

Sri.Lokesh.R vs Sri.Shankar.M.L on 1 February, 2017

IN THE COURT OF THE XVI ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY
Dated: This the 1st day of February 2017
Present: Smt. Saraswathi.K.N, B.A.L., LL.M.,
XVI Addl.C.M.M., Bengaluru City.
JUDGEMENT U/S 355 OF Cr.P.C.,

Case No. : C.C.No.30726/2014

Complainant : Sri.Lokesh.R,
S/o.Sri.Ravi,
Aged about 31 years,
R/at No.25/5.
Munisanjeevappa Building,
Kanakapura Main Road,
Munisanjeevappa Layout,
Jaraganahalli,
Bengaluru-78.

(Rep. by Sri.Shashi Kumar.R.,
Adv.,)

- Vs -

Accused : Sri.Shankar.M.L,
S/o.Late.Lingappa,
Aged about 50 years,
R/at.No.45/46,
4th Main, Astalakshmi Layout,
6th Phase, J.P.Nagar,
Bengaluru-78.

(Rep. by Sri.D.E.Somashekara &
ano., Adv.,)

2 C.C. No.30726/2014 J

Case instituted : 9.10.2014
Offence complained : U/s 138 of N.I. Act
of
Plea of Accused : Pleaded not guilty
Final Order : Accused is convicted
Date of order : 1.2.2017

JUDGMENT

The Complainant has filed this complaint against the Accused for the offence punishable u/Sec.138 of the Negotiable Instruments Act.

2. Briefly stated the case of the Complainant is that the Accused is having a friendly relationship with him and known to him for more than 10 years and both of them are known to each other for the past 2 years.

3. The Complainant has further submitted that, the Accused is running a business in the name and style of "M/s.Bhuvaneshwari Dyeing Works", situated at Bengaluru and in the month of September 2013, he approached him and requested for a sum of Rs.4,00,000/= for his business related purposes and to shifting his office. Knowing fully well about the financial constraints of the Accused he agreed to lend the said amount, which the Accused agreed to repay within a period of 10 to 12 months. Therefore considering the request of the Accused, he lent a sum of Rs.4,00,000/= to him in September 2013, for which, the Accused executed a Consideration Receipt dated 25.9.2013 acknowledging the receipt of the loan amount from him and voluntarily issued a post dated cheque bearing No.007828 dated 30.8.2014, drawn on the Bank of Maharashtra, ATPAR Branch, J.P.Nagar, Bengaluru, in his favour for a sum of Rs.4,00,000/= and as on the date of the receipt of the loan, the Accused promised to repay the said loan amount within a period of 8 to 12 months.

4. The Complainant has further submitted that, in the month of August 2013, he approached the Accused and requested him to repay the loan amount. However instead of repaying the loan amount, the Accused approached the J.P.Nagar Police on 27.8.2014 and got registered a NCR bearing No.2561/1373/2014 and called him and after he was summoned to the Police Station, he narrated the true version of the testimony.

5. Thereafter as per the advice of the jurisdictional police, they agreed to settle the matter at the earliest and the Accused insisted him to present the cheque on 30.8.2014. As per the assurance given by the Accused, when he presented the said cheque for encashment through his Banker, to his utter shock, the said cheque came to be returned dishonoured with a shara "Funds Insufficient" on 1.9.2014. Though he approached the Accused and questioned him regarding the dishonour of the cheque and requested for the payment of the loan amount, the Accused did not care or respond to his request.

6. The Complainant has further submitted that, thereafter he got issued a legal notice to the Accused on 5.9.2014 through RPAD and courier to his residential address calling upon him to pay the said amount within 15 days from the date of the receipt of the notice. Both the notices have been duly served upon the Accused. But inspite of it, the Accused has neither replied nor repaid the cheque amount.

7. The Complainant submits that, the dishonour of the cheque by the Accused has been malafide, intentional and deliberate. Feeling aggrieved by the conduct of the Accused, he has filed the present complaint praying that the Accused be summoned, tried and punished in accordance with Sec.138 of the Negotiable Instruments Act.

8. The Pre-summoning evidence has been led by the Complainant on 18.11.2014. Prima-facie case has been made out against the Accused and he has been summoned vide order of the same date.

9. The Accused has appeared before the court on 27.3.2015. He has been enlarged on bail and the substance of the accusation has been read over to him on 24.4.2015, to which he has pleaded not guilty and has claimed the trial.

10. In his post-summoning evidence, the Complainant has examined himself as PW1 and has filed his affidavit, wherein he has reiterated the averments made in the complaint.

