

**IN THE COURT OF CHIEF JUDICIAL
MAGISTRATE: DIBRUGARH.**

Ref. : **N. I. 117/2017.**

U/S. 138 OF N.I Act.

Sri. Ramen Phukan.....Complainant.

-Vs-

Sri. Nitul Chutia.....Accused.

***PRESENT: A.K. BARUAH, LL.M., AJS.
Chief Judicial Magistrate,
Dibrugarh***

APPEARANCE:

Advocate for the Complainant	:Sri.Surya Singhaniya
Advocate for the Accused	:Mr. A.K. Dutta.
Date of evidence	:18-08-2017, 14-02-2019, 28-08-2019.
Date of argument	: 22-04-2021.
Date of judgment	:06-05-2021.

J U D G M E N T

1. This is a case u/s 138 of the Negotiable Instruments Act filed by one **Sri. Ramen Phukan** against the accused namely **Sri. Nitul Chetia**.

2. The case of the complainant in brief is that the accused was in urgent need of money for the purchase of land and he approached the complainant to give him a sum of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only for a period of 12(Twelve) months in the first week of June, 2016 and had promised to repay the aforesaid amount e.g Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only by 10th June, 2017. The complainant due to good relation with the accused on his assertion, had agreed to help the accused by advancing a sum of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) to the accused for a period of 12(Twelve) months. Thereafter, the complainant advanced a sum of Rs. 2,80,000/- only to the accused on 10-06-2016 by entering into an agreement dated 10-06-2016 embodying therein all the terms and conditions as mutually settled between them.

The accused in discharge of his aforesaid liability of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) gave a post dated cheque to the complainant being cheque no. 901175, dated 10-

06-2017 for Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) of State Bank of India, Moran Branch, Dibrugarh.

The complainant deposited the aforesaid cheque in his bank account lying with the Assam Gramin Vikash Bank, Sepon Branch, Dibrugarh but the aforesaid cheque was dishonoured by the banker of the accused, the State Bank of India, Moran Branch, Dibrugarh on presentation, for the reason of the "**Fund Insufficient**" and the same was returned by the State Bank Of India, Moran Branch, Dibrugarh alongwith a Memo of Reasons, Dated 14-06-2017.

Thereafter, the complainant sent a legal notice dated 11-07-2017 U/s 138 of NI Act to the accused through his advocate Sri. Surya Singhania, informing the accused about the fact of dishonor of the aforesaid cheque given by the accused in discharge of liability of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only towards him and requiring the accused to pay the amount of the aforesaid cheque within 15(fifteen) days from the date of the receipt of the legal notice.

As per the provisions of N.I Act, the accused was required to make payment of the aforesaid cheque amount to the complainant within 15 days from the date of the receipt of the legal notice

which was received by the accused on 17-07-2017 but he failed to do so and the statutory period of 15 days for payment of the aforesaid cheque expired on 01-08-2017 and the cause of action for filling the complainant's case arose on 2-8-17 and the complainant's case was filed within the statutory period of 1(one) month.

The accused had issued the aforesaid cheque in discharge of his aforesaid liability without having sufficient funds in his bank account and further the aforesaid cheque issued by the accused was also dishonoured for the reason of Funds insufficient, hence the accused had committed an offence U/s 138 N.I Act.

3. The case of the defence is that the accused never issued the cheque to the complainant and the accused does not know how the complainant got the cheque of the case.

4. POINT FOR DETERMINATION:

Whether the accused committed any offence u/s 138 of the Negotiable Instruments Act for the dishonour of the cheque no. 901175, dated 10-06-2017 for Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) of State Bank of India, Moran Branch, Dibrugarh which was deposited by the complainant in the bank?

5. The complainant examined one PW and exhibited some documents. The defence side adduced evidence of one witness as DW1 in support of his defense.

6. The statement of the accused was recorded u/s 313 Cr P.C.

7. I have carefully perused the entire evidence on record and heard both the sides and I proceed to decide as follows:

DECISION AND REASONS FOR THE DECISION:

8. **PW1 (Sri. Ramen Phukan)** deposed in his evidence that the accused was in urgent need of money for the purchase of land and approached the complainant to advance him a sum of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only for a period of 12(Twelve) months in the first week of June, 2016 and had promised to repay the aforesaid amount e.g Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only by 10th June, 2017. The complainant due to good relation with the accused on his assertion, had agreed to help the accused by advancing a sum of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) to the accused for a period of 12(Twelve) months. Thereafter, the complainant advanced a sum of Rs. 2,80,000/- only to the accused on 10-06-2016 by entering into an agreement dated 10-06-2016 embodying therein all

the terms and conditions as mutually settled between them.

