

# Mr. Arun Ullas .I vs Mr. Devaraj Marithimmapala on 3 August, 2021

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C.C.No. 8488/2018 J

THE COURT OF THE XVI ADDITIONAL CHIEF  
METROPOLITAN MAGISTRATE, BENGALURU CITY  
Dated:- This the 03rd day of August, 2021

Present: Sri.S.B.HANDRAL, B.Sc., L.L.B(SPL).,  
XVI Addl.C.M.M., Bengaluru City.

## JUDGMENT U/S 355 OF Cr.P.C.,

Case No. : C.C.No. 8488/2018  
Complainant : Mr. Arun Ullas .I,  
S/o Sri. A. Inasappa,  
Aged about 34 years,  
R/at Alphones Nilaya,  
James Road, St. Thomas Town  
Post, Kammanahalli,  
Bangalore - 560 084.  
Rep. by Sri. Shiva Reddy T. N.,  
Adv.,)

- Vs -

Accused : Mr. Devaraj Marithimmapala,  
S/o Murudappa Marithimmapala,  
Aged about 30 years,  
R/at No.12, 1st Floor, 8th Cross,  
5th Main, 2nd Block,  
Behind HDFC ATM, KEB Road,  
H.R.B.R. Layout,  
Bangalore - 560 043.

(Rep. by Sri. Shivakumar S. Naregal  
and Vijaya S. Naregal., Adv.,)

Case instituted : 12.03.2018

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C.C.No. 8488/2018 J

Offence complained : U/s 138 of N.I Act  
of

Plea of Accused : Pleded not guilty

Final Order : Conviction  
Date of order : 03.08.2021

### JUDGMENT

The Complainant has filed this complaint against the Accused for the offence punishable u/Sec.138 of the Negotiable Instruments Act.

2. Briefly stated the case of the Complainant is that, the accused and complainant both are friends and known to each other and whenever the accused was in need of money he used to lend the money to him on mutual agreeable terms of interest. It is further contended by the complainant that, the accused in the month of August 2016, approached him and requested to lend an amount of Rs.3 lakhs as hand loan meet out his personal problems, accordingly due to their long standing understanding, he agreed to lend a hand loan of Rs.3,00,000/- with an interest at the rate of Rs.12% p.a., accordingly, the complainant had been C.C.No. 8488/2018 J transferred a sum of Rs.3,00,000/- to accused account through online and paid in cash i.e., a sum of Rs.20,000/- was transferred on 08.09.2016 to the account of the accused and a sum of Rs.1,30,000/- was paid in cash on 15.09.2016 and a sum of Rs.1,50,000/- was transferred on 15.09.2019 to the account of the accused. It is further contended by the complainant that, at the time of borrowing the above said hand loan, the accused had executed a loan agreement for a sum of Rs.3,00,000/- in favour of the complainant on 15.09.2016 and the accused has agreed to repay the said loan amount within a period of one year from the date of the borrowal and after borrowing the said loan amount, the accused has returned a sum of Rs.50,000/- by way of transferring to online to his account, since the said amount was not required to the accused. It is further contended by the complainant that, the accused again appeared on 26.10.2016 as he was in need of Rs.15,000/- accordingly the complainant transferred the said amount of Rs.15,000/- through online to the account of the accused. The accused again approached the complainant and requested a sum of Rs.30,000/- as he was in need of urgent funds C.C.No. 8488/2018 J accordingly the complainant had transferred the said amount of Rs.30,000/- through online to the account of the accused on the same day and on 10.08.2017 the accused again obtained a hand loan of Rs.50,000/- from the complainant and the complainant has transferred an amount of Rs.49,900/- through online to the accused, thus the accused in total borrowed a sum of Rs.4,14,900/- as loan amount from the complainant. It is further contended by the complainant that, the accused has repaid a sum of Rs.1,87,070/- to the complainant through online transfer i.e., a sum of Rs.20,000/- on 30.10.2016, a sum of Rs.19,000/- on 30.10.2016, a sum of Rs.14,880/- on 09.01.2017, a sum of Rs.31,000/- on 09.02.2017, a sum of Rs.2,190/- on 03.06.2017, a sum of Rs.30,000/- on 18.06.2017, a sum of Rs.6,000/- on 19.06.2017, a sum of Rs.60,000/- on 22.07.2017, a sum of Rs.4,000/- on 20.08.2017 and out of the total loan amount of Rs.4,14,900/- the accused had repaid the total amount of Rs.2,37,070/- and thereafter the accused did not paid the balance amount of Rs.1,77,830/- or interest accrued thereon, inspite of repeated request made to the accused and even personally and over C.C.No. 8488/2018 J phone, but the accused went on giving one or other reasons. It is further contended by the complainant that, on his repeated request and demand, the accused in the month of December 2017 has paid a sum of Rs.17,830/- by way of cash and towards balance amount of Rs.1,60,000/- has issued two post dated cheques i.e., cheque bearing No.319784 dated 27.12.2017 for sum of Rs.1,00,000/- drawn on ICICI Bank, OMBR Layout Branch, Bangalore

and another cheque bearing No.407377 dated 03.01.2018 for sum of Rs.60,000/- drawn on Axis Bank Ltd, Koramangala Branch, Bangalore. Thereafter, on specific instruction of the accused the complainant has presented the aforesaid cheques through his bank namely ICIC Bank, Jayanagar T Block Branch, Bangalore on 06.01.2018, but the said cheques have been returned dishonoured with shara "Payment Stopped by Drawer " and the said intimation was received on 08.01.2018 and thereafter the said fact was brought to the notice of the accused, but the accused gave evasive answers and on 06.02.2018 he got issued statutory notice to the accused calling upon him to pay a sum of Rs.1,60,000/- within 15 days from the date of C.C.No. 8488/2018 J receipt of the notice and the said notice was sent through RPAD and was served on 12.02.2018, despite of it the accused failed to reply to the notice or make the payment of the cheques amount. Hence the complainant has filed this present complainant against the Accused for the offence punishable U/s.138 of Negotiable Instruments Act.

3. Before issuing process against the accused, the Complainant has filed his affidavit in lieu of his sworn statement, in which, he has reiterated the averments of the complaint. In support of his sworn statement, P.W.1 has relied upon the documentary evidence as per Ex.P.1 to Ex.P.12 i.e, original two Cheques dated: 27.12.2017 and 03.01.2018 as per Ex.P.1 and Ex.P.2 respectively, the signatures on the said cheques identified by P.W.1 as those of the accused as per Ex.P.1(a) and Ex.P.2(a) respectively, the Bank Memos as per Ex.P.3 and Ex.P.4, the office copy of the Legal Notice dated 06.02.2018 as per Ex.P.5, the postal receipt as per Ex.P.6, postal acknowledgement as per Ex.P.7, the bank statements as per Ex.P.8 to Ex.P.10 respectively, the original loan agreement dated 15.9.2016 as per C.C.No. 8488/2018 J Ex.P.11, the signatures on the said loan agreement identified by P.W.1 as those of the accused as per Ex.P.11(a) to Ex.P.11(d) respectively, postal cover as per Ex.P.12.

