1 and he has produced the complaint and NCR in C.C.No.26970/2012.

17. In the course of cross-examination he deposed that, at the time of institution of this case he was working in State Bank of India and hence, he know the bank proceedings. There is no impediment for him to intimate the bank to stop payment after misplacing of cheque. Accused admits his signature at Ex.P.1 but denies the date mentioned on Ex.P.1 and further he denied the other suggestions made by the Complainant's counsel.

18. By assessing the entire oral evidence and the documentary evidence of PW-1 and Ex.P.1 wherein it SCCH - 5 reveals that the cheque was issued by the Accused on Ex.P.1 for the amount shown in cheque in discharge of liability in favour of PW-1 is found to be true. So presumption under Section 139 of Negotiable Instrument Act operates against the Accused and it is for the Accused to prove his contention that the said cheque at Ex.P.1 was not issued for discharge, in whole or any part of any debt or other liability due by him which has not been established by the Accused and the presumption operates under Sec.139 of Negotiable Instrument Act in favour of the Complainant who is the holder of the cheque and has received the cheque at Ex.P.1 of the nature referred to in Sec.138 of Negotiable Instrument Act for the discharge, in whole or any part of any debt or other liability. Moreover, at the time of recording of statement U/Sec.313 of Cr.P.C, the Accused has not taken any defence as stated in his affidavit and he simply SCCH - 5 denied the incriminating evidence made by the Complainant.

19. At this stage it is useful to refer a recent decision decided on 6th February 2019 between Bir Singh Vs Mukesh Kumar in Criminal Appeal 230□231 of 2019 wherein the Hon'ble Supreme Court of India held that:

"Negotiable Instruments Act, Presumption under Section 139. Even a Blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the NI Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt".

20. In the instant case, the only contention of the Accused is that he had not issued any cheque in favour SCCH - 5 of the Complainant and the Complainant misused the blank signed cheque issued by the Accused. A meaningful reading of the provisions of the NI Act including, in particular, Sections 20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. Though the Accused taken a contention that the Complainant has misused the stolen signed cheques and filed false case against him, but in order to substantiate his contention he has not examined any witnesses. Moreover, though the notice has been SCCH - 5 duly served on him, he has not given any reply stating that the cheques were stolen and it was misused by the Complainant.

21. In this case also the Accused voluntarily presented the signed blank cheque, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the Accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. Hence, presumption as envisaged in Sec.118 of Negotiable Instrument Act can legally be inferred that the Cheque at Ex.P.1 was made or drawn by the Accused for consideration on the date of which the cheque at Ex.P.1 bears. In the instant case, though the Accused has denied the issuance of cheque in favour of the Complainant, but not adduced any cogent evidence to rebut the presumption under Section 139 of Negotiable SCCH - 5 Instrument Act that he did not issued the cheque at Ex.P.1 towards the discharge of antecedent liability, which is proved by the Complainant by production of the Bank Endorsement at Ex.P.2, from Ex.P.3 □Legal Notice issued by the Complainant in this case within 15 days from the receipt of Ex.P.3 regarding the dishonour of the cheque at Ex.P.1 and intimated the same to the Accused as per Ex.P.3 which was served on the Accused as admitted by him. It is also not disputed that the Complainant files the complaint within the prescribed period from the date on which the cause of action arose. The documents produced by the Accused are noway helpful to discharge his burden and also to disprove the contention of the Complainant. Moreover, he has not given any reply to the notice issued by the Complainant by denying the averments of the notice. In the result, I am of the opinion that the Complainant has proved the SCCH - 5 commission of the offence by the Accused for the offence punishable under Section 138 of Negotiable Instrument Act. Accordingly, Point No.1 is answered in the Affirmative.

22. Point No.2: □In view of my findings on point No.1, I proceed to pass the following:

::ORDER::

Acting U/s.255(2) of Cr.P.C the Accused is convicted for the offence punishable under Section 138 of Negotiable Instrument Act and sentenced to pay a fine of Rs.25,000/□ in default to undergo simple imprisonment for 6 months.

Further, it is made clear that an amount of Rs.16,50,000/□ is to be paid to the Complainant as compensation as provided under Section 357[3] of Cr.P.C.

SCCH - 5 In default of payment of compensation amount, the Accused shall undergo Simple Imprisonment for a period of three months.

Office is directed to supply certified copy of this judgment to the Accused on free of cost in compliance of Sec.363(1) of Cr.P.C. (Dictated to the Stenographer directly on the computer, typed by her, transcript revised corrected and then pronounced by me in the Open Court on this the 15th day of March 2021) (SHARMILA S.) VIII ADDL. SCJ & ACMM MEMBER - MACT, BENGALURU.

::ANNEXURE::

LIST OF WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT:

PW□ : Sri. Kushalappa P.S. LIST OF DOCUMENTS MARKED ON BEHALF OF THE COMPLAINANT:

Ex.P.1 : Original Cheque dated 16.01.2012 Ex.P.1(a) : Signature Ex.P.2 : Bank Endorsement Ex.P.3 : Copy of Legal Notice Ex.P.4 : Postal Receipt Ex.P.5 : Postal Acknowledgment SCCH - 5 Ex.P.6 : Rental Agreement (4 in Nos.) dated 06.03.2015, 14.06.2016, 01.07.2014 and 01.10.2016 Ex.P.6(a) : Signature Ex.P.7 : RTC Ex.P.8 : Copy of Absolute Sale Deed dated 06.04.2015 Ex.P.9 : Copy of General Power of Attorney Ex.P.10 : Copy of Consent Agreement dated 06.04.2013 Ex.P.11 to : Electricity Bills (4 in Nos.) Ex.P.14 Ex.P.15 : Rental Agreement Ex.P.15(a) : Signature Ex.P.16 : Rent Agreement Ex.P.17 : Rent Agreement Ex.P.17(a) : Signature LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED:

DW□ : Sri. S.G.Yellappa LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED:

□NIL□(SHARMILA S.) VIII ADDL. SCJ & ACMM MEMBER - MACT, BENGALURU.