

## Sri. Bhojaraju.N vs Sri.Devidas Gaonkar on 12 March, 2020

1

C.C.No.6523/2015 J

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

Dated: This the 12th day of March, 2020  
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.6523/2015

Complainant : Sri. Bhojaraju.N,  
S/o. K.R. Narayanappa,  
Aged about 40 years,  
No.1, 8th Cross,  
Maruthi Nagar, Ittamadu,  
Banashankari III Stage,  
Bengaluru-560 085.  
(Rep. by Sri.R.V.Shivananda  
Reddy., Adv.,)

- Vs -

Accused : Sri.Devidas Gaonkar,  
S/o.S.Gaonkar,  
Aged about 48 years,  
Karnataka State Co-op  
Organic Producers  
Federation Ltd,  
Old Executive Engineers  
Office, APMC, Tumkur Road,  
Yeshwanthpura,  
Bengaluru-560 022.  
(Rep.by Sri. Ajay Kumar and  
Suman Hegde., Adv.,)

2

C.C.No.6523/2015 J

Date of Institution : 22.1.2014  
Offence complained : U/s 138 of N.I Act  
of  
Plea of Accused : Pleaded not guilty  
Final Order : Accused is convicted  
Date of order : 12.3.2020

## 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, he and Accused are good friends having acquaintance between them more than 5 years and the Accused introduced to him through common friends namely Gururaj and Sharvan Sharma and the Accused was running business by establishing his office at the address No.1881, 39th cross, 11th A main, 4th T block, Jayanagar, Bengaluru since the year 2013. It is further contended that, he being the owner of agriculture property and has proposed to sell the said property in the year 2013 and in that connection he was possessing of part of sale consideration amount and in mean while having knowledge of possessing of consideration amount by him, the Accused has made request to him a hand loan of Rs.30 Lakhs on 1.2.2013 for the purpose of improving business , in furtherance after discussion and considering friendship on 8.2.2013 he has lent a loan of Rs.25 Lakhs to the Accused and the said loan has paid to the Accused as per the terms and conditions incorporated in the loan agreement dated:

8.2.2013 took between him and the Accused, apart from execution of loan agreement the Accused has gave on demand promissory note with consideration receipt dated: 8.2.203 to him. As per the loan agreement though it was condition to repay the loan along with interest on 8.5.2014 the Accused has made request for extension of time for payment of loan amount, accordingly the Accused issued a cheque bearing No. 053807 dated: 10.11.2014 for sum of Rs.27,75,000/- which includes interest amount drawn on State Bank of Mysore 1st phase, JP Nagar, in his favour, by assuring that, he would repay the same by making sufficient financial arrangement for encashment of the cheque and thereafter he has presented the cheque on 13.11.2014 but it was returned with shara on 14.11.2014 and thereafter issued legal notice dated; 10.12.2014 on 12.12.2014 through RPAD to the Accused and it was served to the Accused on 13.12.2014, in turn the Accused gave reply dated; 7.1.2015 to him. Hence the complainant has filed this present complainant against all the Accused persons for the offence punishable U/s.138 of Negotiable Instruments Act.

3. Before issuing process against the accused, the Complainant has filed his affidavit-in-lieu of his sworn statement, in which, he has reiterated the averments of the complaint, along with original documents.

4. Prima facie case has been made against the Accused and summons was issued against him in turn the Accused has appeared before the Court and he has been enlarged on bail and the substance of the accusation has been read over to him, to which he pleaded not guilty and has claimed the trial.

5. The complainant himself examined as PW.1 and he has filed his affidavit in lieu of his examination-in-chief wherein has reiterated the entire averments of the complaint. In support of his sworn statement, P.W.1 has relied upon the documentary evidence as per Ex.P.1 to P.23 i.e, Original Cheque dated:-10.11.2014 as per Ex.P.1, the signature on the said cheque identified by P.W.1 as that

of the accused as per Ex.P.1(a), the Bank challan as per Ex.P.2, Bank Memo as per Ex.P.3, the office copy of the Legal Notice as per Ex.P.4, postal receipts as per Ex.P.5 and P.6, postal acknowledgement as per Ex.P.7, Loan agreement dated: 8.2.2013 as per Ex.P.8, and signature of the Accused are identified by the complainant as per Ex.P.8(a) and (b) and his signature as per Ex.P.8(c) and (d) respectively, on demand promissory note as per Ex.P.9, signatures of the Accused as per Ex.P.9(a) and (b), consideration receipt as per Ex.P.10, Sale agreement deed dated: 7.1.2013 as per Ex.P.11, reply notice given by the Accused as per Ex.P.12, returned legal notice as per Ex.P.13, RPAD cover as per Ex.P.14, postal receipt as per Ex.P.15 and Postal acknowledgement as per Ex.P.16, bank pass book as per Ex.P.17, loan sanctioned letter infavour of the complainant as per Ex.P.18, copy of MR as per Ex.P.19, RTC as per Ex.P.20, visiting card of the Accused as per Ex.P.21, broacher pertaining to the Accused 's company as per Ex.P.22 and IT returns B Form pertaining to the complainant for the year 2013-14 as per Ex.P.23 and during the cross-examination of DW.1 he has produced certified copy of the private complaint in PCR No.8421/2015 as per Ex.P.24 and subsequently during the cross- examination of DW.2 has produced certified copy of the order of Crl.Petition No. 6433/2013 as per Ex.P.25 and certified copy of the order sheet as per Ex.P.26.

6. Thereafter the statement of the Accused as required U/s.313 of Cr.P.C. has been recorded, the Accused has denied the incriminating evidence appearing against him and chosen to lead his rebuttal evidence.

7. The Accused himself examined as DW.1 and no documents have been produced by the Accused on his behalf. The Accused has also examine one witness by name Shravana Sharma as DW.2 and closed his side.

8. Heard the arguments by learned counsel for the complainant and also perused the written argument submitted by him. On the other hand, the learned counsel for the Accused inspite of providing sufficient opportunity to argue the matter but did not addressed arguments on behalf of the Accused and perused the decisions relied upon by the learned counsel for the complainant i.e., 1) AIR 2020 SC 1898 in case of Rangappa Vs. Mohan 2) AIR 2019 SC 4003 in case of Shree Danehwari Traders Vs. Sanjay Jain and another., 3) 2015 Cri.L.J. 3618 incase of Mainuddin Abdul Sattar Shaik Vs. Vujay D.Salvi 4) Crl. Appeal No.735/2018, dated: 101.2.2019 in case of So ny Pharmaceuticals Vs. Nagaraj.