4. Prima facie case has been made out against the accused and summons was issued against the accused in turn he has appeared before the court and got enlarged on bail and the substance of the accusation has been read over to him, to which he pleaded not guilty and claims to be tried.

5. In view of the principles of law laid down and as per the directions of the Hon'ble Apex Court in the decision of the Indian Bank Association Vs., Union of India, reported in 2014 (5) SCC 590, after recording the plea of the accused, as he intended to set out his defence, and the case was posted for cross examination of complainant.

6. Thereafter, the statement of the accused as required under Sec.313 of the Cr.P.C. has been recorded. He has denied the incriminating evidence appearing against him and has chosen to lead his rebuttal evidence, subsequently the accused himself C.C.No. 8488/2018 J examined as DW1 and he has relied upon the documentary evidence as per Ex.D.1 to Ex.D.4 i.e, What's up massages as per Ex.D.1 to Ex.D.21 respectively, Affidavit (65B) as per Ex.D.22, Bank statements as per Ex.D.23 and Ex.D.24 respectively.

7. Heard the arguments by learned counsel for the complainant and accused and perused the materials on record.

8. On the basis of complaint, evidence of complainant and documents and having heard the arguments of both learned counsels for the complainant and the accused, the following points that are arise for consideration are:□

1. Whether the complainant proves that the accused has issued cheques 1) Cheque bearing No.319784 dated 27.12.2017 for a sum of Rs.1,00,000/□drawn on ICICI Bank Ltd, OMBR Layout Branch, Bangalore - 560 043 and 2) Cheque bearing No.407377 dated 03.01.2018 for a sum of Rs.60,000/□drawn on Axis Bank Ltd, Koramangala Branch, Bangalore - 560 095 to discharge legally recoverable debt to the complainant and when the complainant has presented the above said cheques for encashment through his banker C.C.No. 8488/2018 J but the said cheques have been dishonoured for the reasons "Payments Stopped By Drawer" on 08.01.2018 and the complainant issued legal notice to the accused on 06.02.2018 and inspite of it the accused has not paid the cheques amount within prescribed period there by the accused has committed an offence U/s.138 of the Negotiable instruments Act?

2. What Order?

9. The above points are answered as under:

Point No.1: In the Affirmative Point No.2:As per final order for the following:

#### REASONS

10. Point No.1: Before appreciation of the facts and oral and documentary evidence of the present case, it is relevant to mention that under criminal jurisprudence prosecution is required to establish guilt of the Accused beyond all reasonable doubts however, a proceedings U/s.138 of N.I.Act is quasi criminal in nature. In these proceedings proof beyond all reasonable doubt is subject to presumptions as envisaged U/s.118, 139 and 136 of N.I.Act. An essential ingredient of Sec. 138 of N.I.Act is that, whether a person issues cheque to be C.C.No. 8488/2018 J encashed and the cheque so issued is towards payment of debt or liability and if it is returned as unpaid for want of funds, then the person issuing such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act pre□supposes three conditions for prosecution of an offence which are as under:

1. Cheque shall be presented for payment within specified time i.e., from the date of issue or before expiry of its validity.
2. The holder shall issue a notice demanding payment in writing to the drawer within one month from the date of receipt of information of the bounced cheque and
3. The drawer inspite of demand notice fails to make payment within 15 days from the date of receipt of such notice.

If the above said three conditions are satisfied by holder in due course gets cause action to launch prosecution against the drawer of the bounced cheque and as per Sec.142(b) of the N.I. Act, the complaint has to be filed within one month from the C.C.No. 8488/2018 J date on which cause of action arise to file complaint.

11. It is also one of the essential ingredients of Sec. 138 of N.I.Act that, a cheque in question must have been issued towards legally recoverable debt or liability. Sec. 118 and 139 of N.I.Act envisages certain presumptions i.e., U/s.118 a presumption shall be raised regarding 'consideration' 'date' 'transfer' 'endorsement' and holder in course of Negotiable Instrument. Even Sec.139 of the Act are rebuttable presumptions shall be raised that, the cheque in question was issued regarding discharge of a legally recoverable or enforceable debt and these presumptions are mandatory presumptions that are required to be raised in cases of negotiable instrument, but the said presumptions are not conclusive and rebuttable one, this proportion of law has been laid down by the Hon'ble Apex Court of India and Hon'ble High Court of Karnataka in catena of decisions.

12. In the present case the complainant got examined as PW.1 by filing his affidavit evidence wherein he has reiterated the entire averments of the complaint and in his evidence testified that, he and C.C.No. 8488/2018 J accused are friends and known to each other and whenever the accused was in need of money he used to lend the money to him on mutual agreeable terms of interest. The complainant / PW1 further testified that, the accused in the month of August 2016, approached him and requested to lend an amount of Rs.3 lakhs as hand loan meet out his personal problems, accordingly out of their long period of understanding, he agreed to lend a hand loan of Rs.3,00,000/ with an interest at the rate of Rs.12% p.a. accordingly he has transferred a sum of Rs.3,00,000/ to the accused i.e., a sum of Rs.20,000/ was transferred on 08.09.2016 to the account of the accused and a sum of Rs.1,30,000/ was paid in cash and on 15.09.2016 a sum of Rs.1,50,000/ was transferred on 15.09.2019 to the account of the accused. The complainant / PW1 further testified that, on 15.09.2016 i.e., at the time of borrowing the hand loan, the accused had executed a loan agreement for a sum of Rs.3,00,000/ in his favour and the accused has agreed to repay the said loan amount within a period of one year from the date of the borrowal and after borrowing the said loan amount, the accused has C.C.No. 8488/2018 J returned a sum of Rs.50,000/ by way of transfer through online to his account, since the said amount was not required to the accused. The complainant / PW1 further testified that, the accused again approached on 26.10.2016 as he was in need of Rs.15,000/ accordingly he transferred the said amount of Rs.15,000/ through online to the account of the accused and again the accused approached him and requested a sum of Rs.30,000/ as he was in need of urgent funds accordingly he had transferred the said amount of Rs.30,000/ through online to the account of the accused on the same day and on 10.08.2017 the accused again obtained a hand loan of Rs.50,000/ from him and he has transferred an amount of Rs.49,900/ through online to the accused, thus the accused in total borrowed a sum of Rs.4,14,900/ as loan amount from him. The complainant / PW1 further testified that, the accused has repaid a sum of Rs.1,87,070/ to him through online transfer i.e., a sum of Rs.20,000/ on 30.10.2016, a sum of Rs.19,000/ on 30.10.2016, a sum of Rs.14,880/ on 09.01.2017, a sum of Rs.31,000/ on 09.02.2017, a sum of Rs.2,190/ on 03.06.2017, a C.C.No. 8488/2018 J sum of Rs.30,000/ on 18.06.2017, a sum of Rs.6,000/ on 19.06.2017, a sum of Rs.60,000/ on 22.07.2017, a sum of Rs.4,000/ on 20.08.2017 and out of the total loan amount of

