

## K.A.Narayanaswamy vs C.Veeranna Gowda on 1 June, 2018

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

Dated this the 1st day of June - 2018

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

C.C.NO.16598/2015

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	K.A.Narayanaswamy, S/o.Late.K.N.Anjanappa, Aged about 38 years, R/at No.133/A, 2nd Cross, 1st Main Road, Kengeri Saw Mill Road, Kote, Bengaluru-60.
		(Rep. by Sri.M.G.Suresh Holla, Advocate)
	V/S	
Accused	:	C.Veeranna Gowda, S/o.V.Channappa, Aged about 39 years, R/at No.28, 2nd Cross, 1st Main Road, Vinahakanagar, Bengaluru-60. Also at: No.1927, Murali Nilaya, 2nd Cross, 4th Main Road, Kengeri Satelllite Town, Bengaluru-60.
		(Rep.by Sri.B.G.Rajashekar & Associates, Advocates)

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
Judgment	2	C.C.16598/2015

PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is Acquitted.
DATE OF ORDER	:	01.06.2018.

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

## JUDGMENT

The complainant has presented the instant complaint against the accused on 18.05.2015 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque amount of Rs.12 lakhs.

2. In brief, the complainant case is:

The complainant and accused were known persons. The accused on 04.09.2014 for his needs borrowed sum of Rs.12 lakhs from complainant and agreed to repay the same within 4 months from the date of availment and failed to keep up his words. On persistent demand made by the complainant, towards repayment of the said amount, the accused got issued three cheques bearing No.006521, dated:24.02.2015 drawn for Rs.5 lakhs, cheque bearing No.006522, dated:06.04.2015 drawn for Rs.3 lakhs and another cheque bearing No.006523 dated:06.04.2013 drawn for Rs.4 lakhs, in all Rs.12 lakhs, all the cheques are drawn on Corporation Bank, Kengeri Satellite Town Branch, Bengaluru in favour of the complainant.

The complainant has further contended that, reposing faith on the accused and at his instruction, the complainant has presented the said cheques for encashment with his banker viz., Vijaya Bank, on 07.04.2015, but for the shock and surprise of the complainant, the said cheques were returned unpaid with an endorsement dated:08.04.2015 stating "Funds Insufficient". Thereafter, the complainant made several efforts to contact the accused, but the same ended in futile. Thereafter, he caused legal notice to the accused on 16.04.2015 by R.P.A.D and the same came to be served upon accused on 21.04.2015. Thereafter, the accused on 28.04.2015 caused untenable reply. Since, the accused has not paid the money covered under the cheques, thereby, the accused committed the offence punishable under Section 138 of Negotiable Instruments Act. After compliance required mandatory provisions filed the present complaint.

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

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

5. To prove the case of the complainant, he himself choosen to examined as PW.1 and got marked Ex.P1 to P13. The PW.1 is also choosen to examine one witness by name N.Shivakumar as PW.2. The PW.1 and PW.2 were subjected for cross-examination by the advocate for the accused.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and the answer given by him was recorded. In support of the defence, the accused himself was examined as DW.1 and got marked Exs.D1 to D3 and also subjected for cross- examination by the advocate for the complainant.

7. Both side counsels have submitted their detailed written arguments.

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

1) Whether the complainant proves beyond the reasonable doubt that, he lent sum of Rs.12 lakhs to the accused, and in turn, for its repayment the accused got issued Exs.P2 to P4 - cheques bearing No.006521, dated:24.02.2015 for Rs.5 lakhs, cheque bearing No.006522 dated:06.04.2015 for Rs.3 lakhs and cheque bearing No.006523 dated:06.04.2015 for Rs.4 lakhs, in all Rs.12 lakhs, all the cheques are drawn on Corporation Bank, Kengeri Satellite Town Branch, Bengaluru?

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

3) What Order?

