

Basavalingappa vs P.Mahesh on 28 July, 2020

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

Dated this the 28th day of July - 2020

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

C.C.NO.20481/2017

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	Basavalingappa, S/o.Late.Maribasappa, Aged about 63 years, R/at No.161, 1st Cross, Udaualayout, Manganahalli Grama, Sulikere Post, Bengaluru-60. (Rep. by Sri.Bhagyaraju.M, Adv.)
	V/S	
Accused	:	P.Mahesh, S/o.Prabhakar, Aged about 39 years, No.10, C/o. Meena Phabhakar, Behind Prathiksha Beauty Parlour, 5th Cross, Shivanandappa Layout, Jyanajyothinagara, Ullal Main Road, Bengaluru-56. (Rep.by Smt.Mamatha.R, Adv.)

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is Acquitted.
DATE OF ORDER	:	28.07.2020.

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

Judgment

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JUDGMENT

The complainant has presented the instant complaint against the accused on 31.07.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.12 lakhs.

2. In precise, the facts of the complainant case is:

The complainant has contended that, accused is well known to complainant from the past several years. In that acquaintance, the accused had approached him during the 1st week of January, 2016 for hand loan of Rs.15 lakhs for the construction of his building and business purpose and he agreed to repay the same within one year. On 1st week of July, 2016, the complainant had arranged money and handed over an amount of Rs.6 lakhs during 3rd week of January, 2016 and sum of Rs.5 lakhs were given to him on 2nd week of July, 2016, in all he paid Rs.11 lakhs to the accused at his place.

The complainant has further alleged that, the accused adding interest of Rs.1 lakh to the principal amount, he issued a cheque bearing No.011849 dated:12.06.2017 for sum of Rs.12 lakhs drawn on Corporation Bank, Basaveshwaranagar, Bengaluru to the complainant. The complainant had presented Judgment 3 C.C.No.20481/2017 the said cheque for encashment through his banker viz. Vijaya Bank, Moodalapalya Branch, Bengaluru. The said cheque came to be dishonoured for the reasons "Funds Insufficient" as per the endorsement dated:20.06.2017. Thereafter, he gave legal notice to the accused and the same came to be served on him. Despite that, either he paid the amount covered under the cheque or reply the legal notice. 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.

4. In response to the summons, the accused appeared through his counsel and obtained 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 P5 and P12 to Judgment 4 C.C.No.20481/2017 P18. The PW.1 is also choosen to examine the Senior Manager of Corporation Bank by name Sri.B.K.Hari as PW.2 and through him got marked Exs.P6 to P11. The PW.1 and PW.2 were 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 answer given by him was recorded. In this case, the accused has not choosen to entered in to witness box and also not produced any document.

7. I have heard the arguments of both side counsels.

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

1) Whether the complainant proves beyond the reasonable doubt that, the amount covered under the Ex.P1-cheque is the existence of legally enforceable debt payable by the accused?

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:

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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 herself and filed affidavit by reiterating the complaint averments in toto and produced the documents at Exs.P1 to P5 and P12 to P18, they are:

a) Ex.P1 is the cheque bearing No.011849 issued by the accused for sum of Rs.12 lakhs dated:12.06.2017, drawn on Corporation Bank, Basaveshwaranagar Branch, Bengaluru.

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

c) Ex.P2 is the Bank Memo dated:20.06.2017.

d) Ex.P3 is the Legal Notice dated:04.07.2017.

e) Ex.P4 is the Postal receipt.

f) Ex.P5 is the track consignment. .

g) Ex.P12 is the certified copy of sale deed dated:08.08.2013 executed by Smt..K.S.Sujay and another in favour of one Smt.P.Prabhakar and his wife.

