

Parvathamma.N vs Radha on 7 December, 2021

IN THE COURT OF THE XXIII ADDL.CHIEF METROPOLITON
MAGISTRATE, NRUPATHUNGA ROAD, BENGALURU CITY

Dated this the 7th day of December - 2021

PRESENT: SRI. N.K.SALAMANTAPI, B.A., LL.B.,
XXIII Addl.C.M.M., Bengaluru City.

C.C.NO.11291/2017

Complainant : Parvathamma.N,
W/o.Ravindra Kumar,
Aged about 36 years,
Kadhirenahalli Village,
Baragur Post, Sira Taluk,
Tumkur District.

(Rep. by Sri.P.D.Subrahmanya, Adv.)
V/S

Accused : Radha,
W/o.Late K.R.Ranganath,
Aged about 37 years,
No.1722, 4th Cross,
Gayathri School Road,
Vijinapura, K.R.Puam,
Bengaluru-16.

(Rep.by Sri.Subhas (Patil), Adv.)

OFFENCE COMPLAINED OF	: U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	: Not guilty.
FINAL ORDER	: Accused is Convicted.
DATE OF ORDER	: 07.12.2021.

(N.K.SALAMANTAPI)
XXIII Addl.CMM., Bengaluru.
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JUDGMENT

The complainant has presented the instant complaint against the accused on 23.02.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act for dishonour of cheque amount of Rs.5 lakhs.

2. The brief facts of the complaint are as under:

The complainant and accused are relatives. The accused has maintained good relationship with complainant till December, 2014. In the month of May 2013, accused has stated her family problems and requested the complainant for hand loan of Rs.6,50,000/- to meet her children education fee to residential school and development of her business and assured to repay said loan amount within one and half year. The complainant has considered the request of accused, arranged the amount and paid to the account of accused, i.e., sum of Rs.25,000/- on 18.06.2013, Rs.25,000/- on 19.06.2013, Rs.25,000/- on 20.06.2013, Rs.25,000/- on 21.06.2013, Rs.40,000/- on 25.06.2013, Rs.40,000/- on 26.06.2013, Rs.40,000/- on 27.06.2013, Rs.40,000/- on 28.06.2013, Rs.40,000/- on 29.06.2013, Rs.40,000/- on 01.07.2013, Rs.10,000/- on 02.07.2013 and Rs.1,00,000/- on 24.07.2013, in all Rs.4,50,000/-. And also deposited the amount of Rs.96,800/- on 29.11.2013, Rs.40,000/-

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on 23.01.2014 and Rs.17,000/- on 24.01.2014, in all
Rs.1,53,800/-, to the account of accused brother's wife
Smt.Shailamma.

After obtaining the loan amount, the accused has paid only

3 months interest on the loan amount and she stopped to pay the interest. In the 1st week of July, 2014, she requested the accused to pay interest, the accused sought time by saying family problems and finally, towards discharge of her partial debt, she got issued a cheque bearing No.541849 dated 30.10.2014 drawn for Rs.5 lakhs drawn on UCO Bank, Ramamurthy Nagar Branch, Bengaluru in favour of complainant and requested to present the said cheque for encashment in the last week of December, 2014.

The complainant has further contended that as per request of accused, she presented the said cheque for encashment through her banker viz., State Bank of Mysore, Vijayanagar Branch, Bengaluru, the same came to be dishonoured with an endorsement dated 29.12.2014 stating "Funds Insufficient". Immediately, she approached the accused and intimated about dishonour of cheque and demanded for repayment of the cheque amount, but the accused has not chosen to repay the cheque amount. Hence, she got issued legal notice to the accused Judgment 4 C.C.No.11291/2017 through her counsel on 10.01.2015 calling upon her to repay the cheque amount along with interest at the rate of 24% p.a. and the same was duly served upon accused on 12.01.2015. After service of demand notice, the accused has issued reply notice, but has not repaid the cheque amount to the complainant. Thus, the accused committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After receipt of the private complaint, my predecessor in office took the cognizance and got registered the PCR and recorded the sworn statement. Since made out prima-facie grounds to proceed against the accused for the alleged offence, got issued process.

4. In response to the summons, the accused appeared through her counsel and obtained bail. As required, complaint copy was supplied to the accused. Thereafter, accusation was read over and explained to accused, wherein, she denied the same and claimed to have the defence.

