

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS AT KAMRUP(M).

**Present:** ARPITA KAR, A.J.S.

**C.R. CASE NO: 1232/14**

**U/S 138 N.I.Act**

**Sri Kabin Baishya.**

..... Complainant

**-Vs-**

**1. Sri Bhupen Deka**

..... Accused.

**Advocate Appeared:-**

For The Complainant: - Sri U.K.Das, Md. A. Hussain.

For The Accused :-Mr.K. Bhuyan, Mr. K.K. Bhuyan, Mr. K. Maurya,  
Mr. P. Das, Mr. K. Baruah, Mr. M. Ahmed, Sri B. Deka.

OFFENCE EXPLAINED ON :05.06.2015

EVIDENCE FILED AND RECORDED ON: 09.07.2015, 21.09.2016

ARGUMENT HEARD ON: 21.12.2016, 22.02.2017.

JUDGMENT DELIVERED ON: 01.03.2017

**JUDGMENT.**

1. This is a case instituted under section 138 of the Negotiable Instrument Act, 1881 alleging therein that the accused Sri Bhupen Deka had issued a cheque in favour of the complainant, which was dishonoured by the drawee bank.

2. The brief facts giving rise to the institution of this complaint case by the complainant, Sri Kabin Baishya (hereinafter referred to as the complainant) is that he is a businessman by profession and had some business transaction with the accused. During the said business transaction the accused was liable to make a payment of RS.4,25,000/- to the complainant and to discharge the aforesaid liabilities the accused issued two cheques bearing No.280447 dated 28.12.2013 for Rs.1,25,000/- (Rupees One lakh and twenty five Thousand only) and cheque bearing No. 280448 dated 30.03.2014 for RS.3,00,000/- (Rupees Three Lakhs only) in favour of the complainant for the discharge of his liability. The complainant accordingly deposited the said cheque bearing Cheque No. 280447 dated 28.12.2013 for Rs.1,25,000/- for encashment to his bank, but the same was returned unpaid by cheque return memo with reason "funds insufficient".

3. The complainant thereafter issued legal notice to the accused demanding the amount of cheque within 15 days, but the accused failed and neglected to pay the same even after receipt of the notice; as such the complainant lodged this complaint under section 138 of the Negotiable Instruments Act, 1881.

4. The accused was called upon to enter trial and upon his appearance on receiving the summon, the particulars of offence under section 138 of the Negotiable Instruments Act, 1881 were explained to him to which he pleaded not guilty and claimed to be tried.

5. Complainant side examined witness and exhibited documents. Then examination of accused was recorded u/s 313 Cr.P.C. Defence side did not adduce any witness.

6. The accused in his examination recorded under section 313 Cr.P.C. contended that he is ready to pay the cheque amount if he gets time till March,2017 as his contracts bills are not cleared.

7. I heard arguments for both sides.

8. Upon hearing and on perusal of the record I have framed the following **points for determination** in order to arrive at a definite finding as regards the dispute in this case :-

**i) Whether the accused issued the cheque no. 280447 dated 28.12.2013 in favour of the complainant for the discharge of any legally enforceable debt or liability?**

**ii) Whether the cheque was dishonoured for insufficient funds in the account of the accused?**

**iii) Whether the accused received the demand notice issued by the complainant regarding the dishonour of the cheque?**

**iv) Whether the accused has failed to repay the cheque amount to the complainant within stipulated period and thereby committed the offence under section 138 of the Negotiable Instruments Act, 1881?**

**DISCUSSION, DECISION AND REASONS FOR THERE OF:-**

**Point For Determination No.1: Whether the accused issued the cheque no. 280447 dated 28.12.2013 in favour of the complainant for the discharge of any legally enforceable debt or liability?**

9. The complainant has alleged that the accused had issued the cheque-in-question for the discharge of legally enforceable debt; whereas the accused has contended that he is unable to pay the cheque amount as his bills are not cleared by a third party.

