

DATE OF COGNIZANCE : 05/05/2014

DATE OF DISPOSAL : 08/06/2017

IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT AT
MAGISTERIAL LEVEL-II, COIMBATORE

Present: Thiru.M. Ashfaq Ahamed, B.A., B.L.,
Judicial Magistrate

Thursday the 8th day of June 2017

CC.1/17

(CC.160/14, JM-7, Coimbatore)

(CC.217/15 FTM.No.I Coimbatore)

V.Jayakumar

S/o.Veeraperumal

Partner Zeta Computer solutions

Complainant

-VS-

Meghavarnan

S/o. Rangarajupandian

Accused

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This case coming up for the final hearing before me in the presence of Thiru.P.Vijayakumar, M.A., BL., Counsel for complainant and Thiru. B.Vijayakumar , B.Com, .B.L., Counsel for accused and having stood over for Consideration till this day, this court delivered the following.

JUDGMENT

1) This is a complaint filed by the complainant under section 200 Cr.P.C. as against the accused for offence under section 138 of NI Act R/W 142 of NI Act.

2) The case of the complainant in the written complaint is as follows-

The accused and the complainant are known to each other. The accused borrowed a sum of Rs. 1,50,000/- from the complainant the month of December 2012 for urgent family needs and promised to repay the same within a year. The accused has also agreed to pay interest at the rate of 24% per annum. The accused has not paid any amount either towards principle or towards interest. After repeated demands the accused had issued a cheque bearing No.152380 dated 26-10-2013 for Rs.1,50,000/- drawn in the name of the

firm and drawn on HDFC Bank Gandhipuram branch, Coimbatore towards the principal amount and assured to repay the balance interest in a short period. The complainant presented the cheque with his banker Vijaya bank Saibaba colony branch Coimbatore on 30/11/2013 and the same was met with dishonour. At the request of the accused the cheque was again presented for collection on 7-1-2014 and it was dishonoured for the reason "fundsInsufficient" vide memo dated 07/01/2014. The complainant has issued a legal notice dated 24-01-2014 calling upon the accused to pay the amount covered under the cheque. The accused has received the notice on 28/01/2014. The accused had not chosen to pay the amount due under the dishonoured cheque nor issued any reply to the notice. The accused has committed an offence under section 138 of NI Act. Hence the complaint.

3) On receipt of the complaint, sworn statement was recorded. Cognizance was taken against the accused. The accused appeared on receipt of summons and he was questioned regarding the averments made in the complaint and the accused denied guilt and claims to be put on trial.

4) The complainant was examined as PW1. The chief examination of the complainant was recorded by a proof affidavit which is in consonance with the written complaint. The original cheque dated 26/10/2013 for Rs.1,50,000/- drawn on HDFC Bank ,Gandhipuram branch, Coimbatore, Bearing No.152380 as Ex.P1, Cheque return memo dated 07/01/2014 as Ex.P2, Legal notice dated 24/01/2014 as Ex.P3 and the acknowledgment card dated 28/01/2014 as Ex.P4. The evidence of the complainant was closed with the examination of the PW1 .

5) After closing of evidence on the complainant side, the accused was examined under section 313 (1) (b) Cr.P.C. regarding the incriminating portion of evidence. The accused had denied the said evidence as false and claimed to adduce evidence on his side. However the accused has not let in any evidence or marked any documents to substantiate his defence.

6) Based on the above facts, evidence and Arguments put forth the question for consideration is “whether the cheque was issued by the accused for discharge of existing liability, the same returned dishonoured and accused had committed an offence punishable under section 138 of NI Act.

7) From the materials available before the court it has to be noted the accused has not denied his signature in the cheque marked as Ex.P1 . Therefore the statutory presumption contemplated under section 139 of NI Act shall be drawn infavour of the complainant. Untill the contrary is proved, it is presumed that the cheque is issued for the discharge of legally enforceable debt or liability. The burden is now on the accused to either prove or at the least to probablise his defence. This view of the court is supported by the decision of the Apex Court as reported in AIR 2010 Supreme Court 1898 (Rangappa -vs- Sri Mohan) and AIR 2001 Supreme Court 2895 (K.N. Beena -vs- Muniappan). Though the presumption is in favour of the complainant, the same is a rebuttable presumption. The defence available for the accused is “preponderance of probability”. It is not certain that the accused should let in evidence to shift the burden. It would be suffice if the accused was able to prove or probablise his case on the materials available.