Rs.4,14,900/-the accused had repaid the total amount of Rs.2,37,070/-and thereafter the accused did not paid the balance amount of Rs.1,77,830/-or interest accrued thereon, inspite of repeated request made to the accused and even personally and over phone, but the accused went on giving one or other reasons. The complainant / PW1 further testified that, on his repeated request and demand, the accused in the month of December 2017 has repaid a sum of Rs.17,830/-by way of cash and towards balance amount of Rs.1,60,000/-has issued two post dated cheques i.e., cheque bearing No.319784 dated 27.12.2017 for sum of Rs.1,00,000/-drawn on ICICI Bank, OMR Layout Branch, Bangalore and another cheque bearing No.407377 dated 03.01.2018 for sum of Rs.60,000/-drawn on Axis Bank Ltd, Koramangala Branch, Bangalore. The complainant / PW1 further testified that, thereafter, on specific instruction of the accused, he has presented the cheques in question through his bank namely ICICI C.C.No. 8488/2018 J Bank, Jayanagar T Block Branch, Bangalore on 06.01.2018, but the said cheques have been returned dishonoured with shara "Payment Stopped by Drawer " and the said intimation was received on 08.01.2018 and thereafter the said fact was brought to the notice of the accused, but the accused gave evasive answers and on 06.02.2018 he got issued statutory notice to the accused calling upon him to pay a sum of Rs.1,60,000/-within 15 days from the date of receipt of the notice and the said notice was sent through RPAD and was served on 12.02.2018, despite of it the accused failed to reply to the notice or make the payment of the cheques amount.

13. In support of oral evidence, P.W.1 has relied upon the documentary evidence as per Ex.P.1 to Ex.P.12 i.e, original two Cheques dated: 27.12.2017 and 03.01.2018 as per Ex.P.1 and Ex.P.2 respectively, the signatures on the said cheques identified by P.W.1 as those of the accused as per Ex.P.1(a) and Ex.P.2(a) respectively, the Bank Memos as per Ex.P.3 and Ex.P.4, the office copy of the Legal Notice dated 06.02.2018 as per Ex.P.5, the C.C.No. 8488/2018 J postal receipt as per Ex.P.6, postal acknowledgement as per Ex.P.7, the bank statements as per Ex.P.8 to Ex.P.10 respectively, the original loan agreement dated 15.9.2016 as per Ex.P.11, the signatures on the said loan agreement identified by P.W.1 as those of the accused as per Ex.P.11(a) to Ex.P.11(d) respectively, postal cover as per Ex.P.12.

14. In the present case, there is no dispute between the complainant and Accused with regard to their acquaintance. It is also not in dispute by the accused that, the cheques in question belongs to his account and signatures found at Ex.P.1(a) and Ex.P.2(a) are also those of his signatures. The Accused has also not disputed that the cheques in dispute were presented for encashment and dishonoured for the reason of "Payment Stopped by Drawer" vide bank endorsement dated:06.01.2018 therefore as a matter on record and has been proved by producing bank memos i.e., Ex.P.3 and Ex.P.4 issued by the concerned bank dated: 06.01.2018. Therefore the complainant has proved that, the cheques in question i.e Ex.P.1 and Ex.P.2 were presented within their validity period and C.C.No. 8488/2018 J dishonoured as per bank endorsement issued by the banker of the Accused and the cheques in question belonging to the Accused account and signatures of the Accused are at Ex.P.1(a) and Ex.P.2(a). In relation to the service of notice, the complainant in order to prove service of notice upon the Accused, has produced the documents i.e copy of the legal notice dated 06.02.2018, postal receipt, postal acknowledgement which are at Ex.P.5 to P.7 respectively. The perusal of the Ex.P.5 to Ex.P.7 it appears that, the complainant has issued legal notice dated 06.02.2018 by his advocate to the accused through RPAD and the said notice was served upon the

accused as per the postal acknowledgement i.e., Ex.P.7. The accused during the course of his cross examination dated 15.07.2019 at page No.3 in para No.3 has clearly admitted that, the complainant has issued legal notice to him and he has received the said notice, but has not given any reply to the said notice. Hence in view of the non-disputing of the documents produced by the complainant i.e., Ex.P.5 to Ex.P.7 and categorical admissions of the accused with respect to the receipt of legal notice it can be held C.C.No. 8488/2018 J that, the complainant has issued the legal notice to the accused within 30 days from the date of receipt of the bank memo in respect of dishonour of the cheques in question and calling upon the accused to pay the amount covered under the dishonoured cheques within 15 days from the date of receipt of the notice. Hence the complainant has complied all the mandatory requirements as required under Sec.138 (a) to (c) of N.I. Act, therefore initial presumptions can be drawn in favour of the complaint as per Sec.118 (a) and 139 of the N.I. Act

15. It is also the defence of the Accused that, in the 1st week of September 2016 has approached the complainant as he required loan amount and requested to lend an amount of Rs.1,50,000/- as hand loan for which the complainant agreed to lend the said amount on interest i.e., 10% per month and on 15.09.2016 the complainant had transferred an amount of Rs.1,50,000/- through his bank account, at that time, the complainant had collected his five cheques belongs to HDFC Bank and five cheques belongs to Axis Bank and blank cheques belongs to ICICI Bank Account and also collected two signed C.C.No. 8488/2018 J stamp papers. It is also defence of the accused that, he has repaid the entire loan amount of Rs.1,50,000/- alongwith interest and requested for return of his cheques and documents, but the complainant assured him to return his cheques and documents, but later did not returned the said cheques and documents and misused the same by filing this case and also filed other cases through different persons on behalf against him. Hence, on these background the oral and documentary evidence adduced by the complainant and accused has to be examined by this court.

16. It is the specific claim of the complainant that, he has paid an amount of Rs.3 lakhs to the accused in the month of September 2016 as hand loan and accused has agreed to repay the said loan amount at 12% p.a. and after borrowing the said amount the accused has executed the loan agreement for sum of Rs.3 lakhs in his favour on 15.09.2016 by agreeing to repay the said amount within a period of one year from the date of borrower. It is also the specific claim of the complainant that, after borrowing the said loan C.C.No. 8488/2018 J amount of Rs.3 lakhs the accused had returned an amount of Rs.50,000/- by way of online transfer to his account as he did not required. It is also the specific claim of the complainant that, the accused again approached on 26.10.2016 and borrowed an amount of Rs.15,000/- and again approached on 14.07.2017 and borrowed a sum of Rs.30,000/- and again approached on 10.08.2017 and borrowed an amount of Rs.49,900/- thus, the accused has been borrowed a total amount of Rs.4,14,900/- from him. It is also the specific contention of the complainant that, the accused has repaid an amount of Rs.2,37,070/- i.e., out of the total loan amount of Rs.4,14,900/- i.e., an amount of Rs.1,87,070/- was paid on different dates through online transfer to his account. It is also the specific claim of the complainant that, the accused has not paid the balance amount of Rs.1,77,830/- or interest thereon, thereafter on his repeated request and demand in the month of December 2017 has paid Rs.17,830/- by way of cash and towards remaining balance amount of Rs.1,60,000/- as handed over two postdated cheques i.e., Ex.P.1 for sum of Rs.1,00,000/- and Ex.P.2 for sum of Rs.60,000/- C.C.No. 8488/2018 J and

thereafter the said cheques have been presented for encashment through his banker, but same were returned dishonoured for the reason of "Payment Stopped by Drawer".

