

Presented The Cheque To His Banker ... vs May Be Through Cheque. He Does Not ... on 7 June, 2018

IN THE COURT OF THE V ADDL. SMALL CAUSES JUDGE &
24th ADDL. CHIEF METROPOLITAN MAGISTRATE
Court of Small Causes, Mayo Hall Unit, Bangalore
(SCCH-20)
C.C.No.28232/2006

Present: Smt.A.G. Shilpa,B.A., LL.B,
V Addl. Small Causes Judge,
& XXIV A.C.M.M.

Dated this the 7th day of June, 2018

1. Sl.No. of the case C.C. No.28232/2006
2. The date of Institution 03.04.2006
3. The date of commencement of the evidence 10.01.2017
4. Name of the Complainant N.A.Thimmaiah
S/o Late Aiyappa
Aged about 38 years,
Residing at No.2371,
16th main, HAL II stage,
Bangalore- 560008.
5. Name of the Accused : (By Pleader Sri.V.Harihara,
Adv.,)
M.Raja,
S/o M.Murugan,
Aged about 44 years,
1st cross, Shivashakti Street
Marathahalli post
Bangalore 560037

Office Address;
M.Raja
Helper B Staff No.2381
ISRO, Satellite center
Airport Road, HAL post

SCCH-20

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CC.No.28232/2006

Bangalore 560017

6. The offence complained of or proved (By Pleader Sri.Jagadish.SR,
Adv.)
Under Sec.138 of N.I. Act.

- | | | |
|----|---|----------------------|
| 7. | Plea of the accused on
his examination | Pleaded not guilty |
| 8. | Final Order | Accused is Acquitted |
| 9. | Date of such order | 07.06.2018 |

JUDGMENT

This is a complaint filed by the complainant against the accused for the offence punishable U/Sec.200 of Cr.PC praying to punish accused for the offence punishable U/sec., 138 of the Negotiable Instruments Act., 1989.

2. Brief averments of the complaint are as under:

It is submitted that the accused had borrowed loan of Rs.1,00,000/- from complainant to purchase an immovable property on 02.07.2004 and promised to repay the same within 1½ year and agreed to pay interest @ 1.5% pm., on the principle amount. The complainant further submitted that accused towards repayment of hand loan issued post dated cheque bearing No.769502 dated 02.02.2006 for a sum of Rs.1,00,000/- drawn on Vijaya bank, Trinity circle Bangalore 560001 in favour of complainant. The accused neither paid interest nor repaid the loan. Therefore, the complainant presented the cheque to his banker Corporation Bank Dommulur branch, Bengaluru and it was dishonored for funds insufficient on 03.02.2006. The complainant as per request of accused represented the cheque on 07.02.2006 which again dishonor for funds insufficient on 08.03.2006. The complainant issued legal notice to accused on 27.02.2006 demanding the repayment. The accused received the notice sent by UCP and RPAD returned by postal authority has not claimed as insufficient address. Hence, this complaint is filed.

3. On the basis of the complaint, cognizance of offence was taken and the complaint was registered. Then, sworn statement of the complainant was recorded. After hearing the counsel for the complainant, the court found sufficient material to issue process against the accused for the offence punishable U/s 138 of the Act. Accordingly, this criminal case was registered against the accused for the said offence and issued summons to the accused. The accused has appeared before court through his counsel and he is enlarged on bail. Then, substance of accusation was read over and explained to the accused. He has pleaded not guilty. Hence, the complainant was called upon to give evidence.

4. During evidence, the complainant has examined himself as PW.1 and got marked documents as Ex.P1 to Ex.P8. Then, statement of accused was recorded U.s 313 of CR.PC. The accused has examined himself as DW-1 and also examined a witness as DW-2 and got marked documents as Ex.D1.

5. Heard the arguments and perused the record.

6. Now the points arise for my considerations are:

1. Whether the complainant prove that accused issued cheque in his favour towards discharge of legally enforceable debt and it is dishonored for insufficient funds, thereafter he failed to pay the cheques amount within time inspite of service of demand notice?

