

Y.M.Ramakrishna vs S.N.Doddegowda on 15 June, 2018

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 15th DAY OF JUNE 2018

C.C.NO: 12457/2013

COMPLAINANT: - Y.M.Ramakrishna,
S/o Muniswamappa,
Aged about 45 years,
R/o Lakshmiranganatha Nilaya,
Kempegowda Circle,
Yelahanka Old Town,
Bangalore-560 064.

(Represented by
Shri.N.D.Onkarappa , Advocate)

V/s.

ACCUSED: - S.N.Doddegowda,
S/o T.Narayanappa,
Aged about 40 years,
R/o Shettigere Village,
Jala Hobli,
Bangalore North,
Bangalore

(Represented by
Sri.A.B.Narayanaswamy, Advocate)

JUDGEMENT

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 accused is a known person and he was introduced to him through his friend Shivanna of Beethahalasur about 6 years back, in that connection the accused started visiting the complainant and disclosing his financial matters and in one of his visit about of one year back accused approached the complainant to lend some amount for his urgent need and necessity to invest the same in his real estate business. Accordingly, the accused borrowed a sum of Rs 15,00,000/- during the month of February 2012 and for repayment of said amount he had executed on- demand promissory note and agreed to pay interest at the rate of 1% per month and promised

to the complainant he will repay the amount within year and has paid interest for a period of 6 months thereafter he stopped to pay the interest. The complainant demanded the accused to repay the amount at that time the accused requested to extend the time for a period of 3 months on the ground that he has invested the money in some land dealing and getting back from that business he will repay the amount. The accused failed to repay the said amount. When the complainant demanded the accused to repay, he issued 3 posted dated cheques bearing No:755289, No. 755290 both dated 26/11/2012 for Rs.5,00,000/- each drawn on Vijaya Bank, Vidhyanagar Cross, Bengaluru and cheque No. 180201 dated 22/12/2012 for Rs.5,00,000/- drawn on HDFC Bank, MVM Branch, Bengaluru. When the complainant presented the first two cheques for encashment, it was dishonored with an endorsement "Funds Insufficient" and he presented the another cheque for encashment it is also dishonoured as " Account closed" on 18/1/2013 on . Thereafter the complainant issued legal notice on 30/1/2013 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.9 documents 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 has examined as D.W.1 and he examined one witness by name Ganapathi Radhakrishna as D.W.2 and he exhibited Ex.D.1 to D5 documents and 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:-

12) To disprove the complainant case, accused has examined as D.W.1 and in his evidence he categorically denied about the issuance of cheques in favour of the complainant for Rs.15,00,000/- as stated in the complaint and he has stated that in the chit transaction he has issued blank signed cheques and he has not issued said cheques for consideration etc., and he exhibited following 5 documents.

To substantiate the accused evidence he examined one Bank Manager, HDFC, Bangalore by name Ganapathi Radhakrishna as D.W.1 in his evidence he stated that the

13) During the course of arguments complainant and accused counsels filed written arguments in which i.e., complainant counsel argued that complainant has categorically, cogently proved his case by way of oral and documentary evidence i.e., borrowing of loan of Rs.15,00,000/- by the accused with the complainant and issuance of Ex.P.1 to 3 cheques to discharge the debts and other liabilities and filed a complaint within a time and he also relied upon following rulings.

1. AIR 2010 SC 1898 Rangappa Vs Mohan.
2. 2012 (3) AIR Kar R 838 Ningegowda Vs Y.H.Hanumantha.
3. 2015 (1) KCCR 235 Lale Patel Vs Sharanbasappa

4. AIR 2015 SC 2240 T.Vasanthakumar Vs Vijayakumari In the rulings of the complainant their lordships laid down the following principles.

- a) Stop payment instructions given by the accused is also punishable under section 138 of NI Act.
- b) Once accused has admitted his signature on cheques then presumptions under section 139 of NI Act is applicable to the case on complainant side. Etc.

14) On the other hand the accused also filed written arguments in which he reiterated the entire averments of his evidence and he argued that there is no specific date has mentioned in the complaint nor P.W.1 evidence exactly on what date he has paid amount to the accused and he also argued that in the year 2005 he has issued cheques to the complainant in chit transaction and said cheques have been misused in the year 2012 and filed the complaint to grab the money from the accused and he has no financial capability hence prays to acquittal of the accused and relied upon the following rulings.

1.2015 Crl.L.J 912 K.Subramani Vs K.Damodara Naidu

2. 2010 (5) KCCR SN 435 B.Giris Vs S.Ramaiah. 3.2008 Crl.L.J.2405 Sri Vinay Parulekar Vs Sri Pramod Meshram

4. 2008 Crl.L.J 2955 Rajendraprasad Gangabishen Porwal Vs Santoshkumar Parasmal Saklecha and anr

5. 2016 (2) AKR 419 Prabhakar Murthy Vs S.G.Shankaraiah 6.2014(4) KCCR3661 (SC) K.Subramani Vs Damodhara Naidu In rulings of the accused their lordships laid down the following principles.

- a) Unless proved the consideration by the complainant by way of oral and documentary evidence, i.e., his capability for the source of income he is not entitled for relief under section 138 of NI Act.
- b) If accused proved that non existence of consideration by raising probable defence then he is entitled for acquittal.
- c) It is bounden duty of the complainant to prove that cheques have been issued by the accused to discharge the debts and other liabilities.