9. On the basis of complaint, evidence of complainant and documents the following points that are arise for consideration are:-

1. Whether the complainant proves that the accused has issued cheque bearing No. 053807 dated:

10.11.2014 for sum of Rs.27,75,000/- drawn on State Bank of Mysore 1st phase, JP Nagar, to discharge legally recoverable debt to the complainant and when the complainant has presented cheque for encashment through his banker but the said cheque has been dishonoured for the reasons "Funds Insufficient" on 14.11.2014 the complainant issued legal notice to the accused on 10.12.2014 and inspite of it the accused has not paid the cheque amount within prescribed period

there by the accused has committed an offence U/s.138 of the Negotiable instruments Act?

## 2. What Order?

10. The above points are answered as under:

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

### REASONS

11. 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 such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act pre-supposes conditions for prosecution of an offence which are as under:

1. Existence of legally enforceable debt or liability and issuance of cheque in discharge of said debt or liability;
2. Cheque shall be presented for payment within specified time i.e., from the date of issue before expiry of its validity.
3. 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
4. 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 conditions are satisfied by holder in due course gets cause action to launch prosecution against the drawer in respect of 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.

12. It is also one of the essential ingredient 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 are 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.

13. In the present case the complainant got examined as PW.1 by filing his affidavit evidence wherein the complainant has reiterated the entire averments of the complaint, the complainant/PW.1 in his evidence testified that, he and Accused are good friends since more than five years and the Accused was introduced to him by his common friends namely Gururaj and Sharvan Sharma and the Accused was running the business in the year 2013 and Accused knows the some part of sale consideration amount possessed by him and having knowledge of the same the Accused on 1.2.2013 approached him and requested for hand loan of Rs.30 Lakhs for the purpose of improving his business and on 8.2.2013 he has lent an amount of Rs.25 Lakhs to the Accused and the said amount was paid as per the terms and conditions of the loan agreement dated: 8.2.2013, apart from that, the Accused has also given on demand promissory note and consideration receipt dated 8.2.2013. The complainant/PW.1 has also testified that, for the purpose of repayment of the said loan, the Accused has issued a undated cheque bearing No. 053807 drawn on State Bank of India, JP Nagar Branch, Bengaluru by filling the name and amount for sum of Rs.27,75,000/- and as per the loan agreement the Accused has to repay the loan amount along with the interest on 8.5.2014, however the Accused has made request for extension of time for repayment of the loan amount accordingly time was extended till November 2014, in furtherance of the same, the Accused has filled the date in the cheque. The complainant/PW.1 further testified that, he has presented the said cheque for encashment, however the same has been returned on 14.11.2014 with shara of "Funds Insufficient" after return of the cheque inspite of his best effort the Accused has not shown any interest for repayment of the loan amount having no other alternative has issued legal notice dated: 10.12.2014 on 12.12.2014 and same was duly served upon him on 13.12.2014, in turn the Accused issued reply by making irrelevant statement.

14. In support of the oral evidence of the complainant, he produced the documentary evidence as per Ex.P.1 to P.23 Original Cheque dated:-

10.11.2014 as per Ex.P.1, the signature on the said cheque identified by P.W.1 as that of the accused as per Ex.P.1(a), the Bank challan as per Ex.P.2, Bank Memo as per Ex.P.3, the office copy of the Legal Notice as per Ex.P.4, postal receipts as per Ex.P.5 and P.6, postal acknowledgement as per Ex.P.7, Loan agreement dated: 8.2.2013 as per Ex.P.8, and signature of the Accused are identified by the complainant as per Ex.P.8(a) and (b) and his signature as per Ex.P.8(c) and (d) respectively, on demand promissory note as per Ex.P.9, signatures of the Accused as per Ex.P.9(a) and (b), consideration receipt as per Ex.P.10, Sale agreement deed dated: 7.1.2013 as per Ex.P.11, reply notice given by the Accused as per Ex.P.12, returned legal notice as per Ex.P.13, RPAD cover as per Ex.P.14, postal receipt as per Ex.P.15 and Postal acknowledgement as per Ex.P.16, bank pass book as per Ex.P.17, loan sanctioned letter infavour of the complainant as per Ex.P.18, copy of MR as per Ex.P.19, RTC as per Ex.P.20, visiting card of the Accused as per Ex.P.21, broacher pertaining to the Accused 's company as per Ex.P.22 and IT returns B Form pertaining to the complainant for the year 2013-14 as per Ex.P.23 and during the cross-

examination of DW.1 he has produced certified copy of the private complaint in PCR No.8421/2015 as per Ex.P.24 and subsequently during the cross- examination of DW.2 has produced certified copy of the order of Crl.Petition No. 6433/2013 as per Ex.P.25 and certified copy of the order sheet as per Ex.P.26.

15. In the present case, the Accused has denied his acquaintance with the complainant. The Accused has not disputed that, the cheque in question belongs to his account and signature appearing on the cheque in question i.e Ex.P.1(a) is that of his signature. It is also not in dispute by the accused that, the cheque in question presented for encashment and dishonoured for the reason of "Funds Insufficient" since as matter on record, proved by return memo i.e.Ex.P.3 issued by the concerned bank dated: 14.11.2014, therefore it is a matter on record and has been proved that, the cheque in question was presented within its validity period and dishonoured as per the bank endorsement issued by the banker of accused. It is also not disputed by the Accused with regard to service of legal notice issued by the complainant as per Ex.P.4 dated: 10.12.2014 and receipt of the said notice as per Ex.P.7 i.e., postal acknowledgement, and the Accused has given reply to the said notice, as per Ex.P.12, hence the complainant has proved that, he has complied the mandatory requirements as required U/s.138(a) to (c) of N.I.Act and initial presumptions are available infavour of the complainant U/s.118a and 139 of N.I. Act.

