

Mrs.Khanum Taj Habib vs Mr.Mahesh Putturaya on 2 November, 2019

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

-: PRESENT :-

PADMA PRASAD, BA (Law), LLB.
XXXIII ADDL. CHIEF METROPOLITAN MAGISTRATE,
BENGALURU.

DATED THIS THE 2ND DAY OF OCTOBER, 2019.
C.C.No.50183/2016

COMPLAINANT : MRS.KHANUM TAJ HABIB
Wife of Mr.Mirza Habib Aga,
aged about 70 years,
residing at No.1, Arablines, 'B'
Street,
Richmond Town,
BENGALURU - 560 025,
.Vs.

ACCUSED : MR.MAHESH PUTTURAYA
son of late K.Rajagopal Rao
aged about 32 years
residing at No.54, 'Daya Sadan'
1st 'A' Main, 1st Block
RMV 2nd Stage
Dollars Colony
BENGALURU - 560 094
Also at:
Sri Durga Kattikala
Arala Village
Bantwala Taluk
Dakshina Kannada - 574 211

JUDGMENT

The complainant filed this complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The complaint case in nutshell is that the accused representing to be in the business of dealing shares and other allied products invited the complainant to invest money with the accused ensuring the good returns on the investment. The complainant also claims that the accused told her that she was at liberty to seek the refund of investment made by her. Accordingly, the complainant claims that she has paid Rs.3,00,000/- in cash on 03.11.2012. The complainant also claims that there was a memorandum of understanding between the complainant and the accused dtd:03.11.2012. The complainant further claimed that the accused had agreed to share the profit at a minimum return of 36% p.a. The complainant claims that the accused has paid the amount in the said agreed rate to the complainant till February 2015 and thereafter not paid any amount. When the complainant asked

the accused for the refund of entire amount as per the terms of memorandum of understanding the accused has issued the cheque bearing No.103702 dtd:21.03.2015 drawn on ICICI Bank for Rs.3,13,500/-. When the complainant presented the said cheque for encashment that has been returned without encashment with bank memo dtd:17.06.2015 stating "Funds Insufficient". Thereafter the complainant caused a legal notice to the accused on 02.07.2015 calling upon the accused to pay the cheque amount. The said notice has been served on to the accused on 08.07.2015. The accused instead of complying with the notice has given untenable reply dtd:23.07.2015. Hence, filed the complaint.

3. After filing the complaint, sworn statement of the complainant has been recorded and on perusing the materials on record i.e., cheque, bank endorsement, legal notice and documents for having been caused the notice to the accused, the court has been taken the cognizance of offence and issued summons to the accused.

4. In response to the summons, the accused appeared through his counsel and he was on court bail. Plea has been recorded; accused pleaded not guilty and claimed to be tried.

5. To prove the case, the complainant got examined himself as P.W.1 and got marked documents at Ex.P.1 to P.10.

6. On closure of complainant side evidence, the accused statement has been recorded under Sec.313(1)(b) of Cr.P.C., by placing the incriminating evidence appeared against the accused that are denied by the accused.

7. The accused examined himself as D.W.1 in support of his defense and also got marked documents at Ex.D.1. The case made out by the accused is that he came to know the complainant through his cousin Raghavendra R Putturaya in the year 2013 and whatever the transaction claimed by the complainant in the complaint is taken care by the said Raghavendra Putturaya. The accused claimed that he has paid Rs.10,00,000/- to the complainant through said Raghavendra Putturaya out of the amount claimed in the complaint. The accused claimed that there was a memorandum of understanding that has been signed by Raghavendra Putturaya as a witness. The accused further claimed that he was in good terms with said Raghavendra Putturaya in the year 2013. The accused also claims that due to the Government policies in the year 2014 and 2015 he has incurred loss in the share marked business and he has informed the said fact to the Raghavendra Putturaya and requested time for making the payment and communicate the said fact to the complainant. The accused further claimed that at that time said Raghavendra Putturaya cleverly obtained the signed blank cheques from the accused claiming that the said cheques are required in order to bypass the threat of the complainant. The accused also claims that the daughter of the complainant namely Tahire Mirza also filed a cheque bounce case against the accused in C.C.No.50128/2016. The accused claimed that he has not received any money in cash from the complainant. The accused further claimed that Raghavendra Putturaya has received the money and said Raghavendra Putturaya colluding with the complainant filed this false complaint. Accordingly prayed for dismissal of complaint.

