

## **Smt. Meena Gajendra Gowda @ Meena vs Smt.Chikkamani.H on 22 May, 2020**

IN THE COURT OF THE XX ADDL.CHIEF METROPOLITAN  
MAGISTRATE AT BENGALURU CITY

Dated this the 22nd day of May 2020

PRESENT: KALPANA.M.S.,  
B.Sc., LL.M.,  
XX ADDL. C.M.M. Bengaluru.

C.C.No.920/2019

Complainant : Smt. Meena Gajendra Gowda @ Meena,  
W/o. Gajendra G.T.  
Aged about 45 years,  
Residing at No.62,  
Maranna Layout,  
Behind Panchamukhi  
Ganapathi Temple,  
Doddabidarakallu,  
Bengaluru - 560 073.

Vs.

Accused : Smt.Chikkamani.H,  
W/o Hanumantharaj,  
Aged about 40 years,  
Residing at No.25,  
Maranna Layout,  
Near Panchamukhi  
Ganapathi Temple,  
Doddabidarakallu,  
Bengaluru - 560 073.

Offence complied of : U/S. 138 of N.I. Act.,  
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C.C.920/2019

Plea of accused : Pleadged not guilty

Final Order : Accused is Convicted

Date of Order : 22.05.2020

## JUDGMENT

The complainant has filed this complaint through Special Power of Attorney holder under section 200 of code of criminal procedure read with section 138 & 142 of Negotiable Instrument Act (in short referred as "N.I. Act") against the accused alleging that, she has committed the offence.

02. The sum and substance of the complaint, is as follows;

The accused and complainant are well known to each other from past several years. During the month of the April 2018, the accused availed hand loan of Rs.10,00,000/- by way of cash from the complainant to purchase a site and also assured the complainant to return the same in the second week of November 2018 i.e., on 21.04.2018. The accused had executed an On Demand Promissory note and consideration receipt along with loan agreement it is written in Rs.100/- e- stamp paper in favour of the complainant and mentioned it to return the loan amount within second week of November 2018. After consistent demands, towards discharge of his liability , accused has issued a Cheque No.185942 dated 12.11.2018 for Rs.10,00,000/-, drawn on Karnataka Bank Ltd., HMT Layout, Nagasandra Branch, Bengaluru. Complainant presented the said cheque for encashment through her banker i.e., Karnataka Bank Ltd., HMT Layout, Nagasandra Branch, Bengaluru. The said cheque returned with an endorsement "Funds Insufficient" on 22.11.2018. Thereafter, complainant got issued legal notice on 10.12.2018 to the accused has been duly served on 11.12.2018. Accused has issued untenable reply dated 15.12.2018. It is contended that, accused intentionally not maintained sufficient amount in her bank account to honour the cheque issued in favour of the complainant towards discharge of legally enforceable debt. On these allegations, present complaint is filed.

03. On filing of complaint, this court has taken cognizance for the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, accused enlarged on bail and plea was recorded as per section 251 of Cr.P.C. Accused has stated the defence that, she has taken an amount of Rs.1 Lakh from the complainant and issued cheque for security, even after repayment of the said loan amount, complainant has not returned the cheque.

04. Learned Counsel for complainant prays to treat sworn statement as examination-in-chief and to consider the documents marked as Ex.P.1 to 9. In spite of sufficient opportunity accused neither cross examined PW.1 nor adduced defence evidence. After taking bail, accused continuously remained absent and not present before the court for recording of statement under section 313 of code of criminal procedure. As the Negotiable Instrument Act is special statute and in the light of the decision reported in, AIR 2014 SC 2528; Indian bank Association and others V/s Union of India and another, the recording of the statement of accused is not compulsory. In the said decision, Hon'ble Supreme Court issued directions to follow the guidelines stated in the judgment. As per the said guidelines; after appearance of accused, she has to enter his plea of defence. After recording plea, case shall be fixed for defence evidence, unless an application is made by the accused under section 145(2) for recalling complainant for cross examination. This observation clearly goes to show

that, recording of statement under section 313 of Cr.P.C. in a case filed under Negotiable Instrument Act, is not compulsory. Hence, statement under section 313 of code of criminal procedure is dispensed with.

