IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, UDALGURI, ASSAM

Present: *Sri Tarun Dey, A. J. S.,*
Addl. Chief Judicial Magistrate,
Udalguri, Assam

Date of Judgment: **12.07.2024**

N. I. case No.8/2023 under Section 138 NI Act, 1881.

COMPLAINANT:	Sri Rahul Beria
REPRESENTED BY	Mr. R. Khakhlari
ACCUSED	Sri Uma Boro S/o- Late Binoy Boro Resident of vill.- Chamuapara (Pukhripar) P.S.- Udalguri Dist.- Udalguri, Assam
REPRESENTED BY	Mr. J. Daimari

Date of commencement of evidence	01.08.2023 & 10.04.2024
Date on which Judgment is reserved	24.06.2024
Date of Judgment	12.07.2024
Date of the Sentencing Order, if any	None

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bond	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.PC
1	Rahul Beria	-	-	Section 138 NI Act	Convicted	**1 year SI and also to pay a fine of Rs.15,00,000/- fine i/d SI for 6 months**.	-

J U D G M E N T

1. The facts leading to institution of this complaint case, as revealed from the complaint petition are that the accused borrowed a sum of Rs.13,65,000/- from the complainant and accordingly in pursuance to liquidate the legally enforceable debt to the complainant, the accused issued a cheque in favour of the complainant towards the payment of the said debt. The complainant duly presented the cheque bearing nos. 961344 dated 20.06.23, 961345 dated 20.06.23 and 961347 dated 20.06.23 for encashment through Axis bank, Tangla Branch bearing account No.923020003960981 on dated 20.06.23 within its validity period. But, the said cheques were returned to the complainant being dishonoured by the bank of the accused along with the cheques return memo dated 23.06.2023 with the remarks as "Fund Insufficient". The intimation of the dishonoured cheques came to knowledge of the complainant through its bank on dated 23.06.23. On receipt of the information of the dishonour of the said cheques, the complainant sent a demand notice dated 04.07.23 through his advocate upon the accused by registered post on 04.07.23 in terms of Section 138 (b) of the NI Act, 1881 as amended up-to-date and called upon the accused to pay the sum of Rs.13,65,000/- within a period of 15 days from the date of receipt of the said notice. The demand notice was duly dispatched on 04.07.2023 to the proper and correct address of the accused through registered post but despite of receipt of the notice, the accused has intentionally failed and neglected to pay the amount to the complainant till today. Hence this case.

2. On receipt of the complaint and initial deposition of complainant in affidavit, the accused has been issued summons. Accordingly, the accused entered his appearance in the case and thereafter, the particulars of offences u/s 138 N.I. Act was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

3. In course of trial, the complainant side examined only 1 (one) witness i.e. the complainant, who was duly cross examined by defence. The accused has been examined U/s 313 Cr.P.C and his statements have been recorded. The defence declined to adduce any evidence. I have heard arguments placed by Ld. Counsels of both sides.

POINTS FOR DETERMINATION:

4. Let me go through the contents of Sec 138 N.I. Act, Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Though Section 138 N.I. Act penalizes the dishonour of a cheque, however, dishonour of a cheque is, by itself, not an offence under the section.

To become an offence, the following ingredients have to be fulfilled:

1. Drawing of the cheque.
2. Presentation of the cheque to the bank.
3. Return of the cheque unpaid by the drawee bank.
4. Issuance of notice in writing to the drawer of the cheque demanding payment of the cheque amount.

5. Failure of the drawer to make the payment within 15 days of receipt of the notice.

5. After perusal of the Case Record, I have found the following points for determination:

(i) Whether cheque bearing nos. 961344 dated 20.06.23 amounting to Rs.7,65,000/-, 961345 dated 20.06.2023 amounting to Rs.2,00,000/- and 961347 dated 20.06.2023 amounting to Rs.4,00,000/- were issued by the accused in favour of complainant? If so, whether those were issued for discharge of a legally enforceable debt?

