

Basavaraju.H.R vs K.S.Manjunath on 15 February, 2020

IN THE COURT OF THE XXIII ADDL.CHIEF METROPOLITON
MAGISTRATE, NRUPATHUNGA ROAD, BENGALURU CITY

Dated this the 15th day of February - 2020

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,
XXIII Addl.C.M.M., Bengaluru City.

C.C.NO.17355/2016

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	Basavaraju.H.R, S/o.Late.H.S.Rajanna, Aged about 56 years, R/at No.1119, 4th Main Road, Vijayanagar, Bengaluru-40.
		(Rep. by Sri.G.Chandrashekharaiiah.G, Adv.)
	V/S	
Accused	:	K.S.Manjunath, (Proprietor), M/s. Systech Trade Solutions, No.188, Meera Marvel, Opp. Ayyappa Basket Ball Court, 1st Main Road, Channamanakere Acchukattu, Banashankari 3rd Stage, Bengaluru-85. Also residing at: K.S.Manjunath, S/o.Late.Shanthappa, Aged about 38 years, R/at. No.43, Angala Parameshwari Nilaya, KSRTC Layout, 6th Main, Vajapayee Nagar, Subramanyapura Main Road, Uttarahalli, Bengaluru-61. (Rep.by Sri.Dinesh Hegde.H.L, Adv.)
Judgment	2	C.C.No.17355/2016

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is Acquitted.
DATE OF ORDER	:	15.02.2020.

(SHRIDHARA.M)
XXIII Addl.CMM., Bengaluru.

JUDGMENT

The complainant has presented the instant complaint against the accused on 15.06.2016 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.15 lakhs.

2. The factual matrix of the complainant case is:

The accused has projected himself to be a reputed finance business, running the said business in the name and style of Systech Trade Solutions as a proprietor. The accused had requested the complainant to pay some amount for him to run his finance business, in the month of April, 2015. The complainant had sold the agricultural property on 23.06.2014 and has certain amount in his possession. On the request of the accused and bonafide believing his words, complainant had paid sum of Rs.15 Judgment 3 C.C.No.17355/2016 lakhs on 14.05.2015. The accused has received the said money from the complainant and invested the same in his business.

The complainant has further alleged that, subsequent to the receipt of the said amount, the accused has entered into an agreement for having receiving the amount from the complainant on 14.05.2015, with various terms and conditions. One of the conditions of the said agreement was, the complainant entitled to receive the amount from the accused, as and when he required.

The complainant has further averred that, the payment of amount of Rs.15 lakhs to the accused, on receipt of the said money, the accused had promised to repay the same after sometime, as he has invested the same in his business.

Subsequent to his promise, the accused to repay the same, as he was in dire need of money. As against the said request, the accused towards discharge of his legal liability has issued a post dated cheque bearing No.000617 dated:27.04.2016 for sum of Rs.15 lakhs, drawn on Axis Bank Ltd., Uttarahalli Branch, and assured to honour the same on the date of its presentation.

The complainant has further alleged that, accordingly, the complainant has presented the said cheque for encashment through his banker viz., Veerashaiva Co-operative Bank Ltd., Judgment 4 C.C.No.17355/2016 Akkipete Branch, Bengaluru on 27.04.2016. But the same came to be dishonoured as per endorsement dated:28.04.2016 stating "Funds Insufficient". Subsequent to the dishonour of the said cheque, the complainant had informed the accused about the same and

requested him to pay the amount covered under the cheque. Thereby, the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act.

Hence, on 06.05.2016, through his counsel he got issued legal notice to the accused by R.P.A.D and the same was returned with an endorsement dated:18.05.2016 stating "Not Claimed". The notice sent by R.P.A.D to his residential address also returned stating "Intimation Delivered and he refused" to receive the same.

The accused was permanently residing in the said address, but intentionally avoided to receive the legal notice and as he not paid the amount covered under the cheque. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After receipt of the private complaint, my predecessor in office took the cognizance and got registered the PCR and recorded the sworn statement. Since made out prima-facie grounds to proceed against the accused for the alleged offence, got issued process.

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4. In response to the summons, the accused appeared through his counsel and obtained the bail. As required, complaint copy was supplied to the accused. Thereafter, accusation was read over and explained to him, wherein, he denied the same and claimed to have the defence.

5. To prove the case of the complainant, he himself choosen to examined as PW.1 and got marked Exs.P1 to P8(a). The PW.1 was subjected for cross-examination by the advocate for the accused.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and the answer given by him was recorded. In support of the defence, the accused himself was examined as DW.1, but not produced any documents in support of his defence.

7. Both side counsels have submitted their detailed written arguments, apart from adduced oral arguments.

8. On going through the rival contentions, based on the substantial evidence available on record, the following points have been arising for determination:

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1) Whether the complainant proves beyond the reasonable doubt that, he paid sum of Rs.15,00,000/- on 14.05.2015 as hand loan to the accused, and in turn, for discharge of legal recoverable debt, the accused issued the Ex.P1 cheque bearing No.000617, dated:27.04.2016 for sum of Rs.15,00,000/- drawn on Axis Bank Ltd., Uttarahalli Branch, Bengaluru?

2) Whether the complainant proves the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act?

3) What Order?

9. On appreciation of materials available on record, my findings on the above points are as under:

Point No.1 : In the Negative Point No.2 : In the Negative Point No.3 : As per final order, for the following:

REASONS

10. POINT NOs.1 and 2: Since both the points are connected with each other, they have taken together for common discussion in order to avoid repetition of facts.

