

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
B H U B A N E S W A R .**

Present :

Shri Bishes. Kumar. Sahu, LL.M.
J.M.F.C., Bhubaneswar.

1CC case. No. – **4908/2008**
Trial No. -- **384/2013**

Date of Conclusion of Argument : 16.05.2014
Date of Judgment : 06.06.2014

*M/S Godrej & Boyce Mfg. Co. Ltd,
Represented by its Managing Director,
Having its registered office at Pirojshah
Nagar, Vikhroli, Mumbai- 400 079, Carrying
On business throughout India including
At Bhubaneswar at NH-5, Highway Complex,
Rudrapur, Pahala, PS- Baliana, Dist- Khurda,
Represented by its Branch Commercial Manager/
Authorised Signatory Sri Dibyendu Rajguru,
Aged about 33 years, S/o- Late Gourahari Rajguru.*

.....Complainant

Vrs

1. *The Proprietor, M/S CELL WORLD,
B-14, Janpath, Bapuji Nagar,
PS- Capital, Dist- Khurda.*

2. *Sri Manoranjan Biswal, Proprietor,
M/S CELL WORLD, B-14,
Janpath, Bapuji Nagar,
PS- Capital, Dist- Khurda.*

.....Accused

Offence under Section 138 of Negotiable Instruments Act.

Counsel for the complainant : Shri B. Mohanty And associates

Counsel for the defense :Shri P.K.Dasmohapatra and associates

J U D G M E N T

1. The accused person stood prosecuted for commission of offence U/s.-138 of Negotiable Instruments Act.
2. The brief facts of the case is that the Complainant is a company registered under the Companies Act, 1956 and manufacturing group of products comprising of Storewels, Filling Cabinets, Security equipments etc. The Complainant Company represented by its commercial manager Sri Dibyendu Rajguru. The accused Manoranjan Biswal is the proprietor of M/S CELL WORLD and a dealer for M/S Godrej & Boyce Mfg Co. Ltd. The accused being the proprietor of M/S CELL WORLD had purchased appliances from the Complainant Company. Towards the discharged of the liability the accused had issued a Cheque bearing No. 270267 dated 18.10.2008 for an amount of Rs2,00,000/-(Rupees Two Lakhs) only drawn on Bank of Baroda in favour of M/S Godrej & Boyce Mfg Co. LTD. As per the instruction of the accused the complainant company deposited the aforesaid cheque in its account but Bank of Baroda on receipt thereof returned the aforesaid cheque as unpaid with remarks "Exceeds Arrangement" in return memo dtd 21.10.2008 to Complainant's Bank i.e. Citibank. Then Citibank returned the said cheque along with return memo of Bank of Baroda to the Complainant's Company on 22.10.2008. on receipt of the return memo the Complainant's

Company issued a statutory demand notice to the accused on dtd 24.10.2008 demanding payment of the cheque amount within fifteen days of receipt thereof. The notice has been duly served to the accused on 27.10.2008 but the accused failed to make payment on or before statutory period and hence the complainant filed this case against the accused u/s 138 of N.I.Act.

3. The plea of the accused is of complete denial and of false implication.

4. Taking into account the facts and circumstances of the case and ingredients of Section 138, N.I. Act, the points which arise for determination in this case are as follows:-

(i) Whether the accused has issued a Cheque drawn on The Bank of Baroda bearing No. 270267 of dated 18.10.2008 amounting Rs.2,00,000/- in favour of Complainant's Company namely M/S Godrej & Boyce Mfg. Co. Ltd?

(ii) Whether the said Cheques were issued by the accused to the complainant towards discharge in whole or in part of any debt or other liability?

(iii) Whether the complainant presented the said Cheques before his banker within a period of 6 months from the date of which it was drawn or within the period of its validity (whichever was earlier)?

(iv) Whether the said Cheques were returned as unpaid due to reason of "Exceed Arrangments" in the account of the accused?

(v) Whether the complainant sent a legal notice in writing to the accused demanding payment of the Cheque amount within 30 days of the receipt of information by him from the bank regarding the return of the Cheques as unpaid?

(vi) Whether the accused has to fail to make payment of the Cheques amount to the complainant within 15 days of receipt of notice?

5. To prove this case during trial, complainant has been examined as C.W.1 and Exhibits 1 to 7/2 have been marked on the side of the complainant. On the other hand, accused has been examined as D.W.1 and Exhibit A to G marked in his behalf.