16. The complainant in order to substantiate his oral evidence i.e., to show that he is having sufficient source of fund has produced the original sale agreement deed dated: 7.1.2013 and original Bank pass book pertaining to him and loan sanction letter issued by Karvy Financial services Ltd., Mumbai, Mutation Register Extract, RTC, I.T>Returns for the assessment year of 2013-14 which are marked as Ex.P.11, Ex.P.17, Ex.P.18, Ex.P.19, Ex.P.20 and Ex.P.23 respectively. On careful perusal of the above said documents makes it clear that, the complainant owned a landed property in Sy.No.50/2, measuring 7 acres 9 guntas situated at Guddadahobalapura Vilalge and the said land was agreed to sell for sum of Rs.40 Lakhs out of the said sale consideration, has received sum of Rs.35 Lakhs on the date of agreement of sale i.e. 7.1.2013. The complainant has also granted loan of Rs.36,10,000/- from Karvy Finance Services and as per his bank pass book the complainant was having sufficient funds in his bank account, therefore from the Ex.P.11, Ex.P.17, Ex.P.18, Ex.P.19, Ex.P.20 and Ex.P.23 makes it clear tht, as on the date of lending of the loan to the Accused the complainant was having sufficient source of income. It is also relevant here to mention that, on perusal of the Ex.P.23 i.e. i.T>Returns for the Assessment year 2013-14 and financial year 2012-13 makes it clear that, the complainant has declared the loan amount of Rs.27,50,411/- is due to him by the Accused, hence the complainant has also declared the loan transaction in question in his income tax returns. It is also relevant here to mention that, the learned counsel for the Accused has cross examined the complainant on the above referred documents but nothing has been elicited to discard the said documents and the above said documents are not disputed by the Accused which corroborates the version of the complainant that, he was having sufficient source of income and funds at the time of lending of the loan amount to the Accused.

17. The complainant in order to prove the fact that, he has lent an amount of Rs.25 Lakhs hand loan to the Accused on 8.2.2013 and in turn the Accused has executed loan agreement dated:

8.2.2013 and on demand promissory note and consideration dated: 8.2.2013 and in order to repay the loan amount the Accused has issued the cheque for sum of Rs.27,75,000/- as per the loan agreement, has produced the original loan agreement dated: 8.2.2013, on demand promissory note and consideration receipt dated:8.2.2013 which are marked as Ex.P.8, Ex.P.9 and Ex.P.10 respectively. On careful perusal of the Ex.P.8 wherein it is seen that, the Accused and complainant have entered into loan agreement in respect of the loan transaction in question i.e the Accused has approached the complainant seeking loan of Rs.30 Lakhs for improvement of his business on 1.2.2013 and the complainant has agreed and paid a sum of Rs.25 Lakhs to the Accused on 8.2.2013 in the presence of the witnesses and the Accused has agreed to repay an amount of Rs.27,75,000/- which includes principal and part of the share of profit in the business on 8.5.2014 and it is also referred about the execution of the on demand promissory note and consideration receipt in favour of the complainant and for prompt repayment of the said loan amount and also referred the cheque in question has been issued to the complainant for sum of Rs.27,75,000/- i.e cheque bearing No. 053807 drawn on State Bank of India, J.P.Nagar Branch, Bengaluru. It is also seen from Ex.P.9 and P.10 that the Accused has executed on demand promissory note and consideration receipt on 8.2.2013 in favour of the complainant for sum of Rs.27,75,000/-. It is also important to note here that, the Accused has not disputed his signatures found on Ex.P.8, Ex.P.9 and P.10 i.e ., Ex.P.8(a) and P.9(a) and P.10(a), hence it goes to show that, the Accused has admitted his signatures on the loan agreement, on demand promissory note and consideration receipt. The learned counsel for the Accused during the course of cross-examination has not at all disputed the execution of the Ex.P.8 loan agreement and also on demand promissory note and consideration receipt i.e Ex.P.9 and p.10 infavour of the complainant. It is suggested to the complainant i.e PW.1 in the cross-examination that, he is having habit of lending the loan amount without having money lending license and also by taking blank signed cheque, stamp paper and blank signed on demand pronotes but the said suggestion has been denied by the complainant. It is also suggested to the complainant that, he has advanced loan to one Gururaj and at the time of lending the loan to him has forcibly taken the car from the said Gururaj which was in the name of his wife and blank signed cheque blank signed loan agreement stamp paper and blank signed disputed pronote were kept in the said car and same have been misused by him but the said suggestion was categorically denied by the complainant, except the said suggestion nothing has been elicited to discard the documentary evidence of the complainant i.e Ex.P.8 to P.10. It is also important to note here that, the learned counsel for the Accused has not cross examined on the cheque in question i.e Ex.P.1 except the suggestion made to the complainant that, the said cheque was kept in the car which was belongs to wife of one Gururaj and it was forcibly taken by the complainant, that too the said suggestion was denied by the complainant, hence except the said suggestion nothing has been elicited from the complainant with regard to issuance of the cheque.

It is also important to note here that, the learned counsel for the Accused made the suggestion i.e the date on the disputed cheque was not written by the Accused, but has not disputed the rest of the contents of the cheque, hence it goes to show that, the Accused has admitted the contents of the cheque in question except the date. Therefore the Accused has admitted the issuance of the cheque and contents of the cheque except the date in favour of the complainant for sum of Rs.27,75,000/-.

18. It is specifically stated by the complainant /PW.1 in his cross-examination that, on 8.2.2013 he has advanced an amount of Rs.25 Lakhs to the Accused and he has received on demand promissory note and consideration receipt from the Accused. It is also stated by the complainant that, the Accused was agreed to pay the loan amount after one year and three months i.e., on 8.5.2014 from the date of borrowing of the loan i.e. from 8.2.2013 and the cheque in question was also referred as it was issued towards repayment of the loan amount. It is also stated by the complainant that, Accused has received an amount of Rs.25 Lakhs and agreed to return the said amount after one year three months from the date of borrowal o the said amount and also agreed to pay an amount of Rs.27,75,000/- which includes the principal and part of the share of profit in the business. Hence, the entire perusal of the cross-examination of the complainant, nothing has been elicited to discard or discredit the oral and documentary evidence of the complainant

