

Sri.B.S.Nanjundaswamy vs Shri.Shailesh.K on 25 March, 2017

IN THE COURT OF THE LVIII ADDL. CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT,
BENGALURU

Dated this the 25th day of March 2017

PRESENT:

Sri. Nataraj.S. B.A.L, LLB.,
LVIII Addl. Chief Metropolitan Magistrate
Bengaluru.

CASE NO C.C.No.55501 /2014

COMPLAINANT Sri.B.S.Nanjundaswamy,
S/o B.C.Shir Kantaiah,
Aged about 46 years,
R/at No.109,Bheemajyothi,
LIC colony, Basaveshwaranagara,
Bangalore-560 079.

ACCUSED Shri.Shailesh.K.
S/o Late Kallaiah,
Aged about 45 years,
R/at No.G-2, Ground Floor,
Apoorva Annex, 4th Cross,
Ganesh Block, R.T.Nagar,
Bangalore-560 032.

Office Address:
Sun-18, (Distribution)
Media Services South Pvt Ltd.,
Maran Towers, No.9, Brunton Road,
M.G.Road, Bangalore-560 001.

OFFENCE U/s 138 of Negotiable Instruments Act

PLEA OF THE ACCUSED Pleded not guilty

FINAL ORDER Accused is Acquitted

(NATARAJ.S.)
LVIII ADDL.C.M.M.BENGALURU

2

CC.No.55501/2014

JUDGMENT

The complainant filed a complaint Under Section 200 of Cr.P.C for the offence punishable Under Section 138 of Negotiable Instrument Act.

2. The case of the complainant is that:

The accused is known to him from the past 5 years the accused approached the complainant for financial assistance and borrowed hand loan of Rs.15,00,000/- on different dates and executed loan agreement on 11.6.2013. The accused subsequently deposited a sum of Rs.34,000/- to the account of complainant in the month of January 2014 and thereafter a sum of Rs.50,000/- was paid through cheque in the month June 2014 as a part of interest amount and promise to repay the loan amount. On demand by the complainant for repayment of the entire hand loan of Rs.15,00,000/- towards discharge of his liability the accused issued two cheques bearing No. 000007 & 000008 both dated 18.7.2014 for Rs.7,50,000/- each, drawn on HDFC Bank, MG Road branch, Bangalore, on presentation of both cheques through the complainant banker HDFC Bank, Basaveshwaranagar Branch, Bangalore, the same were returned for the reason payment stopped by drawer as per the memo 18.7.2014. Thereafter, the complainant issued demand notice on 6.8.2014 the said notice was received by the accused on 8.8.2014 and did not make payment but issued false reply after expiry of 15 days thereafter, within 30 days filed above said complaint for offence punishable under section 138 of NI Act.

3. The Sworn statement was recorded, the cognizance was taken, summons was issued to the accused. He has appeared through his counsel. The copy of the complaint was furnished to him. The accusation was read over and explained to him he pleaded not guilty and claimed to be tried.

4. The complainant to prove of his case examined himself as P.W.1 in his support Ex.P.1 to P.11 documents are marked.

5. The statement of accused Under section 313 Cr.P.C. has been recorded. The accused denied the incriminating evidence appeared against him. Accused has not adduced oral evidence however, through cross examination of PW1 D1 to 3 documents were marked.

6. Heard arguments of both sides.

7. On consideration of contention of both sides and material on records, the following points that arise for consideration are as follows:

1. Whether accused rebuts the presumption under section 118, 139 of Negotiable Instrument Act?

2. Whether the complainant proves that accused committed an offence Punishable Under Section 138 of NI Act?

3. What order?

8. My answers to the above points are as follows:

Point No.1: In the Affirmative Point No.2: In the Negative Point No.3: As per final order For the following;

REASONS:

9. Point No.1:- Both points interconnected to avoid repetitions of fact both points are taken together.

10. It is the specific case of the complainant in the complaint and oral evidence that accused borrowed hand loan of Rs.15,00,000/- on different dates , towards discharge of said loan he had issued Ex.P.2 & 3 cheques , on presentation of said cheques it came to be dishonour, on issuance of notice the accused failed to pay the amount within stipulated time. Therefore, he is before the court.

