

## Mr.R.V.Nathan vs Mr.A.P.Mahesh on 2 November, 2018

IN THE COURT OF LVII ADDL. CHIEF METROPOLITAN  
MAGISTRATE, MAYO HALL UNIT, BENGALURU

- : PRESENT : -

PADMA PRASAD, BA (Law), LLB.  
LVII ADDL. CHIEF METROPOLITAN MAGISTRATE,  
BENGALURU.  
DATED THIS THE 2ND DAY OF NOVEMBER, 2018.

C.C.No.53556/2016

COMPLAINANT : Mr.R.V.Nathan,  
S/o Late V. Rajaraman,  
Aged about 70 years,  
No.205, "Ram-Lakshman" Apartment,  
No.89, Diagonal Road,  
V.V.Puram,  
Bangalore - 560 004

.Vs.  
ACCUSED : Mr.A.P.Mahesh  
S/o.late A.M.Paramashivaiah  
Aged about 54 years,  
No.4, New No.118, 5th Main,  
7th Cross, N.R.Colony,  
Bangalore - 560 019.

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### JUDGMENT

The complainant filed this complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The complaint case in nutshell is that he is the owner of Flat bearing No.103, in Sai Apartment, 10th Cross, 2nd Main, N.R.Colony, Bengaluru. The accused approached the complainant to purchase the said Flat and the complainant agreed to sell the said Flat to the accused for a consideration of Rs.18,00,000/-. Accordingly, the complainant and the accused have entered into a sale agreement dtd:30.08.2012. The accused as per agreement paid Rs.5,10,000/- to the complainant on the day of sale agreement and agreed to pay the balance consideration of Rs.12,90,000/- to the complainant at the time of registration of sale deed. The complainant executed the registered sale deed in favour of the complainant on 25.07.2013 at the Sub-Registrar office, Basavanagudi, Bengaluru. The complainant claims that at the time of execution of sale deed the accused has paid Rs.2,52,000/- through demand draft and issued 5 cheques bearing No.102231 to 102235 dtd:27.05.2013 for Rs.1,00,000/-, Rs.1,40,000/-, Rs.3,00,000/-, Rs.3,00,000/- and Rs.2,00,000/- respectively drawn on Corporation Bank, Basavanagudi Branch and asked the

complainant to present the said cheque on the next day of the registration of the sale deed. The complainant further claims that in the evening of the Registration of the sale deed the accused approached the complainant and told him to present only 1st cheque for encashment and the remaining 4 cheques after the lapse of 2 months. Accordingly, the cheque issued by the accused for Rs.1,00,000/- has been encashed by the complainant. Subsequently the complainant has presented the cheque bearing No.102232 and 102233 on 21.08.2013 and the cheque bearing No.102234 and 102235 on 24.08.2013. The said cheques have been returned without encashment as per bank endorsement dtd:22.08.2013 and 27.08.2018 respectively stating "Funds Insufficient. Thereafter the complainant caused a legal notice to the accused on 30.09.2013 calling upon the accused to pay the cheque amount. In spite of receipt of the said notice the accused failed to comply with the notice. Hence, filed the complaint.

3. After filing the complaint, sworn statement of the complainant has been recorded and on perusing the materials on record i.e., cheque, bank endorsement, legal notice and documents for having been caused the notice to the accused, the court has been taken the cognizance of offence and issued summons to the accused.

4. In response to the summons, the accused appeared through his counsel and he was on court bail. Plea has been recorded; accused pleaded not guilty and claimed to be tried.

5. To prove the case, the complainant got examined himself as P.W.1 and got marked documents at Ex.P.1 to P.17.

6. On closure of complainant side evidence, the accused statement has been recorded under Sec.313(1)(b) of Cr.P.C., by placing the incriminating evidence appeared against the accused that are denied by the accused.