17. In order to prove the claim made by the complainant has produced his bank account statements which are at Ex.P.8 to Ex.P.10 and also produced Ex.P.11 original loan agreement dated 15.09.2016 and signature of the accused are marked as Ex.P.11(a) to Ex.P.11(d). It is also relevant here to mention that, the accused in his evidence has admitted that, the complainant has lent an amount of Rs.1,50,000/- on 15.09.2016 through account transfer. It is also relevant here to mention that the learned counsel for the accused has cross examined the complainant i.e., PW.1 but nothing has been elicited to discard or discredited the evidence of the PW.1. The complainant in his cross examination has specifically stated that on 08.09.2016 and 15.09.2016 has transferred an amount of Rs.1,30,000/- through online banking and on 15.09.2016 has paid amount to the accused in cash C.C.No. 8488/2018 J and in total has paid Rs.3 Lakhs and to that effect he and accused have entered into a loan agreement which as Ex.P.11. It is true that complainant admitted that there is no hindrance for him to pay the amount of Rs.1,30,000/- through online transfer, but mere admitting that no hindrance for transferring the amount through online account is not a ground to reject the contention of the complainant that an amount of Rs.1,30,000/- was paid in cash. It is also admitted that except the Ex.P.11 loan agreement the complainant has not secured other documents like pronote and consideration receipt, but the complainant stated that he has not a secured pronote from the accused since there is hand loan agreement between them. The complainant has also denied the suggestions made to him that the signatures of the accused have been taken on blank signed stamp paper and the said stamp paper got created as Ex.P.11 loan agreement. It is also stated by the complainant that the rate of interest was fixed 12% but in the Ex.P.11 the rate of interest shown as 9% since the said written document brought by the accused, therefore no correction has been made in Ex.P.11 but the C.C.No. 8488/2018 J accused orally agreed to pay the interest at the rate of 12% p.a. The complainant has also stated the reasons for securing the loan agreement from the accused as the loan transaction in question involved is huge amount, therefore he secured the loan agreement i.e., Ex.P.11 from the accused towards security of the loan amount advanced by him. The complainant has also stated that on 15.09.2017 he and accused entered into an agreement as per Ex.P.11 on the said date of loan amount was advanced to the accused and some amount was transferred through online and some amount was paid in cash and thereafter the loan agreement was executed. It is also stated by the complainant that the accused has returned an amount of RS. 50,000/- on the very day of borrowing of the loan amount i.e., on 15.09.2016 but the same was not mentioned in the EX.P.11 loan agreement, since the said amount was returned by the accused after execution of the Ex.P.11 and he has requested the accused for rectification in the Ex.P.11 but the accused did not returned, therefore as per Ex.P.11 he had given an amount of Rs.2,50,000/- to the accused. The complainant had also stated that the C.C.No. 8488/2018 J accused has repaid an amount of RS.1,87,070/- to him by way of transferring the said amount on different dates by online transferred and has to take the remaining amount of Rs.1,60,000/- Therefore on careful perusal of the entire cross examination of the complainant by the accused, nothing has been elicited to accept the defence of the accused.

18. The accused during the course of cross examination of the complainant and in his defence has denied the Ex.P.11 Loan Agreement entered into between him and the complainant. On careful



perusal of the contents of the Ex.P.11 it appears that, the said loan agreement got written on stamp papers which were purchased by the accused and the said loan agreement was prepared on 15.09.2016 and as on that day the accused has received an amount of Rs.3 lakhs from the complainant i.e., an amount of Rs.20,000/□ was transferred through online on 08.09.2016 and an amount of Rs.1,50,000/□ was transferred through online to the account of the accused on 15.09.2016 and it is also mentioned that, on 15.09.2016 the accused has received an amount of Rs.1,50,000/□ by C.C.No. 8488/2018 J way of cash. The complainant has identified the signature of the accused which are at Ex.P.1(a) to Ex.P.1(d) and the accused is also not disputed his signatures and purchase of stamp papers by him, however has denied the execution of the said agreement. It is important note here that, the accused during his cross examination dated 06.03.2019 at page No.1 in para No.2 has specifically admitted that, on 01.09.2016 when he approached the complainant alongwith the stamp papers purchased by him at that time the complainant informed him that, he had no money and promised to pay the amount in the next week, hence, the said admission itself sufficient to hold that, the accused has purchased the stamp papers on 01.09.2016 and approached the complainant seeking loan amount and now he cannot be permitted to deny the execution of the Ex.P.11 Loan Agreement. If really the contents of the Ex.P.11 are not known to the accused and accused has put his signatures on blank stamp papers and handed over to the complainant and subsequently the complainant got created the Ex.P.11, the accused would have proved this fact by producing cogent and C.C.No. 8488/2018 J convincing evidence, but except oral denial nothing has been placed before the court, therefore when the accused admitted his signature on Ex.P.11 and also purchase of stamp papers in his name, then the burden is upon the accused to prove his defence that, the complainant has got created the Ex.P.11, but as it is already held in the above that, the accused has not produced any relevant evidence to believe or accept his defence that, Ex.P.11 is got created by the complainant, on the contrary in view of the admitted facts by the accused about the receipt of amount of Rs.1,50,000/□ from the complainant on 15.09.2016 by way of bank account transfer and signatures on Ex.P.11 and purchase of stamp papers by him and handing over of the said stamp papers to the complainant it can be held that, the complainant has proved that, he and accused were entered into an agreement in respect of the loan amount of Rs.3 lakhs borrowed by the accused in the month of September - 2016 as per Ex.P.11.

