

Smt. N. Sujatha vs Sri. Vinod Yadav on 30 August, 2016

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

DATED : THIS THE 30TH DAY OF AUGUST 2016

PRESENT: LAKSHMINARAYANA BHAT.K., B.A., LL.B.
XVIII ADDL.C.M.M., BANGALORE
C.C.NO: 14596/2015

Complainant: Smt. N. Sujatha.,
S/o. N. Manjunath.,
Aged about 38 years,
Residing at No:47,
1st A Cross,
Parvathinagar,
Laggere,
Bangalore-560 038.

(Represented by Shri.K.R.Anantha
Murthy., Advocate)

V/s.

Accused : Sri. Vinod Yadav,
S/o. Late. Narasimhamurthy,
Aged about 22 years,
Residing at: Totada Ramakrishnappa
Building,
Shettihalli,
Jalahalli West Post,
Bangalore-560 015.

Also residing at:-
Chikkagundappa Nayakana Halli,
Arudi Post,
Saslu Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

(Represented by Sri.Harinath.L.,
Advocate)

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

Plea of accused: Plead not guilty

Final order

Accused is found guilty

Date of order:

30/8/2016

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 he 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 she has produced documents marked as per Ex.P.1 to Ex.P.7. The statement of the accused under Section 313 of Cr.P.C was recorded. The accused entered his defence and was examined as D.W.1. He has produced only documentary evidence marked as per Ex.D.1.

4. Heard the 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 30/1/2015 the accused had borrowed hand loan of Rs.90,000/- 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 he 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 : In the Affirmative, POINT NO.2 : As per final order, for the following:-

REASONS

7. POINT NO.1:- As per the complaint averments, that on 30/1/2015 the accused had borrowed loan of Rs.90,000/- from the complainant for his urgent legal necessities and agreed to repay the said amount within 3 months. He alleged to have executed an agreement in favour of the complainant on a stamp paper face value of Rs.20/- and handed over the cheque dated 29/4/2015 for Rs.90,000/- drawn on Corporation Bank, Vidyaranyapura Branch, Bengaluru. After borrowing loan, the accused had failed to make repayment as promised by him. Thereafter, the complainant presented the said cheque through State Bank of India, Laggere Branch, Bengaluru, but to her surprise as per memo

dated 2/5/2015 it was returned unpaid with an endorsement "Funds Insufficient". The complainant got issued legal notice to the accused dated 16/5/2015 in compliance to Section 138(b) of N.I. Act. The said notice returned to the sender with an endorsement "not claimed". The complainant in her affidavit filed in lieu of examination-in- chief deposed as per the averments made in the complaint.

8. The accused in his defence evidence admitted he is acquainted with the complainant and her husband Manjunath. The accused has specifically admitted on 9/7/2013 he had borrowed loan of Rs.1,80,000/- from the husband of the complainant Manjunath. At the time of borrowing, he had agreed to repay the said amount with interest thereon at 5% per month. It is further submitted after borrowing loan, every month the accused was making payment of Rs.9,000/- towards interest and Rs.10,000/- towards principal amount, in all Rs.19,000/- for a period of 9 months. Thereafter, on account of his financial difficulties he could not make repayment of the balance amount to the husband of the complainant. In the above circumstances, Manjunath the husband of the complainant had demanded the accused to issue a cheque for the balance amount of Rs.90,000/-. The accused has admitted issued Ex.P.1 cheque for Rs.90,000/- and handed over the said cheque to the husband of the complainant. It is further alleged the husband of the complainant has also obtained a blank signed stamp paper from the accused. The accused further claimed after issuing Ex.P.1 cheque for Rs.90,000/- he has paid interest to the husband of the complainant at the rate of Rs.9,000/- per month for a period of 4 months. The other defence of the accused is that Ex.P.3 notice sent on behalf of the complainant was not served. He specifically denied borrowed loan of Rs.90,000/- from the complainant or in discharge of the said debt issued Ex.P.1 cheque. He has disputed his liability to make payment of Ex.P.1 cheque to the complainant. For the aforesaid reasons he has prayed for dismissal of the complaint.

9. Before going into the merits of the case, it is appropriate to mention the accused has admitted Ex.P.1 cheque relates to his Bank account and also his signature appearing in the said cheque. As per his evidence, he had handed over Ex.P.1 cheque for a sum of Rs.90,000/- and it was undated and the name of the payee was not mentioned by him and he had handed over the said cheque to the husband of the complainant Manjunath. According to the complainant, on 30/1/2015 she had advanced Rs.90,000/- to the accused and at the time of borrowing the accused had promised to repay the said amount within 3 months. The complainant has produced Ex.P.7 agreement dated 30/1/2015 alleged to have been executed by the accused. The accused has produced Ex.D.1 agreement dated 9/7/2013 executed by him in favour of the husband of the complainant Manjunath. As per the recitals of Ex.D.1, the accused had borrowed loan of Rs.1,80,000/- from the husband of the complainant and he had agreed to make repayment of the said amount within 11 months. The accused has admitted execution of Ex.D.1 agreement and borrowed loan of Rs.1,80,000/-. The accused is in the habit of executing agreement at the time of borrowing loan from the complainant or her husband is proved by producing Ex.D.1 loan agreement. In order to prove the accused had handed over Ex.D.1 signed blank stamp paper to the husband of the complainant, except the interested testimony of D.W.1, there is no other documentary or oral evidence. During cross-examination of P.W.1, the accused has failed to disprove the validity and execution of Ex.P.7 loan agreement. As per the recitals of Ex.P.7, there is a specific reference regarding the accused had issued Ex.P.1 cheque dated 29/4/2015 for Rs.90,000/- in favour of the complainant for the loan amount.