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h) Ex.P12(a) and P12(b) are the signatures of accused herein.

i) Ex.P13 is the certified copy of gift deed dated:29.01.2014 executed by Sir.P.Prabhakar and his wife in favour of one Smt.Mala.B.

j) Exs.P13(a) and P13(b) are the signatures of accused herein.

k) Ex.P14 is the certified copy of application under Section 445 of Cr.P.C.

l) Ex.P14(a) is the signature of accused herein..

m) Ex.P15 is the certified copy of bail application in Crime No.240/2016.

n) Ex.P16 is the certified copy of surrender application in Crime No.240/2016.

o) Ex.P16(a) is the signature of accused herein.

P) Exs.P17 and P18 are the certified copies of vakalaths in Cr.No.240/2016 and C.C.No.3973/2017.

q) Exs.P17(a) and P18(a) are the signatures of accused herein.

11. That apart, to prove his case, the complainant got choosen to examined the Senior Manager of Corporation Bank by name Sri.B.K.Hari as PW.2 and through him got marked Exs.P6 to P11. They are:

a) Ex.P6 is the true copy of account opening form pertaining to one Prabhakar.P, who is the father of accused herein issued by Corporation Bank.

b) Ex.P7 is the true copy of specimen signature letter pertaining to Prabhakar.P.

c) Ex.P7(a) to P7(c) are the signatures of Prabhakar.P.

d) Ex.P8 is the postal cover.

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e) Ex.P9 is the true copy of ID Card pertaining to the Prabhakar.P issued by Kabini Minerals.

f) Ex.P10 is the true copy of voters identity card pertaining to Prabhakar.P and

g) Ex.P11 is the true copy of rental agreement dated:05.11.2012 executed by one Smt.K.Prabhavathi in favour of Smt.Meena.G. The PW.1 and PW.2 were subjected to

the cross-

examination by the advocate for the complainant.

12. In this case, the accused has not chosen to enter into witness box and also not produced any documents.

13. After the cross-examination of PW.1, since the accused took serious defence as to the questioned cheque at Ex.P1 by contending that, questioned cheque at Ex.P1 is not of the accused and the signature found therein is also not of him and he did not have any transaction with the complainant and by misusing someone's cheque, by forging the signature of accused got filed the false case. It also contended that, the accused had no account in Corporation Bank at Kamakshipalya and no notice was served on him. Hence, he is not replied. He also contended that, the complainant did the chit business and got obtained so many cheques from his members and by misusing one of the cheque and filed the false case against the accused, hence, he is not liable to pay the cheque amount. Based on the said defence Judgment 8 C.C.No.20481/2017 taken by the accused, in order to prove the questioned cheque and signature at Ex.P1 belongs to the accused, complainant chosen to examine the bank manager. Accordingly, the bank manager by name Sri.B.K.Hari, Senior Manager of Corporation Bank, Kamakshipalya Branch, Bengaluru were entered into witness box, on oath and examined as PW.2. Wherein, he deposed that, since last 2 years he has been working in the said bank and by receiving witness summons from this court, he got obtained the documents pertaining to account No.1234 pertaining to Ex.P1 cheque produced before this court.

The PW.2 has deposed that, the said account number stood in the name of account holder by name Prabhakar.P. At the time of he opened the bank account, he submitted application, his address proof, Identity Card, Photograph as well as rent agreements before this court along with its copies and contended that, those original documents are required for business, therefore, at his request since other side has not opposed the copies of documents on compared with originals, since it was tallied, the documents produced by PW.2 got marked at Exs.P6 to P11 and the specimen signatures of the accused found in Ex.P7 got marked at Ex.P7(a) to P7(c). The PW.2 was subjected for Judgment 9 C.C.No.20481/2017 cross-examination from the advocate for accused. With that, the complainant got closed his side.

14. Thereafter, whatever 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 gave his statement by stating that, the complainant does not know to accused and he had no transaction with the complainant. Ex.P1 cheque and signature found therein is not of him and complainant had filed the false case. The accused not chosen to enter into witness box to prove his probable defence.

