

# Aged About 28 Years vs Aged About 54 Years on 30 January, 2020

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

DATED THIS THE 30th DAY OF JANUARY, 2020

PRESENT

Sri. K. GURUPRASAD, B.A., LL.B (Spl.)  
XIV ADDL. C.M.M., BENGALURU

CASE NO	C.C. NO.51250/2019
COMPLAINANT	SRI. RAKESH BABU. R S/o. Late Ramaiah Reddy Aged about 28 years, No.233, R.B. Complex, Nanga Reddy Colony, Krishna Reddy Layout, Jeevanbheemanagar, Bengaluru - 560 017.
ACCUSED	SRI. H.K. GOVINDA SHETTY S/o. Krishna Shetty H.P Aged about 54 years, No.192, Hoodi Main Road, Opp : Swamy Vivekananda Ashrama, Mahadevapura, Bengaluru - 560 048.
OFFENCE PLEA OF THE ACCUSED FINAL ORDER	U/s.138 of Negotiable Instruments Act  Pleaded not guilty Accused is convicted

(K. GURUPRASAD)  
XIV ADDL. C.M.M., BENGALURU

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JUDGMENT

The present complaint is filed under Sec.200 Cr.PC for the offence punishable under Section 138 of Negotiable Instruments Act.

2. It is the case of the complainant that, the accused and his son H.G. Kiran Kumar who were known to the complainant, approached the complainant for loan and availed hand loan of Rs.9 lakhs from the complainant and assured to repay the same within three months along with interest @ 2% per

month from the date of loan. They also executed loan agreement on 8.8.2018 in favour of complainant. Towards said liability, the accused issued a cheque bearing No.340139 for Rs.4,50,000/- dtd.8.11.2018 drawn on Corporation Bank, Mahadevapura branch, Bengaluru in favour of the complainant. When the complainant presented the said cheque for collection to his banker i.e Canara Bank, Hennur branch, Bengaluru, the said cheque came to be dishonoured with bank endorsement "funds insufficient" on 13.12.2018. When the complainant got issued legal notice to the accused on 27.12.2018 calling upon the accused to pay the cheque amount, the said notice was served on the accused on 28.12.2018. The accused has failed to pay the cheque amount in spite of service of said notice and as such, the accused is guilty of the offence punishable under Section 138 of N.I. Act. Hence this complaint.

3. After filing of this complaint, cognizance was taken for the offence punishable U/s.138 of N.I. Act. Sworn statement of the complainant was recorded. This court was satisfied as to prima facie case made out by the complainant for issuance of the summons. Accordingly, criminal case was registered against the accused and summons was ordered to be issued.

4. In pursuance of court process issued by this court, the accused appeared through his counsel and got enlarged on bail. Thereafter plea was recorded. The accused pleaded not guilty and claimed for trial.

5. In order to prove his case, the complainant himself examined as CW.1 (PW.1) and got marked Ex.P1 to P9 and closed his side of evidence. Thereafter, statement of the accused U/s.313 of Cr.PC was recorded. The accused denied incriminating materials in the evidence of complainant as against him. Then the accused examined himself as DW.1 and got marked Ex.D1 and D2 and closed defence side of evidence.

6. Heard both sides. Perused the complaint, evidence on record and court records.

7. The following points arise for my consideration and determination;

1) Whether the complainant proves that the accused has issued a cheque in question in discharge of legally enforceable debt or liability as contended by him?

2) Whether the complainant further proves that the accused committed the offence punishable under Section 138 of Negotiable Instruments Act?

3) Whether the complainant is entitled for the relief's as prayed in the complaint?

4) What Order?

8. The above points are answered as under;

Point No.1 to 3 : In affirmative, Point No.4 : As per the final order, for the following.....

## REASONS

9. Point Nos. 1 and 2: Since these two points are inter linked and to avoid repetition they are taken together for discussion.

10. As regard to limitation to file this complaint, Ex.P2 is cheque dated 8.11.2018 drawn on Corporation Bank, Mahadevapura branch, Bengaluru in favour of the complainant. Ex.P3 is cheque return memo dated 13.12.2018 issued by Canara Bank, Hennur branch, Bengaluru. Ex.P4 is copy of legal notice dtd.27.12.2018 got issued by the complainant to the accused. Ex.P5 is the postal window receipt issued by postal department for having sent Ex.P4 notice by registered post. Ex.P6 is postal acknowledgement signed for having received Ex.P4-notice sent by registered post on 28.12.2018.

