

APPENDIX -12

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

Present: Smt. Darshana Nath, JMFC, SONITPUR, TEZPUR

[Date of the Judgment]

12.10.2022

[N.I. Case No. 59 of 2012]

COMPLAINANT :	Md. Riazul Haque S/o- Lt. Abdul Aziz Seikh, R/o- Lalmati, P.O. & P.S.- Tezpur, Dist.- Sonitpur(Assam)
REPRESENTED BY	S.K. Singh, Ld. Counsel.
ACCUSED	Musstt. Rahida Begum W/o- Md. Dilwar Hussain R/o- Likhak Gaon, P.O.- Pithakhowa, P.S.- Tezpur, Dist.- Sonitpur(Assam)
REPRESENTED BY	Putul Borah, Momi Nath, Ld. Counsel.

APPENDIX -13

Date of Offence	-
Date of FIR.	-
Date of Charge-sheet	-
Date of Offence Explained	20-03-2014
Date of commencement of evidence	30-08-2014
Date on which judgment is reserved	07-09-2022, 22-09-2022, 01-10-2022, 07-10-2022.
Date of the Judgment	12-10-2022
Date of the Sentencing Order, if any	The accused person is convicted and sentenced to undergo RI for 3 (three) months and to pay fine of Rs. 6,00,000/-

	<p>(Rupees Six lacs only) i/d RI for two (1) months on her conviction u/s 138 of the Negotiable Instrument Act, 1881.</p>
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ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A1	Musstt. Rahida Begum	Nil	Nil	U/S 138 of N.I. Act, 1881	Convicted	Nil	Nil

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS AT SONITPUR, TEZPUR**

**PRESENT: DARSHANA NATH,MA, LL.M, AJS
JMFC, Sonitpur, Tezpur**

N.I. CASE NO: 59/2012

U/S 138 of NI Act, 1881

Complainant: Md. Riazul Haque

VS.

Accused person: Musstt Rahida Begum

Evidence recorded on : 30/08/2014,30/05/2015,
01/10/2019,30/12/2019
Arguments heard on : 23/08/2022
Judgement delivered on : 12/10/2022
Appearing for Prosecution : S.K. Singh, Ld. Counsel.
Appearing for Defence : Putul Borah, Momi Nath,
Ld. Counsel.

JUDGMENT

1. This is a case instituted under section 138 of the Negotiable Instruments Act, 1881 alleging that the accused person A1 had issued one cheque in favour of the complainant which was dishonoured due to the reasons of "insufficient fund".

2. The brief facts giving rise to the institution of this complaint case inter alia is that both complainant and accused's husband Dilwar Hussain Saikia are well acquainted with each other. Due to the cordial relationship between the complainant and accused person's husband, the accused approached him in the month of July, 2012 for a loan of Rs. 5,50,000/- (Rupees five lakh fifty thousand only) to meet her financial difficulties. The amount was to be refunded within 25 days. The accused also entered into an agreement in writing wherein she agreed to refund the loan amount within 25 days from the date of execution of the agreement. The complainant is not money lender and extended loan to the accused only to help her.
3. The complainant requested the accused to refund the entire loan amount in August, 2012. The accused handed over a cheque bearing no. 4074984 dated 08/08/2012 for Rs. 1,50,000/-. The accused sought one week time to refund entire amount and handed over another cheque no. 4074983 dated 14/08/2012 for Rs. 2,00,000/- drawn on Assam Gramin Vikash Bank, Pithakhowa Branch. The complainant presented the said cheque to the Central Bank of India, Tezpur Branch for collection of the amount. The complainant came to know that the cheque was dishonoured due to **"insufficient fund"** through an intimation dated 27/09/12 sent to him in writing.
4. The complainant then legal notice dated 19/10/2012 through his advocate by registered post to the accused on her address u/s 138(b) of NI Act, 1881. The accused received the notice 26/10/2012, but the accused failed to the amount. The accused handed over the cheques knowing well that the cheque would be bounced due to insufficient balance in her account.

