

**(2009) 11 KAR CK 0008**  
**In the Karnataka High Court**

**Case No :** Criminal Revision Petition No's. 1190, 1191, 1192 and 1193 of 2006

Sri B.H. Lakshminarayana

APPELLANT

Vs

Smt. Girijamma

RESPONDENT

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**Date of Decision :** 16-11-2009

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2010) 4 KCCR 2637 : (2011) 2 RCR(Criminal) 207

**Hon'ble Judges :** Jawad Rahim, J

**Bench :** Single Bench

**Advocate :** Rameshchandra, for the Appellant; M.R. Naik, for the Respondent

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**Judgement**

Jawad Rahim, J.—All these four criminal revision petitions are against the common judgment in Criminal Appeal Nos. 1457, 1458, 1459 and 1460 of 2005 dated 6-4- 2006, confirming the conviction of the Petitioner-accused for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 [for short, the Act], by the common judgment dated 20-10-2005 in CC Nos. 5074, 4719, 4987 and 4760 of 1998 respectively, on the file of XVI Additional Chief Metropolitan Magistrate, Bangalore and the consequent sentence imposed on him.

2. Heard Sri Rameshchandra, learned Counsel for the Petitioner-accused on merits and examined the records of the lower Court.

3. The contextual facts which require reference for appreciation of the points arisen in these appeals are that:

The Respondent-complainant initiated proceedings against the Petitioner-accused through her private complaints in CC Nos. 5074, 4719, 4987 and 4760 of 1998, on the premise that she had lent money to the Petitioner-accused as loan on various dates beginning from 5-6-1994 till 14-9-1996, the particulars of which are as under:

SI. No.

Date

Amount

1

5/6/94

Rs. 20,000

2

10/5/95

Rs. 30,000

3

10/8/95

Rs. 30,000

4

12/2/96

Rs. 15,000

5

27/2/96

Rs. 80,000

6

13/3/96

Rs. 10,000

7

10/8/96

Rs. 20,000

8

10/12/96

Rs. 25,000

9

10/7/96

Rs. 40,000

10

10/9/96

Rs. 60,000

11

9/5/96

Rs. 60,000

12

22/8/96

Rs. 50,000

13

14/9/96

Rs. 45,000

Total

Rs. 4,85,000

Despite the efforts made by her, the Petitioner-accused failed to make payment and thereafter in acknowledgment of the liability and towards the discharge of the amount due by the Petitioner-accused, he issued cheques on various dates covering various amounts and the same was incorporated in the agreement dated 26-2-1997. The particulars of said cheques are as hereunder:

- a. Cheque dated 16-4-1997 for the sum of Rs. 50,000/- drawn on State Bank of Travencore;
- b. Cheque dated 31-5-1997 for the sum of Rs. 50,000/- drawn on State Bank of Travencore;
- c. Cheque dated 20-7-1997 for the sum of Rs. 25,000/- drawn on State Bank of Travencore;
- d. Cheque dated 30-7-1997 for the sum of Rs. 40,000/- drawn on State Bank of Travencore;
- e. Cheque dated 5-12-1997 for the sum of Rs. 60,000/- drawn on State Bank of Travencore;
- f. Cheque dated 25-3-1998 for the sum of Rs. 75,000/- drawn on State Bank of Travencore.

The cheques, on presentation, were dishonoured, necessitating issuance of statutory notices to the Petitioner-accused, which were also not complied with. Thus, she sought prosecution and recovery of amount covered under the cheques.

4. On taking cognizance, presence of the Petitioner-accused was secured. The Petitioner-accused in turn appeared before the Court and resisted the prosecution on several grounds and the main defence was that the Respondent-complainant and her husband had induced him to issue the cheques in question on the assurance that a loan would be arranged which he needed for the advancement of his business. The Petitioner-accused fell pray to the gullible tactics of the Respondent-complainant and issued eight cheques and another cheque towards commission to be paid to the husband of the Respondent-complainant by way of discounting the cheques. The said cheque for Rs. 15,000/- was encashed by the husband of the complainant, while the other cheques dishonoured and were with her. Despite several demands made by the accused, the complainant and her husband did not arrange for the loan, consequent to which, the Petitioner-accused had no other choice but to issue a notice to them directing them not to present the cheques, as the transaction was frustrated at their own volition. Soon after the issuance of the notice sent by the accused on 19-8-1992 [Ex.D.1 in CC No 4987 of 1998], the complainant presented the cheques on various dates to the Bank and issued notices to the accused in respect of the dishonour of cheques describing the notices as statutory notice u/s 138 of the Act. It is the contention of the Petitioner-accused that the notices were not in conformity with the requirement of law and those notices were defective. There was no existing debt or legal liability covered under the cheques and therefore the cheques were unenforceable. He also raised a plea that contents written in the cheques were not by the accused, but by a different person, which itself shows that the cheques issued were blank and were intended only for the purpose of a loan that the complainant and her husband had offered to him. Lastly, he contended that reliance placed by the complainant on various documents was not tenable as the said documents were concocted.

