

Sri. Venkatesh.S vs Sri. H.C.Nagabhushan on 2 July, 2016

IN THE COURT OF THE XVIII ADDL. CHIEF METROPOLITAN
MAGISTRATE, BANGALORE

DATED : THIS THE 2ND DAY OF JULY 2016

PRESENT: LAKSHMINARAYANA BHAT.K., B.A., LL.B.
XVIII ADDL.C.M.M., BANGALORE
C.C.NO: 19096/2014

Complainant: Sri. Venkatesh.S.,
S/o. Late. B.S.Seetharam,
Aged about 69 years,
Residing at No: 51,
1st Main Road,
G.M.Temple, Matadahalli,
R.T.Nagar.
Bangalore-560 032.

(Represented by
Shri.M.G.Vasudevappa., Advocate)

V/s.

Accused : Sri. H.C.Nagabhushan,
S/o. H.S.Chandrashekar,
Aged about 58 years,
Residing at No: 121,
5th Block,
PWD Quarters,
Wilson Garden,
Bangalore-560 027.

Office address:-
Women and Child Development
Department,
M.S.Building,
Bangalore-560 001.

(Represented by Sri.C.M.Eshwarappa.,
Advocate)

Offence complained of: U/s.138 of N.I.Act

Plea of accused: Plead not guilty

2

CC.No: 19096/2014

Final order Accused is found guilty

Date of order: 2/7/2016

JUDGMENT

The complaint was filed against the accused for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter in short referred as N.I. Act.).

2. After filing of the complaint, cognizance of the offence was taken. After recording sworn statement, in pursuance of summons, presence of the accused was secured and he was enlarged on bail. The substance of accusation was recorded and the accused pleaded not guilty.

3. To prove the complaint averments, the complainant was examined as P.W.1 and has produced documents marked as per Ex.P.1 to Ex.P.10. The statement of the accused under Section 313 of Cr.P.C was recorded. The accused entered his defence and was examined as D.W.1. He has not produced any documentary evidence.

4. Heard the arguments. The learned Advocate appearing for the parties have filed memorandum of written arguments. The learned advocate appearing for the accused has placed reliance on following reported Judgments.

(1) (2008) 7 SCC 137 in Sudhir Kumar Bhalla V/s.

Jagdish Chand and others.

(2) (2013) 3 SCC 86 in Vijay V/s. Laxman and another. (3) ILR 2007 KAR 1708 in Vishnudas V/s. Mr. Vijaya Mahantesh.

(4) AIR 2001 NOC 309 (Gujarat) in Jogindra R. Anand, Partner of Anand Training Company V/s. Ganaram B. Rathod and another.

(5) 2011(1) DCR 680 in Inder Pal Singh V/s. Pankaj Bharadwaj.

(6) 2016 CrL.L.J. 1061 in Venkatesh Bhat V/s. Rohidas Shenoy.

5. After analyzing the averments made in the complaint, oral and documentary evidence placed on record and after hearing the arguments, at this stage the points that arise for my determination are:-

1) Whether the complainant has he had advanced Rs.1,52,000/- hand loan to the accused and Ex.P.1 and Ex.P.2 cheques issued in discharge of the said debt were dishonoured and even after service of notice, the accused had failed to pay the amount and thereby he is guilty of the offence punishable under Section 138 of N.I.Act?

2) What order?

6. My findings on the aforesaid points are as under:-

POINT NO.1 : In the Affirmative, POINT NO.2 : As per final order, for the following:-

