

## **Raja.P @ Rajanna vs Sri.V.Venkatesh on 3 February, 2020**

THE COURT OF THE XIX ADDL.CHIEF METROPOLITAN  
MAGISTRATE AT BENGALURU CITY.

Dated this the 3rd day of February, 2020.

PRESENT: SRI MADHVESH DABER, B.COM.,L.L.B(SPL).,  
XIX ADDL.C.M.M., BENGALURU.

Case No: C.C.No.4716/2019  
Complainant: RAJA.P @ RAJANNA  
S/o Parthasarathy.C,  
Aged about 47 years,  
R/at No.18/1B, 4th Cross,  
Shanthi Nagar,  
OM Shakthi Temple,  
Hongasandra, Bommanahalli,  
Bengaluru-560068.  
(By Mohan Reddy T.A., Advocate)

V/s

Accused: Sri.V.VENKATESH  
S/o Venkataramanappa  
Aged about 25 years,  
R/at No.618,  
2nd Cross, VP Road,  
Near Anjanaya Temple, Madiwala,  
Bengaluru-560068.

And also at

No.111, 2nd "A" Cross,  
VP Road, Opposite to LEVI Store,  
Near Anjanaya Temple Madiwal,  
Bengaluru-560068

Offence complained of: U/s.138 of N.I.Act.  
Plea of accused: Pleaded not guilty.

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CC No.4716/2019

Opinion of the Judge: Accused found not guilty. .  
Date of order: 3rd February,2020.

### **JUDGEMENT**

The complainant has filed this complaint U/s.200 of Cr.P.C. against the accused for the offence punishable U/s.138 of N.I.Act.

2. The brief facts of the complaint are that; The Complainant contends that, the complainant and accused being good friends, as a token of friendship the accused requested the complainant to pay a sum of Rs.5,00,000/- to improve his business as the accused was running a Flower Vending Business. The complainant considering his request and bonafides, extended his helping hand and paid a sum of Rs.5,00,000/- by way of cash on 19.11.2016. In this regard the accused executed a hand loan agreement dated 19.11.2016 and for assurance of prompt repayment of the said amount, issued post dated cheque for Rs.5,00,000/- bearing No.842655, dated 16.10.2018 drawn on Canara Bank, Madiwala Branch, Bengaluru-56. The accused undertaken in the said agreement that in case he failed to repay the amount the complainant could present the cheque for clearance. However, after several requests made by complainant the accused failed to repay the hand loan amount in terms of the agreement. Then the complainant presented the cheque for realization through his banker. But the said cheque came to be dishonored for the reason "Funds Insufficient". Thereafter, the complainant got issued a Legal Notice on 03.11.2018 to the accused which was duly served upon the accused on 08.11.2018. The accused neither replied the notice nor paid the cheque amount. Hence, accused has committed offence under Section 138 of Negotiable Instruments Act. Hence this complaint.

3. Soon after filing of the complaint, cognizance of the offence was taken. Matter was registered as P.C. After recording of sworn statement of the complainant, the Private Complaint lodged by the complainant was registered as a Criminal Case. Summons was issued as against the accused. The Accused appeared through his Counsel and he was enlarged on bail. Substance of accusation was read over to the Accused. The Accused pleaded not guilty and claimed to be tried.

4. The complainant has been examined as PW-1 and documents Ex.P.1 to Ex.P.8 were got exhibited and closed his side. One ObulaReddy has been examined as PW-2.

5. After closure of the complainant side evidence, accused Statement u/Sec.313 of Cr.P.C. was recorded. The accused denied the incriminating evidence in toto. The accused has been examined as DW-1 and no documents were got marked.

6. Heard Arguments.

7. Now, the points that arise for my consideration are as under:

i) Whether the Complainant proves that the accused in discharge of legally enforceable debt, issued Cheque for Rs.5,00,000/- (Rupees Five Lakhs Only) which on presentation came to be dishonoured and he has failed to honour the notice and not paid the amount and thereby committed offence u/Sec.138 of N.I. Act ?

ii) What order ?

