

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-30/2013

Trial No- 425/14

**Sameswar Senapati, aged about 48 years,
S/o. Late Gangadhar Senapati, Plot No.610,
Lane-11, Aerodrome Area, P.S. Airfield
Bhubaneswar,Dist- Khurda.**

.....Complainant

Versus

**Supremedreams Business Managment, Represented through
its Authorized Signatory Ari Arabinda Mohanty, Plot No.A-144,
At/Po/P.S- Saheed Nagar, Bhubaneswar Dist- Khurda, A/P- Plot
No.A-18, A/Po- B.J.B. Nagar, P.S. Laxmisagar, Bhubaneswar,
Dist- Khurda.**

.....Accused

Offence under Section 138 of N.I. Act

Counsel for the Prosecution: Sri G.S. Chand and Associates.

Counsel for the defence: Sri H.S. Mishra and Associates.

Date of argument: 20.02.2014

Date of Judgment: 03.03.2014

J U D G M E N T

The accused Sri Arabinda Mohanty stands prosecuted for committing offence punishable U/s. 138 of the N.I Act.

2. The complainant's case brief is that:

The accused is dealing with business and as the complainant was in search of a land to purchase for residential purpose, the accused assured him to provide a litigation free land in Mouza Bainchua . For

that purpose the accused received a sum of Rs.26,000/- (Rupees twenty six thousand) only and Rs.17,000/- (Rupees seventeen thousand) only in total 43,000/- (Rupees forty three thousand) only from the complainant to provide land in Mouza Bainchua but in spite of several request of the complainant, the accused did not provide the land and subsequently on repeated request of the complainant he issued two nos. of cheques bearing No. 823876 dtd, 26.08.12 of Rs. 26,000/- (Rupees twenty six thousand) only and cheque bearing no. 823878 dtd. 17.09.12 of Rs.17, 000/- (Rupees seventeen thousand) only drawn on ICICI bank, Nayapalli, Branch, Bhubaneswar, to discharge of his legal debt in favour of the complainant. Then the complainant deposited the cheque in his bank i.e. State Bank of India, Vivekananda Marg Branch, Bhubaneswar for encashment on dtd. 21.01.2012 but the cheques were dishonoured due to payment stopped by drawer and **“funds insufficient”**. On getting intimation from his banker on 23.11.2012 regarding dishonour of cheques, the complainant on dtd. 10.12.2012 sent a registered letter with acknowledgement through his Advocate to the accused with a demand to repay the cheque amount within fifteen days from the receipt of these notice. But the accused did not pay the same for which the complainant has filed this case against the accused.

3. The plea of the accused is that of complete denial one and of false implication. The accused has taken the stand that he had given these two cheques towards his legal entitlement of Rs. 50,000(Rupees fifty thousand) only initially but as the accused took the payment on voucher and cash these two cheques became invalid and the other stand is that another person was working with him who was assisting him in giving cheques and looking after his other works and that the said persons left the job and in connivance with the present complainant has filed this case only to harass him.

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

Whether the accused has issued the cheques bearing No. 823876 dtd, 26.08.12 of Rs. 26,000/-(Rupees twenty six thousand) only and

cheque bearing no. 823878 dtd. 17.09.12 of Rs.17,000/- (Rupees seventeen thousand) only drawn on ICICI bank, Nayapalli, Branch, Bhubaneswar, to discharge of legal debt in favour of the complainant 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 the case, the complainant, Sameswar Senapati has examined himself as P.W.1 and has exhibited the cheque bearing no.823876 dtd. 26.08.12 Rs. 26,000/- as Ext.1 and the signature of the accused on the said cheque as Ext. 1/1. He also exhibited the cheque return memo dtd. 23.11.12 with reference to Ext.1 as Ext.2 and has exhibited the counter foil of the pay-in-slip as Ext.3. The complainant (P.W.1) has further exhibited the cheque bearing No.823878 dtd. 17.09,12 of Rs. 17,000/- as Ext.4 and the signature of the accused on the said cheque as Ext.4/1. He has further exhibited pay-in-slip with respect to Ext. and Ext.5 and the cheque return memo with regard to Ext.4 dtd. 23.11.12 as Ext.6. The complainant also exhibited the office copy of the demand notice sent to the accused as Ext.7 and the postal receipt there on as Ext.8 and Ext.9 and the postal acknowledgement card as Ext.10. On the other hand the accused has not adduced any evidence from his side.

