

IN THE COURT OF THE 1<sup>ST</sup> ADDL. SESSIONS JUDGE- CUM-  
SPECIAL JUDGE (VIGILANCE) BHUBANESWAR.

Present :

Shri N.Sahu, LL.B.,  
1<sup>st</sup> Addl. Sessions Judge,  
Bhubaneswar.

Crl. Appeal No. 6/48 of 2012/2011.  
(Arising out of the judgment, dt. 19.9.2011 passed  
in I.C.C. Case No. 4693/2008 by the learned  
J.M.F.C., Bhubaneswar ).

Sri Deba Prakash Mohapatra,  
Authorized Signatory,  
M/s. Konark Aquatics and Exports Pvt. Ltd.,  
Plot No.6/A, Sector-A, Zone-B,  
Mancheswar Industrial Estate,  
PO-Rasulgarh, Bhubaneswar-10,  
Resident of Plot No.1, Sahid Nagar,  
Bhubaneswar, Orissa, PIN-751007.

... Appellant.

-Versus-

M/s. Navayuga Experts Ltd.,  
A/99, Sahid Nagar, Bhubaneswar,  
Represented through its General Manager,  
Sri Siladitya Dey, aged about 51 years,  
Son of Late A.K. Ray.

... Respondent.

For the Appellant : Sri S.N. Das & Associates.

For the Respondent : Sri R. Hota & Associates.

Date of argument : 20.08.2014.

Date of judgment : 01.09.2014.

**J U D G M E N T**

1. This appeal has been filed against the judgment, dt.19.9.2011 passed by the learned J.M.F.C., Bhubaneswar in I.C.C. Case No.4693/2008. The present appellant was the accused whereas the respondent was the complainant before the lower Court.

2. The complainant's case in brief is that as per the understanding for supply of frozen prawn slabs basing on the letter, dt.30.5.08 of the accused, the complainant had supplied 10847.4 Kgs.(1044 nos. of master cartoons) to the accused and to discharge the above liability in part, the accused being the authorized signatory had issued cheque No.029724, dt.19.7.2008 for Rs.20,00,000/- drawn on Federal Bank Ltd., Bapujinagar in favour of the complainant company. The complainant deposited the said cheque in its account at SBI, Commercial Branch, IDCOL House, Bhubaneswar for collection, but it was returned dishonoured with a remark "Refer to drawer". On receipt of the information the complainant through his advocate issued a demand notice, dt.6.10.2008 by registered post with A/D to the accused which was received by the accused on 16.10.08. But inspite of receipt of the demand notice, the accused did not make the payment. Hence, the case.

The plea of the accused is that he had no previous liability and had not issued the cheque in question towards part payment against supply. During course of hearing, the complainant had examined two witnesses and exhibited 14 documents whereas the accused had not examined any witness nor exhibited any document in support of their respective cases. The learned lower Court after considering the evidence on record, found the accused guilty of the offence u/s.138 N.I.Act and sentenced him to undergo S.I. for one

year and to pay compensation of Rs.24,00,000/- u/s.357 Cr.P.C. The said judgment of conviction and sentence is under challenge in the present case.

3. During course of hearing of the appeal, the learned counsel for the appellant-accused challenged the judgment and sentence on the grounds that the complainant had no locus-standi to file the case and there was no proper service of demand notice and the accused had no previous liability and the Court had no power to award compensation.

4. So far, the locus-standi of the complainant to file this case, PW-1 in his evidence categorically stated that he is the General Manager and authorized person of Navayuga Exports Ltd. PW-2 the Senior Engineer of the firm also stated that being the General Manager, PW-1 is authorized to deal with any case matter and he proved the certified true copy of the resolution of the board meeting of the company, dt.2.9.08 vide Ext.12 authorizing the complainant to file cases and to look after the ancillary matters relating to matters of business of sale and export of prawn to the accused. It was suggested to the complainant (PW-1) during cross-examination that he had not been authorized by the complainant company to represent the company in this case or to depose evidence to which he denied. Barring such suggestion, nothing was elicited in the cross-examination of PWs-1 and 2 to disbelieve their testimony or to discard Ext.12. The complaint petition was filed on 12.11.08 and the resolution of the board meeting, dt.2.9.08 was much prior to the institution of the present case. So, considering these materials, it

can be safely held that the complainant had locus-standi to file the case.