REASONS

7. POINT NO.1:- The complainant submits he is acquainted with the accused for the past 20 years and both of them were working in the same department. It is stated the accused in order to meet his personal problems alleged to have borrowed loan of Rs.1,52,000/- from the complainant by cash and also executed a loan agreement in favour of the complainant on 28/6/2013. It is further claimed in discharge of the aforesaid debt, as a security for the transaction the accused had issued 2 cheques in favour of the complainant for Rs.62,000/- and Rs.80,000/- dated 10/3/2014 and 17/3/2014 drawn on The Karnataka State Co- Operative Apex Bank Ltd., Vidhana Soudha, Bengaluru. When the complainant demanded repayment of the loan, the accused had repaid Rs.10,000/- by cash. He had informed the complainant to present the 2 cheques given as security for the balance amount of Rs.1,42,000/-. The complainant has submitted he has presented the cheques issued by the accused, but as per memo dated 19/3/2014 and 20/3/2014 they were dishonoured with an endorsement "Funds Insufficient". The complainant issued statutory demand notice dated 9/4/2014 and called upon the accused to make payment of the dishonoured cheque amount. The accused deliberately evaded service of the notice and it was returned with an endorsement "door locked". According to the complainant, after borrowing loan, the accused has not made repayment of the loan. The complainant in his affidavit filed in lieu of examination-in-chief deposed as per the averments made in the complaint.

8. The accused in his defence evidence admitted he is acquainted with the complainant for the past 13 years. He has further admitted Ex.P.1 and Ex.P.2 cheques relates to his Bank account and also his signature appearing in those cheques. The accused has submitted the contents of both those cheques are not filled in his hand writing. The accused has specifically admitted in 2010 to meet his wife's medical expenses he had borrowed Rs.30,000/- and at the time of borrowing the complainant has informed he is charging interest at the rate of 10% per month. The accused further submitted out of the aforesaid loan of Rs.30,000/-, he had repaid Rs.10,000/- to the complainant and still in due for payment of balance amount of Rs.20,000/-. The accused has further claimed paid interest to the complainant at the rate of Rs.3,000/- per month for 10 months. It is alleged the complainant has misused Ex.P.1 and Ex.P.2 blank signed cheques and filed a false complaint. According to the accused, when he had borrowed loan of Rs.30,000/- from the complainant, he had deposited Ex.P.1 and Ex.P.2 blank signed cheques. The other contention of the accused is that Ex.P.5 demand notice sent on behalf of the complainant was not served. It is stated the said notice was sent to the wrong address. The accused has disputed his liability to make payment of Ex.P.1 and Ex.P.2 cheque amount to the complainant. For the aforesaid reasons he has prayed for dismissal of the complaint.

9. The complainant and accused are acquainted with each other and they were working in the same department is not in dispute. The accused has further admitted he had borrowed loan of

Rs.30,000/- from the complainant and claimed made repayment of Rs.10,000/- and balance amount of Rs.20,000/- is still in due. The accused has further admitted he had issued Ex.P.1 and Ex.P.2 blank signed cheques in favour of the complainant in connection with the aforesaid loan transaction. During cross-examination of P.W.1, it is not suggested to the complainant on behalf of the accused that Ex.P.1 and Ex.P.2 cheques were filled by the complainant. During cross-examination of P.W.1 dated 27/2/2016, it is stated the accused has fully repaid the loan amount. In order to prove repayment of entire loan amount, the accused has not produced any documentary evidence. Even regarding repayment of Rs.10,000/- to the complainant as deposed by the accused, he has not produced any documentary evidence. But the complainant in the complaint averments, Ex.P.5 statutory demand notice and in his evidence has admitted received Rs.10,000/- part payment from the accused. Therefore, the facts admitted need not be proved.

