

B.Ramamurthy vs J.K.Purushotham on 27 July, 2016

IN THE COURT OF THE XXII ADDL.CHIEF METROPOLITON
MAGISTRATE, BANGALORE CITY.

Dated this the 27th day of July , 2016,

PRESENT: SRI. NAGARAJEGOWDA.D, B.Com., LL.B.,
XXII Addl.C.M.M., Bangalore City.

JUDGMENT U/S 355 OF Cr.P.C.

C.C.No.17077/2015

Complainant	:	B.RAMAMURTHY, S/o.Late.Bheema Rao, Aged about 58 years, R/at.# 238/11, Oni Cross Road, Near BMK Colony, Hommadevanahalli, Bannerghatta Road, Bengaluru-560 083. (By Sri.Y.V.HARISH.Adv.)
Accused	V/s.	: J.K.PURUSHOTHAM, S/o.J.Krishna Rao, Aged about 62 years, R/at # 57/B, 18th Main Road, Banashankari 1st Stage, II Block, Bengaluru-560 085. (By Sri.H.Ramanjanaiah ,.Adv.)
Date of Institution		09-07-2015
Offence complained of		U/s 138 of N.I.Act.
Plea of the accused		Pleaded not guilty
Final Order		Accused is Convicted
Date of Order		: 27.07.2016.

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The complainant filed the private complaint u/s 200 of
Cr.P.C alleging that, the accused person has committed an offence

punishable u/s 138 of N.I.Act.

REASONS

The brief facts of the complainant case is as follows:-

2. The complainant is the Kannada Film Director and Producer from past several years and he has got sufficient income from the said film land and one Mr.M.N.Vyasarao was also working as Kannada film lyrics and story writer, he is well known to this complainant. The complainant had the habit of availing the loan and repay the same and also has good earnings. The accused is running the business under the name and style of M/s.J.K.School of Business and Management Visveswaraiah Layout, 1st Block, Jnanabharathi Post, Bengaluru. As the accused has sustained huge loss in running the institution and he was introduced through the said Vyasarao. Due to the said acquaintance since from January-2012 the accused approached the complainant and availed financial assistance and the complainant had paid the amount to the accused on different dates as on 18-05-2013 the accused received the amount of

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Rs.10,90,000/- to clear the debts to the bank, domestic purpose and other commitments. The accused promised to repay the said amount within April-2015 and executed loan agreement on 18-05-2013 with respect of acknowledging the aforesaid amount. The complainant approached the accused on several occasions, but the accused dodged the matter on one pretext and other up to

November-2014, because the Bank Authorities approaching to auction the Institution and as such the accused sought time and after persistent demand made by the complainant to repay the said amount, the accused has issued four cheques viz., (1) cheque bearing No.215299, dated 10-04-2015, for a sum of Rs.1,50,000/- , 2) cheque bearing No.215302. dated 15-04-2015. for a sum of Rs.80,000/-, 3) cheque bearing No.215301, dated 16-04-2015, for a sum of Rs.60,000/-, 4) cheque bearing No.215300 dated 17-04-2015 for a sum of Rs.8,00,000/- all the cheques were drawn on HDFC Bank, Jayanagara Branch, Bengaluru in favour of the complainant and assured the complainant the said cheque will be honoured on its presentation to the Bank. As per the assurance of accused the complainant presented the said cheques through his Bankers namely Bank of Baroda, Banashankari Branch, Bengaluru, but the said cheque returned unpaid endorsement dated 18-04-2015 with a shara "Funds Insufficient". Immediately

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after dishonour of the said cheques, the complainant informed to the accused and demanded to repay the cheque amount, but till today the accused has not repaid the cheque amount. Hence the complainant constrained to issue a legal notice on 16-05-2015 calling upon the accused to pay the cheque amount. The said notice sent through Registered Post returned unserved on 29-05-2015 with a shara intimation delivered, unclaimed, refused, but the accused did not comply the terms of notice and thus he has committed an offence punishable U/sec.138 of N.I.Act punish the

accused in accordance with law by awarding compensation to the complainant in the interest of Justice and equity.

