

Kiran.B.H vs Santosh.R on 5 October, 2020

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

Dated this the 5th day of October - 2020

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

C.C.No.19128/2018

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	Kiran.B.H, S/o.Huchaiah, R/at Office, M/s. Sharadha Accounts & Taxation Services, No.433, Shop No.02, 13th Main, M.C.Layout, Vijayanagar, Bengaluru-40. (Rep. by Sri.Sharanagouda S Patil, Adv.)
	V/S	
Accused	:	Santosh.R, S/o.Rajashekar, C/o.Sharada Cinemas, Dharmaraya Swamy Temple Road, Nagarathpet, Bengaluru-02. Alternative address: Santosh.R, Rajashekar, Aged about 39 years, No.7/85, 7th Main, 4th Cross, Srinivas Nagar, Bengaluru-35. (Rep.by Sri.M.Murali Babu, Adv.)
Judgment		2 C.C.19128/2018

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is Acquitted.
DATE OF ORDER	:	05.10.2020.

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

JUDGMENT

The complainant has presented the instant complaint against the accused on 22.06.2018 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.5 lakhs.

2. In brief, the complainant case is:

The accused was known person to the complainant and also borrower from him from past 2 years. The accused had been taken loan from complainant on 18.12.2016 via account pay cheque bearing No.281133 dated:08.12.2016 drawn on Axis Bank current account related to M/s. Sharadha Accounts and Taxation Services. The complainant had issued a cheque in the name of accused and he got realized the said amount through cheque on 12.12.2016 through his bank account. The accused have been executed an agreement as financial arrangement dated:08.12.2016 on non-judicial bond of Rs.200/-.

The complainant has further averred that, the accused was in need of money for paying rent of Theater. The accused has handed over the cheque of Rs.5 lakhs mentioned his signature on the same. As per agreement, the accused has pay interest at 5% and mutually agreed by both the parties to deduct Rs.25,000/- and paid as loan amount.

Whenever, the accused was paying including interest can be paid as per the terms and conditions agreement dated:08.12.2016.

The complainant has further alleged that, after deducting the interest in advance and paid Rs.4,75,000/- through cheque bearing No.281133 dated:08.12.2016. As per the conditions, the accused has to return money within a year not beyond.

The complainant has further contended that, after completing the year, when complainant asked the accused many times for repayment of loan amount, the accused had dragged the matter for one or other reasons up to 5 months. Thereafter, the accused was communicated the complainant and instructed to put a date on 29.05.2018 on his cheque, which was handed over some documents along with the said cheque prior to the signature of the accused.

The complainant has further alleged that, at the instructions of the accused, he presented the cheque bearing No.374270 for Rs.5 lakhs issued by the accused drawn on the then State Bank of Mysore, SBM Colony Branch, Bengaluru, in the name of complainant towards the discharge of legally recoverable liability payable to the complainant, through his banker viz., Axis Bank, Vijayanagar Branch, Bengaluru.

The same came to be dishonoured as per memo dated:30.05.2018 for the reasons "Funds Insufficient". The complainant got utter shock and surprise to see the bank memo and informed the same to the accused and demanded for repayment, but he failed to pay the same. The amount covered under the cheque is legally payable to the complainant, though it was presented at his assurance, the same came to be dishonoured. The accused in order to defraud and cheat the complainant, though there is "Funds Insufficient" in his account got issued the cheque and committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

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

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

5. To prove the case of the complainant, he himself choosen to examined as PW.1 and got marked Ex.P1 to P11(a). The PW.1 was subjected for cross-examination by the advocate for the accused. In the cross-examination of PW.1, accused counsel got confronted two documents and same are marked as Exs.D1 and D2.

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

7. Both side counsels have submitted their detailed written arguments, apart from adduced oral arguments.

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

1) Whether the complainant proves beyond the reasonable doubt that, the amount made mentioned in Ex.P1 cheque for sum of Rs.5 lakhs is the legally existing debt payable by the accused to the complainant?

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

3) What Order?

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

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

REASONS :UNDISPUTED FACTS:-

10. The fact that, the knowingness of the complainant and accused as well as their particulars of addresses made mentioned in the cause title of the complaint is not in dispute. The fact that, by virtue of cheque bearing No.281133 dated:08.12.2016, the complainant by deducting 5% monthly interest at Rs.25,000/- got paid the loan of Rs.4,75,000/- to the accused is not in dispute. The fact that, the accused got encashed the said amount through his bank account on 08.12.2016 is not in dispute.

The fact that, the signature found in Ex.P1 cheque and the same is belongs to the accused is not in dispute. The fact that, the signature found in alleged loan agreement dated:08.12.2016 as per Ex.P9 belongs to the accused subject to prove its due execution is not in dispute. The fact that, the Ex.P1 cheque came to be dishonoured as per banker slips at Exs.P2 and P3 is not in dispute. The fact that, the complainant has not pleaded as to issuance of demand notice as required under Section 138(b) of Negotiable Instruments Act is not in dispute. The fact that, the complainant had paid sum of Rs.4,75,000/- to the accused through cheque pertaining to his concern M/s. Sharadha Accounts and Taxation Services as found in Ex.P10 is not in dispute.

The fact that, the issuance of legal notice as per Ex.P4 to the accused which got served on him and in turn, the accused got replied the complainant on 21.07.2018 as per Ex.P7 is not in dispute. The fact that, as found in Ex.D1 colour xerox copy of the print out taken by the accused pertaining to the WhatsApp Mobile number of complainant coupled with his status photograph bearing his cell number of 97422 63877 is not in dispute. The fact that, as found in Ex.D2 sum of Rs.25,000/-, Rs.75,000/-, Rs.25,000/-, Rs.25,000/-, Rs.75,000/-, Rs.25,000/-, and Rs.75,000/- were paid by the accused to the complainant respectively on 14.02.2017, 05.05.2017, 07.06.2017, 10.07.2017, 09.11.2017, 15.12.2017 and 18.01.2018 and in all Rs.3,25,000/- paid by the accused is not in dispute. The fact that, the genuineness of exchange of WhatsApp Messages between complainant and accused as found in Ex.D2 is not in dispute.

The fact that, complainant had account No.911010025117390 in Axis Bank, M.G.Road, Bengaluru in his name is not in dispute. The fact that, the complainant did C.A. Course and doing the profession of Auditor is not in dispute. The fact that, the complainant had not paid sum of Rs.4,75,000/- to the accused through his personal account, but it was paid through his M/s. Sharadha Accounts and Taxation Services is not in dispute.

The fact that, the Ex.P9 - e-Stamp paper was purchased in the name of complainant herein on 03.12.2016 is not in dispute. The fact that, the genuineness of the entries made mentioned in the bank statement at Ex.P10 pertaining to the complainant is not in dispute. The fact that, Ex.D3 is the bank statement pertaining to the accused in Bank of India and genuineness of entries made mentioned therein is not in dispute.

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

The PW.1 to prove his case chosen to examined himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P11(a), they are:

- a) Ex.P1 is the cheque bearing No.374270 issued by the accused for sum of Rs.5 lakhs dated:29.05.2018, drawn on the then State Bank of Mysore, SBM Colony Branch, Bengaluru.
- b) Ex.P1(a) is the signature of accused.
- c) Exs.P2 and P3 are the Bank Memos dated:30.05.2018.
- d) Ex.P4 is the Legal Notice dated:04.06.2018.
- e) Ex.P5 is the Postal receipt.
- f) Ex.P6 is the Track consignment.
- g) Ex.P7 is the reply notice dated:21.07.2018 issued by accused through his counsel to the complainant counsel.
- h) Ex.P8 is the RPAD cover.
- i) Ex.P9 is the loan agreement dated:08.12.2016 executed by accused herein in favour of complainant herein.
- j) Ex.P9(a) is the signature of accused.
- k) Ex.P10 is the statement of account pertaining to complainant concern for the period from 01.12.2016 to 20.12.2016 issued by Axis Bank.
- l) Ex.P11 is the private complaint and
- m) Ex.P11(a) is the signature of complainant.