o5. Heard the Learned Counsel for complainant. No arguments addressed on behalf of accused.

o6. The points that arise for my consideration are as follows;

#### POINTS

1. Whether the complainant proves that, accused issued a Cheque No.185942 dated 12.11.2018 for Rs.10,00,000/- towards discharge of her liability, which was returned unpaid on presentation and also not complied the notice issued by the complainant and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

o7. Now my answer to the above points is as follows;

1. Point No.1: In the affirmative

2. Point No.2: As per final order for the following;

#### REASONS

o8. POINT No.1: Complainant has filed this complaint alleging that, accused has intentionally not maintained sufficient amount in their bank account to honour the cheques issued by them. Before proceeding further, let us 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 is the cheque dated 12.11.2018, Ex.P.2 is the bank endorsement dated 22.11.2018, Ex.P.3 is the legal notice dated 10.12.2018, which was duly served on accused on 11.12.2018, Ex.P.4 is the postal receipt, Ex.P.5 is the complaint before postal authority, Ex.P.6 is the tracking report, Ex.P.7 is the reply notice, Ex.P.8 is the On Demand Promissory note, Ex.P.8(a) &

(b) are the signatures of the accused, Ex.P.9 loan agreement, and Ex.P.9(a) is the signature of accused. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act is complied with and this complaint is filed within time. It is worth to note that, accused has not disputed the signatures present on the cheques. Thus, statutory presumption enshrined under section 118 read with section 139 of N.I. Act would operate.

o9. The oral evidence of complainant is supported by the documentary evidence. There is no ambiguity in the oral and documentary evidence brought on record. Complainant produced supportive documents i.e., Ex.P.8 - On Demand Promissory note and Ex.P.9- loan agreement fortify the claim. The bank endorsements bearing shara "Funds Insufficient"

attracts section 138 of the N.I. Act. All the requirements of section 138 of N.I. Act are complied with.

10. The next point for consideration is, whether presumption could be drawn in favour of complainant. Section 139 of the Act provides that unless contrary is proved, it shall be presumed that the holder of a cheque received the same for discharge of any debt or other liability. The word "shall" indicate that, it is mandatory of the part of the court to draw the presumption in favour of holder of the cheque in due course, unless rebutted. At the cost of repetition, it is worth to note that, accused has not taken any steps to rebut the said presumption. Though, accused has stated before the court while recording substance of accusation that, she has taken loan amount of Rs.1,00,000/- from the complainant and repaid it and the security cheque was misused by the complainant, but no iota of evidence is placed to show the previous transaction of Rs.1,00,000/- and issuance of present cheque as security. As such, this statement unsupported with cogent evidence is not acceptable.

11. That apart, section 118 of the N.I. Act lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume that the instrument was endorsed for consideration. So also, in the absence of contrary evidence on behalf of the accused, the presumption under section 118 of the N.I. Act goes in favour of the complainant. Therefore, this court can conveniently opine that, complainant proved his case through cogent, convincing and acceptable oral and documentary evidence brought on record.

12. Under the facts and circumstances of this case, it is profitable to refer the decisions of the Hon'ble Supreme Court of India reported in, AIR 2018 SUPREME COURT 3601, in a case of, T.P.Murugan (Dead) Thr.Lrs. V. Bojan, wherein it is held that;

"Negotiable Instruments Act (26 of 1881), Ss.118,138,139- Dishonour of cheque- Presumption as to enforceable debt- cheques allegedly issued by accused towards repayment of debt- Defence of accused that 10 cheques issued towards repayment of loan back in 1995- Behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural- Accused admitting his signature on cheques and pronote, presumption under S.139 would operate against him- Complainant proving existence of legally enforceable debt and issuance of cheques towards discharge of such debt- Conviction, proper".

