

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-3877/2012
Trial No-662/14

**M/s. Raj Electronics SCR-26, Janpath, Bapuji
Nagar, Bhubaneswar-751009, Dist- Khurda,
Represented through its Managing Partner,
Sri Prakash Kumar Biswal.Complainant**

Versus

- 1. Nikshita Associates Pvt. Ltd. 200, Bapuji Nagar,
near Sishu Bhawan over bridge, Po- Forest Park, Ps- Capital,
Bhubaneswar, Dist- Khurda, represented through its
Authorized Signatory Sri Sandeep Dash.**
- 2. Sri Sandeep Dash, S/o. Late Harihar Dash,
Authorized Signatory of Nikshita Associates Pvt. Ltd. 200,
Bapuji Nagar, Near Sishu Bhawan Over bridge, Po- Forest
Park, Ps- Capital, Bhubaneswar, Dist- Khurda**

.....Accused persons.

Offence under Section 138 of N.I. Act

Counsel for the Prosecution: Sri A.K.Satpathy and Associates.

Counsel for the defence: Sri B.N. Mohanty and Associates.

Date of argument: 08.08.2014

Date of Judgment: 23.08.2014

J U D G M E N T

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

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

He is an authorized dealer of different electronics items of different companies such as LG, Philips, SVL, BPL, Samsung, Whirlpool, Godrej, Sony, Sansu, Protect Stabilizer, Nokia etc. and also sells the said products and its counter and the accused is a retailer doing his business in the name and style as "Nikshita Associates Pvt. Ltd" The accused Sandeep Dash is the authorized person and in-charge who is responsible for day to day transaction of "Nikshita Associates Pvt. Ltd" . The complainant and the accused had long standing business ties and as such on orders being placed by the accused, the complainant used to supply its products to the accused on deferred payment basis. During such business transaction, the accused issued an A/C. payee cheque bearing No.238633 dtd. 06.10.12 of Rs.2,02,314/- only drawn on Axis Bank Ltd. Kalpana Square, Bhubaneswar Branch in favour of the complainant for discharge of his liability in part against the supply of electronic goods. As per the instruction of the accused, the complainant presented the said cheque with its banker Punjab National Bank, Bapuji Nagar, Bhubaneswar for its encashment but the complainant received communication on 09.10.12 from Axis Bank Ltd., Kalpana Square Branch, indicating that the said cheque has been dishonoured due to account closed. In such circumstances having no other alternative, the complainant issued the statutory demand notice U/s. 138 of N.I. Act on 26.10.12 in his correct address but despite of the fact that notice has been served on the accused, he failed to pay the dishonoured cheque amount within the stipulated period of time for which the complainant has filed this case .

3. The plea of the accused is that one of complete denial and false implication. During his examination U/s. 313 of the Cr.P.C. has stated before this court that his firm had business transaction with the complainant

firm and for security purpose he has given six blank but signed cheques to the complainant and subsequently he has cleared all the dues of their transaction and when their business did not pull on well, the accused purchased different electronics article from other dealer and for that purpose the complainant with malafide intention has mis-utilized the security cheques and has filed this case against the accused.

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

Whether the accused No.2 has issued the cheque bearing No.238633 dtd. 06.10.12 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 authorization given by other partners to him to file and looking after this case as Ext.1 and the deed of partnership as Ext.2. The copy of invoice dtd. 17.09.2011 has been marked as Ext.3 and the seal and signature on it in support of receipt of items by accused as Ext.3/1. The cheque bearing No.238633 dtd. 6.10.12 of Rs. 2, 02,314/- has been marked as Ext.4 and the signature of the accused on the said cheque has been marked as Ext. 4/1. The cheque return memo dtd. 08.10.12 has been marked as Ext. 5 and the office copy of the demand notice dtd. 26.10.12 has been marked as Ext.6. The postal receipt showing dispatch of notice to the accused firm has been marked as Ext. 7 and the postal receipt showing dispatch of notice to the accused Sandeep Dash has been marked as Ext.8. The reply of the postal department dtd. 18.01.13 and 19.01.13 respectively showing delivery of both the notice have been marked as Ext. 9 and Ext. 10 respectively. On the other hand, the accused Sandeep Dash has examined himself as D.W. 1. and did not prefer to exhibit any document in his favour.

6. The complainant has filed this case on the allegation that the accused had taken electronics article from his company and towards discharge of his legal liability the accused who is the authorized signatory of the accused company, has issued the cheque vide Ext.4 to him but subsequently the said

cheque was dishonoured due to account closed. In support of his allegation, the complainant has exhibited authorization letter vide Ext.1 and the copy of on partnership vide Ext.2 along with copy of the invoice dtd. 17.09.2011 as Ext.3. The Ext.1, Ext.2 clearly shows that the complainant has been authorized to file this case on behalf of his company and there is no dispute on this aspect. Coming to the invoice vide Ext.3, it clearly reveals that one Chandan Samal has received the electronic articles of Rs. 2, 02,314/- on behalf of Nikshita Associates Pvt.Ltd.by putting the seal of the accused company and by signing on the said invoice. D.W.1 also admitted during his cross-examination that he is acquainted with the signature of the said Chandan Samal. These facts and circumstances clearly shows that the accused had taken goods of Rs. 2, 02,314/- from the complainant and accordingly has issued cheque vide Ext.4 to the complainant. On verification of Ext.4, it is ascertained that the accused No.2 being the authorized signatory of Nikshita Associates Pvt. Ltd. has issued the cheque to the complainant on proper signature on it.