The complainant exhibited the agreement dated 10-06-2016 executed between them as Ext. 1 and his signature on the agreement as Ext.1(i) and 1(ii) and exhibited the signatures of the accused person as Ext. 1(iii) and Ext. 1(iv) . The complainant exhibited the signature of witnesses No. 1 Sri. Bijoy Phukan as Ext. 1(v) and Signature of witness No. 2 Sri. Riki Mohan as Ext. 1(vi).

The accused in discharge of his aforesaid liability of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) gave a post dated cheque to the complainant being cheque no. 901175, dated 10-06-2017 for Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) of State Bank of India, Moran Branch, Dibrugarh.

The complainant exhibited the Cheque being cheque no. 901175, dated 10-06-2017 for Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) of State Bank of India, Moran Branch, Dibrugarh as Ext. 2 and the signature of the accused as Ext. 2(i).

The complainant deposited the aforesaid cheque in his bank account lying with the Assam Gramin Vikash Bank , Sepon Branch, Dibrugarh but the aforesaid cheque was dishonoured by the

banker of the accused, the State Bank of India, Moran Branch, Dibrugarh on presentation, for the reason of "**Fund Insufficient**" and the same was returned by the State Bank Of India, Moran Branch, Dibrugarh alongwith a Memo of Reasons, Dated 14-06-2017.

The complainant exhibited the Memo of reasons, dated 14-06-2017 of State Bank of India, Moran Branch, Dibrugarh as Ext 3. Thereafter, the complainant sent a legal notice dated 11-07-2017 U/s 138 of NI Act to the accused through his advocate Sri. Surya Singhania, informing the accused about the fact of dishonor of the aforesaid cheque given by the accused in discharge of liability of Rs. 2,80,000/- (Rs. Two Lakhs Eighty Thousand) only towards him and requiring the accused to pay the amount of the aforesaid cheque within 15(fifteen) days from the date of the receipt of the legal notice.

The complainant exhibited the legal notice dtd 11-07-2017 U/s 138 N.I Act sent to the accused as Ext. 4 and Ext4(i),Ext. 4(ii) as signatures of the advocate Sri. Surya Singhania. The complainant exhibited the registration receipt as Ext. 5 and exhibited the Postal AD card with receipt endorsement of the accused dated 17-07-2017 as Ext 6.

The complainant/PW1 further submitted that as per the provisions of N.I Act, the accused was required to make payment of the aforesaid cheque to him within 15 days from the date of the receipt of the legal notice which was received by the accused on 17-07-2017 but he failed to do so and the statutory period of 15 days for payment of the aforesaid cheque expired on 01-08-2017 and the cause of action for filing the complainant's case arose on 2-8-17 and the complainant's case is filed within the statutory period of 1(one) month.

The accused had issued the aforesaid cheque in discharge of his aforesaid liability without having sufficient funds in his bank account and further the aforesaid cheque issued by the accused in his/PW1's favour was also dishonoured for the reason of Funds insufficient and hence the accused had committed an offence U/s 138 of N.I Act.

In his cross examination, P.W.1 stated that he is a worker/serviceman in the shop of Bijoy Phukan. P.W.1 denied the suggestion that Bijoy Phukan does money lending business. The name of the father of Bijoy Phukan is Khagen Phukan. P.W.1 denied the suggestion that Bijoy Phukan is not his relative. P.W.1 denied the suggestion that Bijoy Phukan does money lending business through him/PW1. P.W.1 denied the suggestion that the accused had prior monetary transaction with one

Tripti Lahon. His/P.W.1's house is situated at a distance of 1 and ½ Kilometer from Tripti Lahon's house. P.W.1 denied the suggestion that Tripti Lahon only lent Rs 50,000/- to the accused and in the blank cheque, he/PW1 filled up name and excessive figure of amount. P.W.1 denied the suggestion that accused did not issue any cheque to him and no money is due to him from the accused. The exhibit 1 was executed on 10.06.2016. The non judicial stamp paper on which exhibit 1 was executed was purchased on 29.12.2015. That stamp paper was purchased by him from Sibsagar Judiciary. P.W.1 denied the suggestion that exhibit 1 was executed on the paper which was purchased six months back illegally. The exhibit 1 was typed by his learned Advocate. Exhibit 1 was typed by Bijoy Phukan. In exhibit 1, the name of Bijoy Phukan is mentioned as witness and not as the typist. P.W.1 denied the suggestion that he made conspiracy with Bijoy Phukan to file this case by fabricating the documents of this case.