5. To prove the case of the complainant, she herself chosen to examine as PW.1 and got marked Exs.P1 to P25. In support of her case, the PW.1 chosen to examine three witnesses by names H.C.Thammannagowda, Muniswamy and J.Anand Kumar, Judgment 5 C.C.No.11291/2017 who are the Advocates/Notaries as PW.2 to PW.4 respectively and through them got marked the documents at Exs.P26 to P31(b). The PW.1 to PW.4 were subjected for cross-examination by the advocate for the accused. In the cross-examination of DW.1, complainant counsel got confronted one document and same was marked as Ex.P32.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same. In support of the defence, the accused herself was examined as DW.1 and got marked Ex.D1 document. The DW.1 was subjected for cross-examination by the advocate for complainant.

7. Both side counsels have addressed their arguments.

8. On going through the rival contentions, based on the substantial evidence available on record, the following points would arise for determination:

1) Whether the complainant proves beyond all reasonable doubt that the accused got issued Ex.P1-cheque bearing No.541849 to the complainant towards discharge of legally recoverable debt or liability and the said cheque was dishonoured, thereby the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act?

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2) What Order?

9. On appreciation of materials available on record, my findings on the above points are as under:

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

REASONS

10. POINT No.1: The complainant has filed this complaint for an offence punishable under Section 138 of Negotiable Instruments Act against the accused and prayed to punish the accused for an offence punishable under Section 138 of Negotiable Instruments Act.

11. To attract Section 138 of Negotiable Instruments Act, complainant should prove that; (1) the accused has issued a cheque for discharge of legally recoverable debt. (2) The same was presented through his banker. (3) It was dishonoured on presentation. (4) The notice in terms of provisions was served on the accused and (5) Despite service of notice neither any payment was made nor other obligations, if any were complied within 15 days from the date of receipt of notice.

12. In order to prove her case, the complainant filed her affidavit and herself examined as PW.1, wherein, she has Judgment 7 C.C.No.11291/2017 reiterated the averments made in the complaint. In support of her contention, she relied upon the documents at Exs.P1 to P32(a).

Among them, cheque bearing No.541849 issued by the accused for sum of Rs.5,00,000/- dated 30.10.2014, drawn on UCO Bank, Ramamurthy Nagar Branch, Bengaluru is marked as Ex.P1. The signature of accused is marked as Ex.P1(a). Ex.P2 is the Bank Endorsement issued by State Bank of Mysore, the contents of Ex.P2 disclose that the cheque bearing No.541849 drawn for Rs.5,00,000/- was dishonoured for the reasons "Funds Insufficient". Ex.P3 is the Legal Notice dated 10.01.2015, the recitals of Ex.P3 disclose that the complainant has issued this notice to the accused through her counsel. By issuing this notice, complainant called upon the accused to repay the cheque amount of Rs.5,00,000/- within 15 days from the date of receipt of notice. Ex.P4 is the Postal receipt. Exs.P5 and P6 are the postal acknowledgment cards. Ex.P7 is the letter dated 13.01.2015 written by accused herein addressed to the counsel for complainant and complainant. Exs.P8 to P22 are the bank challan counter foils. Exs.P23 and P24 are the bank account passbooks pertaining to complainant issued by State Bank of India and State Bank of Mysore. Ex.P25 is the hand loan agreement dated 22.06.2013, executed by accused herein in Judgment 8 C.C.No.11291/2017 favour of complainant regarding availment of hand loan of Rs.1 lakh from the complainant. Ex.P25(a) to P25(d) are the signatures of complainant, accused and witnesses. Ex.P26 is the declaration declared by the mother of accused herein that the accused has received sum of Rs.3,50,000/- from the complainant herein and she was sole responsible for the said loan amount. Ex.P27 is the loan agreement dated 11.07.2014, executed by accused in favour of complainant regarding availment of loan of Rs.3,50,000/- from the complainant. Ex.P27(a) to P27(d) are the signatures of complainant, accused and witnesses. Exs.P28 to P30 are the notary register extracts. Ex.P28(a) and P28(b) are the signatures of complainant and accused. Ex.P31 is the xerox copy of hand loan agreement dated 01.07.2013, executed by accused in favour of complainant. Ex.P31(a) and P31(b) are the signatures of complainant and accused. Ex.P32 is the summons issued by this court to the accused and Ex.P32(a) is the signature of accused. The PW.1 to P4 were subjected to the cross- examination by the advocate for the accused. In support of her case, the complainant through her counsel has relied upon the decisions as under:

a) 2021 (1) KCCR 545 (SC) in the case of M/s. Kalamani Tex and Another V/s. P.Balasubramanian.