8. On the basis of above, the point for consideration is that;

"Whether the complainant has proved that the accused has committed the offence punishable under Sec.138 of Negotiable Instruments Act?"

9. Heard the arguments and perused the materials on record. On that basis my finding on the above point is in the "Affirmative" for the following;

REASONS

10. The complaint case in nutshell is that the accused representing to be in the business of dealing shares and other allied products invited the complainant to invest money with the accused ensuring the good returns on the investment. The complainant also claims that the accused told her that she was at liberty to seek the refund of investment made by her. Accordingly, the complainant claims that she has paid Rs.3,00,000/- in cash on 03.11.2012. The complainant also claims that there was a memorandum of understanding between the complainant and the accused dtd:03.11.2012. The complainant further claimed that the accused had agreed to share the profit at a minimum return of 36% p.a. The complainant claims that the accused has paid the amount in the said agreed rate to the complainant till February 2015 and thereafter not paid any amount. When the complainant asked the accused for the refund of entire amount as per the terms of memorandum of understanding the accused has issued the cheque bearing No.103702 dtd:21.03.2015 drawn on ICICI Bank for Rs.3,13,500/-. When the complainant presented the said cheque for encashment that has been returned without encashment with bank memo dtd:17.06.2015 stating "Funds Insufficient". Thereafter the complainant caused a legal notice to the accused on 02.07.2015 calling upon the accused to pay the cheque amount. The said notice has been served on to the accused on 08.07.2015. The accused instead of complying with the notice has given untenable reply dtd:23.07.2015. Hence, filed the complaint.

11. The accused examined himself as D.W.1 in support of his defense and also got marked documents at Ex.D.1. The case made out by the accused is that he came to know the complainant through his cousin Raghavendra R Putturaya in the year 2013 and whatever the transaction claimed by the complainant in the complaint is taken care by the said Raghavendra Putturaya. The accused claimed that he has paid Rs.10,00,000/- to the complainant through said Raghavendra Putturaya out of the amount claimed in the complaint. The accused claimed that there was a memorandum of understanding that has been signed by Raghavendra Putturaya as a witness. The accused further claimed that he was in good terms with said Raghavendra Putturaya in the year 2013. The accused also claims that due to the Government policies in the year 2014 and 2015 he has incurred loss in the share marked business and he has informed the said fact to the Raghavendra Putturaya and requested time for making the payment and communicate the said fact to the complainant. The accused further claimed that at that time said Raghavendra Putturaya cleverly obtained the signed blank cheques from the accused claiming that the said cheques are required in order to bypass the threat of the complainant. The accused also claims that the daughter of the complainant namely Tahire Mirza also filed a cheque bounce case against the accused in C.C.No.50128/2016. The accused claimed that he has not received any money in cash from the complainant. The accused

further claimed that Raghavendra Putturaya has received the money and said Raghavendra Putturaya colluding with the complainant filed this false complaint. Accordingly prayed for dismissal of complaint.