11. The counsel for the complainant argued that evidence of complainant and documents established the lending of amount to the accused and issuance of cheques by the accused. The dishonour of cheques and also non payment of amount within stipulated time attract section 138 of NI Act. The accused in his oral and evidence taken false defense. There is no proof that he had taken loan of Rs.3,00,000/- from the complainant and he has repaid it. The complainant by producing income tax returns establish his financial capacity to lend the amount and also lending of amount. The complainant established legally existing enforceable debt the accused fail to rebut the presumption, the defense is not probable and acceptable prayed to convict and awarding compensation.

12. The learned counsel for accused argued that the complainant not established the lending of Rs.15,00,000/- to the accused. The documents produced by the complainant disclose he is no financial capacity lend huge amount. It is further argued that the complainant in the complaint stated about payment of amount by the accused but makes a demand by issuing notice for Rs.15,00,000/- it is not permissible. The complainant admits the various amounts paid by the accused but he claims amount of Rs.15,00,000/-. It is further argued that the accused had borrowed only Rs.3,00,000/- from the complainant and the complainant collected three blank cheques and blanked signed stamp paper as security the accused had paid Rs.1,36,000/- by bank transfer during the month of October , November and December 2013 and in January 2014 he had deposited Rs.34,000/- to complainant account. Thereafter , the complainant on monthly basis collected Rs.30,000/- by cash every month till 2014 and totally Rs.2,56,000/- thereafter, the balance of Rs.44,000/- was realized by the complainant by filling the one blank issued in his favour for Rs.50,000/-. The accused in all he had paid Rs.3,06,000/- and Rs.6,000/- was collected more than the amount required to be collected , there is no existing debt or liability by misusing the cheques presented and filed false complaint. The learned counsel in support of his contention.

1. B Shivaram-Vs M.V.Venkatesh-MANU/KA/0227/2015

2.L.Raju Vs Gurappa Reddy-MANU/KA/2708/2015. Equivalent citation: 2015(5) Kar L.J.457

3.Pawan-Vs Gauri Shankar Deora & Anr -

MANU/DE/1354/2012.

4.Predeep Kumar Verma Vs Aparna Mehra and Ors MANU/DE/0194/2015

5.K.Subramani Vs K.Damodara Naidu- MANU/SC/1031/2014.

6.Santhi.C Vs Mary Sherly and Anr-MANU/KE/1330/2011

7.Krishna Janardhana Bhat Vs Dattatraya G.Hedge- MANU/SC/0503/2008

8. Rangappa Vs Sri Mohan- MANU/SC/0376/2010.

13. On consideration of contention of learned counsels for both sides and as well as principles laid down in the rulings keeping in mind the above said principles. At the outset, it has to be stated that all the necessary conditions to file a complaint for the offence punishable U/s 138 of NI Act have been duly complied with even when the cheque is dishonoured by reasons of stop payment instruction by virtue of section 139 the court has to presume that the cheque was received by the holder for the discharge of in whole or in part or any debt or liability. The accused has to show that the stop payment notice had been issued because of other valid reasons including that there was no existing debt or liability at the time of presentation of cheque for encashment as held in (2012) 13 SCC 375 in Laxmi Dyechem Vs Stae of Gujarath and others. Ex.P2 & 3 are the cheques, Ex.P.4 is the bank endorsement, Ex.P.5 is the legal notice issued within stipulated time. Ex.P.6 are the postal receipts, Ex.P7 to 9 are the postal acknowledgement, after expiry of 15 days thereafter, within 30 days the complainant has been filed. There is no dispute between the parties in that regard. What has been disputed by the accused is that the cheques in question were not issued by him to the complainant towards the discharge of legally recoverable debt. It is the case of the accused that he had never taken hand loan of Rs.15,00,000/- from the complainant at a different dates nor he had issued two cheques in favour of complainant. The accused has admitted his signatures on Ex.P.2 & 3 cheques, at the most the presumption can be drawn U/s 139 of NI Act that the cheques were issued towards the discharge of legal liability. But the presumption U/s 139 of NI Act is a rebuttal presumption. Accused can rebut the presumption by leading evidence or from the evidence placed on record by the complainant. The accused need to prove his case beyond reasonable doubt the burden to be discharged by the accused is that of preponderance of probabilities as held in Krishna Janardhana Bhat and Rangappa Vs Mohan cases cited by the accused above.

