

C. R CASE NO: 5439 OF 2008
COMPLAINANT: SHRI NABAJIT DAS Vs
ACCUSED: SHRI BIBRATA LANGTHASA

DISTRICT: KAMRUP
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL
MAGISTRATE, (S),II, KAMRUP

CR CASE NO: 5439/ 2008

U/S 138 N. I ACT

COMPLAINANT: SHRI NABAJIT DAS
VERSUS
ACCUSED: SHRI BIBRATA LANGTHASA

PRESENT : YUSUF AZAZ, SDJM, (S),II, KAMRUP

ADVOCATE FOR THE PROSECUTION: SHRI A. ALI

ADVOCATE FOR THE ACCUSED: SHRI S. DAS

OFFENCE EXPLAINED ON: 28/5/2009

EVIDENCE RECORDED ON: 7/10/2009, 5/10/2010, 28/2/2011, 7/4/2011

ARGUMENT HEARD ON: 26/7/2012

JUDGMENT DELIVERED ON: 8/8/2012

JUDGMENT

1. This is a case instituted under section 138 of the Negotiable Instruments Act, 1881 alleging therein that the accused, Shri Bibrata Langthasa had issued a cheque in favour of the complainant which was dishonoured due to insufficient funds in the account of the accused.

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2. The brief facts giving rise to the institution of this complaint case, as is revealed from the complaint is that, Shri Nabajit Das, the complainant had business relationship with the accused herein and that the accused took financial help from the complainant. The accused once approached the complainant for some financial help and accordingly the complainant gave the accused a loan of Rs.40,00,000/- (forty lakh) to the accused.
3. The complainant had further alleged that the accused issued a cheque bearing no:110139 dated 12/9/2008 for Rs.40,00,000/- in favour of the complainant for the discharge of his liability. The complainant accordingly deposited the said cheque for encashment to his bank, but the same was returned unpaid on 20/9/2008 as the accused did not have sufficient funds in his account to honour the said cheque.
4. The complainant thereafter issued legal notice to the accused on 23/9/2008 demanding the amount of cheque, 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.
5. The accused was called upon to enter trial and upon his appearance 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.
6. The complainant examined himself in support of his case and also examined the official witness of the bank, but the defence did not examine any witness in support of his defence.
7. The case of the accused, as is revealed from the statement of the accused recorded under section 313 CrPC and the trend of cross examination is that according to the accused he is a contractor and he got a contract to do some work under PMRY. The accused gave a power of attorney in favour of the complainant so that the complainant could look after the said contract work on behalf of the accused. The accused in view of the above gave some blank cheques after signing the same to the complainant so that the complainant could meet the expenses in doing the said work. The accused has further contended that the complainant has misused the said cheques and had fraudulently got one of the said cheques issued in this name

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and got the same dishonoured so as to harass the accused. The accused has further stated that the complainant has also misused one another cheque wherein he got the said cheque issued in the name of his wife. The accused has contended that he does not have legally enforceable debt or liability; hence the complaint is liable to be dismissed.

8. I have heard the learned counsels for both the parties.
9. Upon hearing and on perusal of record I have framed the following points for determination in order to arrive at a definite finding as regards the dispute in this case-
 - (1) Whether the accused issued the cheque for the discharge of any legally enforceable debt or liability?
 - (2) Whether the cheque was dishonoured for insufficient funds in the account of the accused?
 - (3) Whether the accused received the demand notice issued by the complainant regarding the dishonor of the cheque?
 - (4) Whether the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881?

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

POINT FOR DETERMINATION NO.1: Whether the accused issued the cheque for the discharge of any legally enforceable debt or liability?

10. The complainant had contended that he provided a loan of Rs.40,00,000/- to the accused; and that the accused issued the cheque in question for the discharge of his aforesaid debt.
11. The complainant (PW1) has examined himself in support of his case and he has deposed that the accused was known to him and that he had given loan of Rs.40,00,000/- to the accused. The complainant

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has further deposed that the accused issued the cheque in question towards the discharge of his aforesaid debt. The complainant has produced the said cheque and the same is marked as exhibit 1. I have perused the aforesaid exhibit 1 and the perusal of the same clearly reveals that the said cheque was issued in favour of the complainant by the accused for Rs.40,00,000/-.

