

G.V.Prakash Reddy vs N.K.Hameed Khan on 6 July, 2018

IN THE COURT OF LVII ADDL. CHIEF METROPOLITAN
MAGISTRATE, MAYO HALL UNIT, BENGALURU

-: PRESENT :-

PADMA PRASAD, BA (Law), LLB.

LVII ADDL. CHIEF METROPOLITAN MAGISTRATE,
BENGALURU.

DATED THIS THE 6TH DAY OF JULY, 2018.

C.C.No.54353/2015

COMPLAINANT : G.V.Prakash Reddy,
S/o Venkataramanappa
Aged about 49 years
Guttapalya, Gownipalli
Chintamani Hobli
Chikkaballapur Taluk

.Vs.

ACCUSED : N.K.Hameed Khan
S/o Late Hussain Khan
BMTc Division No 6
Indiranagar Depot
Driver cum conductor
(Token No 6742)
Bangalore - 560038.

JUDGMENT

The complainant filed this complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The complaint case in nutshell is that he and accused were working together and they are friends. The accused approached the complainant for a hand loan of Rs.3,00,000/- and paid the same to the accused. The accused towards the repayment of said amount, issued a cheque bearing No.595532 dtd:05.05.2015 for Rs.3,00,000/- drawn on Vijaya Bank, Ulsoor Branch. When the complainant presented the said cheque for encashment that has been returned without encashment with bank memo dtd:07.05.2015 stating "Funds Insufficient". Thereafter the complainant caused a legal notice to the accused on 14.05.2015. The accused instead of complying with the notice has given untenable reply. Hence, the complaint.

3. After filing the complaint, sworn statement of the complainant has been recorded and on perusing the materials on record i.e., cheque, bank endorsement, legal notice and documents for having been caused the notice to the accused, the court has been taken the cognizance of offence and issued summons to the accused.

4. In response to the summons, the accused appeared through his counsel and he was on court bail. Plea has been recorded; accused pleaded not guilty and claimed to be tried.

5. To prove the case, the complainant got examined himself as P.W.1 and got marked documents at Ex.P.1 to P.13.

6. On closure of complainant side evidence, the accused statement has been recorded under Sec.313(1)(b) of Cr.P.C., by placing the incriminating evidence appeared against the accused that are denied by the accused.

7. The accused examined himself as D.W.1 in support of his defense and also got marked documents at Ex.D.1 and 5. The case of the accused is that he and the complainant working together in BMTC. The complainant after knowing the difficulties of the accused assured the accused to provide society loan and asked him to give 2 blank signed cheque. Accordingly the accused has issued a cheque bearing No.595532, 595533 drawn on Vijaya Bank, Ulsoor branch along with one signed Rs.50/- stamp paper and also issued 3 months pay-slip, 3 months bank statements. In spite of that the complainant has not provided any loan to him. The accused also claimed that the complainant has filed one case personally against him for Rs.3,00,000/- and also got filed another case through the relative of the accused namely Raghunath Reddy on the file of JMFC Court, Madanapalli for Rs.4,00,000/-. The accused also claimed that he has purchased Rs.50/- stamp paper on 14.03.2014 and totally denied the transaction claimed by the complainant. The accused totally denied the complaint case and also issuance of cheque towards the discharge of any debt and claims that the complainant by misusing the blank signed cheque filed a false complaint against him. Accordingly prayed for dismissal of complaint.

8. On the basis of above, the point for consideration is that;

"Whether the complainant has proved that the accused has committed the offence punishable under Sec.138 of Negotiable Instruments Act?"

9. Heard the arguments and perused the materials on record. On that basis my finding on the above point is in the "Affirmative" for the following;

REASONS

10. The complaint case in nutshell is that he and accused were working together and they are friends. The accused approached the complainant for a hand loan of Rs.3,00,000/- and paid the same to the accused. The accused towards the repayment of said amount, issued a cheque bearing No.595532 dtd:05.05.2015 for Rs.3,00,000/- drawn on Vijaya Bank, Ulsoor Branch. When the complainant presented the said cheque for encashment that has been returned without encashment with bank memo dtd:07.05.2015 stating "Funds Insufficient". Thereafter the complainant caused a legal notice to the accused on 14.05.2015. The accused instead of complying with the notice has given untenable reply. Hence, the complaint.

