

**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-3900/2012

Trial No 3475/13

Saraswati Sahu, aged about 28 years, W/o. Nabaghan Sahu, Plot No.143, Infront of Nibedita Women Hostel , Keshari Nagar, Unit-V Bhubaneswar, Dist -Khurda.

.....Complainant

Versus

Prahallad Kumar Sarangi, S/o.Late Braja Sundar Sarangi, At/Po-Kalyaninagar, Dist- Cuttack

.....Accused person

Offence under Section 138 of N.I. Act

Counsel for the Prosecution : Sri B. Mohanty and other Associates

Counsel for the defence : Sri B.R. Pattnaik 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: -

She is a working lady and her husband is visual impaired for which the complainant deals with all business and financial matters of her husband. The accused is also a business man who deals in Grice business having its own industries namely Eastern Media Lubricant at Jagatpur, Cuttack from where the complaint used to purchase

Grice to resale it in different places since 2005. On the request of the accused the complainant gave Rs. 2, 25,000/- to the accused as a friendly loan to mitigate his personal problem and to discharge of his liability the accused issued two nos. of cheques bearing No. 592841 and 707012 dtd. 06.08.12 and 21.01.12 respectively for total sum of Rs. 2,25,000/- and gave a written document in Indian Non-Judicial Paper assuring to refund of Rs.2,00000/- by the end of October 2012 Accordingly, the complainant deposited the said cheques in his bank namely State Bank of India, Head office branch Bhubaneswar on dtd. 02.11.2012 for necessary encashment but the said cheque was returned unpaid with remarks 'Funds Insufficient' in the account of the accused and the complainant came to know about the bounce of the said cheque on dtd. 05.11.201`2 from his banker. On being request when the accused deliberately avoided to pay dues, the complainant issued legal notice through his Advocate demanding payment of cheque money and when the accused did not return the cheque amount , the complainant has filed this case against the accused. Hence this trial.

3. The plea of the defence is of complete denial and false implication. The accused has specifically stated before this court that on the alleged date the husband of the complainant forcibly took the cheque and had purchased the stamp paper. The accused has further pleaded that the complainant has filed this false case against him.

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. The complainant Saraswati Sahu has examined herself as P.W.1 and has exhibited the original receipt issued by the accused on stamp paper as Ext.1, the cheque bearing No.59284 on dtd.06.08.12 of Rs. 25,000/- as Ext.2 and the signature of the accused on the said cheque

as Ext.2/1, the cheque bearing No. 707012 dtd. 02.11.2012 of Rs. 2,00000/- as Ext.3 and the signature of the accused on the said cheque as Ext.3/1, the cheque return memo of cheque bearing No. 592841 of ICCI Bank as Ext.4 and the cheque return memo of cheque bearing No.707012 of ICCI bank as Ext.5, the office copy of the demand notice issued to the accused as Ext.6 and the envelope containing demand notice which was returned un-served has been marked as Ext7 and that intimation of State Bank of India dtd. 05.11.2012 as Ext.8. The complainant has not examined any other witnesses from her side. On the other hand the accused has not examined any witness from his side. But he has exhibited the signature of the husband of the P.W.1 on the backside of Ext.1 as Ext.A.

6. The allegation of the complainant in this case is that the accused has issued two cheques bearing No. 592841 and 707012 dtd. 06.08.12 and dtd. 02.11.12 respectively for total sum of Rs.2,25,000/- towards discharge of his liability but both the cheques were dishonored due to 'funds insufficient'. There is no dispute as regard to the fact that both the cheques were issued from the account of the accused, Prahalad Kumar Sarangi in ICICI Bank Ltd., Cuttack Branch, bearing A/c. No.ANWB634205004698 and there is also no dispute as regard to the fact that the demand notice have been issued to the accused by the complainant. Most importantly the accused has taken the specific plea that this present case has been filed against him with false allegation. He has no liability to pay back any money to the complainant.

Now two facts are before this Court as regard cheque vide Ext.2 of Rs. 25,000/- and Ext.-3 of Rs.2,00000/-. Coming to the second cheque vide Ext.-3 of Rs.2,00000/-. it is required to discuss certain facts and circumstances on record. The complainant has exhibited one document accepted by the accused in support of taking of Rs. 2,00000/- from the complainant. This fact has been disputed by the accused and has argued that the Non-Judicial stamp

