

Sri. Murali Mohan vs Smt. B.S.Uma on 17 December, 2021

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CC.No.20964/2016 J

THE COURT OF THE XVI ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY

Dated:- This the 17th day of December, 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.20964/2016

Complainant : Sri. Murali Mohan,
S/o. C.Balu,
Aged about 33 years,
R/at No.169, 43rd Cross,
8th Block, Jayanagar,
Bangalore -560 070.
Rep. by L.Dayananda.,Adv.,)

- Vs -

Accused : Smt. B.S.Uma,
W/o. Late.Sri.B.S.Ramanath,
Aged about 53 years,
R/at No.515, 10th Main,
BHCS Layout,
Bangalore - 560 061.
(Rep. by Sri. Narasimharaju,
Adv.,)

Case instituted : 25.08.2016
Offence complained : U/s 138 of N.I Act
of
Plea of Accused : Pleaded not guilty

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Final Order : Accused is convicted
Date of order : 17.12.2021

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, accused is known to him from the past 4 to 5 years and the accused have been introduced to him by H.Krishna Murthy who is the uncle of the accused and the accused often frequently visiting to him for financial help and was sincerely repaying the loan amount taken from him and accused approached him on 9.1.2016 and requesting him for a hand loan of Rs.30 Lakhs to meet her financial commitments and accused also promised him to repay the said loan amount within period of two months and on 13.01.2016 the accused approached him and requested to pay an amount of Rs.30 lakhs and after verifying the need of the accused he has paid a sum of Rs.30 lakhs to the accused on CC.No.20964/2016 J 13.01.2016 by way of cash and accused have admitted and acknowledged the cash of Rs.30 Lakhs from him and after receipt of the said amount the accused promised him to return the amount within two months. The complainant further contends that, after two months he visited and demanded the payment of the loan amount on ie., 20.3.2016 and on that day the accused have issued a cheque bearing No.327551 dt: 20.3.2016 for a sum of Rs.30 Lakhs drawn on Canara Bank, Padmanabhanagar branch, Bangalore to him as a discharge and also assured him that, the said cheque will be honoured on its presentation and as per the assurance of the accused he presented the said cheque for several times, but the said cheque bounced back with instructions "Funds Insufficient" to honour the cheque, thereafter he visited the accused several times and intimated her regarding insufficient balance in her bank account, for that the accused requesting him for further extension of time for repayment and accused also assured him that, she will deposit sufficient amount in her bank balance to honour the cheque, believing the version of the CC.No.20964/2016 J accused, he waited for 3 months hoping that she will going to repay the amount, and as per the instructions of the accused he presented the cheque for encashment through his banker ie State Bank of India, J.P.Nagar Branch, Bangalore on 16.6.2016, but again it returned dishonoured as "Funds Insufficient" and thereafter left with no other alternative, he got issued legal notice dt: 12.07.2016 through RPAD calling upon her to pay the cheque amount and the said notice sent through RPAD has been duly served on the accused on 13.7.2016, after service of legal notice the accused caused reply notice dt: 2.08.2016 denying the averments made in the demand notice, in order to cheat him the accused have joined her hands with her uncle H.Krishna Murthy and his son to file false complaint against him and he will give fitting reply to his allegations and there is no truth in that complaint and he appeared before the police and gave his version to the police.

3. The complainant further contends that, in order to cheat him by giving the reply notice stating CC.No.20964/2016 J that, the said H.Krishna Murthy had land transaction with one Mruthyunjaya and the said Mruthyunjaya has paid Rs.20 Lakhs to him on behalf of H.Krishna Murthy, but he is denied the said allegations as false and baseless, he has not received any amount either from Mruthyanjaya or from H.Krishnamurthy and has not received any amount of Rs.4 Lakhs from H.Krishnamurthy in March 2016.

4. The complainant further contends that, the said Krishna Murthy has sold some of his property in Sy.No.52/2, and 53/2 to one Ramesh on 19.3.2015, but he is not the purchaser of the above said property and he is only a witness to the said transactions and he denied the contents of reply notice

and he submits that, he has purchased 26 ½ guntas of land in sy.no.106/1, and 106/2, from the accused's uncle for a valuable consideration, the said amount was paid by him to the accused's uncle ie., H.Krishna Murthy on 12.5.2015 and he further contends that, the purchase of land from H.Krishna murthy is nothing to do with the loan amount of CC.No.20964/2016 J Rs.30 lakhs taken by the accused on 13.1.2016 and the accused along with her uncle Krishnamurthy hatched a conspiracy with the help of police in order to cheat him and has created a false grounds in order to defeat his claim. Hence the complainant has filed this present complainant against the Accused for the offence punishable U/s.138 of Negotiable Instruments Act.

5. 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 oral evidence, P.W.1 has relied upon the documentary evidence as per Ex.C.1 to C.8 i.e., original Cheque dt:20.03.2016 as per Ex.C.1, the signature on the said cheque identified by P.W.1 is that of the accused as per Ex.C.1(a) the Bank Memo as per Ex.C.2, Bank challan as per Ex.C.3, the office copy of the Legal Notice as per Ex.C.4, two receipts as per Ex.C.5 and C.6, complaint settled reply as per Ex.C.7, reply notice as per Ex.C.8.

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

7. The complainant himself examined as PW.1 and filed his affidavit in lieu of examination in chief and has produced as many as 8 documents and marked as Ex.C.1 to C.8 and complainant has also examined his father by name Sri.C.Balu S/o.Changa Reddy as PW.2 and has produced documents ie., certified copy of the Deed of Transfer of membership dt: 24.02.2014 as per Ex.P.9, statement of accounts for the period from 01.01.2014 to 31.05.2014 as per Ex.P.10 and the complainant also got marked the certified copy of the final report in Crime No.124/16 as per Ex.P.11 and closed his side.

8. Thereafter the statement of the accused as required under Sec.313 of the Cr.P.C. has been recorded. She has denied the incriminating evidence CC.No.20964/2016 J appearing against her and has chosen to lead her rebuttal evidence, subsequently the accused herself examined as DW1 and has not produced any documents by the accused and one H.Krishna murthy is examined as DW.2 has produced certified copy of the FIR, complaint, charge sheet and other related documents as per Ex.D.1, certified copy of the Renewal Rental agreement as per Ex.D.2, certified copies of the Sale deeds dt: 12.05.2015 and 19.03.2015 as per Ex.D.3 and D.4, attested copy of the Statement of accounts of ICICI Bank dt:

31.1.2015, 31.07.2015, 31.10.2015, 31.01.2016, 1.05.2016 and 31.07.2016 as per Ex.D.5 to D.10 respectively and closed her side.

9. Heard the arguments by learned counsel for the complainant and accused and perused the materials on record and perused the decisions relied upon by the learned

counsel for the complainant ie.

1) AIR 2019 SC 2446 - Bir Singh Vs. Mukesh Kumar 2) AIR 2019 SC 1876 □ Rohitbhai Jivanlal Patel Vs. State of Gujarat and Anr., CC.No.20964/2016 J The decisions relied upon by the learned counsel for the accused ie. 1) 2015 AIR (Criminal) 36 SC □ K.Subramani vs.. K.Damodar Naidu

2) 2016(2) AKR 419 □ Prabhakar Murthy Vs. G.Shankaraiah

10. 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 arise for consideration are: □

1. Whether the complainant proves that the accused has issued cheque bearing No.327551 dt: 20.03.2016 for an amount of Rs.30 Lakhs drawn on Canara Bank, Padmanabhanagar, Bangalore to discharge legally recoverable debt to the complainant and when the complainant has presented the above said cheques for encashment through his banker but the said cheques have been dishonoured for the reasons "Funds Insufficient" on 16.6.2016 and the complainant issued legal notice to the accused on 12.07.2016 and in spite of it the accused has not paid the cheques amount within prescribed period CC.No.20964/2016 J there by the accused has committed an offence U/s.138 of the Negotiable instruments Act?