10. P.W.1, Shri Kabin Baishya has deposed that he is a businessman by profession and had some business transaction with the accused. During the said business transaction the accused was liable to make a payment of RS.4,25,000/- to the complainant and to discharge the aforesaid liabilities the accused issued two cheques bearing No.280447 dated 28.12.2013 for Rs.1,25,000/- (Rupees One lakh and twenty five Thousand only) and cheque bearing No. 280448 dated 30.03.2014 for RS.3,00,000/- (Rupees Three Lakhs only) in favour of the complainant for the discharge of his liability. The complainant accordingly deposited the said cheque bearing Cheque No. 280447 dated 28.12.2013 for Rs.1,25,000/- for encashment to his bank,. The said cheque is produced and marked as exhibit-1.

11. The veracity of the P.W.1 could not be shaken in his cross-examination also. The accused in his examination U/S 313 Cr.P.C. has admitted that he had some business transaction with the complainant and is liable to pay an amount of RS.4,25,000/- to the complainant and that he is willing to repay the same if he gets time till March, 2017. The only contention made by him is that he is not able to make the payments as his contracts bills are not cleared.

12. In the instant case, from what has been discussed so far it becomes clear that the accused has admitted his cheque and that the same was issued in discharge of his liabilities. The only contention made by him is that as his bills are not cleared hence he is not able to make the payments to the complainant and would repay the same if he gets time till March,17. Now as the accused has already admitted his liability towards the complainant hence in absence of any such agreement to the

effect that the liability towards the complainant will be discharged only when his bills are passed, the accused cannot take the plea that as his payment is stopped by a third party hence he would discharge his liability towards the complainant only when his bills are passed.

13. In addition to the above there is a statutory presumption under section 139 of the Negotiable Instruments Act, 1881 in favour of the holder of the cheque, that the cheque was issued for the discharge of debt. In the instant case at hand the complainant vide Exbt-1 has already proved the liability of the accused; as such the only presumption that can be drawn in the absence of any evidence to the contrary, is that the said cheque was issued for the discharge of legally enforceable debt.

14. In view of the above, it is held that the accused had issued the cheque-in-question, Exbt-1 for repayment of the amount owed by him to the complainant.

15. ***DECISION:*** The cheque was issued by the accused for the discharge of a legally enforceable debt.

**Point For Determination No.2:- Whether the cheque was dishonoured for insufficient funds in the account of the accused?**

16. P.W.1, has deposed that the said cheque was presented to the complainant's bank for encashment, but the same was dishonoured because of "funds insufficient". P.W.1 has produced the cheque return memo and the same is marked as exhibit-2 which shows that the said cheque was dishonoured for "funds insufficient" on 24.03.2014. The accused has not disputed the factum of dishonour of the cheques. In addition to the above, the section 146 of the Negotiable Instruments Act, 1881 provides for a statutory presumption as regards the

genuineness of the cheque return memo issued by the bank; hence it is held that the said cheque was dishonoured for the reason "funds insufficient" when presented for encashment.

17. ***Decision:* The cheque issued was dishonoured for insufficient funds in the account of the accused.**

**Point For Determination No.3:- Whether the accused received the demand notice issued by the complainant regarding the dishonour of the cheque?**

18. P.W.1, has deposed that after the dishonour of Exbt-1, demand notice was issued in respect of the dishonour of the said cheque after the receipt of the cheque return memo (exhibit -2) the complainant issued a demand notice to the accused by registered post in his correct address. The copy of the said notice is produced and marked as exhibit-3. The complainant has also produced the postal receipt by which the said notice was issued to the accused and the same is marked as exhibit -4.

19. I have perused the above exhibits and there is nothing on record to doubt or disbelieve the genuineness of the above exhibits. The postal receipt [exhibit-4] shows that the notice was sent by registered post duly prepaid and addressed to the accused and it was sent on 11.04.2014.

20. The perusal of the exhibit-3 shows that it is demand notice whereby the factum of dishonour of the cheque (exhibit-1) is clearly mentioned and a demand is made to honour the amount of the said cheque.