8. My findings to the above points for consideration are as under:

Point No.1: In the Negative. Point No.2: As per final order for the following:

**:: R E A S O N S ::**

9. Point No.1: In order to prove his case, the Complainant viz., RAJA.P @ RAJANNA entered into the witness box and filed an affidavit in lieu of examination in chief and reiterated the complaint averments and got examined himself as PW and documents Ex.P.1 to Ex.P.8 were got exhibited and closed his side. One ObulaReddy has been examined as PW. The accused has been examined as DW and no documents were got marked.

10. During arguments the learned Counsel for Complainant has argued that, the accused has received an amount of Rs.5,00,000/- from the complainant for improvement of his business. For repayment of the said amount he issued cheque Ex.P1 which on presentation came to be dishonoured for the reason "Funds Insufficient". The complainant has complied all the legal formalities. The complaint is within time. The notice has been duly served upon the accused. So the accused has failed to discharge the burden cast upon him. The accused executed hand loan agreement Ex.P.8. Moreover one supporting witness viz., ObulaReddy has been examined. His evidence is not controverted. Moreover the case of the accused is not substantiated by leading cogent evidence. The issuance of cheque and transaction are not denied. The loan agreement is not denied. In the evidence of DW1 several admission were extracted which render the evidence of DW 1 doubtful. If at all the cheque was misused by the complainant, the accused should have taken legal action. But he has not taken any legal action against the complainant. Moreover nobody would give four blank signed cheques as a security for transaction of Rs.50,000/- The contention of accused is not supported by any documentary evidence. So the learned counsel for complainant prayed to convict the accused.

11. In support of his arguments, the learned Counsel for the complainant relied upon the following rulings; Typed balance

1. 2001 SC(Cri) 960 Hiten P.Dalal v/s Bratindranatha Banerjee.
2. 2015 AIR SCW 3040 T.Vasanthakumar v/s Vijayakumari.
3. 2006 CRI.L.J.1 Gorantla Venkateshwara Rao v/s Kolla Veera Rahava Rao and Anr.
4. (2001) 8 Supreme Court Cases 458 K.N.Beena v/s Muniyappan and Another.
5. ILR 2013 KAR 1201.  
M.Prakash v/s Sri Murugarajendra Co-operative Bank Ltd.,
6. 2002 (5) Kar.L.J.516.  
K.Sreedhar Rao.J. v/s Smt. Bhavani .
7. 2001(40 Kar.L.J.122 S.R. Muralidar v/s Ashok G.Y

8. 2004(3) KCCR 1816 L.Mohan v.s V.Mohan Naidu.

12. Per contra the learned counsel for accused argued that, there are several infirmities in the cross examination of PW□ which render his version doubtful. During the relevant period of time when the alleged transaction has taken place, there was demonetization of currency notes. At that time there was no possibility of complainant lending Rs.5,00,000/□in Rs.500/□currency notes. So the payment of Rs.5,00,000/□to accused is improbable. Nothing has been elicited in the cross examination of DW□ to disbelieve his evidence. The Ex.P.8 is a created document which was issued by the accused in blank form for the transaction of Rs.50,000/□ Moreover the accused was a Flower Business man. He was not in need of Rs.5,00,000/□in a single day. In a Flower business one cannot purchase flowers worth Rs.5,00,000/□in a single day unless there is a huge transaction of Rs.4,00,000/□per day. Here in this case the accused is a small business man. So he was not in need of Rs.5,00,000 as on the date of alleged transaction. So the case of the complainant is unacceptable one. Hence, he prayed of acquit the accused.

13. In support of his arguments, the learned Counsel for the accused relied upon Certified copy of Order sheet in C.C.No.33234 of 2018.

14. I have carefully gone through the principles of above rulings relied upon by the learned counsel for complainant and accused. Keeping in mind the principles of above rulings, I have examined the evidence on record.

15. It is trite principles of law that the presumption u/Sec.139 of N.I. Act is initially in favour of the Complainant that the cheque was issued for discharge of a legally recoverable debt or liability. However, the said presumption is rebuttable presumption. The Accused has to rebut the said presumption by taking a probable defence. The presumption can be rebutted even by eliciting facts from the cross□examination of PW1 or by leading defence evidence. For that Accused need not enter into the witness□box. Even the question of legally recoverable debt or liability can also be contested. Whether the presumption is rebutted or not? depends on facts and circumstances of each case. This principle is laid down by Hon'ble Supreme Court in AIR 2010 SC 1898 Rangappa v/s. V. Mohan. In the light of above principles of law now I have to see whether the presumption is rebutted or not? and Complainant has proved his case or not?