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

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

#### REASONS

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

PW.1 apart from filing the affidavit evidence, by reiterating the complaint averments and got marked Exs.P1 to P13, which are:

a) Ex.P1 is the loan agreement dated:04.09.2014 executed by the accused in favour of complainant.

b) Ex.P1(a) to P1(d) are the signatures of accused herein and two witnesses.

c) Exs.P2 to P4 are the cheques bearing No. 006521, 006522 and 006523 issued by the accused for sum of Rs.5 lakhs, Rs.3 lakhs and Rs.4 lakhs respectively dated:24.02.2015 and 06.04.2015 drawn on Corporation Bank, Kengeri Satellite Town Branch, Bengaluru.

d) Exs.P2(a) to P4(a) are the alleged signatures of accused.

e) Exs.P5 to P7 are the Bank Memos dated:08.04.2015.

f) Ex.P8 is the Legal Notice dated:16.04.2015.

g) Exs.P9 and P10 are the Postal receipts.

h) Ex.P11 is the Postal Acknowledgment Card.

i) Ex.P12 is the unclaimed R.P.A.D cover, and

j) Ex.P13 is the reply notice dated:28.04.2015 issued by the accused through his counsel to the complainant counsel.

11. Apart from the above, the complainant chosen to examined the PW.2, the witness who filed the affidavit stated that, the accused for the development of his house owned by him got obtained loan of Rs.12 lakhs on 04.09.2014 and undertakes to repay the same with interest within 4 months, on that day, he executed the Ex.P1 - Loan Agreement, wherein, the PW.2 got signed as the 1st witness and another witness by name Ramanji was also signed, and identified his signature at Ex.P1(b) and another witness signature at Ex.P1(c) and identified the signature of the accused at Ex.P1(a). The PW.1 and 2 were subjected for cross-examination by the advocate for the accused.

12. The DW.1 apart from denying the allegations made against him while recording plea as well as accused statement under Section 313 of Cr.P.C. put forth his defence by way of cross-examination to the PW.1 and PW.2, chosen himself to examined as DW.1. In his affidavit evidence, he stated in brief that:

There was no transaction between the complainant and accused, but they were doing real estate business and the complainant for a guarantee received the questioned cheques and misused the same, when he caused legal notice, then only he came to know about the misuse of cheques. The said cheques were issued to the complainant in respect of the land deal and the said deal did not fructify on false presumption that, he received sum money, the complainant has fabricated the document and misused the cheques.

13. The DW.1 also contended that, he is staying in the rented house and he has no own house, his house was sold much earlier in the year 2011 itself, contrary to the same, the complainant filed the false case stating that, for the development of his own house borrowed the alleged loan, the complainant has not informed as to when he has given the amount and whether it is one payment, but produce the false document by shown it as loan agreement that too unregistered, but stamp paper is obtained for affidavit. The DW.1 also produced the documents at Exs.D1 to D3. They are:

a) Exs.D1 and D2 are the certified copies of registered sale deeds dated:16.08.2007 and 24.01.2011 which are earlier purchased by the accused and in turn, he sold the same to one Venkatesh.M.

b) Ex.D3 is the Encumbrance Certificate depicts the sale deed at Ex.D2.

The DW.1 was subjected for cross-examination by the advocate for the complainant.

14. The complainant based on the Ex.P1 - Loan agreement dated:04.09.2014 brought the present case contending that, the accused borrowed loan of Rs.12 lakhs and for its repayment issued the alleged questioned cheques Exs.P2 to P4. The accused, at the 1st instance caused reply notice at Ex.P13. Wherein, also he denied the borrowing of loan and execution of loan agreement, but specifically contended that, the accused had given the cheque in question in respect of some land dealings as security for payment of profits and the PW.1 has no capacity to lend the alleged loan of Rs.12 lakhs and misused the cheque issued by the complainant which was given as security, as demanded by the complainant regarding payment land deals which did not fructify. The said real estate business was done by the complainant and accused jointly and the complainant was also received one blank e-stamp paper, there is no liability on the part of the accused to do the same and made the false claim.

15. From the defence taken by the accused at the earliest point of time till the end, it made clear that, the accused harping on the financial capacity of the complainant and borrowing of the alleged loan of Rs.12 lakhs and issuance of Exs.P2 to P4 cheques and execution of Ex.P1 loan agreement. Therefore, whatever the initial presumption drawn in favour of the complainant as per Sections 118 and 139 of Negotiable Instruments Act, it is subject to prove the contrary. In view of the strong defence taken by the accused coupled with documentary evidence on record, it is the reverse burden casted upon the complainant to prove the lending of alleged loan of Rs.12 lakhs and execution and issuance of Exs.P2 to P4 cheques along with Ex.P1 loan agreement.

