

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

N.I. 152^C /2016

U/S. 138 OF N.I Act

Sri. Dulal Duari.....Complainant

-Vs-

Sri. Anil Gupta.....Accused

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

APPEARANCE:

Advocate for the Complainant : Mr. Jan Dutta.
Advocate for the accused : Mr. Utpal Borah.
Date of evidence : 30-12-17, 05-03-18,
29-11-18.
Date of argument : 20-04-2019.
Date of judgment : 04-05-2019

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. Dulal Duari** against the accused namely **Shri Anil Gupta**.
- 2.** The case of the complainant in brief is that as the complainant had business relation with the accused since long dealing in green tea leaves, the complainant supplied Green Tea Leaves to the accused person worth Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) in different times during the months of August

to October 2015. The complainant went to the residence of the accused person in the month of October 2015 to receive his payment of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) from the accused person but the accused person was unable to pay the money to the complainant and told him/complainant that he/accused kept the money with him but due to an urgent matter he/accused spent the same and as such he was requested to come to his residence to take his/complainant's due money of worth Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) in the month of November, 2015. The complainant believed the accused and decided to wait till the month of November, 2015 keeping in mind the business relation between them. The complainant in the last part of November, 2015, went again to the residence of the accused person to bring his due amount of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) but surprisingly enough the accused person again failed to pay the aforesaid amount, explaining his this and that problems. The complainant did not believe the accused person's version and demanded to pay the amount. The accused person again requested him to wait for some days, but the complainant rejected the request of the accused person. The accused asked the complainant to wait for the month of December, 2015. At last, the complainant came back to his house from the residence of the accused demanding to pay the amount in December, 2015. The complainant in the last part of the month of December, 2015, again reached the residence of the accused person with his friend Sri. Tapan Bokalia but that time also the accused person created the same drama as earlier and agreed to pay the aforesaid amount in two installments fixing dates as 10-01-2016 and 25-01-2016. The accused person for his wrongful gain failed to pay the aforesaid amount on dates so fixed by himself and tried to avoid him. The complainant over telephone, on many times had been demanding his due amount and even on many times, he/complainant met the accused person in that regard for which the accused made an

agreement/promissory note on 18-02-16 to pay the total amount of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) on different dates as agreed upon. The said agreement was also went in vain and the accused again failed to pay the amount to him as agreed on 18-02-16. The accused again failed to pay the amount and therefore he/complainant repeatedly demanded the amount either over telephone or by meeting the accused person and at last after a long time on 03-10-2016 the accused person issued an account payee cheque bearing No. 264775 to him/complainant of S.B.I, Naharkatia Branch, dated 03-10-2016 of Rs. 3,25,000/- (Three Lacs Twenty Five Thousand) as a part payment of the aforesaid due amount with interest. The complainant deposited the said cheque on 03-10-16 at SBI, Naharkatia branch and the same was got bounced/dishonoured by the Banker due to insufficient of fund on 26-10-16. The complainant immediately after the dishonour of the cheque, contacted the accused person over telephone and even personally, but the accused with dishonest and fraudulent intention to defraud played hide and seek drama assuring sooner payment on several occasion on several pretexts with a view to get escape from the same. However, he/complainant requested the accused on several times to make payment of the cheque amount, but the accused had a fraudulent intention to cheat him/complainant from the beginning of the transaction and miserably failed to do so. The accused had the dishonest, fraudulent and guilty intention from the beginning of the issuing of the aforesaid cheque and did not keep his promise. Immediately after dishonour of the cheque, the complainant contacted the accused and informed the accused about the dishonour of the cheque but the accused took the matter lightly and did not pay any heed. The the complainant issued demand notice through his Ld. advocate Jan Dutta, on 10-11-16 to the accused which he received on 16-11-16 but made no reply to the notice. The accused did not make the payment of the cheque amount as per demand notice even after expiry of the

15 days from the receipt of the demand notice which was over on 29-11-2016. The accused deliberately issued the cheque against the existing due amount having knowledge that the same would be dishonoured for the insufficient of the funds in his account and even after the demand notice which he received failed to make the payment to him/complainant. Therefore, the complainant filed the complaint u/s 138 of N.I. Act.

3. The case of the defence/accused is that he had some business transaction with the complainant and the accused took some green tea leaves from him. The accused deposited the cheque in question as security to the complainant and the accused already paid all the dues to the complainant and hence the accused is not liable to pay any money/amount to the complainant.

Point For Determination.

- i. Whether the accused committed any offence u/s 138 of the Negotiable Instruments Act for the dishonour of the cheque bearing No. 264775 dated 03-10-2016 which was deposited by the complainant in the bank?

4. The complainant examined himself as PW.1 and exhibited some documents. The defence side adduced himself as D.W.1.
5. The statement of the accused was recorded u/s 313 CrP.C.
6. 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:

7. PW1. Dulal Duari in his evidence stated that as the P.W. 1/complainant had business relation with the accused since long dealing in green tea leaves, the P.W.1/complainant supplied Green Tea Leaves to the accused person worth Rs.