paper has been purchased by the husband of the complainant and the signature of the husband of the complainant has been accepted by the accused as Ext-A. The accused has taken a special plea that the husband of the complainant has taken his signature forcibly for security purpose. It is also before this Court that the complainant has not discharged his burden to establish the fact that she has given a friendly loan to the accused. The complainant(P.W.1) during her cross-examination has stated that the accused has not given separate receipt regarding receiving the amount and she has no money lending licence. Further, the stamp paper has been purchased by her husband and signature of her husband has been Exhibited as Ext.1. on the reverse side of the stamp paper by the accused. Moreover Ext.1 has been executed on dtd. 15.08.12 and Ext.4 has been given on dtd. 06.08.12 prior to execution of Ext.1 which brings shadow of doubt as regard to the allegation of the complainant. If the contents of the complaint-petition will be taken into consideration then it reveals that the complainant has filed this case for realization of total sum of Rs.2,25,000/- and for that purpose two nos. of cheques i.e. bearing No.592841 on dtd. 06.08.12 and cheque bearing No.707012 dtd.02.11.12 have been issued for the fulfillment of the debt incurred by the accused from the complainant. Then the question comes to mind as to if at all Rs.2,25,000/- has been taken as friendly loan by the accused from the complainant then what is requirement of giving two cheques i.e one of Rs.25,000/- and another of Rs.2,00,000/- in shape of two nos of cheques that to on different dates i.e. on dtd. 06.08.12 on dtd. 02.11.12. The next question comes to mind if the accused has taken Rs.2,25,000/- as friendly loan then while he executed Ext.1 then why he mentioned Rs.2,00,000/ instead of mentioning Rs. 2,25,000/-? Such doubt becomes more stronger when the accused has taken the plea that he has no legal liability to pay back Rs. 2,25,000/- coupled with the fact of purchase of the Non-Judicial

stamp paper vide Ext.1 by the husband of the complainant and his signature on it Vide Ext-.A. In such 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** have further held that the cheque issued for the security or any other purpose would not come with the purview of Section 138 of the Act.

In the case of **M/s. Kumar Exports V. M/s. Sharma Carpets, AIR 2009, Supreme Court1518, Hon'ble Appex Court** held that : **The accused in a trial under Section138 has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumption an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial.**

Hon'ble Appex Court in the case of **Krishna Janardhan Bhat V. Dattatraya G.Hegde2008 (I) CIVIL COURT CASES 716(S.C.)** have held that question as to whether presumption stood rebutted or not has to be determined keeping in view the other evidences on record- **Stepping into the witness box by the appellant is not imperative- Background fact and the conduct of the parties together with their legal required to be taken into consideration.**

Hon'ble Appex Court in the case Vijay V. Laxman & Another, (2013)54 OCR,(SC) 1035 have held that presumption that issue of cheques for consideration held rebuttal on preponderance of probabilities.

So the observation of the Hon'ble Appex Court in above noted reported cases is very clear that the accused in a trial U/s.138 can either show that consideration and debt did not exist or that under the particular facts of the case the non-existence of the consideration and debt is probable that a prudent man would suppose that no consideration and debt existed. To rebut the statutory presumption an accused is not expected to prove his defence beyond all reasonable doubt as is required of the complainant in a criminal trial. In this instant case, the above discussed facts and circumstances clearly show that the accused has discharged his burden of establishing the fact that he has not issued the cheques which have been taken away forcibly by the husband of the complainant in addition to the fact of purchase of Non-Judicial stamp paper vide Ext.-1 being signed on its reverse vide Ext.-A by the husband of the complainant. So, now burden shifted to the complainant to establish the fact of giving loan of Rs.2,25,000/- to the accused to which she has not established properly as it is expected from her as per the provision of law. Although she has given Rs.2,25,000/- to the accused as friendly loan the specific date has not been given in her complaint-petition nor she is able to give it to the court. Further no document or receipt has been provided by her to the Court to establish the fact of receipt of Rs.2,25,000/- by the accused from her. If at all her version will be taken as true for sake of argument, then this Court is in dark as to for which reason Ext.-2 was issued on dtd. 06.08.2012 which is prior to the date of execution of Ext.1 and further doubt comes before this Court as to why Ext.-1 has been executed for Rs. 2,00,000/- although complainant is alleging of Rs. 2,25,000/-. Hence the case of the

complainant totally comes under doubt and the complainant has completely failed to discharge her burden, while burden shifts to her to prove her case.

7. **On the other hand, the complainant has relied upon the reported case of HASHMIKANT M. SHETH V. STATE OF GUJURAT 2004 CRLJ 3268 GUJURAT, P.K MANMADHAN KARTHA V. SANJEEV RAJ, 2002,STPL(LE) 31324 SC,S.K Krishna Murthy V. A.R. Ranjan1[996] CrLJ355 and has vehemently argued before this Court to punish the accused as per law.**

8. **But the observation of the Hon'ble Appex Court in the case of M/s. Naryan Menon @Mani V. State of Kerala and another (Supra), M/s. Kumar Exports V. M/s. Sharma Carpets, (Supra), of Krishna Janardhan Bhat V. Dattatraya G. Hegde,(Supra), Vijay V. Laxman & Another (Supra) are more applicabale to the facts and circumstances of the present case.**

Accordingly 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 a 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 23th day of December, 2013.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

P.W.1: Sarawati Sahu

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the Complainant:

Ex.- 1: Original receipt issued by the accused with a stamp paper

Ext. – 2: Cheque No.592841 dtd. 06.08.12

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

Ext.- 3: Cheque No. 707012 dtd. 02.11.2012

Ext.-3/1: Signature of the P.W. 1 on Ext.-3

Ext.-4: Cheque return memo bearing No.592841 of ICICI Bank

Ext-5: Cheque return memo of cheque 707012 of ICICI Bank

Ext.-6: Office copy of demand notice

Ext.- 7: Envelope containing demand notice.

Ext.- 9 : Intimation of SBI dtd. 05.11.12.

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.