6. It is the settled principles of law that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability. It is also the settled law that presumption of innocence as human rights and the doctrine of reverse burden introduced by Section-139 of N.I.Act should be delicately balanced which would largely depend upon the factual matrix of each case, the materials brought on the records and having regard to the legal principles governing the same. It is also the settled law that the presumptions will live, exit and survive and shall end only when the contrary is proved by the accused, i.e; the cheque was not issued for consideration and discharge of any debt or liability and a presumption is not in itself evidence, but only make a prima facie case for a party for whose benefit it exists.

7. The complainant has duly filed his examination-in-chief vide his affidavit on dtd 17.07.2009. In the said affidavit he has narrated on solemn affirmation about the prosecution story and during his examination-in-chief exhibited certain documents. The certified copy of Power of Attorney marked as Ext-1. *The cheque bearing No.- 270267 of*

dated 18.10.2008 amounting Rs.2,00,000/-- drawn on Bank of Baroda, Nayapalli Branch, BBSR branch has been marked as exhibit-2 and Ext-2/1 is the signature of the accused on it. The Cheque Return Memo with regard to Ext-2 furnished by Bank of Baroda, Nayapalli Branch marked as Exhibit-3. The office copy of the statutory demand notice dtd 24.10.2008 is marked as Ext-4. The Postal Receipt corresponding to Exhibit-4 marked as Exhibit-5 which shows that the notice was sent to the accused by speed post with AD. The Postal Acknowledgment Receipt corresponding to Exhibit-4 & 5 marked as Exhibit-6 which shows that the accused has received the legal notice. Ext-7 is the statement of Account of the accused for the period of OCT 2008 maintained by the Complainant's Company. Ext-7/1 & 7/2 are the signature of PW-1 on Ext-7. On the other hand defense adduced the evidence of the accused as DW-1 on 06.05.2014. During the examination of DW-1 certain documents are marked exhibit on behalf of the defense. The Xerox copy of the draft duly acknowledged by one Santosh who is working as ISD at Complainant Company bearing No. 250325 of dtd 12.11.2008 of amounting Rs 75,000/- marked as Ext-A and Ext-A/1 is the signature of the Santosh of which signature the accused was acquainted. The Xerox copy of the draft duly acknowledged by one Rakesh Kumar Routray who is working as Area Sales Manager at Complainant Company bearing No. 250346 of dtd 14.11.2008 of amounting Rs 50,000/- marked as Ext-B and Ext-B/1 is the signature of the Rakesh Kumar Routray of which signature the accused was acquainted. The office carbon copy of tie up scheme for the period of SEP to NOV, 2007 marked as Ext-C and Ext-C/1 is the signature of Rakesh Ku Routray (Area Sales Manager) and Ext-C/2 is the signature of Raghunath Mishra who is the regional manager of Complainant's Company. The office carbon copy of tie up scheme for the period of JAN to JUN, 2008 marked as Ext-D. The office copy of the letter issued to the Complainant's Company for the service, replacement, sales return of defective stocks of dtd 04.01.2010 marked as Ext-E. The original receipt of Complainant's

Company of Dtd 30.12.2009 marked as Ext-F and Ext-F/1 is the signature of branch accountant. The office copy of claim pending for settlement of dtd 05.10.2010 of accused company marked as Ext-G.

8. The learned Advocate for the complainant examined the complainant, cross examined the Defence witness successfully and submitted that in the present case the evidence adduced by the complainant is well conforming with the essential ingredients of the offense under Section -138 of NI Act. Accordingly, he prays to convict the accused in accordance with law.

9. The learned defence counsel examined the Defence Witness and cross examined the complainant in full which has been minutely observed by the court.

10. Now, it is to be seen whether on the evidence available on record, the offense u/s.-138 of NI Act is proved or not, for creating a criminal liability in terms of the section -138 of NI Act, the complainant must show:

- (i) That the Cheque was issued;
- (ii) The same was presented;
- (iii) But, it was dishonoured;
- (iv) A notice in terms of said provision, was served on the person sought to be made liable, and;
- (v) Despite the service of notice, neither any payment was made nor any other obligations, if any, were complied with within 15days from the date of receipt of the notice.

