

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-633/2013**  
**Trial No- 329/14**

**Smt. Damayanti Panda, aged about 46 years,**  
**W/o. Prafulla Kumar Panda, Plot No.6/478,**  
**IRC Village, Nayapalli, Bhubaneswar,**  
**Po/Ps: Nayapalli, Dist- Khurda.**

**.....Complainant**

**Versus**

**Sri Abinash Sahoo, aged about 32 years,**  
**S/o. Ramesh Ch. Sahoo, Plot No. A/401,**  
**Madhab Vihar Apartment, Bomikhal,**  
**Bhubaneswar, Po/Ps. Laxmisagar,**  
**Dist- Khurda.**

**.....Accused**

**Offence under Section 138 of N.I. Act**

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

**Counsel for the defence: Sri J. Mishra and other Associates.**

**Date of argument: 10.02.2014**

**Date of Judgment: 10.02.2014**

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

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

2. The complainant case brief is that:

On 27.03.2012 the accused had taken an amount of Rs.7, 00000/- (Rupees Seven Lakhs) from her towards running his business by executing one money receipt to that effect. Accordingly, towards discharge of part liability, the accused issued the cheque bearing

No.904949 dtd. 01.09.2012 for an amount of Rs. 3, 50,000/-(Rupees Three Lakhs fifty Thousand only) drawn on Anadhra Bank, Barmunda Branch, Bhubaneswar in favour of the complainant. As per the instruction of the accused, the complainant deposited the cheque in her account maintained at State Bank of India, Jaydeve Vihar Branch, Bhubaneswar for collection of money 'but the Andhra Bank , Barmunda Branch returned the cheque with remark 'Funds Insufficient' and subsequently the complainant issued pleaders notice to the accused on 26.12.2012 demanding payment of the above said amount but the said notice has been returned by the Postal Department on 29.12.2012 with remark "Addressee left without intimation, so returned to sender", but the notice was sent to the present address of the accused and knowing fully well that he had no sufficient balance in his account the accused has issued the cheque in favour of the complainant for which the complainant has filed this case against the accused.

3. The plea of the accused is that he had taken Rs. 7,00,000/- (Rupees Seven Lakhs only) from the complainant and has paid Rs.70,000/- per month for a continuous period of three years and has given one cheque for security purpose and that when he could not pay the interest to the complainant, she 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 bearing no 904949 dtd. 01.09.2012.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 prove her case, the complainant has examined herself as P.W.1 and has exhibited the money receipt issued by the accused as Ext.1 and the signature of the accused on it as Ext.1/1. She has also exhibited the cheque bearing No.904949 dtd. 01.09.12 of Rs.3,50,000/- as Ext.2 and the signature of the accused on it as Ext.2/1, the cheque return memo dtd/ 28.11.12 as Ext.3, the cheque return memo dtd. 03.12.12 as Ext.4, the office copy of the demand notice dtd. 26.12.12 as

Ext.5 and postal receipts as Ext.6 and Ext.7, the office copy of the query sent to the postal department as Ext.8 and the reply of the postal department to the complainant on 26.02.13 regarding deliver of demand notice as Ext.9 and the Postal A.D as Ext.10. On the other hand, accused Abinash Sahoo has examined himself as D.W. 1.

6. The facts and circumstances and the allegation of the complainant shows that the accused had taken Rs. 7, 00000/-(Rupees Seven Lakhs only) from the complainant which is not disputed before this Court. Besides, the complainant has exhibited the money receipt with this regard as Ext.1 and the signature of the accused on the said money receipt as Ext.1/1. Most importantly the complainant has exhibited the cheque bearing No.904949 dtd. 01.09.2012 of Rs.3,50,000/- issued by the accused Abinash Sahoo as Ext.2 and the signature of the accused on the said cheque as Ext.2/1.

Section 139 of N.I Act “**speaks that 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**”.

Needless to mention here that there is no dispute before this Court that the cheque has been presented within time of its validity and the documents on record vide Ext.3, Ext.4, Ext.5, Ext.6, Ext8, and Ext.9 clearly shows that the complainant has made a demand notice to the accused for payment of the above said amount of money by giving notice in writing with the prescribed period of time and the facts and circumstances also shows that the accused has failed to make the payment of the said amount of money to the complainant with the prescribed period of fifteen days of receipt of the said notice.

Although the accused has taken the plea that he has returned Rs. 70,000/-(Rupees Seventy Thousand) per month continuously for a period of three years, he has not filed a single scrap of paper in support of his contention.

Moreover, the conflicting version of the complainant before the Court during course of his cross-examination U/s.313 of Cr.P.C. and during course of his examination as defence witness before the Court as regard to the amount of money received by him from the complainant creates suspicion as regard to the credibility of his version. While the accused has specifically admitted the fact that he had taken Rs. 7, 00000/- from complainant during his examination U/s. 313 of the Cr.P.C., in his evidence before the Court during cross-examination as D.W. 1, he has changed his version and has stated that he had taken Rs. 2,00000/- from the complainant with an agreement that he shall take another 2,00000/- from her and shall return 7,00000/- to the complainant with interest.

Most importantly the money receipt which has been filed by the complainant as Ext.1 has not been objected by the accused in any manner. So, the totality of evidence and documents on record and the facts and circumstances of the case clearly shows that the accused has committed an offence punishable U/s. 138 of N.I Act, 1881 and accordingly, it is hold that the complaint has proved her case beyond all reasonable doubt.

7. In the result the accused is found guilty U/s. 138 of N.I Act 1881 and accordingly he is convicted there under. Taking consideration of the facts and circumstances of the case, this Court does not feel it proper to extend any of the benevolent provision of the probation of offenders Act or the provision U/s.360 of the Cr.P.C. Hence, the convict is sentenced to undergo Simple Imprisonment for a period of one year. In addition to that the convict is directed to pay a compensation of Rs.7,00000/-(Rupees Seven Lakhs only) to the complainant U/s.357 (3) of the Cr.P.C., and in default, to undergo Simple Imprisonment for a further period of two months.

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 10<sup>th</sup> day of February, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

: P.W. 1: Smt. Damayanti Panda

List of witnesses examined on behalf of the defence:

D.W. 1: Abinash Sahoo

List of Exts. marked on behalf of the Complainant:

Ext/1: Money receipt on dtd. 27.03.12

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

Ext.2: Cheque No.904949 dtd. 01.09.12 of Andhra Bank,  
Bhubaneswar.

Ext.Ext.2/1: Signature of the accused on cheque.

Ext.3: Cheque return memo dtd. 28.11.12 of Andhra Bank.

Ext. 4: Intimation memo dtd. 03.12.12 of SBI, Jaydev Vihar,  
Bhubaneswar.

Ext. 5: Demand notice dtd. 26.12.12.

Ext.6: Postal slips dtd. 26.12.12.

Ext.7: Postal slips dtd. 26.12.12

Ext. 8: Postal query dtd. 31.11.13.

Ext. 9: Complainant settle reply dtd. 26.02.13.

Ext. 10: Postal notice along with A.D. dtd. 29.12.12.

List of Exts. marked on behalf of the Defence

Nil

S.D.J.M., Bhubaneswar.