

## Sri.Rudresh.M.K vs Rudresh.S on 5 January, 2021

IN THE COURT OF THE XVIII ADDL. CHIEF  
METROPOLITAN MAGISTRATE, BENGALURU  
PRESENT: MANJUNATHA.K.P, B.A.L, LL.B.  
XVIII ADDL.C.M.M., BENGALURU

DATED : THIS THE 5th DAY OF JANUARY 2021

C.C.NO: 24867/2015

COMPLAINANT: - Sri.Rudresh.M.K.  
S/o Karigowda,  
Aged about 28 years,  
R/at No.224, 1st Floor,  
Avalahalli Main Road,  
New B.D.A. Layout,  
Near N.M.Gas Agency,  
Girinagar, B.S.K.3rd stage,  
Bangalore-560 085.

(Rept by Shri.CM, Advocate)

V/s.

ACCUSED: - Rudresh.S.  
S/o Late Sathyendra,  
Aged Major,  
R/at No.4th cross Road,  
Kalyani Nagara (Narigudda),  
Chikkamangalur City-577101

(Rept by Sri.CRG, Advocate)

### JUDGMENT

The complainant has presented the complaint under Section 200 of Cr.P.C against the accused for the alleged offence punishable under Section 138 of N.I. Act.

2) The brief facts of the complainant's case is that:-

The complainant and accused are very well known friends from more than 3 years. Out of their well acquaintance with the each other, the accused had approached the complainant for a loan of Rs.4,00,000/- for his business purposes, legal necessities and for family benefits and promised to return. Believing the words of accused the complainant gave a sum of Rs.4,00,000/- by cash on 16/7/2014 to the accused . After one month he started demanding the accused to return his money. The accused started postponing the same on one or the other pretext. Thereafter on demand and lot of following the accused had issued a cheque bearing No. 903997 dated 15/06/2015 for Rs.4,00,000/- drawn on Karnataka Bank Ltd., Vijayanagara II stage branch, Mysore and promised the complainant that the cheque would be honoured

on presentation. As per the instructions of the accused when the complainant presented the above said cheque for encashment, it was dishonored with an endorsement "Funds Insufficient" on 7/8/2015. Thereafter the complainant issued legal notice on 5/9/2015 calling upon the accused to make payment of the dishonoured cheque amount and the said notice was duly served on the accused. In spite of service of notice, the accused has not complied the same. Hence, complainant is constrained to file this private complaint for the said relief.

3) After receipt of complaint, this court has taken cognizance of the alleged offence and sworn statement of complainant was recorded and process was issued to the accused. He was appeared through his counsel and enlarged on bail and all papers were supplied to him. The substance of plea was recorded and read over and explained in Kannada language to the accused, to which he pleads not guilty and claims to be tried. Hence, posted the case for complainant evidence.

4) In order to prove the complainant case, complainant was examined as P.W.1 and he exhibited Ex.P.1 to Ex.P.13 and he also examined two witnesses by name Mahesha & Ravithejas as PW2& 3 and closed his side. Thereafter, the statement of accused under Section 313 of Cr.P.C is recorded, read over and explained in Kannada language to which accused has denied the entire incriminating evidence which appears against him. Per contra, accused examined as DW1 and he exhibited Ex.D.1 to 4 documents thereafter posted the case for arguments.

5) Heard the arguments on both sides and perused the entire papers.

6) Now, the following points that arises for my consideration are:-

1) Whether the complainant has made out all the ingredients of Section 138 of N.I. Act to prove the guilt of the accused person?

2) What order?

7) My answer to the above points are as follows:-

POINT NO.1 : In the Negative.

POINT NO.2 : As per final order, for the following:-

#### REASONS

8) POINT NO.1:- As the brief facts of the complainant's case as already stated above, hence I need not repeat the same facts once again to avoid the repetition of the same facts.

9) To bring home guilt against the accused, the complainant/prosecution must prove the following ingredients of Section 138 of N.I. Act.

i) That there is a legally enforceable debt.

ii) That the cheque was drawn from account of Bank for discharge in whole or in part of any debt or other liability which presuppose a legally enforceable debt;

iii) Cheque so issued had been returned due to insufficiency of funds.

10) To prove the aforesaid ingredients of Section 138 of N.I. Act, the complainant filed his chief affidavit and examined as P.W.1. In his chief examination affidavit he reiterated the entire averments of the complaint. In support of his case he has exhibited Ex.P.1 to Ex.P.13 documents.

Ex.P.1 is the cheque, Ex.P.2 Bank endorsement, Ex.P.3 legal notice, Ex.P.4 is the postal receipts, Ex.P.5 RPAD returns cover, Ex.P.6 to 8 Bank Statements, Ex.P.9 & 10 RTC extracts, Ex.P.11 & 12 Crop Certificates, Ex.P.13 Bank statement.

