

## Smt.V.Padmavathi vs Smt.R.Srilatha on 22 September, 2018

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

Dated this the 22nd day of September 2018

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

C.C.No.2442/2017

Complainant : Smt.V.Padmavathi,  
W/o V.Srinivas,  
Aged about 39 years,  
R/at No.239,  
1st Cross, 1st Main,  
Byraveshwaranagara,  
Laggere,  
Bengaluru - 560 058.

Vs.

Accused : Smt.R.Srilatha,  
W/o S.M.Srinivasa Reddy,  
Aged about 45 years,  
R/at : No.46, 1 "D" Cross,  
Nanjappa Reddy Garden,  
Near LIC Colony,  
Yeshavanthapura,  
Bengaluru- 560 022.

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

Plea of accused : Pleded not guilty  
2 C.C.2442/2017

Final Order : Accused is Convicted

Date of Order : 22-09-2018

### JUDGMENT

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 of the Negotiable Instruments 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 is the friend of complainant and well known to her from past several years. On 24.01.2015, the accused had obtained hand loan of Rs.5,00,000/- by way of cheque bearing No.982854 drawn on SBM Bank, Peenya Branch, Bengaluru from the complainant for her urgent financial necessities and agreed to repay the same within 1 1/2 years. As per the request of the Complainant, on 04.05.2016 accused has executed the loan agreement on Rs.500/- e-stamp paper in favour of the Complainant. After several demands and requests, towards discharge of her liability, accused has issued a cheque bearing No.796257 dated 28.10.2016 for Rs.5,00,000/-, drawn on State Bank of India, Gokul 1st Stage, 2nd Phase, HMT Main Road Branch, Bengaluru. Complainant presented the said cheque for encashment through her banker i.e., State Bank of Mysore, Peenya Industrial Area Branch, Bengaluru and the said cheque returned with an endorsement "Funds Insufficient", dated 03.11.2016. Thereafter, complainant got issued legal notice on 23.11.2016 to accused. The notice was duly served to the accused on 02.12.2016. Accused neither replied the notice nor paid the cheque amount. Hence, this complaint.

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 not stated the defence.

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 5. Statement under section 313 of Code of Criminal Procedure recorded. Accused has not let in oral or documentary evidence.

05. In this case, the evidence on record shows that summons trial procedure was adopted instead of summary trial. As per the judgment passed by Supreme Court reported in 2014 Cr.L.J. 1953, in a case of Mehsana Nagarik Sahakari Bank Limited V/s. Shreeji CAB Company Limited and others, conducting Denova trial does not arises.

06. Heard the Learned Counsel for complainant and accused. Perused the citations and materials on record.

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

## POINTS

1. Whether the complainant proves that, accused issued cheque for Rs.5,00,000/- 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?

o8. 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

o9. POINT No.1: Complainant has filed this complaint alleging that accused has committed offence under section 138 of N.I. Act. She pleads and asserts that, towards discharge of her liability, accused has issued a cheque for Rs.5,00,000/-, drawn on State Bank of India, HMT Main Road, Bengaluru. The said cheque came to be dishonoured on presentation. Complainant has issued notice within time stipulated calling upon the accused to pay the amount covered under cheque. In spite of service of notice, accused has not paid the amount within 15 days, which gave rise cause of action to file this complaint. He further relied on the documents from Ex.P.1 to 5. This witness was subjected to cross examination.

10. In this scenario, 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 cheque dated 28.10.2016, Ex.P.2 is bank endorsement dated 03.11.2016, Ex.P.3 is legal notice dated 23.11.2016, Ex.P.4 is Postal acknowledgement and Ex.P.5 is loan agreement. This complaint came to be filed on 13.01.2017. 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. Thus, complainant relied on the statutory presumptions enshrined under section 118 read with section 139 of N.I. Act.

