

## M.Kempaiah vs G.T.Muralidhar on 4 December, 2020

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

Dated this the 4th day of December - 2020

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,  
XXIII Addl.C.M.M., Bengaluru City.  
C.C.NO.21084/2017

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : M.Kempaiah,  
S/o.Mayanna,  
Aged about 49 years,  
R/at No.22, 5th Main Road,  
Kandayana Badavane,  
Annapurneshwari Nagar,  
Nagarabhavi 2nd Stage,  
Bengaluru-91.  
(Rep. by Sri.D.M.Kumar, Adv.)

V/S

Accused : G.T.Muralidhar,  
S/o.Thirumalagiriyappa,  
R/at. No.4, Kalabyraveswara Nilaya,  
Behind Aroghya Badavane,  
3B- 1st Main Road, 11th Cross,  
Srigandadakaval,  
Bengaluru-91.  
(Rep.by Sri.D.Raghu Prakash Babu, Adv.)

OFFENCE COMPLAINED OF : U/Sec. 138 of Negotiable  
Instruments Act.  
PLEAD OF THE ACCUSED : Not guilty.  
FINAL ORDER : Accused is Acquitted.  
DATE OF ORDER : 04.12.2020.

Judgment (SHRIDHARA.M)  
XXIII Addl.CMM., Bengaluru.  
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### JUDGMENT

The complainant has presented the instant complaint against the accused on 19.07.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.3 lakhs.

2. In a nut shell, the case of the complainant is:

The accused was friend of complainant and he was tenant under the complainant. The accused was doing flower decoration in Kalyana Mantapa. The accused for the purpose of purchasing Flower Decoration Materials and develop his flower decoration business, during the 1st week of June, 2016 approached the complainant and seeking for hand loan of Rs.6 lakhs. The complainant on trusted the accused agreed to help him. Accordingly, on 21.06.2016 the complainant gave Rs.6 lakhs to the accused. The accused on the said day itself, got executed loan agreement to the complainant and undertakes to repay the same within six months.

The complainant has averred that, after lapse of agreed period of 6 months, the complainant went to the accused and requested and demanded for repayment of the said loan amount of Rs.6 lakhs, the accused told him that, since Rs.500/- and Judgment 3 C.C.No.21084/2017 Rs.1,000/- denomination notes were not circulated on account of demonetization and there were ups and down in his business, therefore, took time and assured to repay today or tomorrow. Finally, on 01.05.2017, the accused gave cheque bearing No.024458 dated:08.05.2017 for sum of Rs.3 lakhs and another cheque bearing No.628262 dated:03.06.2017 for sum of Rs.3 lakhs, both the cheques are drawn on Axis Bank and Karnataka Bank Ltd., of Rajarajeshwarinagar Branch, Bengaluru and handed over the said 2 cheques and assured the complainant to present them on the date made mentioned therein.

The complainant has further alleged that, as per the instructions of accused, when the complainant has presented the cheque bearing No.628262 dated:03.06.2017 for encashment through his banker viz., the then State Bank of Mysore, Cotton pet Branch, Bengaluru. After seeing the bank endorsement dated:05.06.2017, the said cheque came to be dishonoured for the reasons "Funds Insufficient". Thereafter, he try to brought the said fact to the notice of accused and whenever he try to contact the accused, the accused avoided the complainant. Finally, on 12.06.2017 the complainant gave cheque bounce notice demanding the accused to pay the amount covered under the cheque. The accused after receipt of legal notice, caused Judgment 4 C.C.No.21084/2017 untenable reply, but not paid the amount covered under the cheque. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

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

4. In response to the summons, the accused appeared through his counsel and obtained 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 chosen to examined as PW.1 and got marked Exs.P1 to P5. The PW.1 is also chosen to examine one witness to the said transaction by name Mr.P.Kannan as PW.2. The PW.1 and PW.2 were subjected for cross-examination by the advocate for the accused. In the cross-examination of PW.1, accused counsel got confronted three documents and same are marked as Exs.D1 to D3.

