

**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-1078/2011**

**Trial No- 3477/13**

Biswa Ranjan Biswal. S/o. Chitaranjan Biswal, At- Plot No.2180,  
B.J.B Nagar, Sabarsahi, Kalpana, Near Excise Office, P.S Badagad,  
Bhubaneswar, Dist-Khurda..

.....Complainant

Versus

Bibhu Prasad Rath, S/o. Nilamani Rath, At Plot No.EB-508,  
Baragada Brit Colony, Bhubaneswar, Dist- Khurda.

.....Accused person

Offence under Section 138 of N.I. Act

Counsel for the Prosecution : Sri P.Das and other Associates

Counsel for the defence : Sri B.B Panda and other Associates.

Date of argument: 23.12.2013

Date of Judgment: 28.12.2013

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

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

2. The complaint's case in brief is that: -

He has family relationship with the accused who is a business man.  
Due to business crisis the accused approached the complainant for financial help of Rs. 9,00,000/- (Rupees nine lakh) in the month of

May, 2010 and with much difficulties the complainant arranged the said money and handed over Rs. 9,00000/- to the accused on 10.05.2010 and the accused promised to return the said amount within three months to the complainant. The accused failed to fulfill his commitment to refund the loan amount and after repeated approach to return the loan amount, the accused issued a cheque bearing No. 000197 in discharge of his liability for an amount of Rs. 9,00000/- and then the complainant deposited the cheque in State Bank of India, Badagada Branch for collection. But the said cheque was dishonored for reason 'Funds Insufficient'. Then the complainant issued a demand notice through his advocate to the accused on dtd. 21, 03.2011 calling upon him to return the said amount but despite of the fact of the receipt of the said notice the accused did not return the loan amount for which the complainant has filed this case. Hence this Judgment.

3. The plea of the defence is of complete denial one and of false implication.

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

Whether the accused has issued the cheque 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 only examined himself as P.W.1. and exhibited the cheque bearing No.000197 dtd. 26.09.10 as Ext.1 and the signature of the accused on the said cheque as Ext. 1/1. The complainant has also exhibited the cheque return memo dtd. 20.01.2011 as Ext.2 and the cheque return memo dtd. 12.03.11 as Ext.3. The demand notice dtd. 21,03,2011 has been marked as Ext.4 and the postal acknowledgement receipt has been marked as Ext.5 by the complainant. The complainant has not examined any other witnesses. On the other hand, the accused did not prefer to examine any witnesses for his defence and preferred to

produced and proved the certified copy of the complaint-petition by Biswaranjan Biswal bearing No. ICC 1130/11 as Ext.A., and the signature Biswa Ranjan Biswal on paper containing some writings as Ext-.B and B/1, certified copy of the complaint-petition in ICC No. 2802/11 as Ext.-C, three numbers of counter foils as Ext-.D, Ext-.E, and Ext-.F. The relevant account statement of the accused maintained by him in YES Bank as Ext-.G and the relevant account statement of the accused maintained by him in Neelachala Gramya Bank, Bhubaneswar as Ext-.H.

6. The complainant has filed this case against the accused on the allegation that he has given friendly loan of Rs.9,00000/-to the accused on 10.05.2010 on his request and the accused promised him to return it back within three months. But the accused intentionally avoided the complainant on some plea or other to cheat him and when the complainant asked him to return his money, the accused issued a cheque bearing No.000197 towards his liability for an amount of Rs. 9,00000/- on 26.09.2010. Before dealing with the present case it is pertinent to mention here some of additional facts in connection to this case in between the present parties. The present complainant has filed another two complaint cases, one is against the wife of the present accused and other one is against the present accused and his wife along with two other close relatives of the present accused persons. Out of those two complaint case ICC 1130/11 has been filed by the present complainant against the wife of the present accused: namely- Adya Laxmi Mohapatra U/s. 138 of NI Act. on the allegation of non-return of Rs. 38,25,000/- which had been given by the present complainant to her as friendly loan. The accused of this case during his examination U/s. 313 of the Cr.P.C. has specifically denied the