11. No doubt, the accused has disputed and denied that Ex.P4-notice is served on him and that Ex.P6 postal acknowledgement bears his signature. However DW.1 has admitted during cross-examination that his address shown in cause title of the complaint and also in Ex.P4-notice is his correct address and that any notice sent by registered post to him will reach him. Therefore it is clear that Ex.P4-notice is sent by registered post at the correct address of the accused. As per Sec.27 of General Clauses Act when notice is issued by registered post at correct address, the said notice is presumed to have been served on the addressee. The burden of rebutting said presumption is on the person who disputes service of said notice. But in the present case on hand, the accused has not adduced any evidence on record to show that Ex.P4-notice is not received by him or that he is unaware of contents of said notice. Hence, it can be concluded that Ex.P4-legal notice is duly served on the accused.

12. Therefore, it is clear from Ex.P2 to P6 that when the complainant presented Ex.P2-cheque to his banker, the same came to be dishonored with shara dtd.13.12.2018 as "funds insufficient" and that when the complainant got issued Ex.P4-notice by registered post on 27.12.2018, said notice was served on the accused on 28.12.2018. In other words, when the complainant presented the cheque in question within three months from the date of said cheque, the said cheque came to be dishonored and that when the complainant got issued statutory notice U/s.138 of N.I. Act within 30 days from the date of intimation of dishonour of said cheque, it was duly served on the accused. Hence, the present complaint filed on 7.2.2019 i.e after expiry of 15 days from the date of receipt of said notice and within 30 days thereafter is well within time.

13. As regard to legally enforceable debt or liability, in 2010 (11) SCC 441 - (Rangappa Vs Sri. Mohan), it is held that;

" The presumption mandated by Sec.139 of the Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the complainant" ..... "when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'.

Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the presumption can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own".

14. In ILR 2006 KAR 2958 (Rajendraprasad Vs M.Shivaraj), it is held that Bank Manager of accused is more competent person to say whether it is the signature of the accused or not with reference to the specimen signature. In the bank's intimation, the discrepancy of the signature with the specimen signature is not the ground for dishonour. In the instant case, the banker does not mention that the signature is discrepant and does not tally with the specimen signature. Therefore, the self-serving denial of signature in the cheque cannot be a good evidence to come to the conclusion that the signature on the cheque is not that of the accused. The banker's no objection for the signature in the cheque is one of the strongest circumstance to corroborate that the signature on the cheque is that of the accused. The possession of the loose cheque with the complainant suggests an inference of endorsement and delivery of inchoate instrument which impliedly admits the issuance of cheque in favour of the complainant.

15. If the facts and circumstances of this case are considered in light of above said principles of law, it is clear that though the accused has not seriously disputed his signature on Ex.P2-cheque during initial stage of trial, the accused has disputed his signature on Ex.P2-cheque during cross-examination. However, DW.1 has admitted on page 4 of his cross-examination that Ex.P2-cheque is drawn on his bank account. Further DW.1 has gone to the extent of denying his signature on his vakalath filed in this case on his behalf. Moreover, it is clear from Ex.P3-cheque return memo that Ex.P2-cheque is dishonored for the reason "funds insufficient" and not for the reason "drawer signature differs". In other words, the banker of the accused, who is competent person to say whether the signature on the cheque is that of accused or not with reference to specimen signature does not mention in Ex.P3- cheque return memo that signature is discrepant and does not tally with the specimen signature. Moreover, the accused has not taken any steps for appointment of handwriting expert for comparison of signature on Ex.P2- cheque with admitted signature. Therefore, the self-serving denial of signature in the cheque at the later stage of trial, cannot be a good evidence to come to the conclusion that the signature on the Ex.P2-cheque is not that of the accused. The very fact that banker of the accused has no objection for the signature in the cheque is one of the strongest circumstance to corroborate that the signature on the cheque is that of the accused. The possession of the loose Ex.P2-cheque with the complainant suggests an inference of endorsement and delivery of inchoate instrument which impliedly admits the issuance of cheque in favour of the complainant.