15. On going through the rival contentions of the parties, it made clear that, by virtue of Section 118, it has to be presume that, the questioned cheque was issued by the accused to the complainant in respect of the liability of passing of consideration. As per Section 139 of Negotiable Instruments Act, the initial presumption has to be drawn in favour of complainant that, whatever the amount made mentioned in the cheque is the existence of legally recoverable debt payable by the accused,

therefore, he got issued the questioned cheque at Ex.P1 cheque to the complainant unless and until contrary prove. Therefore, by Judgment 10 C.C.No.20481/2017 virtue of those sections, it is the initial burden on the accused to prove his probable defence to rebut the statutory presumption and facts and circumstances raised by the complainant herein. No doubt, in this case, the accused had not entered into witness box to lead his defence It is relevant to cite the decisions of the Hon'ble Supreme Court in (2008) 2 Supreme Court Cases (Criminal) 166 (Krishna Janardhan Bhat V/s. Dattatraya G Hegde) and 2010 AIR SCW 2946 (Rangappa V/s. Mohan).

"The accused need not enter into witness box and he could rebut the presumption envisage under Section 139 of Negotiable Instruments Act by setting up a probable case. As such, there is no strict rule that, the accused should enter into the witness box in support or proof of his defence. The accused has got every right to prove his defence from the cross-examination of PW.1 or the materials already brought on record. It is also held that, the standard of evidence be to led by the accused is preponderance of probabilities and no proof beyond reasonable doubt. On the contrary, for the complainant he should prove his case beyond all reasonable doubt".

16. As per the said dictum, the accused need not require to enter into witness box to prove his probable defence. He can make use of the opportunity by way of cross-examining the PW.1 Judgment 11 C.C.No.20481/2017 coupled with documents relied by the complainant to establish his probable defence. Therefore, non-entering into witness box by he accused is not a ground to disbelieve his probable defence. Whatever the defence he had put forth by way of cross-examining PW.1 and PW.2 orally as well as based on the documents of the complainant, the accused has relied.

17. It is pertinent to note that, it is the initial burden on the accused to prove his probable defence. No doubt, the present case is based on the questioned cheque at Ex.P1.

It is require to cite Section 138 of Negotiable Instruments Act, which runs thus:

"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 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 provision of this Act, be punished with imprisonment for [a term which may be extended to two year], or with fine which Judgment 12 C.C.No.20481/2017 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.

18. On going through the Section 138 of Negotiable Instruments Act, it made clear that, wherein, cheque drawn by a person on account maintained by him with his banker for payment of any amount to another person from out of that account for the discharge in whole or part of any liability, if the said cheque Judgment 13 C.C.No.20481/2017 dishonoured unpaid, the drawer of the cheque shall be deemed to have committed the offence, by virtue of Section 138 of Negotiable Instruments Act. Therefore, it made clear that, the drawer of the cheque only held responsible for commission of offence. Section 7 Negotiable Instruments Act, deals about drawer. Wherein, it has clearly mentioned that, the maker of bill of exchange or cheque is called the drawer. Accordingly, on whose account the questioned cheque at Ex.P1 belongs and having account at Corporation Bank is only called the drawer. In that regard, it required to appreciate the evidence available on record.