19. It is the specific claim of the complainant that, the accused has borrowed total loan amount of Rs.4,14,900/□ on different dates by way of account C.C.No. 8488/2018 J transfer and also by way of cash and out of the said total amount the accused repaid the total amount of Rs.2,37,070/□ and towards remaining balance amount of Rs.1,77,830/□ the accused has paid sum of Rs.17,830/□ in cash and has issued two cheques i.e., Ex.P.1 and Ex.P.2 for sum of Rs.1,00,000/□ and Rs.60,000/□ respectively towards remaining balance amount of Rs.1,60,000/□ On the other hand, the accused during the course of his cross examination has admitted the amount of Rs.1,50,000/□ was received by him through account transfer on 15.09.2016 and also admitted return of Rs.1,87,070/□ but has denied the receipt of loan amount of Rs.4,14,900/□ as contended by the complainant. As it is already held in the above that, as per Ex.P.11 the complainant has proved that, he has paid an amount of Rs.3 lakhs to the accused in the month of September 2016. According to the complainant, after execution of the Ex.P.11 the accused approached the complainant and has received the remaining loan amount. It is relevant here to mention that, the accused during the course of his cross examination has denied the suggestions made to him that, he has received an

amount of C.C.No. 8488/2018 J Rs.4,16,900/□from the complainant till 10.08.2017 and has admitted that, he has repaid total amount of Rs.2,37,070/□to the accused, but he volunteers that, he has repaid entire loan amount to the complainant, hence the above admission of the complainant sufficient to hold that, he has repaid only an amount of Rs.2,37,070/□out of the total loan amount borrowed by him. In addition to that, the complainant has produced statement of his bank account which are at Ex.P.8 to Ex.P.10 and the accused has also produced his statement of account which is at Ex.D.23 and Ex.D.24, on careful perusal of the Ex.P.8 to Ex.P.10 and Ex.D.23 and Ex.D.24 alongwith the Ex.P.11 it can be held that, as per Ex.P.11 the accused has received total amount of Rs.3 lakhs till the month of September 2016 and thereafter as per Ex.P.9 to Ex.P.10 has received remaining loan amount.

20. It is important to note here that, on careful perusal of the entire oral and documentary evidence produced by the complainant i.e Ex.P.1 to Ex.P.7 and admitted facts by the Accused, the complainant proved that the cheques in question belongs to the C.C.No. 8488/2018 J Accused i.e Ex.P.1 and Ex.P.2 and signatures found at Ex.P.1(a) and Ex.P.2(a) are those of the signatures of the Accused and also proved that, the cheques in question were presented within their validity period and they were dishonoured for the reason of "Payment Stopped by Drawer" as per Ex.P.3 and Ex.P.4 and thereafter the legal notice caused by him through RPAD as per Ex.P.5 was duly served on him as per Ex.P.7 and Accused has not given any reply to the legal notice, in such circumstances, it can be held that, the complainant has discharged his initial burden by complying the mandatory requirements as required U/s.138 of N.I. Act and initial presumptions are available in favour of the complainant U/s.118a and 139 of the N.I.Act. Consequently it is for the Accused to rebut the said presumptions available in favour of the complainant to show that, the cheque in question was not issued either to the complainant or towards discharge of any legally recoverable debt by producing cogent and convincing evidence but not mere suggestions or even by plausible explanation. In such circumstances, when the presumptions U/s.118 and 139 of N.I.Act are available to the complainant, even a presumption C.C.No. 8488/2018 J can be drawn to the extent of existence of legally recoverable debt or liability against the Accused unless and until the said presumptions are rebutted by the Accused, even in the absence of documents produced by the complainant with regard to loan transaction in question.

21. The complainant has also produced Ex.P.8 to Ex.P.10 and Ex.P.11 to prove that, he has lent the loan amount of Rs.4,14,900/□to the Accused and also proved that, the accused has returned Rs.2,37,070/□towards the loan amount and also paid a sum of Rs.17,830/□and in respect of balance amount of Rs.1,60,000/□the Accused has issued the Ex.P.1 and Ex.P.2 cheques i.e., towards discharge of the said debt and as it is already held in the above that, the Accused himself admitted that, he has borrowed loan amounts from the complainant on various occasions. part from that, it is relevant here to refer the decisions reported in 2001 AIR Karnataka HCR 2154 between 'M/s.Devi Tyres V/s.Navab Jan' and in 2011 ACD 1521 (KAR) between 'Smt. Usha Suresh V/s. Shashidharn', in C.C.No. 8488/2018 J 2010 SC 1898 between 'Rangappa Vs. Mohan' and 2011 ACD 1412 (KAR) between 'N.Hasainar Vs. M.Hasainar, S/o. Ibrahim'. The Hon'ble High Court of Karnataka in the above decision i.e., 2001 AIR Karnataka HCR 2154 at para No.6 was pleased to hold that issuance of cheque itself was adequate proof of existence of debt or liability. In another decision of Hon'ble Apex Court of India i.e. Hon'ble Three Judges Bench Decision reported in (2010) 11 SCC 441 in the case of

Rangappa Vs. Sri. Mohan ., wherein the Hon'ble Apex Court held that "

A. Negotiable Instruments Act, 1881 - S.139 - Presumption under - scope of - Held, presumption mandated by S. 139 includes a presumption that there exists a legally enforceable debt or liability - However such presumption is rebuttable in nature - Criminal Trial - Proof - Presumptions - Generally. Further held that "Signature on the cheque was his, statutory presumption under S.139 comes into play and the same was not rebutted even with regard to the materials submitted by C.C.No. 8488/2018 J complainant Appellant not able to prove "lost cheque" theory - Apart from not raising a probable defence appellant was also not able to contest the existence of a legally enforceable debt or liability - hence, his conviction by High Court, held, proper. In another decision of Hon'ble Apex Court of India, reported in CRIMINAL APPEAL NO. 508 OF 2018 DT 15<sup>th</sup> 3<sup>rd</sup> 2018 between ROHITBHAI JIVANLAL PATEL Vs STATE OF GUJARAT AND ANR held that "Negotiable Instruments Act facts like source of funds are not relevant if the Accused has not been able to rebut the presumption. It is further held that " When such a presumption is drawn, the facts relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the Accused has been able to rebut the presumption or not". In another decision of Hon'ble Apex court of India decided in Crl.Appeal No.1545 of 2019 dt.17/10/2019 by the Hon'ble Apex Court of India in the case of C.C.No. 8488/2018 J Uttam Ram Vs. Devinder Singh Hudan and Anr. Wherein the Hon'ble Apex Court held that, "

Dishonor of cheque - Statutory presumption under - burden to prove - the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other 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 - even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act - the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act. It is also held that, " the accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on the account of discrepancy in the cartons, packing materials C.C.No. 8488/2018 J or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore it is presumed that, the cheque in question were drawn for consideration and the holder of the cheques received the same in existing debt". It is also held that, " the Trial court and the High Court proceeded as if, the appellant is to prove a debt before civil Court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries statutory presumption of consideration. The holder of cheque in due course is required to prove that, the cheque was issued by the Accused and that when the same presented , it was not honoured Since there is a statutory presumption of consideration, the burden is on the Accused to rebut the presumption that, the cheque was issued not for any debt or other liability ". It is also relevant here to refer the decision of Hon'ble High Court of Karnataka reported C.C.No. 8488/2018