2. What order?

7. My findings are:

POINT NO.1 : In Negative.

POINT NO.2 : As per final order.

REASONS

8. Point No.1:- The PW1 has filed evidence affidavit reiterating the complaint averments and narrated that accused had borrowed loan of Rs.1,00,000/- from complainant to purchase an immovable property on 02.07.2004 and promised to repay the same within 1½ year and agreed to pay interest @ 1.5% pm., on the principle amount. The complainant further submitted that accused towards repayment of hand loan issued post dated cheque bearing No.769502 dated 02.02.2006 for a sum of Rs.1,00,000/- drawn on Vijaya bank, Trinity circle Bangalore 560001 in favour of complainant. The accused neither paid interest nor repaid the loan. Therefore, the complainant presented the cheque to his banker Corporation Bank Dommulur branch, benagluru and it was dishonored for funds insufficient on 03.02.2006. The complainant as per request of accused represented the cheque on 07.02.2006 which again dishonor for funds insufficient on 08.03.2006. The complainant issued legal notice to accused on 27.02.2006 demanding the repayment. The accused received the notice sent by UCP and RPAD returned by postal authority has not claimed as insufficient address

9. The Ex.P.4 legal notice dated; 27.02.2006, Ex.P.5 UCP receipt & Ex.P.6 postal receipt, Ex.P7 and 8 two returned and unserved notice. The section contemplates a notice in writing and UCP is valid for the purpose of section 138.

10. The PW1 has produced the documents Ex.P.1 cheque, Ex.P2 and 3 bank memo dated 03.02.2006 and 08.02.2006 respectively and the cheque was returned with an endorsement funds insufficient.

11. The PW-1 assert that accused borrowed loan of Rs.1,00,000/- and he paid it by way of cash at his office. He is not money lender. He is doing real estate business at 1.21, Srinivas Estate, 18th main road, HAL 2nd stage, since 25 years, in the name and style Srinivas Estate. At the same time, the complainant has lent loan for a return of interest of Rs.1.50 which is not reduced to writing. He assert that accused did not pay him interest and he did issue written notice demanding for interest. In respect to this transaction, documents are not forthcoming for declaration of loan to Income Tax.

It is the law that an individual who lends money for interest is taxable. It is not case in this complaint loan is given to family members or friend. The loan to family members or friend is usually un-secured, terms and conditions are undefined or hazy. Moreover such a loan is usually interest free. In order to avoid losing of money, people practice taking cheques. Definitely the complainant is neither family member or friend and transaction is neither gift or tax free. In case of family member and friends Interest free loans are non taxable for both lender and borrower. It is complicated only when there is provision for payment of interest as the lender will have to pay the tax on the interest earned. Loan for purchase of site is not eligible for tax benefits. The complainant has collected cheque according to him for principle amount and does not include interest. Lending a loan for interest and gains should be declared to HM Revenue and customs on self assessment tax return or inform local tax office.

12. It is elicited from complainant that he hold an account in Corporation bank Dommalur branch from 2002-2010. During that period he held only one account. In the name of his company or his name there was an account at state bank of Hyderabad. 100 feet road Bangalore. Accused had borrowed loan twice including this transaction. He does not remember the amount borrowed at first time. At first time, he gave money to accused may be through cheque. He does not remember the cheque is drawn on which bank. He denied that the accused has discharged his debt, he had in fact lent Rs.10,000/- only to accused, he had deducted Rs.500/- towards interest and paid Rs.9,500/- to the accused through a cheque drawn on State Bank of Hyderabad, Indranagar Branch, Bangalore in the month of May 2004. He further deposed, since he had closed the said account, he is unable to produce the statement of account. He can produce if it is available?. The PW-1 further denied the accused issued Ex.P1 cheque as security towards discharge of Rs.10,000/- only. He denied for filling the date, name and the amount in Ex.P1 cheque. He denied that he issued on 20.05.2004 cheque bearing No.494664 to the accused for Rs.9,500/-.