16. The brief facts of the case of the complainant are that, the accused borrowed a sum of Rs.5,00,000/□from the complainant to improve his business. So the complainant paid a sum of Rs.5,00,000/□on 19.11.2016. For repayment of the said amount accused issued the post dated cheque Ex.P.1 which on presentation came to be dishonored for the reason "Funds Insufficient". Hence, after complying legal formalities present complaint is filed.

17. On the other hand the accused contended that in the year 2016, for his business and family necessities he had borrowed Rs.50,000/□from the complainant. He paid Rs.3,000/□per week for 26 weeks and repaid the entire amount. However the complainant had obtained four blank cheques and one blank Bond paper as a security for the transaction of Rs.50,000/□ After payment of Rs.78,000/□to complainant, the accused demanded return of four cheques and one blank Bond

paper. But the complainant went on postponing the matter. Thereafter complainant misused the said cheque and filed false complaint against him.

18. In this case the accused has admitted the cheque and signature over the cheque. So also the loan agreement Ex.P.8 and signature of the accused over Ex.P.8 are admitted. So heavy burden is upon the accused to disprove the case of the complainant. In this regard accused entered into the witness box as DW□ and filed affidavit reiterating the stand taken by him. In this case in the cross examination he has admitted the receipt of the legal notice. He has also admitted that he has not given reply notice to the legal notice. Further he has admitted issuance of cheque to complainant as per Ex.P1 on 19.11.2016. It is also true that he has not produced any document to show that in November 2016 he had borrowed a sum of Rs.50,000/□from complainant. It is also admitted that he has not produced any document to show that he paid Rs.3,000/□to the complainant in a week. It is also true that he has improved his version that he has given four cheques of Canara Bank by filling them up to for Rs.50,000/□each. More importantly he has not taken any legal action for issuance of four blank cheques and one Bond paper to the complainant and he has not issued legal notice to the complainant to return those blanks cheques and Bond paper.

19. However, the accused has clearly deposed that he has signed over blank Bond paper and the complainant has taken the cheque as a security for the amount of Rs.50,000/□ In the circumstances of the case if the evidence of complainant is perused it appears that he has stated that he is a vegetable vendor and real estate agent. But his witness viz., ObulaReddy and accused deposed that complainant is running a Foot ware business. He has denied that the complainant is running Vegetable business and real estate business. It is to be noticed that accused is a Flower Vender. His own evidence discloses that he is carrying on business over the road in Madivala Bazar. The accused has no any shop for running his business. According to his own evidence the accused invests an amount of Rs.20,000/□for his daily business. Under such circumstances the complainant has not shown before the court as to for what reason the accused was in need of Rs.5,00,000/□in a single day. Admittedly accused has denied that during the festival season he invests an amount of Rs.1 to 5,00,000/□for flower business. Under such circumstances I am of the opinion that it appears from the evidence that the accused was not at all in need of Rs.5,00,000/□in single day for his business.

20. More important facts is that the alleged transaction as taken place on 19.11.2016. The complainant stated that one week prior to 19.11.2016 the accused demanded the money. But he paid the amount after 15 days. Then it is quite clear that the amount was not paid on 19.11.2016, but on a subsequent date. Admittedly on 08.11.2016 the demonetization of currency notes had taken place. At that time the Government has directed the public to deposit old currency notes of Rs.500/□and Rs.1000/□ Under such circumstances it is highly impossible that the complainant had Rs.500/□new currency notes with him as on 19.11.2016. So I am of the opinion that the contention of the complainant that he paid the amount in Rs.100/□and Rs.500/□currency notes on 19.11.2016 is highly impossible and unacceptable. Moreover complainant has failed to prove that as on 19.11.2016 he had Rs.5,00,000/□with him. So the financial capacity of complainant is not proved.