11. (i) As far as the question of issuance of Cheques by the accused in favour of the complainant's Company is concerned, the same facts are cogently proved by taking into consideration the evidence adduced by the

complainant along with exhibit-2, exhibit-2/1. The DW-1 clearly admitted that he had issued the cheque marked as Ext-2 in favour of the complainant in para-13 of the evidence of DW-1. Accused also admitted his signature on Ext-2 which is marked as Ext-2/1 in the evidence of DW-1 in para-01. In para-01 of the evidence of DW-1, accused stated that other than the signature of the accused on Ext-2 nothing has been filled up by him. Further he stated that the cheque had been given for security purposes. Thus from the evidence of the accused it is well corroborated the contention of the complainant that the cheque has been issued by the accused in favour of the complainant's company. The burden of proof lies upon the accused to show that the cheque has been issued for the security purposes as the fact of issuance of cheque for the security purposes is asserted by the accused. However the fact that the accused issued a cheque in favour of the complainant's company is correctly proved by the complainant.

(ii) The fact that the said Cheques were duly presented by the complainant before his bank and that was dishonored due to 'Exceeds arrangement' is proved by Exhibit-3. Ext-3 is the *Cheque Return Memo dtd. 21.10.2008 with regard to Ext-1 furnished by Bank of Baroda, nayapalli Branch.* showing reason of 'Exceeds Arrangements'. Therefore, it is consequently proved that the presentment of the Cheques by the complainant was within 6 months of the drawl of the alleged Cheques.

(iii) Exhibit-4 is the Office copy of the pleader notice dtd. 24.10.2008 issued by the complainant's Company to the accused demanding him to pay the dishonored Cheque amount within 15 days of receipt of notice. Exhibit-5 is the postal receipt dated. 24.10.2008 corresponding to exhibit-4. The acknowledgment receipt Exhibit-6 reveals that the demand notice has been duly served. Therefore, it is proved that the complainant

has sent the pleader notice well within the statutory period of 30 days from the date of receipt of intimation of dishonor.

12. At this juncture, it is pertinent to mention that by virtue of section -139 of NI Act, a presumption is drawn that the said Cheque was issued in discharge, in whole, or in part of, any debt or other liability.

It has been held in ***State of Madras Vs. Vaidyanath Iyer, AIR-1983, SC-61*** that “It is obligatory on the part of the court to raise this presumption in every case where the factual basis for raising presumption had been established. Since the complainant has already discharged his burden of proving, the factual basis for rising of presumption under Section-139 of N.I. Act which has already been established. It is now up to the accused to rebut the said presumption by proving that the cheque-in-question was not issued towards the legally enforceable existing debt or other liability.

This court has also perused minutely the written argument filed by the learned defense counsel. He relied upon the Ext-A, Ext-B and Ext-F. He made submission before the Court that the accused had given certain amount to the complainant under Ext-A, B & F and he has settled all his dues to the Complainant’s Company by 14.12.2009. Complainant raised the objection over Ext-A & B which are the Xerox Copy of Drafts of sum of amounting Rs,1,25,000/- which could not be taken as evidence on the ground that both the documents are Xerox document, after thought and self manufactured. So far as the Ext-F is concerned, it is the receipt copy of the Complainant’s Company, which shows that the Complainant’s Company has received Rs,20,000 vide draft No. 410542 on dated 14.12.2009. On perusal of the record I found Ext-A & Ext-B are the Xerox document upon which evidence could not be relied. So far as the

Ext-F is concerned it solely could not waive out the burden from the accused.

It is settled principle of Law that the proviso to Section -138 of NI Act is meant to protect honest drawer whose Cheque may have been dishonored for the fault of others, or who may have generally wanted to fulfill their promise but on account of inadvertence or negligence failed to make necessary arrangement for the payment of the Cheque. The proviso is not meant to protect unscrupulous drawers to never intend to honour the cheque issued by them, it being a part of their modus operandi to cheat unsuspecting persons, *AIR-2006, SC-2179*. The object of the proviso is to avoid unnecessary hardship to an honest drawer. Therefore, giving a notice to a drawer before filing complainant under Section-138 of NI Act is a mandatory requirement.

Therefore, it is clear that prosecution has established his case by conforming all ingredients under Section-138 of NI Act. The defense has no sufficient evidence to discard or disbelieve the prosecution case.

13. Considering the evidence on record, the documents exhibited by the complainant and upon the result of discussion by this court in the foregoing paragraphs, this court is of the considered view that the complainant could able to prove/establish its case against the accused beyond all probabilities and all reasonable doubt. Accordingly, the accused is held guilty for the offence U/s-138 of N.I.Act and he is convicted there under.