12.The accused was examined as regards the aforesaid cheque and the said question was put to him in his statement recorded under section 313 CrPC to which the accused had admitted that the cheque belonged to him and also admitted his signature upon the said cheque. The accused had contended that he had issued a blank cheque but the complainant forged the same and converted the said cheque to show that the accused has liability towards him.

13.It is seen from the above that the accused has not denied the issuance of the cheque, but has only denied the fact that he did not take the loan of Rs.40,00,000/- and that he gave a blank cheque.

14.The section 139 of the Negotiable Instruments Act,1881 raises a statutory presumption that the holder of the cheque, unless the contrary is proved, received the cheque for the discharge in whole or in part of any debt or liability.

15.In the instant case at hand the complainant has produced the cheque issued by the accused, and the said fact is also admitted to by the accused, as such there is a statutory presumption raised in favour of the fact that the said cheque was issued for the discharge of a debt or liability.

16.In view of the above the burden now shifts to the accused to rebut the above presumption and raise a probable defence that the said cheque was not issued for any debt or liability.

17. The accused had stated that he gave a power of attorney in favour of the complainant and also handed over some blank cheques by signing the same so that the complainant could meet the daily expenses for the contract work awarded in favour of the accused. The accused has not adduced evidence to prove the above facts and further there is no other material on record to show, even remotely that the accused had executed the power of attorney and that he had

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handed over blank cheques to the complainant. The accused has failed to bring on record the alleged power of attorney; as such the story of the accused to this effect cannot be believed.

18. On the contrary the accused had, during the cross examination of the complainant (PW1) had suggested to the complainant (PW1) that the accused had already paid the cheque amount from his bank account. The complainant had denied this suggestion, but this suggestion clearly shows that the accused had admitted his liability in respect to the amount of the said cheque and had also alleged that he paid the said cheque amount, even though the said fact is denied by the complainant.

19. The above clearly shows that the accused had incurred a liability of Rs.40,00000/- and had issued the above cheque (exhibit 1) in question for the discharge of the said liability.

20. The accused had further stated that he had given few blank cheques to the complainant so that the complainant could meet the day to day expenses. The said contention of the accused cannot be believed, in the absence of any direct evidence in this regard, because it cannot be comprehended that the accused being a businessman would be so casual that he would hand over not one or two, but many blank cheques after signing the same.

21. In view of the above discussion it is held that the accused has failed to dislodge the presumption by bringing on record any credible evidence to show that he had issued the said cheques in blank to the complainant and not for any debt or liability; hence it is held that the said cheque was issued for the discharge of a legally enforceable debt.

22. The learned counsel for the accused has contended that the complainant had stated in his cross examination that he gave the loan after arranging the same from various sources, but the said fact is not stated in details in the complaint petition; hence the complainant cannot be believed. The said contention of the accused is not sustainable because the complaint is meant to give an overview of the circumstances leading to the complaint and is not meant to be the encyclopedia of all the events and or to contain the evidences to prove the allegations made. There is nothing unnatural or abnormal

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in the fact that the complainant arranged the money from different sources so as to provide the loan to the accused, because it is quite natural that a person might not have such a huge sum of Rs.40,00000/- with him and in that case he is left with no choice but the arrange for the same from his friends or relatives.

23. Further there is nothing on record to doubt or disbelieve the complainant; as such it is held that the accused had issued the said cheque in favour of the complainant for the discharge of his debt.
24. In view of the above it is held that the accused had issued the said cheque (exhibit 1) for the discharge of his debt of Rs.40,00,000/-, i.e for payment of the loan which he took from the complainant.
25. DECISION: The cheque was issued 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?