19. It is also relevant here to mention that as it is already held in the above that, the complainant has proved that he was having sufficient source of funds and income as on the date of lending of the loan amount to the Accused by producing documentary evidence i.e Ex.P.11, Ex.P.17, Ex.P.18, Ex.P.19, Ex.P.20 and Ex.P.23 and also proved that, he has lent a loan of Rs.25 Lakhs to the Accused on 8.2.2013 and in turn the Accused has executed the loan agreement, on demand promissory note and consideration receipt by agreeing to repay the said amount along with the share of profit in the business i.e., Rs.27,75,000/- to the complainant and also proved that, the Accused has issued the Ex.p.1 cheque in question infavour of the complainant. It is also not disputed by the Accused that, the Ex.P.1 cheque belongs to his account and signature appearing on the cheque is that of his signature. Therefore in view of the admitted facts by the Accused, it can be held that, the complainant has discharged his initial burden by complying the mandatory requirements as required U/s.138 of N.I. Act and initial presumptions can be drawn in favour of the complainant U/s.118a and 139 of the N.I. Act. Consequently it is for the Accused to rebut the said presumptions available in favour of the complainant to show that, the cheque in question was not issued towards discharge of any legally recoverable debt by producing cogent and convincing evidence but not mere suggestions or even by plausible explanation. Therefore, when the presumptions U/s.118 and 139 of N.I.Act are available to the complainant, even presumption can be drawn to the extent of existence of legally recoverable debt or liability against the Accused unless and until the said presumptions are rebutted by the Accused even in the absence of documents produced by the complainant in respect of liability in question. 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 adequate proof of existence of debt or liability. In another decision of Hon'ble Apex Court of India i.e. Hon'ble Three Judges Bench Decision reported in



(2010) 11 SCC 441 in the case of Rangappa Vs. Sri. Mohan ., wherein the Hon'ble Apex Court held that "

A. Negotiable Instruments Act, 1881 - S.139 -

Presumption under - scope of - Held,  
presumption mandated by S. 139 includes a  
presumption that there exists a legally

enforceable debt or liability - However such presumption is rebuttable in nature - Criminal Trial - Proof - Presumptions - Generally. Further held that "Signature on the cheque was his, statutory presumption under S.139 comes into play and the same was not rebutted even with regard to the materials submitted by complainant Appellant not able to prove "lost cheque" theory - Apart from not raising a probable defence appellant was also not able to contest the existence of a legally enforceable debt or liability - hence, his conviction by High Court, held, proper. In another decision of Hon'ble Apex Court of India, reported in CRIMINAL APPEAL NO. 508 OF 2018 DT 15-03-2018 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 CrI.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 cheque was issued not for any debt or other liability - it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer - even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act - the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act. It is also held that, " the accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on the account of discrepancy in the cartons, packing materials or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore it is presumed that, the cheque in question were drawn for consideration and the holder of the cheques received the same in existing debt". It is also held that, " the Trial court and the High Court proceeded as if, the appellant is to prove a debt before civil Court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries statutory presumption of consideration. The holder of cheque in due course is required to prove that, the cheque was issued by the Accused and that when the same presented , it was not honoured Since there is a statutory

presumption of consideration, the burden is on the Accused to rebut the presumption that, the cheque was issued not for any debt or other liability ". It is also relevant here to refer the decision of Hon'ble High Court of Karnataka reported in ILR 2019 KAR 493 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat, wherein the Hon'ble High Court held that, the presumption mandated by Sec.139 of N.I Act includes the presumption that, there existed a legally enforceable debt or liability, however such presumption is rebuttable in nature". In another decision of Hon'ble High Court of Karnataka in the case of Shri.V.R.Shresthi Vs. Shri. Bhaskara.P. in CrI. Appeal No. 2109/2017 dated: 15.10.2019 wherein the Hon'ble High Court of Karnataka held that "the Accused has not given any reply to the notice and also in the cross- examination, he categorically admits that, the cheque has bounced on account of no sufficient fund in the bank account of the Accused. Mere non producing of the document before the court with regard to the source of income to advance a loan is not a ground to dismiss the complaint.

The Accused ought to have rebutted the contention of the complainant by producing cogent evidence before the court and mere denial is not enough". In another decision of Hon'ble Apex Court of India in CrI. Appeal Nos. 132/220 in the case of D.K.Chandel Vs. M/s. Wockhardt (L) wherein the Hon'ble Apex Court held that "production of the account books/cash book may be relevant in the civil court, may not be so in the criminal case filed under section 138 of NI Act while restoring the trial court judgment, the High Court observed that "the reason given by the lower appellate 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 section 138 of NI Act. This is because of the presumption raised in favour of the 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 a presumption is drawn the facts relating to the want of documentary evidence in the form of receipts or accounts or want of evidence regarding source of funds were not of relevant unless the Accused rebutted the presumption available to the complainant as held by the Hon'ble Apex Court and High Court of Karnataka in the above decisions. In the present case also the complainant has complied mandatory requirements and has proved that, the Accused has issued the cheque in question in his favour and the Accused has admitted the cheque belongs to him and signature appearing on the cheque is that of his signature. It is also proved by the complainant that, the legal notice caused by him was served on the Accused, 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 defence of Accused with regard to legally recoverable debt is not in existence cannot be acceptable one and the defence with regard to misuse of the cheque in question by the complainant cannot be acceptable one unless the Accused rebutted the presumptions available to the complainant.

20. In order to rebut the presumptions available in favour of the complainant, the Accused himself examined as DW.1. The Accused /DW.1 in his evidence, has specifically contended that, he was a chairman of Green Life Souhardha Credit Co- operative society during the year 2012-13 and during

his period he has appointed one Shravana Sharma, and Gururaj as his consultants to develop society's software and the said persons have discussed their personal financial transactions with him at that time they disclosed that they have borrowed loans from the complainant in the year 2004 and the complainant was giving torture to them for recovery of interest and also collected the gold from them to the extent of Rs. 6 Lakhs and also had taken their Polo Car along with the original documents which were kept inside the car for recovery of interest. The Accused /DW.1 has also stated that, he has no knowledge about the dishonour of the cheque and after service of the legal notice he made an enquiry to Shravana Sharma and Gururaj and at that time they told him that, the said cheques will be returned after securing from the complainant and also he had given reply through his advocate. The Accused /DW.1 further deposed that, on 8.2.2013 the Shravana Sharma and Gururaj have collected the documents from him and on the same day, the complainant had collected the gold and also the original documents of the Polo car and also taken the said car, at that time his signed blank cheques, signed blank stamp papers, signed blank pronote and signed blank cheque which were kept inside the said car have also taken by the complainant, thereafter the complainant agreed to return the said gold and documents to the Shravana Sharma and Gururaj but later has not return the said documents and got transferred the car in his name but has not return the said documents and he has not borrowed any loan amount from the complainant and has not issued cheque in question to the complainant towards discharge of the alleged loan amount and has not executed any loan agreement or pronote or consideration receipt and has not written the date on the cheque.