P.W.1 has also relied upon the following documentary evidence:-

The attested copy of the Acknowledgment of the J.P.Nagar Police as per Ex.P1, the true of the complaint as per Ex.P2, the True copy of the statement as per Ex.P3, Ex.P4 is the cheque, in which, the signature is identified by P.W.1 as that of the Accused as per Ex.P4(a), the Bank memo as per Ex.P5, the office copy of the Legal Notice as per Ex.P6, the Postal Receipt as per Ex.P7, the Courier Receipt as per Ex.P8, the Postal Acknowledgement as per Ex.P9, the Loan Agreement as per Ex.P10, the Complaint as per Ex.P11 and the Statement of Accounts as per Ex.P12.

11. The statement of the Accused under Sec.313 of Cr.P.C., has been recorded on 7.1.2016. Though the Accused has denied the incriminating evidence found against him and though initially he had chosen to lead his rebuttal evidence, subsequently he has failed to do so.

12. Heard the arguments of the learned counsel for the Complainant who has prayed for the conviction of the Accused on the ground that, in Ex.P2 the Accused has admitted the issuance of the cheque in question and he has not stated in the said document that it is a blank cheque. Likewise in Ex.P3 the Accused admits the issuance of the cheque and stamp papers for security. The Accused also admits his signature on the loan agreement, but alleges that the loan agreement is a created document, but the same has not been challenged by the Accused. Hence it is argued that the Accused has failed to probablise his defence and the statutory presumptions under Sec.118 and 139 of the N.I.Act stand un-rebutted. Hence, prayed for the conviction of the Accused.

13. Despite given sufficient opportunities, the Defence counsel has not addressed his arguments.

14. I have considered the submissions and perused the record carefully.

15. Sec.138 of the Negotiable Instruments Act has been enacted to lend credibility to the financial transactions.

The main ingredients of the offence under Section 138 Negotiable Instruments Act are:-

- (i) Drawing up of a cheque by the Accused towards the payment of the amount of money, for the discharge, in whole or in part, of any debt or any other liability;
- (ii) Return of the cheque by the bank as unpaid;

(iii) The drawer of the cheque fails to make the payment of the said amount of money within 15 days of the receipt of the notice under the proviso (b) to Section

138.

The Explanation appended to the Section provides that, the "debt or other liability" for the purpose of this Section means a legally enforceable debt or other liability.

16. Apart from this, Sec. 139 of the Negotiable Instruments Act lays down a presumption in favour of the holder of cheque in the following terms:-

"It shall be presumed, unless the contrary is proved, that:-

The holder of a cheque received the cheque, of the nature referred to in Sec. 138, for the discharge, in whole or in part, of any debt or other liability".

17. Also, Sec. 118 of the Negotiable Instruments Act states, "Until the contrary is proved, the following presumptions shall be made:-

(a) that every Negotiable Instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;"

18. Thus, the Act clearly lays down the presumptions in favour of the Complainant with regard to the issuance of the cheque by the Accused, towards the discharge of his liability in favour of the Complainant.

19. Under the scheme of the Act, the onus is upon the Accused to rebut the presumptions in favour of the Complainant by raising a probable defence.

20. Such being the legal position, it would be pertinent to refer to the defences raised by the Accused to rebut the presumptions in favour of the Complainant in this case.

21. It is pertinent to note that, at the outset, the Accused has not disputed either his acquaintance with the Complainant or his financial transaction with him.

On the contrary, the Accused has admitted that, he knows the Complainant and that, he had availed financial assistance from him in the year 2013. However it is the defence of the Accused that, he had availed a loan of Rs.1,00,000/= from the Complainant at an interest of 2% per month, during which, the Complainant had collected 4 blank signed cheques and a signed blank stamp paper from him and that the loan agreement at Ex.P10 is created on the said blank stamp paper and that he has repaid the loan of Rs.1,00,000/=, but inspite of it, the Complainant has failed to return his cheques and by misusing the same, the present false case has been filed against him.

22. With this defence, it goes to show that, the Accused has admitted his financial transaction with the Complainant. However, when the specific defence of the Accused is that, the said loan availed by him from the Complainant was only for Rs.1,00,000/= and not Rs.4,00,000/= as claimed by the Complainant, the onus is shifted upon the Accused to prove the same with reliable and probable evidence. However except cross- examining the Complainant in the light of this defence, there is no material placed on record by the Accused to substantiate the said defence version. Moreover the Accused has alleged that the loan agreement is a created document. In such circumstance, nothing prevented the Accused from challenging the genuineness of the said loan agreement in an appropriate manner before the appropriate forum. However the Accused has admitted his signature on the loan agreement as well as on the cheque in question. But when the Accused claims that, even though he has repaid the loan of Rs.1,00,000/=, the Complainant has not returned the cheque in question to him, he is bound to prove the same at least in a manner so as to probabalise his defence. However except his self- serving testimony in t, there is no iota of evidence led by the Accused in this regard.