16. Since the accused has touched the financial capacity of the complainant, it is him to establish his financial capacity to lend the huge extent of loan of Rs.12 lakhs which is accountable money or not lies on the complainant. In that regard, it is relevant to cite the decision reported in AIR 2011 (NOC) 75 (KAR) (Amzad PashaV/s. H.N.Lakshmana). Wherein, it was held by the Hon'ble Apex court that:

(B) Negotiable Instruments Act (26 of 1881). S. 138 -

Dishonour of cheque - Accused alleged to have taken loan from complainant - Complainant has not placed any evidence to show that he had financial capacity to lend substantial amount of Rs.4,50,000/- - Admittedly no document evidencing the loan transaction has come into existence - Case of complainant that he had lent Rs.4,50,000/- to the respondent is highly impossible and not acceptable - None of witnesses in presence of whom loan amount was paid by complainant examined by complaint - Adverse inference can be drawn against complainant - Accused liable to be acquitted".

In another decision reported in Criminal Appeal No.2402 of 2014, between K.Subramani V/s K.Damodara Naidu, the Hon'ble Apex court held that:

"The Hon'ble Apex Court confirmed the Judgment of Trial Court acquitting the accused on the ground of capacity to pay the amount of cheque. In the above said ruling the Trial Court acquitted the accused on the ground that the complainant had no source of income to lend sum of Rs.14,00,000/-. In the appeal the 1st Appellate Court set aside the order and remanded the matter to the Trial Court to give an opportunity to complainant to prove the same. The accused went in appeal before the Hon'ble Apex Court and the Hon'ble Apex Court has set aside the order of the 1st Appellate Court and upheld the acquittal order passed by the Trial Court".

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

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

17. As per the above said dictums, it is bounden duty of the complainant to establish his financial capacity on account of the strong probable defence of denial taken by the accused.

18. On going through the legal notice, complaint and affidavit evidence, it does not disclose the fact that, when the accused requested for the huge loan of Rs.12 lakhs and in respect of which property, the accused wishes to make development and on which source the complainant has mobilized the funds of Rs.12 lakhs, and on whose presence, he lend the said huge money to the accused is not been explained. The said explanation is warranted as the accused, at the 1st instance prior to filing the complaint by way of issuing reply notice at Ex.P13 got denied and disputed the borrowing loan and issuance of alleged cheques. The non-mentioning of the said particulars, there is no explanation forthcoming from the side of the complainant.

19. It is significant fact to note that, without any proper pleading's all of sudden during the course of the evidence of PW.1, he introduced the Ex.P1- loan agreement dated:04.09.2014. In that regard, the existence of the said loan agreement, there was no proper pleading or information given to the accused for take up specific stand in that document. But, the accused was very diligent and specifically contended in his reply notice that, blank signed e-stamp paper was taken by the complainant from the accused, and there is no liability of the accused, in view of taking the blank e-stamp paper and cheques. Therefore, it is the complainant expected to fair and disclose the true facts of the material facts in order to determine the dispute involved in the present case effectively. The non explanation regarding existence of Ex.P1 either legal notice or in the complaint as well as affidavit evidence, no satisfactory explanation forthcoming from the side of PW.1.

20. On going through the rival contention of the parties, the fact that, the complainant and accused are known to each other, moreover they were childhood classmates are not in dispute. The fact that, the address of the complainant and accused made mentioned in the cause title address is not in



inspite of disclosing the source of money or show the financial capacity regarding mobilization or possession of huge money of Rs.12 lakhs, he solely depend upon the said witnesses. In that regard, he choosen to examined the PW.2.