12. The complainant in support of her case examined herself as P.W.1 and got marked the documents at Ex.P.1 to

10. Ex.P.1 is the memorandum of understanding, Ex.P.2 is the cheque, Ex.P.3 is the bank challen, Ex.P.4 is the Bank Return Memo, Ex.P.5 is the O/c of the legal notice, Ex.P.6 & 7 are the postal receipts, Ex.P.8 is the postal acknowledgment, Ex.P.9 is the returned postal cover, Ex.P.10 is the reply notice. The complainant presented the said cheque for encashment in time, the cheque has been dishonoured for want of funds in the bank account of the accused, legal notice issued in time and the complaint is also filed in time. The accused during the course of trial admitted the transaction claimed in the complaint. The defense of the accused is that there was a loss in his share business. Hence, he requested Raghavendra Putturaya some time for repayment of money and communicate the same to the complainant and at that time on the say of said Raghavendra Putturaya he has issued the signed blank cheque. Therefore, the said claim itself shows that through Raghavendra Putturaya this accused requested the complainant some time for repayment of money to the complainant and issuance of the cheque and signature in the cheque is admitted by the accused. Hence, certainly the initial presumption under Sec.139 of N.I.Act can be drawn in favour of the complainant.

13. When the complainant made out a prima-facie case to draw the initial presumption under Sec.139 of N.I.Act in favour of the complainant, the burden shifts on the accused to prove the contrary to the complaint case and also to give rebuttal evidence to the complaint case so that the court can disbelieve the complaint case. The accused taken a defense that he came to know the complainant through one Raghavendra Putturaya and whatever the transaction claimed by the complainant in the complaint is taken care by the said Raghavendra Putturaya. The accused claimed that there was a loss in the business in the year 2014-15 and at that time he has requested the Raghavendra Putturaya for some time for repayment of money to the complainant and also communicated the said fact to the complainant. The accused made out a case that Raghavendra Putturaya cleverly obtained the cheque and colluding with the complainant got filed this case.

14. Apart from aforesaid defense, the accused during the course of argument claimed that the claim of the complainant is an illegal claim and the debt is not an enforceable debt. The accused also claimed that the interest claimed by the accused is exorbitant which is against the RBI guidelines and apart from that the accused also claimed that he has paid entire amount due to the complainant. The accused also disputed the borrowing of Rs.4,00,000/- in cash from the accused etc. Therefore, the burden of proving all these facts is on the accused.

15. The complainant in the case on hand relied much on the documentary evidence in support of her case rather than the oral evidence. The specific case of the complainant is that she has invested the money with the accused and the accused agreed to share 36% of the profit to the complainant and it is also the case of the complainant that the accused agreed to return her investment. The

complainant in support of her claim much relied on documents at Ex.P.1 memorandum of understanding dtd:03.11.2012 that discloses the payment of Rs.3,00,000/- in cash. Therefore, the complainant claims that after the payment of Rs.3,00,000/-, this accused and complainant entered into a memorandum of understanding at Ex.P.1. The execution of memorandum of understanding at Ex.P.1 is not in dispute. The signature of the accused in Ex.P.1 on all the pages have been got marked on confrontation with the accused. Therefore, the accused admitted his signatures at Ex.P.1. There was also the signature of the accused wherein the amount has been written in pen at Ex.P.1. The said signature also probablise the case of the complainant that the accused has received Rs.3,00,000/- in cash as per Ex.P.1. If at all the accused has not received any money as per Ex.P.1, certainly there is no necessity whatsoever to enter into a memorandum of understanding at Ex.P.1. When the accused admitted his signatures at Ex.P.1, certainly he cannot be permitted to deny the said document and it has to be inferred that the said document has been properly executed and the complainant cannot insisted to prove the execution of said document at Ex.P.1 in view of the principle laid down in; ILR 2004 Kar 183 in a case of Narbada Bai .Vs. Birendrakumar Jaiswal and another wherein Apex Court held that;

"Evidence Act Sec.17, 61 and 62. Proof of contents of document - mere production and marking of document as exhibit not enough - execution has to be proved by admissible evidence. But where document produced are admitted by the signatories there to and then marked as exhibits - held ☐no further burden to lead additional evidence to prove writing and its execution survives".