The PW.1 to prove his case choosen to examined himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P8(a), they are:

a) Ex.P1 is the cheque bearing No.000617 issued by the accused for sum of Rs.15,00,000/-

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dated:27.04.2016, drawn on Axis Bank Ltd.,
Uttarahalli Branch, Bengaluru.

b) Ex.P1(a) is the alleged signature of accused.

c) Ex.P2 is the Bank Memo dated:28.04.2016.

d) Ex.P3 is the Legal Notice dated:06.05.2016.

e) Exs.P4 and P5 are the Postal receipts.

f) Exs.P6 and P7 are the not claimed R.P.A.D covers.

g) Exs.P6(a) and P7(a) are the legal notice at Exs.P6 and P7.

g) Ex.P8 is the agreement entered into between complainant and accused and

h) Ex.P8(a) and P8(b) are the signatures of complainant and accused.

11. The PW.1 was subjected to the cross-examination by the advocate for the accused. In support of his case the complainant through his counsel has produced the citations and relied upon same, they are;

a) 2015 (1) KCCR 235

b) 2015 (8) SCC 378

12. In order to prove the defence of the accused, he himself choosen examined as DW.1, but not produced any documents in support of his defence evidence. Apart from lead defence evidence, the DW.1 through his counsel has produced the citations and relied upon same. They are:

a) AIR 2019 SC 1983 Judgment 8 C.C.No.17355/2016

b) ILR 2008 KAR 4629

c) AIR 2019 SC 2446

13. While appreciate the materials on records and evidence, this court has gone through the decisions stated supra apart from the other decisions.

14. After cross-examination of PW.1, the incriminating evidence made against the accused was read over and explained to him as required under Section 313 of Cr.P.C., wherein, he denied the same and claimed to be have the defence. Accordingly, the accused entered into witness box and on oath deposed as DW.1. The accused in his chief examination has deposed in brief that:

Through his friend by name Ravi, the complainant known to accused. For doing on line trading business, the accused took sum of Rs.10 lakhs on 29.05.2015 by RTGS, to his Axis Bank account at Uttarahalli Branch, and sum of Rs.25 lakhs on 21.08.2015 by way of RTGS through Axis Bank, Banashankari Branch, in all he received sum of Rs.35 lakhs from the complainant.

The accused also contended that, when 1st time he took loan from the complainant, the complainant took 2 singed blank cheques, out of which, one cheque belongs to Axis Bank, Judgment 9 C.C.No.17355/2016 Uttarahalli Branch and another cheque is drawn on ICICI Bank, Ittamadu Branch. Likewise, when he borrowed loan on 2nd time also, the complainant took 2 signed blank cheques, out of which, one cheque belongs to Axis Bank, Banashankari Branch and another cheque belongs to ICICI Bank, Ittamadu Branch as security. Along with cheques, the complainant took singed blank stamp paper with seal of his concern in No.2 each in the year 2015 particularly took 2 and in the year 2016 particularly took 2 singed blank stamp paper as such.

The accused also contended that, for repayment of the loan of the accused, the accused directly through the State Bank of Mysore and Veerashaiva Sahakari Co-operative Bank Ltd., of Vijayanagar Branch of the accused, the complainant had joint account with his friend by name Ravi at Karnataka

Bank Ltd., Vijayanagar Branch, in the name of Atlas Associates to the said 3 accounts, the accused had transferred sum of Rs.16,88,020/- through his bank account. That apart, accused also contended that, sum of Rs.1,60,000/- in order to reach the complainant gave it through his friend Ravi.

The accused has also specifically contended that, that apart, in cash, he paid sum of Rs.6 lakhs on 15.10.2015, sum of Rs.4 lakhs on 21.12.2015 and sum of Rs.5,50,000/- on 10.02.2016 and sum of Rs.6,55,000/- on 27.04.2016, in all he paid Rs.22,05,000/- to the complainant in cash. The accused very particularly stated that, including interest he paid sum of Rs.41 lakhs to the complainant. When accused asked the complainant to return the documents, the complainant demanded more interest from the accused and after pays the said additional interest, then only he assured to return those security documents. The accused has stated that, notice issued by the complainant is not served on him. In the year 2016, he got vacated his house at Uttarahalli and shifted to house No.562, BHSC Layout, 3rd Cross, 9th Main Road, Uttarahalli, Bengaluru-64. The complainant after filing the present case and came to him to the changed address, then only he appeared before this court and whatever the loan he borrowed from the complainant got returned with interest. Hence, he is not liable to pay the amount covered under the cheque.

15. The accused not produced any document, but he took several admissions in the mouth of PW.1. The DW.1 was also subjected for cross-examination.

16. On going through the rival contentions of the parties, the complainant has put forth the present claim based on the Ex.P1-

Judgment 11 C.C.No.17355/2016 cheque stating, he lent loan of Rs.15 lakhs to the accused and for its repayment, accused got issued the questioned cheque after sometime. The same came to be dishonoured and despite, caused legal notice, without receiving the same; he avoided the payment and claimed thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act.