16. It is the case of the complainant that the accused and his son Kiran Kumar together availed hand loan of Rs.9 lakhs from the complainant on 8.8.2018 and jointly executed Ex.P1-loan agreement in favour of the complainant and issued post dated cheque as per Ex.P2, which came to be dishonored. On the other hand, it is defence of the accused that neither himself nor his son availed any loan from the complainant nor issued Ex.P2- cheque towards repayment of said loan. It is specific defence of the accused that when accused and his son were in need of money for marriage expenses of daughter

of accused, the complainant assured the accused and his son to help them to get loan and obtained blank signed cheques from the accused and his son and blank signed stamp paper and thereafter misused the same and created Ex.P1-loan agreement and Ex.P2-cheque and filed this false complaint against the accused and another false complaint in C.C. No.51624/2019 against his son Kiran Kumar as per Ex.D1 and D2.

17. On careful perusal of evidence on record, it is clear that the defence of the accused is not probable nor does it inspire confidence of this court. It is because, the evidence of DW.1 is vague and devoid of necessary details. No doubt, DW.1 has deposed that the complainant assured the accused and his son to help them to get loan and took blank signed cheques and blank signed stamp paper from the accused and his son. However it is not clear from the evidence of DW.1 as to from which bank or financial institution or money lender, the complainant assured to help to get such loan. It is also not clear how many blank signed cheques have been taken from the accused and his son and name of bank or banks on which such cheques have been drawn. It is also not clear how much loan amount the accused and his son wanted for marriage expenses of daughter of accused and what loan amount, the complainant assured to help to get. The date on which the accused and his son approached the complainant for the said purpose is also not disclosed in the evidence of DW.1. In absence these material details, it is not safe to rely upon defence of the accused.

18. Secondly, DW.1 has deposed in his examination- in-chief that the complainant has taken blank signed cheques of himself and his son. However during cross- examination, DW.1 has denied on page 4 of his cross- examination that the signature appearing on Ex.P2-cheque is his signature. If the complainant had really taken blank signed cheque or cheques from the accused, there would have been no question of DW.1 denying his signature on Ex.P2-cheque, particularly when it is defence of the accused that Ex.P2-cheque is one of the blank signed cheques taken from the accused by the complainant. This contradiction in the evidence of DW.1 regarding signature on Ex.P2-cheque raises serious doubt regarding defence of the accused.

19. Thirdly, it is defence of the accused that himself and his son have never borrowed any loan from the complainant nor issued Ex.P2-cheque towards said liability. However, DW.1 has deposed in his examination-in-chief itself that he has taken loan of only Rs.3 lakhs from the complainant, but the complainant has filed this false complaint by adding extra amount in the cheque. But again during cross-examination, DW.1 has deposed on page 4 of his cross-examination that he has not availed any loan from the complainant. This material contradiction in the evidence of DW.1 regarding availment of loan, raises serious doubt regarding defence of the accused and supports the case of the complainant.

20. Fourthly, it is clear from Ex.P4 to P6 that when the complainant got issued Ex.P4 notice by registered post to the accused, the said notice was served on the accused. No doubt, it is clear from Ex.P6 that a person by name Madhu has signed on the Ex.P6-postal acknowledgement. PW.1 has deposed on page 9 of his cross-examination that one Madhu who is daughter of accused has signed on the postal acknowledgement. Even DW.1 has deposed during cross-examination that one Madhumitha is his daughter and that his daughter stays in the house and does not go to job. Therefore it can be concluded that Ex.P4-notice is received by the daughter of accused and that

accused is well aware of contents of Ex.P4-notice. It is pertinent to note that even though the accused was well aware of the contents of Ex.P4-notice, the accused has not got issued any reply notice to complainant, denying any loan transaction between himself and complainant and issuance of Ex.P2-cheque for repayment of said loan. Any prudent person in place of accused under similar circumstances would have promptly got issued reply notice to Ex.P4-notice putting up his defence and denying any loan transaction between himself and complainant. However the accused has failed to do so and thereby lost an opportunity to put-up his defence at the earliest, by issuing reply notice to Ex.P4. Further the accused has also not lodged any police complaint against the complainant, alleging misuse of Ex.P2-cheque. This inaction on the part of the accused to issue reply notice to Ex.P4 and lodge police complaint against the accused raises serious doubt regarding the prosecution case.