23. The Complainant has produced the acknowledgment as per Ex.P1, in respect of a complaint lodged by the Accused against him and one Santosh and one Ramanna alleging that they have been causing harassment to him and accordingly a complaint has been lodged by the Accused against them as per Ex.P2. The Accused has not disputed the contents of the said complaint. Therefore when the contents of Ex.P2 is gone through, it goes to show that, even in the said complaint, the Accused has admitted having availed from the Complainant in the year 2013 and having issued the cheques and a stamp paper, towards the security of the said loan and he has also admitted in the said document that, there is delay on his part in repaying the said loan amount. Though even in this complaint, it is alleged by the Accused that, he has availed a loan of Rs.1,00,000/= from the Complainant, there is no proof to substantiate the same. On the other hand, in pursuance of the complaint at Ex.P2, the Complainant has given a statement before the police as per Ex.P3, in which, he has stated that, the Accused has availed a loan of Rs.4,00,000/= from him in September 2013 by issuing cheques and a stamp paper, towards the security of the said loan and when he sought for the repayment of the same on 15.8.2014, the Accused has lodged such false complaint against him. Therefore as per the averments made in the complaint at Ex.P2 and the statement of the Complainant at Ex.P3, it clearly goes to show that, each party has set forth his own claim. However when the Accused has taken up a specific defence that, he has availed a sum of Rs.1,00,000/= and not Rs.4,00,000/= and during the cross-examination of the Complainant, he claims that, he has repaid the said loan, then it is the burden of the Accused to prove before the court the mode of such repayment as well as the time of such repayment of the loan. Nowhere the Accused has stated, as to, when he has repaid the said loan of Rs.1,00,000/=. In such circumstance, the defence of the Accused cannot be accepted by the court as probable and reliable. Moreover when the Accused claims that, the cheque in question is one among the 4 signed blank cheques, which were issued by him to the Complainant, the burden is upon the Accused to explain before the Court about his 3 other cheques, which he claims to have issued to the Complainant. In this regard, there is no explanation forthcoming from the Accused. In such circumstance, the court cannot believe the defence of the Accused. Likewise, when the Complainant has deposed before the court that, he knows the Accused since 10 years and that, the Accused is running a Dyeing Company by name Bhuvaneshwari Dyeing Company, but the same has not been denied by the Accused, this clearly goes to show that, the case of the Complainant is believable.

24. Likewise, nowhere the Accused has disputed the service of the legal notice upon him. In such circumstance, nothing prevented the Accused from giving reply to the legal notice to the Complainant by denying the allegation made against him in the legal notice at Ex.P6 as well as to take appropriate legal action against the Complainant, if really, the cheque in question as well as the blank stamp paper was misused by him and thereby foisting a false case against him. However the Accused has utterly failed to do so. Generally no man of ordinary prudence would keep quite, if his blank cheque and the a signed blank stamp paper is filled up in a manner that, he is liable to pay a huge amount of Rs.4,00,000/=, if really there existed no liability to such an extent. The conduct of the Accused in remaining silent also raises a serious doubt about his defence. Moreover during the cross-examination of the Complainant, it is suggested to him by the Defence counsel, as to if, he has no objection to send the cheque in question to the opinion of an expert. No doubt the Accused had filed an application seeking to refer the cheque in question to the opinion of a hand writing expert, but the same came to be rejected by this court, in view of the fact that, the Accused has neither denied the issuance of the cheque in question nor his signature on it. Further it makes no difference as to who has filled up the other contents of the cheque in question, in view of Sec.20 of the N.I.Act. Therefore the entire materials placed on record clearly go to show that, the Accused has miserably failed in probablizing his defence.

25. It is pertinent to note that, the Accused has also taken up the defence that, the Complainant has no financial capacity to lend a loan of Rs.4,00,000/= to him. In this regard, during his cross-examination, it is deposed by the Complainant that, he has an annual income of Rs.4,00,000/= to Rs.5,00,000/= and that, he is not an income tax assessee. According to him, he has withdrawn the amount from his Bank and lent the same to the Accused in the factory of the Accused and that on the same day, the Accused has executed a loan agreement in his favour.