17. Whereas, the accused has specifically contended that, he came to know the complainant through their common friend Ravi and from the complainant, the accused had borrowed loan of Rs.35 lakhs as stated in his evidence and he took those loan on two occassins sum of Rs.10 lakhs on 29.05.2015 and sum of Rs.25 lakhs on 21.08.2015, whenever the complainant lent the loan, he used to collect 2 signed blank cheques and singed blank stamp papers as security. Despite, the accused got cleared the money to the complainant, he without return the same and prosecuted the matter by misusing his signed blank cheques and stamp papers by creating documents, hence, claimed he is not liable to pay money. To prove the defence of the accused, apart cross-examining the PW.1, he himself entered in to witness box. No doubt, as per Sections 118 and 139 of Negotiable Instruments Act, it is the initial burden on the complainant to rebut the presumption as well as case put forth by the complainant. Hence, Judgment 12 C.C.No.17355/2016 the evidence of accused placed through PW.1 as well as himself coupled with document has to be appraised.

18. On going through the rival contentions of the parties, the fact that, the names and addresses of the parties as found in cause title of complaint is not in dispute. The fact that, the accused being a proprietor of M/s. Systech Trade Solutions, has run trading business is not in dispute. The fact that, the complainant has financed to accused as hand loan is not in dispute. The fact that, the questioned cheque and signature therein including signature at Ex.P8 the agreement alleged to be executed by the accused is not in dispute, subject to prove that, it was duly executed.

19. In this case, the accused has contended that, he took loan of Rs.10 lakhs on the 1st occasion from the complainant on 29.05.2015 and sum of Rs.25 lakhs on 21.08.2015 by way of RTGS, in all Rs.35 lakhs, he took from the complainant on the security of signed blank cheques and signed blank stamp papers.

20. During the course of cross of PW.1, he re-asserted that:

"ç£ÁAPÀ 21.08.2015 gÀAzÀÄ |AiÀiÁðç-ÄAzÀ gÀÆ.25 ®PÀëªÀ£ÄÄß
YÀqÉçzÉÝ£É."

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21. The accused has clearly admitted and reasserted sum of Rs.25 lakhs were received by complainant on 21.08.2015. The said factum is not been denied by the complainant. Though, complainant has contended, Ex.P8 agreement was executed by the accused in his favour for having receipt of Rs.15 lakhs, the suggestion made to DW.1 has to its genuineness is to be looked into. During the course of cross of DW.1, it was suggested him that:

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¼|.8 £ÄÄß DvÀ¼UÉ ¼ÄrzÉÝ JAzÀÄ ¼RgÀªÁV £É£À|®è. ¼|.8 gÀ bÁYÁ PÁUÀzÀ
ç£ÁAPÀ 04.02.2016 gÀAzÀÄ £Á£ÉÄ RjÄç¹zÉÝ JAzÀgÉ , Äj. MAzÀÄªÀµÄzÀ
§½PÀ D zÄR-ÉAiÀÄ£ÄÄß |AiÀiÁðçUÉ PÉÆnÖzÉÝ£É£AzÀgÉ , ÄjAiÀÄ®è.
, ÄQëAiÀÄÄ MlÄÖ 3-4 " Äj bÁYÁ PÁUÀzÀPÉÌ £Á£ÄÄ , Ä»ªÀiÁr
PÉÆnÖzÉÝ£É£AzÀÄ £ÄÄrAiÀÄÄvÁÛgÉ. 2015 gÀ°è JgÀqÄjAzÀªÄÄgÄÄ bÁYÁ
PÁUÀzÀ °ÁUÀÆ 2016 gÀ°è MAzÀÄ bÁYÁ PÁUÀzÀPÉÌ , Ä»ªÀiÁr |AiÀiÁðçUÉ
PÉÆnÖzÉÝ£ÄÄ. £Á®ÄÌ ««zÀsªÄªÀ°ÁgÀPÉÌ , ÄA\$AzÀsYÄlÖAvÉ £Á£ÄÄ D jÄw
£Á®ÄÌ " Äj bÁYÁ PÁUÀzÀªÄ£ÄÄß |AiÀiÁðçUÉ PÉÆnÖzÉÝ JAzÀgÉ , ÄjAiÀÄ®è."

22. On going through the said suggestion, the complainant again admitted the payment of loan of Rs.25 lakhs to the accused, but though in the complaint he contended that, for having receipt of Rs.15 lakhs on 14.05.2015, the accused got executed the Judgment 14 C.C.No.17355/2016 agreement on the subsequent to the receipt of the said money. Therefore, it discloses that, the Ex.P8 is the vital document, which discloses, the agreement dated:30.05.2015, which is the date of purchase of stamp paper. Wherein, it does not discloses, the payment of Rs.15 lakhs, as alleged in the complaint. From the above re-production of cross-examination of DW.1, from the suggestion of the complainant, it discloses, the accused does not remember, after lapse of how many days from the receipt of Rs.25

lakhs, he gave the stamp paper at Ex.P8 to the complainant. But the DW.1 clearly admitted that, the stamp paper at Ex.P8 was purchased by him on 04.02.2016.

23. On going through the Ex.P8, it does not disclose, the date of purchase as such, but discloses, the date of purchase on 30.05.2015 at 12.53 p.m. Therefore, then on which basis the complainant counsel has suggested on 04.02.2016 the Ex.P8 stamp paper purchased, it creates doubt, as to the due execution and issuance of the questioned agreement stamp paper to the complainant. The said further cross-examination also discloses, the complainant has admitted that, after lapse of one year, the accused got issued the Ex.P8 to the complainant, but DW.1 has denied the same. But the DW.1 volunteers that, 3 to 4 times, he got signed the blank stamp paper and given to the complainant.