3. The accused appeared before this court and contest this case by denying the entire case of complainant at the time of recording of Plea of Accusation . In support of the case of complainant examined himself as PW-1 and examining one witness as PW-2 and got marked Ex.P1 to P15 and these PW-1 and PW-2 have been cross examining by the accused counsel and thus the complainant closed his side evidence.

4. There afterwards, the accused person examined u/s.313 of Cr.P.C. in which, he totally denied the entire case of complainant and examined one witness as DW-2 through him got
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marked Ex.D1 to D10 and these DW-1 and 2 have been fully cross examining by the complainant counsel and thus the accused closed his side evidence.

5. In support of the case of complainant the learned counsel for complainant submitting the written arguments by narrating facts and circumstances of the case and submits that the complainant had fulfilled all the ingredients of the offence punishable U/sec.138 of N.I.Act and punish the accused in accordance with law with the help of reported decisions in 2001 Criminal Law Journal 2692, 2) ILR 2012 1642 Evidence Act 1861

Section 114, 3) ILR 2006 Karnataka page 4672, 4) 2004(3) KCCR page 1816, 5) ILR 2008 Karnataka 1883= ILR 2006 Karnataka page 1703. Accordingly he prays for convict the accused in accordance with law.

6. I have heard the arguments of Advocate for accused and in support of this case the Learned counsel relying on the following decisions reported in: 1) 2016 Criminal Law Journal 1267, 2) 2015 AIR SCW 64, 3) 2014(2) SC 236, 4) ILR 2008 Karnataka 4629. Accordingly he prays for acquittal of the accused in accordance with law.

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7. In order to prove the case of complainant, the complainant examining himself as PW-1 filed affidavit by way of chief examination and examining one witness namely Srinivasa Prasad as PW-2. He too also filed affidavit by way of his chief examination and got marked Ex.P1 is the loan agreement alleged to be executed by the accused in favour of complainante on 18-05-2013 and identified signatures of both complainant and the accused and the witness Srinivasa Prasad also identified his signature as Ex.P1(a) to P1(e) respectively. In this agreement it is clearly mentioned that the accused undertaken to repay the loan amount borrowed from the complainant on various dates totally Rs.10,90,000/-. Ex.P2 to P5 are the cheques alleged to be issued by the accused in favour of complainant and identified the signature of accused as Ex.P2(a) to P5(a). These issuance of

cheque in favour of complainant is admitted by the accused, but the same are issued for the purpose of security. Ex.P6 to P9 are the endorsements issued by the bankers stating that Ex.P2 to P5 cheques are dishonoured due to "Funds Insufficient". Ex.P10 is the copy of legal notice, this notice does contain the signature of complainant and his counsel. Ex.P11 is the RPAD postal receipt for having sent the legal notice to the accused. Ex.P12 is the RPAD postal cover i.e. legal notice sent to the accused is returned

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with the postal shara intimation delivered and unclaimed etc.,. Ex.P12(a) is the notice in it. Ex.P13 is the identity card of the complainant to show he is the Film Director. Ex.P14 are the Bank of Baroda pass books stands in the name of complainant to show this complainant made several money transactions from the year 2007 to 2013 in which he made several money transaction by keeping the sufficient balance in his bank account etc., and also as per Ex.P15 the statement of account of the complainant to show in the Bank of Baroda from the year 2010 to 2016, this complainant made several money transaction with the Bank. On the basis of oral and documentary evidence of complainant prima-facie proves he paid huge amount of Rs.10,90,000/- to the accused on different dates as on 18-05-2013.