25. On meticulous reading of the affidavit evidence of PW.2, he does not clarified whether, he was present at the time of lend the loan of Rs.12 lakhs to the accused on 04.09.2014. But his affidavit evidence reflects, he is 1st witness to the said loan agreement and identified his signature. He subjected for cross-examination. Wherein, he deposed that, for the purpose of repair the house of the accused borrowed the said money. In his cross-examination he deposed that, he does not know the address of the accused and denied the suggestion that, BDA was allotted the said house to the accused and does not known the measurement of the said house. But he only stating that, in the house the complainant gave Rs.12 lakhs to the accused, at that time, he along with Ramanji were present. The PW.2 in his cross-examination is also deposed that, at the time of paying of money, one agreement was prepared and he does not remember who brought the stamp paper, but it was typed and he does not know, who typed the same, and he read out the said agreement. It was suggestion made to him that, no loan of Rs.12 lakhs were paid to the accused, and the stamp paper taken by the complainant from the accused for preparing affidavit and obtained the signature on the same and prepared the loan agreement. No doubt, it was the suggestion made by the accused denying the issuance of loan and execution of Ex.P1 loan agreement.

26. On meticulous reading of the evidence of PW.2 affidavit cum the cross-examination, it does not disclose the issuance of Exs.P2 to P4 cheques in favour of the complainant by the accused. Even, in the cross-examination also nothing has whispered. From which, it made clear that, to prove the execution of Ex.P1, the complainant probable examined the PW.2, when the PW.2 is not more enough to prove the execution and handed over the money of Rs.12 lakhs to the accused, it is him to examine one more witness Ramanji, who alleged to be present at the time of said transaction as contended by the PW.1 during his cross-examination. The availability of the said Ramanji are not examination of him in support of the case of the PW.1 is also one of the draw back. Moreover, in the presence of those witnesses, the Ex.P1 was executed is not been contended in the pleadings of the complaint.

27. Apart from that, the PW.1 during the course of his cross- examination in regard to Ex.P1 has deposed as follows:

"-1 , ÁÖAYİ YÉÄYÄgiÉÄÄß DgÉÆÄ RjÄç¹gÄÄvÁÛgÉ. -1gÄ°è "ÁAqİ YÉÄYÄgiÉÄÄß PÉ. ÉÁgÁAiÄÄt , Áé«Ä, vÄAzÉ ¯ÉÄmİ PÉ.JÉİ. CAdÉÄYÄà RjÄç¹gÄÄvÁÛgÉAzÄÄ ÉÄªÄÄÆzÄÄ EzÉ JAzÄgÉ , Äj. -1gÄ°è ªÉÆzÄ®ÉÉ YÄnð ÉÄÉAzÄÄ vÉÆÄj¹zÄÄY 2ÉÉÄ YÄnð AiÄiÁgÄÄ E®è JAzÄÄ vÉÆÄj¹zÉ JAzÄgÉ , Äj. -1gÄ ªÉÆzÄ®ÉÉ YÄÄlzÄ°è ÉÄÉÄß , Ä» E®è JAzÄgÉ , Äj. , ÁÖAYİ YÉÄYÄgiÉÄÄß , Ä®zÄ PÄgÁgÄÄ YÄvÄæ vÄAiÄiÄj , Ä®Ä RjÄç¹®è JAzÄgÉ , ÄjAiÄÄ®è. MAZÄÄ YÄæªÄiÄt YÄvÄæ §gÉAiÄÄ®Ä , ÁÖAYİ YÉÄYÄgiÉÄÄß RjÄç¹ CzÄgÄ°è , Ä®zÄ PÄgÁgÄÄ YÄvÄæªÄÉÄÄß vÄAiÄiÄj¹ "ÁAqİ YÉÄYÄgiÉÄÄß zÄÄgÄÆYÄAiÉÆÄÜÄ ªÄiÄrPÉÆArzÉYÄÉÄzÄgÉ , ÄjAiÄÄ®è."