Judgment 15 C.C.No.17355/2016 More particularly he deposes, about 2 to 3 stamp papers were given by him in the year 2015 and in the year 2016 gave one stamp paper with his signature to the complainant. The complainant counsel has suggested that, for different 4 transactions, the accused gave 4 stamp papers to the complainant. The said evidence of DW.1, it clearly revealed that, the complainant has admitted that, about 3 to 4 times, he took the signed blank stamp papers from the accused. Therefore, he got confuse in suggesting the date as 04.02.2016, as the date of purchase of stamp paper of Ex.P8 against the correct date:30.05.2015. Therefore, the Ex.P8 is not safe to rely upon. The said document not proved the case of complainant, moreover, it goes against the contention of the complainant.

24. That apart, on going through the Ex.P8 it discloses, the alleged agreement was entered into between complainant and accused on 30.05.2015 in connection to the investment made by the complainant, in the share trading of the accused subject to the responsibility of the accused in making investment and the said agreement came to be in force for the period of 11 months only. The said agreement also discloses, the questioned cheque at Ex.P1 bearing No.000617 was handed over by the accused to the complainant. In order to show that, the said agreement was Judgment 16 C.C.No.17355/2016 alleged to be entered into between complainant and accused, as pleaded in the complaint, the complainant has failed to demonstrate on 14.05.2015, he lent Rs.15 lakhs to the accused and subsequently, the accused got executed the Ex.P8 document. It is not the case of accused that, he took loan of Rs.15 lakhs from the complainant, but specifically stated, on 2 occasions sum of Rs.10 lakhs and Rs.25 lakhs respectively, were received by him from the complainant and claimed to be repaid. Though, DW.1 subjected for cross-examination, it was suggested him about borrowal of loan of Rs.15 lakhs, as alleged in the complainant and got issued the questioned cheque for repayment, but DW.1 categorically denied the same and withstood his contention.

25. The accused also taken up the specific plea that, apart from the admitted payment made to the complainant, as he admitted in his cross-examination commencing from 20.05.2015 till 21.10.2015 claimed to be paid sum of Rs.6,28,000/-, apart from the cash payment of Rs.17,18,020/- as found in the bank statement of the complainant, the accused also claimed sum of Rs.1,60,000/- by way of cash sent through one Ravi, who is known to complainant and accused and cleared loan in all Rs.41 lakhs paid by him against the receipt of loan of Rs.35 lakhs and filed the false case.

(D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof required rebuttal - HELD, Rebuttal does not require proof beyond reasonable doubt -

Something probable has to be brought record -

Burden of proof can be shifted back to complainant by producing convincing circumstantial evidence - Thereafter the said presumption arising under Section 118 and 139 case to operate - To rebut said presumption accused can also rely upon presumptions under Evidence Act, 1872 Section 114 (common course of natural even human conduct and public and private business) -

Evidence Act, 1872 - Section 114 - Presumptions of fact under".

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"The presumption under Section 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque. Whenever there is huge amount shown in the cheque, though the initial burden is on the accused, it is equally necessary to know how the complainant advanced such a huge amount".

29. From the point of above dictums also, it was the reverse burden casted upon the complainant to establish the very case beyond the reasonable doubt in order to convict the accused.

30. In the complaint, the complainant has contended that, he paid Rs.15 lakhs on 14.05.2015, subsequently, accused got executed the receipt of above amount by way of agreement. As discussed earlier, in order to show that, accused admitted the receipt of Rs.35 lakhs on different occasions, the same is not been disputed by the complainant. Therefore, in order to show that, on 14.05.2015, the complainant got paid sum of Rs.15 lakhs to the accused, he require to produce the necessary document, as to mobilization of fund and handed over to the accused. In that regard, no satisfactory explanation is forth coming from the side of Judgment 21 C.C.No.17355/2016 complainant. Though, complainant has contended on 14.05.2015, the accused borrowed loan and to that effect agreement at Ex.P8 was executed.

31. On going through the Ex.P8 it does not disclosing date of its execution as 14.05.2015, but discloses, altogether different date as 30.05.2015. The said document discloses, the payment of Rs.15 lakhs on 14.05.2015 by way of investment made by the complainant for the period of 11 ½ months subject to the risk of accused. The said document also depicts, the questioned cheque was issued on the said date. But in the cross-examination of DW.1 has re-produced above, the complainant has admitted that, after one year of the transaction, accused gave the Ex.P8 document to the complainant. If at all, it was true definitely, the said document should be bare the date after the alleged payment dated:14.05.2015, but the said document discloses, the date 30.05.2015 about 15 days of alleged payment date. Therefore, after lapse of one year, if at all, the accused gave Ex.P8

agreement, definitely, it discloses altogether different date, but it is not so. Therefore, the creation of Ex.P8 itself appears to be doubtful.

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32. On going through the Ex.P8 it discloses, the said agreement was entered into between complainant and accused for the period of 11 ½ months, commencing from 20.05.2015 to 27.04.2016. The said document does not disclose the word payment of loan amount to the accused, but it discloses, the investment made by the complainant in the concern of the accused. Therefore, against the recitals whatever the investment made by the complainant in the share trading business of the accused, it is subject to the risk of both the parties, not only restricted to the accused. In the event of accused suffered loss or share came to be down fall, the accused is personally liable to pay the original amount is also not been satisfactorily explained. Therefore, the Ex.P8 is not safe document to rely upon in proving the case of complainant.