5. So far service of demand notice, the learned counsel for the appellant during course of hearing, contended that the accused had been shown as authorized signatory of M/s. Konark Aquatics and Exports Pvt. Ltd. and the notice was sent in his residential address at Plot No.1, Sahid Nagar although the aforesaid firm situates at Mancheswar Industrial Estate. So, there was no proper service of notice. On the contrary, learned counsel for the complainant-respondent drawing my attention to Exts.1,2 and 3 submitted that the same clearly show that the registered office of the firm situated at Plot-1, Sahid Nagar, Bhubaneswar and its factory is situated at Mancheswar Industrial Estate area. Ext.11 shows that the notice was issued in Sahid Nagar address. There is mention in Ext.13 (Reply, dt.15.11.08 of the accused through his advocate) that the accused was the authorized signatory of M/s. Konark Aquatics and Exports Pvt. Ltd. at plot No.1, Sahid Nagar having its factory at Mancheswar Industrial Estate. Absolutely, there is no challenge in Ext.13 that the service of notice on the accused was improper.

Law is well settled that a person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. **(Vide Para 17, 2007(II) OLR (SC) Page-384, C.C.Alavi Haji-Vs.-Palapetty Muhammed and another)**. Therefore,

on examination of the evidence on record and keeping in view the position of law as cited above, I hold that there was proper service of demand notice on the accused.

6. So far previous liability, Ext.1 shows that as per discussion among the parties, the accused had confirmed the price for purchase of the materials. Exts.3 and 4 are the acknowledgments, dt.19.7.08 showing receipt of the articles from the complainant. Ext.4 is the invoice, dt.14.8.08 for Rs.5738790.00P. It may be reiterated here that in Ext.13, the accused has admitted the issuance of cheque No.029724, dt.19.7.08 for Rs.20,00,000/- against supply of frozen prawn slabs. Even in his statement u/s.313 Cr.P.C., the accused has admitted that the complainant had supplied 10847.4 Kgs.(1044 nos. of master cartoons) of frozen prawn to him.

Law is well settled that Section 118 of the Act *inter alia* directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability. Applying the definition of the word 'proved' in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was

executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a *prima facie* case for a party for whose benefit it exists. **(Vide para 10, 2009 (I) OLR (SC) 460, M/s.Kumar Exports-Vrs.- M/s.Sharma Carpets).** Here, the complainant in his evidence has categorically stated that the accused had issued the cheque (Ext.5). The complainant has also stated that the accused gave his signature on the said cheque in his presence and he proved the signature of the accused on the cheque vide Ext.5/1. The complainant has proved the deposit slip, vide Ext.6 and the bank return memo of that date vide Ext.7. In his reply (Ext.13), the accused has admitted the fact of issuance of the cheque. The accused has not adduced any evidence nor even examined himself to rebut the presumption. So, it is held that the accused had previous liability and the cheque was issued for discharge of the same.

7. So far the award of compensation, the learned counsel for the respondent during course of argument placed reliance on a decision of the Hon'ble Supreme Court reported in **(2001) 20, OCR (SC) 315(Pankajbhai Nagjibhai Patel-Vs.-The State of Gujarat and another)** wherein at para-16 of the judgment it was held as follows :-

“In our view, this question does not now pose any practical difficulty. Whenever a Magistrate of the first class feels that the complainant should be compensated, he can, after imposing a term of imprisonment, award

compensation to the complainant for which no limit is prescribed in Section 357 of the Code.”

So, in view of the aforesaid rulings of the Hon'ble Apex Court, it is held that the Magistrate had power to award the compensation u/s.357 Cr.P.C.

The learned lower Court has vividly discussed the evidence on record and found the accused guilty and convicted him u/s.138 N.I. Act. No other ground worth consideration was raised by the appellant. I do not find any illegality or perversity in the findings of the learned lower Court convicting the appellant u/s.138 N.I.Act. So also, I do not find any justifiable reason to modify or alter the quantum of substantive sentence or the compensation awarded by the learned lower Court. Accordingly, the appeal is held to be devoid of any merit. Hence, it is ordered.

#### O R D E R

The Criminal Appeal is dismissed on contest. The judgment of conviction and sentence, dt.19.9.2011 passed by the learned J.M.F.C., Bhubaneswar in I.C.C. Case No.4693/2008 is hereby confirmed.

1<sup>st</sup> Addl. Sessions Judge,  
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 1<sup>st</sup> day of September, 2014.

1<sup>st</sup> Addl. Sessions Judge,  
Bhubaneswar.