26. The complainant has deposed that the said cheque was presented to his bank for encashment, but the same was dishonoured because of insufficient funds in the account of the accused. The PW1 was not cross examined in this regard; as such it is held that the said cheque was dishonoured.
27. In addition to the above the complainant (PW1) has produced the cheque return memo issued by the State Bank of India informing him regarding the dishonor of the said cheque due to insufficient funds in the account of the accused and the said cheque return memo is marked as exhibit 2. The official of the Assam Gramin Vikas Bank, Shri Shakhipada Bhattacharjee (PW2) was examined by the complainant on his behalf and the said witness had proved the exhibit 2 and also proved that the accused maintained an account in that bank. The PW2 was not at all cross examined in this regard.
28. In addition section 146 of the Negotiable Instruments Act, 1881 provides for statutory presumption as regards the cheque return memo issued by the bank in respect of the dishonor of the cheque;

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hence it is held that the said cheque was dishonoured due to insufficient funds in the account of the accused.

29. Further the accused has admitted in his statement recorded under section 313 CrPC that the cheque was dishonoured for insufficient funds in his account; hence it is held that the said cheque was dishonoured due to insufficient funds in the account of the accused.

30. DECISION: The cheque 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 dishonor of the cheque?

31. The complainant (PW1) has deposed that he had issued the demand notice in respect of the dishonor of the said cheque through his advocate on 23/9/2008. The complainant has produced the copy of the said notice and the same is marked as exhibit 3. The complainant had issued the said notice by way of registered post and the complainant had produced the postal receipt in respect of the same and it is marked as exhibit 3(1). The perusal of the postal receipt (exhibit 3(1)) shows that the complainant had got the demand notice issued to the proper address of the accused and the same was prepaid. The complainant has also produced the Acknowledgment card by which the accused had received the said demand notice and the same is marked as exhibit 4. The complainant has identified the signature of the accused thereon and the same is marked as exhibit 4(1). The complainant has further deposed that the accused send a reply to his notice and the reply to the notice is produced and the same is marked as exhibit 5.

32. The perusal of the above documents leaves no room for doubt that the accused did not receive the said demand notice. The defence has also not disputed the above statements of the complainant during the cross examination or during the recording of the statement of the accused under section 313 CrPC. Further the reply (exhibit 5) send by the accused clearly proves that he had received the demand notice (exhibit 3). In vi

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33. In view of the of the above discussions it is held that the demand notice was duly served upon the accused.

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

POINT FOR DETERMINATION NO.4: Whether the accused has committed the offence under section 138 of the Negotiable Instruments Act,1881?

35. The offence under section 138 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 six months of its issuance or within its validity and that the notice regarding the dishonor of the cheque for insufficient funds ought to be given within 30 days of the receipt of information regarding the dishonor.

36. In the instant case at 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 dishonoured due to insufficient funds. The cheque (exhibit 1) was issued in the instant case on 12/9/2008 and it was presented on 20/9/2008 which is within six months for encashment. The cheque return memo (exhibit 2) further shows that the information regarding the dishonor of the said cheque was received on 20/9/2008; and that the demand notice was issued by the complainant on 23/9/2008, which is within 30 days from the receipt of information of dishonor. The notice was received by the accused on 3/10/2008. The complainant had thereafter instituted this complaint on 24/10/2008 which is 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.

37. 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.

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

39.In view of the discussions made above and the decisions reached in the foregoing points for determinations it is held that the accused has 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.

40.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 instill a sense of confidence and assurance to the business community.

41.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 simple imprisonment for 6 (six) months and further to pay compensation of Rs.60,00,000/- (sixty lakhs) to the complainant as the cheque amount is Rs.40,00,000/- and about four years have elapsed from the date of loan. It is further directed that the accused shall undergo simple imprisonment for another two months in default of the payment of compensation.

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

43.The case is disposed of on contest.

Given under my hand and the seal of this court on this the 8th day of August,2012 at Guwahati.

Yusuf Azaz,
SDJM(S) II, Kamrup

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APPENDIX

PROSECUTION EXHIBITS:

- 1) EXHIBIT 1- CHEQUE
- 2) EXHIBIT 2- RETURN MEMO
- 3) EXHIBIT 3- DEMAND NOTICE
- 4) EXHIBIT 3(1)- POSTAL RECEIPT
- 5) EXHIBIT 4- ACKNOWLEDGMENT CARD

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6) EXHIBIT 5- REPLY OF ACCUSED TO DEMAND NOTICE

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SHRI NABAJIT DAS
- 2) SHAKIPADA BHATTACHARJEE

DEFENCE WITNESSES

- 1) NONE

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