The PW.1 was subjected to the cross-examination from the advocate for accused in detail. In support of his case, the complainant through his counsel has produced the citations and relied upon same, they are:

- a) (2019) 5 SCC 418
- b) Crl.R.Peti. No.453/2016 & Crl.M.A.10169/2016

12. After detailed cross-examination done by the advocate for accused to the PW.1, the complainant got closed his side. Thereafter, whatever the incriminating evidence made against the accused was read over and explained to him as required under Section 313 of Cr.P.C., wherein, he denied the same and gave his statement that, he borrowed the loan of Rs.4,75,000/- from the complainant on the security of signed blank cheque at Ex.P1 and he got repaid sum of Rs.4,50,000/- to the complainant. He only needs to pay Rs.25,000/- as balance loan to the complainant, the complainant got filled the blank cheque and filed the false case. Hence, he is not liable to pay the cheque amount.

13. That apart, to prove his probable defence, the accused entered into witness box and choosen to filed affidavit evidence, the same is not opposed by the advocate for complainant. Therefore, to reject the said affidavit evidence there is no material produced by the complainant, hence, it requires to appreciate the defence affidavit evidence of the accused.

In the affidavit evidence of the accused, he stated that, he is not liable to pay the cheque amount to the complainant and he filed the false case by misusing his blank cheque given to him at the time of borrow the loan and he himself for his convenient got filled his name, date and amount. The complainant not paid loan under his individual capacity, but paid from the account of M/s. Sharadha Accounts and Taxation Services. The complainant has not made his concern as a party to the present case, hence, he has no locus standy to file the present case under the individual capacity. There is no relationship between complainant and accused as lender and borrower. In the absence of firm of the complainant, present case is not maintainable and he not obtained any authorization to prosecute on behalf of firm.

The accused has further contended that, in order to make false claim, the complainant has filed the present case. There is no truth or justification in filing the present false case. The accused already repaid the substantial amount of more than Rs.4,75,000/- by way of cash and cheque to the complainant. But he filed the false case by suppressing the receipt of said amount from the accused. The complainant had acknowledged the receipt of money from the accused by way of sent WhatsApp Messages on 01.02.2018, the accused has paid sum of Rs.1,50,000/- to the complainant by way of cash. In that regard, he not issued any receipt. On behalf and since he had faith on complainant, he not demanded the receipt from the complainant. The complainant by suppressed and misrepresented the true facts by playing fraud, filed the false case. He is only due sum of Rs.25,000/- payable to the complainant.

The accused has further alleged that, the firm of the complainant got paid loan of Rs.4,75,000/- to the accused with an understanding that, accused shall repay the same in installments at Rs.25,000/- p.m. to the complainant within a period of one year. At the time of giving loan amount, the complainant took the signed blank cheque and obtained signature on blank stamp paper by stating, those are required towards security to the loan amount. At the instruction of the complainant, he issued the said signed blank cheque and singed blank stamp paper to the complainant as security. With the understanding that, it would return after discharge the entire loan amount. Even, the complainant also assured to return after clearance of loan.

The accused has further alleged that, the complainant had demanded sum of Rs.75,000/- interest on the said loan amount for one year period and accordingly, the complainant had deducted Rs.25,000/- initially towards interest as against the loan of Rs.5 lakhs. The balance interest of Rs.50,000/- to pay by the accused to the complainant, on discharge of the entire loan amount at the end of the year. As per the said understanding between the complainant and accused, he repaid the loan of Rs.25,000/- every month regularly to the complainant by way of cash. The complainant had not issued any receipt, for receipt of the said installment loan. The accused started to pay installments from 01.01.2017 at Rs.25,000/- p.m. and up to May, 2018, he got paid as such, in all paid substantial amount of Rs.4,75,000/- to the complainant. He only due sum of Rs.25,000/- as principal amount and balance interest of Rs.50,000/- as agreed between them. Without consent of accused, the complainant got misused his signed blank cheque and signed blank paper and made false claim. The accused had repaid the amount by cash in installments i.e., sum of Rs.25,000/-, Rs.75,000/-, Rs.25,000/-, Rs.25,000/-, Rs.75,000/-, Rs.25,000/- and Rs.75,000/- were paid by the accused to the complainant respectively on 14.02.2017, 05.05.2017, 07.06.2017, 10.07.2017, 09.11.2017, 15.12.2017 and 18.01.2018, in all Rs.3,25,000/-. For having receipt of the said loan amount by the complainant, he got sent WhatsApp Messages on various dates to the accused and same got produced before this court and even he admitted in his cross-examination.

The accused has further contended that, apart from the above payments, he also paid sum of Rs.1,50,000/- by way of cash on 01.02.2018 and in all he paid Rs.4,75,000/- to the complainant and only due sum of Rs.25,000/-. The complainant by misusing his signed blank cheque and stamp paper in order to make illegal gain by breach the trust of the accused, got filed false case with created and concocted documents, hence, whatever the amount made mentioned in the cheque is not legal money payable by him to the complainant. The cheque bearing No.374270 dated:29.05.2018 belongs to the State Bank of Mysore, which was amalgamated with the State Bank of India, therefore the said cheque, has no legal sanctity and valid in the eye of law. After lapse of 1 ½ years from issuance of signed blank cheque by himself got filled the same and filed the false case, hence, he is not liable to pay the amount covered under the cheque. Hence, prayed for dismissal of the case. Apart from the accused also chosen to produced the documents at Exs.D1 to D3. They are:

- a) Exs.D1 and D2 are the copies of colour print out of the WhatsApp exchange messages between complainant and accused and
- b) Ex.D3 is the statement of account pertaining to accused herein for the period from 01.01.2018 to 31.12.2018 issued by Bank of India.

The DW.1 was subjected to the cross-examination by the advocate for the complainant. With that, the accused got closed his side.

14. On going through the rival contentions of the parties, it made clear that, the accused in this case has seriously attack on the claim put forth by the complainant. On going through the materials it discloses, the complainant has brought the present case against the accused based on the questioned cheque at Ex.P1. Therefore, it is needs to draw the presumption as per Sections 118 and 139 of Negotiable Instruments Act. As per Section 118(g), it shall be presume that, unless the contrary is

prove, the holder of the cheque, the complainant received the cheque for discharge of legal liability. This presumption is rebuttable. Accordingly, Sections 139 and 138 of Negotiable Instruments Act, it also requires to presume that, cheque was drawn for discharge of liability of drawer, it is presumption under law. Therefore, it made clear that, by virtue of the above said sections stated, it made clear that, it requires to draw statutory presumption in favour of complainant that, in respect of discharge of existence of legally recoverable debt, the accused got issued the Ex.P1-cheque unless and until contrary prove. Therefore, as per those sections, it made clear that, it is the initial onus on the accused to prove his case based on the principles of 'Preponderance of Probabilities'.

15. It is require to cite the decision reported in AIR 2010 SCC 1898, in a case between Rangappa V/s Mohan. Wherein, the Hon'ble Apex Court pleased to observe that, the obligation on the prosecution may be discharged with the help of presumption of law or facts unless the accused adduce evidence showing the reasonable probability of non-existence or presumed fact. Wherein also it was pleased to observed that, the accused can prove the non-existence of consideration by raising probable defence. If accused is able to discharge the initial onus of proof of showing that, the existing of consideration was improbably or adverse or the same was illegal, the onus would shift to the complainant, who will be obliged to prove it as a matter of fact, and upon its failure to prove would dis-entitle him to grant the relief on the basis of Negotiable Instruments Act. The burden on the accused of proving the non-existence of consideration can either direct or by bringing on record the preponderance of probabilities by referring to the circumstances upon which, he relies could bare denial of passing consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting benefit of shifting the onus of proving to the complainant. To disprove the presumption, the accused has to bring on record such facts and circumstances upon the consideration of which the court may either believe that, consideration did not exist or its non-existence was so probable that, a prudent man would, under the circumstances of the case, act upon that, it did not exist. Therefore, it made clear that, the accused need to take the probable defence mere denial is not enough.