(ii) Whether the cheques in question issued by accused in favour of complainant were dishonoured for insufficiency of funds?

(iii) Whether the accused committed offence u/s 138 N.I. Act?

DISCUSSION, DECISION AND REASONS THEREOF:

6. To arrive at a judicious decision in the above points of determination, I have carefully gone through the materials on record, including evidence recorded and in the light of arguments heard, appreciated the evidences as follows:

Point of determination no. I

7. The P.W. 1 being the complainant, by submitting his evidence in chief in affidavit, has reiterated his statements made in complaint petition, which I find needless to reproduce. In support of evidence in chief, he exhibited the cheques as Exhibit P-1, Exhibit P-2 and Exhibit P-3. He also exhibited the deposit slips of cheques as Exhibit P-4, P-5 and P-6. He further exhibited the cheque return memos as Exhibit P-7, P-8 and P-9, demand notice as Exhibit P-10, postal receipts as Exhibit P-11. In the cross examination of P.W.1, I do not find any significant fact coming out, which negate the above evidence of complainant in respect of issuance of cheques in question. The accused during his statement u/s 313 CrPC has denied that he borrowed any money from the complainant. Rather, he lost five numbers of cheques somewhere from his cheque book. Such plea of losing leafs of cheques has come from defence side for the first time, as such, during the cross examination, the plea of defence is found to be a different one. In the cross examination of P.W. 1 the plea of defence was that accused had business terms with father of complainant, out of such relation, he gave three numbers of blank cheques in the name of complainant, which were filled up by the complainant and deposited to bank. This suggestion of defence has been denied by the complainant in his answer. So, I have found two contradictory pleas of defence here. If I go to examine the plea made in statement of accused u/s 313 Cr.PC, I find that the accused has not supported his plea by any reasonable explanation as to how and where his 5 numbers of cheques were lost, or whether he lodged any report to police or any report to bank about losing cheques. Any prudent man would take these steps under such circumstances. But, the accused did not state anything showing that he has taken those steps. So, this plea is not at all plausible in my view. In the other plea, the accused side admitted the issuance of cheque. So, I am inclined to presume that above mentioned cheques were issued by the accused to the complainant.

8. Now, let me come to the 2nd part of the point of determination, which is whether the cheques were issued by accused in discharging a legally enforceable debt of the complainant. The accused in his statement u/s 313 CrPC has stated that he did not borrow any sum of money from the complainant. However, this time, his plea remained consistent with his plea made during cross examination of complainant.

9. During arguments, the learned defence Counsel has pointed out that the accused did not issue the cheque in discharge of legally enforceable debt as the accused denied owing money to the complainant.

10. Now, let me elaborate the position of law in respect of burden of proof and presumptions of consideration and debt in N.I. Act cases. It is the cardinal principle of criminal jurisprudence that it is the burden of the prosecution to prove the guilt of the accused beyond reasonable doubt. Statutory presumptions, wherever available, create an exception to this cardinal principle by shifting the burden of proof to the opposite party. Among the notable presumptions available under the scheme of the N.I. Act, two are essential when it comes to the proof of the offence under Section 138. They are available under Sections 118(a) and 139 of the Act. Section 139 of the N.I. Act has clearly spelled out a presumption as to the existence of a debt or liability in favour of the holder of a cheque.

11. Section 139 N.I Act, Presumption in favour of holder: It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. Similarly, Section 118 (a) N.I. Act has also created a presumption of consideration for a negotiable instrument.

12. Section 118: Presumptions as to Negotiable Instruments. — Until the contrary is proved, the following presumption shall be made:— (a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.

