

Vide This Judgment I Shall Dispose Of The ... vs Unknown on 22 June, 2015

IN THE COURT OF MS. MEENU KAUSHIK, METROPOLITAN MAGISTRATE,
NORTH-WEST, ROHINI, DELHI

Unique ID No. 02404R0094232012
CC No. 443/1/12

H.C.D. Maini
S/o Late Sh. S.C.D. Maini
R/o B-1/23, Sector-11,
Rohini, Delhi-110085.

.....Complainant

Versus

Vikram Tiwari
S/o Late Sh. K.M. Tiwari
R/o B-8/58-59, Ground Floor,
Sector-11, Rohini,
New Delhi-110085.

.....Accused

JUDGMENT

- | | | |
|-----|---|---|
| (1) | Name of the complainant,
parentage & address | H.C.D. Maini
S/o Late Sh. S.C.D. Maini
R/o B-1/23, Sector-11,
Rohini, Delhi-110085 |
| (2) | Name of accused,
parentage & address | Vikram Tiwari
S/o Late Sh. K.M. Tiwari
R/o B-8/58-59, Ground Floor,
Sector-11, Rohini,
New Delhi-110085 |
| (3) | Offence complained of or
proved: | 138 N.I. Act |
| (4) | Plea of accused: | Pleaded not guilty |
| (5) | Date of institution of case: | 04.04.2012 |
| (6) | Date of reserve of order: | 21.05.2015 |
| (7) | Date of Final Order: | 22.06.2015 |
| (8) | Final Order: | Convicted |

1. Vide this judgment I shall dispose of the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act').

2. Brief facts relevant for the decision of the case are as under: That the accused was well known to the complainant and offered the complainant to invest the amount received as retirement benefits with the accused on higher rates of interest i.e. 5-6% per month. Accused represented that he had good clientage and circle of needy people from whom accused was charging interest at the rate of 8-10% per month and in this manner, a good amount could be earned by the complainant. The accused succeeded to pursue the complainant and complainant advanced a total sum of Rs. 13,84,500/- to the accused on various dates.

The loan of Rs. 3,00,000/- out of the total amount of Rs. 13,84,500/- was advanced to the accused by the complainant for the period of four months. Sum of Rs. 3,00,000/- was given by way of a cheque bearing no. 089913 dated 03.08.2011 for sum of Rs. 3,00,000/- drawn on Canara Bank, Rohini, Delhi. The accused agreed to pay interest at the rate of 6% per month which was to be payable every month in advance. Towards repayment of principle amount, accused issued a cheque bearing no. 715964 dated 07.02.2012 for sum of Rs. 3,00,000/- drawn on Oriental Bank of Commerce, Rohini, Delhi. The accused failed to pay the subsequent interest as agreed by him. The cheque given by him towards principle amount was also dishonoured on presentation vide cheque returning memo dated 09.02.2012 with the reasons "funds insufficient". Thereafter, complainant having no other resort, issued statutory demand notice dated 24.02.2012 through Speed post and registered AD within stipulated period. The said legal notice was duly received by the accused and reply to the same was also given by the accused through his counsel. Thereafter, complainant finally has filed the present complaint case with the submission that accused be summoned, tried and punished according to law.

3. In his pre summoning evidence, complainant examined himself on affidavit. He reiterated the contents of complaint and placed on record loan agreement as Ex. CW-1, cheque bearing no. 715964 dated 07.02.2012 for sum of Rs. 3,00,000/- drawn on Oriental Bank of Commerce, Rohini, Delhi as Ex. CW-3, cheque returning memo dated 09.02.2012 as Ex. CW-4, legal demand notice dated 24.02.2012 as Ex. CW-5, postal receipt as Ex. CW-6, AD card as Ex. CW-7 and reply of legal notice as Ex. CW-8.

