

Sri.Kodanda vs Smt. G.Pallavi on 15 November, 2022

KABC030003002019

Presented on : 02-01-2019
Registered on : 02-01-2019
Decided on : 15-11-2022
Duration : 3 years, 10 months, 13 days

IN THE COURT OF THE XVIII ADDL.CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY

PRESENT: MANJUNATHA M.S. B.A., LL.B.
XVIII ADDL.C.M.M., BANGALORE

DATED : THIS THE 15 th DAY OF NOVEMBER 2022

Criminal Case No.49/2019

COMPLAINANT: Sri.Kodanda
S/o Late narasimhappa,
Aged about 74 years,
R/at No.68, AECS Layout,
3rd stage, Nagashettyhalli,
Bangalore-560 094.

(By Sri.T.R.R- Advocate)

ACCUSED: // Versus //
Smt. G.Pallavi,
W/o Umesh R.
R/at Ramaiah Nilaya
(Chandramma Building)
4th Main Road, Bommasandra
(ward No.10) Anekal Taluk,
Bangalore-560 099.

Also

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CC.No.49/2019

Smt.G.Pallavi,
D/o Sarojamma,
R/at Manjunatha Building,
Bommasandra (Ward No.10)
Anekal Taluk,
Bangalore-560 099.

(By Sri.G.N. - Advocate)

Offence complained	: U/Sec.138 of Negotiable Instrument Act.
Name of the complaint	: Sri.Kodanda S/o Late Narasimhappa
Date of commencement of evidence	: 28-06-2019
Date of closing evidence	: 02-09-2022
Opinion of the Judge	: Accused found guilty.

(MANJUNATHA M.S.)
XVIII A.C.M.M. , BANGALORE

JUDGMENT

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 of the Negotiable Instruments Act (in short referred as "N.I. Act") against the accused alleging that she has committed the offence punishable under section 138 of NI Act.

02. The sum and substance of the complaint is as follows; The complainant and accused are known to each other since eight years. The accused has taken a house of the complainant on rent to run business of Herbal products and also to give coaching. During the said tenancy period, the accused became friend and well wisher of the complainant and his family members. When the accused was badly in need of funds to meet her urgent business necessities and to pay her hand loans which was borrowed from the third parties to run her business, she has approached the complainant for hand loan of Rs.8,00,000/- and promised to repay the same within two years. Considering her request the complainant has lend a hand loan of Rs.8,00,000/-to the accused by way of cash on 18.02.2018 and while receiving the said amount, the accused has executed loan agreement in favour of the complainant. After completed two years, the complainant has made several request and demand to repay the said loan amount. At that time the accused has informed the complainant about her father's death and requested for extension of six months time to repay the loan amount and also agreed to pay a sum of Rs.1,00,000/- as additional amount for delayed repayment of loan amount. The complainant has agreed the same. After completion of six months, the complainant made demand to repay the said amount, at the time the accused has issued Two cheques bearing No. 701801 for Rs.8,00,000/- and No. 693589 for Rs.1,00,000/- both dated 10.10.2018 drawn on State Bank of India, Sanjaya Nagar Branch, Bengaluru towards the discharge of the debt and promised the complainant that the said cheques will be honoured on their presentation. As per the assurance of the

accused, the complainant has presented the said cheques for encashment through his banker, but the said cheques were dishonored for "Funds Insufficient" on 11.10.2018. Therefore, the complainant has got issued demand notice on 23.10.2018 to the accused by demanding the payment of cheque amount on her two addresses. The said notice was duly served on accused. Despite of the notice the accused has not paid the cheque amount. Thereby she has committed an offence punishable under section 138 of NI Act.

03. After filing of complaint, this court has taken cognizance of the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of the complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, the accused was enlarged on bail and her plea was recorded as per section 251 of Cr.P.C. The accused has not pleaded guilty and submitted that she has defense to make.