J in ILR 2019 KAR 493 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat, wherein the Hon'ble High Court held that, the presumption mandated by Sec.139 of N.I Act includes the presumption that, there existed a legally enforceable debt or liability, however such presumption is rebuttable in nature". In another decision of Hon'ble High Court of Karnataka in the case of Shri.V.R.Shresthi Vs. Shri. Bhaskara.P. in Crl. Appeal No. 2109/2017 dated: 15.10.2019 wherein the Hon'ble High Court of Karnataka held that "the Accused has not given any reply to the notice and also in the cross-examination, he categorically admits that, the cheque has bounced on account of no sufficient fund in the bank account of the Accused. Mere non producing of the document before the court with regard to the source of income to advance a loan is not a ground to dismiss the complaint. The Accused ought to have rebutted the contention of the complainant by producing cogent evidence before the court and mere C.C.No. 8488/2018 J denial is not enough". Therefore on careful reading of the principles of law laid down by the Hon'ble Apex Court of India and High Court of Karnataka in the above referred decisions makes it very clear that, once the holder in due course i.e. the complainant proved that, the cheque in question belongs to the drawer and signature appearing on the cheque is that of the drawer i.e., Accused and complied the mandatory requirements as required U/s.138 of N.I.Act, presumptions U/s.118a and 139 of N.I.Act indeed does extend to the existence of legally recoverable debt and when such presumption is drawn the facts relating to the want of documentary evidence in the form of receipts or accounts or want of evidence regarding source of funds were not of relevant unless the Accused rebutted the presumption available to the complainant as held by the Hon'ble Apex Court and High Court of Karnataka in the above decisions. In the present case also the complainant has complied mandatory requirements and has proved that, the Accused has issued the cheques in question in his favour and the Accused has admitted the cheques belongs to him and signatures appearing on the C.C.No. 8488/2018 J cheques are those of his signatures and even after service of the notice, the Accused has not given any reply or complied the terms of the notice, in such circumstances, presumptions have to be drawn towards existence of legally enforceable debt as per Sec.139 of N.I.Act.

22. Therefore, for the above said reasons the defence taken by the Accused that, the complainant has failed to prove that, he has lent an amount of Rs.4,14,900/- to the accused and the accused the accused has issued the cheques in question towards discharge of balance amount of Rs.1,60,000/- cannot be acceptable one. The defence taken by the Accused appears that, the complainant has to prove his claim by producing his evidence as if it is required for proving of his debt before the Civil Court, but same cannot be permissible in a proceedings initiated U/s.138 of N.I. Act, as held by the Hon'ble Apex court of India in the above referred decisions, therefore in view of the principles of law laid down in the above referred decisions it is presumed that, cheques in question were drawn for consideration as the Accused has admitted the C.C.No. 8488/2018 J cheques in question belongs to him and signatures found on the cheques in question are also those of his signatures.

23. In order to rebut the presumptions available to the complainant and to substantiate the defence of the accused, the accused himself examined as DW.1 and the accused in his evidence stated that, he approached the complainant in the month of September 2016 and requested a loan amount of Rs.1,50,000/- and thereafter, at his request the complainant on 15.09.2016 has lend an amount of Rs.1,50,000/- through account transfer from his account as hand loan interest at the rate of 10% p.m. and at that time towards security of the said loan amount complainant had collected his five

signed cheques pertains to HDFC Bank and five signed cheques pertains to Axis Bank and ICICI Bank account and also signed two stamp papers. The accused further stated that, on 15.09.2016 out of Rs.1,50,000/□has returned a sum of Rs.50,000/□i.e., Rs.20,000/□in cash on the same day and remaining Rs.30,000/□by way of transferring from his account to the account of complainant. The C.C.No. 8488/2018 J accused further deposed that, on 15.09.2016 at the time of lending the loan amount the complainant had collected Rs.15,000/□on the very day and also instructed him to hand over and received his debit card pertains to Axis Bank to draw the monthly interest amount towards the loan amount lent by him, accordingly on 30.09.2016 and 04.11.2016 has drawn an amount of Rs.20,000/□each and thereafter in month of November, December and January has received interest amount of Rs.20,000/□by way of cash, thereafter the complainant instructed him to repay an amount of Rs.1,15,000/□towards his loan amount and interest, but he informed him that, there is variation in the accounts and also sent his Axis Bank statements to the E□mail ID of the complainant, thereafter as per the demand made by the complainant, he agreed to return the said amount of Rs.1,15,000/□on installment basis. The accused further deposed that, as per the instructions of the complainant he has deposited an amount of Rs.24,000/□to the S.B. Account of one Ravi Prasad and paid Rs.72,000/□by cash as per his request and also transfer an amount of Rs.24,000/□to the account of the complainant as C.C.No. 8488/2018 J per his request and thereafter he has requested for return of his blank signed documents at that time the complainant informed that, the said documents will be handed over after two days as they were kept in his office and thereafter one week he again enquired the complainant and requested for return of his documents at that time, the complainant again agreed and promised to return the said document, but inspite of his repeated request he did not return the said documents on the contrary the complainant threatened him by stating that, he being an advocate and will file cheque bounce cases against him in the name of different persons and also abused in vulgar language. The accused in support of his oral evidence has produced computer downloaded what's up messages which are at Ex.D.1 to Ex.D.21 and his affidavit in respect of production of the Ex.D.1 to Ex.D.21 and same has been marked as Ex.D.22, true copies of the bank statement of his account pertains to Axis Bank and HDFC Bank which are at Ex.D.23 and Ex.D.24.

24. The accused though he has stated that, he has borrowed only an amount of Rs.1,50,000/□as C.C.No. 8488/2018 J hand loan interest at the rate of 10% p.m. from the complainant on 15.09.2016 and he has paid the interest amount i.e., the complainant has drawn interest amount of Rs.20,000/□each on 30.09.2016 and 04.11.2016 and the accused has paid interest amount in the month of November, December and January by way of cash of Rs.20,000/□each to the complainant, but has not produced any documentary evidence, therefore except self serving statement his evidence has not produced any other document and evidence, hence the defence of the accused cannot be acceptable one. It is true that, the accused has produced Ex.D.23 and Ex.D.24 Bank Statement, the said statement are not supports the defence of the accused, on the contrary the entries made in the Ex.D.23 and Ex.D.24 corroborates the date of amount received by him as claimed by the complainant.