7. The accused in support of his defense examined himself as D.W.1 along with 2 witness as D.W.2 and 3 and also got marked documents at Ex.D.1 to 24. The case made out by the accused during his defense is that one M.A.Rajendran was his advocate and in the office of M.A.Rajendran he met the complainant. Thereafter they developed the friendship with each other. The accused claimed that his advocate M.A.Rajendran insisted the accused to give the hand loan to the complainant. Accordingly, he has advanced a sum of Rs.4,60,000/- through cash and cheques. The complainant avoided repaying the said hand loan and on 01.02.2012 complainant handed over a draft copy of the sale agreement and insisted the accused to pay 50% of the sale consideration at the time of registration and another 50% after handing over the possession of flat. Thereafter he entered into a sale agreement with the complainant on 30.08.2012. The complainant acknowledged the receipt of Rs.4,50,000/-. Later on demand of the complainant he has paid Rs.48,000/- to the complainant. The accused claims that thereafter he made a correspondence with the complainant regarding the delivery of the possession of the title. The accused further claimed that they have exchanged the draft copy of the memorandum of understanding. The accused further claimed that on 27.05.2013 the complainant has executed the sale deed in his favour and at the time of execution of sale deed he has paid Rs.2,52,000/- through Demand Draft to the complainant and spent approximately Rs.2,00,000/- towards the registration of the sale deed. Later on the complainant insisted the

accused to pay the house tax from 1992-2014 for which he has spent Rs.70,000/-. On 27.05.2013 in the evening the accused and the complainant entered into a memorandum of understanding and at that time he has issued 5 cheques to the complainant for the balance amount of Rs.10,40,000/-. The accused claims that one cheque has been encashed for Rs.1,00,000/- and in total he has paid Rs.9,60,000/- to the complainant. The accused further claimed that when he demanded the possession of the flat the complainant used to demand more money from him and on one or the other pretext the complainant postponed the delivery of the flat hence, he has sent the notice to the complainant on 28.04.2014 calling upon the complainant to give the possession of the flat and taken the balance money. The complainant has not given any reply and also not complied with the said notice. The accused further claimed that he has filed a private complaint against the complainant in PCR No.10272/14 on the file of 24th ACMM Court, wherein the police have filed the charge sheet on 16.01.2016 that has been stayed by the High Court of Karnataka. The accused further claims that one Gopalkrishna Murthy has filed a case against M.A.Rajendran for the offence punishable under Sec.420 and 506 of IPC. Accordingly prayed for dismissal of the complaint.

8. When the case is posted for arguments the accused filed one application under Sec.45, 46 and 47-A of the Indian Evidence Act wherein the accused prayed to send the signatures found in memorandum of understanding at Ex.D.3 to compare the alleged signatures of the complainant with the admitted signatures of the complainant found in Complaint, Vakalath and other documents to obtain the experts opinion on the signatures of the complainant. The complainant filed the detailed objection to the said application.

9. The accused filed one more application under Sec.193 and 196 of IPC praying to permit and prosecute the complainant under the above Sections, as the complainant in this case has misled the court by filing false complaint with false affidavit without any supporting documents of the assignment of facts etc by abusing the process of this court. The complainant filed a detailed objection.

10. On the basis of above, the points for consideration are that;

1. Whether the accused made out sufficient grounds to send the signatures found in Ex.D.3 for comparison with the admitted signatures of the complainant in complaint, Vakalath for experts opinion?"

2. Whether the accused made out a case to permit him to prosecute the complainant under Sec.193 and 196 of IPC.

3. Whether the complainant proved beyond reasonable doubt that the accused has committed the offence under Sec.138 of N.I.Act.?

4. What Order?

2. The counsel for complainant and accused filed their written arguments. Heard and perused the materials on record. On that basis my finding on the above points are as under;

Point No.1 : In the Affirmative  
Point No.2 : In the Negative  
Point No.3 : In the Negative  
Point No.4 : As per final order for the following;

#### REASONS

11. Point Nos.1 to 3 :- All these points are interlinked with each other hence, taken up together for common discussion in order to avoid repetition the repetition in the judgment.

12. The complaint case in nutshell is that he is the owner of Flat bearing No.103, in Sai Apartment, 10th Cross, 2nd Main, N.R.Colony, Bengaluru. The accused approached the complainant to purchase the said Flat and the complainant agreed to sell the said Flat to the accused for a consideration of Rs.18,00,000/-. Accordingly, the complainant and the accused entered into a sale agreement dtd:30.08.2012. The accused as per agreement paid Rs.5,10,000/- to the complainant on the day of sale agreement and agreed to pay the balance consideration of Rs.12,90,000/- to the complainant at the time of registration of sale deed. The complainant executed the registered sale deed in favour of the complainant on 25.07.2013 at the Sub-Registrar office, Basavanagudi, Bengaluru. The complainant claims that at the time of execution of sale deed the accused has paid Rs.2,52,000/- through demand draft and issued 5 cheques bearing No.102231 to 102235 dtd:27.05.2013 for Rs.1,00,000/-, Rs.1,40,000/-, Rs.3,00,000/-, Rs.3,00,000/- and Rs.2,00,000/- respectively drawn on Corporation Bank, Basavanagudi Branch and asked the complainant to present the said cheque on the next day of the registration of the sale deed. The complainant further claims that in the evening of the Registration of the sale deed the accused approached the complainant and told him to present only 1st cheque for encashment and the remaining 4 cheques after the lapse of 2 months. Accordingly, the cheque issued by the accused for Rs.1,00,000/- has been encashed by the complainant. Subsequently the complainant has presented the cheque bearing No.102232 and 102233 on 21.08.2013 and the cheque bearing No.102234 and 102235 on 24.08.2013. The said cheques have been returned without encashment as per bank endorsement dtd:22.08.2013 and 27.08.2018 respectively stating "Funds Insufficient. Thereafter the complainant caused a legal notice to the accused on 30.09.2013 calling upon the accused to pay the cheque amount. In spite of receipt of the said notice the accused failed to comply with the notice. Hence, filed the complaint.