16. That apart, in a decision reported in ILR 2006 KAR 4672, in a case between J.Ramaraj V/s Hiyaz Khan. Wherein, it was pleased to observed that, mere denial of issuing cheque, whether is sufficient to discharge the initial burden is to be looked into. In that dictum, it was pleased to held that, mere denial of issuing cheques would not be sufficient as it is time and again noted that, once the cheque issued duly signed by the petitioner, the presumption goes against him as per Section 139 of Negotiable Instruments Act.

17. On going through the citations referred supra, it made clear that, whereas the presumption must prove that, guilt of accused beyond the reasonable doubt. The standard of proof so as to prove a defence on the part of the accused is 'Preponderance of Probabilities'. Inference of 'Preponderance of Probabilities' can be drawn, not only from the materials brought on record by parties, but also by reference to the circumstances upon which he relies.

18. Since, it is the initial burden on the accused to prove his probable defence as against the admission of borrowing of loan of Rs.4,75,000/- through cheque, he got repaid the said amount on various dates directly to the complainant and the cash of Rs.1,50,000/- including only he is liable to

pay Rs.25,000/-, it is him to prove the same. In that backdrop, it requires to appreciate the evidence of accused. On going through the probable defence of the accused, he fought against the complainant on various folds.

19. The accused has attack on the complainant that, on account of non-joinder the firm of complainant by name M/s. Sharadha Accounts and Taxation Services, the present case is not maintainable. Both the complainant and accused have clearly admitted that, by virtue of cheque pertaining to M/s. Sharadha Accounts and Taxation Services belongs to the complainant, accused got received sum of Rs.4,75,000/- as loan through the complainant is not in dispute. It is not the contention of the complainant and accused that, other than the complainant, is there any other responsible person run the said firm is not been explained. In order to avoid the responsibility of the complainant, the accused has not disclosed the responsibility of any other person, then the complainant to run firm name M/s. Sharadha Accounts and Taxation Services.

20. The complainant during his cross-examination has clearly admitted that, he run the said firm for doing his auditor business. He not stated anything, the involvement of any other persons as an auditors or partners etc. Without the complainant, question of run the said firm does not arise. If at all, as said by the accused, it was a transaction between the said firm and accused, why he dealt with through the complainant in borrowing the said loan is not been explained. In order to disqualify the claim put forth by the complainant in the absence of his concern, the accused not placed any satisfactory evidence. The complainant and his M/s. Sharadha Accounts and Taxation Services are one and the same. When he clearly admitted, he got received money from the said firm account through the complainant, definitely, mere because of non-mentioning the said concern is not a hurdle to the case of complainant. It is the complainant only deal in the name of the said M/s. Sharadha Accounts and Taxation Services. Therefore, admitted loan borrowed by the ac from the complainant. Therefore, after taking advantage of the loan, the accused has estopped from taking such contention. It is the complainant needs to act on behalf of his firm for its benefit. Accordingly, he dealt with, therefore, to accept the contention of accused, present case is bad of non-joinder of said M/s. Sharadha Accounts and Taxation Services, is holds no water and the same is not disqualified the case of complainant in brought the present case.

21. The contention of the accused that, he did loan transaction with the M/s. Sharadha Accounts and Taxation Services, not under individual capacity of the complainant. Though, he taken such contention, he not disclosed, other than the complainant through whom he got received the loan amount of Rs.4,75,000/- from the said firm. Therefore, when he admittedly receipt of Rs.4,75,000/-, that too, by way of cheque of the said concern got signed by the complainant herein, he cannot raise such contention that, it was the transaction between the said firm and accused and the complainant has no role to initiate the present proceedings. Since, the complainant being an authorized person, who dealt the accountant profession in the name of said firm, it cannot be termed as it was purely transaction between firm and accused. Even to make believe the transaction of the firm and complainant altogether different, the complainant has not placed any satisfactory evidence before this court, in that backdrop also the very contention of the accused as to the transaction were between firm and accused in the absence of complainant is not maintainable.

22. On meticulous perusal of the defence evidence of accused, he categorically admitted the receipt of loan of Rs.5 lakhs from the complainant through cheque belongs to M/s. Sharadha Accounts and Taxation Services. More categorically, the accused also admitted that, by deducting the interest of Rs.25,000/-, the balance of Rs.4,75,000/- loan were paid by complainant to the accused. On appraisal of rival contentions raised by the parties, the factum of borrowing of loan for the tune of Rs.4,75,000/- including deduction of interest at Rs.25,000/- is remains unchallenged. It was the contention of the accused that, while borrow the said loan of Rs.4,75,000/-, after deduction of interest as against the loan of Rs.5 lakhs, the complainant took signed blank cheque and signed blank e-stamp paper. As per the terms and understandings made between complainant and accused, sum of Rs.25,000/- interest have to be remitted by the accused, accordingly, the same was deducted while lent loan of Rs.5 lakhs and regularly, the accused have to repay the same in installments at Rs.25,000/- and at the fag end, the accused has to pay the balance interest of Rs.50,000/-. Accordingly, he got repaid sum of Rs.3,25,000/- as found in Ex.D2 WhatsApp Messages as admitted by the complainant and sum of Rs.1,50,000/- paid by him on 01.12.2018 and only the balance of Rs.25,000/- and balance interest of Rs.50,000/- is to be payable by him to the complainant. But ignoring the payment made by the accused, the complainant himself got filled the blank bond paper and got prepared Ex.P9 agreement in order to make false case.

23. The accused also not discloses, whether the said loan was lent by the complainant to the accused on interest and for what duration. The complainant and accused have categorically admitted, the said loan lent by the complainant to the accused for the period of 12 months. In the complaint he pleaded, it was paid to the accused on interest, but the complainant has not specified, whether it was on monthly interest or interest per annum. Likewise, the accused also very much silent as to the same. But vaguely put forth his defence that, Rs.25,000/- interest was deducted while lent loan and at the time of clearing the last installment of Rs.25,000/- loan, the balance interest at Rs.50,000/- has to be payable by him. Taken in to the analogy of accused, if at all, it was repayment of loan installment, at Rs.25,000/- p.m. for the period of 12 months, it becomes Rs.3 lakhs. Within in the period of 12 months, if regularly paid as, it would not be reaches Rs.5 lakhs. Therefore, as contended by the accused, he got repaid the loan installment per month Rs.25,000/- to the complainant for the period of 12 months, as no sound reason, therefore, the version of the accused also is not acceptable.

24. However, from the oral defence suggested to the PW.1 as well as the defence evidence placed by accused, himself by examined as DW.1 coupled with production of documents at Ex.D2, he able to manifest that, as admitted by the complainant by way of sent WhatsApp Messages as found in Ex.D2, the accused got paid Rs.3,25,000/- is been proved by the accused.