28. The Ex.P1 stamp paper was produced by the accused and in the Ex.P1 it also clearly mentioned that, it was purchased in the name of complainant herein and the 1st party has mentioned in the said document, is also the complainant and the particulars of the 2nd party has not been mentioned at Ex.P1. Even, the PW.1 has admitted that, his signature is not found in Ex.P1 loan agreement and it was not purchased for prepare the loan agreement, but it was purchased or prepared the affidavit and then the PW.1 by creating the loan agreement and produced before this court. On comparative reading of the Ex.P1 together with the above testimony of PW.1, it clearly depicts that, as urged by the PW.1 the said stamp paper was not purchased in the name of the accused. Even, the purpose of purchase and involved in respect of the said transaction is also not been mentioned. The Ex.P1 clearly discloses at description of the document, it discloses only for affidavit not for the loan agreement. Though, the PW.1 has contended that, the accused has purchased the stamp paper, but he does not discloses that, he purchased the said stamp paper in his name. If at all, the accused purchased the stamp paper definitely, whether it was in his name or not been disclosed by the PW.1. If, the accused purchased the Ex.P1 definitely, it was for the purpose of affidavit not for the purpose of loan agreement. No doubt, the accused not disputed the signature at Ex.P1, but contended that, he purchased the blank e-stamp paper for the purpose of affidavit in respect of the real estate transaction was given by him along with the cheques to the complainant. The said contention of the accused has to be accepted as the complainant has fails to discloses that, the Ex.P1 is not purchased in the name of the accused. Moreover, when the complainant himself was the party to the Ex.P1 and the said agreement was bilateral in nature, how he is exclude signatory to the Ex.P1 is not been explained. Admittedly, the signature of the complainant is not in Ex.P1. Even, the address of the witnesses is also not been found at Ex.P1. Even, the signature of PW.2, which is affidavit and the Ex.P1(b) is also not almost similar. Without mentioning the address and particulars of the witnesses, the complaint examined the PW.2 in order to prove the execution of Ex.P1 and the same is not proved by the complainant. If at all, the accused got executed the Ex.P1 for obtained the loan for the purpose of development of his house definitely, the best particulars of the house number or property number or any particulars would have been collected by the complainant, but without doing so, simply mentioned the name of the 'Murali Nilaya'. On going through the suggestion made by the accused as well as the evidence of DW.1, it made clear that, as per Ex.D1 the accused got purchased the house property bearing No.1670/44 measuring 20X30 feet, land with the built up the area for sum of Rs.10 lakhs on 16.08.2007. The same house was sold by him to one Venkatesh.M as per Ex.D2 on 24.01.2011 for sum of Rs.10,45,000/-, and the same has been reflected in the encumbrance certificate at Ex.D3. From the Exs.D1 to D3 it made clear that, as on the date of alleged lent of loan on 04.09.2014 the accused was not the owner or in possession of the house described in Exs.D1 to D3. Therefore, how the complainant has contended that, for the development or construction of the house, the accused got the loan of Rs.12 lakhs from the complainant is creates doubt in respect of the very transaction put forth by the complainant.

In a decision reported in 2010 (2) DCR 80 Karnataka High Court (Matheson Bonsanquet V/s. K.V.Manjunatha). Wherein the Hon'ble Court held that:

"In a criminal case, the complainant has to prove beyond the reasonable doubt in his case against the accused as alleged in his complaint but not a case which is contrary to one alleged in the complaint. Further, it is also held that, cheque was issued as

security for performing his part of contract entered into between himself and the complainant and further it is also not the case of the complainant that, the accused did the breach of contract then no offence arises under Section 138 of Negotiable Instruments Act".

The principle of law laid down in the above decision is aptly applicable to the case on hand.

In a decision reported in ILR 2006 KAR 3579, (M/s. Sathavahana Ispat Ltd., V/s. Umesh Sharma and another). Wherein, the Hon'ble High Court of Karnataka clearly held that:

"The cheque issued in respect of uncertain future liabilities would not attract prosecution under Section 138 of Negotiable Instruments Act, though the right to recover the amount in a Civil Forum will not get affected".

The principle of law laid down in the above decision is also applicable to the facts of the case.

Further in a decision reported in ILR 2008 KAR 4629 (Shiva Murthy V/s. Amruthraj). Wherein, the Hon'ble Court held that:

"On the date of the cheque, if no consideration was paid or if a loan was taken on a particular date and in discharge of the same the cheque was issued on the later date, then the presumption under Section 118(a) of the Negotiable Instruments Act stands rebutted".