10. The complainant has produced Ex.P.9 loan agreement dated 28/6/2013 executed by the accused. The said document is prepared in an E-Stamp worth Rs.200/- purchased in the name of the accused on 28/6/2013. As per the recitals of Ex.P.9, the accused had borrowed loan of Rs.1,52,000/- and had issued Ex.P.1 and Ex.P.2 cheques in favour of the complainant. During cross-examination of P.W.1, the accused has not disputed execution of Ex.P.9 loan agreement in favour of the complainant. As per the contents of Ex.P.9, it is not a document in which the complainant has obtained signature of the accused on a blank stamp paper and subsequently filled the document. In this regard, during cross-examination D.W.1 in clear and unambiguous terms admitted "çÉÁAPÀ 28-06-2013 gÀAzÀÄ ÉÁÉÄÄ |AiAiÁðçUÉ ¤|-9 gÀAvÉ PÀgÀgÀÄYÀvÀæªÉÄÄß §gÉzÀÄPÉÆnÖzÉYÄÉÉ. ÉÁÉÄÄ ¤|-9 PÀgÀgÀÄYÀvÀæzÀ°è |AiAiÁðçAiÄªAzÀ YÀqÉzÀÄPÉÆAqÀ gÀÆ.1,52,000 ,Á@zÀ°è gÀÆ,10,000 ªÄÄgÀÄYÀªAw ªAiArzÀÄY, ªAQ gÀÆ,1,42,000 EzÉ JAzÄÄ §gÉzÀÄPÉÆnÖgÀÄvÉÜÄÉÉ. |AiAiÁðç D, ÀävÉæAiÄªezÁYUÀ ÉÁÉÄÄ |AiAiÁðçAiÄª °É, ÀjUÉ JgÀqÄÄ ZÉPiUÀ¼ÄÉÄÄß PÉÆnÖgÀÄvÉÜÄÉÉ. ÉÁÉÄÄ |AiAiÁðçUÉ gÀÆ.80,000 ªÄÄvÄÄÜ gÀÆ,62,000 ªÉÆvÄÜPÉÏ JgÀqÄÄ ZÉPiUÀ¼ÄÉÄÄß PÉÆnÖzÉYÄÉÄ JAzÄgÉ , ÀjAiÄª®è. ÉÁÉÄÄ ZÉPiUÀ¼ÄÉÄÄß PÉÆnÖzÄÄY, ªÉÆvÄÜªÄÉÄÄß §gÉAiÄª®è. ÉÁÉÄÄ |AiAiÁðçAiÄª °É, ÀjUÉ gÀÆ.80,000 ªÄÄvÄÄÜ gÀÆ,62,000 ªÉÆvÄÜPÉÏ JgÀqÄÄ ZÉPiUÀ¼ÄÉÄÄß PÉÆLÄÖ ªÉÆvÄÜªÄÉÄÄß §gÉAiÄª®è JAzÄÄ , ÄÄ¼ÄÄi °ÉÄ¼ÄÄwÜzÉYÄÉÉ JAzÄgÉ , ÀjAiÄª®è.

çÉÁAPÀ 18-02-2014 gÀAzÀÄ ÉÁÉÄÄ PÀbÉÄjAiÄª°è PÉ®, À ªAiÁqÄÄwÜzÁYUÀ |AiAiÁðç ¤|-10 gÀAvÉ zÁR¯ÉAiÄªÉÄÄß §gÉzÀÄPÉÆqÄÄªAvÉ °ÉÄ½zÀ PÀgÀtPÁÏV ÉÁÉÄÄ §gÉzÀÄPÉÆnÖzÄÄY, CªÄgÄÄ §®ªAvÄªV zÁR¯ÉAiÄªÉÄÄß §gÉ¹PÉÆArzÁYgÉ". The complainant has produced Ex.P.10 letter written by the accused. In this document, the accused has specifically admitted he is in due for payment of Rs.1,42,000/- balance amount to the complainant. The contention of the accused that the complainant has forcibly obtained Ex.P.10 letter from the accused is highly improbable and unbelievable. During cross-examination of P.W.1, the accused has tried to disprove the financial capacity of the complainant to advance Rs.1,52,000/-. The accused in his defence evidence specifically admitted borrowed loan of Rs.30,000/- from the complainant and the aforesaid evidence shows the complainant was financially in a better position and the accused was in need of money and in the above circumstances he had borrowed the loan. During cross-examination of the complainant, the accused has failed to make out the complainant was financially not capable to advance Rs.1,52,000/- hand loan. As per the contents of Ex.P.9 loan

agreement, the accused had agreed to pay Rs.2,000/- per month before 10th of each calendar month to the complainant and it appears the said amount was agreed to be paid towards interest on the loan amount of Rs.1,52,000/-.