4. Accused was summoned for an offence punishable under Section 138 of Negotiable Instruments Act and notice under Section 251 Cr. P.C. for this offence was framed upon him on 18.12.2012 to which he pleaded not guilty and claimed trial. He stated that ten blank signed cheques were issued by him to the complainant as security for procuring loan of Rs. 20,00,000/- from Canara Bank and Muthoot Finance as complainant was retired as General Manager from Canara Bank and he was working as Manager with Muthoot Finance after his retirement. However, no loan was ever procured by the complainant for him. Accused also stated that he pledged his gold with Muthoot Finance two-three years ago and he gave his blank signed cheques to them also. The complainant, being Manager in Muthoot Finance, misused his blank cheques which were lying with Muthoot

Finance. It is also stated by the accused that he received intimation that his two cheques were stolen from the possession of the Muthoot Finance. Written complaint was also filed by him regarding the same in police station Prashant Vihar, DCP concerned and Commissioner of Police.

5. In his post notice evidence, complainant examined three witnesses including himself as CW□. He adopted his pre□suming evidence towards his post notice evidence and during cross examination, he stated that during his tenure in Muthoot Finance, he met accused who used to take gold loan from Muthoot Finance. For giving loans, few forms were to be filled and sometimes cheques were also taken in favour of Muthoot Finance. The same procedure was also adopted for giving loan to the accused. The loan of Rs. 13,84,500/□was given by him in ten to eleven installments from March, 2011 to November, 2011. He did not give any notice to the accused in writing for claiming interest and before presentation of cheque in question in bank. He stated that cheque in question was given by accused to him at the time of execution of agreement Ex. CW□/1. The stamp paper was purchased by the accused himself on which the loan agreement was executed. The period of repayment of loan was fixed for four months i.e. from the date of agreement 03.08.2011.

CW□2 Sh. Rakesh Kumar Singal, from Oriental Bank of Commerce brought the statement of account Ex. CW□2/1 and stated that cheque bearing no. 089913 dated 03.08.2011 for sum of Rs. 3,00,000/□drawn on Canara Bank was credited on 06.08.2011.

CW□3 Sh. Daya Sagar brought the attested copy of cheque bearing no. 089913 dated 03.08.2011 for sum of Rs. 3,00,000/□drawn on Canara Bank as Ex. CW□3/A and he also brought statement of account of the account Ex. CW□3/B & Ex. CW□3/C.

6. Thereafter, statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating evidence were put to the accused to which he stated that he never took any loan from the complainant. The complainant was working as Manager in Muthoot Finance and told him that he could get the loan sanction from different banks at lower rate of interest and hence, he handed over some blank cheques including cheques in question to the complainant for commission/security purpose. The complainant did not get any loan sanction to him and misused the cheques in question. He denied for any liability towards the complainant.

7. Accused examined three witnesses including himself as DW□ in his defence evidence. He stated in his examination in chief that he met the complainant for the first time in February, 2011 as he was working as Manager in Muthoot Finance. The complainant offered him for better loan options from the banks on lower rate of interest. For arranging loans from different banks, the complainant asked him to complete certain documentary requirements and to give few blank signed papers, blank signed stamp papers and blank signed cheques and photocopies of ID proof. The complainant assured him to use blank signed cheques for the commission purpose only against the loan. The complainant also took cash from him for a number of times in the name of expenditure incurred in arranging loan and till July, 2011, he gave amount of Rs. 3,25,000/□to the complainant for arranging loans from different banks. When the complainant failed to arrange loan for him, he requested for refund of his amount. The complainant gave a cheque of Rs. 3,00,000/□in the month