21. Fifthly, the complainant has produced Ex.P1 which is an original loan agreement dtd.8.8.2018 executed by accused and his son Kiran Kumar in favour of complainant. It discloses that the accused and his son availed hand loan of Rs.9 lakhs from the complainant and agreed to pay interest @ 2% per month on the said loan. Ex.P1 also discloses that the accused and his son executed On Demand Promissory Note for Rs.9 lakhs in favour of the complainant. Ex.P1 also discloses that the present accused issued Ex.P2 post dated cheque while said Kiran Kumar issued cheque drawn on State Bank of India, Hoody branch towards repayment of said loan. No doubt, the accused has seriously disputed execution of Ex.P1-loan agreement and contended that signatures of himself and his son were taken on blank stamp paper for the purpose of helping to get loan. However it is clear from Ex.P1-loan agreement that the said loan agreement was also signed by two witnesses by name Sampath Kumari and H.V.Nirmala. DW.1 has admitted during cross-examination that said Sampath Kumari is his wife and that the signature of Sampath Kumari at Ex.P1(e) on the Ex.P1-loan agreement may be that of his wife. PW.1 has categorically deposed during cross-examination that the wife of accused and mother of PW.1 were also present at the time of execution of Ex.P1- loan agreement and signed on the loan agreement as witnesses. This very fact of the wife of accused being present at the time of execution of Ex.P1-loan agreement and having signed as witness, supports and corroborates claim of the complainant and goes against the defence of the accused that signatures of accused and his son were taken on blank stamp paper. Moreover, though the accused received Ex.P4-notice, he has not issued any reply notice denying execution of loan agreement. Therefore, the execution of Ex.P1-loan agreement is sufficiently proved by the complainant, which supports the case of the complainant and disproves the defence of the accused.

22. Counsel for the accused has argued and contended that the complainant has no financial capacity to lend huge amount of Rs.9 lakhs and that the complainant has not proved source of funds for lending such huge amount. In this regard counsel for the accused relied upon decisions in 2015 (1) SCC 99 and 2014 (2) SCC 236.

23. However the complainant has produced Ex.P7 which is bank statement pertaining to bank account of complainant in Canara Bank, Hennur branch, Bengaluru. It shows that the sum of Rs.2,54,745/- was credited on 4.8.2018 towards loan from Muthoot Finance and subsequently a sum of Rs.2,55,000/- was withdrawn on 8.8.2018. PW.1 has deposed during cross-examination that he had taken gold loan from Muthoot Finance and that the said amount was withdrawn and paid to

the accused and his son on 8.8.2018. This statement of PW.1 is corroborated by documentary evidence of Ex.P7-bank statement. Further the complainant has also produced Ex.P8 which is bank statement of bank account of complainant in S.B.I., Jeevanbheemanagar, Bengaluru. It discloses that the complainant has withdrawn a sum of Rs.2,45,000/- from the said bank account through cheque on 8.8.2018. In view of above said oral and documentary evidence on record, the complainant has sufficiently proved source of funds for lending loan to the accused and his son. Even otherwise since the accused has utterly failed to prove his defence, the complaint cannot fail merely because the complainant has failed to prove his financial capacity and source of funds to lend loan amount, as held in 2019 SCC online SC 389 - (Rohitbhai J. Patel Vs The State of Gujarat and another). In the present case on hand, above said principle is applicable because the accused has utterly failed to prove his defence that Ex.P2-cheque was given in blank to the complainant for the purpose of helping to get loan. Therefore the accused cannot be acquitted only on the ground that the complainant has failed to produce documentary evidence to prove source of funds for lending entire loan of Rs.9 lakhs. Hence contention of counsel for the accused cannot be accepted and the two decisions relied upon by the counsel for the accused are not helpful to the accused.

24. The counsel for the accused argued that the complainant has not produced Promissory Note alleged to have been executed by accused and his son. The accused has further contended that the complainant has utterly failed to prove the existence of legally enforceable debt or liability. It is further argued that the complainant has not explained why interest amount is not claimed in this case. It is further argued that Ex.P1-loan agreement is doubtful document and it is clear from said document that the contents of said document are type written after obtaining signature and LTM of accused and his son. It is therefore argued that the accused is entitled for acquittal. In this regard counsel for accused has relied upon decisions in (2008) IV SCC 54, ILR 2014 KR 6572, (2006) VI SCC 39, ILR 2008 KAR 4629, 2001 CRI. L.J. 1585, LAWS (KAR) 2013 172, ILR 2008 KAR 4629, (2009) 2 SCC 513, (2010) 2 Kant L.J. 284, AIR 2008 SC 278 AND LAWS (BOM) 2013 7 295 (Crl. A. No.5717/2010).