2. What Order?

11. The above points are answered as under:

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

REASONS

12. 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 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 CC.No.20964/2016 J such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act presupposes 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 date on which cause of action arise to file complaint.

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13. 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.

14. 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, accused CC.No.20964/2016 J is known to him from the past 4 to 5 years and the accused have been introduced to him by H.Krishna Murthy who is the uncle of the accused and the accused often frequently visiting to him for financial help and was sincerely repaying the loan amount taken from him and accused approached him on 9.1.2016 and requesting him for a hand loan of Rs.30 Lakhs to meet her financial commitments and accused also promised him to repay the said loan amount within period of two months and and on 13.01.2016 the accused approached him and requested to pay an amount of Rs.30 lakhs and after verifying the need of the accused he has paid a sum of Rs.30 lakhs to the accused on 13.01.2016 by way of cash and accused have admitted and acknowledged the cash of Rs.30 Lakhs from him and after receipt of the said amount the accused promised him to return the amount within two months. The complainant/PW.1 further testified that, after two months he visited and demanded the payment of the loan amount on 20.3.2016 on that day the accused have issued a cheque bearing No.327551 dt: 20.3.2016 for a sum of Rs.30 Lakhs CC.No.20964/2016 J drawn on Canara Bank, Padmanabhanagar branch, Bangalore and issued to him as a discharge and also the accused has assured him that, the said cheque will be honoured on its presentation and as per the assurance of the accused he presented the said cheque for several times, but the said cheque bounced back with instructions "Funds Insufficient" to honour the cheque. The PW.1/complainant further testified that, thereafter he visited the accused several times and intimated her regarding insufficient balance in her bank account, for that the accused requesting him for further extension of time for repayment and accused also assured him that, she

will deposit sufficient amount in her bank balance to honour the cheque, believing the version of the accused, he waited for 3 months hoping that she will going to repay the amount, and as per the instructions of the accused he presented the cheque for encashment through his banker ie State Bank of India, J.P.Nagar Branch, Bangalore on 16.6.2016, but again it returned dishonoured as "Funds Insufficient" and thereafter left with no other alternative, he got issued legal CC.No.20964/2016 J notice dt: 12.07.2016 through RPAD calling upon her to pay the cheque amount and the said notice sent through RPAD has been duly served on the accused on 13.7.2016, after service of legal notice the accused caused reply notice dt: 2.08.2016 denying the averments made in the demand notice, in order to cheat him the accused have joined her hands with her uncle H.Krishna Murthy and his son to file false complaint against him and he will give fitting reply to his allegations and there is no truth in that complaint and he appeared before the police and gave his version to the police.

15. The PW.1/complainant further testified that, in order to cheat him by giving the reply notice stating that, the said H.Krishna Murthy had land transaction with one Mruthyunjaya and the said Mruthyunjaya has paid Rs.20 Lakhs to him on behalf of H.Krishna Murthy, but he has denied the said allegations as false and baseless, he has not received any amount either from Mruthyanjaya or from H.Krishnamurthy and has not received any amount of Rs.4 Lakhs from H.Krishnamurthy in CC.No.20964/2016 J March 2016.

16. The PW.1/complainant further testified that, the said Krishna Murthy has sold some of his property in Sy.No.52/2, and 53/2 to one Ramesh on 19.3.2015, but he is not the purchaser of the above said property and he is only a witness to the said transactions and he denied the contents of reply notice and he submits that, he has purchased 26 1/2 guntas of land in sy.no.106/1, and 106/2, from the accused's uncle for a valuable consideration, the said amount was paid by him to the accused's uncle ie., H.Krishna Murthy on 12.5.2015 and he further contends that, the purchase of land from H.Krishna murthy is nothing to do with the loan amount of Rs.30 lakhs taken by the accused on 13.1.2016 and the accused along with her uncle Krishnamurthy hatched a conspiracy with the help of police in order to cheat him and has created a false grounds inorder to defeat his claim.

17. In support of his oral evidence, P.W.1 has relied upon the documentary evidence as per Ex.C.1 CC.No.20964/2016 J to C.11 i.e,original Cheque dt:20.03.2016 as per Ex.C.1, the signature on the said cheque identified by P.W.1 is that of the accused as per Ex.C.1(a) the Bank Memo as per Ex.C.2, Bank challan as per Ex.C.3, the office copy of the Legal Notice as per Ex.C.4, two receipts as per Ex.C.5 and C.6 , complaint settled reply as per Ex.C.7, reply notice as per Ex.C.8, certified copy of the Deed of Transfer of membership dt: 24.02.2014 as per Ex.P.9, statement of accounts for the period from 01.01.2014 to 31.05.2014 as per Ex.P.10, certified copy of the final report in Crime No.124/16 as per Ex.P.11.

18. In the present case, there is dispute between the complainant and Accused with regard to their acquittance. It is not in dispute by the accused that, the cheque in question ie Ex.C.1 belongs to her account and signature found at Ex.C.1(a) is that of her signature. The accused has also not disputed that, the cheque in question was presented to the encashment within its validity period and the said

cheque has been returned as dishonoured for the reason of "Funds Insufficient" as per the returned CC.No.20964/2016 J memo dt: 16.6.2016 issued by the concerned bank i.e Ex.C.2, hence as a matter on record it is proved by the complainant that, the cheque in question was dishonoured for the reason of Funds Insufficient. The complainant in order to prove the service of legal notice has produced copy of the legal notice dt:

12.07.2016, postal receipts, settled reply issued by the postal department, reply notice dt: 2.08.2016 given by the accused, postal acknowledgement which are at Ex.C.4 to C.8 respectively. Hence, the legal notice caused by the complainant is within 30 days from the date of receipt of the endorsement from the concerned bank and same was sent through RPAD and it was duly served on the accused. Hence, the complainant has complied all the mandatory requirements as required U/s.138(a) to (c) of N.I.Act and initial presumptions can be drawn in favour of the complainant as required U/s.118 (a) and 139 of N.I.Act.

19. The accused in her defence has denied the financial capacity of the complainant and also the transaction in question and issuance of the cheque CC.No.20964/2016 J in favour of the complainant. The complainant in order to prove his financial capacity has produced certified copy of the sale deed dt: 24.02.2014 executed by his father in favour of one Sri.C.A.Jacob for sale consideration of Rs.36,15,000/□ It is the specific case of the complainant that, the accused approached him on 09.01.2016 and requested him for hand loan of Rs.30 Lakhs for her financial commitment and after verifying the need of the accused he has paid the same on 13.1.2016 by way of cash and accused agreed to return the said amount within two months. The accused during the course of cross examination has questioned the financial capacity of the complainant and the complainant in his cross examination has stated that, the accused approached him seeking loan of Rs.30 Lakhs on 09.01.2016 and in the year 2014 they had sold one flat situated in Jayanagar 4th T Block which was in the name of his father for about Rs.36 to 38 Lakhs and received the said consideration amount through cheque and the said amount was deposited in the account of his father in Karnataka Bank and his CC.No.20964/2016 J father had withdrawn the amount from his account in the year 2014 and gave him the amount in January 2016 for the purpose of lending it to the accused.