21. It is to be noticed that the PW❏ Obulareddy has deposed supporting the case of the complainant. However by the time his evidence was recorded he had improved his version and deposed that the amount was paid in Rs.100/❏and Rs.50/❏notes of which demonetization of currency notes had not taken place. But in my opinion that it is an improvement made by him only with an intention to help the complainant. So the contention of PW❏ that Rs.5,00,000/❏was paid in currency notes of Rs.50 and Rs.100 cannot be believed. Under such circumstances it becomes probable that the cheques which were given to the security for loan agreement of Rs.50,000/❏may have been misused by the complainant.

22. The complainant highly relied upon Ex.P.8 which is loan agreement of transaction for Rs.5,00,000/❏ In fact the stamp paper for loan agreement was purchased by complainant himself. It was not purchased by accused. Moreover it is not mentioned in the Ex.P.8 that the amount of Rs.5,00,000/❏was paid in old currency notes Rs.100 and 50. The PW❏ has deposed that he has not entered into an agreement for payment of interest and in this regard no document was executed. But in Ex.P.8 it is clearly mentioned that accused agreed to pay interest at 2%. So it clearly goes to show that the contention of complainant that accused borrowed Rs.,5,00,000/❏and agreed to pay interest at 2% is highly improbable. Moreover the PW❏ Obulareddy who has deposed in support of Ex.P.8 and identified his signature over it has deposed that he did not know the contents of the Ex.P.8. Further he deposed that the complainant was a financier and his good friend. The Bond paper was purchased by complainant himself. Under such circumstances it is quite natural that the PW❏ supported the case of the complainant and also made a prayer to convict the accused which cannot be accepted. Moreover the complainant has also admitted that he had no license to run chit and finance business. So these circumstances go to show that the version of complainant is unacceptable one. During the demonetization period it was highly improbable for the complainant to pay an amount of Rs.5,00,000/❏in new currency notes of Rs.100/❏and Rs.500/❏ So it is quite clear that the complainant's case is doubtful. The case of the accused is probable. The accused by eliciting facts from the cross examination of the PW❏ probablised his case that the cheques which were taken by complainant for a transaction of Rs.50,000/❏have been misused by the complainant and filed false case against him.

23. Hence considering all these aspects I am of the opinion that the complainant has failed to prove his case to the satisfaction of the court. The accused elicited facts from the cross examination of complainant and probablised his case. Thereby the accused has rebutted presumption under Section 139 of Negotiable Instruments Act. Hence, I am of the opinion that the accused is entitled for acquittal. Accordingly, I answer point No.1 in the Negative.

24. Point No.2:❏In view of my findings on the above point and the reasons stated therein, I proceed to pass the following:

ORDER Acting u/Sec.255 (1) of Cr.P.C., the accused is hereby acquitted of the offence punishable u/Sec.138 of N.I. Act.

The bonds of the accused stand bail bond and surety

(Dictated to the Stenographer, transcript thereof is computerized and print out taken by him is verified and then pronounced by me in the Open Court on this the 3 rd day of February,. 2020) (MADHVESH DABER) XIX ADDL.C.M.M., Bengaluru.

ANNEXURE:

Witnesses examined on behalf of the Complainant:

PW.1 RAJA.P @ RAJANNA.  
PW.2 OBULA REDDY.

Witnesses examined on behalf of the Accused:

DW.1 Sri.V.VENKATESH. Documents marked on behalf of the Complainant:

Ex.P.1	Cheque.
Ex.P.1(a)	Signature of the Accused.
Ex.P.2	Bank Endorsement.
Ex.P.3	Office copy of the Legal Notice.
Ex.P.4 & Ex.P.5	Postal receipts.
Ex.P.6 & Ex.P.7	Postal Acknowledgments.
Ex.P.8	Sale Agreement.
Ex.P.8(a) to 8(b)	Signatures of the Accused.

Documents marked on behalf of the Accused: □(MADHVESH DABER) XIX ADDL.C.M.M., Bengaluru.

03.02.2020 Judgment (Judgment pronounced in the open court vide separate order )  
ORDER Acting u/Sec.255 (1) of Cr.P.C., the accused is hereby acquitted of the offence punishable u/Sec.138 of N.I. Act.

The bail bond and surety bonds of the accused stand cancelled.

(MADHVESH DABER) XIX ADDL.C.M.M., Bengaluru.

Corrected