13. Let me illustrate this point in the light of interpretation of Hon'ble Supreme Court of India. In the case of Rangappa vs Sri Mohan reported in (2010) 11 SCC 441, it has been made clear that "…the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. The law as it stands now after Rangappa (supra) is that once the issuance of the cheque is admitted or proved, the trial Court is duty bound to raise the presumption that the dishonoured cheque placed before it was indeed issued in discharge of a legally enforceable debt or liability of the amount mentioned therein. That being said, let me also point out that the presumption is a rebuttable one; it is up to the accused to prove that the cheque in question had not been issued in discharge of a legally enforceable debt or liability. Now, the question arises as to how the accused shall discharge this burden. It has been held in Hiten P. Dalal v. Bratindranath Banerjee reported in (2001) 6 SCC 16, that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.

14. Although the accused has not adduced any evidence in his defence, the plea of defence has become clear when I go through the statements of accused u/s 313 CrPC and the suggestion of defence during cross examination of complainant. The defence suggested that the accused issued blank cheque to the complainant out of a business relation with father of complainant. From statement of such suggestion it is presumable to some extent that out of business relation with father of complainant, the amount might have become due to the accused. Now, let me delve into the plea of issuing blank cheque.

15. Under Section 20 of the N.I. Act, it is perfectly possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the payee. Therefore, as long as the cheque has been signed by the drawer, the fact that the name and figures are written or the date filled up by the complainant is not a material alteration for the purposes of Section 87 of the N.I. Act.

16. The issue has been discussed by the Supreme Court of India in the case of Bir Singh v. Mukesh Kumar (2019) 4 SCC 197. The Hon'ble Supreme Court has held as follows. "If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

17. As stated above, the accused side pleaded that he issued blank cheques. In view of the above decision of Hon'ble Supreme Court of India, such plea does not hold good to exonerate him from his criminal liability. The absence of pre existing debt would be a factor to be considered in spite of the plea of issue of blank cheque, but the accused has neither adduced any evidence by examining himself in the dock nor any other document to support his contentions.

18. It is seen from the evidences that the prosecution has successfully discharged its burden of proving the fact of existence of legally enforceable debt as a reason of issuance of cheque by plausible oral and documentary evidences, leading the Court to draw statutory presumption u/s 139 and 118 N.I. Act. But, the accused has failed to discharge his burden to disprove/ rebut the statutory presumptions against existence of legally enforceable debt. So, it is held that the accused has a legally enforceable debt and the cheque in question was issued in discharge of such legally enforceable debt.

Point of determination no. II

19. The fact of dishonour of the cheque in question has been proved by the complainant by adducing his oral evidence as well as exhibiting the 2 numbers of cheque deposit slips which have been exhibited as Exhibit 4, 5 and 6 and cheque returning memo issued by Axis Bank, Tangla branch, which have been marked as Exhibit 7, 8 and 9. The memos of bank clearly say that the cheque were returned to the complainant unpaid due to insufficiency of funds in the bank account of the accused. I do not have any doubt on veracity of the cheque returning memo, as it bears seal of Axis Bank, Tangla branch, dated 23.06.23, containing the cheque no. 961344 amounting to Rs. 7,65,000/-, cheque no. 961345 amounting to Rs. 2,00,000/- and cheque no 961347 amounting to Rs. 4,00,000/- and also mentions the account number of the complainant vide no. 923020003960981. The Exhibit 4, 5 and 6 being the cheque deposit slip clearly mentions the date 20.06.23, the details of cheque in question and the said account number of the complainant and also bears seal of the bank. As it bears signature of complainant as depositor, he has duly proved the cheque deposit slips. So, it is held that the complainant has proved the fact of dishonour of cheques for insufficiency of funds issued by the accused in favour of the complainant.