20. In order to prove the fact that, the father of the complainant had given Rs.30 Lakhs to him , the complainant examined his father by name Sri.C.Balu as PW.2 and the PW.2 in his evidence stated that, complainant is his son and on 24.02.2014 he have sold his property bearing flat No. A003 in Spartacus apartment situated at Jayanagar 4th T Block in favour of Mr.C.A.Jacob for Rs.36,15,000/□and has received the said consideration amount by way of cheque by depositing the same in his bank account ie Karnataka Bank Ltd. Jayanagar on 28.12.2014 and after encashment of the said cheque he have withdrawn the amount on 03.03.2014 to purchase other property but the said transaction was not materialized so he retained the said amount in his house and thereafter on 13.01.2016 the accused came to his house along with her uncle Krishna CC.No.20964/2016 J murthy and brother Kumaraswamy and requesting the complainant to pay amount of Rs.30 Lakhs to meet her requirements and his son complainant has requested to pay a sum of Rs.30 Lakhs to him as the accused has agreed to return the amount within 2 months considering the request made

by his son he has paid Rs.30 Lakhs to him who in turn paid the money to the accused. In support of his evidence has produced the certified copy of the registered sale deed dt: 24.02.2014 and bank statement issued by Karnataka Bank Ltd., Jayanagar which are at Ex.P.9 and P.10 respectively. The perusal of Ex.P.9 it appears that, the father of the complainant ie PW.2 has sold his flat for sum of Rs.36,15,000/- in favour of one Mr. C.A.Jacob and the sale consideration amount was paid by way of cheque in favour of the father of the complainant ie PW.2 and the perusal of Ex.P.10 it appears that, the sale consideration amount of Rs.36,15,000/- received by the PW.2 was deposited to his account as shown in the Ex.P.10 ie Bank statement pertains to the Karnataka Bank Ltd. Jayanagar Branch, of PW.2. Hence, on careful perusal of the oral and documentary evidence of the CC.No.20964/2016 J complainant and his father and Ex.P.9 and P.10 makes it clear that, the father of the complainant has sold his flat for sum of Rs.36,15,000/- during the year 2014 and the said amount was deposited in the account of PW.2. and the PW.2 has categorically stated that, he had withdrawn the amount from his bank for the purpose of purchasing other property but same was not materialized and has retained the said amount in his house and subsequently paid to his son ie., complainant and in turn he has paid the said amount to the accused.

21. The accused has cross examined the complainant ie PW.1 and his father ie PW.2 in length but nothing has been elicited from them to discard their version that, the father of the complainant ie PW.2 has sold his flat in the year 2014 as per Ex.P.9 and received sale consideration amount of Rs.36,15,000/- by way of cheque. It is true that, the learned counsel for the accused during the course of argument vehemently argued that, the father of the complainant has sold his property in the year 2014 and the alleged loan amount lend to CC.No.20964/2016 J the accused as per the complainant is on 13.1.2016, therefore according to the father of the complainant he has withdrawn the amount from the bank in the year 2014 and the said amount was retained in his house since 2014 to 2016 and the said amount was paid in the year 2016 to the accused , but same cannot be acceptable one as no layman can retain the huge cash amount of Rs.36,15,000/- in the house for a period of two years that too for paying the same to the accused but the line of argument can be acceptable only when in the absence of evidence of the father of the complainant , but the father of the complainant has specifically stated that, the said amount was withdrawn by him for the purpose of purchasing of other property but the same was not materialized so he retained the said amount in his house, in such circumstances unless and until the evidence of PW.2 is tainted with suspicious version , the evidence of PW.2 cannot be discarded. The perusal of cross examination of the PW.2 though he has admitted that, he has not given information to his advocate to prepare his affidavit filed on his behalf and does not CC.No.20964/2016 J know the contents of the affidavit but he has specifically denied the suggestion made to him that, for the first time that too before the court he had seen the accused but the PW.2 specifically stated that, he had seen the accused when she was came to his house in the month of January 2016. The PW.2 has also stated that, he had sold his flat in the month of February 2014 for sum of Rs.36 Lakhs and has received sale consideration amount by way of cheque and had withdrawn the entire amount from his bank account in the month of March 2014 for purchase of other property as he has not found suitable property, hence retained the entire amount in his house for a period of two years. The PW.2 has also stated that, in the month of January 2016 the accused approached and requested the loan amount. It is true that, the PW.2 admitted that, he has not verified the financial capacity of the accused either directly with the accused or to his son and at the time of lending the amount to the accused no documents were

collected from the accused but has denied the suggestion that, if the huge amount of Rs.30 Lakhs paid to the accused, atleast they would CC.No.20964/2016 J have obtained the necessary documents from the accused and falsely deposing that, he has retained Rs.36 Lakhs in his house for a period of two year. Hence, on entire perusal of cross examination of PW.2 nothing has been elicited from him to discard his evidence to the extent that, he has sold his flat as per Ex.P.9 in favour of one Mr.C.A. Jacob for Rs.36,15,000/□and in turn has received the said amount by way of cheque and subsequently he has withdrawn the entire amount from his bank account and in turn has paid an amount of Rs.30 Lakhs to his son.

22. In addition to the above, the accused during the course of cross examination of the complainant has suggested that, complainant doing money lending business by charging more than 10% interest per month and also suggested that, the complainant has lent loan amount to the uncle of accused by name Krishna Murthy and charged interest of 10% and the accused has also examined her uncle by name H.Krishna Murthy as DW.2 who in his evidence has stated that, he has received an CC.No.20964/2016 J amount of Rs.25 Lakhs from the complainant during the year 2012□13, hence it goes to show that, according to the accused the complainant doing money lending business and during the year 2012□13 her uncle has received Rs.25 Lakhs from the complainant but the accused has not produced any documents to show that, complainant is doing money lending business by lending the loan amount on interest at 10% but the fact of receiving of loan amount by her uncle remained as it is , in such circumstances when the accused herself admitted that, her uncle has received Rs.25 Lakhs from the complainant during the year 2012□13, now the accused cannot be permitted to question the financial capacity of the complainant on the contrary the accused herself admitted the financial capacity of the complainant by admitting that, her uncle has received Rs.25 Lakhs from the complainant during the year 2012□13 itself , in such circumstances what ever the cross examination made on behalf of the accused with regard to financial capacity of the complainant is of no relevancy and cannot be acceptable one.

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23. The accused has cross examined the complainant and his father ie PW.1 and PW.2 in length but nothing has been elicited in their cross examinations to disbelieve or discredit their evidence. It is true that, the complainant has admitted in his cross examination that at the time of lending of the loan amount has not collected the documents from the accused but the complainant categorically stated that, the accused has given him cheque after two months from the date of lending of loan to her ie when he went to demand for repayment of the loan amount. The complainant has denied the suggestions that, though he have not lent the any loan amount to the accused and except having seen the accused only in the court and he never seen the accused and that the financial transaction only between Krishna Murthy and the complainant. The complainant has also denied the suggestion that, he used to lend loans to the Krishna Murthy at an interest of 10% and in respect of his financial transaction with Krishna Murthy he had collected the cheque in dispute and house documents of the accused from the said Krishna CC.No.20964/2016 J Murthy and he demanded payment of excess interest from Krishna Murthy and in this regard he got transferred two of his properties in his name and got executed a sale deed dt: 12.05.2016 from Krishna Murthy towards payment of interest. The PW.1 has also denied the suggestion that, on 04.04.2016 he visited the house of Krishna Murthy and

harassed him and his family members physically and mentally and the said Krishna Murthy attempted to commit suicide in his house. The PW.1 has also denied the suggestion that, apart from the cheque in question has also collected a signed blank stamp paper of Rs.100/- from the accused through her uncle at the time of lending the loan to her and on the basis of signed blank stamp paper he have got filed false suit against the accused through her friend one Hemanth.D by creating rental agreement in the said stamp paper by becoming as a one of the witness to the said rental agreement. Therefore on entire perusal of cross examination of PW.1 nothing has been elicited to discard or discredit the evidence of the PW.1 or accept the defence of the accused.