11. The accused examined himself as D.W.1 in support of his defense and also got marked documents at Ex.D.1 and 5. The case of the accused is that he and the complainant working together in BMTC. The complainant after knowing the difficulties of the accused assured the accused to provide society loan and asked him to give 2 blank signed cheque. Accordingly the accused has issued a cheque bearing No.595532, 595533 drawn on Vijaya Bank, Ulsoor branch along with one signed Rs.50/- stamp paper and also issued 3 months pay-slip, 3 months bank statements. In spite of that the complainant has not provided any loan to him. The accused also claimed that the complainant has filed one case personally against him for Rs.3,00,000/- and also got filed another case through the relative of the accused namely Raghunath Reddy on the file of JMFC Court, Madanapalli for Rs.4,00,000/-. The accused also claimed that he has purchased Rs.50/- stamp paper on 14.03.2014 and totally denied the transaction claimed by the complainant. The accused totally denied the complaint case and also issuance of cheque towards the discharge of any debt and claims that the complainant by misusing the blank signed cheque filed a false complaint against him. Accordingly prayed for dismissal of complaint.

12. The complainant in support of his case examined himself as P.W.1 by filing evidence affidavit wherein he stated in consonance with the complaint case and also the complainant has produced the documents at Ex.P.1 to 13. Ex.P.1 is the cheque, Ex.P.2 is the Bank Return Memo, Ex.P.3 is the O/c of the legal notice, Ex.P.4 and 5 are the postal receipts and returned postal cover, Ex.P.6 is the reply notice, Ex.P.7 is the loan agreement dtd:14.03.2014, Ex.P.8 is the RTC Extract, Ex.P.9 is the notarized copy of the voter ID card, Ex.P.10 and 11 are 2 APMC receipts, Ex.P.12 and 13 are the 2 pay- slips of the complainant. In this case the accused in the reply notice pleaded ignorance about the possession of his cheque by the complainant but in the defense evidence claimed that he has issued the cheque to the complainant as the complainant assured him to provide loan in the society. The accused not disputed his signature in the cheque. Hence, issuance of the cheque in favour of the complainant has been admitted by the accused during the trial. The cheque presented within its validity, legal notice has been issued in time and the complaint is also filed in time hence, the complainant satisfied the statutory requirements contemplated under Sec.138(a) to (c) of N.I.Act. As such certainly the initial presumption under Sec.139 of N.I.Act can be drawn in favour of the complainant.

13. When the complainant made out a prima-facie case to draw the initial presumption under Sec.139 of N.I.Act in favour of the complainant, the burden shifts on the accused to prove the contrary to the complaint case and the accused is expected to make out a probable defense in the case. In the case on hand the specific defense of the accused is that the complainant after knowing the difficulties of accused assured him to provide a society loan and asked him to give 2 blank signed cheques and stamp paper. Accordingly, he has issued 2 blank signed cheques bearing No.595532, 595533 drawn on Vijaya Bank and one signed Rs.50/- stamp paper along with 3 months pay slip and 3 months bank statement to the complainant. Per-contra, the complainant specifically claimed that on 14.03.2014 he has advanced Rs.3,00,000/- to the accused and accordingly the accused executed a hand loan agreement in favour of the complainant. As such the complainant has to prove his case and the accused has to prove the defense.

14. The complainant in order to prove his case relied much on Ex.P.7 document i.e. the loan agreement executed by the accused in favour of the complainant. The accused admitted his signature in the loan agreement at Ex.P.7(a). The said signature has been marked on confrontation with the accused. The accused during his evidence specifically claimed that he was in need of money in the year 2013- 14 and the complainant assured him to provide society loan. This fact sufficiently shows that in the year 2013-14 or during the relevant period claimed by the complainant the accused was in need of money. Hence, there is possibility of borrowing the loan from the accused.

15. The accused totally disputed the borrowing of money from the complainant. After the receipt of legal notice, the accused has given a reply as per Ex.P.6. In the Ex.P.6 notice, the accused totally disputed the transaction between him and the complainant. In the reply notice at para NO.6 the accused claimed that he is not aware that how the cheque came to the possession of the complainant. Therefore, in the reply notice the accused disputed the issuance of cheque in favour of the complainant. Per-contra the accused himself admitted during his evidence that he and the complainant were working together and after knowing the difficulties of the accused, the complainant promised him to provide a society loan and obtained the cheque from the accused. Therefore, the accused has taken a contradictory defense in the case. The admission given by the accused during his cross-examination also discloses that he was in need of money and also he used to borrow money regularly from the bank etc.