11. No doubt, the said presumptions of law are rebuttable in nature. The accused can take probable defence and rebut the presumption available to the complainant. Let us examine whether accused has successfully rebutted the presumptions of law. It is the specific defence of the accused that, she has taken an amount of Rs.1,00,000/- from the Complainant in the year 2015 and at that time Complainant has taken signatures on 50 and 100 rupees stamp papers and also taken four blank cheques bearing Nos.796263, 796264, 796259 and 796258. The Complainant has manipulated one of the cheques, stamp paper and the previous agreement for unlawful gain and filed this false complaint. To endorse this contention, accused solely relied on the cross examination of Complainant and not chosen to place defence evidence.

12. In the back drop of the rival contentions, this court has given anxious consideration to the case papers. At the outset, accused has not disputed the issuance of the cheque and execution of the loan agreement. No doubt, she has taken contention of the previous transaction, no cogent and acceptable evidence is placed in support of the same. Law is settled on this point that, when the accused has admitted the issuance of the cheque and signature present therein, the presumptions enshrined under Sec.118 and 139 of N.I.Act would operate. It is for the accused to rebut the said

presumption through cogent evidence.

13. As stated earlier, except suggesting the Complainant regarding the previous transaction and issuance of the blank signed cheques and blank signed stamp paper, accused is not successful in eliciting material information in support of her defence. So also, no steps taken to place the cogent defence evidence. Mere denial of issuance of the cheque towards discharge of the legally enforceable liability is not sufficient to discharge the burden of rebuttal.

14. This aspect is dealt in detail in the decision reported in, 2015 AIR SCW 3040, in a case of Criminal Appeal No.728 of 2015 -- T.Vasanthakumar Vs. Vijayakumari, it is held that;

"Cheque as well as signature on it not disputed by accused- Presumption under section 139 would be attracted story brought out by accused that cheque was given to complainant long back in 1999 as a security to a loan, the loan was repaid but complainant did not return security cheque- is unworthy of credit, apart from being unsupported by any evidence."

From the gist of the ratio in the afore said decision it is clear that, cheques issued towards security falls within the purview of section 138 of Negotiable Instrument Act and does not absolve liability of the accused.

15. One more point which merits consideration of this court is that, legal notice issued by the Complainant is duly served on the accused. She has also not disputed the service of notice. Such being the case, what prevented the accused to issue reply by taking all these contentions at the initial stage, is not properly explained. The act of the accused in not issuing reply at the earliest point of time immediately after service of the legal notice is one of the strong circumstances in favour of the complainant.

16. This proposition is laid down in the decision reported in 2007 CRI.L.J. (NOC) 520 (KER), in a case of Sanjeev P.R. V/s. Thriveni Credit Corporation, Thodupuzha & Another, wherein it is held that;

"(B). Negotiable Instrument Act (26 of 1881), S.138- Dishonour of cheque-

Conviction- Validity- Signature in cheque is admitted - Notice of demand though duly received and acknowledged , did not evoke any reply.....- Concurrent finding that complainant has succeeded in proving all ingredients of the offence punishable under section 138 -

Conviction of accused proper."

17. The complainant relied on another decision reported in, 2006 CRI.L.J.1, in a case of Gorantala Venkateswara Rao. V/s. Kolla Veera Raghava Rao and another, it is held that;

"(B) Negotiable Instrument Act ( 26 of 1881), S.138 - Dishonour of cheque-

Legally enforceable debt- Failure of accused in giving reply to legal notice issued by complainant- Is one of the strong circumstances to draw an inference that accused borrowed amount from complainant and cheque was issued towards part payment of legally enforceable debt."

From the ratio laid down in the aforesaid decisions it is clear that, non issuance of reply by the accused is fatal to his defence. In the present case, though reply is issued, accused has not taken the aforesaid defences in the reply, which also leads to take adverse inference against accused. As such, the defence taken by the accused is not acceptable.

18. From the overall consideration of the evidence on record it is forthcoming that, accused has not taken probable defence to rebut the statutory presumption. Mere denial is not sufficient to discharge the onus shifted on accused. To fortify this opinion, it is proper to refer the decision reported in, 2001 CRI.L.J. 4647, in a case of Hiten P.Dalal V/s. Bratindranath Banerjee, wherein it is held that;

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

Presumption that cheque was drawn for discharge of liability of drawer- Is presumption of law- Ought to be raised by Court in every case- Rebuttal evidence- Nature- Mere plausible explanation is not sufficient- Proof of explanation is necessary.