allegation against him and has stated that the complainant has taken blank but signed cheque from him forcibly. The accused has also exhibited the certified copy of the complaint-petition in ICC 2802/11 as Ext.-C, which reveals that the complainant of the present case has filed that case against the present accused and his wife and against another two persons U/s. 420/406/294/506/34 of IPC on the allegation that he has given Rs. 50,00000/- to the present accused, his wife and other two persons on their request to run a Media and Television company by registering a company namely 'SAMRUDHI MEDIA & TELEVISION PVT LTD and subsequently they did not return and being asked threatened the complainant with dire consequences. During cross-examination of the complainant, the accused confronted such facts to the complainant to which he has admitted and has stated that the accused and his wife had asked him to arrange a friendly loan and the present accused received Rs.9,00000/- and his wife received Rs. 38,25,000/-. So, from the very version of the present complainant it is very much clear that he has filed three different complaint cases against the present accused, his wife and other two persons in connection to friendly loan given to the present accused and his wife out of Rs.50,00000/-. So, these three cases are connected with each other. The case bearing no. ICC-1130/11 and the present case i.e. ICC 1078/11 have been tried together vide order dtd. 24.08.2007 in order to arrive at just conclusion and for a comprehensive view. The present complainant, Biswa Ranjan Biswal has examined as P.W. 1 in both the cases and has been examined and cross-examined extensively in both the cases. It is the admitted fact that the present accused and his wife are the accused persons in both the case in connection to the friendly loan alleged to have been availed from the present complainant out of Rs.50,00000/-. From the evidence on record it reveals that the complainant has alleged to have given Rs. Rs. 47,25,000/- to the

accused and his wife and the present accused alleged to have received Rs. 9,00,000/- and his wife received Rs. 38,25,000/- and that being fully aware of the complaint petition in ICC No.2802/11 he has signed there on and the facts mentioned therein is correct and true. If such version of the complainant will be taken as true then it will definitely contradict the allegation of the complainant made in the complainant petition of ICC 2802/11 in which the complainant has alleged against the accused to have cheated of Rs.50,00,000/-. So, the very version of the present complainant is contradictory and comes under doubt as regard to friendly loan he has given to the accused . But surprisingly, it is noticed that the complainant has not kept any receipt or account or any other document to show that he has given a friendly loan to the accused. In these circumstances the observation of **Hon'ble Appex Court, M/s.Narayan Menon @ Mani V. State of Kerala & Another, 2006(3)Civil Court Cases 468(S.C.)** is relevant where **Hon'ble Appex Court** have held that **“Rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable , the standard of reasonability being that of the prudent man”**. **Hon'ble Appex Court of India- In the case of M/s. Kumar Exports V. M/s. Sharma Carpets, AIR 2009, Supreme Court 1518, have held that: the accused in Section 138 is not expected to establish his plea as is required for the complainant in criminal trial.** Coming to the facts and circumstances of the present case it worthy to mention here that the accused has taken the plea that the complainant has taken the alleged cheques forcibly and he has no legal liability to pay the amount and this case has been foisted against him. The conflicting version of the present complainant as regard to giving of friendly loan and its amount in different complaint cases especially with

respect to Ext.-C brings shadow of doubt in the version of the complainant. The accused has taken the plea that he has taken Rs. 5,00000/- which he has returned back exceeding the said mount to the complainant and the complaint has taken cheques forcibly and has filed cases against him, against his wife falsely. The account statement stands in the name of Samrudhi Associates which reveals that the complainant has received a total amount of Rs.5,00,500/- exceeding the amount of Rs. 5,00000/-. The extract of the account statement of Samrudhi Associates has been marked as Exhibit Ext.G & H with objection as per order dtd. 17.08.13. But there is no reason assigned by the complainant as to why this document will not be taken into evidence. Ext. G & H reveal that these are the extract of the account statements stand in the name of Samrudhi Associates . There is also no reason to disbelieve these document vide Ext.G and Ext.H by this Court. The Ext. G reveals that payment have been made to the complainant in the following manner.

| <b>I</b> | <b>Date of payment</b> | <b>Amount of Rs.</b> |
|----------|------------------------|----------------------|
|          | 01.12.2009             | 25,000/-             |
|          | 05.12.2009             | 49,000/-             |
|          | 11.12.2009             | 25,000/-             |
|          | 19.12.2009             | 20,000/-             |
|          | 25.01.2010             | 75,000/-             |
|          | 05.02.2010             | 25,000/-             |
|          | 10.02.2010             | 70,000/-             |

Of Total Rs, 2, 89,000/- .