7. Section 139 of the 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.

8. So, the facts and circumstances clearly shows that the accused has issued the cheque vide Ext.4 to the complainant towards discharge of his legal liability and on the other hand, although accused has categorically stated before this court that this case has been foisted against him and he had paid all the dues pending against him, but not a single document has been filed in support of such contention. The evidence on record shows that the accused has taken the defence plea that he has given 6 nos. of cheques for security purpose to the complainant and those cheques have been misutilized by the complainant. To utter surprise during his cross-examination he has answered to the question of learned counsel of the complainant that he has not intimate the complainant in writing regarding return of those six cheques or regarding the illegal demand of the complainant nor has he filed any case against the complainant for his

illegal demand or misutilization of his cheque. On the other hand, he has admitted that he is the authorized signatory of his company and he is looking after the day to day transaction of the company. Most importantly, in Para-8 of his cross-examination he has admitted that he has not submitted any receipt in support of fact that of his company to the complainant towards payment of the amount mentioned in the invoice.

9. The accused during his examination U/s. 313 of Cr.P.C. has specifically admitted that he is the authorized signatory of Nikshita Associates and has also admitted that the P.W.1 Prakash Kumar Biswal is the Managing Partner of Raj Electronics and he has authorized to file this case. So, on the version of the accused itself shows that P.W.1 is competent to file this case and the accused is the authorized signatory of Nikshita Associates. Further the accused has admitted that the complainant firm has supplied different electronics item on deferred payment basis . However, the accused has denied the fact that he issued the cheque vide Ext.4 of Rs.2,02,314/- to the complainant toward discharge of his legal liability and has taken the plea that he had given six nos. of blank but signed cheques to the complainant and during transaction he has cleared all the pending cheques to the complainant and when their business did not pull well, the complainant has misutilized these cheques and has filed this case against him as has been discussed earlier, not a single scarp of document has been filed by the accused in support of such plea and such fact has been clearly admitted by the accused during his cross-examination. So, in view of the above said fact and circumstances, this Court holds that the accused has legal liability to pay back the money for receiving electronics goods from the complainant company during course of their transaction.

10. At this juncture, learned counsel for the accused vehemently argued that six nos. of cheques did not given by the accused to the complainant as security purpose and those security cheques cannot be utilized for the purpose of Negotiable Instrument as has been held by Hon'ble Appex Court in number of cases. In response to such argument, this Court feels it proper to mention here that Section 139 of the N.I Act Mandates **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. Admittedly, the accused has not able to prove that there was not such legal liability on him as has been alleged by the complainant in this case. So, while the facts and circumstances clearly shows that there exist liability on the accused to pay back the money to the complainant for receiving electronics goods and while the accused has failed to prove its contrary . The plea of security cheque taken by the accused does not seem reasonable. Moreover, while legal liability exist it's the duty of the accused to pay back the dishonoured cheque amount to the complainant and the complainant has maintained all the pre-conditions of law enunciated U/s. 138 of the N.I Act. before filing of this before this Court and reasonable opportunity given to the accused to pay back the money and also during course of the trial to prove his innocence by establishing his plea before this Court. But in all occasions , the accused has failed and this Court is constrained in the above discussed facts and circumstances to hold the accused guilty U/s. 138 of the N.I. Act as the complainant has proved his case beyond all reasonable doubt.

11. In the result the accused is found guilty U/s. 138 of N.I Act 1881 and accordingly he is convicted there under. As the convict no.1 is being firm represented by its authorized signatory i.e. accused no.2 as per the provisions of law, the substantive sentences shall be imposed to the convict no.2. 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 no.2 is sentenced to undergo Simple Imprisonment for a period of one year. In addition to that the convict no.2 is directed to pay a compensation of Rs.2, 90, 000/- (Rupees two lakhs nienty thousand) 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 23rd day of August, 2014

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W. 1: Prakash Kumar Biswal

List of witnesses examined on behalf of the defence

D.W.1: Sandeep Dash.

List of Exts. marked on behalf of the Complainant:

Ext/1: Authorization given by the other partners to look after.

Ext.2: Partnership deed

Ext. 3: Copy of the invoice dtd. 17.09.11

Ext.3/1.: Seal and signature of the accused on Ext.3

Ext. 4: Cheque bearing No.238633 dtd. 16.10.12

Ext. 4/1: Signature of the accused on the said cheque

Ext.5: Cheque return memo dtd 08.10.12.

Ext.6: Office copy of the demand notice dtd. 16.10.12.

Ext. 7: Postal receipt showing dispatch to the accused firm

Ext.8: Postal receipt showing dispatch to the accused.

Ext.9: Reply of the postal department dtd. 18.01.13.

Ext.10.: Reply of the postal department dtd 19.01.13.

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.