8. The accused has denied the case of complainant in support of his denial a leading his side oral evidence as DW-1 in his chief examination he admitted the case of complainant as he is knows the complainant from the year 2012 and he took loan of

Rs.1,50,000/- from the complainant during the year 2013 at that time for the purpose of security he issued a six blank signed cheques and one Rs.100/- stamp paper. Hence the signature found on the Ex.P1 to P6 belongs to this accused and he has not received any legal notice from the complainant for dishonour of

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the cheque, but he admitted that the addresses stated in the Ex.P12 RPAD cover belongs to this accused. Further stated that he repaid Rs.1,50,000/- in the month of May 2015 to the complainant and he asked to return his security cheques, but he did not return the same and the same has been misused by this complainant and also his friends Girish and Shankar filed cheque bounce case against this accused. Hence he has not committed any offence as alleged by the complainant. In support of the case of accused examining the DW-2 N.Sridhara he too also supporting the case of accused stating that in the month of May 2015 he paid Rs.1,50,000/- to this accused in order to repay the loan amount borrowed from the complainant except these things, he do not know any other things. But he has stated that at time of paying the said amount the complainant is also present. As per the evidence of DW-2 the DW-1 has not stated about Rs.1,50,000/- paid by the DW-2. Through DW-2 at the time of cross examination got marked the pan card of DW-2 and also I.T.returns for the year 2007-08 as Ex.D1 and D2. Further got marked the Sir M.Visveshwaraiah Bank and S.B.M. Bank eight pass books as Ex.D3 to D10. In the month of May, June 2015

there is no bank transaction with his bankers. During the year
2015 as per the pass book entry this DW-2 has got 10,00,000/-
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in his bank account, but there is no entry in his pass book.
Further during the year 2015 he has not paid the Income tax and
there is no entry of Rs.1,50,000/- paid to the DW-1 the same has
been given to the complainant. But he voluntarily stated that the
accused used to take Rs.25,000/- and Rs.50,000/- from him and
he repaid the same. Further he has stated that he do not know
howmuch amount had been paid to the accused during the year
2015. But in that year he paid the said amount to the accused
due to the accused running the college. Further stated that the
accused has not stated about rising loan amount from anybody
and he denied that in the month of May 2015 he has not paid the
said amount to the accused. But he voluntarily stated that he
paid the said amount in the said month except the total denial of
the case of complainant the accused failed to given any
corroborative evidence. This DW-1 has been cross examined by
the complainant counsel in his cross examination he admitted the
transaction how it is to be made in the bank because he did
M.E.Ph.d. But he denied that the accused obtained loan from the
complainant and for repayment of the said amount executed
Ex.P1 loan agreement and also issued Ex.P2 to P5 cheques in
favour of complainant. But he has stated that the said
documents given to the complainant in a blank form except
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signature. Further he denied that he has not received any legal notice from the complainant. But he admitted that the address stated in the Ex.P12 postal cover belongs to this accused. Further he has stated that an amount of Rs.1,50,000/- was given to the complainant after obtaining same from his friend DW-2 Sridhara. But the same is not stated in his chief examination. Further he has not taken any steps against the complainant for misusing of E-stamp paper and the cheques in question because the complainant is his friend except the total denial of the case of complainant the accused has not given rebuttal evidence to the case of complainant to disprove his case.

9. As per the defence taken by the accused his counsel cross examining the PW-1 in his cross examination he is trying to elicited that Ex.P1 to P5 agreement and cheques are issued by the accused for discharge of liability towards the complainant. As per the contents of Ex.P1 loan agreement, the Vyasaraao was not present, but the same is written in the presence of Vysaraao. In the further cross examination of PW-1 at the time of execution of Ex.P1 agreement his age was 56 years and the accused age was 62 years and the same 62 years has been mentioned in the complaint and he admitted that at time of execution of Ex.P1 agreement the age of the accused was 58 years.

Further he
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admitted that there is no entry in the bank statement to show the complainant paid huge amount of Rs.10,90,000/- to the accused.

