

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,:::::: BONGAIGAON

NICR.- 48/2013

U/S- 138 N.I. Act

Shriram Transport Finance Company Limited.....Complainant.
(Represented by its branch manager authorized signatory)

-VS.-

Mugal Ali..... Accused

Present:-

Sri B. Sutradhar, A.J.S.

Chief Judicial Magistrate,

Bongaigaon

Appeared:-

For the complainant: Mr. M. Rahman Ld. Advocate.

For the accused: Mr. D. S. Hoque Ld. Advocate.

Date of evidence: 19-3-14 & 30-9-15

Date of argument: 18-4-16

Date of judgment: 29-4-16

J U D G E M E N T

1. This is a case U/S 138 N.I.Act filed by the complainant on represented capacity against the accused Mughal Ali. The brief case of the prosecution is that the complainant is a Public Ltd. Company, carrying on business of leasing of financing of vehicles including purchase and registered as a non-banking finance company. The complainant is engaged in the business of hire purchase, lease and loan-cum-hypothecation for commercial vehicle and the accused approaches for financial assistance to purchase a Bajaj auto passenger bearing Registration No. As-16C-0118. The complainant provide financial assistance on specific terms and conditions which was accepted by the accused and accordingly a loan-cum-hypothecation agreement was made between the parties vide No. GUWAH0809290005. **Contd.....P/2**

After obtaining loan the accused was found to be tardy in making payment of his dues to the complainant as per loan agreement. The accused was supposed to remit back the entire loan amount together with interest to the complainant in 34 installments. After several approaches and official correspondence accused issued a cheque amounting to Rs. 1,10,840/- in favour of Sriram Transport Finance Company Ltd. Vide cheque No. 8618305 dated 22-2-13 of the Allahabad Bank Bhodgaon Branch under the signature of the accused for payment against the loan amount. The complainant deposited the cheque to Axis Bank Ltd. Bongaigaon Branch for collection through his company account on dated 27-4-13. The Allahabad Bank, Bhodgaon Branch dishonored the said cheque due to insufficient fund and return the said cheque to Axis Bank Ltd., Bongaigaon Branch on 9-5-13 with an endorsement that there is fund in sufficient and accordingly the Axis Bank Ltd. Bongaigaon Branch returned the said cheque to the complainant on the same date. The complainant sent an Advocate notice dated 16-5-13 through Advocate to the accused person by informing regarding the dishonor of the said cheque and asked him to pay the amount of Rs. 110840/- within a stipulated period of 15 days from the date of receiving of the notice but the accused failed to pay the cheque amount as given in the notice which was send by Register post with A.D. The accused person has committed an offence U/S 138 N.I. Act by issuing the said cheque knowingly and intentionally having no balance in his account, he issued the cheque.

Hence the case.

2. On receipt of the complainant, cognizance was taken U/S 138 N.I. Act and summon was issued to the accused person. The accused appeared before the court and he was allowed to go on bail. The particulars of the offence U/S 138 N.I. Act was read over and explained to the accused person and to which he pleaded not guilty and claimed to be tried. During the course of evidence the prosecution side examined one witness and submitted some documents. The evidence was closed. The statement of the accused U/S. 313 Cr.P.C. was recorded. The accused denied that he has issued such cheque to the accused person rather he deposited 5 numbers of the blank cheques at the time of taking loan. The accused decline to adduce any evidence in defence.

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Points for determination are:

3. i. Whether the alleged cheque was issued by the accused for discharging the liability of Rs. 110840?
- ii. Whether the accused has committed an offence U/S 138 N.I. Act?

Decision and reasons thereof:

4. During the course of argument the Ld. Advocate of the complainant side argued that the case has been well proved and accused deserved conviction. In support of the case they submitted some judgments of Hon'ble High Court and Hon'ble Supreme Court. On the other hand the Ld. Advocate of the accused argued that agent cannot give evidence for principal, power of attorney was not submitted and the power of attorney is not valid. He submitted that the complainant side failed to prove the case and acquit the accused person. It is also submitted that the sum of Rs. 1,10,840/- alleged to have been due from the accused is unreasonable and accused is not liable to make such payment. The accused has also stated the power of attorney granted in favour of the complainant is defective and failed to prove resolution passed by the Board to authorize the company secretary of the complainant company.

