

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-2216/2010

Trial No- 3198/2013

Sri Chintamani Barik aged about 36 years, S/o Bimbadhar Barik,
At -Plot No. - A/E-264, VSS Nagar, Po/PS.-Saheednagar,
Bhubaneswar, Pin-751007, Dist- Khurda
.....Complainant

Versus

Sri Smruti Ranjan Jena S/o. Sudarshan Jena, At- Sanmulei, Po-
Badabila, PS. – Gobindapur, Dist-Cuttack

-----Accused person

Offence under Section 138 of N.I. Act

Counsel for the Prosecution: Sri L.R. Das and other Associates.

Counsel for the defence: Sri K.B Maharana

Date of argument: 08.11.2013

Date of Judgment: 19.11.2013

J U D G M E N T

The above named accused stands prosecuted for committing
the offence punishable U/s. 138 of NI Act.

2. The case of the complainant in short is as follows: -

The complainant and the accused person were close friend
and taking the advantage of his simplicity the accused requested the
complainant for a friendly loan of Rs.10, 000/-(Ten Thousand). The
complainant gave the said amount to the accused and the latter
promised to return the same within a short span of time. After a long
time when the accused did not return the amount, the complainant
approached him time and again. Thereafter, in order to repay the said

amount the accused issued the cheque bearing No.859747 dtd.04.12.2009 amounting Rs.10, 000/- (Ten Thousand) drawn on SBI, Industrial Estate Branch, Mancheswar, Bhubaneswar. Then the complainant deposited the said cheque in his account on 04.05.2010. However, the said cheque was dishonored and was returned unpaid for 'Insufficient funds' (The intimation of dishonored was served on the complainant on 05.05.2010). Then on 25.05.2010 the demand notice was sent to the accused which was delivered. The accused neither replied to the notice nor returned the cheque amount within the stipulated period. So, the complainant approached this court by filing the complaint petition. The statement of the complainant was recorded U/s.200 Cr. P.C and cognizance of the offence punishable U/s.138 of NI Act. was taken. Subsequent to issuance of process the accused appeared and has faced his trial.

3. The accused claimed innocence and false implication at the hands of the complainant during trial. In his statement/s.313 of Cr.P.C. Further explain that the complainant had a personal business wherein he (accused) was employed. However, the complainant had pay his salary in due time. Further the complainant had open account in the name of the accused for his (complainant's) transaction. The accused has not made any transaction with respect to the said account and only issued the cheque as per the direction of the complainant. Further the accused had kept of his documents in the office of the complainant. Taking advantage of such situation, it is alleged, the complainant had taken away present cheque which was signed by the accused. It is further asserted that the complainant firms mis-utilized the said blank sign cheque and has filed this false case to harass the accused.

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

Whether the accused has issued the cheque to discharge of 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. The complainant only examined himself as P.W.1 in order to prove his case. The cheque bearing Registration No.859747 dtd.04.12.2009 is marked as Ext.1, the cheque return memo is marked as Ext.2, the office copy of the demand notice is marked as Ext.3 and the postal receipt is marked as Ext.4. On the other hand the accused preferred not to adduce any evidence, oral or documentary in his support.

6. As far as point 1 is concerned the accused has admitted that the cheque in question has been drawn from the account opened in his name. Ext.1 reveals that the account No.30588401545, So, the point No.1 is proved.

As far as point No.3 is concerned the cheque bears the dtd.04.12.2009.

The cheque return memo i.e. Ext.2 reveals that the cheque has been dishonored on 04.05.2010 or prior to that, which is within a period of six months from the date on which it is drawn (red 04.12.2009). So point No.3 is also proved by the complainant.

As regard point No.4 is concerned ext.2 reveals that the cheque has been returned unpaid for reasons 'insufficient opening balance' which means that the amount extension in the account of the accused. So point No.4 also stands proved.

As far as point No.5 is concerned Ext.3 and 4 reveals that the demand notice has been sent on behalf of the accused on 25.05.2010. It is already been observed that the cheque has been dishonored on 04.05.2010. So the demand notice is within the period of 30 days from the date of receipt of intimation of dishonored. So this point also stands proved.

As far as point No.6 is concerned, the same needs a brief description. The accused while answering this statement U/s.313 of Cr.P.C. has stated that he has not received the demand notice. Similar

things have also been suggested to P.W.1 on his behalf of in cross-examination. The complaint petition reveals the address of the accused as follows:-

Sri Smruti Ranjan Jena S/o. Sudarshan Jena, At- Sanmulei, Po- Badabila, PS.- Gobindapur, Dist-Cuttack, the accused while being released on bail has furnished his address which is the same i.e. mentioned in the complaint petition. The accused has also given his same address while replying U/s.313 of Cr.P.C. So there is not doubt that the complainant has furnished the correct address of the accused and the demand notice has been sent to the said address which is evident from Ext.-4 and Ext.-5. It is needless to mention here that once the complainant has despatched the demand notice to the correct address of the accused, it is for him (accused) to prove that in fact he has not received the notice. In this case no such evidence or prove has been adduced by or on behalf of the accused. So it is to be presumed that the demand notice has been served on accused. Then the next question comes as to whether the accused has made any payment with respect to the cheque amount to the complainant. *While* answering question No.8, the accused has categorically admitted that he has not given the cheque amount to the complainant. So it is proved that the accused has not paid the cheque amount with complainant within 15 days of receipt of the demand notice. Hence point 6 also stands proved.

The most vital question is whether the cheque has been issued by the accused in discharge of his debt or liability. The complainant in his complaint petition and also while adducing his evidence has stated that the accused had taken a friendly loan of Rs.10,000/- from him and in order to pay back the said debt he has issued Ext.-1 to him (complainant). In his cross-examination the complainant has expressed his ignorance to say the exact date when he has advanced the said friendly loan to the accused. He has also not filed any document

regarding his payment of Rs.10, 000/- to the accused. So again the corpus up as to whether in such scenario the cheque can be presumed to have been issued for discharge the liability. At this juncture, it is worthwhile replying question No.10 during his statement U/s.313 of Cr.P.C. has given an explanation that he was working as the driver in the agency of the complainant and that the complainant defaulted in payment of his salary. He has also explained that it was the complainant who has opened the bank account of the accused and which was he (complainant) who used to make all transaction with respect to the said account of which the accused was completely ignorant. He has further stated that the accused used to issue cheque only as per the direction of the complainant of which he had no knowledge and that since all the documents of the accused used to be in the office of the complainant, he (complainant) has stolen the present cheque which blank but signed and as thereafter miss-utilized the said cheque by filing it up and submitting it for illegal gain. This version of the accused has not been suggested to P.W.1 in cross examination.

7. No other material, direct or circumstantial, is available on case record to incriminate the accused. Hence, the complainant has failed to prove its case against the accused beyond all reasonable doubt. In the result, the accused person is found not guilty of the offence punishable U/s. 138 of NI Act and I acquit him as per the provision u/s.255 (1) Cr.P.C. He be set at liberty forthwith.

His bail bond stands cancelled enter the case as a mistake of fact.

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 19th day of November, 2013.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W.1 : Smruti Ranjan Jena

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the Complainant:

Ext.1: Cheque bearing no.859747 dtd. 04. 12.2009.

Ext.1/1: Signature of accused on Ext.1

Ext. 2. : Cheque Receipt memo of 04.05.2010.

Ext.3 : Office copy of demand notice dtd.25.05.2010.

Ext.4: Postal Receipt

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.