

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE,
BHUBANESWAR

PRESENT:

Sri D.R. Sahoo, L.L.M.

S.D.J.M, Bhubaneswar.

1CC Case No-127/2013

Trial No- 2948 /14

**Md. Shahnawaz, aged about 31 years,
S/o. Md. Laique Ali, Flat No.5C, 5th Floor,
Gitanjali Palace, Cuttack Road, P.S. Laxmisagar,
Bhubaneswar, Dist- Khurda.**

.....Complainant

Versus

**Mr. Amit Bikram Choudhury, aged about 27 years,
S/o. Kailash Ch. Sahoo, At/Po- Gopiakuda,
Via- Kujanga, Dist- Jagatsinghpur ,
At/Pr- Plot No.42/1401, Lane/Road No.8,
Jagannath Nagar, Rasulgarh,
P.S. Mancheswar, Bhubaneswar, Dist- Khorda.**

.....Accused

Offence under Section 138 of N.I. Act

Counsel for the Prosecution: Sri R. Pattnaik & Associates.

Counsel for the defence: Sri P. Sahoo & Associates

Date of argument: 30.10.2014

Date of Judgment: 10.11.2014

J U D G M E N T

The accused stands prosecuted on alleged commission of offence U/s. 138 of the N.I Act.

2. The complainant case in brief is that:

He and the accused are well known to each other in course of their business transaction and that the complainant is the Proprietor of M/s. Telescape HR Solutions having its registered office at Mancheswar

Industrial Estate, Bhubaneswar dealing and carrying on professional and carrier oriental course. The accused became the channel partner in the name and style of Altus forum having its registered office at MIG-143, Barmunda Housing Board Colony, Bhubaneswar and on dtd. 15.12.2009 both the complainant and the accused executed an agreement for their partnership business. The accused approached the complainant for a hand loan of Rs.5,00,000/- to meet urgent need and on good faith the complainant gave him Rs.5,00,000/- for a period of one month on dtd. 05.10.11 but the accused did not refund it despite of repeated request of the complainant. However, on 30.11.12 the accused issued one cheque bearing No.728057 of Rs.5,00,000/- to the complainant to discharge his legal liability but the said cheque was dishonoured and subsequently on 15.2.12 the complainant sent demand notice through his Advocate to the accused demanding cheque amount but despite of receiving the said notice the accused did not pay back for which the complainant has filed this case against the accused U/s. 138 of N.I. Act. Hence this judgment.

3. The plea of the accused is complete denial and false implication. However, the accused during his examination U/s. 313 of Cr.P.C. has stated that he had an agreement with the complainant in the year 2009 and he has given him more than Rs.28,00,000/-. As because the complainant did not give his share, dispute started and has further stated that in between 07.10.12 to 20.10.12, he had been to Paradeep and on dtd. 06.10.12 he had issued 2 nos. of cheques which the complainant has misutilized and has filed this false case against him.

4. The sole point for determination in this case is as follows:-

Whether the accused has issued the cheque bearing No728057. dtd. 30.11.12 drawn on IDBI Bank, IDBI House, Unit IX, Bhubaneswar of Rs. 5,00,000/- (Rupees five lakhs) only in favour of the complainant to discharge his legal liability and did not pay the cheque amount even after receipt of the demand notice and thereby committed the offence punishable U/s. 138 of NI Act?

5. In order to prove his case the complainant has examined himself as P.W.1 and has exhibited the cheque bearing No.728057 dtd. 30.11.12 as Ext.1 and the signature of the accused on the said cheque as Ext.1/1., the counter foil pay-in-slip dtd. 06.12.12 as Ext.2 , the cheque return memo dtd. 7.12.12 as Ext.3, the office copy of the demand notice dtd. 15.12.12 as Ext.4, postal receipt thereof as Ext.5 and the acknowledgement card as Ext.6. On the other hand the accused Amit Bikram Choudhury has examined himself a D.W.1 and the defence has exhibited the signature of P.W.1 on the affidavit as Ext.A, Ext. A/1 and Ext. A/2.