9. DW1:- (Smti. Karuna Chetia) deposed in her evidence that the complainant Romen Phukan filed this case against her husband Nitul Chutia. Her husband had taken a loan of Rs.50,000/- from Tripti Lahon. Her husband gave a blank cheque to Tripti Lahon against the said loan. Ext.2 is the said

cheque. Except the signature of Nitul Chutia ,other contents like name of the payee, amount both in figure and letter, date were blank. Her husband took the sum of Rs.50,000/- due to his financial necessity. Her husband gave the cheque to Tripti Lahon. She does not know as to how Romen Phukan got the cheque/Ext.2. The husband of PW2 and PW2 do not know the complainant. Her husband could not foresee the problem likely to come, by issuing the cheque/Ext.2. To her knowledge, the complainant Romen Phukan also filed several cases against Tripti Lahon. There is no due to Romen Phukan by her husband. Presently her husband works at Fire Service Dept. He had gone for six months training from his department. After completion of the training, he will come to Dibrugarh.

In cross examination ,D.W.1 deposed that she had not submitted any document to show that her husband took a loan of Rs.50,000/- from Tripti Lahon. She cannot say the exact date on which her husband took the said loan from Tripti Lahon. She cannot say the number of the cheque given by her husband to Tripti Lahon. D.W.1 further deposed that Ext.1 and Ext.2, bears her husband's signatures. D.W.1 exhibited her husband's signature as Ext.1(3), Ext.1(4) and Ext.2(1). D.W.1 denied the suggestion of defence that she had

deposed falsely that her husband took a loan of Rs.50,000/- from Tripti Lahon. D.W.1 denied the suggestion of defence that she deposed falsely that they took loan from Tripti Lahon to get rid of the case filed by Romen Phukan (complainant). D.W.1 denied the suggestion of defence that she does not know anything about the transaction between the complainant and the accused as because the transaction took place between the complainant and her accused husband. D.W.1 denied the suggestion of defence that she deposed falsely to save her husband.

10. The Id. Advocate for the complainant submitted that from the evidence on record it is proved that the accused has committed the offence u/s 138 of N.I. Act.

11. Again, the Id. Advocate for the accused submitted in length that the necessary ingredients of the offence u/s 138 N.I. Act are absent in this case.

12. Now, in order to ascertain whether the ingredients of sec 138 of N.I. Act are present in this case, I have perused the entire evidence on record and I find from the evidence of PW1 that-

i) The accused borrowed money from the complainant and for the debt, he issued a cheque (Ext2) to the complainant,

ii) The cheque(Ext2) was presented to the bank within a period of six months(the cheque was issued on 10-06-17 as post dated cheque and the same was presented in the bank by the complainant on 12-6-17). In other words, the cheque was presented by the complainant/PW1 in his bank within the period of its validity.

iii) The cheque was dishonoured due to insufficient fund in the account of the accused,which was intimidated to the complainant by the bank vide Ext3.

iv) The complainant made a demand in writing for payment of the cheque amount by issuing notice to the accused (The notice was duly exhibited and proved by PW1, the postal receipt of sending notice was also exhibited and proved by PW1). The notice was issued within a period of 30 days of receipt of information by the complainant from the bank regarding the return of the cheque as unpaid.

v) The accused failed to make the payment of the cheque amount to the complainant within 15 days of the receipt of the notice of the complainant.

vi) The complainant did file the complaint within the period of limitation as required u/s 138 of N.I. Act on 18-8-17 which is established from the materials on record.