29. The principles of law laid down in the above decisions also applicable to the facts of the case. In the instant case, as appreciated above, it clearly manifested that, without any obligation from the side of the accused, as well as without narrating proper grounds, as to how, accused is liable to pay amount covered under the cheques alleged to be issued by the accused is also not demonstrated by the complainant satisfactorily. On the contrary, it can presume that, the said cheques were possessed by the complainant from the unexplainable source, and falsely projected the case and failed to prove the same. Hence, there is no question of drawing presumption under Section 118(a) or 139 of the Negotiable Instruments Act, even though the signatures in Exs.P2 to P4 is admitted by the accused. Just because, the cheques bares the signatures of the accused, that, will not mandate the court to draw the presumption under Section 118 of Negotiable Instruments Act.

At this stage, this court relies upon the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

"Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, his admission in his evidence that, the cheque in question bares his signature would not be sufficient proof of the fact that, he delivered the said cheque to the complainant and the latter received it from the former".

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

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

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

31. The principle of law laid down in the above decisions is applicable to the facts of this case. In the case on hand also, as discussed above, the complainant has failed to prove with cogent evidence as to the lending of loan of Rs.12 lakhs to the accused. Thus, that fact itself is sufficient to infer that, accused is able to rebut presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

In a decision reported in AIR 2006 Supreme Court 3366 (M.S.Narayana Menon Alian Mani V/s. State of Kerala and another). The Hon'ble Apex court held that:

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

32. In this case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, he is not liable to pay Exs.P2 to P4 cheques amount of Rs.12 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the accused has borrowed the cheques amount and he is legally liable to pay the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to initiate a proceeding against the drawer of the cheques, who is not at all liable to pay the cheques amount. The accused has taken his defence at the earliest point of time, while record accusation and statement under Section 313 of Cr.P.C. by way of denial. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheques for discharge of liability of Rs.12 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

33. From the above elaborate discussions, it very much clear that, the complainant has failed to adduce cogent and corroborative evidence to show that, accused has issued cheques Exs.P2 to P4 in discharge of his legally payable debt for valid consideration. Hence, rebutted the legal presumptions under Section 139 and 118 of Negotiable Instruments Act in favour of the accused.

34. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheques pertaining to the account of the accused is dishonoured and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied, then it has to be presumed that, cheques in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases. Now, it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

35. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the presumption envisaged under Section 138 of Negotiable Instruments Act. The complainant has failed to discharge the initial burden to prove is contention as alleged in the complaint. Hence, the complainant has not produced needed evidence to prove that, amount of Rs.12 lakhs legally recoverable debt. Therefore, since the complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the complainant in its entirety without the support of the substantial documentary evidence pertaining to the said transaction. The complainant fails to prove its case beyond all reasonable doubt.

36. As discussed above, it does not required to discuss other thing as the complainant at the inception failed to demonstrate the financial capacity and lending of money to the accused as alleged by him. Therefore, securing the cheques through unexplained source is not ground to recover the said money. The compliance of mandatory provision does not create any liability on the accused to pay the money covered under the cheques. It is the complainant has to establish her case beyond the proof, but the accused has rebutted the statutory presumptions required under Section 118 and 139 of Negotiable Instruments Act.

37. From the appreciation of the materials coupled with oral evidence of the parties, it made clear that, the complainant has utterly fails to demonstrate the execution of Ex.P1, therefore, through which the complainant without having any monetary source or mobilization of funds paid sum of Rs.12 lakhs to the accused is highly impossible and not acceptable. The logic behind the complainant brining the Ex.P1 or the payment of alleged loan is not acceptable and not proved by the complainant. No doubt, during the course of cross-examination of PW.1 as well as from the inception the accused has taken the contention that, the cheques were taken by the complainant in blank as security. It is not his contention, earlier or during the cross of PW.1 that, the said cheques were not signed by him, but during the course of his cross-examination, he took up inconsistence defence that, his signature found at Exs.P2(a) to P4(a) are not of him. If, he was very consistent in regard to denying the signature would have been state in the reply notice as well as during the cross-examination of PW., but not choosen todo so. Mere denial of his signature does not amounts that, it is not his signatures. That, the PW.1 admitted his signature at Ex.P1(a). Therefore, the signature found at Exs.P2(a) to P4(a) cannot be considered as not the signature of the accused. Any how, the complainant herein has utterly fails to prove the financial capacity regarding passing of consideration of Rs.12 lakhs to the accused on 04.09.2014. Moreover, he being unemployed without possessing money, how it possible to possess and lent the huge sum of Rs.12 lakhs to the accused is