of August, 2011. The complainant told him that due to anxiety of accused he is returning Rs. 3,00,000/- out of Rs. 3,25,000/- and still he would try for arranging loans for him. The complainant never arranged any loan for him and he refused to return his blank signed documents and cheques. Complainant many times gave cheques to him for the purpose of withdrawal of money for him and he used to do the same for the complainant due to good relations. During cross examination, he accepted his signatures on Ex. CW-1 at point A, however, he is stated that the same were taken by the complainant on the blank papers. He accepted his signatures on the cheque in question i.e. Ex. CW-3 and stated that cheque in question was given to the complainant as blank signed cheque for the commission for purpose of arranging loan for him. He accepted that Ex. CW-2 was given to him by the complainant and stated that complainant made payment of Rs. 3,00,000/- by way of cheque for returning of amount taken by him on different dates in the name of commission. The balance amount of Rs. 25,000/- was not paid by the complainant and complainant stated that the same has been adjusted as he was making efforts for arranging loan for him. He voluntarily stated that at the time of handing over cheque bearing no. 715964 of Rs. 3,00,000/- the mutual document containing payment of Rs. 3,00,000/- was destroyed in presence of complainant. During evidence, accused placed documents Ex. DW-1 (colly) & Ex. DW-2 (colly) on record which are the certified copies of the complaint filed by nephew of the complainant and his friend against the accused.

DW-2 Ms. Aarti Tiwari supported the version of the accused. DW-3 Sh. K.G. Sharma, from Muthoot Finance stated that now a days Muthoot Finance does not take any blank cheque from the applicant at the time of sanctioning of loan.

8. Thereafter, oral arguments tendered on behalf of complainant. No oral arguments tendered on behalf of accused despite given sufficient opportunity. Finally, opportunity of the accused to lead final arguments was closed. However, liberty was given to the accused to submit written arguments. Written arguments were submitted on behalf of both the parties.

9. Following submissions were made on behalf of the complainant: ☐ That loan was advanced by the complainant to the accused as accused was well known to the complainant.

☐ That the cheque in question was given towards the legally enforceable debt. Reliances placed upon by the complainant on Y. Sreelatha @ Roja v. Mukanchand Bothra.

☐ That cheques in question were returned dishonoured with the reason "insufficient funds" and hence accused commenced an offence under Section 138 NI Act.

☐ That all the ingredients of the offence under Section 138 NI Act are fulfilled by the complainant.

☐ That presumption under Section 118 & 139 lies in favour of the complainant. Reliances placed upon by the complainant on Krishna Janardhan Bhat v. Dattatraya G. Hegde : AIR 2008 SC 1325. ☐ That during trial accused has accepted that all the cheques in question were issued by him.

□That the accused has also accepted during trial that all the cheques in question were issued by him in his full senses.

□That signatures on the cheques in question are accepted by the accused. Reliances placed upon by the Hiten P. Dalal v. Bratindranath Banerjee (2001) 6 S.C.C. 16 & Rangappa v. Sri Mohan A.I.R. 2010 SC 1898. □That accused executed loan agreement with the complainant regarding loan taken by him.

□That all the payments were acknowledged by the accused. □That sources of advancement of loan is established by the complainant as most of the payments were routed through bank Account. □That during trial defence taken by the accused is that the cheques in question and stamp papers were signed by him in blank.

□That the accused is an educated person and no question arises that he gave blank cheques and blank signed stamp papers to the complainant. □That all the cheques in question were issued by him for consideration.

10. Per contra, following written submissions were made on behalf of the accused: □□That as per the complainant, there was commercial transaction between him and the accused.

□That as per the complainant, loan of Rs. 3,00,000/□was advanced to the accused on 03.08.2011 and one loan agreement in this regard was also executed on the same date.

□That as per complainant, cheque in question was handed over by the accused on 07.12.2011 and it is difficult to believe that if loan agreement was executed on 03.08.2011, then why one post dated cheque was issued on 07.12.2011.

□That document Ex. CW□/1 was never executed between accused and the complainant.

□That document Ex. CW□/1 has numerous contradiction with the contents of the complaint.

□That as per para 4 of affidavit of the complainant, regular interest was paid by the accused till October, 2011, however, no document in this regard is placed on behalf of the complainant.

□That document Ex. CW□/1 nowhere speaks about the cheque in question and its first two pages are not signed by the accused.

□That since day one, accused has been disputing the execution of document Ex. CW□/1.