13. The learned counsel for accused emphasized on the admission of PW-1 in cross examination dated 10.04.2018 that he stated before court on 05.01.2018 that cheque No.494664 for an amount of Rs.9,500/- dated 20.05.2004 was issued to accused. At the same time, the PW-1 who was doing business transaction by cash and paid Rs.1,00,000/- to accused did not produce bank statement or other document to show he had with him cash of Rs.90,500/- either on 02.07.2004 or 20.07.2004 in his account.

14. It is the defence of accused that he was introduced to complainant through Mr.Sunil Nayar and he took him to complainant office at Indranagar where complainant demanded for identity card zerox, 3 months salary certificate, Rs.50/- bond paper and blank cheque. He obtained on demand pro note signed and sealed from him. He demanded these documents to lend him loan. The complainant told him to come after week for money. He went after a week to his office. He took all the document and issued a cheque of Rs.9,500/- drawn on State bank of Hyderabad, Indranagar branch. For Rs.10,000/- after deducting charges has issued cheque of Rs.9,500/- he took the cheque and presented to State bank of Hyderabad, Indranagar branch and it was self cheque which belongs to complainant account. Mr.Sunil Nayar was present while complainant issued the cheque on May 2004 and he had agreed to pay interest of 3% every month. He has returned the loan on next preceding month. One month he paid interest. He repaid loan by cash at complainant office. He

demanded to return the documents. Complainant assured him that his documents were at locker and he shall return it to him. The complainant did not return the documents. He assured that he will return since he well known to him. Accused approached every month at his leisure and asked to return the documents. He again assured the documents were at personal locker and he is searching for it and he will return it soon. One year lapsed. After 10 year, he received notice at his office from the court and he engaged the counsel to prosecute the case.

15. The DW-1 was cross examined at length. Ex.p9 is emphasized to show that accused willfully absconded . However, the Hon'ble court has observed that petitioner is an employee of ISRO and question of proclamation was unwarranted, the petitioner gave acceptable explanation regarding his absence and also before execution of proclamation, he appeared before the court voluntarily and moved for bail. He was enlarged on bail on 12.08.2016 by the Hon'ble LVII ADDl.City Civil and Session Judge, on the file of CRL.P No.25153/2015.

During cross examination of DW-1 it is elicited as follows;

" That he does not have written proof to show Mr.Sunil Nayar is employed under complainant. He did not take any acknowledgment for issuing salary, bond paper, blank cheque and demand pro note. There are no written documents in respect to 3% interest on principle amount. The complainant deducted Rs.500/- out of Rs.10,000/- hand loan for Rs.500/- bond paper and on demand promissory note. The accused did not demand for receipt for payment of Rs.10,000/- to complainant. He did not get written acknowledgment from the complainant to show his documents are kept in the locker. He did not issue notice to complainant demanding return of his documents. Ex.P1 cheque belongs to him and Ex.P1a is his signature".

16. The accused corroborated the fact of complainant issued him self cheque No.494664 for Rs.9,500/- only out of his account by examining the chief manager SBI. He is examined as DW-2. He produced statement of account pertaining to complainant account No.52194904609 from 1st January to 31st December 2004. It is marked as Ex.D1. He deposed as follows:

