

## **Sri. Ranganath. G vs Smt. Radha.S on 18 January, 2016**

IN THE COURT OF THE XVIII ADDL. CHIEF METROPOLITAN  
MAGISTRATE, BANGALORE

DATED : THIS THE 18TH DAY OF JANUARY 2016

PRESENT: LAKSHMINARAYANA BHAT.K., B.A., LL.B.  
XVIII ADDL.C.M.M., BANGALORE  
C.C.NO: 15252/2013

Complainant: Sri. Ranganath. G.,  
S/o. Ganganarasaiah.,  
Aged about 53 years,  
Residing at No: 2,  
15th Cross,  
1st Main Road,  
Muneshwara Block,  
Mahalakshmipura,  
Bangalore-560 0586.  
  
(Represented by Shri.S.Krishna  
Murthy., Advocate)

V/s.

Accused : Smt. Radha.S.,  
W/o. Nagaraju.N.,  
Residing at No: 29/13,  
2nd Flor,  
Near Maruthi Traders,  
2nd Main, II Cross,  
Goraguntepalya,  
Bangalore-560 022.  
  
(Represented by Sri.Jaya Prakash.S.R.,  
Advocate)

Offence complained of: U/s.138 of N.I.Act

Plea of accused: Pleded not guilty

Final order Accused is found guilty

Date of order: 18/1/2016

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CC.No:15252/2013

JUDGMENT

The complaint was filed against the accused for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter in short referred as N.I. Act.).

2. After filing of the complaint, cognizance of the offence was taken. After recording sworn statement in pursuance of summons, presence of the accused was secured and she was enlarged on bail. The substance of accusation was recorded and the accused pleaded not guilty.

3. To prove the complaint averments, the complainant was examined as P.W.1 and has produced documents marked as per Ex.P.1 to Ex.P.8. The statement of the accused under Section 313 of Cr.P.C was recorded. The accused entered her defence and was examined as D.W.1. She has not produced any documentary evidence.

4. Heard the arguments. The learned advocate appearing for the accused has filed memorandum of written arguments.

5. After analyzing the averments made in the complaint, oral and documentary evidence placed on record and after hearing the arguments, at this stage the points that arise for my determination are:-

1) Whether the complainant has proved on 2/12/2008 he had advanced hand loan of Rs.7 lakhs to the accused and Ex.P.1 cheque issued in discharge of the said debt was dishonoured and even after service of notice, the accused had failed to pay the amount and thereby she is guilty of the offence punishable under Section 138 of N.I.Act?

2) What order?

6. My findings on the aforesaid points are as under:-

POINT NO.1 : Partly in the Affirmative, POINT NO.2 : As per final order, for the following:-

#### REASONS

7. POINT NO.1:- It is submitted the complainant and the husband of the accused are friends. The accused intended to purchase a site bearing No:657, Bagalakunte Village, Yeshvanthapura Hobli, Bangalore North Taluk. That on 2/12/2008 she had approached the complainant and requested to advance Rs.7 lakhs hand loan to purchase the aforesaid property. The complainant on considering the request of the accused, on 2/12/2008 advanced Rs.7 lakhs hand loan to the accused by cash. The accused had agreed to make payment of the aforesaid amount within two years and she had executed a document dated 2/12/2008 in writing. For the discharge of the aforesaid debt, the accused alleged to have issued a cheque in favour of the complainant dated 2/6/2011 for Rs.7 lakhs drawn on Vijaya Bank, Yeshwanthapura Branch, Bengaluru. That on 1/6/2011 the accused approached the complainant and requested for further two months time for making payment, for which the complainant agreed. As per the request of the accused, that on 21/11/2011 the complainant appears to have presented the said cheque, but as per memo dated 22/11/2011 it was

dishonoured with an endorsement "Funds Insufficient". The complainant had sent statutory demand notice dated 25/11/2011 and informed the accused regarding dishonour of the cheque and called upon him to make payment covered under the said cheque. The notice returned to the complainant with an endorsement "not claimed". The complainant in his affidavit filed in lieu of examination-in-chief deposed as per the averments made in the complaint.