21. The accused in his examination U/S 313 Cr.P.C. has admitted the factum of receiving the said legal notice.

22. Thus, in view of the aforesaid discussions and evidences, it is held that the accused received the demand notice issued by the complainant regarding the dishonour of the cheque.

23. ***DECISION:*** The demand notice was duly served upon the accused.

**Point For Determination No 4:- Whether the accused has failed to repay the cheque amount to the complainant within stipulated period and thereby committed the offence under section 138 of the Negotiable Instruments Act, 1881?**

24. The offence under section 138 of the Negotiable Instruments Act, 1881 is complete on the satisfaction of certain conditions which are: that the cheque has to be issued on the account maintained by the accused and that the cheque has to be issued for the discharge of a debt or liability. It is further provided that the said cheque has to be deposited within three months of its issuance or within its validity and that the notice regarding the dishonour of the cheque for insufficient funds ought to be given within 30 days of the receipt of information regarding the dishonour.

25. In the instant case in hand, it is already held that the cheque was issued by the accused in the account maintained by him and that the said cheque was issued for the discharge of a legally enforceable debt. It is also held that the said cheque was dishonoured due to insufficient fund, vide Exbt-2. The cheque in the instant case was dated 28.12.2013 and it was presented within its validity for encashment. The cheque was dishonoured on 24.03.2014 as is revealed from the cheque return memo; and the demand notice was issued by the complainant on 11.04.2014 which is within 30 days from the receipt of information of dishonour. On this point, defence side has no contrary plea that accused paid the cheque amount within 15 days from the receipt of demand

notice and evidences given by complainant remained unrebutted. The accused has never contended that the case is not filed within its limitation, as such it can be said that the case is filed within 30 days after the lapse of 15 days from the date of receipt of demand notice; hence the complaint is lodged within the period of limitation.

26. In view of the above discussion it is held that all the ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 are satisfied in the instant case and further the complainant has satisfied all the requisites for the institution of the complaint; hence it is held that the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881.

27. ***DECISION:*** The accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881.

28. In view of the aforesaid discussions and the decisions reached in the foregoing points for determinations, it is held that the accused have committed offence under section 138 of the Negotiable Instruments Act, 1881 and as such the accused is convicted under section 138 of the Negotiable Instruments Act, 1881.

29. I have heard the parties. I am not inclined to extend the benefit of the provisions of the Probation of Offenders Act, 1958, because the offence committed is in the nature of an economic offence and the backbone of the nation depends on a healthy economy. Moreover the real intention behind the enactment of the said offence is to provide quick remedy to the payee or the holder of the cheque, and also to install a sense of confidence and assurance to the business community. So if accused is given the benefit of probation it will go against the spirit of the legislation.

30. I have heard the parties on the point of compensation and sentence.

31. Considering the nature of the offence and the other attending facts and circumstances of this case, the accused is convicted of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to undergo imprisonment for Six(6) months and further to pay compensation of Rs.2,00,000/- (Rupees Two Lakhs Only)U/S 357 Cr.P.C. to the complainant as the cheque amount is Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) and about three years have elapsed from the date of issuance of cheque. It is further directed that the accused shall undergo simple imprisonment for another two months in default of the payment of compensation.

32. Furnish a free copy of the judgment to the accused immediately.

33. The case is disposed of on contest.

Given under my hand and the seal of this court on this the 1<sup>st</sup> day of March, 2017 at Kamrup(M).

Judicial Magistrate 1<sup>st</sup> Class, Kamrup(M).

**A P P E N D I X.**

1. **Prosecution Witnesses:-**

P.W.1:Sri Kabin Baishya.

2. **PROSECUTION EXHIBITS:-**

EXHIBIT 1: Returned Cheque

EXHIBIT 2:Returning memo.

EXHIBIT 3: Copy of Advocate's Notice.

EXHIBIT 4: Postal Reciept.

3. **DEFENCE WITNESSES:-**

None

4. **DEFENCE EXHIBITS :-**

None.

Judicial Magistrate 1<sup>st</sup> class, Kamrup(M).