□That if interest was not paid by the accused, then how come amount in the cheque in question does not include the interest part as the accused is liable to the same as per the complainant.

□That complainant has taken contradictory stands during trial. □That complainant has not examined his nephew and friend of his nephew to support his case.

□That the complainant took several blank signed papers and cheques on the pretext of arranging loan for the accused and same papers are misused by the complainant in Ex.CW1/1.

□That no question is asked from the accused as to how the blank signed cheques and papers were given by the accused.

□That complainant has made a false story and failed to prove his case. □That accused has relied upon the following authorities:□

1. Shajahan T.M. v. P.J. Abraham, Puthenpurayil House & Anr. 2012 (2) DCR 40 (Ker).

2. Vipul Kumar Gupta v. Vipin Gupta 2013 (2) BC 36B (CN).

3. Virender Singh v. Laxmi Narain & Anr. 2007CRI,L.J. 2262.

4. Nanda (Smt.) v. Nandkishor 2010 (1) DCR 618 (Bom).

5. Anil Kumar Haritwal & Anr. v. Alka Gupta & Anr. AIR 2004 SC 3978.

6. C. Antony v. K.G. Raghavan Nair 2003 (1) SCC 1.

Same are perused and taken into consideration.

11. Before appreciating the facts of the case in detail for the purpose of decision let relevant position of law be discussed first:□As present complaint is under Section 138 of Negotiable Instruments Act, there are three ingredients as follows held by the Hon'ble Supreme Court of India in Krishna Janardhan Bhat(supra).

Three ingredients of Section 138 of the Act, viz.:

(i) that there is a legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which pre□supposes a legally enforceable debt; and

(iii) that the cheque so issued had been returned due to insufficiency of funds.

The proviso appended to the said Section provides for compliance of legal requirements before a complaint petition can be acted upon by a court of law.

12. The Act raises two presumptions in favour of the holder of the cheque i.e. Complainant in the present case; firstly, in regard to the passing of consideration as contained in Section 118 (a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability.

Section 118(a) and Section 139 of the said act are read as under:

Section 118 Presumption as to Negotiable Instruments : □Until the contrary is proved, the following presumptions shall be made: □

(a) of consideration □that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

Section 139. presumption in favour of holder: □It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge in whole or in part, of any debt or other liability.

13. For the offence under Section 138 N.I. Act, the presumptions under Sections 118(a) and 139 have to be compulsory raised as soon as execution of cheque by accused is admitted or proved by the complainant and thereafter burden is shifted to accused to prove otherwise. These presumptions shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability etc. A presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. Presumptions both under Sections 118 and 139 are rebuttable in nature. Same was held by the Hon'ble Supreme Court of India in Hiten P. Dalal(supra).

14. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory presumption, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary.

15. I have perused the entire record and have given due considerations to the submissions made by the respective counsels of the parties. In the present case, the accused has admitted his signatures on the cheque in question and on the third page of document Ex.CW1/1. Reference has been made to Judgment of Apex Court in Rangappa(supra) that, "Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant."

The defence taken by the accused is that he gave several cheques and blank signed papers and stamp papers to procure loan from the complainant but no loan was arranged by the complainant for him. Accused in the present case is an educated person. Hence, it is difficult to believe that he would have given several blank signed papers and cheques for securing loan. No police complaint is made H.C.D. Maini v. Vikram Tiwari CC No. 443/1/12 10 and no intimation was given by the accused to the bank before filing of the present case for non returning of the cheques and blank signed papers by the complainant. Police complaint made by the accused against the complainant is not proved by the accused. Accused has also failed to prove that his some cheques were stolen from Muthoot Finance. Accused accepted that he encashed the cheques bearing no. 089913 dated 03.08.2011 for

sum of Rs. 3,00,000/- drawn on Canara Bank as Ex. CW-3/A. The defence taken by the accused is that the complainant gave the said amount as repayment of the sum given by accused for securing loan. Accused has also not adduced any evidence to prove that he made payment of total sum of Rs.3,25,000/- to the complainant for arrangement of loan. No criminal case is filed by the accused against the complainant for misusing his blank signed papers. Written Police complaint filed by accused regarding the stolen cheques from Muthoot Finance is also not proved by the accused.