16. The accused disputed the borrowing of any money from the complainant claiming that 14..03.2014 is a working day and the complainant and accused were on duty as such it is not possible for the complainant to advance the money to the accused at his house. It is true that the complainant in his evidence stated that he was on duty on 14.03.2014 etc., but the stamp paper at Ex.P.7 has been purchased by the accused on 14.03.2014 at 1.46 p.m. If it were so, this accused was not on duty on 14.03.2014 at 1.46 p.m. Admittedly the accused claimed that he has given a signed stamp paper to the complainant hence, the stamp paper has been purchased by the accused himself and the said stamp paper purchased at 1.46 p.m. on 14.03.2014. The complainant claimed that 14.03.2014 is Friday and i.e., weekly off for them. On perusal of calendar it is clear that 14.03.2014 is a Friday hence, it is clear that this accused and complainant were not on duty on that day, the purchasing of the stamp paper on 14.03.2014 at 1.46 p.m. by the accused also probablise the said fact. It is also not the case of accused that the complainant has purchased the stamp paper in his name.

17. Admittedly, the accused during his evidence claimed that the accused asked him to give 2 signed blank cheques and 1 signed stamp paper in order to get the loan from the Society. If it were so, the intention of the accused to get the loan from the society. If it were so, the name of the 2nd party in the stamp paper has to be mentioned as concerned society or respective financier as the stamp paper has been purchased for the specific purpose of obtaining the loan but the name of the complainant has been stated as 2nd party. It is not the case of the accused that the complainant himself purchased the stamp paper in his name or told the accused to purchase stamp paper by mentioning the name of complainant in the stamp paper. The defense of the accused discloses that he has purchased the stamp paper voluntarily in order to get the loan. As per entries found in said stamp paper the stamp paper has been purchased by the accused and he himself paid the stamp

duty. Now it is relevant to note the object of purchasing of stamp paper. The stamp paper has been purchased by the accused for the purpose of agreement and the agreement to be entered between the complainant and the accused. It is specifically stated in the stamp paper that 1st party is N.K.Hameed Khan who is the accused and the 2nd party is G.V.Prakash Reddy is the complainant. This fact shows that the stamp paper is not at all purchased with the intention to borrow any loan from the society or bank but the stamp paper has been purchased only with the intention to borrow loan from the complainant and execute the hand loan agreement in favour of the complainant.

18. The accused claimed that after obtaining the signed stamp paper and cheques has not advanced the loan to him. Admittedly the accused was in need of money at that time. Whether he has borrowed any loan from others, society or bank to meet his legal necessity is not explained. It is also not the case of the accused that he has borrowed money from others or society or banks when the complainant refused to pay the money to him. In the absence of any such case, it has to be accepted that this accused has borrowed money from the complainant and while borrowing the money he has executed the Ex.P.7 hand loan agreement. As already stated earlier, the signature in the said hand loan agreement is not in dispute and the document is marked without any objection and the signature in the agreement is also admitted signature. In this context it is useful to refer the decision reported in; ILR 2004 Kar 183 in a case of Narbada Bai .Vs. Birendrakumar Jaiswal and another held that;

"Evidence Act Sec.17, 61 and 62. Proof of contents of document - mere production and marking of document as exhibit not enough - execution has to be proved by admissible evidence. But where document produced are admitted by the signatories there to and then marked as exhibits - held - no further burden to lead additional evidence to prove writing and its execution survives".

19. Therefore, it has to be accepted that the accused voluntarily executed the hand loan agreement in favour of the complainant after borrowing the money.

20. The accused disputed the money lending capacity of the complainant. The complainant in order to prove the said fact produced the RTC Extract of his property at Ex.P.8, as per said document this complainant owns a property to the extent of 1 Acre, 9 guntas and also produced 2 APMC receipts for having been sold the Tomato as on 19.06.2013 and 24.06.2013. The amount under the said 2 receipts is more than Rs.3,00,000/-. Apart from that the complainant is a employee under the BMTC and also having salary. Even according the defense of the accused the complainant is advancing the money to various persons. The said contention also shows that the complainant had sufficient means to advance the loan. Apart from that when the accused admitted the issuance of cheque he is estopped from disputing the money lending capacity of the complainant under Sec.121 of N.I.Act. Further, the Ex.P.7 hand loan agreement certainly falsifies the defense of the accused that the complainant has no capacity to advance the money.