11) On careful perusal of the entire oral and documentary evidence, the admitted facts are that there is no dispute that Ex.P.1 cheque is belongs to the accused and it was dishonoured as per Ex.P.2 endorsement and notice has been issued as per Ex.P.3 and said notice was returned with a shara of "address not claimed" as per Ex.P.5. So, there is a catena of decisions by the Hon'ble Apex Court and Hon'ble High Court of Karnataka i.e., if any notice send to the proper address if they returned with a shara of " door locked , unclaimed , "addressee refused" etc., then it is nothing but a deemed service. If the complainant has addressed the postal cover to the proper address. The complainant also exhibited Ex.P.6 to 8 documents they are Bank statements issued by the various banks and he also exhibited Ex.P.9 &10 RTC extracts they are standing in the name of Karigowda who is father of the complainant and crops certificates as per Ex.P.11 & 12 are also standing in the name of Karigowda i.e., father of the complainant and he also exhibited another bank statement as per Ex.P.13 issued by the State Bank of India. Per contra, to disprove the complainant case, accused examined as DW1 and in his evidence he stated before the court that he is only borrowed loan of Rs.3 lakhs with the complainant. The said amount has been discharged along with interest of Rs.5 lakhs and said Rs.5 lakhs has borrowed by him in his company Indus Viva Health Sciences Pvt Ltd, Bangalore for purpose to pay the loan those borrowed with the complainant etc., and prays to acquittal of the accused and he exhibited Ex.D.1 to 4 documents.

12) During the course of arguments, the learned counsel for the complainant Sri.CM filed written arguments and argued that, complainant has proved his case by way of oral and documentary evidence and on admissions in the mouth of DW1 and admissions of PW1 are minor and to be neglected and accused has taken some independent evidence. The said fact has not been proved and prays to convict the accused by relying following rulings.

1. ILR 2018 KAR 5431 Sri.S.M.Nataraja Vs B.M.Prakash 2.2015 CrL.L.J 2853 T.Vasanthakumar V.Vijayakumari

3. ILR 2006 KAR 4672 J.Ramaraj Vs Iliyaz Khan

4.LAWS (KAR) 2012 (7) 473 Lale Patel Vs Sharanbasappa

5.LAWS (SC) 2019 (2) 45 Bir Singh Vs Mukesh Kumar

6.(2001) 8 SCC 458 K.N.Beena Vs Muniyappan and anr Per contra, Sri.CRG counsel for accused filed written arguments and argued that absolutely there is no debts between the complainant and accused. Previously accused has borrowed only Rs.3 lakhs with the complainant and the said amount has been discharged along with interest i.e., accused has borrowed loan in his company Rs.5 lakhs. Out of the said amount Rs.3 lakhs paid to the complainant and interest also paid and there is no debts are existing between the complainant and accused and the admissions of PW1 have destroys his case and prays to acquittal of the accused by relying following rulings.

1.2016(1) AKR 211 A.M.Govindgowda Vs B.V.Ravi

2. (2015) 1 SCC 99 K.Subramani Vs K.Damodara Naidu

3.Cr.A.No. 3059/2017 Man Sing Vs Raveer Singh

4.ILR 2009 KAR 1633 Kumar Exports Vs Sharma Carpets.

5.K.N.Beena Vs Muniyappan and another 2001(6) SCC 458

6.Dalmia Cement Bharath Ltd Vs Galaxy Traders and Agencies Ltd 2011 (6) SCC 463.

7.K.Devaraj Vs T.K.Kaya 2003 520 CrL.L.J 8.2003(2) Civil J 318 (Mad)

9.Cr.A.No.736/2003 Shaji Joseph Vs Chako Valuparambal

10.AIR 2008 SC 1325 Krishna Janardhana Bhat Vs Dattatraya

11. 2011(5) KCCR 4223

12.AIR 2010 SC 1890

13) On careful perusal of the entire oral and documentary evidence and arguments addressed by the counsels, the admitted facts are that there is no dispute that complainant and accused are very well known friends from several yeas and complainant has claiming amount of Rs.4 lakhs in the present case and he also claiming an Rs.4,20,000/- and Rs.3 lakhs in other cases and he also filed three cases against the accused CC.No.24867/2015, CC.No.21916/2015 and CC.No.24865/2015. To prove