19. In the present case on hand, by way of cross-examining the PW.1, the accused has taken up the specific defence that:

"-1 ZÉPÀÄÏ DgÉÆÄ|AiÄÄ SÁvÉUÉ ,ÀA§AzÀsYÀnÖzÀÝ®è °ÁUÀÆ CzÀgÀ°ègÀÄªÀ ,À» PÀÆqÀ DgÉÆÄ|AiÄÄzÀ-Áè JAzÀgÉ ,ÀjAiÄÄ®è. DgÉÆÄ|ÉÀÉÆÆBAçUÉ AiÄiÁªÀÄzÉÄ jAwAiÄÄ ,Á®zÀªÀªªÀ°ÁgÀªÀiÁr®è, "ÉÄgÉAiÄÄªÀgÀUÉ ,ÀA§AzÀsYÀlÖ ZÉPÀÏÉÄÄß DgÉÆÄ|AiÄÄ ZÉPÀÄÏ, DvÀÉÀ ,À» ,ÀÈ¶Ö¹PÉÆAqÄÄ ,ÄÄ¼ÄÄi YÀæPÀgÀtªÀiÁrzÉÝÄÉÉ JAzÀgÉ ,ÀjAiÄÄ®è. DgÉÆÄ| PªÀiÁQçYÁ¼ÄÄzÀ°è EgÄÄªÀ PÁYÉÆðÄgÉÄµÀÉi "ÁÄAPiÉÄ°è AiÄiÁªÀÄzÉÄÄ SÁvÉAiÄÄÉÄÄß °ÉÆAç®è JAzÀgÉ ,ÀjAiÄÄ®è. ÉÉÆÄÄÄ, i DgÉÆÄ|UÉ eÁjAiÄiÁV®è, D PÁgÀtPÉÏ DvÀ YÀævÄÄÄvÀÛgÀªÀr®è JAzÀgÉ ,ÀjAiÄÄ®è. ÉÁÉÄÄªÀªªÀ°ÁgÀªÀiÁqÄÄwÛzÄÄÝ ,ÄzÀ, ÄÄjAzÀ ,ÁPÀµÄÄÖ ZÉPÀÄÏUÄ¼ÄÉÄÄß YÀqÉzÄÄ, CªÀgÄÄUÄ¼ÄÄ «gÄÄzÄP ,ÄÄ¼ÄÄi Judgment 14 C.C.No.20481/2017 YÀæPÀgÀtªÀÉÄÄß zÁR®ÄªÀiÁqÄÄªÀ YÀjYÁl ElÄÖPÉÆArzÉÝÄÉÉ JAzÀgÉ ,ÀjAiÄÄ®è. ZÉPiÉÄªÉvÄÛ DgÉÆÄ|ªÀqÄÄ®Ä §zÄÝÉÄ®è JAzÀgÉ ,ÀjAiÄÄ®è."

20. The accused in the earlier portion of cross-examination has denied the alleged transaction put forth by the complainant in terms of complaint allegations. The accused had took specific defence stating that, questioned cheque and signature therein is not of him, he had no such account in Corporation Bank, Kamakshipalya Branch and no notice is served, he is not cause any reply and he had no transaction with complainant. Further taken the contention that, the complainant used to do

chit business by obtaining several cheques from its members and by misusing the same got created the signature of accused and filed false case against him. By taking such defence, it made clear that, the accused at the outset, attack on the contention of the complainant, as to accused gave questioned cheque to him for discharge of legal liability including denial of his signature made there. By way of cross-examining the PW.1, he made it clear that, questioned cheque and signature not belongs to him but, intelligently in the cross-examination he not specified to whom it belongs. Therefore, it was inevitable to the complainant to establish that, the questioned cheque and signature is of the Judgment 15 C.C.No.20481/2017 accused, therefore, he choosen to summon the Senior Bank Manger of Corporation Bank, Kamakshipalya Branch and examined as PW.2. Wherein, the said PW.2 got produced the relevant documents pertaining to the account holder of the cheque at Ex.P1. Accordingly, those documents got marked at Exs.P6 to P11.

21. It is categorically evidence led by PW.2 that, as per Exs.P6 to P11, the account No.1324 as found in Ex.P1 cheque belongs to one Prabakar. In that regard, he produced Exs.P6 TO P11. On going through Ex.P6, it also made clear that, one P.Prabhakar by submitting the account opening Form for saving bank/current account in the Corporation Bank of Kamakshipalya Branch, Bengaluru. Accordingly, the Ex.P6 - account opening Form also discloses the name of account holder by name Prabhakar.P. The PW.2 got produced Ex.P7 wherein, discloses the specimen signature and photograph of account holder. On meticulous perusal of the photograph, it discloses some different person then accused found therein. As per the details, account holder is Prabhakar.P. The account holder specimen signature as per Ex.P7(a) to (c), it made clear that, it discloses P.Prabhakar and the specimen signature is altogether different from signature bound in cheque at Ex.P1(a). In the Ex.P1(a) signature of P. Judgment 16 C.C.No.20481/2017 Mahesh could have been seen. But the Ex.P7(a) to P(c) it discloses, the signature of P.Prabhakar.