At Ex.P1 one Srinivasa and others have put their signatures as a witnesses he admitted that the witnesses who signed on the Ex.P1 agreement namely Srinivasa and Vidhyadhara are belongs to this complainant. Further he has stated that he is having a knowledge of the accused obtained Rs.1,00,30,000/- from the Janatha Seva Co-operative Bank, R.P.C.Layout Branch, but he do not know when the accused obtained the said loan amount and also he has stated he do not know for non repayment of loan amount the accused property was come under the auction. But he denied that the accused obtained only loan of Rs.1,50,000/- from the complainant. In the further cross examination he admitted that as per his bank statement he has not made the money transaction more than Rs.2,00,000/- and hence he has no capacity to pay huge amount to this accused.

10. In support of the case of complainant the learned counsel for complainant submitted written arguments stating that the complainant had fulfilled all the ingredients of the offence punishable U/sec.138 of N.I.Act. For dishonour of the cheque, the legal notice issued to the correct address of the accused. But he did not take the notice. Hence the same is duly served to the

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accused as per the ruling of 2001 Criminal Law Journal page 2692 A. Further presumption can be arised in favour of complainant stating alleged cheque in question and the signature of the cheques has been admitted by the accused. Hence

presumption U/sec.139 of N.I.Act can be drawn in his favour. In all these reasons, the learned counsel for complainant stating the relevant ruling of ILR 2012 1642 Evidence Act, Section 114, ILR 2006 Karnataka 4672, 2004(3) KCCR 1816 (L.Mohan V/s.V.Mohan Naidu) and also ILR 2008 Karnataka 1883 = ILR 2006 Karnataka 1730 accordingly the learned counsel for complainant prays for convicting the accused in accordance with law.

11. As per the defence taken by the accused the learned counsel for accused vehemently argued that alleged cheque in question and the E-stamp paper was given to the complainant which were in blank towards the security for the loan amount borrowed from the complainant for sum of Rs.1,50,000/- the same amount has been repaid given by the DW-2 Sridhara for that through him several documents have been produced. Hence the accused given rebuttable evidence to the case of complainant. In support of his defence the learned counsel relying on the decisions reported in 2016 Criminal Law Journal 1267 13 C.C.No.17077/2015

(Venkatesh Sadananda Pai V/s.Kanchana.A.Kakkodkar and another rendered by the Hon'ble Bombay High Court. Likewise 2015 AIR SCW 64 (K.Subramani V/s.K.Damodhara Naidu) rendered by the Hon'ble Supreme Court of India stating the complainant had no source of income to lend sum of Rs.14,00,000/- to the accused. Hence the accused is entitled for acquittal. Likewise relying on the decision reported in ILR 2008

KAR page 4629 (Shivamurthy V/s.Amruthraj of the Hon'ble High Court of Karnataka. In view of the aforesaid ruling the Advocate for accused praying for acquittal of the accused.

12. On the basis of oral and documentary evidence in order to show the complainant paid the various amounts to the accused on various dates. He has not specifically stated all those dates, but he has stated that as on 18-05-2013 he totally paid Rs.10,90,000/- to the accused to clear debts to the bank, domestic purpose and other commitments. The accused contended that Ex.P1 loan agreement stamp paper and Ex.P2 to P5 cheques are given in blank towards the security of the loan amount of Rs.1,50,000/- borrowed from the complainant. The accused has not stated the repayment of Rs.1,50,000/- was given by the DW-2 Sridhara but he examined the said Sridhara to support his case. Further the legal notice sent to the accused for

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dishonour of cheque to the correct address of accused. But accused taken a untenable contention stating that the legal notice not duly served to him. As such the accused has not approached this court with clean hands. The decision relied by the complainant in 2001 Criminal Law Journal page 2692 of the Hon'ble High Court of Karnataka held that the notice for payment sent U/s.138(b) refusal to accept the notice, amounts to service in accordance with law. Likewise ILR 2012 Karnataka 1642 (Jayaram Shetty V/s.Biviyas Finance and Leasing Ltd). The