25. That apart, the accused has contended, he got paid Rs.1,50,000/- by way of cash to the complainant on 01.02.2018. When he paid cash, as he admitted since he had faith on the complainant not insisted for receipt. But, to show that, he had such amount and withdraw from his bank account, he got produced his bank statement at Ex.P3. On meticulous perusal of the said bank statement, which clearly manifest that, on 01.02.2018 the accused withdraw sum of Rs.2 lakhs by way of cash, out of the said money, he claimed to be paid Rs.1,50,000/- to the complainant. In that backdrop, he subjected for cross-examination. During the course of cross of DW.1, the complainant has not disputed the withdrawal of the said Rs.2 lakhs by the accused in cash. But contending that, it

was withdrew for his personal purpose, not paid the alleged cash to the complainant. The DW.1 has deposed that, to the suggestion made to him as to, if at all, any amount of Rs.1,50,000/- in cash alleged to be paid by the accused to the complainant, could have been paid by way of account transfer, since not paid as such, deposed falsely. But DW.1 has denied the same and for doing so, he explained that, since earlier he was repaid the money by way of cash, accordingly, at his instruction, he got repaid by way of cash, but complainant has denied the payment made as such. Thereby, the accused withstood his contention by contending that, by withdraw sum of Rs.2 lakhs as found in Ex.D3 got paid Rs.1,50,000/- to the complainant on cash.

26. It is pertinent to note that, the said defence taken by the accused could have been seen from the inception by way of caused reply at Ex.P10, even in the present case also. On going through the Ex.D2, the WhatsApp Messages exchanged between complainant and accused, it clearly depicts, the amount of Rs.3,25,000/- paid by accused to the complainant. On meticulous perusal of the same, wherein it is not mentioned about the mode of payment, but the complainant by accepting the payment made by the accused, hence, acknowledged the receipt of money for the tune of Rs.3,25,000/- through cash only. As found in Ex.D2, when accused had made payment through cash, definitely, it requires to accept the contention of accused that, on 01.12.2018 he got paid Rs.1,50,000/- to the complainant is to be believed. It is not the contention of the complainant that, whatever the payment made by the accused as found in Ex.D2 made through other mode then cash. When the Ex.D2 clearly manifest the payment made by the accused to the complainant through cash on various dates, then it has to be presume that, whatever the amount of Rs.1,50,000/- paid by the accused to the complainant by way of cash only. Despite, the complainant got received sum of Rs.3,25,000/- as found in Ex.D2 and sum of Rs.1,50,000/- on 01.02.2018, in all he got received sum of Rs.4,75,000/-, he not discloses, about the receipt of the said money. Thereby, it made clear that, whatever the amount paid by the complainant in the name of his concern for the tune of Rs.4,75,000/- against the loan of Rs.5 lakhs, got repaid by the accused and the balance payable by him was Rs.25,000/-. If at all, the said loan was lent without any interest.

27. As discussed earlier, the accused has not clarified, whether he borrowed loan without interest, but only undertakes to repay on monthly installments. As he contended, deduction of Rs.25,000/- at the time of borrow loan of Rs.5 lakhs is not in dispute. To show that, remaining amount of Rs.50,000/- interest has to be pay at the time of payment of last installment, the accused has not satisfactorily furnished necessary explanation. Likewise, in order to claim either the monthly interest at 5% p.m. or 5% p.a., there is no clear pleading in the complaint as well as affidavit evidence of the complainant including in his legal notice. In order to adjust the amount repaid by the accused for the tune of Rs.4,75,000/- as found in Exs.D1 and D2 coupled with evidence of complainant and accused, it requires to verify, what was the interest agreement entered into between complainant and accused in the absence of any oral evidence from both the parties.

28. It requires separate discussion as to the complainant has brought the present case by contending that, sum of Rs.5 lakhs made mentioned in the questioned cheque is legally recoverable debt, in view of he got receipt of Rs.4,75,000/-, it is the complainant has to demonstrate, whether the amount covered under the cheque is legally recoverable debt or not.

29. The accused by way of caused reply at the earliest point of time and under the same contention got defended the present case by way of cross-examining the PW.1 as well as himself entered into witness box withstood his contention, coupled with production of documents at Exs.D1 to D3. Thereby, he clearly manifest that, as against the borrowing of loan of Rs.5 lakhs by deducting the interest of Rs.25,000/-, he got received sum of Rs.4,75,000/-, he got repaid Rs.4,75,000/-. Therefore, the accused has successfully rebutted the statutory presumption as well as the facts and circumstances raised by the complainant in the present case. In view of the accused rebutted the very case of complainant by way of place his contra evidence, it would be the reverse burden on the complainant to prove his case beyond the reasonable doubt.

It is well worthy to cite the decision reported in AIR 2008 SC 278 between John K John V/s. Tom Verghees, the Hon'ble Apex court it is held that:

"The presumption under Section 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque. Whenever there is huge amount shown in the cheque, though the initial burden is on the accused, it is equally necessary to know how the complainant advanced such a huge amount".

30. As per the said dictum as well as by virtue of Section 139 of Negotiable Instruments Act, as the accused has successfully proved his probable defence, it is reverse burden casted on the complainant to prove his case beyond the reasonable doubt in order to convict the accused. No doubt, the alleged lent of loan on the security of Ex.P1 cheque issued by the accused to the complainant is not in dispute.

31. Though, complainant has pleaded, he lent loan to the accused by virtue of loan agreement dated:08.12.2016 as well as cheque at Ex.P1 was handed over by him subject to liberty given to him to adding date, he lent loan. On going through the pleading of the complainant, it was very much silent, whether the agreed interest at 5%, whether it was per month or per annum , is very much silent in the pleading of the complainant. On going through the said pleading and evidence placed by both the parties, it made clear that, the complainant has lent the alleged loan for interest is been seen. It is not the contention of the complainant that, the alleged loan was lent by him at first. But his own pleading discloses, there was money lending business between complainant and accused from the past 2 years. Therefore, it made clear that, apart from the complainant has doing auditor business in the name M/s. Sharadha Accounts and Taxation Services, to do the money lending business, has he secured any license nothing has been pleaded by the by him.

32. On meticulous perusal of the cross-examination of PW.1, he categorically admitted that, he had not secured any money lending license. From which, it made clear that, without securing required money lending license to do the business on interest or any profit, the complainant has not secured any license. Under such circumstances, it made clear that, the complainant is doing money lending business illegally. In order to exempt him to do the said money lending business, it is not his case that, the present loan transaction is only the transaction held between them. As per his own pleading, since last 2 years the money lending business is going on between them. Therefore, it

made clear that, the complainant is doing money lending business illegally without obtaining any valid license from years together. Therefore, the very act of the complainant is deprecated.

33. That apart, in the complaint it is very much silent, whether the said loan was lent to the accused either for the monthly interest or for annual interest. But claiming that, by deducting Rs.25,000/- interest for the month and got paid the loan of Rs.4,75,000/-. By contending so, it appears that, he expecting monthly interest at Rs.25,000/- as against the loan of Rs.5 lakhs. Then which amounts the monthly interest at 5% p.a. Taken in to consideration of the same, the annual interest become 60%. Whether the complainant to impose such exorbitant rate of interest at 60% p.a, he authorized to do such money lending business or not, no satisfactory explanation is forth coming from his side. 60% p.a. interest is an exorbitant rate of interest, normally any prudent man or recognized financial institutes would not impose such huge interest. Therefore, it also made clear that, the complainant has doing illegal money lending business, that too, the exorbitant rate of interest at 60% p.a. The same also condemned as, he did the same against the existence of provisions of law.

34. Even though, the complainant has contended that, he lent loan to the accused on interest at 5%. During the course of cross of PW.1, contrary to the same has deposed that:

"£Á£ÄÄ 1.J. ªÁâ, ÄAUÄ ªÄiÁrzÉÝÄ£É. £Á£ÄÄ ªÄÈwÛAiÄÄ°è Drlgï. £Á£ÄÄ CzÄgÉÆAçUÉ §rØ ªÄªªÄ°ÁgÄ ªÄiÁqÄÄªÄÄç®è."