In order to constitute the wrong under Section 138 of N.I. Act, the following grounds need to be considered which were framed in the case of **Kusum Ingots And Alloys Ltd. Vs. Pennar Peterson Securities Ltd. (2000)** by the Hon'le Supreme Court of India:

- a) The drawer of the cheque should possess the legally bound debt towards the payee or the holder and the same is discharged by drawing a cheque .
- b) There is a return of the cheque either due to deficient funds or greater amount that the bank agreed to provide with.
- c) The presentation of the concerned cheque should be carried out within a period of six months or within the stipulated time frame.
- d) The drawer must receive prior notice from the bank within a period of 30 days informing the former regarding the insufficiency of funds .
- e) The payee does not receive the payment within a period of 15 days from the day of sending a notice to the drawer himself.

In this instant case, all the above grounds to constitute the wrong under Section 138 of N.I. Act are found from the

evidence of the complainant as discussed above.

13. Although the defence side took the plea that the accused never issued the cheque/Ext2 to the complainant , but DW1 admitted and identified the signatures of the accused in Ext1 and Ext2 as Ext.1(3), Ext.1(4) and Ext.2(1) respectively. From the evidence on record including Ext1, it is clear that the cheque was issued by the accused for legally enforceable debt. From the evidence of PW1 it appears that the accused after receiving the notice or intimation about the dishonour of his cheque due to insufficient fund did not pay the cheque amount within the prescribed time.

Although, accused took the plea in his statement u/s 313 CrPC that he did not issue the cheque to the complainant, but the accused failed to prove the same by any convincing evidence.

Therefore, considering the above, I am not inclined to accept the submission of the defence side that the accused is not liable to pay the cheque amount u/s 138 of NI Act.

In **M/S Dalmia Cement (Bharat) Ltd. Vs. M/S Galaxy Traders & Agencies Ltd. & Ors**, the reasoning behind the enactment of section 138 of NI Act was given. The hon'ble Supreme court

basing its judgment on the existing facts said that section 138 of NI Act has been made keeping in concern any kind of infringement of legal right of the person whose payment has not been issued and therefore if any such situation arises which will make it impossible for the person to get the payment, then in such case , the section should function the way it has been laid down to keep the objective of the Act. Thus , in this case, the Hon'ble Court ordered actions to be carried out against the respondent as laid down in the Act.

14. From the above findings, I am of the view that all the ingredients of section 138 of the N.I. Act are present in this case to hold that the accused committed the offence u/s 138 of N.I. Act by issuing the cheque(Ext2) to the complainant which was dishonoured later on for insufficient fund in the account of the accused. Hence, I have no other option but to hold that the **accused committed an offence u/s 138 of the Negotiable Instruments Act for the dishonour of the cheque bearing No.. 901175, dated 10-06-2017 for Rs. 2,80,000/- (Rs. Two Lakh Eighty Thousand) of State Bank of India, Moran Branch, Dibrugarh which was deposited by the complainant in the bank.**

In other words, I have found the accused guilty u/s 138 of N.I. Act. Hence, I convict the accused u/s 138 of N.I. Act.

15. Considering the facts of the case, I am not inclined to invoke the provisions of the Probation of Offender's Act into this case.

16. I have heard the convict as to the sentence to be passed against him. He has pleaded for mercy and stated that he is not liable to pay any amount and he paid some amount to the complainant .

17. Considering all the aspects of the case and hearing the convict, I sentence the convict to pay a fine of Rs 3,00,000/- (three lakhs) as compensation to the complainant in default to undergo simple imprisonment for 6 months u/s of 138 NI Act .

18. Let a free copy of the judgment be furnished to the convict.

Given under my hand and seal of this court on the 06TH May,2021.

(A.K. Baruah)
Chief Judicial Magistrate
Dibrugarh::ASSAM

A P P E N D I X

Complainant's witness:

PW-1: Ramen Phukan

Documents exhibited by complainant side:

Ext.1: Agreement Dtd. 10-06-2016

Ext.2: Cheque no. 901175, dated 10-06-2017
for Rs. 2,80,000/- (Rs. Two Lakh Eighty
Thousand)

Ext.3: Memo of reasons dtd. 14-06-2017

Ext.4: Legal Notice dtd. 11-07-2017.

Ext.5: Postal Registration receipt.

Ext.6: Acknowledgement card

Defence witness:

DW-1 : Smti. Karuna Chetia

Documents exhibited by the defence side:

Nil

(A.K.Baruah)

Chief Judicial Magistrate

Dibrugarh.