14. The accused disputed the financial capacity of the accused to pay huge amount in this regard he has relied ruling of Karnataka High Court in B. Shivarama Vs M.V.Venkatesh reported Manu/KA/0277/2015 and (2015) 1 SCC 99 K.Subramani Vs K.Damodara Naidu. The complainant in his cross examination deposed that he is working in KA media as a distribution head which supplies channels through cable. Apart from above said work is also giving cable connections to the houses with his sister in the name of Karthik Television Partnership. It is also elicited his wife and daughter are his dependents and he is paying amount towards school fee of his daughter. He is also paying every month Rs.15,000/- loan installments to his house. The complainant in the complaint and in his chief examination contended that in the 11th June of 2013 he had paid Rs.10,00,000/- to the accused out of which Rs.5,00,000/- was paid through cheques and Rs.5,00,000/- in cash and subsequently in the month of January 2014 he had paid Rs.5,00,000/- in cash. The accused

disputed the payment of above said amount but according to him. He had borrowed only Rs.3,00,0000/- from the complainant and at that time 3 blank cheques were obtained and also on blank signed stamp paper.

15. The complainant in his cross examination para-4 for the first time deposed he had given Rs.4,00,000/- through cheque and Rs.11,00,000/- in cash. The complainant to show the transaction he has produced Ex.P.10 income tax returns for the year 2014-15 assessment year. In which column No.1 gross total income is shown as Rs.3,99,737/-, in column no.3(a) of Ex.P.10 current year loss is shown as Rs.4,32,986/- which creates doubt about advancement of Rs.15,00,000/- showing gross income of Rs.4,00,000/- and showing Rs.4,50,000/- as a loss in that year in the income tax returns. In view of above said circumstances showing in the income tax returns fro the year 2014-15 and 2015- 16 Rs.15,00,000/- shown as a loan in the annexure creates suspicion. Ex.P.11 is the bank statement of complainant it disclose on 30.6.2013 Rs.3,00,000/- and on 26.6.2013 Rs.1,00,000/- was paid to the accused through CTS cheques. As on 11.6.2013 the date as on that date or prior to it nor subsequently, there is no sufficient amount in his account to advance alleged amount of Rs.15,00,000/-. The said amount was not in his bank account. It is not the case of the complainant he has withdrawn the amount from his different bank account and paid to accused.

16. The bank statement of complainant at Ex.P.11 is considered it is improbable to accept that at different point of time he had advanced loan more than Rs.4,00,000/- to the accused. The complainant who is an income tax assessee and files income tax return every years he would have paid the amount through cheque or DD to accused , having not paid through instrument the theory of paying amount of Rs.11,00,000/- in cash is doubtful. The bank statement and the income tax returns does not establish the complainant financial capacity to lend huge amount of Rs.15,00,000/-.

17. Ex.P.1 is the loan agreement the signature thereon is admitted by the accused but contended that on blank stamp paper signature was obtained. This would probablise that on 1st page of agreement there is no signature and there are no witness to the document. No persons have been examined as witness to establish the execution of loan agreement and payment of huge amount to the accused. No ordinary prudent man would accept that the complainant after payment of Rs.10,00,000/- on 11.6.2013 again in the month of January 2014 the complainant stated to have advance of Rs.5,00,000/- in cash to accused unbelievable. The complainant produced Ex.P.2 & 3 and cheques which were filled by typing the signatures are admitted. Either in the complaint or in the evidence the complainant has not stated when those two cheques were issued by the accused.