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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 given by him was recorded. In support of the defence, the accused himself was examined as DW.1 and got marked Exs.D4 and D5 and also subjected for cross-examination by the advocate for the complainant.

7. Accused counsel has addressed his side arguments through video conference. Complainant counsel has not addressed his side arguments. In spite of given liberty to file his written arguments, but complainant counsel has not submitted his written arguments.

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

1) Whether the complainant proves beyond the reasonable doubt that, he paid sum of Rs.6,00,000/- on 21.06.2016 as hand loan to the accused, and in turn, for partial discharge of legal recoverable debt, the accused issued the Ex.P1 cheque bearing No.628262, dated:03.06.2017 for sum of Rs.3 lakhs drawn on Karnataka Bank Ltd., Rajarajeshwarinagar Branch, Bengaluru?

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

3) What Order?

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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 complainant and accused are known to each other is not in dispute. The fact that, as per the rental agreement produced at Ex.D1, the accused was tenant under the complainant is not in dispute. The fact that, as per Ex.D1 at the time of accused was inducted as a tenant, he made security deposit of Rs.1,50,000/- returnable after lapse of 11 months is not in dispute. The fact that, the accused got vacated the said rented premises of the complainant is not in dispute.

The fact that, the complainant was entered into Service Provider Agreement as found in Ex.D3 with JAS E Techno Services Pvt. Ltd., dated:21.12.2015 is not in dispute. The fact that, the said document, the accused was also signatory as per Ex.D3(b) is not in dispute. The fact that, as per Ex.D3 the Judgment 7 C.C.No.21084/2017 complainant needs to supply electrical goods for carrying out the distribution process as per guidelines of Government of India is not in dispute. The fact that, the terms and conditions made mentioned in Ex.D3 is not in dispute.

The fact that, questioned cheque at Ex.P1 and signature found therein belongs to the accused is not in dispute. The fact that, the bouncing of cheque and cheque as per memo at Ex.P2 is not in dispute. The fact that, exchange of legal notices between complainant and accused as found in Exs.P3 and P5 are not in dispute.

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

The PW.1 to prove his case chosen to examine himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P5, they are:

a) Ex.P1 is the cheque bearing No.628262 issued by the accused for sum of Rs.3 lakhs dated:03.06.2017, drawn on Karnataka Bank Ltd., Rajarajeshwarinagar Branch, Bengaluru.

b) Ex.P1(a) is the alleged signature of accused.

c) Ex.P2 is the Bank Memo dated:05.06.2017.

d) Ex.P3 is the Legal Notice dated:12.06.2017.

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e) Ex.P4 is the postal acknowledgment card.

f) Ex.P5 is the reply notice dated:23.06.2017 issued by accused through his counsel to the complainant counsel.

12. That apart, to prove his case, the complainant got chosen to examine one Mr.Sri.P.Kannan as witness and who filed affidavit evidence and examined as PW.2 on oath. He in his affidavit evidence has contended that, he knew the complainant and accused. On 21.06.2016 the accused borrowed

sum of Rs.6 lakhs from the complainant and on the day itself, the accused got executed loan agreement in favour of the complainant in his presence. The PW.2 has affixed his signature as a witness to the said loan agreement. He also stated that, the accused undertakes to repay the said loan within 6 months. The PW.1 and PW.2 were subjected to the cross-examination by the advocate for the accused.

13. After detailed cross-examination done by the advocate for accused to the PW.1 and PW.2, 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, the accused denied the same and gave his statement that, he not borrowed Judgment 9 C.C.No.21084/2017 loan from the complainant nor issued the cheque to him and he is having his own defence evidence.

14. In order to prove the defence of the accused, the accused himself choosen to entered into witness box and examined as DW.1 on oath and filed affidavit evidence.