5. The case record was assumed by my learned predecessor-in-court for due disposal, and after taking cognizance of offence, summons were issued to the accused person. Accused person appeared in pursuance of the summons; then also enlarged on bail and after compliance of section 207 CrPC as well as hearing of both sides, the court explained and read over the substance of accusations u/s 138/142 of the NI Act, 1881 to the accused to which they pleaded not guilty and claimed to be tried.
6. During the course of trial, the complainant side examined two witnesses, i.e., complainant and a bank official. On closure of the evidence of the complainant, the statement of the accused was recorded u/s 313 CrPC. Accused failed to adduce evidence in her defence.
7. Heard the argument advanced by the learned counsels of both sides and arrived at the conclusion as follows:

POINTS FOR DETERMINATION

- a. Whether the accused on 08/08/12 and 14/08/12 issued cheque no. 4074984 and 4074983 respectively drawn from the bank account maintained by her, in favour of the complainant for the amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) and 2,00,000/- (Rupees Two lakh only) to discharge her debt or other liability and the said cheques were dishonoured for reasons of "insufficient funds"?
- b. Whether a valid notice under section 138 NI Act was served upon the accused and the accused failed to pay the money as demanded within 15 days of receipt of the notice?

- c. Whether the accused has committed an offence punishable under section 138 of the NI Act, 1881?

PLEA OF THE ACCUSED/DEFENCE

8. In this case, the accused person denied the allegation levelled against her. Further the accused A1 stated in her statement recorded u/s 313 CrpC that she gave two cheques signed by her and complainant filled the cheques. She stated that she did not receive any statutory notice.

DETERMINATION OF POINT, DISCUSSION, DECISION AND REASONS THEREOF

9. ***Point no. (a)*** PW1 is the complainant. He stated that both complainant and accused's husband Dilwar Hussain Saikia are well acquainted with each other. Due to the cordial relationship between the complainant and accused person's husband, the accused approached him in the month of July, 2012 for a loan of Rs. 5,50,000/- (Rupees five lakh fifty thousand only) to meet her financial difficulties. The amount was to be refunded within 25 days. The accused also entered into an agreement in writing wherein she agreed to refund the loan amount within 25 days from the date of execution of the agreement. The complainant is not money lender and extended loan to the accused only to help her. The complainant requested the accused to refund the entire loan amount in August, 2012. The accused handed over a cheque bearing no. 4074984 dated 08/08/2012 for Rs. 1,50,000/-. The accused sought one week time to refund entire amount and handed over another cheque no. 4074983 dated 14/08/2012 for Rs. 2,00,000/- drawn on Assam Gramin Vikash Bank, Pithakhowa Branch. The complainant

presented the said cheque to the Central Bank of India, Tezpur Branch for collection of the amount. The complainant came to know that the cheque was dishonoured due to “**insufficient fund**” through an intimation dated 27/09/12 sent to him in writing.

10. The complainant then sent legal notice dated 19/10/2012 through his advocate by registered post to the accused on her address u/s 138(b) of NI Act, 1881. The accused received the notice 26/10/2012, but the accused failed to the amount. The accused handed over the cheques knowing well that the cheque would be bounced due to insufficient balance in her account.

11. In cross examination PW1 resolutely maintained his stand and it is noticed that the defence side failed to rebut his testimony. It appears that defence had not disputed either the cheques or the signatures. She had not denied the issuance of cheques to the complainant. She only stated that she gave blank cheques to the complainant which she failed to prove in the court.

12. The non denial of cheques and signatures in those cheques together with the SB account no. 5673 which the accused A1 maintains in Assam Gramin Vikash Bank, Pithakhowa branch and issuance of cheques in favour of the complainant leads to application of section 139 NI Act, which brings presumptions in favour of the holder of the cheques, i.e. the complainant. The Hon’ble Supreme Court in ***T.P. Murugan vs. Brojen [(2018) 8 SCC 469]*** held that once a cheque has been signed and issued in favour of the holder of the cheque, there is statutory presumption under section 139, N.I. Act that the cheque is issued in discharge of legally enforceable debt or liability.