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b) AIR 2020 SC 945 in the case of APS Forex Services Pvt. Ltd., V/s. Shakti International Fashion Linkers and others.

c) (2019) 10 SCC 287 in the case of Uttam Ram V/s.

Devinder Singh Hudan and another.

d) AIR 2018 SC 3601 in the case of T.P.Murugan V/s. Bojan.

e) 2015 AIR SCW 3040 in the case of T.Vasanthakumar V/s. Vijayakumari.

f) Crl.R.Case No.733 of 2010 in the case of Jayalakshmi Textiles and others V/s. S.K.Kolandasamy. I have gone through the above decisions. Section 118 (a) of Negotiable Instruments Act provides that:

"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, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

Section 139 of Negotiable Instruments Act provides that:

"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."

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13. In order to rebut the presumption available under Sections 118(a) and 139 of Negotiable Instruments Act, the accused has filed her affidavit and examined herself as DW.1. In her evidence, she has taken her defence that she was the member of chit business in the year 2013, which was run by the complainant, for security of said chit transaction, the complainant has taken 5 blank cheques, she already returned the chit amount, but complainant has not returned her blank security cheques. Hence, she is not liable to pay the cheque amount.

14. In the present case on hand, it is not in dispute that the Ex.P1-cheque and signature appears thereon belongs to the accused. The initial burden of proving defence that she was one of the subscriber of chit business in the year 2013, which was run by the complainant, for security of chit transaction, she gave 5 blank cheques

and she has paid the entire chit amount to the complainant is on the accused. The accused has not produced any believable documents before this court that the complainant has run the chit transaction in the year 2013 and she was one of the subscriber of the said chit transaction.

15. In the present case, the accused has stated that she has given 5 blank cheques for security of chit transaction, but she has Judgment 11 C.C.No.11291/2017 not stated what are the numbers of said five cheques, mere taken defence that she has given 5 blank cheques for security of the chit transaction is not a sufficient ground to believe her version. In the 313 of Cr.P.C statement, the accused has stated that she has given 5 blank unsigned cheques to the complainant for security of chit transaction, but in her chief-examination, she has stated that she has given signed 2 blank cheques to the complainant for withdrawal of amount from her account as she has lost her ATM Card. There is no corroboration in her own version, therefore, it is difficult to believe her version that she has given the blank cheques to the complainant for security of chit transaction. Thus the accused has failed to rebut the presumption available under Section 118(a) and 139 of Negotiable Instruments Act in favour of complainant by producing cogent and convincing evidence before the court.

16. The accused did not produce material documents and not examined any one of the subscriber, who were participated in the chit transaction, which was run by the complainant in the year 2013 before the court in order to prove her defence. In the absence of such material evidence before the court, it is difficult to believe the defence of the accused that in the year 2013, the complainant has run the chit transaction and she was one of the Judgment 12 C.C.No.11291/2017 subscriber of the said chit transaction. Thus the accused has failed to prove her initial burden casted upon her to prove the defence taken in the 313 of Cr.P.C statement and her chief-examination. Mere denial in the chief-examination about the case of complainant is not enough to believe the defence taken by the accused.

17. The accused has taken her contention that the legal notice sent by the complainant was not served on her and she has not received the legal notice. But she has not denied the address mentioned in the Ex.D1 - RCC House rental agreement. I have carefully perused the address mentioned at column(b) in the legal notice at Ex.P3 and the address mentioned in the Ex.D1-RCC House rental agreement, it appears that both the addresses are one and the same and belongs to the accused. In order to prove the service of legal notice to the accused, the complainant has produced the Exs.P5 and P6 postal acknowledgment cards. On carefully perusal of the Exs.P5 and P6 - postal acknowledgment cards, it discloses that the legal notice sent by complainant at Ex.P3 has been received by the accused personally and put her signature thereon. Therefore, she cannot say that the legal notice was not served on her and she did not aware about the contents of legal notice at Ex.P3. Even there is no suggestion made by the Judgment 13 C.C.No.11291/2017 accused's counsel to the PW.1 with regard to the compliance of mandatory provision. Thereby, the PW.1

proved her case, but accused without any base took bald and baseless contention.