6. It is the allegation of the complainant that the accused person has taken Rs. 26,000/-(Rupees twenty six thousand) only and Rs.17,000/- (Rupees seventeen thousand) only, in total Rs. 43,000/-(Rupees forty three thousand) only from him to provide litigation free land at Banichua mauza but subsequently the accused did not give any land to the complainant and issued two Nos of cheques bearing no. 823876 dtd. 26.08.12 and cheque bearing no. 823878 dtd. 17.09.12 which were dishonoured due to payment stopped by drawer and “**funds insufficient**” . In such circumstances the complainant has exhibited both the cheques

vide Ext.1 and Ext.4 on dtd. 26.08.12 and 17.09.12 respectively. The accused has taken the specific plea during examination U/s. 313 of Cr.P.C. that he has already paid the money to the complainant in form of cash and cheque which was due on him as the complainant was working with him for his business. So, the specific stand taken by the accused is that he has already paid the money to the complainant and for that reason, he has exhibited the account statement of the account No.024010200044846 as Ext .A. The complainant himself has admitted the content of Ext. A during his cross-examination by learned counsel for the accused and at the same time he has also admitted that he has obtained an amount of Rs.20,279/- on 25.05.2009 and an amount of Rs. 10,140/- on dtd. 25.05.2009 from the account of Super Dreams Business Management maintained at Axix Bank. He has further admitted that he has obtained Rs. 872/- and Rs. 4,794/- from the said account on dtd. 04.06 .2009 and Rs. 9,589/- on dtd. 25.08.2009.

7. From the allegation and counter allegation of the complainant and the accused, it reveals that the complainant is alleging against the accused to have received money of Rs.43, 000/- from him with a promise to provide a land and subsequently he did not provide the same and issued two nos. of cheques which were bounced on deposit in the bank. On the other hand, the accused is defending himself by submitting that he has never taken the money from the complainant to provide a land rather the complainant was working with him in his business and has misutilized his cheques only to harass him. At the outset, the facts and circumstances and documents on record shows that the complainant has not produced and proved any document with regard to their allegation showing that he has paid money of Rs. 43,000/- to the accused to get a land at Bhubaneswar in Banichua Mouza. No doubt **Section 139 of 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”,

But Hon’ble Appex Court in the case of Rangappa V. Sri Mohan 2010(3) Criminal Court case 022(S.C.), have held that if the accused is able to raise a probable defence which creates doubt about an existence of a legal enforceable debt or liability then the prosecution can fail.

In this instant case the accused has able to raise a probable defence by exhibiting the account statement which has been admitted by the complainant during his cross-examination and these facts brings doubt about the existence of an enforceable debt or liability.

8. In view of the above said facts and circumstances, in the considered opinion of this Court, the complainant has failed to establish his case U/s. 138 of N.I Act against the accused beyond all reasonable doubt, as such the accused is found not guilty U/s. 138 of N.I. Act and accordingly he is acquitted there from as per the provision U/s. 255 (1) of the Cr.P.C. He be set at liberty

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 3rd day of March, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

: P.W. 1: Sameswar Senapati

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the Complainant:

Ext/1: Cheque bearing No.823876 dtd 26.08.12.

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

Ext.2: Cheque return memo dtd. 23.11.12 with reference to
Ext.1.

Ext.3: Counter foil of the pay-in-slip.

Ext. 4: Cheque bearing No.823878 on dtd. 17.0912

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

Ext.5: Pay-in-slip with respect of Ext. 4.

Ext.6: Cheque return memo with regard to Ext.4 on
dtd.23.11.12

Ext. 7: Office copy of the demand notice sent to the accused.

Ext. 8: Postal receipt.

Ext. 9: Postal receipt.

Ext. 10: Postal acknowledgement card.

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.