33. On going through the pleading, he pleaded that, subsequent to the promise, after borrow the amount by the accused, whenever complainant has asking for repayment, then accused gave the questioned cheque for discharge of legal liability. In the pleading is very much silent, as to the handed over of questioned cheque by the accused to the complainant. Ex.P8 discloses, as on 30.05.2015 questioned cheque alleged to be issued to the complainant. The complainant has not suggested Judgment 23 C.C.No.17355/2016 anything about its recitals, while cross-examining the DW.1, though he attack on the same by contending the same is created and forged by obtaining the signature of blank stamp paper. The Ex.P8 discloses, alleged cheque was handed over by the accused to the complainant on 30.05.2015.

34. In the cross-examination of PW.1, he deposed that:

"DgÉÆÃ|UÉ £Á£ÄÄ D °ÀtªÀ£ÄÄß ¥ÁªÀwªÀiÁrzÀ ¢£ÄzÀAzÉÄ, "ÀszÀævÉUÁV ZÉPÄÄÏUÄ¼Ä£ÄÄß PÉÆnÖzÄÝgÄÄ JAzÀgÉ , Àj. DgÉÆÃ|¬ÄAzÀ £Á£ÄÄ "ÀszÀævÉUÁV ,À»ªÀiÁrzÀ SÁ° JgÀqÄÄ ZÉPÄÄÏUÄ¼Ä£ÄÄß ,Á®ªÄqÄÄªÁUÀ DvÀªAzÀ ¥ÄqÉ¢zÉÝ£ÄÄ JAzÀgÉ , ÀjAiÄÄ®è. DgÉÆÃ| D ,Á® £ÄªßAzÀ ¥ÄqÉzÁUÀ, bÁYÁ PÁUÄzÄzÀ°è PÀgÁgÀ£ÄÄß §gÉzÄÄPÉÆnÖzÄÝgÄÄ."

35. As per say of PW.1, the accused on the date of receipt of money got issued he questioned cheque. The suggestion made to the PW.1 as to, complainant took singed blank 2 cheques from the accused is been denied. The PW.1 has specifically stated that, while the accused received the loan amount, got executed the loan agreement in stamp paper. But the above said evidence clearly discloses that, the complainant took the cheque from the accused on the date of alleged lent of loan. The complaint allegation is not like, but subsequent to as the accused not paid the money inspite of complainant requested for repay, after some Judgment 24 C.C.No.17355/2016 time, subsequent to his promise, when he requested the accused got issued the questioned cheque. The said evidence is goes against the very pleading as well as document at Ex.P8. The evidence, pleading and document at Ex.P8 reverse altogether different dates, as to the alleged lent issuance of questioned cheque at Ex.P1. Therefore, the complainant has utterly failed to prove the due execution and issuance of questioned

cheque for discharge of his legal liability. The above said evidence also reveal the fact that, as on the date of accused borrowed the loan, he got executed the agreement, but the agreement it relied by the complainant at Ex.P8 disclosing the date:30.05.2015, not as alleged in the complaint on 14.05.2015. The evidence of PW.1 is not corroborates his pleading as well as documents evidence.

36. In the complaint, the complainant has projected that, during April, 2015, the accused sought for financial assistance of Rs.15 lakhs for his business, complainant gave it on 14.05.2015. In the pleading he does not discloses, through whom, on which mode, how he mobilized the fund is not explained. But in his cross- examination he deposed that:

"DgÉÆÃ|UÉ gÀÆ.25 @PÀëªÀÆÀÄß ¤ÄrzÀ ¢£ÁAPÀ £É£À|®è. DzÀgÉ D °ÀªÀÆÀÄß DgñfJ,ïªÀÄSÁAvÀgÀ DgÉÆÃ|AiÀÄ SÁvÉUÉªÀUÁªªÀUÉ Judgment 25 C.C.No.17355/2016ªÀiÄrzÉÝÆÉ. JgÀqÀÆÉÄ ªÁj DgÉÆÃ|UÉ gÀÆ.15 @PÀëªÀÆÀÄß £ÀUÀzÁV DvÀÆÀ PÀbÉÄjAiÀÄÉèÄ, gÀ« J£ÀÄßªÀªÀgÀªÀÄSÁAvÀgÀ YsÉ§æªÁj 2015 gÀèªÀÄzsÁªÀßzÀ,ªÀªÀAiÀÄ PÉÆnÖzÉÝÆÄ. ¢£ÁAPÀ £É£À|®è. DzÀgÉ D §UÉÍ DgÉÆÃ| PÀgÀgÀÆÀÄß §gÀÉzÀÄPÉÆnÖzÉÝgÉ. gÀÆ.15 @PÀëªÀÆÀÄß gÀÆ.2,000/-ªÀÄÄR ªÉÉAiÀÄ £ÉÆÄn£ÀÉèÄ PÉÆnÖzÉÝÆÄ. CµÀÄÖ zÉÆqÀØªÉÆvÀÛzÀ °Àt £ÀÆÄß D¹ÛAiÀÄÆÀÄßªÀiÄgÁlªÀiÄr §AzÀAvÀªÀ°ÀtªÀVvÀÄÛ."