35. By deposing so, the PW.1 has categorically admitted that, he qualified C.A. and doing the auditor profession. More categorically admitted, he is not doing any money lending business. Even, in his further cross-examination he deposed that:

"£Á£ÄÄ £ÉÆÄn, i ªÄÄvÄÄÛ ¥ÄæªÄiÁt ¥ÄvÄæzÄ°è DgÉÆÄ|UÉ ¥Äæw±ÄvÄ 5 §rØAiÄÄ£ÄÄß PÄrvÄ ªÄiÁr G½zÄ °ÄtªÄ£ÄÄß DvÄªUÉ PÉÆnÖzÉÝÄ£É JA§ÄzÄV PÄtô¹zÉÝÄ£É. D °ÄtªÄ£ÄÄß ªÄiÁ¹PÄ ¥Äæw±ÄvÄ 5 ¥ÄjUÄtô¹ PÄrvÄ ªÄiÁr PÉÆnÖzÉÝÄ£É. ªÄiÁ¹PÄ CxÄªÄ EvÄgÄ «ªÄgÄ F ªÉÆzÄ®Ä PÄtô¹®è JAzÄgÉ, Äj. DgÉÆÄ|UÉ, Á® ªÄiÁrzÄ ç£ÄzÄAzÉÄ DvÄ ç£ÄAPÄªÄ£ÄÄß SÄ° ©lÄÖ G½zÄ «ªÄgÄªÄ£ÄÄß ªÄswð ªÄiÁr ZÉPÄl£ÄÄß £Ä£ÄUÉ PÉÆnÖzÄÝgÄÄ."

36. In the earlier portion of cross-examination, he categorically admitted that, he is not doing money lending business. But as contended in the pleading as well as he categorically admitted, by deducting 5% interest p.m. he gave loan to the accused. He more categorically admitted that, he was not mentioned whether interest was per month or per annum. He more categorically admitted that, the questioned cheque was given by the accused on the date of borrowing loan and the same were kept blank, the date and rest of the writings were filled by him and handed over to the complainant. By way of making such admission, it made clear that, 60% p.a. exorbitant rate of interest, the complainant alleged to be paid the loan to the accused, for doing the said money lending business with exorbitant rate of interest admittedly, he is not doing money lending business. From which, it made clear that, he not secured any money lending license. Under the such circumstances, on which basis he claims the interest at 60% p.a. reveal that, against the relevant provision of Money Lenders Act, the complainant is doing illegal money lending business. That too, since past 2 years without

obtaining any license doing the said business the same has to be condemned. From the said evidence it also reveal that, at the time of he lent money to the accused, he secured undated filled cheque from the accused. From which it discloses, he took the undated cheque as security for the alleged lent of loan. Even he not satisfactorily explained exactly on which date, the accused gave cheque. As per his own pleading, the complainant gave cheque bearing No.281133 dated:08.12.2016, when lent loan of Rs.4,75,000/- to the accused by deducting the interest at Rs.25,000/-. More categorically he pleaded, the said cheque was realized by the accused on 12.12.2016.

37. It is significant fact to note that, on the date of issuance of cheque dated:08.12.2016, the loan amount was not realized by the accused, but he categorically deposed and pleaded, through cheque the accused had realized amount on 12.12.2016, which means 4 days later from the date of alleged issuance of cheque. Under such circumstances, exactly when the accused gave the questioned cheque to him is not been clarified by the complainant. If at all, taken into consideration that, the accused gave the cheque on 08.12.2016 on the alleged date of receipt of cheque from the complainant definitely, on that date, without passing any consideration, the complainant took undated cheque at Ex.P1 from the accused. It is significant fact to be note that, as on 08.12.2016, the accused was not due the cheque amount at Ex.P1 as he not realized cheque amount from the complaint. Likewise, if at all, the accused gave the questioned cheque at Ex.P1 undated on 12.12.2016, on that day, the accused was realized the said amount. It was not the contention of the complainant that, the accused gave the cheque on 12.12.2016. From which, it made clear that, before passing loan consideration to the accused on 08.12.2016, he got obtained the undated cheque. The accused has contended that, complainant took signed blank cheque and complainant got filled the same by mentioning the higher amount. If at all, the accused got issued and executed the cheque for sum of Rs.5 lakhs, no need to pay the amount of Rs.4,75,000/- as found in Exs.D2 and D3. The accused got repaid the major portion of loan amount as admitted by the PW.1. In order to adjust the said payment towards interest, the complainant is not authorize to do so. On careful perusal of Ex.P1 cheque it discloses that, except the admitted signature of the accused other writings are made in different hand writing and ink. Even the said cheque discloses the different hand writing with regard fillings and date, apart from the admitted signature of the accused. As reproduced earlier, the PW.1 has deposed that, the accused himself got issued and executed the questioned cheque. If at all, the accused has executed the questioned cheque definitely, everything should be in his hand writing, but contrary to the same the date, name and amount made mentioned in the cheque are very different hand writing and ink. Therefore, it made clear that, the accused has not to executed the questioned cheque to the complainant, as he alleged for the amount of Rs.5 lakhs.

38. No doubt, accused has admitted got issued signed blank cheque as security for the said loan. But he categorically contended, despite, got repayment of Rs.4,75,000/- and only liable to pay Rs.25,000/- as interest of Rs.50,000/- as he agreed, complainant got filled imaginary amount and filed false case. When accused has been paid the maximum portion of repayment of loan as found in Exs.D2 and D3, still accused was liable to pay Rs.5 lakhs, the complainant has not placed any satisfactory evidence. Therefore, the accused has proved that, he not duly executed and issued the questioned cheque for payment of Rs.5 lakhs as alleged by the complainant.

39. On going through the Ex.P9, the alleged agreement dated:08.12.2016 the admitted signature of the accused and complainant is found. The name and address of the witnesses is not been seen. On perusal of signature of the witnesses it cannot identified, who he is as not mentioned better particulars in order to call. Even the said document discloses, the said stamp paper was purchased by the complainant himself, more particularly on 03.12.2016 at 10.09 a.m. itself. It is not the contention of the complainant that, on behalf of accused he got purchased the said stamp paper much earlier. The stamp paper was purchased on 03.12.2016 and alleged agreement was prepared on 08.12.2016. On which anticipation the complainant much earlier to the alleged request or alleged lent of loan, got purchased the stamp paper in his name itself is created.

40. During the course of cross of PW.1, he deposed that:

" , ÁªÀiÁ£ÄªªÁV , Á®ª£ÄÄß ¤ÄrzÁUÀ , Á®UÁgÀjAzÀ D §UÉÎ PÀgÁgÀ£ÄÄß §gÉ-Ä¹PÉÆ¼ÄÄîvÁÛgÉ. DzÀgÉ £Á£ÄÄ DgÉÆÄ|UÉ , ÀzÀj , Á®ª£ÄÄß ¤ÄrzÁUÀ DgÉÆÄ|AiÉÄÄ D PÀgÁgÀ£ÄÄß vÀAiÀiÁj¹ vÀ£Äß °ÉAqÀwAiÀ£ÄÄß CzÀgÀ°è , ÁQëAiÀiÁV PÁtô¹PÉÆAqÄÄ CzÀgÉÆAçUÉ DgÉÆÄ|AiÄÄ UÄÄgÀÄw£Äª aÄnªÄÄvÄÄÛ «¼Á , ÀzÀ «ªÄgÀª£ÄÄß °ÁUÀÆ °ÀtªÄÄgÀÄYÁªÄwUÁV DgÉÆÄ| , ÉÖÄmî ªÄAPi DYsiªÉÄÊ , ÀÆj£Ä MAzÄÄ ZÉPÀi£ÄÄß £Ä£ÀUÉ gÀÆ.5,00,000/-YÁªÄwUÁV PÉÆnÖzÄYgÄÄ. , ÀzÀj zÁRÉUÄ¼Ä£ÄÄß DgÉÆÄ| ç£ÄAPÀ:

08.12.2016 gÀAzÄÄ PÉÆnÖzÄYgÄÄ. DgÉÆÄ|UÉ £Á£ÄÄ , Á®ª£ÄÄß PÉÆmÁÖUÀ, PÉÄª® DvÀªAzÀ , ÀªªiÄrzÀ SÁ° ¤|.1 gÀ ZÉPÀi£ÄÄß YÀqÉçzÉY JAzÀgÉ , ÀjAiÄÄ®è. D ZÉQIUE £Á£ÄÄ §gªªÀtôUEAiÀ£ÄÄßªªiÄr ªÄswðªªiÄrzÉYÄ£ÄzÀgÉ , ÀjAiÄÄ®è. ¤|.1J , ÀªªÁUÀÆ ZÉPÀi£Ä G½zÀ §gªªUÄ¼Äªª , ÁÛPÀëgªªªvÄÄÛ EAPÄAUÄ¼ÄÄ ªÉÄgÉ ªÉÄgÉ EzÉ JAzÀgÉ £Ä£ÀUÉ UÉÆwÛ®è, DgÉÆÄ|AiÄÄ£ÉBÄ PÉÄ¼ÄªÉÄPÄÄ JAzÄÄ £ÄÄrAiÄÄÄvÁÛgÉ. "

41. The complainant has categorically admitted that, normally when lent the loan, the lender used to collect loan agreement. But the PW.1 has deposed that, while he lent loan to the accused, the accused himself got prepared the Ex.P9 agreement and cited his wife as witness and together with identity card and address proof and for repayment of the loan of Rs.5 lakhs got issued the cheque drawn on the then State Bank of Mysore. In order to show that, the accused got prepared the said loan agreement, Ex.P9 does not disclose, stamp paper was purchased by accused, but contrary the complainant himself much prior to alleged lent of loan got purchased the stamp paper in his name. In order to show that, the said stamp paper was taken away by the accused from the hands of complainant, got typed the recitals, there is no satisfactory explanation is forth coming. If at all, the accused himself got prepared the agreement definitely, it was much prior to handed over the loan amount by way of cheque or passing of consideration from the hands of the complaint to the accused. The accused himself does not impose condition on himself and undertaking made to the complainant as to the alleged payment. If at all, the terms and conditions were agreed between complainant and accused, it should be prepared in the presence of both the parties at their instructions. As per the say of PW.1, the accused himself got prepared the said agreement, it does mean that, the complainant has to participated in mentioning its recitals. From which also it made clear that, the complainant has not participated in preparing the mutual agreement at Ex.P9. If at

all, as alleged by the complainant agreement was prepared by the accused, it is prior to handed over the cheque amount. It is pertinent to note that, as on 08.12.2016 whatever the cheque issued by the complainant pertaining to his firm was not realized, the said agreement if at all, executed between complainant and accused, it is come into effect only after presentation of the cheque, but much prior to it, it was came into force. The PW.1 has deposed, accused himself got prepared and affixed his wife signature as found in Ex.P9. Even no suggestion is made as to identify the signature, whether it was male or female witness. Even no suggestion is made to DW.1 as to the name of his wife and her signature is available on Ex.P9. If at all, it is the contention of complainant it is him to summon the wife of accused to establish due execution of alleged loan agreement.

42. That apart, the clear cut statement given by the PW.1, as to the accused himself got prepared the said agreement, does not bind the complainant. The agreement has to be normally prepared at the instruction of the lender, but contrary to the same, the PW.1 has deposed, it was prepared by accused. Therefore, it is not safe to rely upon, in view of the accused took the defence that, his signature obtained on blank stamp paper and got prepared as agreed. In order to remove the doubt created on the Ex.P9, the complainant has not furnished satisfactory explanation. The PW.1 has deposed that, as on the date of execution of Ex.P9 dated:08.12.2016 questioned cheque was given by the accused. But it was denied by the PW.1 that, signed blank cheque was taken by him and himself got filled. Hence, the ink and hand writing are appears to be different, but he deposed, he does not know, it has to be asked to the accused. It is pertinent to note that, the PW.1 has not denied the hand writing and ink differs from the admitted signature of the accused in the questioned cheque at Ex.P1. No need to ask the accused, it is the complainant has to explain who got executed and issued the questioned cheque. As per say of PW.1, he does not know. Whereas, accused said while borrow the loan, he got issued signed blank cheque to the complainant and same is misused. From the evidence of PW.1, he not able to clarify the due execution of the cheque by the accused for discharge of existence of legally recoverable debt of Rs.5 lakhs.

43. That apart, contrary to the particulars found in Ex.P9, the PW.1 has deposed that:

"bÁYÁ PÁUÀzÀÀÀÀÄÄß, PÀgÁgÀÄ vÀAiÀiÁj, À®Ä RjÄ¢¹zÁUÀ £Á£ÉÄ °ÀtªÀÄÄÄß PÉÆnÖzÉÝÄ£É, DzÀgÉ DgÉÆÄ| CzÀÄÄÄß RjÄ¢¹zÀÝgÀÄ. D bÁYÁ PÁUÀzÀ RjÄ¢, À®Ä DgÉÆÄ| CfðAiÀÄÄÄÄß "ÀswðªÀiÁqÀ®Ä §gÀÄªÀ¢®è JAzÀÄ w¹²¹zÁUÀ, £Á£ÉÄ "ÀswðªÀiÁr, CzÀÄÄÄß RjÄ¢, À®Ä °Àt gÀÆ.200/-, gÀÆ.20/- ±ÄÄ®ÌzÉÆA¢UÉ PÉÆlÄÖ PÀ¼ÄÄ»¹zÉÝÄÄ. £Á£ÉÄ D bÁYÁ PÁUÀzÀ RjÄ¢ªÀiÁrzÉÝ JAzÀgÉ, ÀjAiÀÄ®è. DgÉÆÄ| bÁYÁ RjÄ¢ªÀiÁqÀÄªÁUÀ £Á£ÄÄ DvÀ£ÉÆA¢UÉ EgÀ°®è."

44. The earlier portion cross-examination he deposed, accused himself got prepared agreement at Ex.P9. In the above further cross- examination he deposed, for purchase of the e-stamp paper the complainant himself got paid money to the accused and purchased by him. If at all, accused purchased definitely, it could have been mention in the name of accused as purchaser of the e-stamp paper. But the said document does not disclose. If at all, as said by the PW.1, he gave money to the accused to purchase stamp paper, it should be at least on the date of he lent loan, but contrary to the same, much earlier the said stamp paper was purchased by the PW.1. Hence, it is not safe to rely

upon the say of PW.1, as to the accused got prepared the said loan agreement. The PW.1 has deposed that, since the accused told him that, for purchase stamp paper, he does not know how to fill the application. Therefore, the PW.1 himself got filled and paid sum of Rs.200/- for purchase stamp paper with commission of Rs.20/-. He denied the suggestion, he himself purchased the stamp paper. He also stated at the time of accused purchased the stamp paper, he was not accompanied to him. From which, it also made clear that, for purchase stamp paper the complainant himself got filled the application and paid money much prior to the alleged borrowing of loan is highly improbable to accept the contention of the complainant.

45. If at all, as said by the PW.1 while prepare the Ex.P9 and it was prepared by the accused got obtained the signature of wife of accused and given to the complainant in his office, by that time, his friend by name Byrappa was present. If at all, the said Byrappa was present in the said office at the time of hand over the said document, it made clear that, who is the best witness, but for the reasons better known to him, complainant has not obtained his signature nor examined him before this court to prove that, due execution and issuance of Ex.P9 agreement in favour of complainant. The accused has denied the hand over and issuance including execution of stamp paper at Ex.P9 in favour of complainant, it was created by the complainant on the blank stamp paper signature of the accused.