04. As per the direction of Hon'ble supreme court in "Indian Bank Association V/s Union of India and others reported in (2014) 5 SCC 590, the sworn statement of the complainant treated as complainant evidence and complainant has examined himself as PW1 by filing affidavit of chief-examination and got marked Ex.P.1 to 13. The accused has filed application under section 145(2) of NI Act for recall of PW1 for the purpose of cross-examination. The said application came to be allowed and defence counsel has cross- examined PW1. After completion of complainant's evidence, the statement of accused as contemplated under section 313 of code of criminal procedure was recorded. The accused has denied all the incriminating material appears against her in the complainant's evidence. To prove her defence the accused herself examined has DW1 and Ex.D.1 to 11 were marked on her behalf. The complainant counsel has fully cross examined DW1.

05. Heard the arguments of learned counsels for accused. Despite of giving sufficient opportunities the complainant counsel has not addressed his arguments. Even he has not chosen to file written argument. I have perused the materials available on record.

06. The points that arise for my consideration are as follows;

1. Whether the complainant has proves that the accused has issued Two cheques bearing No.701801 for Rs. 8,00,000/- and No. 693589 for Rs.1,00,000/- both dated 10.10.2018 towards discharge of her liability, which was returned unpaid on presentation for the reason "Funds Insufficient " and despite of notice she has not paid the cheque amount and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

07. My answer to the above points is as follows;

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

08. POINT No.1: The Complainant has filed this complaint alleging that the accused has committed offence punishable under section 138 of N.I. Act. The complainant has pleads and asserts that, the

accused has borrowed hand loan of Rs.8,00,000/- from him and towards discharge of said debt and payment of additional amount for delay in repayment of the loan she has issued cheques in question for Rs.8,00,000/- and Rs.1,00,000/-. The said cheques were returned with an endorsement "Funds Insufficient". Thereafter he got issued demand notice within time stipulated calling upon the accused to pay the amount covered under cheque. Despite of service of notice, the accused has not paid the amount within 15 days, which gave raise cause of action to file this complaint.

09. To substantiate his case, the complainant has stepped into witness box and examined as PW.1 and got marked Ex.P.1 to Ex.P.13. PW1 has reiterated the contents of the complaint in his affidavit evidence about lending of loan of Rs.8,00,000/- to the accused, issuance of cheques in question by the accused towards discharge of said debt and their dishonour for insufficient funds, issuance of legal notice to the accused calling upon her to pay the cheque amount and her failure to comply the same.

10. In this scenario, let me scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. Ex.P.1 & 2 are cheques dated 10.10.2018. The said cheques were returned unpaid with an endorsement "Funds Insufficient" as per Ex.P.3 and 4 bank endorsements dated 11.10.2018, Ex.P.5 is legal notice dated 22.10.2018 under which the complainant has demanded the payment of cheque amount, Ex.P.6 is Postal receipt, Ex.P.7 is unserved postal cover, Ex.P.8 is loan agreement, Ex.P.9 is Bank statement, Ex.P.10 is Joint Development Agreement, Ex.P.11 is Assurance letter, Ex.P.12 is cheque dated 10.03.2015, Ex.P.13 is LIC Bond. This complaint came to be filed on 29.11.2018. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act have been complied with and this complaint is filed within time. The complainant by examining himself as PW1 and by producing aforesaid documents has discharged his initial burden.

11. The accused has specifically denied availing of hand loan of Rs.8,00,000/- from the complainant and issuance of Ex.P.1 & 2 cheques for discharge of debt. She has putforth defence that her father has availed hand loan of Rs.2,00,000/- from the complainant with 5% interest per month in the year 2016 and for which the complainant has collected four signed blank cheques and stamp paper from the accused for security purpose. Thereafter, her father has cleared the said loan in month of June 2017 and demanded for return of said security cheques and stamp papers, but the complainant has represented that said cheques and stamp papers were misplaced. As the accused and her father were in good terms with the complainant as such they have kept quit. On 11.01.2018 she was received message from the State Bank of India stating that her two cheques were dishonoured and complainant has presented the said cheques for encashment. Thereafter the complainant has started to black mail the accused to pay a sum of Rs.9,00,000/- otherwise he will bounce two other cheques and will file cheque bounce case. The complainant by misusing said security cheques has filed present false case against her even though there is no legally enforceable debt. The complainant is habit of filling false cases against other persons also by giving small amount as loan and claiming huge amount from them. As such the cheques in question are not supported by any consideration. Hence, section 138 of NI Act is not applicable to the cheques in question. On these grounds the accused prays to acquit her from the case.