the said fact, complainant examined as PW1 and he filed his affidavit and examined as PW1 and in his evidence he categorically stated before the court that complainant and accused are well acquainted with each other and accused has borrowed loan of Rs.4 lakhs. Accordingly complainant has paid cash dated 16/7/2014 and to discharge the said debts accused has issued Ex.P.1 cheque, but it was came to be dishonored as per Ex.P.2 and notice has been issued as per Ex.P.3 and it was duly served on accused as per Ex.P.5 etc., Per contra, accused has denied the case of the complainant and he taken some independent defence that he borrowed only Rs.3 lakhs debts with the complainant and he discharged the said debts along with interest and he has borrowed loan in his company. To prove the said fact, he exhibited Ex.D1 to 4 documents they are Rental agreement, letter issued by Indus Viva Health Sciences Pvt Ltd, and copy of complaint filed by one Shankarlinga M.S. and certified copy of one photo . Of course, Ex.D2 documents confers to the court that, accused has borrowed loan of Rs.5 lakhs in his company Indus Viva Health Sciences Pvt Ltd, and in the said document he also mentioned about payment of Rs.5 lakhs to the complainant. So, merely the name of complainant has mentioned in Ex.D2 document i.e., he borrowed loan for purpose to pay the said amount to the complainant as debts is not sufficient to believe the entire case of the accused about the payments are concerned. Of course, in the cross- examination of DW1 he admitted certain facts that they are 2012

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The said admissions indicates to the court that about having of certain money transactions between the complainant and accused and PW2-Mahesh who is one of the independent witness he stated before the court that he has given hand loan of Rs.2 lakhs to the complainant in the year 2014, PW3-Ravithejas also stated that he given Rs.1 lakh loan to the complainant in the year 2014 etc., But complainant in his complaint nor Ex.P.3 notice nor chief affidavit has no where stated that exactly

on what date and time PW2 & 3 have given an amount of Rs.3 lakhs to the complainant and PW2 & PW3 also in their evidence no where stated that exactly on what date and time they paid Rs.3 lakhs to the complainant etc., and they simply stated before the court that they doing animal husbandry and working as secretary in Milk Diary and he has receiving Rs.10,000/- as salary in every month in milk dairy and working as Marketing agent of nurtrition health product and complainant has asked them for loan amount in the year 2014 . As per his request they have paid Rs.3 by cash. But complainant in his complaint nor Ex.P.3 notice nor chief examination affidavit has no where stated that exactly on what date and time PW2&3 have given an amount of Rs.3 lakhs to the complainant .To prove the source of income and capacity of the complainant he placed bank statements as per Ex.P.6 to 8 and 13 document and also RTC extracts and crop certificates as per Ex.P.9 to 12 documents. Admittedly RTCs are standing in the name of Karigowda i.e., father of the complainant and it is not the case of the complainant that he has earned amount from his agricultural process and said amount has been paid to the accused etc., Further, the bank statements placed by the complainant as per Ex.P.6 to 8 and 13 confers to the court that several amounts has been credited and debited to the account of the complainant . But in entire case proceedings PW1 has no where stated how he has earned Rs.4 lakhs in order to pay to the accused and except filing of complaint in a general manner that on friendship accused has requested for hand loan of Rs.4 lakhs, then he paid dated 16.7.2014 by cash etc., he has not stated in his complaint nor chief examination that about lending of Rs.2 lakhs from PW2 and Rs.1 lakhs from PW3 for purpose to pay the amount to the accused etc., i.e., complainant has not pleaded the getting of loan amount from the PW2 & 3 and he also not stated the source of income as well as arrangement of Rs.4 lakhs for purpose to pay to the accused.

14) Of course, to substantiate the complainant case i.e., to prove the source of income and capacity he placed crop certificates, RTCs merely some of the lands are standing in the name of the complainant father Karigowda and some crop certificates are issued in the name of the Karegowda by the concerned Village Accountant, the proof shall not be dispensed, unless complainant has placed other corroborative documents to believe about the growing of crops in Ex.P.9 & 10 properties and selling of said crops to the concerned middle mans nor APMC yard nor other Government Departments. So, in the absence of bills as well as receipts for selling of crops from Karegowda nor complainant in Ex.P.9 to 12 properties, merely some of the RTCs are standing in the name of complainant father and crops certificate are issued by the Village Accountant are not sufficient to believe that about acquiring of amount from the above said properties and payment of the said amount to the accused as stated in his oral evidence. As already stated above except evidence there is no plea in the complaint and chief examination affidavit that about getting of Rs.2 lakhs from the PW2 and Rs.1 lakhs from PW3 and his earnings from his agricultural process. So, unless he pleaded, the proof shall not be allowed by the court i.e., there is a catena of decisions by the Hon'ble Appex Court and Hon'ble High Court of Karnataka that without plea no proof shall be allowed by the courts. So, here in this case also there is no plea in complainant and evidence of PW1 about Ex.P.9 to 12 documents, they are RTC and crop certificates. Further, accused has also failed to rebut the complainant case in a proper manner as specified under section 139 of NI Act though it is not a ground to convict the accused in a mechanical manner. Further, accused has placed Ex.D.1 to 4 documents they are rental agreement, letter, complaint and one photo. But the said documents are needs to be corroboration to believe that about borrow of loan of Rs.5 lakhs from the Indus Viva