21. The Accused has also examined one witness by name Shravana Sharma as DW.2 on his behalf who in his evidence has stated about the loan borrowed from the complainant and also documents executed in favour of the complainant and also complaint filed by the complainant against him in respect of the loan amount borrowed by him and also stated that, he has repaid the loan amount along with interest i.e Rs.13,50,000/- to the complainant as per the MOU but the complainant has not return his 200 gms of gold and MOU and again he has paid an amount of Rs.6,50,000/- to get back the gold from the complainant . Thereafter his partner by name C.V. Gururaj continued his relation with the complainant and the said Gururaj borrowed loan of Rs.4 to 5 Lakhs from the complainant and gave the two blank signed cheques, pronote to the complainant and one Mr.Dwarakanath was stood guarantor to the said loan. The DW.2 has also stated that, in the month of December 2012 Mr. Gururaj called him and narrated his problems facing from the complainant and the real transaction between the Gururaj and Complainant was for Rs.10 Lakhs for which the said Gururaj had given his car as security for the said transaction to the complainant and he has collected blank promissory note, stamp paper and cheques from the Accused and thereafter handed over the said blank promissory note, stamp paper and cheques to the Mr.C.V. Gururaj and he requested the said Gururaj for return of the blank promissory note, stamp paper and cheques but he gave evasive answer to him and thereafter in the end of year 2013, he disclosed that, the said blank promissory note, stamp paper and cheques were lying in the car and the said car was confiscated in the year 2013 from the complainant so does not have the copies of the same.

22. On careful perusal of the oral evidence of the Accused and his witness i.e DW.2 makes it clear that, according to the Accused he has not borrowed any loan from the complainant and has not issued any cheque in question to the complainant towards repayment of the loan transaction in

question. But it is the defence of the Accused that, he was a chairman of one Green Life Souhardha Credit Co- operative Society during the year 2012-13, during his tenure he was appointed one Shravana Sharma and Gururaj as his consultants to develop the software of his society and the said persons were discussing with him with regarding to his personal financial transactions stating that they have borrowed loan from the complainant in the year 2004 and the complainant was harassing them to pay the interest on loan. It is also the defence of the Accused that, he has given his blank signed cheque, stamp paper, on demand promissory note and consideration receipt in favour of the said Shravana Sharma and the said Shravana Sharma in turn handed over the said blank signed cheque, stamp paper, on demand promissory note to the C.V. Gururaj and the said Gururaj has kept the said documents inside his car i.e Polo car and the said Gururaj had given his car as a security to the loan amount borrowed from the complainant and the complainant had taken the said car along with the blank signed cheque, stamp paper, on demand promissory note have been given by the Accused to the Shravana Sharma and the said blank signed cheque, stamp paper, on demand promissory note have been misused by the complainant by filing this case. It is important to note here that, except the oral evidence the Accused has not produced single document to show that, he was a chairman of Green Life Souhardha Credit society during the year 2012- 13 and during his tenure as a chairman has appointed Shravana Sharma and Gururaj as his consultants to develop software of the society as alleged by him in his evidence. It is true that, the said Shravana Sharma has examined as DW.2 on behalf of the Accused but he has also not produced document to show that, he was appointed by the Accused as his consultant, in such circumstances the oral evidence of the Accused has not been proved by producing the documents. Therefore it cannot be held that, one Shravana Sharma and Gururaj were appointed as Consultants to the Accused to assist in developing the soft ware of the society and the Accused was chairman of the said society. It is also relevant here to mention that, the Accused or his witness i.e. DW.2 have not produced any single document to show that, the said Sharavana Sharma i.e DW.2 and Gururaj were having financial transactions with the complainant during the year 2004 and in respect of the said transaction the complainant was collected gold and original documents of the polo car of the said Gururaj as alleged by the Accused and DW.2. It is also relevant here to mention that, though the DW.2 has deposed in length in respect of the loan amount borrowed by him from the complainant and execution of the document i.e MOU in favour of the complainant and return of loan amount and interest to the complainant, except his oral say has not produced single document to show that, the complainant has charged interest at the rate of 8% p.m. and he has paid the interest and additional amount of Rs.6,50,000/- to the complainant as alleged by him. It is also important to note here that, either the Accused or the DW.2 have produced the documents to show that, one Mr. C.V.Gururaj has borrowed a loan of Rs.4 to 5 Lakhs from the complainant and at that time had given his two blank signed cheques., pronote to the complainant and the real transaction was sum of Rs.10 Lakhs and for that the said Gururaj had given a car as a surety to the said transaction and the complainant had taken away the said car from C.V.Gururaj, except the oral say nothing has been produced before the court to substantiate their oral evidence. Therefore the entire evidence of the Accused and DW.2 except the self serving oral statmetn nothing has been substantiated by producing documentary proof . It is also important to mention that, the entire defence of the Accused revolving around one C.V. Gururaj i.e. the alleged blank promissory note, consideration receipt, stamp papers and cheque allegedly received from the Accused by the DW.2 were handed over to the said Gururaj who in turn kept the same inside his car and the complainant in turn had taken away the said car along with the said blank promissory note,

consideration receipt, stamp papers and cheque and later same have been misused by the complainant in this case, in spite of it the Accused has not made any efforts to examine the said C.V. Gururaj , therefore in view of non examination of the said C.V. Gururaj the defence of the Accused cannot be acceptable one i.e the complainant has allegedly taken away the car of the C.V. Gururaj along with the alleged blank promissory note, consideration receipt, stamp papers and cheque of the Accused.

23. In addition to the above the Accused/DW.1 in his cross-examination has admitted that, he is an Engineering Graduate and he used to sign the document only after reading and understanding the contents of the document, hence the said admission itself suffice to say that, whenever the documents signed by the Accused he used to read the contents and after understanding the same he used to sign the document, that being the case then the defence of the Accused that, he had given his blank promissory note, consideration receipt, stamp papers and cheque to the one Mr.Shravana Sharma cannot be acceptable one. It is also admitted by the Accused that, he was doing transaction in the bank since 20 to 25 years and he knows the rules of the bankers and also admitted that, at the time of appointment notification have been issued by the company and as per the rules the officials have been appointed and they have maintained the salary, wages paid to the officials of the company in the ledger and has not produced any documents before the court in respect of the society and also not produced any documents to show that, one Mr. Shravana Sahrma and Gururaj were working in his society Hence, the said admissions goes to show that, if really the said Shravana Sharma and Gururaj were appointed by the Accused in his society, definitely the Accused would have produced the documents but no such documents were forthcoming in such circumstances the Accused himself falsified his own evidence . It is also admitted by the Accused that, he is not possessing the documents to show that, Shravana Sharma and Gururaj were having financial transaction with the complainant and he do not know about the cases filed by the complainant against the said Shravana Shrama and Gururaj and has not produced the documents to show that, complainant was harassing the Shravana Sharma and Guruaj in respect of the alleged loan of Rs.6 Lakhs by collecting the gold and also documents of the Polo car, in such circumstances in the absence of the documents only on the basis of oral evidence of the Accused and DW.2 it cannot be held that, the complainant was having financial transaction with the Shravana Sharma and Guruaj and in respect of the said transaction the complainant was collected gold and original documents of the car and also the said car was confiscated by the complainant along with the alleged blank promissory note, consideration receipt, stamp papers and cheque issued by the Accused to the Shravana Sharma i.e DW.2 as alleged by the Accused in his defence.