5,75,000/- (Five Lacs Seventy Five Thousand) in different times during the months of August to October 2015. The complainant went to the residence of the accused person in the month of October 2015 to receive his payment of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) from the accused person but the accused person was unable to pay the money to the P.W. 1/complainant and told P.W.1/complainant that he/accused kept the money with him but due to an urgent matter he/accused spent the same and as such he was requested to come to his residence to take his due money worth Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) in the month of November, 2015. P.W. 1/complainant believed the accused and decided to wait till the month of November, 2015 keeping in mind the business relation between them. P.W.1/complainant in the last part of November, 2015, went again to the residence of the accused person to bring his due amount of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) but surprisingly enough the accused person again failed to pay the aforesaid amount, explaining his this and that problems. P.W.1/complainant did not believe the accused person's version and demanded to pay the amount. The accused person again requested him to wait for some days, but P.W. 1/complainant rejected the request of the accused person. The accused asked P.W.1/complainant to wait for the month of December, 2015. At last, the complainant came back to his house from the residence of the accused demanding to pay the amount in December, 2015. P.W.1/complainant in the last part of the month of December, 2015, again reached the residence of the accused person with his friend Sri. Tapan Bokalia but that time also the accused person created the same drama as earlier and agreed to pay the aforesaid amount in two installments fixing dates as 10-01-2016 and 25-01-2016. The accused person for his wrongful gain failed to pay the aforesaid amount on dates so fixed by himself and tried to avoid him. P.W.1/complainant over telephone, on many times had been demanding his due amount and even on many times, P.W.

1/complainant met the accused person in that regard for which the accused made an agreement/promissory note on 18-02-16 to pay the total amount of Rs. 5,75,000/- (Five Lacs Seventy Five Thousand) on different dates as agreed upon. (P.W.1 identified the agreement/promissory note as Ext1). The said agreement also went in vain and the accused again failed to pay the amount to him as agreed on 18-02-16. The accused again failed to pay the amount and therefore P.W.1/complainant repeatedly demanded the amount either over telephone or by meeting the accused person and at last after a long time on 03-10-2016 the accused person issued an account payee cheque bearing No. 264775 to P.W.1/complainant of S.B.I, Naharkatia Branch, dated 03-10-2016 of Rs. 3,25,000/- (Three Lacs Twenty Five Thousand) as a part payment of the aforesaid due amount with interest. (PW1 identified the said cheque as Ext2) P.W.1/complainant deposited the said cheque on 03-10-16 at SBI, Naharkatia branch and the same was got bounced/dishonored by the Banker due to insufficient of fund on 26-10-16. (The complainant/P.W.1 identified the Return memo of S.B.I, Naharkatia branch as Ext. 3. and complainant/P.W.1 identified the deposit slip as Ext. 4). The complainant immediately after the dishonour of the cheque, contacted the accused person over telephone and even personally, but the accused with dishonest and fraudulent intention to defraud played hide and seek drama assuring sooner payment on several occasion on several pretexts with a view to get escape from the same. However, P.W.1/complainant requested the accused on several times to make payment of the cheque amount, but the accused had a fraudulent intention to cheat P.W.1/complainant from the beginning of the transaction and miserably failed to do so. The accused had the dishonest, fraudulent and guilty intention from the beginning of the issuing of the aforesaid cheque and did not keep his promise. Immediately, after dishonour of the cheque, P.W.1/complainant contacted the accused and informed the accused about the

dishonour of the cheque but the accused took the matter lightly and did not pay any heed. P.W.1/complainant issued demand notice through his Ld. advocate Jan Dutta, on 10-11-16 to the accused which he received on 16-11-16 but made no reply to the notice. (P.W1/Complainant identified the Postal Receipt as Ext. 5 and identified the Legal notice as Ext. 6 and also the complainant/P.W.1 identified the Acknowledgement receipt as Ext. 7). The accused did not make the payment of the cheque amount as per demand notice even after expiry of 15 days from the date of receipt of the demand notice which was over on 29-11-2016. The accused deliberately issued the cheque against the existing due amount having knowledge that the same would be dishonored for the insufficient of fund in his account and even after the demand notice which he received, failed to make the payment to P.W.1/complainant. P.W.1/complainant also stated that the cause of action for filing this case arose on 29-11-16 when the accused completed the 15 days period for payment of cheque amount and subsequently on each date till filing the instant case. Therefore, the complainant filed the complaint u/s 138 of N.I. Act.

