

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

Present: ARPITA KAR, A.J.S.

C.R. CASE NO: 3018/13

U/S 138 N.I.Act

Sami Ahmed Khan

..... Complainant

-Vs-

1.Masaddar Ali Laskar

..... Accused.

Advocate Appeared:-

For The Complainant: - Mr. D.Zakaria, Mr. S. Alim

For The Accused :-Mr. H. Rajbongshi, Mr. B.B. Talukdar, Mr.
N.P.Dowarah, Smti. M. das

OFFENCE EXPLAINED ON :13.03.2015

EVIDENCE FILED AND RECORDED ON: 16.07.2015,23.05.2016,
24.08.2016, 09.01.2017.

ARGUMENT HEARD ON: 28.02.2017

JUDGMENT DELIVERED ON: 17.03.2017

JUDGMENT.

1. This is a case instituted under section 138 of the Negotiable Instrument Act, 1881 alleging therein that the accused Md. Masaddar Ali Laskar 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, Sami Ahmed Khan (hereinafter referred to as the complainant), is that Md. Masaddar Ali Laskar (hereinafter referred as the accused) being known to the complainant and his family took a loan of Rs.5,00,000/- from the complainant with a promise to return the same within a short period and to discharge the legally enforceable debt, the accused had drawn and executed the cheque bearing No. 465013 dated 21.04.2013, 465014 dated 21.04.2013, 465019 dated 26.06.2013, No.465020 dated 26.06.2013 and No.465021 dated 26.06.2013 for an amount of Rs.1,00,000/- each i.e. Rs.5,00,000/- in total. The complainant deposited the aforesaid cheque for encashment to his bank, but the same was returned unpaid by cheque return memo with reason "Insufficient Funds".

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 was 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 also adduced witness.

6. The defence case is of partial denial as is revealed from the statement of the accused recorded under section 313 Cr.P.C. The accused contended that he has already repaid the amount that the complainant was entitled to get from him.

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. 465013 dated 21.04.2013, cheque No.465014 dated 21.04.2013, cheque No.465019 dated 26.06.2013, Cheque No.465020 dated 26.06.2013, cheque No.465021 dated 26.06.2013 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. 465013 dated 21.04.2013, Cheque No.465014 dated 21.04.2013, cheque No.465019 dated 26.06.2013, cheque No.465020 dated 26.06.2013, cheque No.465021 dated

26.06.2013 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 has already repaid the amount for which the complainant was entitled for.

10. The complainant, Shri Sami Ahmed Khan has deposed as P.W.1. He deposed that the accused is known to their family and due to the said familiarity the accused has taken a loan of Rs.5,00,000/- from him with a promise to return the same within a short period of time and in discharge of the said debt and liability the accused has issued five numbers of cheques in favour of the complainant bearing cheque No. 465013 dated 21.04.2013, cheque No. 465014 dated 21.04.2013, cheque No.465019 dated 26.06.2013, cheque No.465020 dated 26.06.2013, cheque No.465021 dated 26.06.2013 for an amount of Rs.1,00,000/- each i.e. Rs.5,00,000/- in total.

11. The accused adduced his evidence as D.W.1. He has admitted his cheques-in-question. He contended that the complainant agreed to purchase a plot of land from him and gave him Rs.5,00,000/- as consideration. But later he did not sale the land to him and returned the amount in cash. The cheques were issued in good faith and were blank at the time of their issuance. After filing the case the complainant agreed to withdraw the case and as such he paid him an amount of Rs.2,00,000/- on 12.05.2016. The money was given in good faith and as such no money receipt was obtained from him.

In his cross-examination he deposed that Mr. Khairul Hussain was present when the amount was given to the complainant. He borrowed the money from Mr. Khairul Hussain and gave the same to the complainant at a place near his office at Ganeshguri. He does not

know the occupation of Khairul Hussain and he is not well known to him.

12. D.W.2, Sri Deepak Lahkar deposed that the accused is known to him and in the month of June-July,2016 he saw the accused giving some money to the complainant and asking him to withdraw the case of land that was pending between them.
13. Thus, from the discussions made so far, it is evident that the accused has admitted his cheque and he has further admitted that he was suppose to return Rs.5,00,000/- to the complainant but he has contended that he has already returned the money to the complainant and the cheques were blank at the time of its issuance.
14. From the perusal of C.R. it is seen that the accused has taken a plea that the accused has returned Rs.2,00,000/- to the complainant and he was supposed to withdraw the case after receiving the said money. But the accused has not produced any document on record to show that he has actually returned the said amount to the complainant. The accused stated that the amount was paid in good faith and as such no money receipt was taken from the complainant. The accused stated that he has returned the said amount of Rs.2,00,000/- to the complainant in presence of one Mr. Khairul Hussain by borrowing the said amount from him. But the accused did not adduce the evidence of the said Mr. Khairul Hussain to support his plea. Rather the accused stated that the said Mr. Khairul Hussain is not very well known to him. Now it is very unlikely that a person who is not well known to him would give him an amount of Rs.2,00,000/-, which is not at all a small amount, to give it to a third person.
15. In addition to the above, the accused deposed that the cheques were issued in good faith and were blank at the time of their issuance. He