16. Therefore, it is clear that the complainant has sufficiently proved the payment of Rs.3,00,000/- to the accused.

17. The accused has taken contradictory defenses in the case. During the course of argument, the accused claimed that he has paid entire amount due to the complainant. Per- contra, this accused during his evidence in chief claimed that he has repaid Rs.10,00,000/-. What is the actual amount repaid by the accused is without any explanation. In the case on hand, the complainant claimed that she has paid only Rs.3,00,000/- and it is also not the case of the accused that he has received more money than Rs.3,00,000/- from the complainant so that he can pay nearly Rs.10,00,000/- cannot be accepted. If the Ex.P.1 is accepted, this accused is liable to share the 36% in the profit. Hence, whatever the amount has been paid by him in the Ex.D.1(a) to (r) may be towards the profit share. It is relevant to note that it is not the case of the accused that he has borrowed any amount from the complainant and that has been repaid by him. The contents of Ex.P.1 clearly discloses that this complainant has invested the money with the accused. Therefore, the transaction between the complainant and the accused is not a loan transaction but it is an investment. It is also relevant to note that memorandum of understanding discloses that the terms and conditions are imposed by the accused. The Ex.P.1 discloses that this accused is an investor and the complainant is a client. The Ex.P.1 in page No.2, 3 rd paragraph reads as;

"AND Whereas, the INVESTOR has agreed to invest the amount of CLIENT in case the CLIENT agrees to abide by terms and conditions put forward by the INVESTOR."

4TH Paragraph reads as;

"AND Whereas the CLIENT has agreed to abide by terms and conditions imposed by the INVESTOR."

18. The aforesaid 2 recitals in the memorandum of understanding discloses that the entire memorandum of understanding has been entered between the parties as per the terms imposed by the accused / investor and the complainant / client agreed for that. Therefore, whatever the terms and conditions are there in the memorandum of understanding at Ex.P.1 are the conditions of the accused for which the complainant has accepted. Therefore, the terms and conditions found in Ex.P.1 are binding on the accused. Hence, it is for the accused to show that he has repaid the amount to the complainant or he need not pay any amount to the complainant.

19. The accused during the trial tried to make out a case that the cheque involved in this case has been obtained by Raghavendra Putturaya and the said Raghavendra Putturaya has handed over the Ex.P.2 cheque to the complainant and the said Raghavendra Putturaya colluding with the complainant got filed this complaint. The said fact has to be proved by the accused. Admittedly, Raghavendra Putturaya is the relative of this accused. There is no material whatsoever on record to show that said Raghavendra Putturaya colluded with the complainant or there is subsequent enmity between the accused and said Raghavendra Putturaya. Of course it is admitted by the complainant that Raghavendra Putturaya has introduced the accused to complainant. Merely on that basis it cannot be accepted that the cheque has been issued to Raghavendra Putturaya and he colluding with the complainant filed this complaint. The claim of the accused that Raghavendra Putturaya cleverly obtained the cheque from the accused cannot be accepted in view of the contention taken by the accused in the reply notice at Ex.P.11. In the Ex.P.10 reply notice at page No.3, 7th line onwards it has been claimed by the accused that reads as;

"Because, recently at the time of taking the above said cheque by your client, your client made undue pressure upon him. But, your client had assured my client that he will not present the above said cheques without my client's consent and knowledge and your client had taken the above said cheques by assuring him that he will keep the above said cheques as a security for his money in his custody, during lock-in period of the MOU mutually entered into between my client and your client."

20. If this contention is accepted, the cheque has not been issued to Raghavendra Putturaya but that has been directly issued to complainant by the accused. Therefore, the defense of the accused during the trial is that the cheque has been issued to Raghavendra Putturaya cannot be accepted and also the claim of the accused that Raghavendra Putturaya got filed this complaint through the complainant also cannot be accepted.