12. In the back drop of aforesaid rival contentions, this court has given anxious consideration to the material on record and the submissions made by defence counsel. At the outset, it is pertinent to state here that during the cross-examination, the accused has unequivocally admitted her signatures in the cheques in question. The only contention of the accused is that she has issued the said cheques as a security to the loan borrowed by her father as he has no bank account. The Hon'ble Supreme Court in M/S Kalamani Tex and another V/s P. Balasubramanian (2021) 5 SCC 283 has held that the Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative, such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Therefore once the drawer has admitted the issuance of cheque as well as on the signature present therein or it is established that signature in cheque belongs to accused, then the presumption envisaged under section 118 and 139 of NI Act, would operate in favour of the complainant. The said provision lays down a special rule of evidence applicable to negotiable instrument. The presumption is one of law and thereunder court shall presume that the Negotiable instrument was endorsed for consideration. So, also in the absence of contrary evidence on behalf of the accused, the presumption under section 118 and 139 of NI Act goes in favour of the complainant. In the present case also as stated above the accused has admitted her signatures in the Ex.P1 and 2 cheques. As such presumption under section 118 and 139 of NI Act has to be drawn in favour of the complainant. Section 118 reads as here: - "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". Further Section 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as here: - "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, or any debt or other liability." A combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability.

13. No doubt, the said statutory presumptions are rebuttable in nature. It is for the accused to place cogent and probable defence in the form of preponderance of probability to rebut the presumption raised in favour of the complainant. To put it other way, the burden lies upon the accused to prove that Ex.P.1 and 2 cheques were not issued for discharge of any liability, but it was issued as a security to the complainant while borrowing the loan by her father. It is worth to note that, section 105 of Indian Evidence Act postulates that, the burden is on the accused to establish the fact which is especially within his special knowledge. This provision is exception to the General Rule that the burden of proof is always in the prosecution to establish their case beyond all reasonable doubt. In that view of the matter the burden is on the accused to prove that the complainant has misused security cheque.

14. To prove her defence and to rebut the presumption envisaged under section 118 and 139 of NI Act, the accused has cross-examined PW1 and also led defence evidence by examining herself as DW1 and got marked Ex.D.1 to 11 documents. Ex.D.1 to 10 are the certified copies of the complaints filed by the complainant here in against other persons and Ex.D.11 is the death certificate of the father of accused. During the chief examination, the accused has reiterated her defence. The complainant counsel has cross-examined her. In the cross-examination, the accused has admitted

signatures found in Ex.P.1 & 2 cheques. In the year 2016 her father has availed loan of Rs.2 lakhs from the complainant and repaid the said amount with 5% interest and after repayment of the said loan amount they have demanded the complainant to return the cheques and stamp paper, but the complainant represented that after renovation work of his home he will return cheques and stamp paper. She further deposed that to that effect have not lodged any police complaint against complainant. Even after receipt of message from the bank she has not lodged any complaint. She further stated that she has not received any summons from the bank. She came to know about filing of case through children of complainant. She denied the suggestion that she is falsely deposing before the court in order to escape from the liability.

15. The defence counsel has cross-examined PW1, during the cross-examination, he deposed that in the year 2016 he lent amount to the accused, but due to typographical mistake it is mentioned as 2018 in the complaint. He further deposed that he has lent Rs.8 lakhs by way of Rs.2,000/- and Rs.500/- denomination currency notes. He withdrawn the amount from his account and kept it in his house and let the same to the accused in presence of her father and mother. He denied the suggestion that father of the accused has availed hand loan of Rs.2 lakhs from him in the year 2016 and for that amount the father of the accused has given cheque of accused for security. He also denied the suggestion that at the time lending said amount he has obtained signed blank stamp paper. He admitted that he has filed 11 cases against other and on confronting the certified copies of said complaints were got marked Ex.D.1 to 10. Thereafter the further cross-examination of PW1 was deferred, but despite of giving sufficient opportunity the accused has failed to further cross examine PW1, hence further cross of PW1 taken as Nil.