DW-3 Sh.K.G.Sharma stated that now a days no cheques are taken by Muthoot Finance for granting loan. This does not mean that Muthoot finance never took any cheque for providing loan. Hence it cannot be said that there is contradiction between statement of CW1 and DW3. Accused has not adduced any other evidence to prove that Muthoot finance never took any cheque for providing loan. In view of the above, it comes out that accused has failed to prove his defence. Complaints filed by nephew of the complainant and his friend against the accused are not relevant for deciding the present case. Further complaint case under section 138 of the Act is not barred in case of loan advanced for earning interest. Reliance is placed upon Kajal v. Vikas Marwah decided by Hon'ble High Court of Delhi on 27.03.2014. The defence taken by the accused seems to be afterthought.

16. In view of the above, this court is of the considered opinion that In the present case, accused has failed to rebut the presumption in favour of complainant either on the basis of material available on record or by adducing any defence evidence. Therefore, complainant has proved his case beyond reasonable doubt.

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17. As the complainant has proved its case beyond reasonable doubt, therefore, accused is being convicted for the offence under Section 138 of Negotiable Instruments Act.

18. Let the accused be heard on point of sentence.

ANNOUNCED IN THE OPEN COURT
nd
TODAY i.e, 22 JUNE, 2015

(MEENU KAUSHIK)

METROPOLITAN MAGISTRATE
ROHINI DISTRICT COURTS/ DELHI

H.C.D. Maini v. Vikram Tiwari

CC No. 443/1/12

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IN THE COURT OF MS. MEENU KAUSHIK, MM, NORTH-WEST,
ROHINI COURTS, DELHI.

CC No. 443/1/12

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27.06.2015

ORDER ON SENTENCE

Present: Complainant in person.
Convict with Ld. counsel Sh. Gurmeet Singh Hans.

Arguments heard on the point on sentence. It is stated by the Ld. counsel for the convict that convict is the only breadwinner in his family and is having family consisting of two minor children, his wife and old age mother. It is further submitted that convict is presently earning only about Rs. 20,000/□per month and he is first time offender, therefore lenient view may be taken.

Per Contra, complainant has submitted that the matter pertains to the year 2012 and relates to loan transaction and the convict has defrauded him as cheque in question was dishonored. It is further submitted by the complainant that convict is man of means and he has handsome monthly income. He is wrongly submitting in the court that he is having monthly income of Rs. 20,000/□only.

I have heard the submissions and carefully perused the record. Complaint regarding present cheque in question is pending since 2012 and the same relates to loan transaction between the parties. I am not inclined to grant the benefit of probation of Offenders Act as the matter pertains to the year 2012 and cheque bouncing cases are on high rises and releasing the convict on probation would not have deterrent effect in the society.

Considering the totality of circumstances, convict is sentenced for simple imprisonment for one year and is further ordered to pay compensation to the complainant for an amount of Rs. 4,00,000/□ (Rs. Four Lakh Only) u/s. 357(3) Cr. P.C. In default of payment of compensation, convict shall undergo further simple imprisonment for a period of 6 months.

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At this stage, an application u/s. 389(3) of Code of Criminal Procedure has been moved on behalf of the convict for suspension of the sentence for a period of one month and for grant of bail to enable him to file appeal against the order. Heard. Perused. Application under consideration is allowed. The aforesaid sentence is suspended for a period of 30 days from today to enable the convict to file an appeal against the order and till then convict is admitted on bail on furnishing of personal bond of Rs. 20,000/□with surety of like amount. Requisite bail bonds furnished. Same are accepted till 27.07.2015.

Copy of this order be given to the convict free of cost.

Announced in the open
court on 27.06.2015

(Meenu Kaushik)
MM (N/W)/Rohini Court

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