8) The accused has not disputed his signature in the cheque marked as Ex.P1. The complainant in his notice, complaint, sworn statement and in his chief examination has deposed about the borrowal of money by the accused and issuance of cheque. The complainant was not cross examined by the accused even though opportunity was given to him. The accused was given opportunity to cross examine PW1 but he has not chosen to cross examine. The complainant was examined in chief on 02-09-2016 and accused was questioned u/s 313 Cr.P.C. on 17.11.2016 . The accused has not chosen to file any list of witness , steps to examine the witnesses on his side nor chosen to file application to challenge the evidence of PW1 by cross examination. The accused was given umpty number of opportunities and the same was not utilised which shows the accused had no defence and no intention to challenge the evidence of PW1 or the pleadings of the complaint. The

accused has also not adduced any defence witness and the case of the complainant remains unchallenged by the accused. The pleadings of the complainant with regard to the borrowal by the accused is consistent and there is no contradiction or discrepancy. The complainant has also pleaded the borrowal is for meeting out family needs. Therefore the object of availing loan by the accused is said to be lawful one. The existence of legally enforceable liability is proved to the satisfaction of the court. There is absolutely no evidence to disbelieve the above version or there is any material to show there exists no liability. Even during 313 Cr.P.C. questioning the accused had blindly denied the evidence of the complainant as false and he has not offered any explanation as to how the cheque was placed in the hands of the complainant. In the absence of any denial or contradictory version or any material to infer that the presumption is rebutted by the accused, the court has no other option except to believe the transaction as true and the liability was proved in accordance with law and the cheque is presumed to be issued for the discharge of such liability. The accused has also not chosen to issue any reply notice to the notice of the complainant. Anyhow the issuance of cheque to the complainant can be inferred. The complainant has produced the acknowledgement for the receipt of notice as Ex.P4. The accused has not disputed the address mentioned in the notice does not belong to him. In the absence of any denial about Ex.P4 and dispute about the address mentioned in the notice, it can be inferred the complainant has discharged his obligation of sending the notice to the correct address of the accused. In such circumstance this court has no hesitation to conclude the cheque was issued by the accused to discharge a legally enforceable liability. The complainant has satisfactorily proved his case that the borrowal by the accused is for legal necessity and the cheque was issued for the discharge of such liability. The accused did not probablise his case and the initial burden was not rebutted. Since the burden was not rebutted the presumption in favour of the complainant still subsists. Accordingly the question of liability and issuance of cheque was proved by the complainant and accused has committed an offence u/s 138 of NI Act for which he is liable to be convicted.

In the result, the accused is found guilty for offence under section 138 o NI Act, convicted and sentenced to undergo one year simple imprisonment and to pay the cheque amount of Rs.1,50,000/- as compensation to the complainant within one month. In default to pay the compensation to undergo three months simple imprisonment in addition u/s 255(2) Cr.P.C.

Dictated by me, directly typed by the typist, corrected and pronounced in the open court on this 8th day of June 2017.

Sd/-M. Ashfaq Ahamed,
Judicial Magistrate,
FTC @ Magisterial Level – II,
Coimbatore.

Complainant side witness.

PW1 – Jayakumar (Complainant)

Complainant side Exhibits.

P1 – 26/10/2013 – Original cheque for Rs.150000/- drawn on
HDFC bank Gandhipuram branch,
Coimbatore, bearing No.152380

P2 – 07/01/2014 – Cheque return memo.

P3 – 24/01/2014 – Legal notice

P4 – 28/01/2014 – Acknowledgment card.

Defense side witness:

Nil

Defense side Exhibits

Nil

Note: The judgment was pronounced in the absence of the accused and NBW was issued against the accused for execution of the sentence.

Sd/-M. Ashfaq Ahamed,
Judicial Magistrate,
FTC @ Magisterial Level – II,
Coimbatore.

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