24. It is also important to not here that, the DW.2 in his cross-examination has admitted that, he has received a loan of Rs.5 Lakhs from the complainant and issued the cheques for Rs.5 Lakhs and Rs.2 Lakhs to the complainant towards repayment of the said loan amount and the said cheques have been dishonoured, for that, the complainant filed a cheque bounce case against him and even inspite of filing the said case he did not return the cheques amount and the said complaint was ended in conviction and court has sentenced him to pay a fine of Rs.5,50,000/- and thereafter he has filed criminal appeal against the said conviction and an FLW was issued by the 12th ACMM Court, in C.C.No. 25253/2006 and thereafter he was arrested and produced before the court and then he has deposited the fine amount and thereafter he has filed criminal petition before the Hon'ble High

Court in 6433/2013 and said criminal petition was dismissed as per Ex.P.25. It is also admitted by the PW.2 that, he has not stated in his evidence in his case, appeal or in crl. Revision petition that, he has paid Rs.24,50,000/- to the complainant as stated by him in this case and also admitted that, he and Accused are good friends. The DW.2 has also admitted that, personally he do not know about the loan transaction of Rs.10 Lakhs between the complainant and Gururaj and the said Gururaj has given his car as a security to the said loan transaction. Hence, the above admissions of the DW.2 makes it clear that, he himself admitted that, he has no personal knowledge about the transaction between the C.V.Gururaj and complainant in respect of Rs.10 Lakhs for which the said Gururaj has given his car as security for the said transaction, in such circumstances his entire evidence cannot be acceptable one in respect of alleged handing over blank promissory note, consideration receipt, stamp papers and cheque given by the Accused and same were handed over to the said Mr. C.V.Gururaj and in turn the said blank promissory note, consideration receipt, stamp papers and cheque were kept inside the car and the complainant had taken away the car of Mr.C.V.Gururaj along with blank promissory note, consideration receipt, stamp papers and cheque. It is also important to note here that, there was cheque bounce case was filed by the complainant against the DW.2 and in the said case the DW.2 was convicted by the court and sentenced to pay fine and he was arrested by the police in the said case and thereafter he has deposited the fine amount before the court and criminal revision petition was filed by the DW.2 was also rejected by the Hon'ble High Court of Karnataka, in such circumstances the evidence of DW.2 cannot be taken in to consideration as it appears that, certainly there is animosity between this witness and the complainant and as admitted by the Dw.2 that, Accused is his good friend , in view of the same the Dw.2 has appeared before the court and deposed on behalf of the Accused, in such circumstances his evidence cannot be acceptable one.

25. It is also relevant here to mention that, the learned counsel for the Accused during the course of cross-examination of the complainant and the Accused in his evidence has taken specific defence that, the Accused has not put the date on the cheque in question i.e., the date on the cheque was not written by the Accused and blank signed cheque of the Accused was misused by the complainant and the said cheque was given to one Gururaj, later on the said cheque was kept inside the car of said Gururaj and the said car was confiscated by the complainant for non payment of the loan taken by the Gururaj and the complainant has misused the said cheque which was kept inside the said car by putting the date on the cheque and represented the same to the bank without his knowledge. As it is already held in the above that the Accused has miserably failed to prove that, he was issued blank signed cheque to the Shravana Shrama ie. DW.2 and who in turn given the said cheque to the Gururaj and thereafter the complainant had taken the car of the said Gururaj along with the blank signed cheque of the Accused, in such circumstances the defence of the Accused cannot be acceptable one. In order to prove the said defence except the oral suggestions of the Accused during the course of cross-examination of the complainant and self serving oral statements in his evidence, nothing has been placed before the court. It is true that, the Accused has filed an application U/s.45 of Indian Evidence Act, seeking direction to sent Ex.P.1 cheque and Ex.P.2 i.e Credit slip to the hand writing expert for getting opinion i.e age of the ink of the name signature, amount written on the cheque and the age of ink of the date written on the cheque Ex.P.2 by comparing same with the Ex.P.2 credit slip filled by the complainant, but the said application was rejected by this court. But the perusal of the oral and documentary evidence adduced by the Accused it cannot be held that the

complainant has fabricated i.e., the date on the subject cheque has been fabricated by the complainant, therefore the defence taken by the Accused is only a bare denial but not proved by producing cogent and convincing documentary proof or evidence. It is also relevant here to mention that, though the Accused has cross examined the complainant in length but nothing has been elicited to discard or discredit his evidence. The complainant /PW.1 has specifically denied a suggestion made to him that, he has filled up the date on the cheque.

26. The Accused himself has admitted that, the cheque in question belongs to his account and signature found at Ex.P.1 (a) is that of his signature. 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 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, he 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 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 of Hon'ble Apex court to India reported in (2002) 7 SCC in the case of P.K. Manmadhan Karthra Vs.Sanjeewa 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 Bengaluru in a case of Crl. Appeal No. 1664/2003 C/w. Crl.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 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 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 he also admitted issuance of the cheque to the complainant, 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 him 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.