13. In another decision reported in, AIR 2018 Supreme Court 3604, in a case of Krishna Rao Vs. Shankargouda, wherein it is held that;

"Negotiable Instruments Act (26 of 1881), Ss.138, 139-Dishonour of cheque-

Presumption as to - Accused issuing cheque of Rs. 2 lacs towards repayment of loan to complainant - Said cheque dishonored on account of insufficiency funds- Complainant proving issuance of cheque having signatures of accused- Accused failing to rebut presumption raised against him and no evidence led by him in his support - Acquittal of accused by High Court in revisional jurisdiction on ground of doubt in mind of court with regard to existence of loan, improper- Accused, liable to

be convicted".

The ratio laid down in the cited decisions is aptly applicable to the case on hand.

14. That apart, as far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of the larger bench of the Hon'ble Apex Court is held in a case of Rangappa Vs. Mohan reported in AIR 2010 SC 1898 that, "In the light of these extracts, we are in agreement with the respondent-

claimant that the presumption mandated by section 139 of the Act does indeed include the existence of the legally enforceable debt or liability".

In view of the law laid by three judges bench of Hon'ble Apex Court, the presumption enshrined under section 139 of the N.I. Act is extendable to the existence of legally enforceable debt.

15. From the discussion made supra, this court is of the firm opinion that, the complainant clearly proved his case both by oral and documentary evidence. Complainant fulfilled all the ingredients of section 138 of N.I. Act. Once the said provision is complied, then the presumption under section 139 of Negotiable Instrument Act supports him. It is rebuttable presumption, but the accused failed to rebut the same. Hence, this court has no hesitation to hold that, complainant has proved that accused has issued the present cheque towards discharge of legally enforceable debt/liability. The complainant has also proved that the accused has intentionally not maintained sufficient amount in his account to honor the disputed cheque. Accordingly, this point No.1 under consideration is answered in the affirmative.

16. 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 It is worth to note that, the offence is of the nature of civil wrong. Hence, it is proper to award sentence of fine, instead of awarding sentence of imprisonment. 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. Considering all these aspects, this court proceed to pass the following;

ORDER Acting under section 255 (2) of Criminal Procedure Code, accused is hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act and sentenced to pay fine of Rs.11,70,000/- (Eleven Lakhs Seventy Thousand Rupees only). In default thereof accused shall (Eight) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.11,60,000/- (Eleven Lakhs Sixty Thousand Rupees only), there from shall be paid to the complainant as a compensation, remaining fine amount of Rs.10,000/- ( Ten Thousand Rupees only) is defrayed to the state for the expenses incurred in the prosecution.

The bail bond and surety bond of the accused stand cancelled after expiry of six months.

Office to supply the copy of this Judgment to the accused immediately on free of cost.

{Dictated to the stenographer directly on computer, corrected and then signed by me and then pronounced in the open court on this 22nd day of May 2020}.

(KALPANA M.S.), XX ACMM, Bengaluru.

ANNEXURE List of witnesses examined on behalf of Complainant:

P.W.1	Smt.Meena Gajendra Gowda @ Meena
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List of documents produced on behalf of complainant:

Ex.P.1	Cheque
Ex.P.1(a)	Signature of accused
Ex.P. 2	Bank endorsement
Ex.P.3	Copy of the legal notice
Ex.P. 4	Postal receipt
Ex.P. 5	Complaint before postal authority
Ex.P. 6	Postal tracking report
Ex.P. 7	Reply notice
Ex.P.8	On Demand Promissory note
Ex.P.8 (a) & (b)	Signature of accused
Ex.P.9	Loan agreement
Ex.P.9(a)	Signature of accused

List of witnesses examined on behalf of accused:

-Nil-

List of documents produced on behalf of accused:

-Nil-

XX A.C.M.M., Bengaluru.