13. The accused in support of his defense examined himself as D.W.1 along with 2 witness as D.W.2 and 3 and also got marked documents at Ex.D.1 to 24. The case made out by the accused during his defense is that one M.A.Rajendran was his advocate and in the office of M.A.Rajendran he met the complainant. Thereafter they developed the friendship with each other. The accused claimed that his advocate M.A.Rajendran insisted the accused to give the hand loan to the complainant. Accordingly, he has advanced a sum of Rs.4,60,000/- through cash and cheques. The complainant avoided repaying the said hand loan and on 01.02.2012 complainant handed over a draft copy of the sale agreement and insisted the accused to pay 50% of the sale consideration at the time of registration and another 50% after handing over the possession of flat. Thereafter he entered into a sale agreement with the complainant on 30.08.2012. The complainant acknowledged the receipt of

Rs.4,50,000/-. Later on demand of the complainant he has paid Rs.48,000/- to the complainant. The accused claims that thereafter he made a correspondence with the complainant regarding the delivery of the possession of the title. The accused further claimed that they have exchanged the draft copy of the memorandum of understanding. The accused further claimed that on 27.05.2013 the complainant has executed the sale deed in his favour and at the time of execution of sale deed he has paid Rs.2,52,000/- through Demand Draft to the complainant and spent approximately Rs.2,00,000/- towards the registration of the sale deed. Later on the complainant insisted the accused to pay the house tax from 1992-2014 for which he has spent Rs.70,000/-. On 27.05.2013 in the evening the accused and the complainant entered into a memorandum of understanding and at that time he has issued 5 cheques to the complainant for the balance amount of Rs.10,40,000/-. The accused claims that one cheque has been encashed for Rs.1,00,000/- and in total he has paid Rs.9,60,000/- to the complainant. The accused further claimed that when he demanded the possession of the flat the complainant used to demand more money from him and on one or the other pretext the complainant postponed the delivery of the flat hence, he has sent the notice to the complainant on 28.04.2014 calling upon the complainant to give the possession of the flat and taken the balance money. The complainant has not given any reply and also not complied with the said notice. The accused further claimed that he has filed a private complaint against the complainant in PCR No.10272/14 on the file of 24th ACMM Court, wherein the police have filed the charge sheet on 16.01.2016 that has been stayed by the High Court of Karnataka. The accused further claims that one Gopalkrishna Murthy has filed a case against M.A.Rajendran for the offence punishable under Sec.420 and 506 of IPC. Accordingly prayed for dismissal of the complaint.

14. The complainant in support of his case examined himself as P.W.1 and got marked the documents at Ex.P.1 to 17 they are; Ex.P.1 is the Sale Deed dtd:27.05.2013, Ex.P.2 to 5 are the four Original cheques, Ex.P.6 to 9 are the Bank Return Memos, Ex.P.10 is the office copy of the legal notice dtd:13.09.2013, Ex.P.11 & 12 are 2 Postal receipts, Ex.P.13 is the Courier Receipt, Ex.P.14 is the postal acknowledgment, Ex.P.15 & 16 are the 2 postal track, Ex.P.17 is the Reply notice dtd:20.09.2013 and thereby claimed that he has proved the case beyond reasonable doubt.