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24. It is true that, the complainant during her cross examination has admitted that, neither his father nor himself have declared in their IT returns about having allegedly advanced the loan amount to the accused but the complainant stated that, he is not an income tax assessee, therefore mere admitting the fact that, neither himself nor his father have declared in their IT returns about lending of loan amount in question may in validates the transaction in question or not is to be taken into consideration. In this regard, it is necessary here to refer the decision of our Hon'ble High court of Karnataka reported in 2019(1) Kar. L.R.185 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat in the said case the Hon'ble High Court of Karnataka held that " Negotiable Instruments Act, 1881 - Sections 138 and 139 -Endorsement 'payment stopped by drawer' - The trial court in the instant case, merely considered a suggestion made from the Accused side in the cross examination of PW.1 that the complainant was an income tax assessee and that he has not CC.No.20964/2016 J declared the alleged loan transaction in his returns and disbelieved the case of the complainant that too, ignoring that legal presumption under section 139 of the N.I. Act, was operating in favour of the complainant. For these reasons, it has to be held that the complainant has beyond reasonable doubt proved the guilt of the Accused punishable under Section 138 of the N.I. Act. As such, the impugned judgment of acquittal passed by the trial court deserves to be set aside and respondent/Accused is liable to be convicted for the offence punishable under Section 138 of the N.I. Act. Hence in view of the principles of law laid down by the Hon'ble High court of Karnataka in the above referred decision, in the present case the complainant has admitted that, neither himself nor his father have declared in their I.T. returns in respect of lending of loan amount to the accused, however, as it is already held in the above that, the complainant has discharged his primary burden by CC.No.20964/2016 J complying the mandatory provisions of Sec.138 of N.I. Act, therefore it is for the accused to rebut the presumption existing infavour of the complainant U/s.139 of Negotiable Instruments Act. Apart from that, the admissions of the complainant with regard to non declaration of the loan transaction in question in his or his father's I.T. Returns, could not by itself draw an adverse inference and to hold that, there was no existence of legally enforceable debt or the presumption as envisaged U/s.139 of N.I.Act is successfully rebutted by the accused. In another decision of Hon'ble Madhya Pradesh High Court decided in C.R.R No.5263/2018 dated: 7.3.2019 in the case of Smt. Ragini Gupta Vs. Piyush Dutt Sharma Gwalior., wherein the Hon'ble High Court held that, "mere non filing of income tax return would not automatically dislodge the source of income of the complainant and non payment of income tax is a matter between the revenue and assessee and if the assessee has not disclosed his income in the income tax return, then the income tax department is well CC.No.20964/2016 J within its right to reopen the assessment of income of

the assessee and to take action as per provisions of Income Tax Act, however non filing of income tax return by itself would not mean that, the complainant had no source of income and thus no adverse inference can be drawn in this regard only because of absence of income tax return". Hence in view of the principles of law laid down by Hon'ble High Court of Madhya Pradesh in the above said decision in the present case also though the complainant has admitted that, neither himself nor his father have declared in their I.T. returns in respect of lending of loan amount to the accused, that itself would not automatically dislodge the source of income of the complainant. Therefore the admissions of the complainant which are elicited in his cross-examination are not helpful for the accused to prove her defence that, in view of non declaration of lending of loan amount income tax documents, by the complainant that itself sufficient to hold that, the complainant has failed to prove the transaction in CC.No.20964/2016 J question cannot be acceptable one.

25. It is suggested by the accused during the course of cross examination of the complainant that, he have filled up the amount in words and figures in the cheque in dispute and forged the signature of the accused in it and presented the same before the court but the said suggestions were denied by the complainant. It is also admitted by the complainant that, has no objection in referring the cheque in dispute to the handwriting expert in respect of the amount written in words and figures in it but though the complainant has admitted has no objection for referring the cheque in dispute to the hand writing expert but the accused has not made any efforts for referring the cheque in question to the handwriting expert, therefore the conduct of the accused in denial of contents of the cheque and signature on the cheque and though the complainant admitted that, has no objection for referring the cheque in dispute for hand writing expert, despite of it the accused has not made any efforts to that effect appears that, the accused has formally denied the CC.No.20964/2016 J contents of the cheque in question and her signature on the cheque. It is also relevant here to mention that, the accused in her reply notice ie., Ex.C.8 has categorically admitted that, her uncle by name Sri.H.Krishna Murthy wanted to borrow Rs.25 Lakhs for his business purpose and requested her to hand over her property papers as security to the loan accordingly she has handed over the original title deeds to her uncle along with the property papers the complainant has also collected a blank signed cheque and a blank stamp paper . Hence, it goes to show that, the accused in her reply has categorically admitted that, the complainant had collected her blank signed cheque from her uncle therefore in view of the said admission it can be held that, the accused has admitted that, the cheque in question belongs to her account and signature found at Ex.P.1(a) is that of her signature, in such circumstances it cannot be held that, the cheque in question has been forged by the complainant and it can be held that, once signature on the negotiable instrument act is admitted, in that circumstances sec. 20 of N.I. Act comes into play i.e. as per Sec. 20 CC.No.20964/2016 J of N.I.Act if the blank or incomplete Negotiable Instrument is given to the holder in due course, it is to be presumed that, she had given authority to the holder in due course to fill up the remaining portion. In this regard, it is relevant here to refer the decision of Hon'ble High Court of Karnataka reported in ILR 2006 KAR 2054 in the case of H.S.Srinivasa Vs. Girijamma and another wherein the Hon'ble High Court held that " a reading of sec.20 of the act which is extracted above reveals that, the words used are ' either wholly blank or having written therein an incomplete negotiable instrument' . The instrument may be wholly blank or incomplete in a particular in either case, the holder has authority to make or complete the instrument as a negotiable one. The authority implied by a signature to a blank instrument is so wide that, the party so signing is bound to be a holder in

due course. Promissory notes are often executed in the name of the payer and left unfilled to be afterwards filled by the actual CC.No.20964/2016 J holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an endorser. Thus, it is seen that, person in possession of an incomplete instrument in material particulars has the authority prima facie to fill it and thus the executants becomes liable to pay the amount due'. In another decision of Hon'ble High Court of Madras reported in 2005 (1) DCR 85 in the case of P.A.Thamatharan Vs. Dalmia cements (B) Ltd., wherein it is held that " Negotiable Instrument Act 1991 - Sec. 138 - dishonour of cheque - plea

-body of cheque was not written by Accused - held it is not mandatory and no law prescribes that, the body of cheque should also be written by the signatory to the cheque, a cheque could be filled up anybody and if it is signed by the account holder of the cheque'. In another decision reported in 1996 Cri. L.J.3099(Guj) :

1997 II Crimes : 1997 (I) CCR 603 wherein the Hon'ble High Court held that "no law provides CC.No.20964/2016 J that, in any case of any negotiable instrument entire body has to be written by maker or drawer only". It is further held that, " when a cheque is admittedly issued blank are incomplete and there is no dispute regarding the signature, it can be presumed that, there is an implied consent for filling up the cheque as when required by holder and get it encashed. Complaint of dishonour of such cheque cannot be held to be beyond the scope of penal provisions of Sec.138". In another decision of Hon'ble Apex court to India reported in (2002) 7 SCC in the case of P.K. Manmadhan Karthra Vs.Sanjeeva Raj., wherein it is held that " As long as signature on the cheque is admitted, whether the ink with which the other particulars are filled up is different or that the hand writing is not that of drawer does not matter. Until rebutted, the presumption that, cheque was issued for consideration exists". In another decision of Hon'ble High Court of Karnataka at CC.No.20964/2016 J Bengaluru in a case of Cri. Appeal No. 1664/2003 C/w. Cri.Appeal No.1663/2003 dated: 18.6.2008 in the case of R.Mallikarjuna Vs. H.R.Sadashivaiah wherein the Hon'ble High Court at para No.19 held that " But, the question is, whether that renders instrument unenforceable. In this regard, it must be observed that, this court similar circumstances in the case of S.R. Muralidar Vs. Ashok G.Y. reported in 3001 (4) KAR. LJ K. 122 referring to the provisions of Sections 20, 138, 139, and 140 of the Act and after interpreting alteration and filling up of the cheque observed thus " The trial court has made much about the difference in ink. Admittedly, Accused cheque is issued bearing signature of the Accused. It is the contention of the defence that, blank cheques issued for the business transactions have been illegally converted as a subject matter to this case fastening false liability..... It is not objectionable or illegal in law to receive a CC.No.20964/2016 J inchoate negotiable instrument duly signed by the maker despite the material particulars are kept blank if done with an understanding and giving full authority to the payee to fill up the material contents as agreed upon. Such a course of action in law cannot vitiate the transaction nor can invalidate the negotiable instrument issued and such transaction fully begins the maker of the negotiable instrument to the extent it purports to declare..... The fact

