

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-3085/2012
Trial No- 601/14

Ashok Kumar Pradhan, aged about 39 years,
S/o. Bhramarabar Pradhan, Plot No.A-112,
Janpath Ps- Kharvel Nagar, Bhubaneswar, Dist-
Khurda, at present residing at Flat No. 14/103
(Vyasa) Kesura, SBI Colony, P.S. Laxmisagar,
Bhubaneswar.

.....Complainant

Versus

Prakash Ranjan Mohapatra, aged about 39 years, S/o.-
Hrusikesh Mohapatra, resident of Plot No.13, Indraprasta-2,
Pokhariput-1, P.S.- Airfield, Bhubaneswar-20, Dist- Khurda, The
Charior Resorts and Spa Sipasarubali, Balipanda, P.S. Sea Beach,
Puri, Pin-752002, Genesis, A-28, Kharvela Nagar, P.S.- Kahrvela
Nagar, Bhubaneswar, Dist- Khurda.

.....Accused

Offence under Section 138 of N.I. Act

Counsel for the Prosecution: Sri S.N. Panigrahi and Associates.

Counsel for the defence: Sri S. K. Sahoo and Associates.

Date of argument: 27.03.2014

Date of Judgment: 11.04.2014

J U D G M E N T

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

2. The complainant's case in brief is that:

The accused had taken a friendly loan of Rs. 1, 67,000/- from the complainant to develop his firm namely "Genesis" with a promise to repay the said amount within three months. When the accused did not repay within stipulated period of time, the complainant requested several times to repay the said amount and finally the accused issued an A/c. cheque bearing No.267509 dtd. 26.06.12 of Rs. 1, 67,000/- to the complainant. The complainant deposited the said cheque on 17.06.12 in his banker i.e. HDFC, Bank, Bhubaneswar but the said cheque was dishonored on 29.06.2012. The accused again deposited the said cheque on 01.09.12 but it was dishonour by the bank on 04.09.2012 with remark "Funds Insufficient". Then on getting intimation regarding such dishonour of cheque by the bank on 05.09.12, the complainant issued a demand notice through his advocate to the accused on 13.09.12 by registered Post with A.D. But despite of receipt of such notice, the accused did not respond to repay the cheque amount for which the complainant has filed this case against the accused U/s.138 of N.I .Act.

3. The accused during his examination U/s. 313 of the Cr.P.C. admitted to have taken Rs. 1,67,000/- as loan from the complainant but he has taken the plea that he has given Rs. 20,000/- by way of draft and Rs. 49,000/- as cash but he could not submit any document in this regard.

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

Whether the accused has issued the cheque bearing No.267509 dtd. 26.06.12 to discharge his 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 establish his case, the complainant Ashok Kumar Pradhan has examined himself as P.W.1. and exhibited the cheque bearing No.267509 dtd. 26.06.12 of Rs.1,67,000/- as Ext.1 and the signature of the accused on the said cheque as Ext. 1/1. The complainant has also exhibited the counter foil of the pay-in-slip dtd. 27.06.12 as Ext.2 and the counter foil of pay-in-slip dtd. 01.09.12 as Ext.3. He has further exhibited the cheque return memo dtd. 28.06.12 as Ext.4 and the cheque return memo dtd. 04.09.12 as Ext.5. The office copy of the demand notice dtd. 13.09.12 has been exhibited as Ext.6 and its corresponding postal receipts have been marked as Ext.7, Ext.8 and Ext.9 respectively. The accused has not adduced any evidence in his defence.

6. The complainant has alleged that the accused had taken a friendly loan of Rs.1,67,000/- from the complainant and this fact has been clearly admitted by the accused during his examination U/s.313 of the Cr.P.C.. So, there is no dispute before this Court as regard to taking of loan of Rs. 1,67,000/- by the accused from the complainant. This fact gets corroborated from Ext.1 i.e. the cheque issued by the accused to the complainant towards discharging his legal liability and the signature of the accused has been marked as Ext.1/1. without objection

7. **Section 139 of N.I Act clearly speaks that it shall be presumed that unless the contrary is proved , that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability**

On the other hand the accused has not adduced any evidence in his defence in order to discard the allegation made by the complainant. Although he has stated before the Court that he has given Rs.20,000/- in shape of draft and Rs. 49,000/- in shape of cash, he could not produce any document in support of his contention that he has repaid the loan amount. In such circumstances, the documents on record clearly shows that the accused has issued the cheque vide Ext.1 to the complainant towards discharge of his legal liability and the complainant has

deposited the said cheque and when the cheque was dishonoured , the complainant has issued a demand notice through his advocate with the time limit as has been prescribed by the Section 138 of the N.I. Act and when the accused did not respond to the notice to repay the cheque amount , the complainant rightly approached this Court U/s. 138 of N.I. Act against the accused. .

8. Hence, there is no reason before this Court to disbelieve the version of the complainant and accordingly it is hold that the complainant has proved his case against the accused U/s. 138 of N.I Act beyond all reasonable doubt.

9. In the result the accused is found guilty U/s. 138 of N.I Act 1881 and accordingly 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.3,00000/- (Rupees three 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 but could not be pronounced and kept in the seal cover due to absence of the convict in the Court on repeated call today i.e. on 11th day of April, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W. 1: Ashok Kumar Pradhan

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the Complainant:

- Ext/1: Cheque bearing No. 267509 dtd. 26.06.12 of
Rs.1, 67,000
- Ext.1/1: Signature of the accused on Ext.1
- Ext.2: Counter foil of pay-in-slip dtd. 27.06.13.
- Ext. 3: Counter foil dtd. 01.09.12
- Ext. 4: Cheque return memo dtd. 28.06.12.
- Ext.5: Cheque return memo dtd. 04.09.12.
- Ext.6: Office copy of the demand notice dtd. 13.09.12
- Ext. 7: Postal receipt.
- Ext.8: Postal receipt.
- Ext.9: Postal receipt

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.