16. The learned counsel for the accused has argued that as per the complainant averments the complainant has lent amount of Rs.8,00,000/- to the accused on 18.02.2018, but in the cross examination he deposed that he has lent the amount in the year 2015. That means he is not sure when exactly he lent the amount to the accused as such there is no existence of legally enforceable debt at all. He also contended that the father of the accused died on 24.10.2018, then how it is possible to sign the alleged agreement on 18.2.2018. This fact shows that the case of the complainant is total false.

17. In view of the said submission, I have gone through the complainant averments, wherein the complainant has stated that he has lent the amount of Rs.8,00,000/- to the accused on 18.2.2018 by cash and after receipt of the amount the accused has executed loan agreement and promise to repay the same with 2 years. After expiring of said period he has demand the accused to repay the loan amount. At that time the accused informed the death of her father and requested to grant six months further time to repay the loan. After expiry of said six months time, the complainant has demanded for repayment of loan, at that time the accused has issued cheques in question. During the cross examination the complainant has depend that he has lent the amount to the accused in the year 2016, but due to typographical mistake it is mentioned on 2018 in his complaint instead of 2016. In support of his case, the complainant has produced Ex.P.8 loan agreement, the accused has not disputed the signature in the said agreement, but she has contended that the complainant has obtained blank signed stamp paper while lending loan of Rs.2 lakhs to her father and later on the complainant has misused said stamp paper and security cheques. On perusal of the recitals of

Ex.P.8 agreement, it appears that the said agreement was executed on 18.02.2016 and stamp paper was purchased on 18.2.2016 to prepare the said agreement. The said agreement contained signature of accused, her father and mother. In the said agreement the accused has stated that she has received Rs.8 lakhs from the complainant to clear her earlier debts obtained from some third parties for business purpose and agreed to repay the same within two years. No doubt in the complaint it is stated that the date of loan as 18.2.2018, but on perusal of the entire complaint averments, it appears that due to typographical error the complainant has mentioned date of loan as 18-02-2018 instead of 18-02-2016. During the cross-examination the complainant has clarified the same and in support of his contention he has produced Ex.P.8 agreement which is completely corroborates the contention of complainant.

18. The accused contended that her father has repaid the loan of Rs.2 lakhs with interest in the year 2017 itself, but the complainant has not returned security cheques and stamp paper. But she has not taken any action against complainant to take back her security cheque and stamp paper till filing this case and even after filing this case also she has not filed any complaint against the complainant for misusing of her cheques. In a normal circumstance, no prudent man will sit quit without taking any action to taken signed blank cheques and stamp paper. The accused being well educated and having know the consequences of issuance of blank cheques has not taken any action appear that she has voluntarily issued cheques in question for repayment of the loan.

19. The defence counsel has argued that the complainant has failed to prove his financial capacity to lend such huge amount of Rs.8 lakhs. But during the cross-examination of PW1, the defence counsel has not disputed the financial capacity of the complainant. On the other hand the defence counsel himself suggested that the complainant has filed several cheque bounce case against several others inspite of the repayment of the loan amount by them. This suggestions establishes that the accused has admitted that the complainant is well off person and having financially capable to lend Rs.8 lakhs. Hence, question of prove of financial capacity does not arise at all. Inspite of the same the complainant has produced his bank statement Ex.P9, joint development agreement Ex.P10, Assurance letter written by accused Ex.P11 and canceled cheque for Rs.6,00,000/- issued by accused Ex.P12. On perusal of Ex.P11 and 12, it appears that prior to this transaction the accused has borrowed Rs.6 lakhs from the complainant and same was repaid by the accused. The accused has not seriously disputed the same. This fact shows that the complainant has financial capacity to lend Rs.8 lakhs at the relevant point of time.

20. The learned counsel for the accused argued that no notice under section 138(b) of NI Act was sent to the accused before filing this complaint. The notice which was sent on the wrong address of the accused is not the sufficient compliance of section 138 of NI Act. On perusal of Ex.P7 unserved postal cover, it appears that the notice sent to the accused through Register post returned as intimation delivered addressee not claimed. That means the accused was residing in the said address on the said time and she has refused to receive the notice. There is presumption that official Act done in good faith. The accused has not summoned the post master who has give said endorsement to prove that he has given the said endorsement by colluding with the complainant. Hence I am of the considered opinion that the complainant has complied section 138(b) of NI Act by issuing demand notice to the accused on her correct address.