8. The accused in her defence evidence has alleged the complainant is a total stranger. As per her evidence, she has seen the complainant before the Court for the first time after appearing in this proceeding. She has specifically denied borrowed Rs.7 lakhs hand loan from the complainant in the month of December 2008 or in discharge of the said debt issued cheque in his favour. It is admitted Ex.P.1 cheque relates the Bank account of the accused and also the signature of the accused appearing in the said cheque. But she has submitted the contents of the cheque are not filled in her hand writing. The other contention of the accused is that Ex.P.3 notice sent on behalf of the complainant was not served to her. The accused has admitted her husband is acquainted with the complainant and he was doing financial transaction with the complainant to an extent of Rs.2,000/- to Rs.3,000/-. She further admitted in 2009 her husband had borrowed a sum of Rs.5 lakhs from the complainant and the said loan was advanced without charging any interest. The accused claimed out of the aforesaid loan amount they have repaid a sum of Rs.3,85,000/- to the complainant. The accused further admitted her husband is still in due for making payment of Rs.1,15,000/- to the complainant. It is further admitted at the time of borrowing, the husband of the accused had deposited four blank signed cheques pertaining to her Bank account drawn on Vijaya Bank. The accused further admitted her signature appearing in Ex.P.6 agreement. It is submitted at the time she had affixed the signature to the document, the contents were not written and it was a blank stamp paper. The accused further deposed the complainant is in possession of two blank signed cheques of her husband. For the aforesaid reasons the accused has disputed the loan transaction to make payment of Ex.P.1 cheque amount. Accordingly, she has prayed for dismissal of the complaint.

9. Before going into the merits of the case, it is appropriate to mention the undisputed facts of the case that the accused has admitted Ex.P.1 cheque relates to her Bank account and also her signature appearing in the said cheque. She has further admitted her signature appearing in Ex.P.6 loan agreement, but denied execution of the document in favour of the complainant. As per her specific contention, she had handed over a blank signed cheque and stamp paper to her husband when he had borrowed Rs.5 lakhs hand loan from the complainant. As per the complaint averments, Ex.P.3 notice and affidavit evidence of P.W.1, on 2/12/2008 the complainant claimed to have advanced Rs.7 lakhs hand loan to the accused by cash. As on the date of borrowing loan, the accused had executed Ex.P.6 loan agreement. It is stated as on the date of transaction, the accused had issued Ex.P.1 post dated cheque for Rs.7 lakhs in favour of the complainant. Ex.P.6 document is dated 2/12/2008 and two stamp papers worth Rs.50/- each was purchased on 2/12/2008 in the name of the accused Radha.S. In Ex.P.6, there is a specific recitals the accused is liable to make payment of interest of Rs.10,500/- per month on Rs.7 lakhs at the rate of 18% per annum (1.5% per month). Ex.P.1 cheque is dated 2/6/2011 and it was issued as on the date of transaction 2/12/2008, 30 months prior to the date of alleged transaction.

10. The accused during cross-examination of the complainant and in her defence evidence specifically admitted her husband had borrowed a sum of Rs.5 lakhs from the complainant and the said transaction does not carry any interest and this portion of the evidence of the accused is unbelievable. Contrary to the defence of the accused, in Ex.P.7 petition dated 13/6/2015 submitted to Sub Inspector of Police, RMC Yard, Bangalore, the accused has claimed, the complainant has charged interest on the aforesaid amount of Rs.5 lakhs at the rate of 10% per month. The complainant in Ex.P.3 statutory demand notice, complaint allegations and affidavit evidence has not disclosed he had received interest from the accused to an extent of Rs.3,50,000/-. This admission was elicited during cross-examination of P.W.1 and therefore the complainant is also guilty of suppression of material facts. Nothing prevented the complainant to admit he had received Rs.3,50,000/- from the accused towards interest. In the event the accused had agreed to make payment of 18% interest on Rs.7 lakhs, the accused ought to have made payment of Rs.1,26,000/- per annum and she ought to have paid Rs.3,15,000/- for the aforesaid period. According to the complainant, he had received a total amount of Rs.3,50,000/-, but the accused has claimed she has paid a sum of Rs.3,85,000/- to the complainant towards repayment of Rs.5 lakhs hand loan borrowed from him. In order to prove the aforesaid payment of Rs.3,85,000/- to the complainant, the accused has not produced any documentary evidence. In the above circumstances, the admission of the complainant that he had received a sum of Rs.3,50,000/- from the accused in connection with the loan transaction can be accepted. The complainant has not filed any suit against the accused for the recovery of money which is the subject matter of Ex.P.6 loan agreement. The complainant has also not claimed interest on the loan amount of Rs.7 lakhs from the accused in the complaint or in Ex.P.3 statutory demand notice. The contents of Ex.P.6 shows there is every possibility the signature of the accused was obtained on the bottom of the page Nos:1 to 3 and the contents have been subsequently interpolated. Similarly, in page No:4 of Ex.P.6, there is much space in between the signature of the accused and her name written on the document. Therefore, the complainant had obtained Ex.P.1 blank signed cheque, Ex.P.6, two blank stamp papers from the accused and it was also signed by her husband as a witness is more probable.

