



The Court of JM 1st Class, Ramgarh

Present: Mrs. Smriti Tripathi

Judicial Magistrate

28th March, 2023

District: Ramgarh

Complaint Case No. 448/2018

CNR:JHRG030000025742018

Complainant	Mrityunjay Kumar Sharma s/o late Shyam Sunder Sharma, male, r/o Budhbazar, riverside Bhurkunda, Patratu, District Ramgarh
<i>Represented By</i>	<i>Sri Sanjiv Kumar Ambastha, Id. Advocate</i>
Accused	1. Sanjay Kumar s/o Gama Ram, male, aged about 45 years [A1] 2. Usha Devi w/o Sanjay Kumar, female, aged about 40 years [A2] both r/o Saunda Near CCL hospital, PS Patratu, District Ramgarh
<i>Represented By</i>	<i>Sri Arun Kumar Singh, Id. Advocate</i>

Date(s) of Offence	30.01.2017
Date of Complaint	05.09.2018
Date of summoning order	23.03.2019
Date of Substance of Accusation	01.03.2021
Date of Commencement of evidence	01.04.2021
Date of Judgment is reserved	28.03.2023
Date of Judgment	28.03.2023
Date of Sentencing Order, if any	N/A

Rank of the Accused	Name of the Accused	Date of Arrest/Surrender	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during trial for the purpose of s. 428, CrPC.
A1	Sanjay Kumar	07.01.20	07.01.20	s.138, NI Act	Acquitted	None	n/a
A2	Usha Devi	07.01.20	07.01.20	s.138, NI Act	Acquitted	None	n/a

J U D G M E N T

- The afore-named accused persons (Hereinafter referred to as "A1 & A2") are facing trial for the offence u/s. 138 of The Negotiable Instruments Act, 1881 (Hereinafter referred to as the "NI Act").

2. The **compendious case** of Mrityunjay Kumar Sharma (Hereinafter referred to as the "**complainant**") as arising out of his complaint petition filed u/s. 138 of NI Act against A1 and A2 is that the complainant is friends with A1 and A2 who had taken a friendly loan of ₹5 lacs from him on 20.10.17, to be repaid within six months. On demand, a cheque bearing no 000024 dated 26.04.2018 of ₹5 lacs was issued by them from their joint account at HDFC, Bank Ramgarh Patratu branch. On presentation at Bank of India, Bhurkunda branch on 13.06.2018, where the complainant maintains an account, the same was dishonoured citing reason "Account Closed". The same was intimated through return memo dated 13.06.2018. Thereafter, he complainant contacted A1 and A2 and requested them to make the said payment but they denied. Thereafter, the complainant sent a legal notice to A1 & A2 by registered post on 12.07.2018 which was duly served to them on 14.07.2018. Despite that, A1 and A2 did not pay the said amount to the complainant and hence, this case.
3. On the basis of the material available on record, **a prima facie case** u/s. 138 of NI Act was found to be made out against A1 by the then court on 23.03.2019.
4. On 01.03.2021, **substance of accusation** for offence u/s. 138 of NI Act was explained to A1 & A2 and read over in simple Hindi to which they pleaded not guilty and claimed to be tried, and the case was fixed for evidence but he did not produce any witness despite numerous chances and dates.
5. Ultimately the complainant's evidence was closed on 20.03.2023 and the record was fixed for recording statement of A1 and A2. Thereafter, the **statement** of A1 & A2 were recorded u/s. 313 of CrPC on 28.03.2023 in which they denied the material available against them and claimed to be innocent.
6. Thereafter, the defense was provided with an opportunity to adduce evidence on its behalf, if any but the ld. counsel for the defense submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed on same day and the matter was posted for arguments.
7. Ld. counsel for the complainant did not turn up for arguments and rather orally informed the court that the complainant has lost interest in this case.
8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out as the complainant has failed to support his case by evidence. It was also submitted that the complainant has failed to prove the guilt of A1 & A2.
9. Now, the Court will consider whether the complainant has been able to substantiate the accusation levelled against A1 & A2 beyond reasonable doubt or not, for which the complainant's case will be examined on the touchstone of the following **points of**

consideration:

- I. *Whether A1 and A2 had issued a cheque dated 26.04.2018 in favor of the complainant in discharge of legally enforceable debt/liability?*
 - II. *Whether the said cheque was dishonoured upon presentation stating the reason "Account closed"?*
 - III. *Whether a valid legal notice was served upon A1 and A2 u/s. 138 of NI Act and they failed to pay the money as demanded within 15 days of receipt of the said notice?*
 - IV. *Whether A1 and A2 have committed an offence punishable u/s. 138 of NI Act?*
10. Before the Court dwells to consider the points of consideration as stated above, it will be apt to enlist the evidences brought by both sides:

List of Witnesses after-charge

A. Complainant:

Rank	Name	Nature of Evidence
--- nil ---		

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Exhibits after-charge

A. Complainant:

Sr. No.	Exhibit Number	Description
--- nil ---		

B. Defence:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

- 11. *(Whether A1 had issued a cheque dated 26.04.18 in favor of the complainant in discharge of legally enforceable debt/liability?; Whether the said cheque was dishonoured upon presentation stating the reason " account closed"?; Whether a valid legal notice was served upon A1 and A2 u/s. 138 of NI Act and they failed to pay the money as demanded within 15 days of receipt of the said notice?; Whether A1 and A2 have committed an offence punishable u/s. 138 of NI Act?)*

1.1 All these points of determination have been taken up together. the reason being that none of these can be analyzed vis-à-vis the complainant's case as the complainant has not adduced any evidence after charge/substance nor exhibited any documents. In such a situation, this court is of the considered opinion that as the complainant's case is shorn of a single piece of evidence to support its case, the guilt of A1 & A2 in the alleged offence has not been established and thus, A1 & A2 are found not guilty of the offence u/s. 138, NI Act.

ORDERED

12. Thus, this court is of the considered opinion that the case is shorn of a single piece of evidence produced by the complainant to substantiate the accusation u/s. 138 of NI Act. Hence, A1 & A2 are hereby **acquitted** of the accusation u/s. 138, NI Act. A1 as well as their respective bailor also stands discharged from the liabilities of their respective bail bonds.

(Dictated and corrected)

Pronounced by me in open court.

Sd/-

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(Smriti Tripathi)
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