Evidence Act (1 of 1872), Ss .114, 101-

104."

Further in another decision reported in, 2017(2) A.K.R. 527, Arjun Vs.E.Shekar, it is held that, S. 138, 139- Presentation of lawful consideration- Rebuttal of - Burden of proving that cheque has not been issued for any debt or liability - is on accused - mere plausible explanation not sufficient to disprove complainant's case.

From the gist of the ratio laid down in the above decisions, it is clear that, burden shift on the accused to rebut the statutory presumption through cogent evidence, which is not discharged by the accused in the present case.

19. The accused has taken a vague defence and not placed cogent evidence to prove the same. This aspect is discussed in detail in a decision reported in, 2014(4) AKR 98 - Sripad Vs. Ramadas M.Shet, Criminal Appeal No.2689 of 2009, wherein it is held that;

"Negotiable Instrument Act (26 of 1881), Ss.138,139, 118- Dishonour of cheque- Acquitted-Validity-Cheque issued by repay loan amount to complainant, was dishonoured-Specific defence -However, accused failed to rebut initial presumption under sections 118 and 119- Mere distorted version or mere taking up defence by It means that he is not liable to pay any amount- Are not sufficient to put back the burden on to the complainant- Acquittal of accused- Not proper."

The ratio laid down in the cited decision is squarely applicable to the facts on hand.

20. As far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of larger bench of the Hon'ble Apex Court reported in Rangappa Vs. Mohan reported in AIR 2010 SC 1898 = 2010 AIR (SCW) 2946, Wherein their lordships pleased to observe 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. Accused has not placed cogent material to rebut the said presumption. As such, this contention of the accused holds no water.

21. In this case plea of the accused was recorded as per section 251 of Cr.P.C. Accused pleaded not guilty. As per section 251 of Cr.P.C. accused has to state about his defence. Here, except pleading not guilty accused has not stated his defence at the time of recording plea. As per the decision reported in AIR 2014 SC 2528 (Indian Bank Association V/s Union of India), Crl. Petition No.8943/2010 M/s.Mess Transgare Pvt V/s Dr .R. Parvathareddy and in Rajesh Agarwals case, Wherein, it is held that; " Accused cannot simply say " I am innocent " or " I pleaded not guilty ". The proposition of law laid down in the aforesaid decision is squarely applicable to the facts and circumstances of this case. As such, it cannot be taken that accused has rebutted the presumption of law enshrined under section 139 and 118 of N.I. Act, by mere pleading not guilty.

22. From the discussion made supra, it is clear that, accused has neither taken probable defence nor taken steps to prove the same. To put it other way, accused has not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged under section 118 read with section 139 of N.I. Act. Accordingly, the case of the complainant is believable. Complainant has proved that, accused has intentionally not maintained sufficient amount in his account to honour the disputed cheque. Hence, this point No.1 under consideration is answered in the affirmative.

23. 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 along with cost of litigation. 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.6,00,000/- (Six Lakh Rupees only). In default thereof accused shall undergo simple imprisonment for 2 (Two) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.5,90,000/- (Five Lakh Ninety 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 of the accused stands cancelled.

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

{Dictated to the stenographer, transcribed and computerized by her, corrected and then signed by me and then pronounced in the open court on this 22nd day of September 2018}.

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

ANNEXURE List of witnesses examined on behalf of complainant:

P.W.1 Padvamavathi List of documents produced on behalf of complainant:

Ex.P. 1	Cheque
Ex.P. 1(a)	Signature of the accused
Ex.P. 2	Bank endorsement
Ex.P. 3	Copy of the legal notice
Ex.P. 4	Postal acknowledgement
Ex.P. 5	Loan agreement

List of witnesses examined on behalf of accused:

-Nil-

List of documents produced on behalf of accused:

-Nil-

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