37. The PW.1 has deposed that, he does not remember when he paid Rs.25 lakhs to the accused, but he specifically contended that, he paid money through RTGS of Rs.25 lakhs. More categorically the PW.1 has deposed that, 2nd time he gave Rs.15 lakhs to the accused in his office and through Ravi only on February, 2015 in the afternoon, he paid the said money to the accused. The said contention not reflected in the pleading nor in the affidavit evidence of his legal notice. The accused receipt of Rs.20 lakhs through RTGS transaction is not been disputed, but he clearly disputed the borrowing of alleged loan from the complainant. Therefore, the said Ravi is the vital witness to prove the passing of cash of Rs.15 lakhs from the hand of complainant to Ravi and then in turn, he paid to accused. Therefore, it made clear that, sum of Rs.15 lakhs hard cash not directly pass on from the complainant to the accused, but as per his say, through Ravi only paid the said money to the accused. Therefore, it is Ravi is Judgment 26 C.C.No.17355/2016 the eye witness and he is very material witness to prove the alleged loan transaction of Rs.15 lakhs. But for the reasons better known to the complainant not examined him. The PW.1 deposed, denomination of Rs.2,000/- notes were given to the accused, which were accrued by him by sold his property. When he mobilized fund as such, definitely, it is him to produce necessary document, as to the gathering of income, but no document is been produced nor examined the said material witness. The DW.1 categorically denied the very loan transaction put forth by the complainant.

38. The accused admitted the borrowing of loan of Rs.35 lakhs, but taken in to consideration of present loan of Rs.15 lakhs and the very complainant herein has filed another case in C.C.No.17354/2016 against the very accused herein, wherein, he alleged to be paid the loan amount of Rs.25 lakhs. If consider both the loan transactions, it will reaches Rs.40 lakhs. But the accused has clearly admitted the borrowing of loan of Rs.35 lakhs and claimed to be repaid with interest at Rs.41 lakhs. Even, the accused specifically stated, sum of Rs.1,60,000/- paid to the complainant

through one Ravi. The PW.1 has not denied the same, but stating it was paid to him in connection to the money transaction held between accused and Ravi, in view of the said Judgment 27 C.C.No.17355/2016 Ravi alleged to be his part of transaction as alleged by the complainant, the said payment is to be proved by the complainant herein by examine him. The complainant has not denied the payment sent of Rs.1,60,000/- in cash by the accused through Ravi is not been disproved. Even, the complainant has not disputed the entries found in bank statement of the accused, wherein, reflected the payment of Rs.6,28,000/- through RTGS. Very particularly to the account of the complainant at SBM Bank. The accused also specifically contended that, he paid Rs.17,80,020/- through RTGS from his Axis Bank account through the account complainant at Vijayanagar Branch. Very particularly to the account No.54030248242. When tendered the statement to the PW.1, he not denied the said payment, but stated it has to be verified. However, the said statement clearly discloses, the payment made by the accused through the account of the complainant of Rs.6,28,020/-. The accused also suggested to PW.1 that:

"DgÉÆÄ|AiÄÄ DQì, i "ÁâAPi SáVÉ-ÄAzÀ £À£Àß J, i©JA SáVÉUÉ DvÀ MIÄÖ gÀÆ.17,18,020/- UÀ¼Ä£ÄÄß aÀUÄðªÀuÉªÀiÁr, ¥ÀqÉzÀ, ª@ªÀ£ÄÄßªÀÄgÀ½¹zÁÝgÉAzÀgÉ, ªAiÄÄ@è. J, i©JA "ÁâAPi£Ä, «dAiÄÄ£ÄUÄgÀ ±ÁSEAiÄÄ CPËAmi, ÀASÉª 54030248242 £À£Àß SáVÉ. ªQëUÉ DgÉÆÄ|AiÄÄ "ÁâAPi£Ä, ÉÖÄmiªÀ£ÄÄmi£Ä°ègÄªÀ, ªZÀj SáVÉ Judgment 28 C.C.No.17355/2016, ÀASÉªAiÄÄ£ÄÄß vÉÆÄj, ÀÁV, ªQëAiÄÄÄ CzÄÄ vÀ£Àß SáVÉ, ÀASÉª JazÄÄ £ÉÆÄr M|àPÉÆArgÄÄvÁÛgÉ. ªZÀj, ÉÖÄmiªÀ£ÄÄmi£Ä ¥ÀæwAiÄÄ£ÄÄß F ¥ÀæPÀgÀtzÀ°è °ÁdgÄÄ ¥Àr¹gÄªªÀÄ¢@è. ªZÀj £À£Àß SáVÉAiÄÄªÀÄSÁAvÀgÀ, DgÉÆÄ| vÀ£Àß SáVÉ-ÄAzÀ ¢£ÁAPÀ 20.05.2015 gÀAzÄÄ £À£Àß SáVÉUÉ gÀÆ.7,200/-, 27.05.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.16,500/-, 03.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 03.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.28,600/-, 10.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 10.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.50,000/-, 17.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 17.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.50,000/-, 24.06.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 01.07.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 08.07.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.25,000/-, 29.07.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.10,000/-, 03.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.90,000/-, 10.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.30,000/-, 29.07.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.10,000/-, 05.08.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.10,000/-, 19.08.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ Judgment 29 C.C.No.17355/2016 gÀÆ.15,720/-, 27.08.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.20,000/-, 03.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.20,000/-, 10.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.20,000/-, 16.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SáVÉ-ÄAzÀ £À£Àß SáVÉUÉ gÀÆ.20,000/-, 23.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ

SÁvÉ-ÄAzÀ £À£Àß SÁvÉUÉ gÀ£.20,000/-, 30.09.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SÁvÉ-ÄAzÀ £À£Àß SÁvÉUÉ gÀ£.20,000/-, 09.10.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SÁvÉ-ÄAzÀ £À£Àß SÁvÉUÉ gÀ£.20,000/-, 15.10.2015 gÀAzÄÄ DgÉÆÄ|AiÄÄ SÁvÉ-ÄAzÀ £À£Àß SÁvÉUÉ gÀ£.20,000/- gÀAzÄÄ C®èzÉÄ 21.10.2015 gÀaAgÉUÉ DgÉÆÄ|AiÄÄ SÁvÉ-ÄAzÀ £À£Àß SÁvÉUÉ MmÁÖgÉ gÀ£.17,18,020/- UÀ¼Ä£Äß £À£Àß SÁvÉAiÄÄ ,ÉÖÄmíaÉÄAmí£À°è PÀAqÄÄ §gÄaÀAvÉ DgÉÆÄ|YÁaAw aÄiÁrzÁÝgÉAzÀgÉ, £À£Àß "ÁÄPí£Ä SÁvÉAiÄÄ JAnæAiÄÄ£Äß mÁä° aÄiÁrzÀ §½PÀaÉÄ £Á£ÄÄ °ÉÄ¼Ä"ÉÄPÄÄ, °ÁUÉ °ÉÄ¼Ä®Ä ,ÁZsã«®è JAzÄÄ £ÄÄRiÄÄÄvÄÛgÉ. DgÉÆÄ|AiÄÄ SÁvÉAiÄÄ aÄÄÄSÁAvÀgÀ £À£Àß SÁvÉUÉ YÁaAw aÄiÁrzÀ °ÄtaÄ®èzÉÄ G½zÄ aÉÆvÀÛaÄ£Äß DgÉÆÄ| £ÄUÄZÁV ,ÄAYÄÇtð §rØAiÉÆAÇUÉ YÁaAw¹ ZÄÄPÄÛ aÄiÁrzÁÝgÉAzÀgÉ ,ÄjAiÄÄ®è. DgÉÆÄ| £Ä£ÄUÉ ,ÄAYÄÇtð °ÄtaÄ£Äß F aÉÄÄ-É °ÉÄ½zÄAvÉ §rØAiÉÆAÇUÉ YÁaAw¹zÄÝgÄÆ PÄÆqÄ DvÄ £Ä£Äß£Äß YÄZÉÄ YÄZÉÄ PÉÄ½PÉÆArzÁÝgÄÆ PÄÆqÄ "ÄszÄævÉUÁV YÄqÉzÄAvÀ°À SÁ° JgÄqÄÄ ZÉPÄÄÛU¼Ä£Äß aÄÄgÄ½¹®è JAzÄgÉ ,ÄjAiÄÄ®è."

39. The above testimony of PW.1 clearly reflected the defence of accused. Wherein, accused specifically contended, the amount Judgment 30 C.C.No.17355/2016 transferred to the account of complainant sum of Rs.17,80,020/- were transferred by the accused to the account of complainant at SBM Bank. The complainant has not disputed the statement shown to the complainant pertaining to him. Wherein discloses, the payment made by the accused of Rs.6,28,020/-. Even suggested the payment made by the accused of Rs.17,18,020/- to the account of the complainant, the complainant has not denied the same, but stated, unless see the bank entries he not able to say anything. Thereby, he not denied the payment made by the accused. Therefore, it is the complainant require to produce the bank statement maintained by him in Veerashaiva Sahakari Co- operative Bank Ltd., Karnataka Bank Ltd., as well as State Bank of Mysore. The accused claiming that, through the various bank account as stated so, of the complainant he paid such amount. Therefore, to rebut the very contention of the accused, it is the complainant heeds to produce his bank statement pertaining to other banks. The accused has specifically contended, despite, he cleared the entire amount with interest, the complainant without returned the questioned cheque, withheld the questioned cheque and filed the false case. Though in the complaint he alleged that, he paid Rs.15 lakhs loan to the accused. But in the cross- examination of DW.1, it was suggested that:

Judgment

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C.C.No.17355/2016

"2015gÄ aÉÄÄ wAUÄ¼Ä°è |AiÄiÄðÇAiÄÄ£Äß DgÉÆÄ| £Ä£ÄUÉ

YÄjZÄ-Ä¹zÄÝgÄÄ. YÄjZÄAiÄÄaÄZÄ wAUÄ¼Ä-ÉÄ £Á£ÄÄ DvÄxÄzÄ gÀ£.10 ®PÄë YÄqÉÇzÉÝ JAzÄgÉ ,Äj."

40. On going through the said testimony of DW.1, he admitted that, complainant known to him in the month of May, 2015. Consequent to the said evidence of DW.1, it was suggested by the complainant to him that, immediately, after introduction of complainant, on the same month, he

received Rs.10 lakhs from the complainant. The said suggestion discloses, in the month of May, 2015 only paid Rs.10 lakhs to the accused, but in the complaint it was alleged that, on 14.05.2015, complainant paid Rs.15 lakhs, the said evidence is contradicts his own pleading. The evidence of PW.1 is contradicts his own pleading and not corroborates the documentary evidence, he relied upon. There is some development in the evidence of complainant against his own pleading. Therefore, it not safe to rely upon the evidence of PW.1. the accused has successfully disproved the case of complainant by producing clear, convincing and clinching evidence.

41. The accused has contended that, he was not residing in the given address, but when complainant came to his house after Judgment 32 C.C.No.17355/2016 filing the present case, then only he knew about the filing of present case. Therefore, it made clear that, the notice is not served on the accused, hence, he not caused any reply. However, though it was reverse burden on the complainant to prove his case beyond the reasonable doubt, he utterly failed to prove the same. Though, there is alleged to be involved, the lent of huge loan amount of Rs.15 lakhs. Hence, the accused is entitled for benefit of doubt for acquittal.

42. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, he fails to demonstrate his very case. While appreciate the materials available on record, this court has humbly gone through the decision relied by both parties apart from the following decisions.

In the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

"Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, his admission in his evidence that, the cheque in question bares his signature would not be sufficient Judgment 33 C.C.No.17355/2016 proof of the fact that, he delivered the said cheque to the complainant and the latter received it from the former".

43. The principle of law laid down in the above decision is applicable to the facts of this case. Merely because, the accused admits that, cheque bares his signature, that, does not mean that, the accused issued cheque in discharge of a legally payable debt.

At this stage, this court also relies upon another decision reported in AIR 2007 NOC 2612 A.P. (G.Veeresham V/s. Shivashankar and another). Wherein, the Hon'ble Court has held as under:

"Negotiable Instruments Act (26 of 1881). S. 138 Dishonour of cheque - Presumptions available to complainant under S. 118 and S. 139 of Act - Rebuttal of cheque in question was allegedly issued by accused to discharge hand loan taken from complainant. However, no material placed on record by complainant to prove alleged lending of hand loan said fact is sufficient to infer that, accused is liable to rebut presumptions available in favour of complainant under Sections 118 and 139 of

Act, Order acquitting accused for offence under S. 138 proper".

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44. The principle of law laid down in the above decisions is applicable to the facts of this case. In the case on hand also, as discussed above, the complainant has failed to prove with cogent evidence as to the lending of loan of Rs.15 lakhs to the accused.

Thus, that fact itself is sufficient to infer that, accused is able to rebut presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

In a decision reported in AIR 2006 Supreme Court 3366 (M.S.Narayana Menon Alian Mani V/s. State of Kerala and another).

The Hon'ble Apex court held that:

"Once the accused discharges the initial burden placed on him the burden of proof would revert back to the prosecution".

45. In this case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, he is not liable to pay Ex.P1 cheque amount of Rs.15 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the accused has borrowed the cheque amount and he is legally liable to pay the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to Judgment 35 C.C.No.17355/2016 initiate a proceeding against the drawer of the cheque, who is not at all liable to pay the cheque amount. The accused has taken his defence at the earliest point of time, while record accusation and statement under Section 313 of Cr.P.C. by way of denial. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheque for discharge of liability of Rs.15 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

Apart from that, in a decision reported in, KCCR 12 (3) page 2057, the Hon'ble Apex Court held that:

"Mere issuance of cheque is not sufficient unless it is shown that, the said cheque was issued towards discharge of legally recoverable debt. When the financial capacity of complainant is questioned, the complainant has to establish his financial capacity".

46. In the case on hand, accused has questioned the financial capacity of complainant. Complainant has not produced any document to show his financial capacity to lend an amount of Rs.15 lakhs to accused. When complainant has failed to prove the transaction alleged in the complaint, then the question of Judgment 36 C.C.No.17355/2016 issuing the cheque for discharge of Rs.15 lakhs does not arise. The evidence placed on record clearly probablize that, complainant has failed to prove

that, accused issued the cheque for discharge of liability of Rs.15 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

47. From the above elaborate discussions, it very much clear that, the complainant has failed to adduce cogent and corroborative evidence to show that, accused has issued cheque Ex.P1 in discharge of his legally payable debt for valid consideration. Hence, rebutted the legal presumptions under Section 139 and 118 of Negotiable Instruments Act in favour of the accused.

48. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheque pertaining to the account of the accused is dishonoured and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied, then it has to be presumed that, cheque in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory Judgment 37 C.C.No.17355/2016 presumption and it has to be raised in every cheque bounce cases. Now, it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

49. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the presumption envisaged under Sections 118 and 139 of Negotiable Instruments Act. The complainant has failed to discharge the initial burden to prove his contention as alleged in the complaint. Hence, the complainant has not produced needed evidence to prove that, amount of Rs.15 lakhs legally recoverable debt. Therefore, since the complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the complainant in its entirety without the support of the substantial documentary evidence pertaining to the said transaction. The complainant fails to prove his case beyond all reasonable doubt. As discussed above, the complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

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50. Point No.3: In view of my findings on point Nos.1 and 2, I proceed to pass the following:

ORDER Acting under Section 255(1) of Cr.P.C.

the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

The bail bond and cash security/surety bond of the accused stands cancelled.

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 15th day of February

- 2020) (SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : Basavaraju.H.R List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of accused
Ex.P2	:	Bank endorsement
Ex.P3	:	Office copy of legal notice
Exs.P4 & P5	:	Postal receipts
Exs.P6 & P7	:	Not claimed R.P.A.D covers
Exs.P6(a) & P7(a)	:	Legal notice at Exs.P6 & P7
Ex.P8	:	Agreement
Ex.P8(a) & P8(b)	:	Signatures of complainant and accused
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List of Witnesses examined on behalf of the defence:

DW.1 : K.S.Manjunatha List of Exhibits marked on behalf of defence:

- Nil -

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

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15.02.2020.

Comp -

Accd -

For Judgment

Judgment pronounced in the open court vide
separate order.

ORDER

Acting under Section 255(1) of Cr.P.C.
the accused is acquitted for the offence

punishable under Section 138 of Negotiable Instruments Act.

The bail bond and cash security/surety bond of the accused stands cancelled.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.