11. During cross-examination of P.W.1, the accused has disputed the financial capacity of the complainant to advance Rs.7 lakhs hand loan as on 2/12/2008. But the accused in her defence evidence admitted her husband had borrowed loan of Rs.5 lakhs from the complainant. As per Section 58 of Indian Evidence Act, facts admitted need not be proved. In the above circumstances, the accused having admitted her husband had borrowed loan of Rs.5 lakhs from the complainant, her contention challenging the financial capacity of the complainant to advance Rs.7 lakhs hand loan as on 2/12/2008 is contradicting and inconsistent. The defence of the accused that she had issued Ex.P.1 cheque in favour of the complainant in connection with Rs.5 lakhs loan borrowed by her husband also attracts the provision of Section 138 of N.I. Act. As per the aforesaid provision, the cheque issued in discharge of the debt or liability, the drawer of the cheque is liable. Therefore, the accused shall not be allowed to contend her husband had borrowed loan and hence she is not liable to make payment of Ex.P.1 cheque amount. The evidence of the complainant that he had obtained Ex.P.1 post dated cheque for Rs.7 lakhs dated 2/6/2011 as on the date of transaction 2/12/2008 without including the interest on the loan amount in the cheque is highly improbable. The complainant has also not specifically deposed evidence how the accused had made payment of interest on the aforesaid loan amount and whether it was paid regularly and the mode of payment. It

appears the complainant has also not issued any receipt to the accused at the time of receipt of Rs.3,50,000/- interest from the accused.

12. The complainant has produced Ex.P.6 documentary evidence to prove advancement of Rs.7 lakhs hand loan to the accused as on 2/12/2008. As per the contents of Ex.P.6 loan agreement, I have already observed it is subsequently interpolated document to suit the circumstances of the case. Therefore, the defence of the accused that herself and her husband have borrowed Rs.5 lakhs hand loan from the complainant in the year 2008 has to be accepted. The accused in her defence has also not even specifically deposed the date on which she had handed over Ex.P.1 cheque to her husband or to the complainant. The complainant has admitted received Rs.3,50,000/- from the accused towards repayment of the aforesaid loan. The complainant has claimed the aforesaid amount of Rs.3,50,000/- was appropriated towards interest on the loan amount of Rs.7 lakhs. The accused in her defence evidence admitted she and her husband are still in due for payment of Rs.1,15,000/- to the complainant. In this regard, except the oral evidence of D.W.1, there is no other documentary proof. As per the contents of Ex.P.7 statement, the accused had offered to make payment of Rs.1,65,000/- to the complainant towards full and final settlement of financial transaction in between them.