Point of determination No. III:

20. As stated above, mere issuance of cheque by the accused and its subsequent dishonour on presentation is not sufficient to constitute the offence u/s 138 N.I. Act. To become an offence under the section, two other important elements must be there. These are i) Issuance of notice in writing to the drawer of the cheque demanding payment of the cheque amount, ii) Failure of the drawer to make the payment within 15 days of receipt of the notice. The complainant in addition to his oral evidence of issuing notice as mandated u/s 138 N.I. Act, exhibited the photocopy of the notice vide Exhibit

10, dated 04.07.23. It is sent through Advocate Seema Daimary and contains all necessary statements which are necessary for informing the accused about the dishonour and demanding the money mentioned in the cheques. He also exhibited the postal receipt as Exhibit 11 as a proof of sending the notice by post. The receipt mentions the name and address of the accused, the date of sending as 04.07.23 and bears India postal marks in it. Although, the complainant side has not deposited any kind of acknowledgement showing that the accused received the notice and although the accused has not challenged the receipt of notice, it is to be mentioned that by virtue of Sec 27 of General Clauses Act, where a sender has dispatched a notice by post, with correct address written on it, then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such service. So, the sending of the notice by post leads a presumption that it has been served to the accused. The complainant has filed the case on 02.08.23 which implies that the accused did not make any payment as demanded by the complainant. As the complainant has proved all the above ingredients of the offence u/s 138 of N.I. Act, it is found that the accused has committed the offence u/s 138 of N.I. Act.

21. As all the three points of determination have been decided in affirmation against the accused, it is held that the complainant side has successfully proved that accused Uma Boro issued cheque bearing no. 961344, 961345 and 961346 dated 20.06.23 in favour of the complainant in discharge of a legally enforceable debt, which was dishonoured due to insufficient funds in the bank account of the accused. Accordingly, the accused Uma Boro is found to be guilty for the offence u/s 138 N.I. Act and convicted for the said offence.

Benefit under the Probation of Offenders Act:

22. I have given due consideration in the case of the accused under the relevant sections of Probation of Offenders Act, 1958. The legislative purpose of enacting Sec 138 N.I. Act is to promote efficacy of banking and financial transactions through cheques and maintenance of credibility in transacting businesses through negotiable instruments. By committing the offence, the accused has deceived the complainant and also raises question on credibility of system business transaction by negotiable instruments. So, I am not inclined to extend the benefit of Probation of Offenders Act to the accused.

23. In the backdrop of my above discussions and also considering all aspects of the case, I am of the opinion that the accused Uma Boro deserves to undergo Simple

Imprisonment for 1 (one) year and also to pay a fine of Rs. 15,00,000/- (Fifteen lakhs), in default of which he shall serve further imprisonment of 6 (six) months. The fine amount, if recovered, shall be paid to the complainant as compensation. The accused is sentenced accordingly.

24. A copy of the Judgment be furnished to the convict free of cost.

Given under my hand and seal of this Court on this 12th day of July, 2024.

TARUN DEY Digitally signed by TARUN DEY Date: 2024.07.12 17:08:04 +05'30'

(Tarun Dey)
Addl. C.J.M., Udalguri

Dictated and corrected by me,

TARUN DEY Digitally signed by TARUN DEY Date: 2024.07.12 17:08:37 +05'30'

(Traun Dey)
Addl. C.J.M., Udalguri

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Rahul Beria	complainant

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	Nil	

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	Nil	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext.P-1	Dishonour Cheque
2	Ext.P-2	Dishonour Cheque
3	Ext.P-3	Dishonour Cheque
4	Ext.P-4	Deposit Slip of Axis Bank, Tangla Branch
5	Ext.P-5	Deposit Slip of Axis Bank, Tangla Branch
6	Ext.P-6	Diposit Slip of Axis Bank, Tangla Branch
7	Ext.P-7	Return Memo of Axis Bank, Tangla Branch

8	Ext.P-8	Return Memo of Axis Bank, Tangla Branch
9	Ext.P-9	Return Memo of Axis Bank, Tangla Branch
10	Ext.P-10	Demand Notices
11	Ext.P-11	Postal Slip

B. Defence:

Sr. No.	Exhibit Number	Description
	Nil	

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
	Nil	

D. Material Objects:

Sr. No.	Exhibit Number	Description
	Nil	

TARUN DEY

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(Tarun Dey)
Addl. C.J.M., Udalguri