"if the cheque is issued without crossed, we obtained signature of the person presenting the cheque and honor the cheque. In 2004, it was computerized and entries will be found in the account extract in respect to the amount withdrawn from respective account and the person to whom money was released. We don't maintain manual register. As per Ex.D1 there is no reference for presenting non crossed cheque by Mr.Raja to the account of Mr.N.A.Thimmaiah and amount of Rs.10,000/- released to Mr.Raja. The complainant holding one account in our bank. All the transaction pertaining to the year 1st January to 31st December 2004 are entered in Ex.D1 in respect to account holder. We maintain computerized accounts statement of all our customer for uncrossed cheques honors. If a person brings uncrossed cheque to bank in case of honoring cheque to third party, reference is available in computerized in out put. In order to produce the general register maintained for honoring uncrossed cheque in the name of third party specific date must be mentioned otherwise it is not

possible to produce whole one year extract, since 13 year has passed and computer system has changed. Such a document can be issued or not need to be verified at the head office and we will furnish the one year entry details if the party bears the whole year cost and approximately it may cost Rs.50,000/-. As complainant is considered at time of 2004 complainant was holding saving account only and not current account. AS per Ex.D1 on 20.05.2004, Rs.9,500/- is debited from the account of complainant and as per account extract cash payment is made to customer in person. The said cheque No.494664 of Rs.9,500/- will be maintained by our bank, the cheque is not available because it is 13 years old. Once, in ten year we destroy record and cheques".

17. From the evidence of DW-2 it can be ascertain that he was not the manager in office and he has not seen the cheque No.494664 was honored either in favour of Mr.Raja or complainant. It is still in practice that self cheques are being presented and honored, in case of third party. The bearer cheque can be written in the name of third person or self name. On the reverse side of the cheque the bank obtained signature, if it is third party otherwise they take signature of the customer. The bearer cheque may be self cheque in the name of third party. In the statement they only provide cheque number pertaining to the party. However, for corroboration it is elicited from PW-1 that cheque bearing No.494664 for amount of Rs.9,500/- dated 20.05.2004 was issued to accused. The complainant claim that he has lent loan of Rs.1,00,000/- to accused on 02.07.2004. The PW-1 neither explained the purpose of issuing cheque bearing No.494664 to accused on 20.05.2004, he did not produce bank statement or documents to show as on the date of 02.07.2004 or 20.05.2004 he had an amount of Rs.90,500/- on his account, as on 08.05.2004 had in his account Rs.41,790/-, likewise, on 20.05.2004 after debit of Rs.9,500/-, complainant had an amount of Rs.58,040/- to his account. From 23.02. 2004 until 20.05.2004 I have not seen single transaction of Rs.90,500/- or Rs.1,00,000/- on the account of complainant.

18. Be that as it may, it is pertinent to note that the complainant is an utter stranger to accused. He is neither family member nor friend or relative of accused. Without any Acquaintance or relationship, the complainant lent loan of Rs.1,00,000/- to accused, admittedly for a return @ 1.5% pm., interest. As a caution the rate of interest is not mentioned in the cheque, therefore, complainant contends that cheque is issued for Rs.1,00,000/- principle amount. In fact as agreed the Ex.P1 cheque is collected towards principle and interest.

19. Section 5 of the Karnataka Money Lender's Act 1961 provides Money Lender to obtain licence. No person shall carry on the business of money lending in the State except in accordance with the terms of conditions of licence (and, after the commencement of the Karnataka Money Lenders (Amendment) Act, 1985, except of payment of security deposit as provided in Section 7(a).

20. Here is case, the complainant admittedly advance loan of Rs.1,00,000/- for interest to the accused on 02.07.2004 on basis of Ex.P1 security.

Definitions - Section (2) "business of money-lending"

means the business of advancing loans whether or not in connection with or in addition to any other business;

(3) "capital" means a sum of money which a money-lender invests in the business of money-lending;

(4) "xxxx (5) "xxxx (6) "interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force;

(7) "licence" means a licence granted under this Act; (8) "licence fee" means the fee payable in respect of a licence;

(9) "loan" means an advance at interest whether of money or in kind, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include,--

(a) a deposit of money or other property in a Government Post Office Bank or in a 1[Karnataka Government Savings Bank] or in any other bank or in a company or with a co-operative society;

(b) a loan to, or by, or a deposit with, any society or association registered under the 1[Karnataka] Societies Registration Act, 1960 (1[Karnataka] Act 17 of 1960);