22. That apart, on going through the Ex.P1 cheque it bares the account No.1324, accordingly, whatever the document produced by the PW.2 at Ex.P7, which reveal the specimen signature also pertaining to an account No.1324. The account opening from of specimen signature pertaining to undisputed point of time, which discloses the date:31.01.2008. At the time of opening account, the said P.Prabhakar submitted the copy of rental agreement, his ID Cards at Exs.P9 to show he was working Kabini Minerals. Wherein also discloses his signature as P.Prabhakar in consonance with specimen signature at Ex.P7(a) to P(c).

23. Further, the PW.2 during the course of cross-examination has specifically stated that, whatever the document produced by him as per Exs.P6 to P11 is pertaining to account No.1324. Even, PW.2 subjected for cross-examination by the advocate for complainant, wherein, he deposed, the questioned cheque at Ex.P1 and endorsement given at Ex.P2 by the bank is pertaining to the same cheque number, is not in dispute. The PW.2 in his cross-examination, has clarified that, he gave the endorsement at Ex.P2 by stating, insufficient funds and more so, he clarified that, Judgment 17 C.C.No.20481/2017 if at all, cheque was presented for encashment, if sufficient money is maintained in the said account, then only verify other particulars and give endorsement. The PW.2 has deposed that, the Ex.P2 endorsement given by the bank stating, 'funds insufficient' is in connection to the Ex.P1 cheque only. The PW.2 has deposed that, he does not know, whether complainant son of P.Prabhakar have/had any account in his bank. On careful scanning of the evidence of PW.2, it

made clear that, whatever the documents produced by him maintained in his bank at Exs.P6 to P11 including specimen signature of the account holder remains un- disproved. Therefore, documents produced by the PW.2, who is the custodian, made it clear that, the account No.1324 pertaining to the questioned cheque at Ex.P1 belongs to the account holder P.Prabhakar, not the accused. The said P.Prabhakar is none other than the father of the accused is not in dispute.

24. Thereby, accused has proved that, the questioned cheque is not pertaining to the account of accused, but it is pertaining to one P.Prabhakar. On going through the cause title address it discloses, the accused name as P.Mahesh S/o Prabhakar. Therefore, it reflect that, Ex.P1 cheque belongs to father of accused. On the subsequent document produced by PW.1 at Ex.P12, which is certified copy of registered sale deed executed in Judgment 18 C.C.No.20481/2017 favour of father and mother of accused by the vendors K.S.Sujay and M.N.Pradeep Kumar, which bares the signature of accused at Ex.P12(b), wherein, he signed as P.Mahesh.

25. That apart, certified copy of gift deed dated:29.01.2014 executed by the father and mother of the accused in favour of Smt.Mala.B, which marked at Ex.P13, to the same also the accused affixed his signature as P.Mahesh as per Ex.P13(b). That apart, to establish that, the accused affixed his signature in the style of Ex.P1(a) as found in the cheque, apart from producing Exs.P12 and P13, he also produced other documents, which discloses the signature of the accused. He also choosen to produced the vakalath and submitted one application through his counsel in connection to Crime No.240/2016. On going through the Ex.P14, P16 and P17, the admitted signature of the accused at Ex.P15(a), P16(a) and P17(a), which made it clear that, he used to sign as P.Mahesh as found in Ex.P1(a). But another vakalath submitted by the accused pertaining to C.C.No.3973/2017 in a case between Jnana Bharathi Police Station V/s. Mahesh.P, he submitted vakalath through his counsel as per Ex.P18. On going through the Ex.P18, it discloses his signature as 'P.Mahesh,' which got marked at Ex.P18(a). If at all, the accused is the habit of put signature as commonly found in Judgment 19 C.C.No.20481/2017 Ex.P1(a), Ex.P12 to P17, why he need to affix his signature differently that too, the court at Ex.P18 in Kannada language against his own previous signature, it creates doubt as to the bonafidness of the accused herein. The different in signature made by the accused as found in one set of document as per Ex.P12 to P14, P15 and P17 coupled with Ex.P1(a) signature found in cheque appears to be almost similar to the bare eyes. But whatever the signature in vakalath submitted by him through his advocate as per Ex.P18 is disclosed altogether in different manner. Therefore, it can reveal that, in order to defraud complainant, though knew that, questioned cheque at Ex.P1- cheque is of his father, the accused gave questioned cheque by affixed his signature at Ex.P1(a) like his admitted signature found in documents at Exs.P12 to P14, P14, P16 and P17. Therefore, all those signatures are tallied each other, but to establish his bonafidness no valid reasons assigned. To deceit the complainant, he made use of cheque of his father by affixing his signature and handed over to the complainant could have been gathered from the defence of the accused complied with available documents demonstrates his signature.