further contended that on 12.05.2016 he has returned an amount of Rs.2,00,000/- to the complainant and the case was supposed to be withdrawn after the receipt of the said amount. But after getting the amount the complainant did not withdraw the case and he also did not take a money receipt as the amount was given in good faith. Now, as the accused himself has deposed that blank cheques were issued by him to the complainant in good faith and the complainant has not returned his cheque even after getting the money then it is not understandable as to why the accused again in good faith did not take any money receipt from the complainant even after paying the amount of Rs.2,00,000/- to the complainant. Also it is not at all believable that the accused has paid the said amount of Rs.2,00,000/- to the complainant without taking any money receipt for the same, that too when a case is pending between the parties. A man of ordinary prudence ought to have taken a money receipt after paying any amount to the complainant pertaining to a case that is pending between them so that he can adduce the same before the court as evidence in support of his contention. The accused has further contended that the complainant has misused his security cheques but he failed to produce any materials on record to show that he has taken any action against the complainant after coming to know that the complainant has misused his security cheques. The accused could have very easily stop payment his security cheques to prevent its misuse, which a man of ordinary prudence ought to have done.

16. In the instant case the accused himself has admitted that he agreed to pay an amount of Rs.5,00,000/- to the complainant as he has received that money from the complainant pertaining to the sale of some plot of land and he has not produced any document to show that he has cleared his liabilities in favour of the complainant. As such it clear that the accused was liable to pay the cheque amount to the complainant.

17. In addition to the above there is a statutory presumption under section 118 and 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 Exbt-1 to 5 has already proved the liability of the accused and accused could not adduce any evidence to rebut the same; 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.

18. **DECISION:** The cheques were 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?

19. P.W.1, has deposed that the said cheques were presented to the complainant's bank for encashment, but the same was dishonoured because of "Insufficient Funds". P.W.1 has produced the cheque return memo and the same is marked as exhibit- 6 to 10 which shows that the said cheques were dishonoured for "Insufficient Funds" on 21.06.2013, 21.06.2013, 28.06.2013, 28.06.2013 and 28.06.2013 respectively.

20. 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.

21. Hence, in view of the ratio of the aforesaid decision it is held that the cheque was dishonoured due to funds insufficient in the account of the accused.

22. ***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?

23. P.W.1, has deposed that after the dishonour of the cheques-in-question, demand notice was issued in respect of the dishonour of the said cheque after the receipt of the cheque return memos. 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-11 and 12. The complainant has also produced the postal receipt by which the said notice was issued to the accused and the same are marked as exhibit -13 and 14.

24. 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 – 13 and 14] shows that the notice was sent by registered post duly prepaid and addressed to the accused and it was sent on 04.07.2013 and 05.07.2013.

25. The accused has denied the factum of receiving the notice.

26. In **C.C. Alavi Haji (2007 CrI. L.J. 3214)**; Hon'ble Apex Court has laid down that if a notice is sent in the proper address of the accused, a person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint U/S 138 of the Act, cannot obviously contend that there was no proper service of

notice as required u/s 138 by ignoring statutory presumption to the contrary under section 27 of the General Clauses Act and Section 114 of the Evidence Act, That any other interpretation of the proviso would defeat the very object of the legislation.

27. In the instant case, the accused did not make any such payment within 15 days from the date of receipt of the summons from the Court and as such, in view of the ratio as laid down in **C.C. Alavi Haji (2007 Cri. L.J. 3214) (supra)** the accused cannot take any advantage of the plea that he has not received the legal demand notice.
28. 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.
29. ***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?

30. 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.
31. 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 cheques were dishonoured due to insufficient fund. The cheques in the instant case were dated 21.04.2013, 21.04.2013, 26.06.2013, 26.06.2013, 26.06.2013 and it was presented within its validity for encashment. The cheques were dishonoured on 21.06.2013, 21.06.2013, 28.06.2013, 28.06.2013, 28.06.2013 as is revealed from the cheque return memo; and the demand notice was issued by the complainant on 4.07.2013 and 5.07.2013 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 un rebutted. 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.

32. 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.

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

34. 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.

35. 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.

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

37. Considering the nature of the offence and the other attending facts and circumstances of this case, the accused Masaddar Ali Laskar is convicted of the offence under section 138 of the Negotiable Instruments Act, 1881. The accused Masaddar Ali Laskar is sentenced to undergo imprisonment for Six(6) months and further to pay compensation of 8,00,000/- (Rupees Eight Lakhs Only) as the total cheque amount for all the five cheques is Rs.5,00,000/- (Rupees Five Lakhs only) and about Four years have elapsed from the date of issuance of cheques. It is further directed that the accused shall undergo simple imprisonment for another two months in default of the payment of compensation.

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

39. The case is disposed of on contest.

Given under my hand and the seal of this court on this the 17th day of March, 2017 at Kamrup(M).

APPENDIX.

1. **Prosecution Witnesses:-**

P.W.1: Sami Ahmed Khan

2. **PROSECUTION EXHIBITS:-**

EXHIBIT 1 to 5 :Returned Cheques.

EXHIBIT 6 to 10 :Returning memos.

EXHIBIT 11 and 12: Copy of Advocate's Notices.

EXHIBIT 13 and 14:postal receipts.

3. **DEFENCE WITNESSES:-**

D.W.1: Md. Masaddar Ali Laskar

D.W.2: Sri Deepak Lahkar.

4. **DEFENCE EXHIBITS :-**

None.

Judicial Magistrate 1st class, Kamrup(M).