Taking into the account of the conduct of the convict and the trivial nature and gravity of the offence and extenuating facts and mitigating circumstances of the case under which the offence was committed by the convict and the impact of commission of such offence on the present commercial world, this court is not inclined to extend any benefit of the Probation of Offenders Act to the convict because the offence, committed by the convict bears, economic character, this kind of

offences are rampantly prevailing in the society and the justice delivery system needs to be checked and preventing steps be taken being alert towards this offence and not by extending any liberal approach to this kind of the offender.

Judicial Magistrate First class,
Bhubaneswar.

S E N T E N C E

Taking into account of all relevant facts, this court feels that a lenient punishment to be imposed on the convict in the instant case which will meet the ends of justice. But at the same time, in order to secure justice to the complainant, it would be just and proper if compensation will be awarded to him from the convict towards the cheque amount for the interest of the said cheque amount and expenditure incurred during the pendency of the case.

Hence, this court sentences the convict to undergo simple imprisonment (S.I.) for six months (06 months) towards the conviction for the commission of the offence u/s-138 of N.I.Act and this court also further directs the convict to pay a sum of Rs.5,00,000.00/-(Rupees Five Lakhs only) as compensation u/s-357 (3) Cr.P.C. which shall be realized from the convict like criminal fines and in default of such payment of compensation, he shall, further undergo Simple Imprisonment (S.I.) for five months (05 months). In this context, in ***K.A. Abbas H.S.A. Vs. Sabu Joseph & Another, 2010 (46) OCR (SC) - 548, (Para-27)***, the Hon'ble Supreme Court held that-

“A sentence of imprisonment can be granted for default in payment of compensation awarded under section-357(3) of Cr.PC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes, the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence, on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation.”

Judicial Magistrate First class,
Bhubaneswar.

O R D E R

Accordingly, the convict is directed to pay a compensation of Rs.5,00,000.00/- (Rupees Five Lakhs only) to the complainant which shall be realized as criminal fines..

Grant free and corrected copy of this judgment to the convict under due acknowledgement.

Judicial Magistrate First class,

Bhubaneswar.

The judgment is typed, corrected & pronounced in the open Court by me today on the 06th day of June 2014 under my hand and seal of this court.

Judicial Magistrate First class,
Bhubaneswar.

List of witnesses examined by the Complainant

P.W-1 : Sri Dibyendu Rajguru.

List of witnesses examined by the Accused

D.W-1 : Sri Manoranjan Biswal

List of Exhibits proved by the Complainant

- Ext-1 : Certified Copy of Power of Attorney
 Ext-2 : Cheque bearing No. 270267 of dated 18.10.2008 amounting Rs.2,00,000/-.
 Ext-2/1 : Signature of the accused on Ext-2
 Ext-3 : Cheque Return Memo with regard to Ext-2 dated 21.10.2008.
 Ext-4 : Lawyer/advocate/demand notice on dtd.24.10.2008.
 Ext-5 : Postal Receipt with regard to Ext-4 dated 24.10.2008
 Ext-6 : Postal A.D. with regard to Ext-4 & 5
 Ext-7 : Statement of Account of the accused for the period of Oct 2008 maintained by the Complainant's Company.
 Ext-7/1 : Signature of Pw-1 on Ext-7
 Ext-7/2 : Signature of Pw-1 on Ext-7

List of Exhibits proved by the Accused

- Ext-A : Xerox Copy of Draft bearing No. 250325 of Dtd 12.11.2008 of amounting Rs,75,000.

- Ext-A/1 : Signature of one Santosh ISD on Ext-A
- Ext-B : Xerox Copy of Draft bearing No. 250346 of Dtd 14.11.2008 of amounting Rs,50,000.
- Ext-B/1 : Signature of one Rakesh Routray on Ext-B.
- Ext-C : Office Copy of tie up scheme for the period of Sep to Nov 2007.
- Ext-C/1 : Signature of Rakesh Routray on Ext-C.
- Ext-C/2 : Signature of Raghunath Mishra on Ext-C.
- Ext-D : Signature of tie up scheme for the period of Jan to Jun 2008.
- Ext-E : Office Copy of letter of Dtd 04.01.10 issued to the Complainant's Company.
- Ext-F : Original receipt of Complainant's Company of Dtd 30.12.2009.
- Ext-F/1 : Signature of the Branch Accountant on Ext-F.
- Ext-G : Office copy of claim pending for settlement of Dtd 05.10.2010.

Judicial Magistrate First class,
Bhubaneswar