

**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-1130/2011**

**Trial No- 3476/13**

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

Smt. Adyalaxmi Mohapatra, W/o. Bibhuprasad Rath, aged about 38 years, 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 Priyabrata Das and other Associates

Counsel for the defence : Sri R. Bahal 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 complainant's case in brief is that: -

he has family relationship with the accused who approached him in the month of September, 2010 for financial help of Rs. 38, 25,000/- and in good faith the complainant gave a friendly loan or Rs.38,25,000/- on 26.09.2010. The accused promised to return back

the said amount along with compensation within three months but failed to fulfill her commitment and intentionally avoided the complainant to cheat him. On repeated request of the complainant, the accused issued 4 nos of cheques i.e. cheque bearing No.108401 of Rs.3, 25,000/- (ii) Cheque bearing No.108402 of Rs. 5,00000/- cheque bearing No.108403 of Rs. 15,00000/- and cheque bearing No. 108404 of Rs. 15,00000/- drawn on State Bank of India, Badagada Branch in due discharge of her liability . Then the complainant deposited the said cheques in State Bank of India Badagada Branch for collection but the said cheques were dishonored for reason 'Funds Insufficient' and the fact of dishonor of cheques was intimated to the complainant on 1.12.2010. Then the complainant issued demand notice to the accused on 21. 03.2011 but the accused refused to receive the said notice and the postal envelope was returned with the Postal mark that the accused refused to receive the said notice. Being aggrieved the complainant has filed this case. Hence this trial.

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

The accused has specifically stated during cross exam. U/s.313 Cr.P.C. that the complainant has forcibly taken the relevant cheques from her and has filed this case to harass her.

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 Biswa Ranjan Biswal has examined himself as P.W. 1 and has exhibited the cheque bearing No.108401 dtd. 04.01.2011 amounting Rs. 3,25,000/- as Ext.1, the cheque bearing No.108402 dtd. 10.01.2011 amounting of Rs. 5, 00000/- as Ext.2, the cheque bearing No.108403 dtd. 17.01.2011 as Ext.3 the cheque bearing No. 108404 dtd. 20.01.2011 as Ext.4, the

cheque return memo dtd. 12.03.2011 as Ext.5 the envelope along with AD which was returned unserved as Ext.6 and Ext.7 respectively, containing the demand notice, the agreement dtd. 03.02.2012 as Ext.8 and the office copy of the demand notice as Ext.9. On the other hand, the accused did not prefer to examine any other witnesses from her side but exhibited the signature of P.W. 1 on Ext.1 as Ext .A, the signature of P.W.1 on Ext.2 as Ext.B , the signature of P.W. 1 on Ext.-3 as Ext.-C and the signature of P.W.1 on Ext.4 as Ext. D. The accused has exhibited certified copy of the complainant being filed in ICC No. 2802/11 as Ext. E.

6. The complainant has filed this case against the accused on the allegation that he has given friendly loan of Rs.38, 25,000/-to the accused on 26.09.2010 on her 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 four cheques bearing No.108401 of Rs.3,25,000/-, cheque bearing No.108402 of Rs. 5,00000/-, cheque bearing No.108403 of Rs. 15,00000/- and cheque bearing No.108404 of Rs.15,00000/-. Before dealing with the present case it is pertinent to mention some of the 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 husband of the present accused and other one is against the present accused and her husband along with two other close relatives of the present accused. Out of those two complaint cases, ICC 1078/11 has been filed by the present complainant against the husband of the present accused: namely- Bibhu Prasad Ratha U/s. 138 of N.I. Act on the allegation of non-return of Rs. 9,00000/- which had been given by the present complainant to the as friendly laon. The accused of this case during her examination U/s. 313 of the Cr.P.c. has specifically denied the allegation against her and has stated that the complainant has taken blank but signed cheque from her forcibly. The accused