5. During the trial, the complainant examined herself as PW1 and placed reliance on the evidence of another witness and also filed several documents, the details of which is in the impugned judgment. The learned Trial Judge considered the evidence on record, both oral and documentary, and held that the evidence let in by the complainant outweighed the evidence adduced by the accused and convicted him. However, in one case, the Trial Court found that the accused has established the claim put forth by him in respect of the cheque impugned therein and acquitted him.

6. In four cases, the Petitioner-accused was convicted as detailed in paragraph supra. The accused challenged his conviction by filing appeals in Criminal Appeal Nos. 1457, 1458, 1459 and 1460 of 2005, reiterating the same plea of innocence. The learned Judge of the Appellate Court considered the defence [of the accused] afresh, analyzed the evidence and found no case was made out to interfere with the finding recorded by the Trial Court and consequently dismissed the appeals.

7. Against the judgments rendered by the Trial Court and affirmed in the appeals

by the first appellate Court, the Petitioner-accused has come up with these revision petitions.

8. Sri Rameshchandra, learned Counsel for the Petitioner-accused would vehemently contend that the Trial Court and the first appellate Court have seriously erred in ignoring the material evidence on record and the Appellate Court erroneously brushed aside all contentions and grounds urged by the accused and the contradictions pointed by him in the evidence of the complainant, holding it was of no consequence, as standard of proof required for establishing the charge u/s 138 of the Act was not so strict, as it relates to establishment of charge for any of the offences under the Indian Penal Code. It is contended that learned Judge of the Appellate Court was in error in convicting the Petitioner on the basis of admission on the part of the accused, regarding issuance of cheques to the complainant, and also of having executed the agreement dated 26-2-1997. Learned Counsel would contend that the complainant had placed reliance basically on the impugned cheques and the agreement dated 26-2-1997. He submits that the agreement dated 26-2-1997 was a concocted document and the accused had denied he was party to the agreement, particularly insofar as the detailed narration in the agreement is concerned. Learned Counsel read out the entire document dated 26-2-1997 [Exp2] and points out to the manuscript at page 2, which, according to him, is the only writing done by the accused. In short, his contention in the agreement dated 26-2-1997, which contains typed portion and manuscript portion, the signature of the accused was obtained by the complainant and her husband in a blank sheet of paper and the contents were later typed by the complainant to create a document to suit her case. As far as the manuscript portion appearing at page-2, immediately after the typed portion, he submits that it is in the handwriting of the accused and he also admits to the contents thereof and further contends that the rest of contents of the document, which are not in ink, are the insertion made by the complainant to suit her case.

9. He would contend that agreement dated 26-2-1997 is a concocted document, created after the Petitioner-accused issued notice dated 19-8-1997. On this basis, it is urged that the agreement dated 26-2-1997 is not a reliable document and if we exclude this document, there is no other document on which the complainant can support her contentions.

10. As regards the impugned cheques are concerned, he submits that the impugned cheques were issued only as a security in the course of the assurance by the complainant and her husband that they would arrange some loans to the accused.

11. Insofar as the evidence is concerned, he submits there are contradictions in the evidence led in support of the case of the complainant.

12. Keeping in mind the contentions urged, I have examined the evidence on record.

13. At the outset, it needs to be observed that the accused has not disputed his signature on the impugned cheques. Apart from the said undisputed fact, it is further to be noticed that in the notice dated 19-8-1997, the accused has furnished the cheque numbers and other particulars of the cheques which he had issued to the complainant and thereafter stopped payment. In the agreement dated 26-2-1997 [Exp2] the details of the six cheques said to have been given by the accused could be verified. It is to be seen that all these six cheques mentioned in the agreement dated 26-2-1997 find place in the notice issued by the accused himself. Therefore, there is no dispute on the point that accused had issued these six cheques mentioned in the agreement dated 26-2-1997. To this extent, the contents of said agreement that the accused had given these six cheques is acknowledged by the accused in the notice issued by him on 19-8-1997.