21. The accused also claimed that the amount claimed by the accused is an illegal claim and the rate of interest claimed by the complainant is also against the RBI Guidelines. The said contention would have been accepted by the court if the transaction is a loan transaction or the complainant was money lender and she has advanced the money to others on interest but in the case on hand, the

transaction is not a loan transaction but it is the investment by the complainant with the accused. The Ex.P.10 reply notice also discloses that the accused admitted the execution of memorandum of understanding at Ex.P.1. The complainant has sufficiently proved the execution of Ex.P.1 as discussed above. In this context it is useful to refer the 2 paragraphs found in page No.2 of the memorandum of understanding at Ex.P.1 that reads as;

"Whereas the INVESTOR of the part one is carrying out dealings in shares and others allied products including commodities."

"AND Whereas, the CLIENT who has the capital with him has decided to invest his amount in the market with the INVESTOR."

22. As per the recital of Ex.P.1 memorandum of understanding, investor is the accused, client is the complainant. Therefore, it is clear that this complainant is investing her money with the accused. In view of the investment of complainant, the accused being a investor assured the profit of minimum 36% and also agreed to repay the amount whatever the complainant demanded after the lock-in period. It is relevant to note that whatever the profit on the investment, the complainant is only entitled for 36% out of share and the accused is entitled for the remaining share in the profit. Apart from that when the parties mutually agreed the terms of contract, certainly it cannot be claimed that the transaction is an illegal transaction and the complainant is not entitled for repayment of money with interest. Apart from that there is no necessity to enter into any contract in the nature of memorandum of understandings at Ex.P.1 if the transaction is only the loan transaction but as rightly claimed by the complainant it is an investment as per the terms and conditions imposed by the accused and the accused agreed for the terms of said memorandum of understanding. As such the terms and conditions of the said memorandum of understanding is binding on the parties and there is no law bars the parties to enter into such agreement as per Ex.P.1. When such is the case certainly it cannot be said that the claim of the complainant is bad under law or it is against the law. Apart from that as the complainant specifically proved that she has invested the money as per the terms and conditions set out in memorandum of understanding, the provisions of Karnataka Money Lenders Act is not applicable to the facts of this case as it is not a financial transaction between the complainant and the accused.

23. The accused also claimed that the rate of interest claimed by the complainant is exorbitant. Even this contention cannot be accepted in view of the condition No.6 of the memorandum of understanding at Ex.P.1 that reads as;

"That the INVESTOR has agreed to share the profit in the business which is limited and fixed to 36% P.A. or 3% per month, on the sum of money invested by the CLIENT".

24. The said contention clearly discloses that it is the accused agreed to share the profit in the business is limited and fixed to 36%. It is relevant to note that the accused is not at all agreed to share 50% in the profit but it is restricted to 36%. Admittedly, the money has been invested by the complainant and out of that money the accused is getting the profit by investing the money of the

complainant. Under such circumstances, it cannot be said that the claim of the interest in the agreement is exorbitant or against the RBI Guidelines, RBI guidelines are only regarding the advance of the loan but not on the investment. The facts and materials on record in this case discloses that the amount claimed by the complainant is not a loan but that is an investment.

25. In view of the aforesaid facts it is clear that the accused collected the money from the complainant and he is liable to repay the same. The accused admitted the issuance of the cheque. Even according to the admitted facts the accused himself issued the cheque in favour of the complainant for repayment of money. In view of the aforesaid discussed facts it is clear that the accused has failed to make out a probable defense. When the accused failed to make out a probable defense, the case of the complainant to be accepted. In view of these facts the principle laid down in the case reported in; 2016(1) AKR 211, AIR 2006 SC 3366, Crl.Appl.No.1575/08, Crl.Appl.No.467/2009 are not applicable to the facts of this case. Therefore, for the aforesaid reasons this court is of the humble opinion that the complainant proved his case beyond reasonable doubt.