5. The prosecution side examined P.W.1 Sri Rajesh Ray who in his evidence deposed that he is the Branch Manager as well as the authorized signatory of Sriram Finance Company Ltd. and the accused entered into a lease and loan-cum-hypothecation agreement with the company in order to purchase a Bajaj auto passenger. Notice was issued against him after dishonor of the cheque and the accused failed to pay cheque amount. The Ext. 1 power of attorney and said Ext. 1 speaks that said Rajesh Ray has been authorized to filed the case etc. Said Rajesh Ray has been made constituted attorney of the company. The Ext. 2 is the loan-cum-hypothecation agreement in between the company and the accused person. The Ext. 3 is the disputed cheque and Ext 3(1) is the signature of the accused. Ext. 4 is the cheque returned report of Axis Bank, Bongaigaon Branch.

In cross-examination the P.W.1 deposed that accused took loan of Rs. 90,000/- but he cannot say the amount which has been returned by accused person.

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6. The accused side has not disputed the signature on the cheque and there is also no denial that the cheque was dishonored due to the lack or insufficient fund. The P.W.1 deposed that after several approaches and correspondence the accused issued a cheque bearing No. 618305 dated 22-2-13 of Rs. 110840/- and the same was deposited in Axis Bank Bongaigaon Branch for collection but the same was dishonored due to insufficient fund. The Ld. Advocate of the accused submitted that the power of attorney submitted by the complainant is not valid and no authority letter was issued but while going through the Ext. 1, it appears that the power of attorney was accepted by company secretary V.M. Achwal and authorized Mr. Rajesh Ray Branch Manager, Bongaigaon of Sriram Transport Finance Company Ltd. and vide clause C of the Ext. 1 said Mr. Rajesh Ray has been nominated and appointed as attorney of the company. The submission of the Ld. Defence counsel therefore does not carry force to consider upon and discard the evidence of prosecution side.

7. The defence side has not adduced any evidence in order to disprove the prosecution case. As per section 139 N.I. Act presumption is against the accused and such presumption may be rebutted by the accused by cogent evidence. In the entire case the defence side has taken defence on the ground that the power of attorney was not valid and the complainant have no authority to filed the case, rather on going through the Ext. 1 it is clear that power of attorney was duly executed in favour of the complainant and on the basis of which the case has been submitted. The accused submitted that the blank cheque was issued in favour of the company but no evidence has been adduced rather the **Hon'ble Supreme Court U.N. K Veena vs. Nuniyappan and another** hold that U/S 139 N.I. Act court has to presume unless the contrary is proved that the holder of the cheque received the cheque for discharge, in whole or in part, of debt or liability. The same view was also taken in **Hiten P. Daldi vs. Bratindra Nath Banerjee case reported in (2001) 6 SSC 16**. Mere denial of liability without giving evidence goes against the accused and the presumption u/s 139 N.I. Act is in favour of the complainant. **The Hon'ble Supreme Court in the case of Vinita S Rao vs. Essen Corporate Service Pvt. Ltd and another** hold that the complaint can be filed by a power of attorney holder and on that ground complaint cannot be held not maintainable.

8. In view of the given fact and circumstances and the record it is clear that

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the complainant succeeded to prove the case. Accordingly the accused is held guilty for committing an offence punishable U/S 138 N.I. Act and convicted for the same. Considering the fact that the case relates to economy of the nation, I am not inclined to give him any benefit of Section 360 Cr.P.C. or any provision of the Probation of the Offenders Act. Heard the accused person on the point of sentence. The accused submitted that he is a poor person and prayed for punishing leniently. The consideration has been taken on the basis of the fact and circumstances of the case and the evidence reveals that the cheque amount of Rs. 110840/- has become due for the high rate of interest of the loan transaction and for default of the accused. In view of the entire matter and keeping in mind the fact in hand that the cheque amount has been increased due to default in making installment etc. I am of the view that a lenient approach of punishment will meet the ends of justice.

9. Accordingly, the accused Mughal Ali is convicted u/s 138 N.I. Act. The accused is sentence to undergo S.I. for 2 months and accused is also sentence to pay a fine of Rs. 1,10,840/- to the complainant in default S.I. for another 3 months. The fine amount if realized shall be paid to the complainant. The bail bond shall remain in force till next six months.

10. Furnished a free copy of judgment to the accused person.

11. The case is disposed of on contest.

Given under my hand and seal of this court on this **29th day of April, 2016**

Chief Judicial Magistrate
Bongaigaon.