that, a document executed is inchoate with regard to some of the material particulars would not render such contract invalid nor make the instrument illegal or inadmissible. Voluntarily, if a person were to deliver an inchoate instrument authorizing the receiver to fill up the material contents as agreed upon, the cheque does not get tainted as in admissible nor it amounts to tampering with the material particulars..... In the present case there is no categorical defence version, it is only by CC.No.20964/2016 J conjunctures and surmises, a case is made out from the difference in ink between the signature of the cheque and the other handwritten contents. Therefore in view of the principles of law of Hon'ble Apex court of India and also Hon'ble High Court of Karnataka and Madras referred above, In the present case the Accused has admitted the signature on Negotiable Instrument i.e. cheque and she also admitted issuance of the cheque, it is prima facie proof of authorizing the holder in due course i.e. the complainant to fill up the remaining contents of the Negotiable Instrument, therefore it cannot lie in the mouth of the Accused that, the complainant had misused or fabricated the cheque in question given by her and the defence of the Accused cannot be acceptable one as the instrument i.e., cheque in question cannot be rendered unenforceable merely because the contents have been filled by different ink, as it would not render such instrument illegal or inadmissible, the complainant certainly can base action on it. Therefore the defence of the accused that, the CC.No.20964/2016 J signature on the subject cheque is not of her signature and has not filled up the contents of the cheque in question cannot be acceptable one.

26. In addition to the above, it is also relevant here to mention that, though the accused has denied the lending of loan amount by the complainant and financial capacity of the complainant and has taken specific defence that, the complainant has not produced the documents to show that, he has lend the loan amount in question to her and the cheque in question has not been issued towards discharge of the debt in question. As it is already held in the above that, the complainant has complied the mandatory requirements as required U/s.138(a) to

(c) N.I.Act by producing oral and documentary evidence and the accused has also admitted that, the cheque in question belongs to her account and the signature found on cheque in question is that of the signature of the accused. It is also proved by the complainant that, the cheque in question has been presented to the bank within its validity period and same has been dishonored for want of sufficient CC.No.20964/2016 J funds and thereafter the complainant got issued legal notice to the accused and in turn the said notice was served on the accused, despite of that, the accused has paid the cheque amount to the complainant, in such circumstance even in the absence of documentary evidence with regard to source of funds, a presumption can be drawn in favour of the complainant with regard to existence of debt or legally recoverable debt. In this regard, 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 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 an adequate proof of existence of debt or liability. In another CC.No.20964/2016 J 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 is statutory presumption under S.139 comes into play and the same was not rebutted even with regard to the materials submitted by 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 CC.No.20964/2016 J Court of India, reported in CRIMINAL APPEAL NO. 508 OF 2018 DT 15th 03rd 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 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 CC.No.20964/2016 J 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.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 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 CC.No.20964/2016 J 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 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 CC.No.20964/2016 J 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 Apex Court of India

reported in ICL 2021(2) SC 529 in the case of M/s Kalamani Tex Vs. P. Balasubramanian, dt:

10.02.2021, wherein the Hon'ble Apex Court held that, "once the accused had admitted his signatures on the cheque and deed, the trial court ought to have presumed that, the cheque was issued as consideration for legally enforceable debt." In another decision of Hon'ble Apex Court of India in Crl. Appeal No.132/2020 in the case of D. K. Chandel Vs. M/s Wockhardt (L) wherein it is held that, "Production of account books / cash book may be relevant in the civil court, may not be so in the criminal case filed under Sec.138 of N.I. Act while restoring the trial court judgments, the High Court observed that "the reason given by the lower Appellate CC.No.20964/2016 J Court that, he did not bring the cash book or order book etc., could well be understood, if civil suit is tried." But may not be so in the criminal case filed under Sec.138 of N.I. Act. This is because of presumption raised in favour of holder of cheque. 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 CC.No.20964/2016 J 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 cheque in question in his favour and the Accused has admitted the cheque belongs to her account and signature appearing on the cheque is that of her signature, in such circumstances, presumptions have to be drawn towards existence of legally enforceable debt as per Sec.139 of N.I.Act. Therefore, for the above said reasons the arguments canvassed by the learned counsel for the accused that, the complainant has not produced the documents to show that, he has lent an amount of Rs.30,00,000/- to the accused and the complainant has not produced the documents to prove that, complainant was having financial capacity to lend the money and has lent the loan amount to the accused 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 CC.No.20964/2016 J U/s.138 of N.I. Act, as held by the Hon'ble Apex court of India in the above referred decision, therefore in view of the principles of law laid down in the above referred decisions it is presumed that, cheque in question was drawn for consideration as the Accused has admitted the cheque in question belongs to her and signature found on the cheque in question is that of her signature. Therefore for the above said reasons and findings given by this court, the arguments canvassed by the learned counsel for

the accused cannot be acceptable one and are not sustainable in law and with due respect to the principles of law laid down by the Hon'ble Apex Court of India relied upon by the learned counsel for the accused are not applicable to the defence of the accuse in this case, as the accused has not elicited anything from the material produced by the complainant to discard or discredit the evidence of the complainant and the facts and circumstances of this case and facts and circumstances of the decided cases relied upon by the learned counsel of the accused are not one and the same.

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27. The accused in order to rebut the presumptions available to the complainant herself examined as DW.1, and in her evidence stated that, she had not taken any amount from the complainant and there is no legal enforcement debt to claim huge amount against her, by misusing the cheque complainant has filed false complaint and the cheque in question was misused by her uncle and the complainant, based on the same the present complaint is filed in order to make wrongful gain. The accused further deposed that, she have not seen the face of the complainant and in the court first time she saw the face of the complainant and she is a widow and not at all required such huge amount for her and in fact she have not taken any loan from the complainant on 13.01.2016 and never approached on 09.01.2016 for hand loan and based on forged cheque the complaint was presented. The accused further deposed that, the cheque in question has taken by his uncle Sri.H.krishna Murthy along with original documents of her house and by using her cheque the complainant and her uncle are playing a game before the court even huge CC.No.20964/2016 J amount as not required for her and she is an uneducated and widow her uncle and complainant misused her cheque and presented before the court. It is further deposed by the accused that, after issuance of notice to her she replied suitably by denying the entire transaction and contents of the notice and has specifically stated that, the cheque and original documents of her being misused by her uncle and the complainant. The accused further deposed that, the complainant in his cross examination admitted that, he do not know her source of income to pay huge hand loan and the admissions of the complainant and his father ie PW.2 clinches the issue by saying that the complainant and her uncle H.Krishna Murthy in collusion with each other have filed false complaint against her. The accused further deposed that, there is no legal enforceable debt and infact may be there had a transaction between her uncle H.Krishna Murthy and Complainant because of the torture made by the complainant, her uncle has attempted for suicide on 06.04.2016 but he was survived and in that regard, in the death note the CC.No.20964/2016 J name of complainant was mentioned and requested to police to take action against the complainant, subsequently FIR came to be registered against the complainant in Crime No.129/2016 before the Kumaraswamy layout police station and charge sheet was also filed against the complainant U/s. 3 & 4 of Karnataka Prohibition of Charging Exorbitant Interest Act 2004, therefore the complainant has tortured for higher interest to her uncle and there is no transaction happened between her and the complainant as claimed by him and the complaint is frivolous in nature and prayed for her acquittal. In support of oral evidence the accused has not produced any documents.