Hon'ble High Court of Karnataka held that under summary trial, the principal cannot be accepted that when the Respondent himself admitted the documents in evidence etc.,. Likewise in the ILR 2006 Karnataka page 4672 (J.Ramaraj V/s.Illiyaz Khan) the Hon'ble High Court of Karnataka held that cheque is issued duly signed by the accused, the presumption does against him as per Sec.139 of N.I.Act - on the facts the cheque and the signature admitted by the accused and the accused did not discharge his responsibility by way of rebuttal evidence cannot be faulted with. Likewise in 2004(3) KCCR Page 1816 (Mohan V/s.Mohan Naidu) the Hon'ble High Court of Karnataka held that the burden of proof shifts on the accused to prove that there was no liability/debt or that the cheque was issued to different person. Likewise in ILR 15 C.C.No.17077/2015

2008 Karnataka page 1883 (Latha K.Nayar V/s. M/s.Gold Mohar Foods and Feeds Ltd). The Hon'ble Court held the presumption available for the complainant U/sec.138 of N.I.Act should be rebutted etc.,. On the basis of aforesaid ruling coupled with the case of accused though the accused has not produced any documentary evidence and also he has not mentioned the specific dates on which he lend the loan amount to the accused, but he has stated on different dates as on 18-05-2013 the accused has received sum of Rs.10,90,000/- . The accused taken the contention that he obtained only Rs.1,50,000/- from the complainant and he repaid the said amount through DW-2 Sridhara. But no supportive documentary evidence is forth

coming to substantiate the case of accused. In view of the facts and circumstances the complainant is entitled to recover the amount of Rs.10,90,000/- covered under the cheques from the accused with the simple interest at the rate of 6% per annum from the date of alleged cheque in question till realization of the same. As such the accused is liable for conviction to that extent.

Accordingly, I pass the following:

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ORDER

Acting u/s 265 of Cr.P.C., the accused is convicted for the offence punishable u/s 138 of N.I.Act sentenced to pay fine of Rs.5000/- in default to undergo simple imprisonment for a period of three months.

The complainant was awarded the compensation of Rs.10,90,000/- i.e. amount of alleged cheque in questions, the same shall be paid by the accused to the complainant with 6% interest per annum on the said amount from the date of the cheque till realization of the same. In default the accused shall undergo S.I for a period of two years.

Supply free copy of the Judgment to the accused on free of cost.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 27th day of July, 2016) (NAGARAJEGOWDA.D) XXII ACMM, Bangalore city.

ANNEXURE Witnesses examined for the Complainant:

PW.1	:	B.Ramamurthy
PW.2	:	Srinivas Prasad

Witness examined for the accused:

DW-1	:	J.K.Purushotham
DW-2	:	N.Sridhara

List of Documents marked for the Complainant:

Ex.P1 : Agreement
Ex.P2 to P5 : Four Cheques

Ex.P2(a) to 5(a) : Signature of the Accused Ex.P6 to P9 : Bank Endorsements Ex.P10 : Copy of Legal notice Ex.P11 : Unserved R.P.A.D.Cover Ex.P12 : Complaint Ex.P12(a) : Signature of the Complainant Ex.P13 and 14 : Bank Pass Books Ex.P15 : Bank Statements List of Documents marked for the accused:

Ex.D1 : Pan Card
Ex.D2 : Assessment I.T.returns for the
Year 2007-08.
Ex.D3 to D10 : 8 Pass Books

XXII ACMM, Bangalore.

Dated.27.07.2016

(Order pronounced in the open court vide separate order) ORDER Acting u/s 265 of Cr.P.C., the accused is convicted for the offence punishable u/s 138 of N.I.Act sentenced to pay fine of Rs.5000/- in default to undergo simple imprisonment for a period of three months.

The complainant was awarded the compensation of Rs.10,90,000/- i.e. amount of alleged cheque in questions, the same shall be paid by the accused to the complainant with 6% interest per annum on the said amount from the date of the cheque till realization of the same. In default the accused shall undergo S.I for a period of two years.

Supply free copy of the Judgment to the accused on free of cost.

(NAGARAJEGOWDA.D) XXII Addl. Chief Metropolitan Magistrate, Bangalore City.