P.W.1 deposed in his cross examination that he did the business of green tea leaves. He did not take any receipt from the accused person for supplying green tea leaves but he took challan when he collected green tea leaves from small growers. Accused sent P.W.1 message in his mobile phone instead of issuing him receipt for receiving green tea leaves. In the year 2015, P.W1 did business of about 2 to 2.5 lakh Kgs of Tea leaves. The value of green tea leaves varies from day to day. Now the average value is Rs. 13 to 14 per kg. In that year, P.W.1 did business of green tea leave for about Rs. 20 to 30 lakh approximately. P.W.1 did not mention about the transaction that took place between him and the accused person in his return of income tax for the year 2015. P.W.1 had not annexed any copy of challan with his complaint petition. In the cheque, under Ext. 2, P.W.1 put the amount with his

handwriting, the name of the payee was also written with his handwriting. The amount is shown for Rs 3,25,000/- (Three Lakhs Twenty Five Thousand) in the cheque. The agreement under Ext. 1 was written by one Sri. Rupak Deb. He put his signature as a scribe in the document. P.W.1 denied the suggestion that the cheque was given to him as a security and it was given to him when the tea leaves were collected from him by the accused. P.W.1 also denied that he made a false case with the help of this cheque against the accused and also denied that the accused has no due to him/complainant.

- 8.** The accused namely Sri. Anil Gupta examined himself as **D.W. 1** and disclosed in his evidence that he knows the complainant with whom he had some business transaction and he took some green tea leaves from the complainant and for such transaction he had deposited the cheque in question as security. DW1 had paid all the dues to the complainant, inspite of that, the complainant is asking money from him/DW1. He further stated that he has some receipt to show that he made the payment due to the complainant.

In cross examination, D.W.1 has stated that he had an account in the SBI, Naharkatia bearing A/C No. 30559455278. He identified his signature on the cheque as Ext.2 (1). He further stated that he did not put the dates on the Ext. 2. He received the notice issued by the complainant U/s 138 N.I Act on 16-11-16, however D.W.1 did not file any reply to this. D.W.1 also stated that it is correct that he put his signature on Ext. 1 and D.W.1 identified his signature as Ext. 1(1). D.W.1denied that he issued the cheque in question to discharge his liability towards the complainant.

- 9.** The Ld. 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.

10. Again, the Id. Advocate for the accused submitted that the necessary ingredients of the offence u/s 138 N.I. Act are absent in this case. The Id. Defence counsel submitted that the accused has no legally enforceable debt towards the complainant. But, on perusal of the evidence of PW1 in the light of Ext1(agreement /promissory note executed by the accused) , I am of the view that the accused has legally enforceable debt towards the complainant.

The Id. Defence counsel submitted in his argument that there is no document to show that the complainant dealt in Green Tea Leaves. But considering the evidence on record, I am of the view that from the evidence of PW1 and Ext1, it is established that the complainant and the accused had business relation regarding green tea leaves and there is no need of any specific evidence or document in this case to show that the complainant dealt in green tea leaves.

The Id. Defence counsel submitted in his argument that the promissory note was executed forcibly for which separate GR case was registered. But, I have not found any evidence to hold that the complainant forcibly executed the promissory note by the accused .

11. 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 that from the evidence of PW1 , it is clearly established that-

- i) The accused borrowed money from the complainant and for the debt, he issued a cheque (Ext.2) to the complainant,
- ii) The cheque(Ext2) was presented to the bank within a period of 3 months(the cheque was issued on 03-10-16 and when the same was presented in the bank by the complainant, it was returned by the SBI bank on 26-10-16.)In other

words, the cheque was presented by the complainant/PW1 in the 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 Ext. 3.
- 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 and acknowledgement of receiving notice were 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. In his evidence, the accused admitted the receipt of notice of the complainant to pay the cheque amount.
- vi) The complainant did file the complaint within the period of limitation as required u/s 138 of N.I. Act on 28-12-16 which is established from the materials on record.

12. Although the Ld. Defence counsel submitted that the accused already paid the amount to the complainant but the accused side has failed to prove the payment of the above amount .The defence side also failed to prove that the cheque was issued by him to the complainant for security purpose only.

13. 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(Ext.2) 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. 264775 dated 3-10-16 which was deposited by the complainant in the bank.

- 14.** 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 has already repaid the amount .
- 17.** Considering all the aspects of the case and hearing the convict, I sentence the convict to undergo simple imprisonment for Six months and to pay a fine of Rs 5,00,000/-(Rupees five Lakhs only) to be paid to the complainant as compensation in default to undergo Simple Imprisonment for 6 months U/s 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 4th day of April, 2019.

(A.K. Baruah)

Chief Judicial Magistrate
Dibrugarh::ASSAM

A P P E N D I X

Complainant's witness:

PW-1 : Dulal Duari

Documents exhibited by complainant side:

Ext.1 : copy of Agreement

Ext.2 : cheque

Ext.3 : Return Memo.

Ext4 : deposit slip

Ext5 : Postal Receipt.

Ext6 : legal notice..

Ext7 : acknowledge receipt.

Defence witness:

D.W.1 : Anil Gupta

Documents exhibited by the defence side:

Nil

(A.K. Baruah)

**Chief Judicial Magistrate
Dibrugarh::ASSAM**