10. The accused in his oral evidence admitted on 9/7/2013 he had borrowed Rs.1,80,000/- from Manjunath husband of the complainant. He claimed, out of the said amount, he has repaid Rs.90,000/- and still he is in due for payment of balance amount of Rs.90,000/-. As per the evidence of the accused, he has paid Rs.1,71,000/- to the husband of the complainant at the rate of Rs.19,000/- per month for a period of 9 months towards repayment of principal amount of Rs.90,000/- and Rs.81,000/- towards interest. In proof of the aforesaid contention of the accused regarding payment of Rs.19,000/- for a period of 9 months, he has not produced any documentary evidence. In this regard, except the interested testimony of D.W.1, there is no other evidence is available on record. The accused has admitted he has handed over Ex.P.1 cheque for Rs.90,000/- in favour of the husband of the complainant. In the event the defence of the accused has to be accepted, nothing prevented him for issuing the said cheque by filling the name of the payee. The evidence of the accused is silent regarding payment of interest on balance amount of Rs.90,000/- to the husband of the complainant. During cross- examination, once the complainant has shown ignorance regarding loan transaction between her husband Manjunath and the accused in connection with Ex.D.1 loan agreement. During the course of cross- examination, the complainant has changed her version and has deposed she is aware of the said loan transaction and the accused has fully repaid Rs.1,80,000/-. If the defence of the accused is accepted, there is no reason for the husband of the complainant Manjunath to waive interest on Ex.P.1 cheque amount of Rs.90,000/- balance loan amount. Even as per the contents of Ex.P.7 and Ex.D.1 agreement, there is no reference regarding payment of interest on the loan amount. As per Section 58 of Indian Evidence Act, facts admitted need not be proved. The accused during cross-examination of the complainant and in his defence evidence in clear and unambiguous terms admitted he is in due for repayment of balance loan amount of Rs.90,000/- to the husband of the complainant. In the above circumstances, even if the entire defence of the accused is accepted, then the payee or holder in due course is legally empowered to fill the instrument and present the cheque for encashment. Admittedly so far the husband of the complainant had not initiated any legal proceeding against the accused for the recovery of the balance loan amount of Rs.90,000/-. The accused having admitted the financial capacity of the husband of the complainant and borrowed loan of Rs.1,80,000/-, the cross-examination of P.W.1 challenging her financial capacity to advance Rs.90,000/- has to be discarded. The complainant in her evidence deposed she is doing tailoring, and also getting building rent of Rs.20,000/- per month. It appears in order to evade his liability, the accused has put forwarded such defence challenging the financial capacity of the complainant.

11. It is the defence of the accused regarding non-service of Ex.P.3 statutory demand notice. The complainant has sent Ex.P.3 notice to the accused through registered post, Ex.P.5 and Ex.P.6 are the unclaimed postal envelopes. In the said document, there is an endorsement "intimation delivered, door locked, not claimed". D.W.1 during his cross-examination specifically admitted the correctness of the address written on both these postal envelopes. Therefore, as per 27 of General Clauses Act, there is a legal presumption in favour of the complainant regarding letter sent through registered post. The accused has failed to rebut the said presumption appearing in favour of the complainant. In this regard, I have referred the Judgment of Hon'ble Apex Court reported in 2007 AIR SCW 3578 in C.C.Alavi Haji V/s. Palapetty Muhammed and another. In Para No.17, Hon'ble Court held "It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any

drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the Court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C.Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case, if the giving of notice in the context of Clause(b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act".

12. The accused during cross-examination of the complainant and in his defence evidence specifically admitted his signature appearing in Ex.P.7 loan agreement. As per Section 139 of N.I. Act, there is a presumption in favour of the complainant that unless the contrary is proved Court shall presume that the cheque had been issued in discharge of any debt or liability. Therefore, it is the burden of the accused to rebut the presumption by placing contra evidence. Ex.P.1 cheque is dated 29/4/2015 and as per Ex.P.2, it was dishonoured on 2/5/2015. The complainant has sent Ex.P.3 demand notice on 16/5/2015 within the stipulated period and the present complaint was filed on 15/6/2015 within the period of limitation. The complainant has fulfilled all the ingredients of Section 138 and 142 of the Act. The accused either during cross-examination of the complainant or in his defence evidence failed to put forward a probable defence and place prima facie evidence to prove the said defence. He has failed to rebut the presumption appearing in favour of the complainant under Section 139 of the Act. He has failed to establish handed over Ex.P.1 cheque for Rs.90,000/- in favour of the husband of the complainant Manjunath. In this regard, the accused could have produced his cheque book record slip. From the said document it is possible to ascertain the date of issuance of the cheque, name of the payee and the cheque amount. Therefore, my findings on Point No.1 is in the affirmative.

13. 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. 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. He is sentenced to pay fine of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only) and in default shall undergo simple imprisonment for 2 (Two) months.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.1,10,000/- (Rupees One Lakh Ten Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.10,000/- (Rupees Ten 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 30th day of August 2016).

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

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Smt. N. Sujatha.

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1 : Cheque No:459426 dated 29/4/2015
for Rs.90,000/- .
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 and Ex.P.6 : 2 postal covers.
Ex.P.7 : Loan agreement.

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

P.W.1 : Sri. Vinod Yadav.

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

Ex.D.1 : Loan agreement.

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. He is sentenced to pay fine of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only) and in default shall undergo simple imprisonment for 2 (Two) months.

Acting under Section 357 (1) (b) of Cr.P.C, out of the fine amount the complainant is entitled for Rs.1,10,000/- (Rupees One Lakh Ten Thousand Only) as compensation.

Acting under Section 357 (1) (a) of Cr.P.C, the balance amount of Rs.10,000/- (Rupees Ten 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.