26. In this case, the complainant has claimed compensation. As per Section 357 of Criminal Procedure Code and as per the ruling reported in; 2001 Cri.L.J. 950 (SC), (Pankajbai Nagibai Patel V/s State of Gujarath), the court can award compensation and there were no limits for the same. As such, the court has to consider how much compensation could be awarded in this case. As per Section 80 of Negotiable Instruments Act, the interest at 18% P.A. can be granted when there is no agreed rate of interest. As per the proved facts of the case, the accused has issued cheque towards the legally enforceable debt, the accused has issued a cheque dated 21.03.2015 as per Ex.P.2 and thus, the accused has to pay interest on the cheque amount from the date of cheque and so, the accused has to pay interest for about 4 years 7 months till this date. If the interest is calculated at 18% P.A. to the cheque amount for the above period, certainly, the complainant is entitled for the suitable compensation to the cheque amount as per Section 80 of Negotiable Instruments Act. The cheque amount in this case is Rs.3,13,500/- and if the interest is calculated for 55 months, the accused shall pay the interest to the complainant at 18% P.A. that amounts to Rs.2,58,638/-. The case is pending nearly about 4 years 7 months as such if the cost of Rs.1,000/- is added to the compensation, it will comes to Rs.5,73,138/- (Cheque amount is Rs.3,13,500/-, interest is Rs.2,58,638/- and cost Rs.1,000/-). Hence, this court is of the humble opinion that in all the complainant is entitled for compensation amount of Rs.5,73,138/-. Further as per the ruling reported in 2000 Cri.L.J 1793(b) SC - (State of Karnataka V/s Krishnappa) wherein it is held that while imposing sentence, the courts are expected to properly operate sentence system, it should be impose such sentence for code offence which serve as detention of commission of like offences by others - Socio economic status, prestige, race, caste or creed of accused or victim are irrelevant considerations in sentencing policy. Hence, in this case also, if the accused is punished with simple imprisonment for one year and pay compensation to the complainant. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing

the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Hence, in this case after awarding the compensation certainly imposing of fine to the accused is sufficient sentence.

27. As per the ruling reported in 2002 Cri.L.L. 1003, SC (Suginthi Suresh Kumar V/s Jagadishan). Where in it is held at page no.1005, at para 5 that:

"In the said decision this court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decisions of this Court in 1988 (4) SCC 551 Hari Singh v. Sukhbir Singh. In the said decision this court held as follows:

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also very depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default."

28. In view of the aforesaid precedent of Hon'ble Apex Court, if the accused is ordered to further imprisonment of a year in default to pay the compensation will make the ends of justice. Accordingly I answer the above point in "Affirmative". In the result, following;

ORDER Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Sec.138 of N.I.Act and sentenced the accused to pay a fine of Rs.5,000/-. In default to pay the fine amount the accused shall undergo simple imprisonment for 3 months.

Acting under Section 357 of Cr.P.C., the compensation is awarded and the accused shall pay compensation of Rs.5,73,138/- to the complainant. In default to pay compensation, the accused shall undergo simple imprisonment of a period of 1 year.

Office to furnish free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the 2nd day of November, 2019) (PADMA PRASAD), XXXIII ACMM, BENGALURU.

ANNEXURE

1. Witnesses examined on behalf of Complainant:

P.W.1 : Mrs.Khanum Taj Habib

1. Documents marked on behalf of complainant:

Ex.P.1	:	Memorandum of understanding
Ex.P.2	:	Original cheque
Ex.P.2(a)	:	Signature of the accused
Ex.P.3	:	Account Pay in slip
Ex.P.4	:	Bank Return Memo
Ex.P.5	:	O/c of the legal notice
Ex.P.6 &	:	Postal receipts
Ex.P.7		
Ex.P.8	:	Postal Acknowledgment
Ex.P.9	:	Returned postal cover
Ex.P.9(a)	:	Returned postal notice
Ex.P.10	:	Reply notice

2. Witnesses examined on behalf of Accused:

D.W.1 : Mr.Mahesh R Putturaya

3. Documents marked on behalf of Accused:

Ex.D.1	:	Certificate by way of affidavit
Ex.D.1(a)	:	E-mails
to		
Ex.D.1(r)		
Ex.D1(s)	:	Compact Disc
Ex.D.1(t)	:	Receipt

(PADMA PRASAD)
XXXIII ACMM, BENGALURU.