26. Even though the Accused has disputed the financial capacity of the Complainant, the same has not been seriously challenged by him. However the Complainant has produced his statement of account as per Ex.P12, in order to show that, during September 2013, he had sufficient funds in his account so as to lend the same to the Accused. No doubt, during his cross- examination, it is suggested to P.W.1 by the learned Defence Counsel that, he has created Ex.P12 only for the purpose of the present case, but the relevant entry dated 4.9.2013 in Ex.P12 goes to show that, there is a credit of Rs.3,00,000/= to the account of the Complainant and that on 10.9.2013 a sum of Rs.2,00,000/= has been withdrawn through cheque from the said account. However the defence of the Accused that, the Complainant has no document to show that, he has paid the said withdrawn amount of Rs.3,00,000/= to him cannot be seriously considered by the court in view of the fact that, the Accused himself has admitted his loan transaction with the Complainant in the year 2013, though according to him, it is only for a sum of Rs.1,00,000/=. Therefore it cannot be accepted that as on the date of lending, the Complainant had no financial capacity to do so.

27. In support of his arguments the learned counsel for the Complainant has relied upon the following decisions:-

1. In Bhanwarlal Kumawat Vs., State of Raj & ano., reported in 2014(2) DCR 782,

2. In Sayed Naushad Ali Vs., Siddhartha Sankar Dev & ano., reported in 2014(2) DCR 505,
3. In Surendra Thakrai Vs., State & ano., reported in 2014(2) DCR 136,
4. In Rayis Ahmad Vs., State of U.P. & Ano., reported in 2014 (2) DCR 508,
5. In Sri.M/s.Savik Vijay Engineering Pvt Ltd., Vs., M/s.Lloyds Finance Ltd., reported in 2014(2) DCR 141,
6. In P.J.Thomas Vs., Vijyakumari, reported in 2014(3) DCR 265,
7. In M.A.Abida Vs., M/s.HMT Watches Ltd., reported in 2014(3) DCR 273.

28. Thus by appreciating the entire evidence available on record, it clearly goes to show that, the Accused has tried to escape from his liability to pay the amount covered under the cheque, even though he has admitted his acquaintance as well as his financial transaction with the Complainant. On the other hand the Complainant has proved beyond reasonable doubt that the cheque in question has been issued by the Accused in his favour towards the discharge of his legally enforceable liability. Accordingly, I proceed to pass the following: -

ORDER By exercising the power conferred u/s 265 of Cr.P.C., the Accused is hereby convicted for the offence punishable u/s 138 of the Negotiable Instruments Act.

He is sentenced to pay a fine of Rs.4,25,000/- (Rupees Four lakhs Twenty Five Thousand only) within 30 days from today and in default of payment of fine, he shall undergo simple imprisonment for 6 (six) months.

Out of the fine amount so collected Rs.4,15,000/-(Rupees Four Lakhs Fifteen Thousand Only) is ordered to be paid to the Complainant as Compensation and the balance of Rs.10,000/- (Rupees Ten Thousand only) is ordered to be adjusted towards cost to the State exchequer.

The bail bond and surety bond of the Accused stands cancelled.

Issue free copy of Judgment to the Accused forthwith.

(Dictated to the Stenographer, transcript thereof is computerized and print out taken by her, verified, corrected and then pronounced by me in the open Court on this the 1st day of February 2017).

(SARASWATHI.K.N), XVI Addl.CMM., Bengaluru City.

ANNEXURE

1. List of witnesses examined on behalf of the Complainant:

PW.1 : Lokesh.R

2. List of documents exhibited on behalf of the Complainant:

Ex.P-1 : Attested copy of the acknowledgment of the J.P.Nagar Police;

Ex.P-2 : True of the complaint;
Ex.P-3 : True copy of the statement;
Ex.P-4 : Original Cheque;
Ex.P-4(a) : Signature of the Accused;
Ex.P-5 : Bank Memo;
Ex.P-6 : Copy of the Legal Notice;
Ex.P-7 : Postal Receipt;
Ex.P-8 : Courier Receipt;
Ex.P-9 : Postal Acknowledgment;
Ex.P-10 : Loan Agreement;
Ex.P-11 : Original Complaint;
Ex.P-12 : Statement of Accounts.

3. List of witnesses examined on behalf of the Accused:

- Nil -

4. List of documents exhibited on behalf of the Accused:

- Nil -

(SARASWATHI.K.N), XVI ACMM, Bengaluru City.

1.02.2017 Judgment pronounced in the open court vide separate order.

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Issue free copy of Judgment
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XVI ACMM, B'luru.