6. It is the specific allegation of the complainant that the accused had taken a hand loan of Rs.5,00000/- from him to meet urgent need and on demand the accused issued cheque bearing no.728057 dtd. 30.11.12 of Rs. 5,00000/- towards discharge of his legal enforceable debt. The complainant has exhibited the said cheque vide Ext.1 and the accused who has been examined as D.W.1 in his cross-examination has admitted his signature on the said cheque as Ext.1/1. The pay-in-slip vide Ext.2 and the cheque return memo vide Ext.3 and the demand notice vide Ext.4 along with the postal receipt vide Ext.5 and postal A.D. vide ext.6 clearly show that before filing of this case the present complainant has complied with all the requirements of Section 138 of N.I. Act..

7. Section 139 of the N.I Act .clearly speaks that unless the contrary is proved, it shall be presumed that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or part, of any debt or other liability. **Hon'ble Apex Court of India in the case of Rangappa V. Sri Mohan 2010(3) CRIMINAL COURT CASES 022(S.C.)** have held that standard of proof for rebuttal of presumption under section 139 of N.I. Act is that of preponderance of probabilities and that if accused is able to raise probable defence which creates doubt about the existence of legal enforceable debt or liability, the prosecution can fail. In this instant case the accused himself has admitted his signature on Ext.1 which pre-supposes that he has issued the cheque to the complainant and the evidence on record and stand taken by him during

examination U/s.313 of the Cr.P.C. are inconsistent with each other and at the same time the accused has failed to bring any kind of evidence which will show his innocence and which will prove that he has not issued the same cheque towards discharge of his legal liability. During examination U/s. 313 of Cr.P.C. the accused has stated before the Court that from 07.10.12 to 20.10.12 he had been to Paradeep and on 06.10.12 he had issued 2 nos. of cheque bearing No.728056 and cheque bearing No.728057 and that the complainant has misutilized the cheque.

8. Admittedly, there was business transaction in between the complainant and the accused and admittedly the same cheque vide Ext.1 has been given by the accused to the complainant and even the accused has admitted his signature vide Ext. 1/1. Now it is not understood as to why the accused had issued two nos. of signed cheque to the complainant on 06.10.12 on the occasion of his travel to Paradeep. No reasonable explanation has been given by the accused with this effect and the accused has not convinced the Court as to what was the requirement of issuance of 2 nos. of cheque to the complainant.

9. Hence it is hold that the complainant has proved his case against the accused beyond all reasonable doubt and accordingly the accused is found guilty U/s. 138 of N.I. Act and as such he is convicted there under. Taking consideration of the facts and circumstances of the case, this Court does not feel it proper to extend any of the benevolent provision of the probation of offenders Act or the provision U/s.360 of the Cr.P.C. Hence, the convict is sentenced to undergo Simple Imprisonment for a period of one year. In addition to that the convict is directed to pay a compensation of Rs.6,00000/- (Rupees six lakhs) only to the complainant U/s.357 (3) of the Cr.P.C., and in default to undergo Simple Imprisonment for a further period of two months.

S.D.J.M., Bhubaneswar.

Typed to my dictation, corrected by me and pronounced the judgment in the open Court today given under my hand and seal this the 10th day of November, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W. 1: Md. Shahnawaz

List of witnesses examined on behalf of the defence:

D.W.1 Mr. Amit Bikram Choudhury

List of Exts. marked on behalf of the Complainant:

Ext1: Cheque bearing no.728057 dtd. 30.11.12 .

Ext.1/1 Signature of the accused on said cheque..

Ext. 2 Pay in slip dtd. 06.12.12

Ext.3: Cheque return memo dtd. 07.12.12

Ext. 4: Office copy of the demand notice dtd. 15.12.12

Ext. 5: Postal receipt

Ext.6: Acknowledgement Card.

List of Exts. marked on behalf of the Defence

Ext. A Affidavit signature of P.W.1

Ext.A/1 -do-

Ext.A/2 -do-

S.D.J.M., Bhubaneswar.