46. The PW.1 has deposed, the accused himself got prepared the loan agreement. Even he failed to disclose, on whose instructions the conditions were made mentioned therein. It is the complainant alleged, he lent loan to the accused, therefore, if at all, prepared at the instructions of the complainant, the said agreement has to be drawn, but contrary to the same complainant has deposed, the accused himself prepared. There is no base in the contention of the complainant in deposing so.

47. On going through the Ex.P9 it also discloses, for the monthly rate of interest at 5% amounting to 60% p.a. alleged to be lent loan to the accused, and accused agreed to repay the money with interest at Rs.25,000/- and by the end of 12 months, the accused has to refund the entire loan amount of Rs.5 lakhs. In order to show that, as made mentioned in the condition No.4, the complainant took the ID Card, PAN Card and Driving License of the accused as address proof, it is him to produce before this court, but not produced the same for the reasons better known to him.

48. It is significant fact to note here itself that, as per the condition No.2, the accused has permitted to repay the interest on or before 5th of every month by way of cash or by way of on-line transfer. The accused has contended, he got repaid sum of Rs.3,25,000/- as found in Ex.D2 and as found in Ex.D3 Rs.1,50,000/- has paid by withdrawing money from his account. Therefore, the Ex.P9 made clear that, as per the agreed terms and conditions, the complainant has permitted, the accused to repay money with cash. Whatever the amount so received by the complainant, he not maintained any receipt, therefore, whatever the WhatsApp Messages exchanged between complainant and accused has to be admitted. With regard to the Ex.D2 - WhatsApp Messages concerned it requires to focus on the evidence of PW.1.

49. PW.1 in his cross-examination has deposed that:

"£À£Àß ¢ÉÆ"ÉÊ"i ,ÀASÉâB 9742263877. ,ÁQëUÉ ¢ÁãmïiCYi ¢ÉÄ, Éei£À°ègÀÄªÀ
 YsÀ£ÆÄmÉÆÄ ¢ÄÄvÀÄÛ CzÀgÀ°ègÀÄªÀ ¢ÄÄ¢ævÀ ,ÀAzÉÄ±ÀªÀ£ÄÄß
 v£ÆÄj ,À"ÁV, vÀ£ÄßzÉÄ JAzÄÄ ,ÁQëAiÄÄ£ÉÆÄr M|àPÉÆAqÀ ¢ÉÄgÉUÉ
 CzÀ£ÄÄß ¢r.1 JASÄzÁV UÄÄgÀÄw, À"Á-ÄvÄÄ. ¢£ÁAPÀ 14.02.2017 gÀAzÄÄ
 DgÉÆÄ|UÉ 25PÉ °Àt 1éÄPÀj1zÉYÄ£ÉAzÄÄ ,ÀAzÉÄ±À PÀ¼ÄÄ»1zÉYÄ£ÉAzÄgÉ
 ,Äj. ,ÁQëAiÄÄÄ D ,ÀAzÉÄ±ÀªÀ£ÄÄß £ÉÆÄr M|àPÉÆAqÀ ¢ÉÄgÉUÉ ¢r.2 JAzÄÄ
 UÄÄgÀÄw, À"Á-ÄvÄÄ. ¢£ÁAPÀ 05.05.2017 gÀAzÄÄ 75PÉ, ¢£ÁAPÀ:07.06.2017
 gÀAzÄÄ 25PÉ, ¢£ÁAPÀ:10.07.2017 gÀAzÄÄ 25PÉ, ¢£ÁAPÀ:09.11.2017 gÀAzÄÄ
 75PÉ, ¢£ÁAPÀ:15.12.2017 gÀAzÄÄ 25PÉ, ¢£ÁAPÀ:18.01.2018 gÀAzÄÄ 75PÉ
 °ÀtªÀ£ÄÄß DgÉÆÄ|ÄÄzÄ 1éÄPÀj1 DvÀªUÉ D §UÉÎ F ¢ÉÄÄ"É °À£Ä½zÄ
 ¢£ÁAPÀUÄ¼Ä°è ®UÄwÛ1gÀÄªÀ ¢ÁãmïiCYi ¢ÉÄ, Éei£À YÀæPÁgÀ DvÀªUÉ
 ,ÀAzÉÄ±ÀªÀ£ÄÄß PÀ¼ÄÄ»1zÉYÄ£ÉAzÄgÉ ,ÄjAiÄÄ®è. ,ÁQëAiÄÄÄ D jÄwAiÄÄ
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 £ÄÄrAiÄÄÄvÀÛgÉ. DgÉÆÄ| F ¢ÉÄÄ"É £À£Àß ¢ÁãmïiCYi ¢ÉÄ, Éei YÀæPÁgÀ
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 °ÀtªÀ£ÄÄß ¢AiÁgÀ£ÉÄ ¢£Ä ¢ÄqÀzÉÄ EzÄY°è, ZÉPÀi£ÄÄß CªAiÁ£ÄÄUÉÆ½1,
 vÀ£ÀUÉ YÀjavÀjgÀÄªÀ C1, ÉÖAmi PÀ«ÄÄµÀ£ÄÄgi DYsi YÉÇ°Ä, i ¢ÄÄSÁAvÀgÀ
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 ,ÀAzÉÄ±À PÀ¼ÄÄ»1zÉY JAzÄgÉ ,ÄjAiÄÄ®è. ¢r.1 ¢ÄÄvÀÄÛ 2 °ÁUÄÆ ®UÄvÀÄÛ
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 DgÉÆÄ| £À£ÀUÉ PÉÄªÀ® gÀÆ.25,000/- ¢ÄqÀ®Ä "ÁQ EzÉ JAzÄgÉ ,ÄjAiÄÄ®è.
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 £Ä ¢AzÄ YÀqÉzÄAvÀ°À gÀÆ.4,75,000/- ¢ÄÄgÀ½, ÄªªÀ §UÉÎ
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50. The PW.1 has categorically admitted as found in Ex.D1 his mobile number is reflected. The PW.1 has categorically admitted, on 14.02.2017 has found in Ex.D2 Rs.25,000/- amount were remitted the account of complainant by the accused was got received by the complainant is been seen. Since, the PW.1 has admitted, the said message document got marked at Ex.D2. Later, it was suggestion made as to the payment of amount as found in Ex.D2 on various dates amounting to Rs.3,25,000/- were received by the complainant, therefore, he got sent WhatsApp Messages for receipt of same is been denied by the PW.1 and he volunteers that, anybody can prepare the said kind of messages. If anybody got prepared the said messages it does not reflect the icon of exchange of repeated messages for the period of year. If at all, it was created, why the complainant go on opening the said message and accepted and further made demand for making payment itself creates doubt, as to the

bonafidness of the complainant. The PW.1 against his own exchange of WhatsApp Messages as found in Ex.D2 has falsely deposed as it was created. The said attitude of the complainant despite got received sum of Rs.3,25,000/- and he himself got acknowledged as found in Ex.D2, for the reasons best known to him, he gone to an extent it was created. The very approach of the complainant has to be condemned. When PW.1 has denied the Ex.D2 entries though he himself communicated messages to the accused, therefore, denial of got receipt of cash of Rs.1,50,000/- on 01.02.2018 from the accused as he withdrew the said money as found in Ex.D3, it has to be presume that, and PW.1 has deposed falsely.