has also exhibited the certified copy of the complaint-petition in ICC 2802/11 as Ext.-E which reveals that the complainant of the present case has filed that case against the present accused and her husband 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, her husband and other two persons on their request to run a Media and Television company by registering a company namely 'SAMRUIDHI 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 her husband had asked him to arrange an amount of Rs. 47,25,000/- and the present accused received Rs.38,25,000/0 on 26.09.2010 and her husband received Rs. 9,00000/- on 10.05.2010. 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, her husband and other two persons in connection to friendly loan given to the accused and her husband out of Rs.50,00000/-. So, these three cases are connected with each other and ICC-1078/11 and present case i.e.1130/11 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 her husband are the accused persons in both the cases in connection to the friendly loan alleged to have been availed from the present complainant out of Rs.50,00000/-. In para-13 of his cross-examination the complainant has admitted that he has given Rs. 47,25,000/- to the accused and her husband and the present accused received Rs. 38,25,000/- on 26.09.2010 and her husband received Rs. 9,00000/- on 10.05.2010 and that except these two

occasions he has not made any payment to the accused or her husband at any point of time. He has further admitted that being well 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.50,00000/-. So, the very version of the present complainant is self contradictory and comes under doubt as regard to the amount of 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 his cross-examination at Para-11 where he has specifically admitted that he has not kept any receipt from the accused regarding his giving of amount.

7. Here the observation of **Hon'ble Appex Court, in 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"**.
8. **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 a trial under Section 138 N.I.Act is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in criminal trial.**
9. Coming to the facts and circumstances of the present case it is worthy to mention here that the accused has taken the plea

that the complainant has taken the alleged cheques forcibly and she has no legal liability to pay the amount and this case has been foisted against her. 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.-E bring shadow of doubt in the version of complainant. Besides the complainant himself has admitted his signature on Ext.1, Ext.2, Ext.3, Ext.4 vide Ext.A, Ext.B, Ext.-C and Ext,D respectively. Most importantly in para-15 of his cross-examination he has specifically admitted that he has written his own name in the bearer column Vide Ext.A, Ext.B, Ext.C and Ext.D respectively. This fact strengthens the presumption of giving the above said cheques Vide Ext.1 to Ext.-4 to the complainant by the accused persons for security purpose. In this connection the observation of Hon'ble Appext 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.

10. Learned counsel for the complainant relied upon the agreement in between the complaint and the accused vide Ext.-8 dtd. 03.02.12 as regard to giving of friendly loan of Rs.47,25,000/-. Primafacily it reveals that the dates mentioned in the cheques Ext.1to Ext.-4 are all of the month of January,2011. The agreement

vide-Ext.-8 is of 3<sup>rd</sup> February,2012 which is subsequent to issuance of such cheques which further creates doubt in mind and in considered view of this Court this document will not come to the rescue of the present complainant. Further the content of the document also reveals that if the second party will fail to repay the loan they shall transfer their landed immovable properties which are in their name after clearing of the bank loan if any stands against them. The very version of the content of Ext.-8 itself negates equity and justice and it is not a valid contract and a smell of ulterior motive is coming from the very content of such document vide Ext.8. In such circumstances while the burden shifts from the accused to the complainant to establish the fact of legal liability due on the accused, the very version of the complainant in para-11 of his cross-examination that he has not kept any receipt from the accused regarding his giving to the amount creates doubt as regard to the credibility of his allegation. Most importantly in Para-13 , the complainant has stated on 26.09.2010 he has given an amount of Rs.38,25,000/- to the accused and on the same date he has received the cheque amount Rs. 9,00000/- from the husband of the accused which is the subject matter of ICC No. 1078/11. If such version of the complainant will be read together with the contents of the Ext.-8 then the date of issuance of loan comes under doubt. So, in this connection the observation of hon"ble 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 he 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 her and is giving threat to her life and liberty for which she has made application to different authorities in her protection. When a 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 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. The facts and circumstances and evidence on record reveals that the complainant has not kept any document for 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 Apex Court in M/s Narayan Menon @ Mani V. State of Kerala & Another (Supra) and the observation in 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 complainant has not discharged his burden to establish the legal debt against the accused, in obedience to the observation of Hon'ble Appex Court , in the above noted reported cases, this Court 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 she 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 bearing No.108401 dtd. 10.01.11

Ext. – 2: Cheque bearing No.108402 dtd. 10.01.11

Ext. – 3: Cheque bearing No.108403 dtd. 17.01.11

Ext.- 4: Cheque bearing No.108404 dtd. 20.01.11

Ext.-5: Cheque return memo dtd.12.13.11

Ext.-6: Envelop along with AD. and which returned unserved.

Ext.-7: Envelop along with AD. and which returned unserved

Ext.- 8: Agreement dtd. 03.02.12

Ext.- 9 : Office copy of the demand notice.

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.