21. From the discussion made supra, it is clear that, the accused neither taken probable defence nor taken steps to prove the same. To put it other way, the accused has not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged under section 118 read with section 139 of N.I. Act. Accordingly, the case of the complainant is acceptable. The complainant has proved that, for discharge of her liability the accused has issued Ex.P.1 and 2 cheques and she has intentionally not maintained sufficient amount in her account to honour the said cheques. Hence, this point No.1 under consideration is answered in the Affirmative.

22. POINT NO.2: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable under section 138 of N.I. Act. Hon'ble Supreme Court of India in a decision reported in, (2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal, observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with cost of litigation. Further the Hon'ble Apex Court in its recent decision in M/s. Meters & instrument Pvt Ltd. Vs. Kanchana Mehta reported in (2018)1 SCC-560 held at para 18 that "The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court. " Therefore, keeping in mind the time when the transaction has taken place and primary object of the provision, this court is of the opinion that, rather than imposing punitive sentence, if sentence of fine is imposed with a direction to compensate the complainant for its monetary loss, by awarding compensation U/Sec.357 of Cr.P.C, would meet the ends of justice. The date of loan is 18.2.2016 and the date of cheques is 10-10-2018. The amount covered under Ex.P1 and 2 is Rs.8,00,000/- and Rs.1,00,000/- respectively. By considering all these aspects, this court is of the opinion that, it is just and proper to imposed fine amount of Rs.,9,50,000/-, which includes interest and cost of litigation, out of which compensation of Rs.9,45,000/- has to be awarded to the complainant U/s 357 Cr.P.C. Accordingly, this court proceeds to pass the following;

ORDER Acting under section 255 (2) of Criminal Procedure Code, accused is here by convicted for the offence punishable under section 138 of Negotiable Instrument Act and accused has been sentenced to pay fine of Rs.9,50,000/-(Rupees Nine Lakhs and Fifty Thousand only). In default thereof accused shall undergo simple imprisonment for the term of 6(Six) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.9,45,000/- (Rupees Nine lakhs and Forty Five Thousand only), therefrom shall be paid to the complainant as a compensation, remaining fine amount of Rs.5,000/-(Rupees Five Thousand only) is defrayed to the state for the expenses incurred in the prosecution.

Office is directed to supply free copy of the judgment to the accused.

(Directly dictated to the Stenographer on computer, typed by her, corrected by me and then judgment pronounced in the open court on this the 15 th day of November 2022).

(MANJUNATHA M.S.) XVIII A.C.M.M.,BANGALORE ANNEXURE I. List of witnesses on behalf of complainant:

P.W.1: Sri.Kodanda II. List of documents on behalf of complainant:

Ex.P-1 &2 : Two Original Cheques.
Ex.P-3 & 4 : Bank memos.
Ex.P-5 : Legal notice.
Ex.P-6 : Postal Receipt .

Ex.P-7 : Unserved postal cover
Ex.P-8 : Agreement.
Ex.P-9 : Bank statement.
Ex.P-10 : Joint Development Agreement.
Ex.P-11 : Assurance letter.
Ex.P-12 : Cheque
Ex.P-13 : LIC Bond

III. List of witnesses for the accused:

D.W.1: Pallavi.G

IV. List of documents for accused:

Ex.D.1 to 4 : Certified copies of complaints.
Ex.D.5 : Appeal Memorandum.
Ex.D.6 & 7 : EP Order sheet and Petition.
Ex.D.8 : Appeal Memorandum.
Ex.D.9 : Criminal Revision order sheet and petition.
Ex.D.10 : Certified copy of the complaint.
Ex.D.11 : Death Certificate.

(MANJUNATHA M.S.)
XVIII A.C.M.M.,BANGALORE

MANJUNATHA M S
MS Date: 2022.11.15
17:00:31 +0530