15. Similarly, the accused in support of his defense produced documents at Ex.D.1 to 24. The Ex.D.1 is the Agreement of sale, Ex.D.2 is the Certified copy the sale deed dtd:27.05.13, Ex.D.3 is the Memorandum of understanding, Ex.D.4 is the Certified copy of the order sheet in PCR No.10277/2014, Ex.D.5 is the Certified copy of the charge sheet filed in Crime No.11/2016 of V.V.Puram police station, Ex.D.6 is the Tax paid receipt, Ex.D.7 & 8 are the Khatha extracts, Ex.D.9 & 10 are the Receipt issued by the Sub-Registrar, Ex.D.11 is the Encumbrance certificate, Ex.D.12 to 17 are Tax paid receipts, Ex.D.18 & 19 are Affidavit U/s 65-B of Indian Evidence Act & g-mail copies, Ex.D.20 is the Certified copy of the General Power of Attorney, Ex.D.21 is the Certified copy of the judgment passed in OS No.7819/99, Ex.D.22 is the Certified copy of the delivery receipt, Ex.D.23 is the Certified copy of the written statement in O.S No.7819/90, Ex.D.24 is the Certified copy of the memorandum of RFA. The accused also got examined 2 witnesses in support of his defense particularly to prove the memorandum of understanding produced at Ex.D.3.

16. The case of the complainant is that he is the owner of flat bearing No.103 in Sai Apartment, 10th Cross, 2nd Main, N.R.Colony, Bengaluru and accused approached him to purchase the said flat and

the accused and complainant entered into a sale agreement agreeing to sell the said flat for total consideration of Rs.18,00,000/- in favour of the accused. The case of the complainant is that on the day of sale agreement, the accused has paid Rs.5,10,000/- and the balance was Rs.12,90,000/-. Subsequently, as on 27.05.2013 at the office of Sub-Registrars, Basavanagudi, Bengaluru. The complainant executed a registered sale deed in respect of the aforesaid flat in favour of the accused. During the time of sale deed the accused has paid Rs.2,52,000/- through demand draft and issued 5 cheques bearing No.102231 to 102235 drawn on Corporation Bank, Basavanagudi Branch and all the cheques are dtd:27.05.2013 for a sum of Rs.1,00,000/-, Rs.1,40,000/-, Rs.3,00,000/-, Rs.3,00,000/- and Rs.2,00,000/- respectively. The complainant further made out a case that after the execution of the sale deed the accused approached the complainant and asked him to present only 1st cheque issued for Rs.1,00,000/- and requested the complainant to present the remaining 4 cheques after 2 months and after 2 months when the complainant has presented the said cheques, those cheques have been returned without encashment with bank endorsement stating "Funds Insufficient" and thereafter though the complainant caused a legal notice, the accused failed to comply with the notice instead he has given untenable reply.

17. The accused though taken several defenses in the case, admitted the sale agreement dtd:30.08.2012 as well as execution of sale deed dtd:27.05.2013. Therefore, it is clear that the accused has admitted the transaction claimed by the complainant in the complaint. The main defense of the accused in the case is that he has to pay the balance amount or the amount stated in the cheque to the complainant only after the delivery of the possession of the flat. The accused specifically claimed that the complainant has not delivered the possession of the flat. Accordingly, the accused claimed that he has not paid the money stated in the cheque. The accused in support of his defense much relied on the memorandum of understanding at Ex.D.3. The accused not disputed the issuance of 5 cheques claimed by the complainant. The accused during the course of cross-examination of complainant made out a case that on the personal capacity of the complainant this complaint is not maintainable, as the property belongs to M/s.Vaikund Property Development (P) LTD and accordingly prayed for dismissal of complaint. With the aforesaid case and defense of the parties, the material placed before the court has to be appreciated.

18. The 1st defense of the accused in this case is that the sale transaction is between the accused and M/s.Vaikund Property Development (P) LTD. As such this complaint on the personal capacity of the complainant is not maintainable. It is true that as per the sale deed as well as sale agreement the property belongs to M/s.Vaikund Property Development (P) LTD and this complainant is the Chairman of the said M/s.Vaikund Property Development (P) LTD. The sale deed at Ex.P.1 as well as Ex.D.2 is also executed by this complainant on behalf of M/s.Vaikund Property Development (P) LTD. If the accused has issued the cheques in the name of M/s.Vaikund Property Development (P) Ltd, the case of the accused would have been accepted by the court.

19. The accused in the reply notice and also during the course of trial made out the case that the transaction is between him and complainant and the entire talks regarding the purchase of property is between him and the complainant and also claimed that initially there is no sale transaction but the hand loan transaction between him and the complainant and as the complainant failed to repay the loan agreed to sell the flat. The accused has also issued an account payee cheque in the name of

the complainant. Further, the various contentions and correspondence between the parties produced before the court discloses that the transaction is between the complainant and the accused and the complainant himself agreed to sell the property. Hence, the accused cannot claim that this complaint is not maintainable.