21. The accused also claimed that the complainant is a Government employee as such he cannot advance money without obtaining permission from the higher or concerned authorities. It is true that as per KCSR the complainant has to obtain necessary permission either to advance or borrow

money exceeding the prescribed limit but that itself does not disentitled the complainant from recovering the amount advanced as a loan particularly when the complainant shows his source of income and financial capacity. Further as per Rule 21 of Karnataka Civil Service Rules, the employee is permitted to advance one month salary as a loan to relative and friends. Any advancing of loan extending one months salary requires the prior permission. Of course it may be the violation of rules subject to disciplinary actions. The said disciplinary action has to be taken by the concerned higher authorities of the complainant. Further, mere advancing the money to the co-staff or colleague itself is not a crime and the object of aforesaid rules is to hold the official accountable and if the complainant shows his source of income certainly he can advance the money. Therefore, merely the complainant has not obtained any permission from the higher authority itself is not a ground to dismiss the claim of the complaint. In view of these facts the observation made in judgment passed by XXIII ACMM in C.C.No.3281/2014 is not a ground to dismiss the claim of complainant and part from that the judgment passed by the other ACMM court cannot operates as precedent to this ACMM court.

22. The another defense of the accused is that the accused is doing a money lending business. Of course the complainant has produced a material to show that the complainant has filed one cheque bounce case against B.V.Ravindra who is another colleague of complainant and accused in C.C.No.3281/2014 and also there is one case filed by Fyroz Khan against the complainant before the Gounpalli Police Station. Of course the Gounpalli police registered a case against the accused for the offence punishable under Section 39 of Karnataka Money Lenders Act and under Sec.4 of Karnataka Prohibition of charging exorbitant interest act 2004 but there is no material on record to show that this complainant held guilty of the offence. Even if those 2 documents are accepted, the complainant claimed the advancing of loan to this accused and Ravindra who are the colleagues of complainant and one Fyroz Khan. Therefore, there is no material on record to show that this accused has advanced loan to various persons. Advancing of money for 2 to 3 persons itself does not establish that the complainant is doing the money lending business without having any license.

23. The accused also claimed that the complainant has filed 1 case against the accused at JMFC Court, Madanapalli through his relative Raghunatha Reddy. The complainant denied the said fact and the accused has not produced any material to show that the said Raghunatha Reddy is the relative of the complainant. Even nothing has been elicited from the mouth of complainant to show that the said Raghunatha Reddy is the relative of this complainant. Hence, the said contention of the accused cannot be accepted.

24. The accused has taken 2 contradictory defense in the case. Immediately after the receipt of legal / demand notice, the accused has issued a reply totally denying the transaction and also denied the issuance of any cheque in favour of the complainant and also pleaded ignorance about the possession of cheque by the complainant. Contrary to this contention this accused during the cross-examination of complainant as well as during his evidence specifically admitted the issuance of cheque, stamp paper, pay slips, bank statements etc. In spite of handing over all these documents the accused totally denied the said fact in the reply notice. The said fact sufficiently shows that this accused used to take false defense in the case. The complainant also shows that he has the capacity to advance the loan and the accused also admitted that he has approached the complainant for loan.

The complainant has also proved the execution of hand loan agreement at Ex.P.7. Hence the complainant has sufficiently proved that he has advanced money to the accused and this accused has issued the cheque towards the discharge of debt that is the hand loan borrowed by him. Therefore, it is clear that the accused has failed to make out a probable defense and thereby rebut the presumption envisaged under Sec.139 of N.I.Act. Therefore, for the aforesaid reasons this court is of the humble opinion that the complainant proved his case beyond reasonable doubt.