11. The accused in his defence evidence contended non-service of Ex.P.5 statutory demand notice sent on behalf of the complainant. The complainant has produced Ex.P.6 receipt for having sent the notice to the accused through registered post. As per Ex.P.7 and Ex.P.8 notice sent to his residential and office address came to be returned with an endorsement "No such person and unauthorized absence". It is pertinent to mention the summons issued in this proceeding to the accused through registered post to his address as shown in Ex.P.8 was duly served. Therefore, the complainant has discharged his burden by sending notice to the accused to the last known correct address. Therefore, there is every reason to believe the accused has deliberately evaded service of notice sent to his residential address as per the endorsement made in Ex.P.7 postal cover as "door locked". Therefore, the defence of the accused regarding non-service of notice is not tenable under law. As per Section 27 of General Clauses Act, there is a presumption in favour of the complainant regarding service of letter sent through registered post. The accused has failed to rebut the presumption appearing in favour of the complainant. In this regard, I have referred the Judgment of Hon'ble Apex Court reported in 2007 AIR SCW 3578 in C.C.Alavi Haji V/s. Palapetty Muhammed and another. In Para No.17, Hon'ble Court held "It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the Court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C.Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case, if the giving of notice in the context of Clause(b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act".

12. As per Section 139 of N.I. Act, there is a presumption in favour of the complainant that unless the contrary is proved Court shall presume that the cheque had been issued in discharge of any debt or liability. It is the burden of the accused to rebut the presumption by placing contra evidence. In the case on hand, during cross-examination of the complainant and in his defence evidence, the accused has miserably failed to rebut the presumption appearing in favour of the complainant under Section 139 of the Act. He has further failed to create any doubt regarding passing of consideration and Ex.P.1 and Ex.P.2 cheques were not issued in favour of the complainant in discharge of any debt or other liability. By producing Ex.P.9 and Ex.P.10 documentary evidence, the complainant has proved the accused in discharge of his liability to make repayment of Rs.1,42,000/- issued Ex.P.1 and Ex.P.2 cheques. Hence, my findings on Point No.1 is in the affirmative.

13. POINT NO.2:- In view of my findings on Point No.1., the accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act. Hence, I proceed to pass the following:-

ORDER Acting under Section 255 (2) of Cr.P.C, accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act 1881. He is sentenced to pay fine of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand Only) and in default he shall undergo simple imprisonment for 4 (Four) months.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.1,80,000/- (Rupees One Lakh Eighty Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.10,000/- (Rupees Ten Thousand Only) is defrayed to the State for the expenses incurred in the prosecution. (Dictated to the Stenographer, transcribed by her, corrected, revised and signed then pronounced by me in the open court on this the 2nd day of July 2016).

(LAKSHMINARAYANA BHAT.K) XVIII A.C.M.M., BANGALORE.

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Sri. Venkatesh.S.

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1 and Ex.P.2 : 2 cheques.

Ex.P.1(a) & Ex.P.2(a) : Signatures of the accused.

Ex.P.3 and Ex.P.4	: Two Bank endorsements.
Ex.P.5	: Office copy of demand notice.
Ex.P.6	: Postal receipt.
Ex.P.7 and Ex.P.8	: Postal covers.
Ex.P.9	: Loan agreement.
Ex.P.10	: Undertaking letter from the accused.

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

P.W.1 : Sri. H.C.Nagabhushan.

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

- Nil -

XVIII A.C.M.M. , BANGALORE .

(Judgment pronounced in Open Court vide a separate Order) ORDER Acting under Section 255 (2) of Cr.P.C, accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act 1881. He is sentenced to pay fine of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand Only) and in default he shall undergo simple imprisonment for 4 (Four) months.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.1,80,000/- (Rupees One Lakh Eighty Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.10,000/- (Rupees Ten Thousand Only) is defrayed to the State for the expenses incurred in the prosecution.

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

XVIII A.C.M.M., BANGALORE.