28. On entire perusal of the oral evidence of the accused it appears that, according to the accused she have not seen the face of the complainant and in the court for the first time she saw the face of

the complainant and she has not borrowed any amount from the complainant and has not issued the cheque in question to the complainant. It is also seen that, according to the CC.No.20964/2016 J complainant the cheque in question has taken by her uncle H.Krishna Murthy along with original documents of her house and by using her cheque the complainant and her uncle have misused the cheque in question and played fraud against her and a false claim was made under this complaint by colluding with each other. But in order to prove the defence of the accused except her oral evidence nothing has been placed before the court to show that, the complainant and her uncle Sri.H.Krishna Murthy by colluding with each other have misused her cheque by filing this complaint. It is also relevant here to mention that, the accused herself examined her uncle ie Sri.H.Krishna Murthy as DW.2 on her behalf and he has filed his affidavit in lieu of examination in chief but in his evidence he nowhere stated that, the cheque in question was misused by him and if really her uncle by colluding with the complainant has misused the cheque in question , definitely she would have questioned the same to her uncle ie Sri.H.Krishna Murthy who has examined as DW.2 on her behalf. It is also relevant here to mention that, the accused at one breath CC.No.20964/2016 J contends that, her uncle and the complainant by colluding with each other have misused her cheque by filing this false complaint against her but another breath she herself examined her uncle as DW.2 but he has not supported the version of the accused and the entire evidence of DW.2 does not disclose that he and the complainant colluded to each other and have misused the cheque in question, if really the complainant and uncle of the accused are colluded to each other and misused the cheque of the accused then the question of examining the uncle of the accused by her does not arise at all, therefore the defence of the accused that, the complainant and her uncle Sri.H.Krishna Murthy have misused her cheque and in collusion with each other have filed false case against her cannot be acceptable one.

29. It is also relevant here to mention that, the accused in her reply notice though she has admitted her signature on the cheque and stamp paper and also stated that, about 3 to 4 years back her uncle wanted to borrow Rs.25 Lakhs for his business CC.No.20964/2016 J purpose since the title deeds of his house was already mortgaged with the Syndicate bank as security and he requested her to hand over her property papers as security to the loan accordingly she handed over original title deeds to her uncle along with blank signed cheque and signed blank stamp paper and who in turn handed over to the complainant but in her evidence she nowhere stated the said facts and by suppressing the said facts she has deposed against her own contents of the legal notice stating that, her uncle and complainant colluded each other and got filed this false complaint by misusing her cheque, therefore the inconsistent defence of the accused itself goes to show that, the accused in order to avoid liability in question has falsely deposing before the court. It is also important here to mention that, the accused in her evidence stated that, based on forged cheque the complainant has filed this complaint though there is no legal enforceable debt to claim against her but the accused except her oral evidence nothing has been placed before this court to prove her defence, therefore only on the basis of self serving statement CC.No.20964/2016 J of the accused it cannot be held that, the complainant has forged the cheque in question and has filed false complaint against her. If really the uncle of the accused ie., Sri.H.Krishna Murthy had collected original title deeds of house property of the accused and blank signed cheque and a signed blank stamp paper and in turn the said documents were handed over to the complainant by her uncle and she never met the complainant personally and the complainant in collusion with her uncle has misused her cheque in question, in

such circumstances the accused would have initiated legal action against the complainant or her uncle either by issuing notices to them or by filing complaint against them but no such efforts have been made by the accused except her self-serving statement in the present case, therefore the conduct of the accused in non taking action against either the complainant or uncle of the accused in alleged misuse of her cheque may leads to draw an adverse inference against to the accused that, in order to avoid admitting the liability in question and to pay the cheque amount the accused has taken such false CC.No.20964/2016 J defence without there being any documentary proof not for other reasons.

30. It is also relevant here to mention that, the accused in her reply at para No.5 has stated that, the complainant has presented the cheque on 29.03.2016 without her knowledge and has presented the cheque despite receiving Rs.20 Lakhs from her uncle ie H.Krishna Murthy during January 2016 and the said amount of Rs.20 Lakhs was returned to the complainant by Sri. Mruthyunjaya who owed that, amount to H.Krishna Murthy and the said H.Krishna Murthy had given that amount to Mruthyunjaya for purchase of his land and since the sale transaction did not materialized he returned that amount to complainant on behalf of H.Krishna Murthy and another sum of Rs.4 Lakhs was paid to complainant during 2nd week of March 2016 and prior to payment of Rs.24 Lakhs her uncle and sons have sold 37 guntas of land in Sy.No52/2 and 53/2 in favour of one Ramesh on 19.03.2015 for Rs.14,07,000/□which was preceded by a sale agreement and the entire sale proceeds was taken CC.No.20964/2016 J by the complainant by opening an account in the name of H.Krishna Murthy and the ATM card pass book etc., were kept in his custody and draw the amount and transferred amount to his account and another piece of land measuring 26½ guntas in Sy.No.106/1 and 106/2 was sold in favour of the complainant on 12.05.2015 and though the accused is not liable to pay any amount to the complainant and her uncle H.Krishna Murthy has paid that, the entire amount with interest and the complainant has refused to return the cheque despite repeated request made by her uncle and his son and the said cheque has been misused by the complainant which was given for security purpose only. On careful reading of the contents of para No.5 to 8 of the legal notice makes it clear that, the accused in her reply notice has taken specific defence that, her uncle by name H.Krishna Murthy had borrowed a loan amount of Rs.25 Lakhs from the complainant and at that time the cheque in question has been given as security to the said loan amount and her uncle has repaid entire loan amount to the complainant despite of it, the complainant did not return the said cheque to CC.No.20964/2016 J her uncle and has misused the cheque in question by filing this complaint. But the accused in her defence evidence has suppressed the above stated facts which are stated at para No.5 to 8 of her legal notice, if really the cheque in question was handed over to her uncle and in turn her uncle had borrowed loan amount of Rs.25 Lakhs from the complainant and at that time the cheque in question was handed over to the complainant as security and her uncle had repaid entire amount to the complainant but the complainant did not return the cheque in question to her uncle, definitely she would have stated the said facts in her evidence but the accused has suppressed the said facts in her defence evidence for her unrevealed reasons and to avoid the liability in question, therefore the defence of the accused ie., at one breath the accused contends that the cheque in question was misused by the complainant and her uncle by colluding with each other and another breath in her legal notice contends that, the cheque in question was handed over to the complainant by her uncle towards security of the loan amount borrowed from the CC.No.20964/2016 J complainant by her uncle in such circumstances

the inconsistent defence of the accused cannot be acceptable one. Therefore on entire perusal of oral evidence of the accused it appears that, though the accused has made allegations against the complainant that, her uncle and the complainant by colluding with each other have misused her cheque ie., cheque in dispute by playing fraud against her and a false claim is made by the complainant under this complaint cannot be acceptable one and same has not been proved by the accused by producing cogent and convincing evidence.