Likewise, Ext.H reveals that on different occasions payment of Rs.1,25,000/-,37,500/-,49,000/- totaling Rs. 2,11,500/- have been made to the complainant. So , from Ext.-G and Ext.H, it appears that a sum of total Rs. 5,00,500/- has been given to the complainant from the accused . So the contention of the accused as regard to taking of cheques by the complainant from him as

security purpose got strengthened from the facts and circumstances of this case. **In this connection the observation of Hon'ble Appex Court in the case of M/s. Narayan Menon @ Mani V. State of Kerala & Another (Supra) is relevant where Hon'ble Appex Court of India have held that cheque if issued for security or for any other purpose the same does not comes within purview of Section 138 of the Act. In this connection the observation of Hon'ble Appext Court of India in the case of Sudhir Kumar Bhalla v. Jagdish Chand &etc. etc.AIR2008 SUPREME COURT 2407 also relevant where Hon'ble Appex Court have held that under the provision of Section 138 of the Act. the Criminal liability of the complainant is only attract on account of dishonor of the cheque issued in discharge of liability of debt but not on account of issuance of security cheques. So,** from the facts and circumstances of this case a prudent man can suppose that there is no consideration and debt existed.

In such circumstances, while the burden shifts from the accused to the complainant to establish of the legal liability due on the accused , the very version of the complainant as regard to the fact that he has not kept any receipt from the accused regarding his giving of the amount creates doubt as regard to the credibility of his allegation. . **So, in this connection to the observation of Appex Court of India in the case of M/s Narayan Menon @ Mani V. State of Kerala & Another (Supra) is very much relevant and it can be reasonably concluded here that the accused has rebutted the allegation of the complainant and from such facts and circumstances a prudent man can believe that there was no liability or legal debt due on the accused to come under the purview of Section 138 of the Act.**

**On the other hand, the learned counsel for the complainant relied upon the reported case of Hon'ble Appex Court in the case of Rangappa v .State of Sri Mohan 2010,**

**(II)SCC-441 in which the Hon'ble Appex Court have held that :  
Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instrument Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established but the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court.**

Having regard to the observation of Hon'ble Appex Court in the above noted case it may humbly be stated here that the accused has taken a plea that she has not taken any friendly loan from the complainant and that the complainant has taken above said cheques forcibly from him . The accused has also established the fact that he has refunded more than Rs. 5,00000/- to the complainant which is evident from Ext.G and Ext.H. When an accused has rebutted the allegation of the complainant by putting forth facts and circumstances as discussed above , it is the responsibility of the complainant to establish primarily that he has given friendly loan to the extent of Rs. 9,00000/- to the accused. While the very basis of the case that is of sanctioning of friendly loan to the accused comes under doubt, this court has a duty to see as to whether in real sense a friendly loan has been given to the accused by the complaint or not. From the facts and circumstances and evidence on record it

reveals that the complainant has not kept any document sanctioning a friendly loan of such a huge amount to the accused which prime facie brings a shadow of doubt on the allegation of the complainant .When such doubt comes before the Court definitely it is the responsibility of the complainant to establish such facts which he has failed to establish before this Court. Hence **the observation of Hon' ble Appex Court M/s Narayan Menon @ Mani V. State of Kerala & Another (Supra) Krishna Janardhan Bhat V. Dattatraya G. Hegde are more applicable to the facts and circumstances of the present case.**

In such facts and circumstances as the complaint has not discharged his burden to establish the legal debt against the accused, in the considered opinion of this Court and due to the observation of Hon'ble Appex Court , in the above noted reported cases, this Court has come to the conclusion that the complainant has failed to establish his case against the accused and as such the accused is found not guilty of the offence punishable U/s. 138 of NI Act and he is acquitted there from as per the provision U/s.255 (1) Cr. P.C. He be set at liberty forthwith.

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 28<sup>th</sup> day of December, 2013.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W.1: Biswa Ranjan Biswal.

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the Complainant:

Ex.- 1: Cheque No.000197 dtd. 26.09.10

Ext. – 2: Signature of the accused on Ext.1.

Ext. – 3: Cheque return Memo dtd. 20.01.11. issued by YES  
Bank to Canara Ban

Ext.- 4: Cheque return memo dtd. 12.03.11 issued by Yes Bank  
to SBI

Ext.-5. Postal A.D.

List of Exts. marked on behalf of the Defence

ExtA. Copy of the Complaint petition in ICC 1130/11

Ext.B : Signature of P.W. 1 on a paper.

Ext. B/1: Signature of P.W. 1 on a paper

Ext.C: Certified copy of the complaint-petition in ICC-2802/11

Ext. D: Counter signed of foils of pay-in-slip dtd. 13.01.10

Ext..E: Counter signed of foils of pay-in-slip dtd. 13.01.10

Ext. F: Counter signed of foils of pay-in-slip dtd. 13.01.10

Ext. G: Account statement of the accused maintained by his in YES  
Bank.

Ext. H: Relevant Account statement of the accused maintained by  
him in Neelachal Gramya Bank , Bhubaneswar.

S.D.J.M., Bhubaneswar.