18. However, both cheques are dated 18.7.2014 if the accused had issued cheques in favour of complainant discharging the liability then he would have been issued one cheque for Rs.15,00,000/- instead of Rs.7,50,000/- each. The complainant in his complaint para-10 and 11 and also 19 stated the amount of Rs.34,000/- was paid in the month of January 2014 and Rs.50,000/- through cheque in the month of June 2014 and sum of Rs.34,000/- had transferred in the month of October, November and December 2013 either in Ex.P.1 or there is any document to show the above said payment was made towards interest thus, the complainant contentions that the above said amount

was paid interest cannot be acceptable and it is part of alleged loan amount of Rs.15,00,000/-. If the accused had paid Rs.1,60,000/- through RTGS for 6 months for Rs.34,000/- each and Rs.15,000/- through cheque no ordinary prudent man would issued cheques for entire alleged loan amount of Rs.15,00,000/- instead of balance amount. The complainant having received part payment from the accused before presentation of cheque even then he has presented the cheque for entire amount of Rs.15,00,000/-. In this regard it is useful refer section 56 of NI Act which reads as follows;

No writing on a negotiable instrument is valid for the purpose of negotiation is such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be indorsed on the instrument, which may then be negotiable for the balance"

(Emphasis supplied)

19. The portion of the amount covered by the cheque was repaid. The same was not indorsed by the drawee on the cheque. In view of the above the very same reasons, the complainant could not have presented the cheques for collection of the full amount. He was entitled to get only the balance amount. Therefore, the complainant must have made an indorsement of the amount received and presented the cheque, to collect the balance amount due. The complainant has not complied the above said provision.

Thus, from all these facts and circumstances discussed and narrated above I am of the opinion that the complainant failed to prove the existence of debt of Rs.15,00,000/-. On other hand the accused has been able to probablise his defense and discharge the burden cast upon him that the cheques were not issued towards the discharge of legally recoverable debt. The defense of the accused is probable to accept that three cheques were obtained by the complainant the time of lending of Rs.4,00,000/- as a security, one cheque of Rs.50,000/- was encashed in the month of June 2014 Ex.P.2 and 3 cheques have been misused by the complainant though the accused has discharged the amount taken by him. The complainant failed to establish legally enforceable debt or other liability. As such the accused is entitled for acquittal. Accordingly, I answer Point No.1 in the Affirmative and Point No.2 in the Negative .

20. Point No.3: For the aforesaid reasons and findings I proceed to pass the following;

ORDER Acting Under Section 255(1) Cr.P.C. accused is acquitted for the offence punishable under section 138 of NI Act.

The bail bonds of accused stands cancelled and cash security of Rs.6,000/- deposited by the accused on 23.7.2015 is ordered to be refund to the accused (if not forfeited or lapsed) after expiry appeal period.

(Dictated to the stenographer, direct on line typed by her, corrected by me and pronounced in the open court on this 25th day of March 2017) (NATARAJ.S.) LVIII ADDL.C.M.M.BENGALURU ANNEXURE Witness examined for the complainant:

P.W.1: B.S.Nanjundaswamy Witness examined for the defence:

Nil Document marked by the complainant:

Ex.P.1	Loan Agreement
Ex.P.2 & 3	Two cheques
Ex.P.4	Bank endorsement
Ex.P.5	Legal notice
Ex.P.6	6 postal receipts
Ex.P.7 to 9	3 postal acknowledgments
Ex.P.10	Income tax returns
Ex.P.11	Bank statement

Document marked by the defence :-

Ex.D.1	Notice
Ex.D2	Postal acknowledgment
Ex.D3	Postal receipt

LVIII ADDL.C.M.M.BENGALURU