51. During the course of cross of PW.1, even suggestion was made to him that, if the accused was not paid interest, on 09.10.2017, the complainant threaten the accused by way of sent message by stating if not paid the interest, through the knowing Assistant Commissioner of Police, he would initiate necessary action against the accused. The PW.1 has denied the said message, but his own sent message it also clearly, he texted that, if interest amount not received today cheque given by you will be presented tomorrow for bank and it is get bounce will speak to Assistant Commissioner of Police, he is well known to me and will take legal action for the same. The said text has been seen in the Ex.D2 WhatsApp exchanged Message between complainant and accused. The said message leads to draw the inference that, the complainant even gone to threat the accused stating, he would bounce the cheque and lodge complaint for pressurize him. If at all, accused not paid money, it is the complainant has to made use of the cheque as per law, but no need to approach the Assistant Commissioner of Police and threaten the accused. Therefore, it clearly manifest that, undated signed blank cheque was in the hands of complainant, therefore, he gone to an extent of sent a message to cause threat to the accused by alleging the intent of use of police force, as he knew the concern police officials. The very act of the complainant also reflects his bonafidness. It was clearly suggested to PW.1 that, as found in Ex.D1 and D2 and attached document including cash, the accused got paid Rs.4,75,000/- and only Rs.25,000/- needs to repay. The complainant not lent loan for interest and whatever the loan borrowed by the accused was repaid to the complainant on every monthly interest of Rs.25,000/-. The PW.1 has denied the same, but the deduction of interest and subsequent transaction and text messages exchanged between complainant and accused as found Ex.D2 clearly manifest that, sum of Rs.4,75,000/- was paid by the accused against the loan of Rs.5 lakhs. Even though, Rs.5 lakhs whole amount of loan has not been paid by complainant, wherein also he deducted Rs.25,000/-. If at all, the accused was need the loan of Rs.5 lakhs definitely, he had every liberty to approach the nationalized bank, who are eager to lent loan for megar interest at the maximum 10% per annum. Contrary to the same, 60% interest p.a. the complainant lent the alleged loan to the accused is highly exorbitant rate of interest imposed by the complainant. Even for doing any money lending license the complainant had not obtained any licensee. Contrary to the existed provisions of liability the complainant as did the alleged loan transaction. If at all, the complainant borrow loan from financial institutions by that time, loan could have been finished. Accordingly, whatever the loan, the complainant lent to the accused of Rs.4,75,000/- were repaid by the accused as found in Ex.D2 and D3. In order to claim Rs.5 lakhs as mentioned by the complainant question as found in Ex.P1 cheque he has not given any satisfactory explanation.

52. If at all, the contention of the complainant has accepted for the interest of 5% p.m. or 60% p.a. is permitted to do the money lending business, that too, without obtaining money lending license by

the complainant definitely, it would regularize the illegal acts done by the complainant. Then the complaint may be taken the situation as granted and will continue the same under the guise of court order. Whatever the alleged money transaction done by the complainant and accused for exorbitant rate of interest, it is against the prevailed financial laws. In order to accept the money lending business of the complainant, without necessary license, that too, with interest of 60% p.a., the complainant has not made out any satisfactory grounds before this court. Therefore, whatever the amount repaid by the accused of Rs.4,75,000/- has considered as repayment of principal amount. Since, he himself got imposed the higher rate of interest at 60% p.a. in view of the accused got repaid the said loan within the span of one year, calculating the further interest also no valid grounds is made out by the complainant. Therefore, it is the considerable opinion of this court that, as agreed by the accused whatever the amount so borrowed for the tune of Rs.4,75,000/- got repaid. Since, he got repaid the amount on every monthly installment for getting adjust the same, the complainant has not imposed reasonable interest, even not came forward to impose reasonable interest adjust the said amount in order to make balance claim. As there is exorbitant rate of interest imposed by the complainant and at the time of alleged lent of loan, he got obtained signed blank paper and signed blank cheque, despite accused got repaid the huge amount of Rs.4,75,000/-, the complainant has projected the present case, still accused liable to pay the principal amount of Rs.5 lakhs, there is no sound reason in doing so. The imposing of exorbitant rate of interest at 60% p.a. by the complainant, though he not being a money lender, if entertained this kind of litigation, the complainant could have taken it has granted and caused court inconvenience and financial cause as well as irreparable loss and hardship to the needy persons like accused. Therefore, viewed from any angle, in view of the accused got repaid sum of Rs.4,75,000/- on monthly installment, claim the interest at 60% p.a. and after adjust the same, the accused still liable for Rs.5 lakhs is not acceptable theory made out by the complainant. Therefore, the very case put forth by the complainant against the provisions of money lending business. Therefore, he is not entitled for the relief sought. The accused himself able to prove his case under preponderance of probabilities and got established Rs.4,75,000/- were repaid to the complainant, as he borrowed in order to claim the interest no reasonable interest were determined between complainant and accused and against the provisions, the complainant is doing money lending business for exorbitant rate of interest, hence, the very case of complainant is not maintainable. Hence, the accused is entitled for benefit of doubt for acquittal.

53. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, he fails to demonstrate his very case. While appreciate the materials available on record, this court has humbly gone through the decision relied by both parties apart from the following decisions.

In the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

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

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

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

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

55. The principle of law laid down in the above decisions is applicable to the facts of this case. In the case on hand also, as discussed above, the complainant has failed to prove with cogent evidence as to the lending of loan of Rs.5 lakhs to the accused. Thus, that fact itself is sufficient to infer that, accused is able to rebut presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

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

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

56. In this case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, he is not liable to pay Ex.P1 cheque amount of Rs.5 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the accused has borrowed the cheque amount and he is legally liable to pay the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to initiate a proceeding against the drawer of the cheque, who is not at all liable to pay the cheque amount. The accused has taken his defence at the earliest point of time, while record accusation and statement under Section 313 of Cr.P.C. by way of denial. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheque for discharge of liability of Rs.5 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

57. From the above elaborate discussions, it very much clear that, the complainant has failed to adduce cogent and corroborative evidence to show that, accused has issued cheque Ex.P1 in discharge of his legally payable debt for valid consideration. Hence, rebutted the legal presumptions under Sections 139 and 118 of Negotiable Instruments Act in favour of the accused.

58. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheque pertaining to the account of the accused is dishonoured and the requirements envisaged under Section 138 of

(a) to (c) of Negotiable Instruments Act is complied, then it has to be presumed that, cheque in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases. Now, it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

59. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the presumption envisaged under Sections 118 and 139 of Negotiable Instruments Act. The complainant has failed to discharge the initial burden to prove his contention as alleged in the complaint. Hence, the complainant has not produced needed evidence to prove that, amount of Rs.5 lakhs legally recoverable debt. Therefore, since the complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the complainant in its entirety without the support of the substantial documentary evidence pertaining to the said transaction. The complainant fails to prove his case beyond all reasonable doubt. As discussed above, the complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

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

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

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

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 5th day of October

- 2020) (SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : Kiran.B.H

List of Exhibits marked on behalf of Complainant:

Ex.P1	: Original Cheque
Ex.P1(a)	: Signature of accused
Exs.P2 & P3	: Bank endorsements
Ex.P4	: Office copy of legal notice
Ex.P5	: Postal receipt
Ex.P6	: Track Consignment
Ex.P7	: Reply notice

Ex.P8 : RPAD Cover
Ex.P9 : Loan agreement
Ex.P9(a) : Signature of accused

Ex.P10 : Statement of account
Ex.P11 : Private complaint
Ex.P11(a) : Signature of complainant

List of Witnesses examined on behalf of the defence:

DW.1 : R.Santosh

List of Exhibits marked on behalf of defence:

Exs.D1 & D2 : Colour printout copies of WhatsApp messages
Ex.D3 : Statement of account

XXIII Addl. Chief Metropolitan
Magistrate, Bengaluru.

05.10.2020.

Comp -

Accd -

For Judgment

Judgment pronounced in the open court vide separate order.

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

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

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.