18. On appraisal of the materials available on record, it shows that the accused has issued the alleged cheque in favour of complainant for discharge of legally recoverable debt. In the entire cross-examination, the complainant has not admitted the defence taken by the accused. There is no cogent and convenience materials on behalf of accused to believe her version that she has not issued the Ex.P1-cheque in favour of complainant for discharge of legally recoverable debt. Thus the accused has failed to rebut the presumption available under Section 118(a) and 139 of Negotiable Instruments Act in favour of complainant.

19. On overall appraisal of the materials available on record, it is the consider opinion of this court that the accused has failed to discharge initial burden to rebut the statutory presumption as well as the facts and circumstances placed by the complainant in the present case. Thereby, the complainant has proved the guilt of the accused that the accused is liable to pay the amount covered under the Ex.P1-cheque. There is no substance in the probable Judgment 14 C.C.No.11291/2017 defence of the accused, whereas the complainant has discharged her burden and proved the guilt of the accused. Therefore, keeping in the mind of the object of introduction of Negotiable Instruments Act, it appears this court that it is a fit case to convict the accused.

20. Therefore, from the perusal of oral and documentary evidence placed on record it reveals that complainant has made out her case and accused has failed to rebut the presumptions arisen in favour of complainant. Thus complainant has proved that accused has committed an offence punishable under Section 138 of Negotiable Instruments Act beyond all reasonable doubt. Hence, in view of the above said reasons, I hold point No.1 in the Affirmative.

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

ORDER Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay total fine of Rs.5,20,000/-.

Judgment 15 C.C.No.11291/2017 Out of the said fine amount, sum of Rs.5,15,000/- shall be payable to the complainant as compensation as per Section 357 of Cr.P.C. Remaining amount of Rs.5,000/- shall be payable to the state as fine amount.

In default of payment of fine amount, the accused shall under go simple imprisonment for 06 (Six) Months.

The bail bond and cash security/surety bond of the accused stands cancelled.

The office is hereby directed to supply the copy of this Judgment to the accused in free of cost.

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 7th day of December

- 2021) (N.K.SALAMANTAPI) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1	:	Parvathamma.N
PW-2	:	H.C.Thammanagowda
PW-3	:	Muniswamy
PW-4	:	J.Anand Kumar

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque	
Ex.P1(a)	:	Signature of accused	
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Ex.P2	:	Bank endorsement
Ex.P3	:	Office copy of legal notice
Ex.P4	:	Postal receipt
Exs.P5 & P6	:	Postal acknowledgment cards
Ex.P7	:	Letter dtd:13.01.2015
Exs.P8 to P22	:	Bank challan counter foils
Exs.P23 & P24	:	Bank account passbooks
Ex.P25	:	Hand loan agreement
Ex.P25(a) to P25(d)	:	Signatures of complainant, accused and witnesses
Ex.P26	:	Declaration
Ex.P26(a) to P26(c)	:	Signatures of Devinalamma & witnesses
Ex.P27	:	Hand loan agreement
Ex.P27(a) to P27(d)	:	Signatures of complainant, accused and witnesses
Exs.P28 to P30	:	Notarized copies of notary register extract
Ex.P28(a) & P28(b)	:	Signatures of complainant and accused
Ex.P31	:	Xerox copy of hand loan agreement
Ex.P31(a) & P31(b)	:	Signatures of complainant and accused
Ex.P32	:	Summons
Ex.P32(a)	:	Signature of accused

List of Witnesses examined on behalf of the defence:

DW.1 : Radha List of Exhibits marked on behalf of defence:

Ex.D1	:	RCC house rental agreement
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Ex.D1(a) & D1(b) : Signatures of accused

XXIII Addl. Chief Metropolitan
Magistrate, Bengaluru.
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Accd -

For Judgment

Judgment pronounced in the open court vide separate order.

***** ORDER Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay total fine of Rs.5,20,000/-.

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The bail bond and cash security/surety bond of the accused stands cancelled.

The office is hereby directed to supply the copy of this Judgment to the accused in free of cost.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment 18 C.C.No.11291/2017 Later, the convict's counsel filed application Under Section 389(3) of Cr.P.C seeking for suspend the sentence for the reasons stated in the application.

Heard.

In the present case, the judgment was pronounced and convicted the accused. In view of the same, the convict's counsel has prayed that to suspend the sentence by appeal period. For the reasons stated in the application, for the limited period of prefer appeal only, the application filed by the accused counsel under Section 389(3) of Cr.P.C. is hereby partly allowed and sentence is suspended

till appeal period only.

The convictee is hereby directed to
execute bond for fine amount of
Rs.5,20,000/-.

XXIII ACMM, Bengaluru.