26. If at all, the complainant himself got forged the signature of the accused, definitely, the said Ex.P1(a) signature not in Judgment 20 C.C.No.20481/2017 accordance with the document at Exs.P12 to P14, P16 and P17. The document at Ex.P18 itself made clear that, the accused has not bonafide approach in putting signature in different manner. His own signature submitted to the

court except Ex.P18(a), but, other documents at Exs.P14 and P15 are tallied. Which discloses that, the accused for the convenient of him in the habit of put his signature in different manner and intends to take above of the same. The very act of the accused has to be deprecated. With regard to the dishonest intention of the accused in affixing signature in different manner though knew that, questioned cheque at Ex.P1 not belongs to him and handed over to the complainant, liable for criminal action. If at all, the complainant wishes to prosecute against the accused regarding mischief of accused, he has liberty to proceed against him as per the relevant provisions of IPC.

27. The accused has taken up the defence that, questioned cheque and signature is not of him and he not had any transaction with the complainant. But he made specific allegation against the complainant, has to misuse of cheque. So also alleges that, the complainant run chit business and from his chit members collected so many cheques and in the habit of filing false case against those, therefore, the accused not liable to pay the amount Judgment 21 C.C.No.20481/2017 covered under the cheque. By making such suggestion to PW.1, the accused has taken up defence that, the complainant runs the chit business and used to collect several cheques from its members and in the habit of filing cheque bounce cases against them. The accused has not submitted that, how his father cheque at Ex.P1 came to the possession of the complainant, but stated false case is filed. He not entered anything as to his father was subscribed for chit with the complainant or not. In that regard, he remained silent, but without examining any chit member or his father, he made baseless and bald allegations against the complainant.

28. If at all, the questioned cheque of his father came to the possession of complainant, it is the accused has to demonstrate, whether it was handed over by the accused or his father in connection to the chit transaction or not. In that regard, no explanation is forth coming from the side of accused. From which, it can gather that, either the accused or his father the questioned cheque came to be in possession of complainant has to be presume. In that regard, to make known that, either the accused or his father not hand over the questioned cheque to the complainant, the accused not choosen to examine his father. If at all, the accused knew that, the questioned cheque was belongs to Judgment 22 C.C.No.20481/2017 his father, what was the compelling circumstances to him to affix his signature to the cheque and though knew that, it was not of him, why he handed over to the complainant is also not been satisfactorily explained. No doubt, it is not his contention that, he handed over questioned cheque, but he denied by saying, he had no transaction with complainant. It is require to explain by the accused and his father as to why his signature at Ex.P1(a) came on the questioned cheque of his father, that took, which is similar to the signature as found in Exs.P12 to P14 documents. Therefore, it is the accused has to demonstrate, how his signature came on questioned cheque. In that regard, he also not sought for any expert opinion by referring questioned cheque to FSL for knowing the genuineness of his signature.