20. It is also relevant to note that it is not the case of the accused that M/s.Vaikund Property Development (P) LTD. are not interested to prosecute this case against the accused and the complainant is not the chairman of M/s.Vaikund Property Development (P) LTD. Further, it is also not the case of the accused that he has issued the cheque in the name of M/s.Vaikund Property Development (P) LTD. It is also relevant to note that it is not the case of the accused that he has issued a blank signed cheque in favour of the complainant that has been misused by him. The accused not at all disputed the writings and the amounts in the cheques at Ex.P.2 to 5 produced before the court. Therefore, it is clear that the name of the complainant along with amount and date in the cheque has been written by the accused himself. Therefore, this accused has the knowledge of the issuance of the cheque that those cheques have been issued in the personal name of the complainant. If at all there is no transaction between the complainant and the accused, there is no necessity for him to issue cheque in the personal name of the complainant. Apart from that the accused during his evidence claimed that he has kept the money in fixed deposit and he is ready to pay the money to the complainant if possession has been delivered. Even the said contention of the accused in his evidence discloses that the transaction is exclusively between him and the complainant and he is ready to pay the amount to the complainant.

21. As discussed above, the main defense taken by the accused is that the possession is not delivered hence; he has not paid the money. Per-contra, the complainant claims that the possession of the flat has been delivered to the accused as on the date of sale deed itself. In this case the memorandum of agreement between the parties as per Ex.D.1 is not in dispute. It is also not in dispute that the complainant has executed the registered sale deed in favour of the accused as per Ex.P.1 as well as Ex.D.2 sale deed. The accused also admitted the execution of said sale deed. Hence, the complainant has executed the sale deed in favour of the accused as on 27.05.2013 before the Sub-Registrar Office at Basavanagudi. When there is a registered sale deed, the contents of the said sale deed is binding on the parties unless and until contrary is proved. The sale deed at Ex.P.1 / Ex.D.1 at page No.6, 2nd paragraph it has been stated about the delivery of the possession of the properties sold to the accused. The said paragraph reads as;

"The Vendor has delivered possession of the Schedule-B Property to the Purchaser by placing the Purchaser possession of the Schedule-B Property and confirming party has delivered vacant possession of the Schedule-C apartment to the Purchaser and the Schedule-B property and Schedule-C Property are together hereinafter referred to the "SCHEDULE PROPERTY" or "PROPERTY HEREBY CONVEYED".

22. Now, what is the 'C' schedule property to be considered. The schedule 'C' is regarding the description of the apartment found in page No.11 of the sale deed. The said schedule 'C' reads as;

"Description of the Apartment constructed by the confirming party, corresponding to the undivided 480/4800 in building in the Schedule-A property Purchased by the purchaser Apartment bearing No 103 on the first Floor with One Car parking Space bearing No 103 in the basement of Apt Known "SAI APARTMENTS" constructed on the Schedule Property with Super built area of 1140 Square Feet with all common areas attributable thereto with mosaic flooring, R.C.C. Roof and Honne Doors and Aluminum windows".

23. Therefore, the Schedule 'C' property is the apartment bearing No.103 which is claimed by the complainant in the complaint and the said property has been described in the Ex.D.1 agreement at Schedule 'B'. The combined writing of aforesaid recitals in the sale deed Ex.P.1 / Ex.D.1 clearly discloses that the complainant has executed the registered sale deed in favour of the accused and delivered the possession of the same. When there is a registered sale deed, the contents of the said registered sale deed is binding on the accused unless and until the said sale deed has been set aside or that has been cancelled. Absolutely there is no material on record to show that the said sale deed has been cancelled or the accused has challenged the said sale deed before any competent court. Hence, the terms and conditions set out in the said sale deed is binding on the accused and complainant. It is also relevant to note that the said sale deed has been presented by the accused for registration on 27.05.2013 at 3:43.22 pm. Therefore, it is clear that the Ex.P.1 sale deed has been presented for registration by the accused himself and it has to be accepted that he knows the contents of the said sale deed. Hence, the recital in the said sale deed has to be accepted and it is binding on the accused.