- 13.** In view of the forgoing discussions, I hold that the complainant has established that the cheques were issued in discharge of a legally enforceable debt or liability. Accused has failed to rebut presumptions under sections 118 and 139 of the Act arising in favour of the complainant. Hence, point no. (a) is decided in affirmative.
- 14.** **Point no. (b):** PW2 is the Manager of Assam Gramin Vikash Bank, Pithakhowa branch. She brought cheque issuing register pertaining to cheque leaf no. 4074984 and 4074983. She identified that Ext. 8 is the account opening form of the accused. She stated that her bank issued cheque book which contained 25 numbers of leafs i.e. 4074976 to 4074500. It is stated that Ext 4 is the cheque returning memo which was issued by their bank which reflects that the cause shown for dishonour of cheque was due to insufficient fund in the account.
- 15.** Ext. 1 is the copy of agreement dated 07/07/2012, Ext.1(1) is the signature of the accused where it was stated that the accused took Rs. 5,50,000/- as loan with a promise that she would return the loan within 25 days. Ext. 2 is a cheque of Rs. 1,50,000/- bearing no. 4074984 dated 08/08/2012 and Ext. 2(1) is the signature of the accused. Ext. 3 is a cheque of Rs. 2,00,000/- bearing no. 4074983 dated 14/08/2012 and Ext. 3(1) is the signature of the accused. Ext. 4 is the cheque returning memo as identified by PW2 which shows that the cheques bearing no. 4074983 and 4074984 were bounced due to "insufficient fund". Ext. 6 is the legal notice issued by the learned counsel on behalf of the complainant and Ext. 7 is the post card where there is no signature of receiver. One D. Begum signed at the Ext.7 but it is not similar with the signature of accused.

- 16.** PW1 in cross examination clearly admits that signature accused in Ext.2 and Ext. 7 differs. From Ext.7, evidence given by the PW1 and statement of the accused, it may be presumed that the accused did not receive any legal notice.
- 17.** Learned counsel of the complainant stated that in petition vide no. 962/18, the accused admitted her liability and both complainant and accused settled the dispute outside the court. The accused agreed to pay Rs. 10,000/- per month to the complainant till the full realization of money. The date when the petition was filed is 13/03/2018 and the cheques were issued on 08/08/2012 and 14/08/2012 and the cheque returning memo was issued by the bank on 28/09/2012 stating the cheques were bounced due to "insufficient fund".
- 18.** Both parties agreed to settle the dispute outside the court which indicates that the accused admitted her liability. **Section 58** of the Evidence Act reads as: "No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."
- 19.** In the instant case, where the accused person showed her liability as per petition vide no. 962/18, whether she received legal notice or not is irrelevant. From above discussions, I hold that the accused had knowledge of the repayment of loan taken by her. Hence, point no. (b) is decided in affirmative.
- 20.** **Point no. ©:** 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 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 notice regarding dishonour of cheque for insufficient funds ought to be given within 30 days of the receipt of information regarding dishonour.

21. In the instant case it is already held that the cheques were issued by the accused in the account maintained by her and the said cheques were dishonoured due to "insufficient funds". The cheques were issued in the instant case on 08/08/2012 and 14/08/2012 and they were presented within six months for encashment, i.e. on 27/09/2012. The cheques were dishonoured on 28/09/2012 as revealed from cheque returning memos; and the demand notice was issued by the complainant on 19/10/2012, which is within 30 days from the receipt of information of dishonour. The said notice was deemed to be received, as shown by Ext. 7. The said notice was deemed to be received by the accused as per petition vide no. 962/18. This fact has remained uncontroverted by defence during cross examination of PW1. The defence failed to put any question at all challenging the authenticity of Ext. 7 and its contents. The complainant instituted this complaint on 29/11/2012 which is within 30 days after the lapse of 15 days from the date of receipt of demand notice (26/10/2012); hence the complaint was lodged within the period of limitation.

22. 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 after analysis of evidence on record it is held that the accused has committed the

offence under section 138 of the Negotiable Instruments Act, 1881.

23. The discussion on evidence and other materials on record coupled with the decision laid down by the Hon'ble Apex court reveals that the complainant successfully and satisfactorily proved the basic components of the offence u/s 138 of the Negotiable Instrument Act, 1881 and the accused person is liable for the consequence of the dishonour of the cheque. Hence, the point no. © is decided in favour of the complainant and against the accused.

CONCLUSION AND FINDING

24. From the decisions and discussions made above, it can be safely concluded that the complainant side has successfully and satisfactorily brings home the guilt of the accused for commission of offence u/s 138 of the Negotiable Instrument Act, 1881 and accordingly the accused person A1 is convicted u/s 138 of the Negotiable Instrument Act, 1881.