15) So, on careful perusal of the aforesaid rulings and evidence of P.W.1 and DW.1 and 2 and arguments addressed by both the counsels, the admitted facts are that there is no dispute that Ex.P.1 to 3 cheques are belongs to the accused and they have dishonoured as per Ex.P.4 to 6 endorsements and notice has been served as per Ex.P.7 and it was returned as per shara of postal authorities. Further there is no dispute that DW2 is Bank Manager of HDFC Bank has admitted that account holder can be used the cheques even after closure of his account. The prime dispute in the present case is that issuance of Ex.P.1 to 3 cheques by the accused to discharge the debts and other liabilities. To prove the said fact complainant in his affidavit has reiterated the entire averments of

the complaint and he exhibited the Ex.P.1 to 9 documents. Of course, on outset on careful perusal of the entire case papers crystal clear about involvement of some transactions between complainant and accused. But during the entire case proceedings accused has denied the capability of the complainant to pay huge amount of Rs.15 lakhs to the accused as stated in the complaint.

16) On careful securitization of the pleadings and oral evidence of P.W.1 except pleadings with respect to the payment of consideration is concerned, complainant has nowhere stated exactly on what date and time he has been paid the amount of Rs.15 lakhs to the accused etc., for passing consideration, and he simply stated one sentence that the accused has borrowed sum of Rs.15,00,000/- during the month of February 2012, except that sentence he has not stated as argued by the accused counsel on what date complainant has paid the said consideration to the accused etc., Of course, merely the complainant has not stated a specific date for passing of consideration, it is not a sole ground to disbelieve the complainant arguments. But as per ratios of Hon'ble Apex court as relied by the accused counsel i.e., 2014(4) KCCR3661 (SC) K.Subramani Vs Damodhara Naidu and other rulings those referred above, it is crystal clear that, it is bounden duty of the complainant to prove the source of income including capability to pay huge amount to the accused. To substantiate the capability of the complainant i.e., owning of Rs. 15 lakhs prior payment to the accused except marking of cheques, endorsements, notice, RPAD return cover. The complainant has not placed any other records either statement of account nor passbook and other material how and what manner he acquired the source of Rs.15 lakhs etc., Of course, in the rulings of the complainant their lordships have enunciated ruled that once accused has admitted the signature on cheques then the presumptions under section 139 of NI Act aptly applicable to the case on complainant side, But the facts and circumstances of the case involved in the complainant rulings are entirely different from present facts and circumstances of the case. Because, since from the date of plea and 313 cr.p.c statement accused has denied the passing of consideration under Ex.P.1 to 3 documents . So, once accused has denied the said fact then burden lies on the complainant to prove his case either beyond reasonable doubt or preponderance of probabilities or other mode of proofs as per ratios enunciated by the Hon'ble Apex court.

17) Of course, D.W.1 also exhibited Ex.D1 to 5 documents they are rental agreement , pay slip, bank pass book, RTC etc., But they have not sufficient to disbelieve the complainant averments and believe that accused is financially well capability rather than the complainant as argued by the accused counsel. Further, admittedly complainant has desires the court for the relief under section 138 of NI Act. As such burden lies on him under section 101 to 104 of Indian Evidence Act. But the said burden has not been discharge in accordance with law i.e., the about source of income to pay amount of Rs.15 lakhs to the accused. So, in the absence of proof of said facts and any amount of evidence and arguments addressed by the complainant counsel have no merits. On the other hand, arguments of the accused counsel have got some merits in view of the aforesaid reasons. Accordingly I am of the considered opinion that, complainant has miserably failed to prove his case by way of oral and documentary evidence i.e., placing of cogent and corroborative evidence as per the ingredients section 138 of NI Act. On the other hand in view of non proof of complainant case accused is entitled for the benefit of doubt as he is not found guilty. Hence, accused is entitled for an acquittal and I answer this Point No.1 in the Negative.

18). 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 15th day of June 2018).

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

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Ramakrishna.

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P.1to 3 : Three Cheques.

Ex.P.1(a) to 3(a) : Signatures of the accused.

Ex.P.4 to 6	: Bank endorsements.
Ex.P.7	: Office copy of demand notice.
Ex.P.8	: Postal receipt.
Ex.P.9	: Return RPAD cover

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

D.W.1	: S.N.Doddegowda
D.W.2	: Ganapathi Radhakrishna

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: -

Ex.D.1	: Rental agreement dated 15.4.13
Ex.D.2	: DRK Infrastructure Pvt Ltd letter
Ex.D.3	: Pay slip
Ex.D.4	: RTC extract
Ex.D.5	: Vijaya Bank Pass book

XVIII A.C.M.M.,
BENGALURU.

11/1/2018
Judgment

(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. The accused is sentenced to pay fine of Rs.2,60,000/-

(Rupees Two Lakhs Sixty Thousand Only) and in default shall undergo simple imprisonment for 6 (Six) months.

Acting under Section 357 (1) (b) of
Cr.P.C, out of the fine amount the
complainant is entitled for Rs.2,50,000/-

(Rupees Two Lakhs Fifty Thousand Only) fine amount 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.

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