15. No doubt, in this case, the accused was entered into witness box and filed affidavit evidence. The filing of affidavit by the accused in lieu of his probable defence is not opposed by the complainant. Mere because of he not sought permission under Sections 315 and 316 of Cr.P.C., it does not a ground to out-rate reject the probable defence set out by the accused. Mere because Section 145(1) of Negotiable Instruments Act does not expressly permit the accused to filed affidavit evidence, it does not mean that, the court cannot allow the accused to give his evidence on affidavit. By applying the same analogy, unless there is just and reasonable ground to refuse such permission, there is no express bar on accused to give evidence on affidavit either in the accused or in the court.

In a decision reported in 2006 SCC online, Bombay 703, in a case between Peacock Industries Limited Vidhyadhar and others V/s. Dudhrani Finance Limited Bombay and another . Ratio layout Judgment 10 C.C.No.21084/2017 therein was partly firm in a decision reported in (2010) 3 SCC 83, in a case between Mandovi Co-operative Society Ltd., V/s. Nimesh B Takore. Wherein, by citing the decisions reported in KSL and Industries Ltd., case, it was pleased to observed that, the observation made by the Division Bench in KSL and Industries Ltd., case, clearly indicate that, even the accused should be given option to lead her evidence on affidavit. But such request should be made in writing as providing for Section 315(1) of Cr.P.C. Wherein, lordship was pleased observed that, find no justified reason to refuse permission to the accused to give his evidence on affidavit subject to the provisions contained in Sections 315 and 316 of Cr.P.C.

16. That apart, in a judgment passed by the Hon'ble High Court of Karnataka dated 13 th Day of February 2020 in a case between Jagadeesh Hiremath and R. Venkatesh in Criminal Appeal No.907 of 2017 A/W Criminal Appeal No.908 of 2017 is pleased to observed that, in view of the orders of this court in Criminal Petition No. 9331/2017 C/w Criminal Petition No. 9332/2017 dated 02.07.2019, wherein following the law laid down by the Hon'ble Supreme Court in Indo International Ltd., & Another Vs. State Of Maharashtra & Another, 2005 CrL.L.J. 208, it is held that, "The court dealing with a complaint under Section 138 Judgment 11 C.C.No.21084/2017 of the said Act of 1881 had an option to take evidence of the witnesses on the side of the prosecution as well as

evidence of the accused and the defence witnesses, if any on affidavit"

17. The accused in his affidavit evidence has contended that, he was a tenant in the house of complainant. He never have any loan transaction with the complainant and he had no necessity to borrow the loan as alleged by the complainant. The complainant has not paid any loan of Rs.6 lakhs by way of cash as he alleged on 21.06.2016 and he not executed any loan agreement in his favour. He also contended that, he never issued any cheque much or less produced in the present case as well as in another cheque produced in C.C.No.21082/2017.

18. The accused has placed his defence in his affidavit evidence that, the complainant is well aware that, he is a mediator and an agent for getting a government contract in respect of LED Bulb Supplies in the rural areas. In the said transaction, the complainant had approached one Kumar, who happened to be in the acquaintance of accused and proposed the accused to venture into the said business, which requires huge deposit of money. Accused had clearly expressed his inability to pay huge sum of money as deposit, however the complainant had persuaded the accused to do the business by guaranteeing huge Judgment 12 C.C.No.21084/2017 profits and also offered unsolicited help stating that, he would pay the deposit on behalf of accused, in pursuance of which, the complainant took signed blank cheques and insisted to give cheque of another person, would would stand as a guaranter. The complainant took 3 cheques from the accused and 2 cheques from his sister-in-law by name Smt.H.J.Mamatha. He also detailed his another cheque bearing No.024457 drawn on Axis Bank, belongs to accused and another cheque bearing No.055818 drawn on State Bank of India, belongs to Smt.H.J.Mamatha.