25. It is also relevant here to mention that, if really the accused has repaid the entire loan amount of Rs.1,50,000/□alongwith interest to the complainant then there is no question of agreeing to settle the loan amount to the extent of Rs.1,15,000/□C.C.No. 8488/2018 J as contended by him in his

evidence. Even for sake of discussion if it is assumed the defence taken by the accused is true, then the further defence of the accused i.e., he has repaid the entire loan amount of Rs.1,50,000/□as stated by him i.e., as per instructions of the complainant he has deposited Rs.24,000/□in the name of Ravi Prasad and has paid Rs.72,000/□in the cash and amount of Rs.24,000/□was transferred to the accused, cannot be acceptable one as the accused has not produced any documentary evidence and even has not examined the person i.e., Ravi Prasad, therefore the defence of the accused remained as allegations against the complainant, but the same has not been proved by the accused by producing cogent and convincible evidence in addition to that, the accused during the course of his cross examination admitted that, he has no document to show that, he has paid interest amount for the months of November to January and even has not produced the documents to show that, the bank has sanctioned the loan to him in the month of February□2017. The accused has also admitted that, he has not produced the documents to show that, he has sent his Axis Bank statement to C.C.No. 8488/2018 J the complainant to his E□mail. The accused has also admitted that, there is no entry in Ex.D.23 and Ex.D.24 that, he has paid the amount of Rs.1,75,000/□in the first and second week of February□2017and there is an entry in Ex.D.23 that, an amount of Rs.1,96,349/□was credited, but there is no entry about transfer of the said amount to the account of the complainant. Hence, the above admissions of the accused makes it cleaer that, the accused himself admitted that, there are no documents to show that, he has paid interest amount to the complainant and there are no documents to show that, he has transfered the amount to the complainant, in such circumstances the oral and documentary evidence produced by the accused is not supported to the defence of the accused. It is also relevant here to mention that, the accused has produced certain What's App Chat messages said to have been communication between him and the complainant, but the complainant has denied the said chat messages. For sake of discussion if the said messages are taken into consideration but the accused has not got marked the relevant alleged messages which are helpful for C.C.No. 8488/2018 J his defence, but none of the messages discloses that, the accused has borrowed only an amount of Rs.1,50,000/□as hand loan interest at the rate of 10% p.m. from the complainant. It is also not seen in Ex.D.1 to Ex.D.21 about alleged amount which was paid the accused as interest to the complainant, therefore Ex.D.1 to Ex.D.21 are not helpful for proving of his defence.

26. It is relevant here to mention that, according to the defence of the Accused that, the complainant at the time of lending of loan amount of Rs.1,50,000/□on 15.09.2016 had collected his five blank signed cheques pertains to the HDFC Bank, five cheques pertains to Axis Bank and ICICI Bank and two signed stamp papers towards security of the loan amount. Thereafter, he has repaid the entire loan amount alongwith interest and requested the complainant for return of his cheques and documents, but the complainant promised to returned the same, subsequently did not returned his documents. As it is already held in the above that, the accused has not produced any documents to show that he has repaid the loan amount C.C.No. 8488/2018 J alongwith the interest as contended by him and has not produced any document to show that, the said complainant had collected his blank signed cheques and stamp papers towards security in respect of the loan transaction as alleged by him. Apart from that, the Accused has clearly admitted in his cross□examination that, he has not issued any legal notice or filed any police complaint before the police complaint or has not initiated any legal action against the said the complainant by alleging that the complainant has misused his cheques by threatening him. Even the accused has not produced any documents to show that, he

had issued Stop Payment Instructions to the concerned bank by mentioning that, he has repaid the entire loan amount to the complainant alongwith interest and inspite of it the complainant intending to produce his blank signed cheques to the bank for encashment. In such circumstances it can be held that, if really the complainant has misused the cheques in question as alleged by the accused, definitely accused would have initiated legal action against the the complainant in respect of alleged misuse of his signed blank cheques which were C.C.No. 8488/2018 J issued towards security of the loan amounts. Admittedly the accused has not made such efforts, in such circumstances, an adverse inference can be drawn against the Accused that, in order to overcome the liability in question the Accused has taken such defence and said defence cannot be acceptable one. In this regard, it is relevant here to refer the decision of Hon'ble Apex Court of India reported in AIR 2018 SC 3601 in a case of T.P.Murugan (dead) Thr. Lrs.V. Bhojan Vs. Posa Nandi, rep. Thr. Lrs. PA holder, T.P. Murugan V. Bhojan, wherein the Hon'ble apex Court held that "Negotiable Instruments Act (26 of 1881) Ss.118, 138, 139 - Dishonour of cheque - Presumption as to enforceable debt□cheques allegedly issued by accused towards repayment of debt□Defence of accused that 10 cheques issued towards repayment of loan back in 1995 - behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural - Accused admitting his signature on cheques and pronote, presumption C.C.No. 8488/2018 J under S.139 would operate against him - Complainant proving existence of legally enforceable debt and issuance of cheques towards discharge of such debt□Conviction, Proper." Hence by applying the above principles of law to the present facts of the case in the present case, the Accused has not produced any document to prove his defence, under such circumstances, it can be held that, the accused has not made any efforts to get return of the cheque in question or other cheques alleged to have been collected by the complainant as a security towards the alleged loan amounts borrowed by him and the said cheques have been misused by the complainant, under such circumstances, the said unnatural conduct of the accused in non taking of action may leads to draw an adverse inference against the accused that, the cheque in question issued by the accused towards discharge of the liability and presumption U/s.139 of N.I. Act would operate against him, as he has admitted the signature and cheque in questions belongs to him.

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27. It is also the specific defence of the Accused that, the cheques in question were collected by the complainant as blank signed cheques towards security of the loan amount of Rs.1,50,000/□ advanced by him and even after repayment made by him the complainant has misused the cheques in question and has filed this false complaint against him. But as it is already held in the above that, the Accused has miserably failed to prove that, he has borrowed the loan amount of Rs.1,50,000/□ only from the complainant and at the time of advancing the loan the complainant had collected his blank signed cheques including the cheques in dispute and he has repaid the loan amount as alleged by him, in such circumstances the defence taken by the Accused cannot be acceptable one, on the contrary the fact of receiving of loan amount and issuance of cheques in favour of the complainant remained as it is, in such circumstances also it can be held that, the cheques in question have been issued by the Accused towards discharge of the loan transaction in question. In this regard, it is also relevant here to refer the decisions of Hon'ble High Court of Karnataka reported in 2015 (1) KCCR 235 in the C.C.No. 8488/2018 J case of Lale Patel Vs. Sharanabasappa., wherein the Hon'ble High