29. On close perusal of the admitted signature of the accused as found in Exs.P12 to P14 coupled with questioned cheque at Ex.P1(a), to the bare eyes, it appears to be one and the same and made by same person. To draw any adverse inference, then so, the accused has not placed any satisfactory explanation before this court. From which, it can draw the inference that, for the reasons better known to the accused, though knew that, questioned cheque is not of him, he gave the same to the complainant for payment of any sum, thereby, deceit the Judgment 23 C.C.No.20481/2017

complainant. Therefore, the accused is liable to criminal prosecution, if complainant wishes to prosecute against the accused in that line as per law. Since, the complainant has not sought for any other relief then the relief claimed under Section 138 of Negotiable Instruments Act, no need to make further observation on the misuse of questioned cheque of the father of accused by the accused himself. Initiate criminal action against the accused is not come within the purview of jurisdiction of this court. However, it is the complainant has to establish his case beyond the reasonable doubt, to prove the guilt of accused based on the questioned cheque at Ex.P1, for the offence punishable under Section 138 of Negotiable Instruments Act.

30. As per the decision reported in AIR 2000 SC 954, in a case between Kusum Ingots and alloys Ltd., V/s. Pennar Peterson Security Ltd. Wherein, the Hon'ble Apex Court was pleased to observe that, object of bringing Section 138 on statute is to inculcate faith in the efficacy of banking operations and credibility in transacting the business of Negotiable Instrument. Therefore, it made clear that, that accused is misused the questioned cheque, though it not belongs to him, affixed his signature. Very act of the accused in hand over the questioned cheque to the complainant Judgment 24 C.C.No.20481/2017 appears to be misuse of Negotiable Instruments Act and try to loss the credibility not making use of the same in transaction.

31. As discussed earlier, as per Section 138 of Negotiable Instruments Act, it is he drawer of the cheque held responsibility for the dishonour as per Section 138 of Negotiable Instruments Act, subject to comply the mandatory requirement. No doubt, by examining the PW.2, it made clear that, the accused is not a drawer of the questioned cheque at Ex.P1, but it is his father by name Prabhakar.P, as found in Exs.P6 to P11 is the account holder of Ex.P1 cheque. Ex.P1 cheque does not discloses the signature of the drawer of the cheque i.e., father of accused. No doubt, the bank as per memo at Ex.P2 gave endorsement stating that, cheque is dishonoured for the reasons 'funds insufficient'. Therefore, complainant could not have an opportunity to know that, questioned signature at Ex.P1(a) is not of the accused. After brought the accused before this court and on seeing his contention as well as from the evidence of PW.2, it made clear that, the questioned cheque belongs to Prabhakar.P, who is none other than father of the accused.

32. Generally no one can be fastened with criminal liability for the acts of other except has expressly provided by law. Criminal Judgment 25 C.C.No.20481/2017 liability, on account of dishonour of cheque primarily false on the drawer. No one is to be held liable for an act of another. This normal rule as observed in a decision reported in, (2013) 8 SCC 71, in a case between Aparna A Sha V/s. Shet Developers Pvt. Ltd. Is subject to exceptions on account of specific provision being made in the statute extending the liability of others. As a matter of fact Section 141 of Negotiable Instruments Act contains contentions which have to be specified before the liability can be extended. In this case, it is not the contention of accused that, he gave questioned cheque on behalf of his father for his liability or his father gave questioned cheque for the liability of the accused. Therefore, specify the provision of Section 141 of Negotiable Instruments Act, does not arise. If the provisions under Section 138 of Negotiable Instruments Act, strictly complied with then it creates criminal liability on the drawer of the cheque. In other words the person who had intending to do with the matter need not be roped in. It is reiterated in the said factum that, it is only the drawer of cheque, who can be made an accused in any proceedings under Section 138 of Negotiable Instruments Act.

33. On going through the complaint as well as affidavit of chief- examination of the complainant, and bare look at Ex.P1 questioned cheque is not pertaining to the account of accused.