SENTENCE HEARING

25. Heard the accused on the point of sentence proposed to be imposed on her. Accused person stated that she has children and has responsibility to look after her family. She has no criminal records. Accordingly, she prayed to hold lenient view at the time of dealing her conviction.

PROBATION

26. From the nature and circumstances of the commission of the offence, it appears that the convict committed the offence to her faithful person who was her husband's friend which caused huge

loss to the complainant and he was deprived from the enjoyment of the money due to commission of the offence by the accused. Considering overall socio-economic nature of the offence and the impact of such acts on business transactions, I am of the opinion that granting the benefits of probation might send a wrong message to the victim.

27. Moreover, a court of law is bound not just to see that the actual offender receives a punishment commensurate to his crime but also to see that potential offenders are deterred from committing similar offence. As such I am disinclined to extend the benefits of the Probation of Offenders Act to the convicts.

SENTENCE AND ORDER

28. I have considered the quantum of sentence to be imposed upon him. Section 138 of the Negotiable Instrument Act, 1881 carries punishment of imprisonment of either description for a term which may extend to two years, while fine may extend to twice the amount of cheque.

29. Considering all, the convicted accused is hereby sentenced to undergo RI for 3 (three) months and to pay fine of Rs. 6,00,000/- (Rupees six lacs only) i/d RI for one (1) month on her conviction u/s 138 of the Negotiable Instrument Act, 1881.

30. The fine amount shall be given to the complainant as compensation u/s 357(1)(b) CrPC.

31. Any period of jail custody already undergone shall be set off against the sentence of imprisonment as per Section 428, Criminal Procedure Code.

- 32.** Her bail bonds are extended for a further period of 6 (six) months as per the provisions of Section 437-A, Criminal Procedure Code. Let the items, which were seized in connection with this case, be returned to the rightful owners in due course.
- 33.** A free copy of the judgment may be furnished to the convict u/s 363(1) CrPC.
- 34.** The judgment is given under my hand with the seal and sign of the court and pronounced and delivered in the open court in presence of the parties on 12 day of October, 2022.

Typed by me:

Smti. Darshana Nath
Judicial Magistrate First Class, Tezpur

APPENDIX -14**LIST OF PROSECUTION / DEFENCE / COURT
WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1/PW1	Md. Riazul Haque	Complainant
CW2	Md. Afzal Ali	Other witness
PW2	Hirnaya Mayee Borah	Other witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

**LIST OF PROSECUTION/ DEFENCE/ COURT
EXHIBITS**

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Exhibit-1	Copy of agreement dated 07/07/2012.
2	Exhibit-1(1) to 1(3)	Signatures of the Accused on agreement dated 07/07/2012..
3	Exhibit-1(4)	Signature of Abdul Usman on agreement dated 07/07/2012.
4	Exhibit-1(5)	Signature of Md. Afzal Ali (CW2) on agreement dated 07/07/2012..
5	Exhibit-2	The Cheque no. 4074984 dated 08/08/2012
6	Exhibit-2(1) and 2(2)	Signatures of accused on Cheque no. 4074984 dated 08/08/2012
7	Exhibit-3	The Cheque no. 4074983 dated 14/08/2012
8	Exhibit-3(1) and 3(2)	Signatures of accused on Cheque no. 4074983 dated 14/08/2012
9	Exhibit-4	The cheque returning memo issued by AGV Bank, Pithakhowa Branch, dated 27/09/12.

10	Exhibit-5	The legal notice dated 19/10/12 issued on the accused by advocate.
11	Exhibit-5(1)	Signature of advocate S.K. Singh on legal notice dated 19/10/12 issued on the accused.
12	Exhibit-6	The postal receipt dated 19/10/12 No. CRS503031235IN.
13	Exhibit-7	The Acknowledgment card.
14	Exhibit-8	Saving Bank Account of Musstt. Rahida Begum at AGV Bank, Pithakhowa Branch.
15	Exhibit-9	The cheque issue register of AGV Bank, Pithakhowa Branch.
16	Exhibit-9(1)	The relevant page of Cheque issue register of AGV Bank, Pithakhowa Branch.
17	Exhibit-10	The Statement of Bank Account of Rahida Begum at AGV Bank, Pithakhowa Branch.

B. Defence:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

Smti. Darshana Nath
Judicial Magistrate First Class, Tezpur