Court held that, NEGOTIABLE INSTRUMENTS ACT, 1881□section 138 - Dishonour of cheque for insufficiency of funds □Plea of accused that he had given a blank cheque signed as security for a transaction and complainant filled up the contents and denied existence of any debt or loan - Conviction by Trial court □Affirmed by Appellate Court - Revision against. Hence the Hon'ble High Court of Karnataka in the said decision clearly held that, if the Accused has taken defence that, the a blank signed cheque has been issued as a security for transaction and the complainant filled up the contents and the accused denied the existence of debt or loan in such circumstances it is for the accused to prove his defence by producing cogent and convincing evidence, if the Accused has not proved the same in such circumstances, it cannot be held that, the cheque in question was issued for the purpose of security in connection with the transaction. In the present case also the Accused has failed to establish his defence that, the cheques C.C.No. 8488/2018 J in question were collected by the complainant for security in respect of the alleged loan transaction and inspite of repayment of the said loan amount, the cheques in question were not return to him and misused by the complainant, under such circumstances the cheques so issued cannot be considered as the one issued as stated by the accused in his defense and the defence taken by the Accused is untenable one. In another decision reported in 2015 (4) KCCR 2881 (SC) in the case of T. Vasanthakumar Vs. Vijayakumari wherein the Hon'ble Apex court held that "NEGOTIABLE INSTRUMENT Act, 1881□Section s138 and 139 - acquittal - If justified□Accused not disputing issuance of cheque and his signature eon it□Plea that it was issued long back as security and that loan amount was repaid□Not supported by any evidence - Fact that date was printed, would not lend any evidence to case of accused□Acquittal not proper. Hence in the present case also it is the main defence of the Accused that the cheques in dispute were alleged to have been collected by the complainant towards loan C.C.No. 8488/2018 J transaction and the said loan amount was repaid to the complainant but the cheques in question were not returned to him but in this regard the accused has not produced documents or proof in such circumstances by applying the principles of law laid down in the above decision the defence of the Accused cannot be acceptable one. Therefore for the above said reasons the arguments submitted by the learned counsel for the defence cannot be acceptable one or not sustainable.

28. It is also important to note here that, the Accused has not denied or disputed that the cheques in question as well as the signatures therein do belong to him and he has failed to prove his defence and how the cheques in question came to the possession of the Complainant, this would also give rise to an adverse inference against him. This preposition of law finds support from the decisions of Hon'ble High Court of Karnataka reported in 2010(1) KCCR 176 in the case of "Siddappa Vs. Manjappa". In another decision of Hon'ble Apex court of India decided in CrI.A.No.664 of 2012 dated: 19.9.2019 in the case of "M.Abbas Haji C.C.No. 8488/2018 J Vs. T.M.Chennakeshava" held that, " the Accused has to explain how the cheque entered into the hands of complainant". Therefore for the above said reasons the defense taken by the accused cannot be acceptable one and accused has miserably failed to rebut the presumption available in favour of the complainant by adducing cogent and convincing evidence.

29. Therefore considering all these aspects of the case and totality of the circumstances and on careful and meticulous appreciation of evidence adduced on behalf of the complainant and accused the complainant has successfully established beyond all reasonable doubt that, he has lent total



amount of Rs.4,14,900/- to the Accused and in turn the Accused has repaid an amount of Rs.2,37,070/- and also has paid sum of Rs.17,830/- in cash and issued the Ex.P.1 and Ex.P.2 cheques in question in his favour towards discharge of remaining balance amount of Rs.1,60,000/- i.e., Ex.P.1 for Rs.1,00,000/- and Ex.P.2 for Rs.60,000/- and thereafter the complainant has presented the said C.C.No. 8488/2018 J cheques through his banker and same were returned dishonoured with an endorsement of "Payment Stopped by Drawer" and thereafter he got issued legal notice to the accused and the said notice was duly served on him, inspite of it, the Accused did not paid the cheques amount, hence the complainant filed the present complaint against the accused. On the other hand, the accused has failed to rebut the presumption available infavour of the complainant with regard to the existence of legally recoverable debt under Ex.P.1 and Ex.P.2 Cheques. Therefore accused has committed an offence punishable U/s.138 of N.I. Act, accordingly for the above said reasons this point is answered in the Affirmative.

30. Point No.2: Negotiable Instrument Act was enacted to bring credibility to the cheque and the very purpose of enactment is to promote the use of negotiable instrument, while to discourage the issuance of cheques without having sufficient funds in their accounts. Such being the case the intention of the legislature is that, complainant be suitable compensated while accused be punished for his act. Hence while awarding the compensation the said C.C.No. 8488/2018 J fact is to be kept in mind and suitable compensation is awarded to the complainant certainly it will not cause injustice to the accused, accordingly the complainant is entitled for the compensation as ordered by the court and for the said reasons, it is just and proper to pass the following : ☐ORDER Acting U/sec.255(2) of Cr.P.C.

the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.1,75,000/= (Rupees One Lakh and Seventy Five Thousand only) within one month from the date of order, in default he shall under go simple imprisonment for a period of (1) one month for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.1,70,000/= (Rupees One Lakh and Seventy Thousand only) shall be paid as compensation to the complainant.

Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= C.C.No. 8488/2018 J (Rupees Five Thousand only) shall be defrayed as prosecution expenses to the state.

The Bail bond of the Accused stands cancelled.

Cash security of Rs.2,000/- deposited by the accused vide dated 12.06.2018 is hereby ordered to be returned to the accused (if not lapsed) after appeal period is over.

Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

(Directly dictated to the stenographer online, printout taken by her, verified, corrected and then pronounced by me in the open Court on this the 03rd August 2021).

(SRI.S.B. HANDRAL), XVI ACMM, Bengaluru City.

## ANNEXURE

1. List of witness/s examined on behalf of the Complainant: □P.W.1 : Arun Ullas .I
2. List of documents exhibited on behalf of the Complainant: □Ex.P□ & 2 : Original Cheques C.C.No. 8488/2018 J Ex.P□(a)&2(a) : Signatures of the Accused Ex.P.3 & 4 : Bank Memos Ex.P.5 : Office copy of the Legal Notice Ex.P.6 : Postal Receipt Ex.P.7 : Postal acknowledgement Ex.P.8 to 10 : Bank Statements Ex.P.11 : Original loan agreement Ex.P.11(a)to(d) : Signatures of the accused Ex.P.12 : Postal cover
3. List of witness/s examined on behalf of the Accused: □DW.1 : Devaraj Marithimmapala
4. List of documents exhibited on behalf of the Accused: □Ex.D.1 to 21 : What's up messages Ex.D.22 : Affidavit (65B) Ex.D.23 & 24 : Bank Statements (SRI.S.B.HANDRAL), XVI ACMM, Bengaluru City.

C.C.No. 8488/2018 J 03.08.2021 Case called out, Counsel for the complainant and complainant absent. Accused absent, Counsel for the accused absent, Judgment pronounced since the fine amount and default sentence is only imposed against the Accused, no separate sentence is imposed against the Accused vide separate order, ORDER Acting U/sec.255(2) of Cr.P.C.

the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.1,75,000/= (Rupees One Lakh and Seventy Five Thousand only) within one month from the date of order, 58 C.C.No. 8488/2018 J in default he shall under go simple imprisonment for a period of (1) one month for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.1,70,000/= (Rupees One Lakh and Seventy Thousand only) shall be paid as compensation to the complainant.

Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= (Rupees Five Thousand only) shall be defrayed as prosecution expenses to the state.

The Bail bond of the Accused stands cancelled.

Cash security of Rs.2,000/□deposited by the accused vide dated 12.06.2018 is hereby ordered to be returned to the accused (if not lapsed) after appeal period is over.

Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

59 C.C.No. 8488/2018 J XVI ACMM, B'luru.