27. It is the defence of the Accused that, the date on the cheque is not written by him and his blank signed cheque has been collected by the complainant at the time of taking the car of one Mr.C.V.Gururaj and the said cheque has been misused by the complainant by mentioning the date on the cheque. Even for sake of discussion if it is assumed that, Accused has given cheque in question without mentioning the date on the cheque, in such circumstances also it attracts the penal liability as contemplated U/s.138 of N.I. Act. In this regard, it is relevant here to refer decision of Hon'ble Apex Court of India reported in AIR 2019 SC 2446 in the case of Birsingh Vs. Mukesh Kumar., wherein the Hon'ble apex Court held that, "presumption U/s.139 is presumption of law, distinguished from presumption of facts and also held that, presumptions are rules of evidence and do not conflict with presumption of innocence which requires prosecution to prove case against the Accused and also held that obligation on the prosecution may be discharged with the help of presumptions of law and presumption of fact unless the accused adduces evidence showing reasonable plausibility of non existence of presumed fact." In the present case though the Accused has denied the contents of the cheque in question except his signature but he did not prove his defence or produced any documents or satisfactory evidence to rebut the presumptions as available U/s.139 of the N.I.Act, under such circumstances in view of the above principles of law, it can be presumed even on fact also that the complainant has proved his case by discharging his burden and complying the mandatory provisions. In the said decision the Hon'ble Apex court has also held that, "presumption as to legally enforceable debt is rebuttable, the signed blank cheque if voluntarily presented to payee towards payment payee may fill up amount and other particulars and it in itself



would not invalidate cheque and onus would still be on the accused to prove that, cheque was not issued or discharge of debt or liability by adducing evidence." 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 cheque was issued not for any debt or other liability - it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer - even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act - the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act. In such circumstances even if it is assumed that, the complainant has written date on cheque in question in such circumstances also in view of the principles of law laid down in the above decision that itself would not invalidates the cheque in question and it can be presumed that, the said cheque has been issued by Accused towards discharge of legally recoverable debt.

28. It is also relevant here to refer the decision of Hon'ble Apex court held in (2016) 10 SCC 458 in the case of Sampelly Sathyanarayana Rao Vs. Indian Renewable Energy Development Ltd, wherein the Hon'ble Apex Court held that " (a) Negotiable Instrument Act 1881 - S.138 - If on the date of the cheque liability or debt exist or the amount has become legally recoverable- S.138 will apply - not otherwise". In another decision of Hon'ble High Court of Bombay decided in CRM-M No.2607/2018 (O & M) dated: 27.8.2019 in the case of Kailash vati Vs. M/s. Ludhiyana Beverages., wherein the Hon'ble High Court held that " A. Negotiable Instrument Act 1881 - S.138 and 6 - Dishonour of cheque- date of drawn - Determination of - The date on which the cheque is drawn has to be with reference to the date mentioned in the column in the cheque and not the date on which it is/was signed- Date when the cheque is drawn is not defined in the act - If date of signing cheque is accepted then all post dated cheques cannot be treated as valid cheques within and drawer of cheques would stand absolved from criminal prosecution if cheques are presented after three months of the date on which signature were appended". Hence in view of the principles of law laid down by the Hon'ble Apex Court of India, it can be held that, the liability of the debt existed as on the date mentioned on the cheque not as on the date of signature on the cheque, even for sake of discussion the defence of the Accused taken into consideration but in view of the principles of law laid down by the Hon'ble Apex Court and High Court of Bombay it is to be considered that the date on which cheque is drawn has to be with reference to the date mentioned in the cheque but not the date on which it is or was signed., therefore the defence of the Accused cannot be acceptable one.

29. The Accused in his defence evidence has taken specific contention that, one Shravana Sharma i.e. DW.2 had received his blank promissory note consideration receipt, stamp papers and cheque and later the said documents were handed over to one Sri.C.V. Gururaj and who in turn kept the same inside of his car and the complainant had taken away the said car, in connection with the loan transaction with the C.V.Gururaj along with the documents i.e. blank promissory note consideration receipt, stamp papers and cheque of the Accused and when the said Shravana Sharma requested the Gururaj for return of the said documents but he gave evasive answer to him and disclosed that, his car was confiscated by the complainant in the year 2013 and the blank promissory note consideration receipt, stamp papers and cheque were also lying in the car and taken by the

complainant and in the month of December 2014 only he came to know about the said blank promissory note consideration receipt, stamp papers and cheque documents are with the complainant. As already stated in the above that, the Accused has not proved his defence either by producing documentary proof or by examining the said Mr.C.V.Gururaj, in such circumstances, the defence taken by the Accused appears to be mere denial in nature. If really the Accused has given blank promissory note consideration receipt, stamp papers and cheque to the DW.2 i.e Shravana Sharma and who in turn given the said documents to Mr.C.V.Gururaj and the said documents were kept in the car of the said Mr.C.V.Gururaja and the complainant has confiscated the car of said Gururaj and also taken the blank promissory note consideration receipt, stamp papers and cheque of the Accused and misused the said documents by the complainant, atleast after coming to know the alleged misuse of the documents by the complainant i.e. even after issuance of the legal notice by the complainant or when the cheque was presented for encashment by the complainant, the Accused would have taken legal action against the complainant either by issuing legal notice to the complainant or by filing the complaint before the jurisdictional police or competent court, but no such efforts have been made by the Accused even after receipt of legal notice, his appearance in this case before the court, in such circumstances, except the bare denial of the Accused nothing has been made for getting return of the alleged blank promissory note consideration receipt, stamp papers and cheque of the Accused, therefore it can be held that, the Accused has not rebutted the presumptions available to the complainant U/s.118 and 139 of the N.I. Act by producing cogent and convincing evidence. It is also relevant here to mention that, the conduct of the Accused in not taking the action against the complainant for alleged misuse of his blank promissory note consideration receipt, stamp papers and cheque may leads to draw an adverse inference against him that, the Accused has not initiated any action against the complainant since the cheque in question has been issued by the Accused to the complainant towards discharge of the liability in question and not for any other purpose. In this regard it is relevant here to refer the decision of Hon'ble Apex Court of India reported in AIR 2018 SC 3601 in a case of T.P.Murugan(dead) Thr. Lrs.V. Bhojan Vs. Posa Nandi, rep. Thr. Lrs. PA holder, T.P. Murugan V. Bhojan, wherein the Hon'ble apex Court held that "Negotiable Instruments Act (26 of 1881) Ss.118, 138, 139 - Dishonour of cheque - Presumption as to enforceable debt- cheques allegedly issued by accused towards repayment of debt- Defence of accused that 10 cheques issued towards repayment of loan back in 1995 - behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural - Accused admitting his signature on cheques and pronote, presumption 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". In another decision of the Hon'ble Apex Court of India reported in AIR 2019 Supreme Court 4003 in the case of M/s. Shree Dhaneshwari Traders Vs. Sanjay Jain and another ., wherein the Hon'ble Apex court held that " Negotiable Instrument Act (26 of 1881) Ss.138 , 139- Dishonour of cheque - Legally enforceable debt- Presumption as to - Statement of complainant that cheques in question were issued for rice bags purchased on credit-Failure of Accused to rebut presumption by leading cogent and consistent evidence- Defence of Accused that complainant did not return cheques issued by him after payment made in cash and used it on later date is improbable since Accused continued transaction without taking steps to get back cheques - Accused liable to be convicted. Hence the principles of law laid down by the Hon'ble Apex Court in the above decision are aptly applicable to the case on hand since in the present case also the accused has not made any efforts to get return of cheque alleged to have been given to one