31. The accused in support of her evidence has examined her uncle ie., H Krishna Murthy as DW.2 and who in his evidence has stated that, accused has not taken any loan from the complainant by misusing the cheque belongs to the accused the present complaint is filed, in fact there is no transaction between the complainant and accused and he had transaction with the complainant in respect of landed properties and during the year CC.No.20964/2016 J 2013-14 he had taken some of Rs.25 Lakhs from the complainant in order to purchase the property at Mandya and he advanced some of Rs.27 Lakhs to purchase the said property, but the said transaction was not materialized and he have returned an amount of Rs.25 Lakhs to the complainant in the year 2013 itself, but the complainant has demanded higher interest to the said amount again he has also executed a sale deed on 12.05.2015 in respect of land bearing No.106/4 of Santhemogenahalli Village, Ramanagar District for sum of Rs.4,65,000/- in favour of the complainant infact the complainant has not paid the said amount and fulfilled the amount to the interest advanced to a sum of Rs.25 Lakhs and further the complainant brought one Sri.Ramesh to purchase his another property in Sy.No.52/2 measuring 37 guntas for sum of Rs.14,07,000/- and even the D.D. which was given to him also being encashed by the complainant in opening the account in his name in ICICI Bank, hence he has paid a sum of Rs.45 Lakhs to the complainant and at the time of receiving Rs.25 Lakhs from the complainant in January 2012-13 the CC.No.20964/2016 J complainant demanded the security to the said amount since he had no other documents to offer surety and he requested the accused to give the cheque and title documents of her property with a request that, he need to offer security in the bank but he never disclosed this said fact to the accused . The DW.2 further deposed that, he had paid entire amount along with higher interest to the complainant but he keep on harassing for further interest by one or other reason, having no other alternatives he decided to commit suicide because of torture made by the complainant and he attempted to suicide on 05.04.2016 by writing a death note against the complainant but he survived and the Jurisdictional police also charge sheeted against the complainant, therefore there was no transaction held between the complainant and accused and though he has repaid entire amount to the complainant but the accused had not return the cheque and original documents taken by him as security. In support of oral evidence of DW.2 he has produced certified copies of the sale deeds dt:

12.05.2015 and 19.03.2015 as per Ex.D.3 and D.4, CC.No.20964/2016 J true copies of the statement of accounts pertaining to the ICICI Bank, dt: 31.01.2015, 31.07.2015, 31.10.2015, 31.1.2016, 01.05.2016, 31.07.2016 as per Ex.D.5 to D.10 respectively.

32. On careful perusal of the evidence of DW.2, according to him, he had borrowed a loan of Rs.25 Lakhs from the complainant during the year 2012-13 for purchase of property but the said transaction was not materialized and he had return the said amount of Rs.25 Lakhs to the complainant in the year 2013 itself and at the time of

receiving the said amount from the complainant and the complainant had insisted to give documents for security, accordingly at his instance he had given cheque belongs to the accused and title documents of her property to the security of the said loan and after repayment of the entire amount with higher interest to the complainant but he did not return the cheque and title documents of the accused. In order to prove the evidence of DW.2 as stated above, except the oral evidence nothing has been produced by the DW.2 to show that, he has repaid entire CC.No.20964/2016 J amount of Rs.25 Lakhs to the complainant along with higher rate of interest and has not produced any document to show that, at the time of receiving of Rs.25 Lakhs from the complainant he had handed over the cheque belongs to the accused and title documents of her property to the complainant as security to the said loan amount. It is relevant here to mention that, the accused in her evidence never disclosed that, without her knowledge her uncle ie., DW.2 had handed over her cheque and title documents of her property to the complainant, on the contrary she had made allegations against the DW.2 himself that, the complainant and DW.2 by colluding with each other have misused her cheque , hence it goes to show that, the evidence of DW.2 is inconsistent to the evidence of the accused and the evidence of accused and DW.2 are not sufficient to hold that the cheque in question was handed over to the complainant by the DW.2 at the time of borrowing loan amount of Rs.25 Lakhs by the DW.2.

33. The DW.2 in his evidence has stated that, CC.No.20964/2016 J after repayment of the loan amount of Rs.25 Lakhs to the complainant again he started to demand higher interest to the said amount and he has executed a sale deed on 12.05.2015 in respect of property bearing No.106/4 for sum of Rs.4,65,000/□in favour of the complainant and complainant has not paid the said amount but adjusted the said amount towards the interest and further the complainant brought one Sri.Ramesh to purchase another property it belongs to him ie., Sy.No.52/2 for sum of Rs.14,07,000/□and though the DD was given to him also being encashed by the complainant by opening the account in his name in ICICI bank and in total he has paid sum of Rs.45 Lakhs to the complainant. In this regard, the DW.2 has produced certified copy of the sale deeds dt:

12.05.2015, and 19.03.2015 but the perusal of the sale deeds it appears that, the DW.2 himself has received the entire sale consideration amount from the complainant and one Mr. Ramesh as per the recitals of EX.D.3 and D.4, therefore the oral evidence of the DW.2 ie., he has not received the sale consideration amount shown in Ex.D.3 and D.4 CC.No.20964/2016 J and same has been received by the complainant and to fulfilled the said amount towards the interest amount advanced on the loan amount of Rs.25 Lakhs cannot be acceptable one. On perusal of true copies of the bank statements pertaining to ICICI Bank account ie., Ex.D.5 to D.10 wherein it is nowhere seen that, the complainant has withdrawn the amounts from the account of the DW.2 as contended by him , therefore the entire oral evidence of DW.2 is contrary to his own documents produced by him, in such circumstances it

cannot be held that, he has repaid a sum of Rs.45 Lakhs to the complainant as against the loan amount of Rs.25 Lakhs borrowed by him from the complainant.

34. The DW.2 in his cross examination has clearly admitted that, he has not filed any complaint against the complainant before the police by alleging that, though he has paid entire amount along with higher interest to the complainant he keep on harassing for further interest amount, hence the admissions of DW.2 itself are sufficient to hold that, if really the DW.2 had repaid the loan amount along CC.No.20964/2016 J with interest to the complainant inspite of that, the complainant harassing for further interest amount to him, definitely he would have lodge the complaint against the complainant at that time only, but no such complaint was filed by the DW.2 as admitted by him, in such circumstances the evidence of DW.2 cannot be acceptable one.

35. The accused during the course of cross examination of the complainant got marked the FIR , copy of the complaint and charge sheet copy filed in crime No.214/2016 by the Kumaraswamy Layout police against the complainant on the basis of the complaint filed by the son of DW.2 of the offence punishable U/s.3 and 4 of Karnataka Prohibition of Charging Exorbitant Interest Act 2004 and offence punishable U/s.506 and 504 of IPC which is at Ex.D.1. According to the accused and DW.2 that, inspite of repayment of the loan amount along with higher interest to the complainant he keep on harassing for further interest to the DW.2, having no other alternative the DW.2 decided to commit suicide due to torture of the complainant on 05.04.2016 by CC.No.20964/2016 J writing a death note against the complainant but the DW.2 survived and the jurisdictional police have filed charge sheet against the complainant. On careful perusal of Ex.D.1 it appears that the on the basis of complaint filed by the son of DW.2 by name Nagesh Sharma H.K. on 07.04.2016 the Kumaraswamy layout police have registered the case against the complainant. But though the charge sheet was came to be filed against the complainant but the court has not yet decided whether the complainant has harassed the DW.2 for further interest amount though he has repaid the entire loan amount along with interest, hence on the basis of Ex.D.1 it cannot be held that, the cheque in question was given by the DW.2 in favour of the complainant as security towards the loan amount borrowed by him and the complainant even after repayment of the loan amount along with interest by DW.2, has harassed him. In addition to that, it is relevant here to mention that, the DW.2 has given statement before the police on 23.06.2016 wherein he has stated that, he used borrowed loan amounts from the complainant on many occasions as hand CC.No.20964/2016 J loans for lower interest and used to repay the said amounts to the complainant and about 3□4 years back he had received an amount of Rs.25 Lakhs as hand loan from the complainant and out of the said amount he had given some amounts to his son and some amounts to his relatives and he has not repaid the said loan amount to the complainant and thereafter the complainant approached him and gave threat to him to repay the loan amount and thereafter at the time of taking medicine he had taken some other medicine due to

that, he got admitted hospital and after taking the treatment he has discharged from the hospital, hence the statement of the DW.2 before the police makes it clear that, as on 23.06.2016 ie., the date of statement given by the DW.2 he himself admitted that, he has not repaid the loan amount borrowed from the complainant and the complainant used to lend the loan amount to him at lower rate of interest and the DW.2 has also admitted in his cross examination that, he has not filed any complaint against the complainant by alleging that, the complainant has insisted him to pay higher rate of CC.No.20964/2016 J interest and harassing him to pay the interest amount, in such circumstances the entire evidence of DW.2 ie., inspite of repayment made by him along with interest amount the complainant keep on harassing for further interest amount by on or other reasons having no other alternative he decided to commit suicide because of torture made by the complainant appears to be doubtful and the said evidence itself is negatived by the DW.2 himself.