depreciated and as contended by the accused the e-stamp paper and the blank cheques issued by the accused would have been misused by the complainant for suit his convenience and in order to recover illegal unaccounted money from the accused, filed the false case. The very act of the complainant has to be depreciated and the complainant by misusing the court machinery though, he not possessed the money of Rs.12 lakhs, as filed the false case stating that, he handed over Rs.12 lakhs to the accused for the purpose of development of his house.

38. Moreover, the accused is not the owner of the house and no house stands in his name, how it possible, he come forward to lend the huge sum without verifying the documents is also not been explained. Moreover, the complainant has misused the e-stamp paper and cheques obtained from the accused from unexplainable source and filed the present case for recover the money. The very act of the complainant is to be condemned by imposing penalty on him as per Section 250(2) Cr.P.C. as he prosecuted the matter against the accused without any base or logic and misused the precious public time of the court. If, this kind of litigation is not nip in the bud definitely, the person like complainant would misuse the Negotiable Instruments by using the court machinery for the satisfaction of their whims and fancies. Therefore, the conduct of the complainant has to be depreciated. Apart from acquitting the accused, the fine has to be imposed on the complainant at Rs.10,000/-. If, the complainant fails to pay the said sum within appeal period, then, it may be recover as land revenue even by using coercive steps. If, that is done it will meet the ends of justice and massage to the people like complainant who misused the cheque and court.

39. In the case on hand, the accused has clearly made out a probable case in respect of his non-liability to pay the cheques amount mentioned in Exs.P2 to P4 and that, the cheques Exs.P2 to P4 were actually issued for security in respect of a real estate business. Therefore, it is considered view of this court that, the accused has to be acquitted and there is no bonafide reason in filing the present complaint, the mode adopted by the complainant has to be depreciated by imposing fine of Rs.10,000/-. As discussed above the complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

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

ORDER Acting under Section 255(1) of Cr.P.C. the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

Further, as per Section 250(2) of Cr.P.C. the complainant without any prima facie grounds made the false allegations against the accused and prosecuted the matter all along, hence, he shall pay the fine of Rs.10,000/- within 30 days. The said fine amount shall be payable to the accused as compensation.

If, the complainant failed to pay the fine within stipulated period, than the same shall be recovered as land revenue.

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

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 1st day of June - 2018)  
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : K.A.Narayanaswamy  
PW-2 : N.Shivakumar

List of Exhibits marked on behalf of Complainant:

Ex.P1 : Loan Agreement  
Ex.P1(a) to P1(d) : Signatures of accused and witnesses  
Exs.P2 to P4 : Original Cheques (4 Nos.)  
Exs.P2(a) to P4(a) : Signatures of accused  
Exs.P5 to P7 : Bank endorsements  
Ex.P8 : Office copy of legal notice  
Exs.P9 & P10 : Postal receipt  
Ex.P11 : Postal Acknowledgment card  
Ex.P12 : Unserved R.P.A.D cover  
Ex.P13 : Reply notice

List of Witnesses examined on behalf of the defence:

DW.1 : C. Veeranna Gowda List of Exhibits marked on behalf of defence:

Exs.D1 & D2 : CC of Sale deeds  
Ex.D3 : Encumbrance Certificate

XXIII Addl. Chief Metropolitan  
Magistrate, Bengaluru.

01.06.2018.

Comp -

Accd -

For Judgment

Judgment pronounced in the open court vide separate order.

\*\*\*\*\* ORDER Acting under Section 255(1) of Cr.P.C. the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

Further, as per Section 250(2) of Cr.P.C. the complainant without any prima facie grounds made the false allegations against the accused and prosecuted the matter all along, hence, she shall pay the fine of Rs.10,000/- within 30 days. The said fine amount shall be payable to the accused as compensation.

If, the complainant failed to pay the fine within stipulated period, than the same shall be recovered as land revenue.

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

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.