13. As per the contents of Ex.P.7 statement, the complainant is still in possession of cheque Nos: 355093, 355094 and 355095 drawn on Vijaya Bank, Yeshwanthpur Branch, Bengaluru. Ex.P.1 cheque is bearing No: 019078 and therefore there is every possibility these cheques have been issued at different points of time. Even though the accused was aware the complainant is in possession of four cheques, she had not given any instructions to the Bank for stop payment. The accused has also not obtained any endorsement from the complainant at the time she claimed to have handed over those cheques to the complainant. The complainant is not a money lender and hence he is not entitled to claim interest on the loan amount at the rate of 18% as recited in Ex.P.6 loan agreement. Therefore, from the documentary and oral evidence placed on record and admitted facts of the case, the accused has made repayment of Rs.3,50,000/- to the complainant is not in dispute. As per Section 139 of N.I. Act, there is a statutory presumption in favour of the complainant that unless the contrary is proved Court shall presume that Ex.P.1 cheque was issued in favour of the complainant in discharge of any debt or liability. The accused has also admitted her husband had borrowed a sum of Rs.5 lakhs from the complainant. The evidence of rival parties is inconsistent regarding loan amount and as per the evidence of the complainant, he had advanced Rs.7 lakhs hand loan on 2/12/2008. In the above circumstances, Court can arrive to the conclusion that the complainant had advanced Rs.7 lakhs to the accused and out of the said amount the accused had made repayment of Rs.3,50,000/- and she is still in due for payment of balance amount of Rs.3,50,000/-.

14. The accused in her defence evidence contended non-service of Ex.P.5 statutory demand notice sent through registered post as per Ex.P.5. Ex.P.5 is the unclaimed postal envelope produced by the complainant and as per the document, the said notice was returned with an endorsement "door locked, intimation delivered". During cross- examination of the complainant and in her defence evidence, it is not the case of the accused that the address written on Ex.P.5 postal envelope is incorrect. Therefore, the complainant has discharged his initial burden by sending notice through

registered post to the last known correct address of the accused. As per Section 27 of General Clauses Act, there is a presumption regarding letter sent through Registered post. In the above circumstances, the defence of the accused regarding non-service of notice is untenable. From the documentary and oral evidence placed on record, the complainant has fulfilled the statutory requirements of Section 138 of N.I. Act. In this regard, I have referred the Judgment reported in AIR 2010 Supreme Court 1898 in Rangappa V/s. Mohan case. In Para No.14 of the Judgment Hon'ble Apex Court held, it is a settled proposition that 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 doubt about existence of legally enforceable debt or liability, the prosecution can fail. Applying the aforesaid ratio, the accused has failed to take a probable defence to prove the said defence by placing prima facie evidence. Therefore, my findings on Point No.1 is in the affirmative.

15. POINT NO.2:- In view of my findings on Point No.1., the accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act and the complainant is entitled to recover Rs.3,50,000/- from the accused towards balance loan amount. Hence, I proceed to pass the following:-

ORDER Acting under Section 255 (2) of Cr.P.C, accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act 1881. She is sentenced to pay fine of Rs.3,65,000/- (Rupees Three Lakhs Sixty Five Thousand Only) and in default shall undergo simple imprisonment for 1 (One) year.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.15,000/- (Rupees Fifteen Thousand Only) is defrayed to the State for the expenses incurred in the prosecution. (Dictated to the Stenographer, transcribed by her, corrected, revised and signed then pronounced by me in the open court on this the 18th day of January 2016).

(LAKSHMINARAYANA BHAT.K) XVIII A.C.M.M., BANGALORE.

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Sri. Ranganath. G.

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1 : Cheque No: 019078 dated 2/6/2011 for  
Rs.7,00,000/- .

Ex.P.1(a) : Signature of the accused.  
Ex.P.2 : Bank endorsement.  
Ex.P.3 : Office copy of demand notice.  
Ex.P.4 : Postal receipt.  
Ex.P.5 : Postal cover.  
Ex.P.6 : Loan agreement.  
Ex.P.7 : Certified copy of the complaint given to the  
police station by the accused.  
Ex.P.8 : Certified copy of the complaint given to the  
police station by the complainant.

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

P.W.1 : Smt. Radha.S.

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

- Nil -

(LAKSHMINARAYANA BHAT.K)  
XVIII A.C.M.M., BANGALORE.

(Judgment pronounced in Open Court vide a separate Order) ORDER Acting under Section 255 (2) of Cr.P.C, accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act 1881. She is sentenced to pay fine of Rs.3,65,000/- (Rupees Three Lakhs Sixty Five Thousand Only) and in default shall undergo simple imprisonment for 1 (One) year.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.15,000/- (Rupees Fifteen Thousand Only) is defrayed to the State for the expenses incurred in the prosecution.

The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

XVIII A.C.M.M., BANGALORE.