Health Sciences Pvt Ltd, for purpose to pay the said amount to the accused i.e., unless he examined the authorized persons of Ex.D.2 document. Further, admittedly Ex.P.5 RPAD cover, returned with a shara of 'address not claimed'. So, there is a catena of decisions by the Hon'ble Apex Court and Hon'ble High Court of Karnataka i.e., if any notice send to the proper address if they returned with a shara of " door locked , unclaimed , "addressee refused" etc., then it is nothing but a deemed service. If the complainant has addressed the postal cover to the proper address. Accordingly, I am of the considered opinion that complainant has miserably failed to prove his case as per ingredients of section 138 of NI Act i.e., existence of debts between the complainant and accused . So, once he failed to prove the said fact it is not possible to believe that about issuance of Ex.P.1 cheque by the accused to discharge the said debts i.e., in the present case complainant has failed to prove the issuance of cheque by the accused to discharge the legally recoverable debts i.e., first of all debts are not proved by the complainant . Further, in the rulings of the complainant their lordship laid down the following principles that

a) once accused has admitted the issuance of cheque then presumptions under section 138 of NI Act are fallen to the case of the complainant.

b) merely complainant has not shown the amount in IT returns, it is not a sole ground to disbelieve the entire case of the complainant in the proceedings filed under section 138 of NI Act.

c) the accused must rebut the complainant case under section 139 of NI Act otherwise he is liable to be convicted In the rulings of the accused their lordship laid down the following principles that

a) burden lies on the complainant to prove the source of income and capacity to pay an huge amount to the accused .

b) unless proved the existence of debts between the complainant and accused and shown the amount in IT returns the complainant is not entitled for any of the reliefs.

So, as per the ratios of the accused rulings the burden lies on the complainant to prove the existence of debts between the complainant and accused and issuance of cheque by the accused to discharge the legally recoverable debts and also source of income and capacity must be proved by the complainant otherwise complainant is not entitled for any of the reliefs. But the complainant has miserably failed to prove the source of income and capacity to pay huge amount of Rs.4 lakhs to the accused and he also failed to prove the issuance of cheque by the accused to discharge the legally recoverable debts. Accordingly, the rulings submitted by the complainant are not applicable to the present case on hand. Because, the facts and circumstances involved in the said rulings are entirely different from present set of facts. Accordingly, I am of the considered opinion that complainant has miserably failed to prove his case as per ingredients of section 138 of NI Act i.e., existence of debts between the complainant and accused and issuance of cheque by the accused to discharge the legally recoverable debts. Hence, complainant is not entitled for any of the reliefs as sought in the complaint. Consequently, accused is entitled for an acquittal as he is not found guilty and I answer this Point No.1 in the Negative.

15). POINT NO.2:- In view of my discussions as stated supra and my findings on Point No.1., I proceed to pass the following.

ORDER Acting under Section 255 (1) of Cr.P.C, accused is hereby acquitted of the offence punishable under Section 138 of Negotiable Instruments Act 1881.

The bail bond executed by the accused and surety bond executed stands cancelled. (Dictated to the Stenographer, transcribed by her, corrected, revised and signed then pronounced by me in the open court on this the 5 th day of January 2021 ).

(MANJUNATHA.K.P) XVIII A.C.M.M., BENGALURU.

#### ANNEXURE

##### 1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1	:	Rudresh.M.K
P.W.2	:	Mahesha
P.W.3	:	Ravithejas

##### 2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1	:	Cheque.
Ex.P.2	:	Bank endorsement.
Ex.P.3	:	Office copy of legal notice.
Ex.P.4	:	Postal receipt
Ex.P.5	:	RPAD returns cover,
Ex.P.6 to 8	:	Bank statements,
Ex.P.9&10	:	RTC extracts,
Ex.P.11&12	:	Crop Certificates
Ex.P.13	:	Bank statement

##### 3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

D.W.1 : Rudresh.S.

##### 4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

Ex.D1	:	copy of Rental agreement
Ex.D2	:	Copy of letter
Ex.D3	:	Copy of complaint in CC.No.21932-2015
Ex.D4	:	xerox copy of photo



(Judgment pronounced in Open Court vide a separate Order) ORDER XVIII A.C.M.M.,  
BENGALURU.