24. The accused claims that the possession of the property agreed to sell in his name has not been delivered to him. In support of said contention he has relied on the memorandum of understanding at Ex.P.3. It is true that the execution of Ex.P.3 has been disputed by the complainant. Even for the sake of argument if it is accepted that the document is genuine but the date of execution of the said document is not properly explained. According to the accused, the said memorandum of understanding at Ex.D.3 has been executed in the evening after 6:00 p.m. on 27.05.2013. If the said contention of the accused is accepted, this memorandum of understanding has been executed subsequent to the sale deed at Ex.P.1 / Ex.D.1. As per the endorsement of Sub-Registrars found in the backside of page No.2 discloses that this sale deed has been presented for registration on 3:43 p.m. The said fact discloses that this sale deed at Ex.P.1 has been executed prior to the execution of Ex.D.3 memorandum of understanding. Now, it has to be seen that whether the said memorandum of understanding has been executed subsequent to sale deed or the accused proves the execution of memorandum of understanding satisfactorily.

25. As already stated above, the complainant disputed the execution and contents of memorandum of understanding. Hence, the heavy burden is on the accused to prove the execution of said memorandum of understanding. The memorandum of understanding produced by the accused at page No.6 at para No.13, it has been stated that;

"The Registration of absolute sale deed to be gets registered on or before 27-5-2013, to avoid all the probable delay."



26. If it were so, this memorandum of understanding has been executed prior to the execution of sale deed. It is also relevant to note that even the clause No.8 and 9 of Ex.D.3 memorandum of understanding also discloses that the alleged agreement has been executed prior to the execution of sale deed. The main point to be noted in the said agreement is that initially the sale consideration has been fixed at Rs.21,00,000/- that has been reduced to Rs.18,00,000/-. Even this fact creates some suspicion regarding the valid execution of memorandum of understanding as claimed by the accused. Apart from that when the parties have entered into a registered sale deed, question of executing the memorandum of understanding between the parties certainly does not arise. Apart from that the accused specifically admitted the issuance of the cheques involved in this case in the sale deed itself. If at all the matter has been settled in respect of consideration prior to the registration of the sale deed, certainly this accused would not have presented the sale deed for registration. Even this fact probablise the case of the complainant that on the day of sale deed this accused has issued a Demand Draft of Rs.2,52,000/- and cheques in respect of the balance sale consideration.

27. In view of the aforesaid discussion it is clear that, even if the contents of Ex.D.3 agreement is accepted or even if that has been executed by the complainant that will not make any difference as the said document cannot be executed in view of the registered sale deed at Ex.P.1 executed on 29.05.2013. When the registered sale deed is binding, certainly no purpose will be served by sending the said document to the experts to compare the signature or signatures. Apart from that even if it is accepted that the accused has executed the memorandum of understanding at Ex.D.3 and if the complainant has violated the terms of said memorandum of understanding, the remedy for the accused lies before the civil court. The accused ought to have filed the necessary complaint or initiate the legal proceedings to enforce the terms of memorandum of understanding at Ex.D.3. Why the accused has not chosen to enforce the terms of memorandum of understanding till this date is without any explanation.

28. The accused also claimed that the complainant has no absolute title and the title of the complainant over the property is defective title. The said contention cannot be accepted in view of the clause 13 of the memorandum of understanding. The clause 13 of the memorandum of understanding discloses that the accused is totally aware of the litigation in respect of the property purchased by him under Ex.P.1 or Ex.D.2 sale deed. In the said clause No.13 of Ex.D.3 memorandum of understanding it is specifically stated that;

"The market value of the flat is about Rs.45,00,000/- and even the Government value fixed for the said apartment is Rs.29,00,000/-. The said building is old construction as well as there is some litigation. The accused agreed to purchase the apartment for Rs.18,00,000/-."

29. Therefore, considering the litigation and risk factor, the accused chosen to purchase the said property at the lesser price than the market price i.e., Rs.18,00,000/-. When the accused is totally aware of all these facts, cannot claim now particularly after the execution of sale deed that the title of the complainant over the Schedule property is defective, possession has not been delivered to him. In view of these facts claim of the accused that he has been cheated by his earlier advocate