25. However above said arguments of counsel for the accused cannot be accepted, because the accused has utterly failed to prove his defence that Ex.P2-cheque came in the custody and possession of the complainant as the same was handed over to complainant in blank to enable the complainant to help to get loan. On the other hand, the complainant has proved the execution of Ex.P1-loan agreement to the satisfaction of the court. Therefore the contentions of the accused cannot be accepted and the case of the complainant cannot be doubted. The above said decisions relied upon by the counsel for the accused are not helpful to the accused.

26. In view of my above discussion, I am of considered opinion that the accused has utterly failed to prove or probabalize his defence and thereby to rebut the statutory presumption available in favour of the complainant. It clearly appears from the evidence on record that defence of the accused is only an afterthought without any basis. Unless and until the accused rebuts the statutory presumption with convincing and cogent evidence, burden cannot be shifted on the complainant. As discussed above, the complainant has placed sufficient materials on record to establish his contention in this case. The evidence on record is sufficient to accept the case of the complainant that accused had issued cheque in question towards discharge of legally enforceable debt or liability

and the complainant has proved all the requirements of Sec.138 of N.I. Act, so as to constitute the offence against the accused. Therefore, I answer Point Nos.1 & 2 in affirmative.

27. Point No.3: As discussed in connection with Point Nos.1 & 2, the complainant has proved his case as to commission of the offence punishable U/s.138 of N.I. Act by the accused. The punishment prescribed for the said offence is imprisonment for a period which may extend to two years or with fine. Considering the facts and circumstances of this case, nature, year of the transaction, nature of the instrument involved, provisions of Sec.117 of N.I. Act, cost of litigation and the rate of interest proposed by Hon'ble Supreme Court in 2012 (1) SCC 260 (R.Vijayan Vs Baby), etc., this court is of the considered view that it is just and desirable to impose fine of Rs.5,00,000/- and out of the said amount a sum of Rs.5,000/- has to be remitted to the State and the remaining amount of Rs.4,95,000/- is to be given to the complainant as compensation as provided U/s.357(1) of Cr.PC and accordingly Point No.3 is answered in Affirmative.

28. Point No.4: For the reasons discussed in connection with Point Nos.1 to 3 this court proceed to pass the following.....

ORDER Acting under Section 255(2) of Cr.PC accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act. The accused shall pay a fine of Rs.5,00,000/- for the offence punishable U/s.138 of N.I. Act. In default of payment of fine amount, the accused shall under go simple imprisonment for a period of six months.

By exercising the power conferred U/s.357(1) of Cr.PC., out of total fine amount of Rs.5,00,000/-, a sum of Rs.4,95,000/- is ordered to be paid to the complainant as compensation and Rs.5,000/- is ordered to be remitted to the State.

The bail bond of the accused stands cancelled. The cash security deposited by the accused is ordered to be continued till expiry of the appeal period.

Supply the free copy of this judgment to the accused forth with.

(Dictated to the stenographer, transcript thereof, computerized and print out taken by him is verified, corrected and then pronounced by me in open court on this the 30th Day of January, 2020) (K. GURUPRASAD) XIV A.C.M.M., Bengaluru ANNEXURE Witnesses examined for the complainant:

CW.1 : Mr. Rakesh Babu .R

Witnesses examined for the defence:

DW.1 : Mr. Govinda Shetty H.K

Documents marked for the complainant:

Ex.P1 : Loan Agreement

Ex.P2 : Cheque



Ex.P3	:	Bank endorsement
Ex.P4	:	Legal notice
Ex.P5	:	Postal receipt
Ex.P6	:	Postal acknowledgement
Ex.P7	:	Account statement of Canara Bank
Ex.P8	:	Account statement of S.B.I
Ex.P9	:	Statement of Account

Documents marked for the defence:

Ex.D1	:	Certified copy of PCR No.51128/19
Ex.D2	:	Certified copy of Affidavit

(K. GURUPRASAD)  
XIV A.C.M.M., BENGALURU