Therefore on entire perusal of oral and documentary evidence of the DW.2 it cannot be held that, while receiving loan amount of Rs.25 Lakhs from the complainant and as per the demand of the complainant towards security of the said loan amount the DW.2 had handed over the cheque belongs to the accused and title documents of her property to the complainant towards security of the loan amount and even after repayment of the said loan amount along with interest the complaint did not return the cheque and other documents cannot be acceptable one as same has been not proved by the DW.2 by producing satisfactory evidence.

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36. The accused in her evidence has stated that, the complainant and her uncle ie., DW.2 by colluding with each other have misused her cheque ie., cheque in dispute and a false claim is made under this complaint and the accused in her reply notice has categorically admitted that, she had given her blank signed cheque and title documents of her property to her uncle ie DW.2 and who in turn has handed over the blank signed cheque and title deeds of her property to the complainant towards security of the loan borrowed by him from the complainant and even after repayment of the said loan amount the complainant did not return her cheque and title deeds to her uncle. The DW.2 in his evidence also stated that, he had borrowed a loan of Rs.25 Lakhs from the complainant during the year 2012-13 for purchase of property but due to not materialization of the sale transaction he had repaid the said amount of Rs.25 Lakhs along with interest to the complainant in the year 2013 itself and at the time of receiving Rs.25 Lakhs from the complainant he has handed over blank signed cheque and stamp paper of the accused to the complainant towards CC.No.20964/2016 J security of the said loan amount but after repayment of the loan amount and interest and though he has requested for return of the documents and cheque but the complainant did not return the blank signed cheque and stamp paper of the accused. As it is already held in the above that, the accused and DW.2 have miserably failed to prove that, the DW.2 has repaid the loan amount borrowed from the complainant and has also failed to prove that, the cheque in question was handed over as blank signed cheque to the complainant towards security of the loan transaction between the complainant and DW.2 and it is also admitted by the DW.2 that, he has not filed any complaint or issued notice

to the complainant or taken any action against the complainant for not return of signed blank cheque and stamp paper of the accused alleged given as security to the complainant. If really the cheque in question was handed over by DW.2 to the complainant towards security to the loan amount of Rs.25 Lakhs borrowed by him and he has repaid the said loan amount in the year 2013 itself and the complainant did not return the signed blank cheque CC.No.20964/2016 J of the accused, definitely either the accused or her uncle ie., DW.2 would have initiated legal action against the complainant either by issuing notice to him or by filing complaint before the competent authority of courts of law for non return of cheque in question but no such efforts have been made by the accused or her uncle ie., DW.2 and their conduct in not taking or initiating any legal action for return of signed blank cheque and stamp paper of the accused against the complainant may lead to draw an adverse inference against them that the accused or her uncle have not taken any action against the complainant only for the reason that, to avoid liability in question or towards payment of the cheque amount they have not initiated any action but not for any other reason, therefore the defence taken by the accused and her uncle ie., DW.2 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. CC.No.20964/2016 J 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 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 or her uncle ie DW.2 have not produced any documents to prove defence of the accused, under such circumstances, it can be held that, the accused or her uncle ie DW.2 have not CC.No.20964/2016 J made any effort to get return of the cheque in question alleged to have been given to the complainant, in such circumstances, the said unnatural conduct of the accused and her uncle in non taking of action may lead to draw an adverse inference against the accused that, the cheque in question issued by the accused only towards discharge of the liability and presumption U/s.139 of N.I. Act would operate against her, as she has admitted the signature and cheque in question belongs to her.

37. It is also important to note here that, the Accused has not denied or disputed that the cheque in question as well as the signature therein do belong to her and she has failed to explain as to how her cheque has come to the possession of the Complainant, this would also give rise to an adverse inference against her. 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 CC.No.20964/2016 J CrI.A.No.664 of 2012 dated: 19.9.2019 in the case of "M.Abbas Haji Vs. T.M.Chennakeshava"

held that, " the Accused has to explain how the cheque entered into the hands of complainant".

Hence in the present case also the Accused has failed to explain how the cheque in question was 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.

38. 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 an amount of Rs.30,00,000/- to the accused as hand loan and the accused in turn has issued cheque in question ie Ex.C.1 towards discharge of the said loan amount and interest and thereafter the complainant has CC.No.20964/2016 J presented the cheque ie Ex.C.1 through his banker and same was returned dishonoured with an endorsement of "Funds Insufficient" and thereafter he got issued legal notice to the accused and in spite of service of the said notice, the Accused did not repay loan amount borrowed by her, hence the complainant filed the present complaint against the accused. On the other hand, the accused has failed to rebut the presumption available in favour of the complainant with regard to the existence of legally recoverable debt under Ex.C.1 cheque. 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.

39. 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 cheque without having sufficient funds in their accounts. Such being the case the intention of the legislature is that, complainant be suitably compensated while accused be punished for her act.

CC.No.20964/2016 J Hence while awarding the compensation the said 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.30,15,000/= (Rupees Thirty Lakhs and Fifteen Thousand only) within one month from the date of order, in default accused shall undergo simple imprisonment for a period of (3) three months 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.30,10,000/= (Rupees Thirty Lakhs and Ten 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.

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 17th day of December 2021).

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

ANNEXURE

1. List of witness/s examined on behalf of the Complainant: □ P.W.1 : Sri.Murali Mohan
CC.No.20964/2016 J PW.2 : Sri.C.Balu

2. List of documents exhibited on behalf of the Complainant: □ Ex.C.1 : Original Cheque Ex.C1(a) :
Signature of the accused Ex.C.2 : Bank Memo Ex.C.3 : Bank Challan Ex.C.4 : Office copy of the Legal
notice Ex.C.5 & C.6 : postal receipts;

Ex.C.7	:	complaint settled reply
Ex.C.8	:	Reply Notice
Ex.P.9	:	Deed of Transfer of Membership (Marked through PW.2)
Ex.P.10	:	Statement of accounts for the period from 01.01.2014 to 31.05.2014 (Marked through PW.2)
Ex.P.11	:	certified copy of the final report in Crime No.124/16 (Marked through PW.2)

3. List of witness/s examined on behalf of the Accused: □ DW.1 : Smt. Uma.B.S DW.2 : Sri.H.Krishna
Murthy

4. List of documents exhibited on behalf of the Accused: □ Ex.D.1: certified copy of the FIR,
CC.No.20964/2016 J complaint, charge sheet and other related documents Ex.D.2 certified copy of
the Renewal Rental agreement (Marked through PW.2) Ex.D.3 & D.4 certified copies of the Sale
deeds dt: 12.05.2015 and 19.03.2015 (Marked through DW.2) Ex.D.5 to D.10 Attested copy of the
Statement of accounts of ICICI Bank dt:

31.1.2015, 31.07.2015, 31.10.2015, 31.01.2016, 1.05.2016 and 31.07.2016 (Marked
through PW.2) (SRI.S.B.HANDRAL), XVI ACMM, Bengaluru City.

CC.No.20964/2016 J 17.12.2021 case called, complainant and counsel for complainant absent and

accused and counsel for the accused present, Judgment pronounced 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.30,15,000/= (Rupees Thirty Lakhs and Fifteen Thousand only) within one month from the date of order, in default accused shall under go simple imprisonment for a period of (3) three months 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.30,10,000/= (Rupees Thirty Lakhs and Ten 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.

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The Bail bond of the Accused stands cancelled.

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

XVI ACMM, B'luru.