M.A.Rajendran can not be accepted

30. As already stated earlier, the accused claimed that the property even today stands in the name of erstwhile owner of the property namely Sundarabai. In support of the said contention, the accused produced certain documents such as Khatha Extract, Tax paid receipts and other documents but all those documents are for the year 2013-14 and not produced the present years Khatha extract. Why the accused has not chosen to produce the present years Khatha extract is without any explanation and the said fact falsifies the contention of the accused. It is relevant to note that there is a registered sale deed in the name of the accused in respect of the apartment. When there is a registered sale deed in respect of the apartment, the accused ought to have taken the steps to take possession of the property if it has not been delivered to him and also should have taken necessary steps to mutate the property in his name on the basis of sale deed. Absolutely there is no material on record to show that this accused filed any suit for possession of the property purchased by him. It is also not made out by the accused that he initiated any legal proceedings against the complainant for cancellation of sale deed or refund of the money already paid to the complainant. When the accused has not challenged the said sale deed, it has to be accepted and inferred that the accused himself admitted that complainant is the absolute owner of the property. The complainant specifically claims that he has delivered the possession of property to the accused as per sale deed at Ex.P.1 and Ex.D.2, as the accused fails to demonstrate that he has initiated any legal proceedings against the complainant for the possession of the property or cancellation of sale deed etc. Therefore, the registered sale deed executed by the complainant in favour of the accused is in force and that is binding on the accused even the sale deed has not been challenged or in dispute. If the contents of the sale deed is accepted, it has to be accepted that while executing the sale deed, the possession of the property has been delivered to the accused.

31. In view of the aforesaid facts no purpose will be served even if the application filed under Sec.45 of Indian Evidence Act is allowed as the registered sale deed is binding on the parties and the accused has not at all challenged the said sale deed at Ex.P.1 that the sale deed is not binding illegally or the possession has not been delivered to him on the basis of sale deed. Apart from that the issuance of the cheque is also admitted fact and the accused categorically admitted that the cheques have been issued towards the balance sale consideration.

32. The accused also filed one more application under Sec.193 and 196 of IPC praying to permit and prosecute the complainant for filing false evidence. The aforesaid discussion makes it clear that the complainant has not at all filed any false affidavit and the case of the complainant is more probable than the case of the accused. In fact the accused himself suppressed certain things. The conduct of the accused also discloses that he want to have an apartment for a much lesser price than the market price. As such he himself chose to purchase the litigated property as claimed by him under Ex.D.3. Therefore, the accused also failed to prove that the complainant is to be prosecuted under Sec.193 and 196 of IPC. Therefore, it is clear that the accused failed to make out a probable defense in the case and also failed to make out a case to refer the Ex.D.3 document to compare with the admitted signatures. Similarly also failed to make out a grounds to prosecute the complainant under Sec.193 and 196 of IPC. As already stated earlier, the transaction claimed by the complainant is admitted fact. Issuance of the cheque is also admitted fact. The cheque has been dishonoured for want of

funds in the bank account of the accused and inspite of the receipt of the notice the accused failed to comply with the notice. The accused also failed to make out a probable defense. When the accused failed to make out a probable defense, it has to be accepted that the complainant has proved his case beyond reasonable doubt. Therefore, for the aforesaid reasons this court is of the humble opinion that the complainant proved his case beyond reasonable doubt.

33. In this case, the complainant has claimed compensation. As per Section 357 of Criminal Procedure Code and as per the ruling reported in; 2001 Cri.L.J. 950 (SC), (Pankajbai Nagibai Patel V/s State of Gujarath), the court can award compensation and there were no limits for the same. As such, the court has to consider how much compensation could be awarded in this case. As per Section 80 of Negotiable Instruments Act, the interest at 18% P.A. can be granted when there is no agreed rate of interest. As per the proved facts of the case, the accused has issued cheque towards the legally enforceable debt, the accused has issued a cheques are dated 27.05.2013 as per Ex.P.2 to 5 and thus, the accused has to pay interest on the cheque amount from the date of cheque and so, the accused has to pay interest for about 5 years 5 months till this date. If the interest is calculated at 18% P.A. to the cheques amount for the above period, certainly the complainant is entitled for the suitable compensation to the cheque amount as per Section 80 of Negotiable Instruments Act. The cheques amount in this case is Rs.9,40,000/- and if the interest is calculated for 65 months, the accused shall pay the interest to the complainant at 18% P.A. that amounts to Rs.9,16,500/-. The case is pending nearly about 5 years 5 months as such if the cost of Rs.2,000/- is added to the compensation, it will comes to Rs.18,58,500/- (Cheque amount is Rs.9,40,000/-, interest is Rs.9,16,500/- and cost Rs.2,000/-). Hence, this court is of the humble opinion that in all the complainant is entitled for compensation amount of Rs.18,58,500/-. Further as per the ruling reported in 2000 Cri.L.J 1793(b) SC - (State of Karnataka V/s Krishnappa) wherein it is held that while imposing sentence, the courts are expected to properly operate sentence system, it should be impose such sentence for code offence which serve as detention of commission of like offences by others - Socio economic status, prestige, race, caste or creed of accused or victim are irrelevant considerations in sentencing policy. Hence, in this case also, if the accused is punished with simple imprisonment for one year and pay compensation to the complainant. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Anyhow the object of Sec.138 of N.I.Act is to have accountability in the business transaction and the intention of the complainant is only to get his money back. The complainant certainly not interested in sentencing the accused for any imprisonment. Further, the offence is punishable with imprisonment or fine. Hence, in this case after awarding the compensation certainly imposing of fine to the accused is sufficient sentence.