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;

(f) a loan to or by an insurance company as defined in the Insurance Act, 1938 (Central Act IV of 1938);

(g) a loan to or by a bank;

(h) an advance of not less than three thousand rupees made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881) other than on the basis of a promissory note;

(i) except for the purposes of sections 26 and 28,--

- (i) a loan to a trader;
- (ii) a loan to a money-lender who holds a valid licence; or
- (iii) a loan by a landlord to his tenant for financing of crops or seasonal finance of not more than fifty rupees per acre of land held by the tenant;

(10) "money-lender" means,--

(i) an individual; or

(ii) xxxx

(iii) xxxx

(iv) xxxx

(a) carries on the business of money-lending in the State;

or

21. For the recovery of the debt due by any by his creditor by obtaining documents which otherwise compulsorily registerable and when money lending incurred payment of security deposit as provided under Section 7(a), in order to avoid the security deposit, the registration fee, Stamp Duties and Tax, the complainant has acted in contravention of the provisions under Karnataka Money Lenders Act 1961 which attracts penalties under Section 39 of the Karnataka Money Lenders Act 1961.

22. In the said circumstances of this case, the accused is able to raise doubt that cheque bearing No.494664 is a self cheque and as caution issued as self cheque by complainant in favour of accused and upon presenting it the accused has drawn Rs.9,500/- otherwise, the accused being third party would not know about the transaction dated 20.05.2004 or able to expose complainant. The Ex.P.1 was issued as security for principle and interest. This seems to me money for gain and therefore, complainant did not account or whisper about cheque bearing No.494664 issued to accused. Loan agreements are not reduced to writing in contravention of law to avoid registration fee, Stamp fee, professional fee and Tax. It is true that the accused has issued this cheque, may be as security. He has established that cheque Ex.p1 was issued towards loan of Rs.10,000/-. In turn the complainant failed to establish his source of income or cash in hand Rs.1,00,000/- on 02.07.2004.

23. If this type of transaction is entertained by filing a complaint the object of legislation will be again defeated. The money lenders will plunge to lend small loan example Rs.1,00,000/- , collect cheque and control the helpless by doing business without licence and not following the conditions of money lending business, affect is infringement of the Act. There is a need to deter illegal money lending practices. Otherwise, the object of the Act to protect innocent debtors will be defeated. Law

provides contravention of the provision of money lenders act must be dealt vigorously to prosecute under section 39 of the Karnataka Money Lenders Act 1961. Under the above said facts and circumstances, it can be held that, the complainant does not establish legal enforceable debt. Hence, I answered point No.1 in the Negative.

24. Point No.2:- In view of my findings on Point No.1, I proceed to pass the following:

ORDER The complaint u/s 200 of Cr.P.C. is hereby dismissed without compensation and cost.

By acting u/s. 255(2) of Cr.P.C. the accused is not guilty and thereby acquitted.

The bail bond of accused stands cancelled.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in open court on this day of 7th June 2018) (A.G.SHILPA,) V ASCJ & XXIV ACMM, Court of Small Causes, Mayo Hall Unit, Bangalore.

Annexure Witnesses examined for Complainant:

P.W.1 NA Thimmaiah

Documents marked for Complainant:

Ex.P.1 : Cheque
Ex.P.1(a) : Signatures of the accused
Ex.P.2-3 : endorsement
Ex.P.4 : Legal Notice
Ex.P.5 : UCP
Ex.P.6 : Acknowledgment
Ex.P.7-8 : Postal covers
Ex.P.9 : Order In CRP.P.25153/15

Witnesses examined for defence:

DW1 : M.Raja
DW-2 M.Ramakrishna Shenoy

Documents marked for defence:

Ex.D.1 statement of account

(A.G.SHILPA,)
V ASCJ & XXIV ACMM,
Court of Small Causes,
Mayo Hall Unit, Bangalore.