14, We have now to consider in relation to which transaction the accused had issued such cheques to the complainant. According to the accused, the cheques were issued in the hope that the complainant and her husband may arrange a loan for him, which he needed. In other words, the claim of the accused is that the cheques were issued in anticipation of receiving money as loan, but without passing of any consideration. How far the accused succeeds in establishing this aspect could be seen from the evidence on record?

15. The accused has, no doubt, disputed the entire contents of Exp2 agreement dated 26-2-1997 - a document adduced by the complainant -but has in unequivocal terms admitted of having written a portion of said agreement, which the accused admits to be in his own handwriting, will be relevant and important. For clarity it is extracted hereunder:

From the extracted portion, it could be seen that the accused has proclaimed in his own handwriting that he had issued the cheques to the complainant covering the value of Rs 3.00 lakh and had also promised that on encashment of those cheques he would further give cheques for Rs. 1.85 lakh. Therefore, there is no gain in any contrary contention that the accused may urge that he is not liable to pay any amount to the complainant. I had requested the learned Counsel for the Petitioner to spell out the contents of relevant portion of Exp2, which the accused admits, to show as to whether it could convey any different meaning than what is written in words. Learned Counsel very fairly submits that the word by word translation of the contents would undoubtedly show that the accused had issued the cheques covering Rs 3.00 lakh and promised to issue further cheques for Rs 1.85 lakh after encashment of the earlier cheques. However, learned Counsel hastened to add that in the other portion of Exp2, there is no indication that cheques were issued for security purpose only, yet he submits that what the accused has stated in the notice dated 19-8-1997 should be read as part and parcel of the said contents. I am unable to accept this contention. The contention is wholly irrational on the facts and circumstance of the case. We are not going by what the complainant has stated in her testimony as PW1, because the same

can be treated as a self-interested testimony, unless it is corroborated from any other material on record. The material on record, which has translated or transformed into acceptable legal evidence is an admission on the part of the accused himself. Under the provisions of Section 20 of the Indian Evidence Act, 1872, a statement made by a person in admission of certain facts is admissible.

16. In the instant case, the issue that has arisen for consideration is whether the impugned cheques were issued in relation to any debt or legal liability ? Since the extracted portion in ExP2 in clear terminology declares that the accused had issued the cheque valuing Rs 3.00 lakh and has also undertaken to issue cheques for Rs 1.85 lakh, is in the form of a written admission by the accused. Such writing, since it purports to have made by the accused himself, has in clear terms admitted that the portion to be in his own handwriting, it becomes not only relevant but is capable of being used in a proceeding of this nature. Once it becomes useful as evidence, it established the fact of liability declared by this document.

17. Further, under the provisions of Section 21 of the Evidence Act, proof of admission against persons making them could only be by producing such admission, whether it is oral or writing. If the so-called admission is disputed, then the person relying on such admission would be required to establish it. When the maker himself admits of having made it, the question of again calling upon the complainant to prove it does not arise in this case.

18. To establish the charge u/s 138 of the Act, the complainant is required to establish issuance of cheque, its dishonour and failure of the drawee to make good the amount within the stipulated time. Insofar as the issuance of cheques is concerned, the accused has not disputed it. Since the impugned cheques are admittedly issued by the accused, as seen from the notice dated 19-8-1997 and as detailed in ExP2 agreement dated 26-2-1997-it is a clinching evidence to show that the accused has issued the impugned cheques. Having held that contents of ExP2 which are written by the accused himself, it amount to an admission of liability and is a sufficient proof that these cheques were issued by the accused towards his liability. I am satisfied that the Trial Court has rightly accepted the case of the complainant that the cheques impugned were issued towards an existing debt or legal liability.

19. Lastly, the important question is whether cognizance could have been taken by the Trial Court, in view of the contention of the accused that there was no proper notice issued. In this regard, the learned Counsel would submit that the contents of the statutory notice are not in conformity with the requirement of Section 138 of the Act. He submits that in the statutory notice issued by the complainant, she had called upon the accused to pay the amount due by him as detailed in ExP2. He refers to the word "hence" to emphasize his point that the word used is "hence", which indicates that the demand made was in relation to the amount due by the accused under ExP2 and not in respect of the cheques impugned. What is the meaning of the word "hence", is sought to be emphasized

by the learned Counsel, producing extracts from several dictionaries including the Oxford dictionary. Learned Counsel is unable to point out to any other defects in the statutory notice. However, for the purpose of satisfying whether the notices are in conformity with the statutory requirement, I have examined the statutory notices issued by the complainant to the accused. These notices contain narration about the loan transaction and also refer to ExP2. The notices, no doubt, declare liability of the accused, as detailed in ExP2 agreement dated 26-2-1997. But, it is material to note that in the concluding paragraph, the complainant has with clarity made the following demand:

Please take notice, pay the cheque amount of Rs. 75,000/-and stopping payment is also offence u/s 138 of N.I. Act. If you have not paid the amount immediately, my client will take serious steps against you before Court of law either in Civil or Criminal. I hope that you are not giving any room to move the matter before Court of law.

This is one of the notices in relation to the dishonour of cheque for Rs. 75,000/-, which was the subject matter of CC No. 5074 of 1998. Similar notices have been issued in all other cases also.

20. Learned Counsel for the Petitioner draws citational constitutional support from the decision of the Apex Court in the case of *Rahul Builders Vs. Arihant Fertilizers and Chemical and Another, J.* Relying on said decision, he submits that the Apex Court quashed the proceedings and set aside the finding of the High Court about the validity of the statutory notice. He submits that in the said case, the Apex Court noticed that the demand raised in the notice was about the loan amount due and not of the cheque amount. He draws parallel between the facts of that case and the facts of these cases to show that in the instant case also, since the complainant has referred to the amount due under the agreement dated 26-2-1997 and as the word "hence" is used, it refers only to "the transaction covered under the agreement" and it is not a demand in relation to dishonoured cheque. All these contentions must necessarily fail, because of the very decision relied upon the learned Counsel, as virtually the decision is against his own contention. The subject matter for consideration before the Apex Court in the decision was whether there was any prescribed form for issuance of statutory notice? The Apex Court has in clear terms held that the notice issuable u/s 138 of the Act is no doubt statutorily required, but the Court has also noticed the fact that what Section 138 contemplates is to make a demand for payment of amount of money due and covered under the cheque. The Apex Court in paragraph 8 of the judgment has observed as under:

8. Section 138 does not speak of a 15 days" notice. It contemplates service of notice and payment of the amount of cheque within 15 days from the date of receipt thereof. when the statute prescribes for service of notice specifying a particular period, it should be expressly stated. In absence of any such stipulation, it is difficult to hold that 15 days" notice was thereby contemplated. The High Court, therefore, was not correct in arriving at the aforementioned

finding.

Therefore, it is seen that the Apex Court itself has held that the requirement of law u/s 138 is to issue a notice calling upon drawer to make payment of amount of money under the cheque. What is held in the said decision is that the demand must relate to the amount covered under the cheque and not any other amount due towards loan. In the instant case, no doubt, in the notice, the complainant has mentioned about the document dated 26-2-1997 and the amount due by the accused, but in clear terms a demand is made in the last paragraph relating to the amount covered under the cheques only.

21. The next question is whether the demand made is to pay the amount immediately and whether 15 days" time was available to the accused to pay the amount. This is also not a defect, because in paragraph 8 of the judgment, which is extracted above, the Apex Court itself has held that u/s 138, there is no mention that the amount must be paid within a specified period. The provision only stipulates that the accused becomes liable for prosecution if he does not pay the amount within fifteen days from the date of receipt of the notice. Therefore, in the absence of any requirement u/s 138 of the Act to mention 15 days period within which the amount has to be paid, the notice will not become defective. Of course, the prosecution cannot be initiated till the expiry of 15 days. That is stipulated to enable the accused to pay the amount covered under the cheque instead of facing prosecution.

22. Hence, the reliance placed by the learned Counsel on the decision of the Apex Court [supra], is no avail to him, as no legal defects can be found in the notice.

23. Lastly, it must also be noticed that the accused does not dispute that the liability declared by him in the agreement dated 26-2-1997 [Exp2] has not been discharged by him.

24. All the grounds urged by learned Counsel for the Petitioner-accused are of not such nature as to make out a ground justifying interference with the finding of the Trial Court or the order of the first appellate Court confirming the said finding. Hence, I decline to interfere with the finding recorded by the Trial Court or the order passed by the first appellate Court affirming the finding recorded by the Trial Court. Consequently, these petitions fail and they are dismissed accordingly.

25. As the accused has not paid the amount as evidenced in the Trial Court order and confirmed by the first appellate Court, the Petitioner-accused is granted four weeks" time from today to clear the amount.