34. As per the ruling reported in 2002 Cri.L.L. 1003, SC (Suginthi Suresh Kumar V/s Jagadishan). Where in it is held at page no.1005, at para 5 that:

"In the said decision this court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decisions of this Court in 1988 (4) SCC 551 Hari Singh

v. Sukhbir Singh. In the said decision this court held as follows:

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also very depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default."

35. In view of the aforesaid precedent of Hon'ble Apex Court, if the accused is ordered to further imprisonment of a year in default to pay the compensation will make the ends of justice. Accordingly I answer the above Point No.1 in the "Affirmative" and Point No.2 and 3 in the "Negative".

36. Point No.4:- In view of the findings on the aforesaid points, the Court proceed to pass following:

ORDER Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Sec.138 of N.I.Act and sentenced the accused to pay a fine of Rs.5,000/-. In default to pay the fine amount the accused shall undergo simple imprisonment for 3 months.

Acting under Section 357 of Cr.P.C., the compensation is awarded and the accused shall pay compensation of Rs.18,58,500/- to the complainant. In default to pay compensation, the accused shall undergo simple imprisonment of a period of 1 year.

Office to furnish free copy of this judgment to the accused forthwith.

Consequently the applications filed by the accused under Sec.193 and 196 of Cr.P.C. and application filed under Sec.45 of Evidence Act is hereby dismissed. (Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the 2nd day of November, 2018) (PADMA PRASAD), LVII ACMM, BENGALURU.

#### ANNEXURE

1. Witnesses examined on behalf of Complainant:

P.W.1 : Sri.R.V.Nathan

2. Documents marked on behalf of complainant:

Ex.P.1 : Sale Deed dtd:27.05.2013

Ex.P.2 to : 4 Original cheques

Ex.P.5

Ex.P.2(a) : Signatures of the accused  
to  
Ex.P.5(a)  
Ex.P.6 to : Bank Return Memos  
Ex.P.9  
Ex.P.10 : O/c of the legal notice dtd:13.09.2013  
Ex.P.11 : 2 Postal receipts  
&  
Ex.P.12  
Ex.P.13 : Courier Receipt  
Ex.P.14 : Postal acknowledgment  
Ex.P.15 : 2 Postal Track  
&  
Ex.P.16  
Ex.P.17 : Reply notice dtd:20.09.2013

3. Witnesses examined on behalf of Accused:

D.W.1 : Sri.A.P.Mahesh  
D.W.2 : Sri.N.Kondal Reddy  
D.W.3 : Umesh S/o Sri.D.H.Gowda

4. Documents marked on behalf of Accused:

Ex.D.1 : Agreement of sale  
Ex.D.2 : Certified copy the sale deed dtd:27.05.13  
Ex.D.3 : Memorandum of understanding  
Ex.D.4 : Certified copy of the order sheet in PCR  
No.10277/2014  
  
Ex.D.5 : Certified copy of the charge sheet filed in  
Crime No.11/2016 of V.V.Puram police  
station  
Ex.D.6 : Tax paid receipt  
Ex.D.7 & : Khatha extract  
Ex.D.8  
Ex.D.9 & : Receipt issued by the Sub-Registrar  
Ex.D.10  
Ex.D.11 : Encumbrance certificate  
Ex.D.12 : Tax paid receipts  
to  
Ex.D.17  
Ex.D.18 : Affidavit U/s 65-B of Indian Evidence Act  
& g-mail copies  
Ex.D.19  
Ex.D.20 : Certified copy of the General Power of  
Attorney  
Ex.D.21 : Certified copy of the judgment passed in  
OS No.7819/99  
Ex.D.22 : Certified copy of the delivery receipt

Ex.D.23 : Certified copy of the written statement in  
O.S No.7819/90  
Ex.D.24 Certified copy of the memorandum of RFA

(PADMA PRASAD)  
LVII ACMM, BENGALURU.