Judgment

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C.C.No.20481/2017

The proceedings filed under Section 138 of Negotiable

Instruments Act cannot be use as a harm twisting tactics to recover the amount allegedly due from the accused. It cannot be said that, the complainant had no remedy against the accused, but certainly not under Section 138 of Negotiable Instruments Act, based on Ex.P1 cheque. Therefore, by way of Section 139 of Negotiable Instruments Act coupled with the various decisions, it made clear that, only the drawer of cheque is liable for criminal prosecution. There is no vicarious liability in criminal law unless statute specifically provides for such fastening of liability. Therefore, it made clear that, in order to attach the criminal liability of the accused based on the questioned cheque, the accused is not a drawer of the cheque. Therefore, it cannot be said that, the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act.

34. However, it at all, the accused with the intention to defraud or deceit the complainant by way of hand over his father's cheque by affixing his signature, definitely, the complainant has liberty to proceed against him by initiate necessary criminal action as required under law. In order to proceed against the accused, in the present case, the complainant has not complied the mandatory provision under Section 138 of Negotiable Instruments Judgment 27 C.C.No.20481/2017 Act. Since, the questioned cheque belongs to the father of the accused; mere because of the signature of accused found therein it cannot attach strict liability by virtue of Section 138 of Negotiable Instruments Act, only drawer of the cheque is liable for prosecution. Therefore, as discussed by this court, in order to punish the accused under Section 138 of Negotiable Instruments Act, there is no sufficient material before this court. Therefore, the accused is entitled for acquittal. In view of the strong case found that, accused is not drawer of the questioned cheque, the appreciate other materials in the present things as to alleged lent of loan by complainant to the accused and in turn, accused got issued and executed the questioned cheque in favour of complainant does not warranted. The complainant failed to prove his case beyond the reasonable doubt, in order to prove the guilt of the accused. Therefore, the accused is entitled for acquittal.

35. 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.

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36. 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 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.

37. 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. 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.

Judgment 29 C.C.No.20481/2017

38. 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.

However, the complainant has liberty to proceed against the accused in accordance with the relevant provision of I.P.C. before appropriate court, if so advice.

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 28th day of July - 2020)
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1	:	Basavalingappa
PW.2	:	B.K.Hari

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque	
Judgment		30	C.C.No.20481/2017
Ex.P1(a)	:	Signature of accused	
Ex.P2	:	Bank endorsement	

Ex.P3	:	Office copy of legal notice
Ex.P4	:	Postal receipt
Ex.P5	:	Track consignment
Ex.P6	:	True copy of account opening form
Ex.P7	:	True copy of specimen signature letter
Ex.P7(a) to P7(c)	:	True copy of Signatures of P.Prabhakar
Ex.P8	:	True copy of postal cover
Ex.P9	:	True copy of ID Card
Ex.P10	:	True copy of voters ID card
Ex.P11	:	True copy of rental agreement
Ex.P12	:	CC of sale deed
Ex.P12(a) & P12(b)	:	Signatures of accused
Ex.P13	:	True copy of gift deed
Ex.P13(a) & P13(b)	:	Signatures of accused
Ex.P14	:	CC of application u/S 445 of Cr.P.C.
Ex.P14(a)	:	Signature of accused
Ex.P15	:	CC of bail application u/S 436 of Cr.P.C.
Ex.P15(a)	:	Signature of accused
Ex.P16	:	CC of surrender application
Ex.P16(a)	:	Signature of accused
Exs.P17 & P18	:	CC of vakalaths
Ex.P17(a) & P18(b)	:	Signatures of accused

List of Witnesses examined on behalf of the defence:

- None -

List of Exhibits marked on behalf of defence:

- Nil -

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.20481/2017

28.07.2020.

Comp -

Accd -

For Judgment

Case called out.

Complainant and accused are absent.

No representation from both side advocates, despite, web-host the case proceedings

and intimate the date of pronouncement of judgment. Hence, as per Section 353(6) of Cr.P.C. the following judgment is pronounced in the open court vide separate order.

Judgment 32 C.C.No.20481/2017 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.

However, the complainant has liberty to proceed against the accused in accordance with the relevant provision of I.P.C. before appropriate court, if so advice.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.