25. In this case, the complainant has claimed compensation. As per Section 357 of Criminal Procedure Code and as per the ruling reported in; 2001 Cri.L.J. 950 (SC), (Pankajbai Nagibai Patel V/s State of Gujarath), the court can award compensation and there were no limits for the same. As such, the court has to consider how much compensation could be awarded in this case. As per Section 80 of Negotiable Instruments Act, the interest at 18% P.A. can be granted when there is no agreed rate of interest. As per the proved facts of the case, the accused has issued cheque towards the legally enforceable debt, the accused has issued a cheques dated 05.05.2015 as per Ex.P.1 and thus, the accused has to pay interest on the cheque amount from the date of cheque and so, the accused has to pay interest for about 3 years 2 months till this date. If the interest is calculated at 18% P.A. to the cheque amount for the above period, certainly, the complainant is entitled for the suitable compensation to the cheque amount as per Section 80 of Negotiable Instruments Act. The cheques amount in this case is Rs.3,00,000/- and if the interest is calculated for 38 months, the accused shall pay the interest to the complainant at 18% P.A. that amounts to Rs.1,71,000/-. The case is pending nearly about 3 years as such if the cost of Rs.2,000/- is added to the compensation, it will comes to Rs.4,73,000/- (Cheque amount is Rs.3,00,000/-, interest is Rs.1,71,000/- and cost Rs.2,000/-). Hence, this court is of the humble opinion that in all the complainant is entitled for compensation amount of Rs.4,73,000/-. Further as per the ruling reported in 2000 Cri.L.J 1793(b) SC - (State of Karnataka V/s Krishnappa) wherein it is held that while imposing sentence, the courts are expected to properly operate sentence system, it should be impose such sentence for code offence which serve as detention of commission of like offences by others - Socio economic status, prestige, race, caste or creed of accused or victim are irrelevant considerations in sentencing policy. Hence, in this case also, if the accused is punished with simple imprisonment for one year and pay compensation to the complainant. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Hence, in this case after awarding the compensation certainly imposing of fine to the accused is sufficient sentence.

26. As per the ruling reported in 2002 Cri.L.L. 1003, SC (Suginthi Suresh Kumar V/s Jagadishan). Where in it is held at page no.1005, at para 5 that:

"In the said decision this court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decisions of this Court in 1988 (4) SCC 551 Hari Singh

v. Sukhbir Singh. In the said decision this court held as follows:

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also very depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default."

27. In view of the aforesaid precedent of Hon'ble Apex Court, if the accused is ordered to further imprisonment of a year in default to pay the compensation will make the ends of justice. Accordingly I answer the above point in "Affirmative". In the result, following;

ORDER Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Sec.138 of N.I.Act and sentenced him to pay a fine of Rs.5,000/-. In default to pay the fine amount the accused shall undergo simple imprisonment for 3 months.

Acting under Section 357 of Cr.P.C., the compensation is awarded and the accused shall pay compensation of Rs.4,73,000/- to the complainant. In default to pay compensation, the accused shall undergo simple imprisonment of a period of 1 year.

Office to furnish free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the 6th day of July, 2018) (PADMA PRASAD), LVII ACMM, BENGALURU.

ANNEXURE

1. Witnesses examined on behalf of Complainant:

P.W.1	:	Sri.G.V.Prakash Reddy
2. Documents marked on behalf of complainant:		
Ex.P.1	:	Cheque
Ex.P.1(a)	:	Signature of the accused
Ex.P.2	:	Bank return memo
Ex.P.3	:	O/c of the legal notice dtd:14.05.2015
Ex.P.4	:	2 Postal receipts
Ex.P.5	:	Unserved notice
Ex.P.5(a)	:	Unserved postal cover
Ex.P.6	:	Reply dtd:27.05.2015
Ex.P.7	:	Loan agreement dtd:14.03.2014
Ex.P.8	:	RTC extract

Ex.P.9 : Notarised copy of voter ID card

Ex.P.10 : Two APMC receipt
&
Ex.P.11
Ex.P.12 : Two pay slips
&
Ex.P.13

3. Witnesses examined on behalf of Accused:

D.W.1 : Sri.N.K.Hameed Khan

4. Documents marked on behalf of Accused:

Ex.D.1 : Certified copy of the Judgment in
C.C.No.3281/2014
Ex.D.2 : Certified copy of the order sheet
Ex.D.3 : Certified copy of the F.I.R.
Ex.D.4 : Certified copy of the complaint
Ex.D.5 : Certified copy of the charge sheet

(PADMA PRASAD)
LVII ACMM, BENGALURU.