Shravana Sharma i.e DW.2 and in turn the said Shravana Sharma given to one C.V. Gururaj, under such circumstances, the said unnatural conduct of the accused in non taking of action, an adverse inference can be drawn against the accused that, the cheque in question issued by the accused towards discharge of the liability and presumption U/s.139 of N.I.Act would operate against him, as he has admitted the signature and cheque in question is belongs to him.

30. 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 him and though he has taken the specific defence that, one Shravana Sharma i.e. Dw.2 had received his blank promissory note consideration receipt, stamp papers and cheque and later the said documents were handed over to one Sri.C.V. Gururaj and who in turn kept the same inside his car and the complainant had taken away the said car in connection with the loan transaction with the C.V.Gururaj along with the documents i.e. blank promissory note consideration receipt, stamp papers and cheque of the Accused and when the said Shravana Sharma requested the Gururaj for return of the said documents but he gave evasive answer to him and disclosed that, his car was confiscated by the complainant in the year 2013 and the blank promissory note consideration receipt, stamp papers and cheque were also lying in the car and taken by the complainant and in the month of December 2014 only he came to know about the said blank promissory note consideration receipt, stamp papers and cheque documents are with the complainant, but the Accused has not proved the said defence by producing cogent and convincing evidence , in such circumstances it can be held that, the Accused has failed to explain and prove how the cheque in question has come to the possession of the complainant, this would also give rise to an adverse inference against him, this proposition 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" and in the decision of Hon'ble Apex court of India decided in CrI.A.No.664 of 2012 dated: 19.9.2019 in the case of "M.Abbas Haji Vs. T.M.Chennakeshava"

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

Therefore for the above said reasons the defense taken by the accused cannot be acceptable one and accused has miserably failed to rebut the presumption available in favour of the complainant by producing cogent and convincing evidence.

31. 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, the Accused has issued the Ex.P.1 cheque in question in his favour towards discharge of loan amount and part of share of profit in the business of the Accused as per the loan agreement i.e Ex.P.8 and thereafter the complainant has presented the said cheque 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 the said notice was served upon him inspite of it, the Accused has not paid the cheque amount, hence the complainant filed the present complaint against the accused. On the other hand, the accused has failed to rebut the presumption available infavour of the complainant with regard to the existence of legally recoverable debt under Ex.P.1 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.

32. 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 suitable compensated while accused be punished for his act. Regarding compensation, Sec. 143 of N.I.Act laid down the judicial Magistrate First class court can try cases under the provisions of N.I.Act summarily notwithstanding anything contain in the criminal procedure code. Adverting to the facts of the present case, the transaction took place in the year 2013, therefore considering the time gap between the date of transaction and the date of judgment complainant is to be reasonably compensated. 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.35,25,000/= (Rupees Thirty Five Lakhs and Twenty five Thousand only) within one month from the date of order, in default Accused shall under go simple imprisonment for a period of (1) One year 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.35,00,000/= (Rupees Thirty Five Lakhs 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.25,000/= (Rupees Twenty Five Thousand only) shall be defrayed as prosecution expenses to the state.

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 12th day of March, 2020).

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

## ANNEXURE

### 1. List of witness/s examined on behalf of the Complainant:-

P.W.1 : Sri.Bhojaraju.N,.

### 2. List of documents exhibited on behalf of the Complainant:-

Ex.P-1 : Original Cheque;  
Ex.P-1(a) : Signature of the Accused;  
Ex.P.2 : Bank Challan;  
Ex.P.3 : Bank Memo;  
Ex.P.4 : Office copy of the Legal Notice;  
Ex.P-5 & 6 : Postal receipts;  
Ex.P-7 : Postal acknowledgement;  
Ex.P-8 : Loan agreement dated: 8.2.2013;  
Ex.P-8(a) &(b) : signature of the Accused  
Ex.P-9 : on demand promissory note

Ex.P-9(a) & (b) : signatures of the Accused;

Ex.P.10 : consideration receipt;  
Ex.P.11 : Sale agreement deed dated: 7.1.2013;  
Ex.P.12 : reply notice given by the Accused  
Ex.P.13 : returned legal notice;  
Ex.P.14 : RPAD cover;  
Ex.P.15 : postal receipt;  
Ex.P.16 : Postal acknowledgement;

Ex.P.17 : bank pass book;  
Ex.P.18 : loan sanctioned letter infavour of the complainant;  
Ex.P.19 : copy of MR;  
Ex.P.20 : RTC;  
Ex.P.21 : visiting card of the Accused;  
Ex.P.22 : broacher pertaining to the Accused 's company;  
Ex.P.23 : IT returns B Form pertaining to the complainant for the year 2013-14;  
Ex.P.24 : certified copy of the private complaint in PCR No.8421/2015;  
(Marked through DW.1)  
Ex.P.25 : certified copy of the order of Crl.Petition No. 6433/2013;  
(Marked through DW.2)  
Ex.P.26 : certified copy of the order sheet;  
(Marked through DW.2)

3. List of witness/s examined on behalf of the Accused:-

DW.1 : Sri.Devidas Gaonkar,  
DW.2 : Shravana Sharma

4. List of documents exhibited on behalf of the Accused:-

- Nil-

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

12.3.2020 Accused absent. Judgment pronounced since the fine amount is imposed against the Accused and default sentence is imposed. No separate independent sentence is imposed against the Accused.

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.35,25,000/= (Rupees Thirty Five Lakhs and Twenty Five Thousand only) within one month from the date of order, in default Accused shall under go simple imprisonment for a period of (1) One year 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.35,00,000/= (Rupees Thirty Five Lakhs 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.25,000/= (Rupees Twenty Five Thousand only) shall be defrayed as prosecution expenses to the state.

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.