The accused has further alleged that, out of the 5 cheques, 3 cheques belongs to the accused and 2 cheques were of Smt.H.J.Mamatha taken by the complainant and thereafter, he not procured the promised LED Bulb Contract. The accused believing the complainant representations, he handed over the above mentioned cheques and a blank stamp paper to secure the LED Bulb Contract in his favour. The xerox copy of the blank cheque and blank stamp paper, which are misused and produced at Exs.P1 to P5 by the complainant.

The accused has further contended that, the complainant being his landlord, forced him to vacate the premises citing that, Judgment 13 C.C.No.21084/2017 he needs same for his personal use. Accordingly, he vacated the premises on 10.03.2017, but complainant did not returned his security deposit till the date. When accused started repeatedly requests to him to refund the security deposit, the complainant had misused the said cheques and issued legal notice alleging all falsities for his illegal gain through unlawful means. There was a specific understanding between complainant and accused that, the said stamp paper or cheques are only meant to be used for securing Government LED Bulb Contract not for any other purpose. But the complainant got misused the stamp paper and cheque by alleging, accused executed the loan agreement. The said contention of the complainant absolutely false and it was created fictitious witnesses i.e., P.Kannan and E.S.Diwakar, those persons are not known to him at any point of time.

The accused has further contended that, infact not 2 cheques, but 3 cheques are belonging to the accused and 2 blank cheques of his sister-in-law by name Smt.H.J.Mamatha was taken by the

complainant. His sister-in-law already gave stop payment instruction to her banker, since the complainant could not returned her cheques and Smt.H.J.Mamatha has never given those cheques, which was in the possession of the accused and it was given by the accused to the complainant. Now, it is learnt Judgment 14 C.C.No.21084/2017 that, the complainant had misused the said cheques and has filed complaint against his sister-in-law through his friend. The act of the complainant clearly establishes that, he committed fraud, cheating and abused the process of law. The complainant was not entitled to deposit the said cheque for collection as no point of time consideration was ever passed to the accused in any manner. He is not liable to pay the amount covered under the cheque, as the same is not legally enforceable debt or liability.

19. Apart from the accused also choosen to produced the documents at Exs.D4 & D5, and also at the time of cross of PW.1, his counsel got confronted 3 documents and same are marked as Exs.D1 to D3. They are:

a) Ex.D1 is the copy of house rental agreement dated:

18.06.2015 entered in to between complainant and accused.

b) Ex.D1(a) is the signature of accused.

c) Ex.D2 is the copy of endorsement issued by Vidyaranyapura Police Station, Bengaluru.

d) Ex.D3 is the copy of Service Provider Agreement dated:21.12.2015 entered into between complainant and JAS E Techno Services Pvt. Ltd.

e) Ex.D3(a) and D3(b) are the signatures of complainant and accused.

f) Ex.D4 is the blank xerox copy of e-Stamp paper with signature of accused and since the accused gave the foundation that, its original was with the complainant and produced at Ex.D5, subject to the objection from Judgment 15 C.C.No.21084/2017 the advocate for complainant, the said document were marked and

g) Ex.D5 is the loan agreement dated:21.06.2016 executed by accused herein in favour of complainant.

20. The DW.1 was subjected to the cross-examination by the advocate for the complainant. The advocate for complainant choosen to cross-examine the DW.1 and by way of confrontation since, accused has admitted the document and signature Ex.D5 was marked. The signatures of accused was marked at Ex.D3(b) during his cross-examination. With that, the accused got closed his side.

21. 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 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 118 of Negotiable Instruments Act, it also requires to presume that, cheque was Judgment 16 C.C.No.21084/2017 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'.

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 his to grant the relief Judgment 17 C.C.No.21084/2017 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 appears 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.

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 accused, the Judgment 18 C.C.No.21084/2017 presumption goes against him as per Section 139 of Negotiable Instruments Act.

22. On going through the provisions referred supra, it made clear that, whereas the presumption must prove that, guilt of accused beyond the reasonable doubt. The standard or 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.



23. On going through the above authorities as well as dictums, it made clear that, it is the initial burden on the accused to prove his probable defence, in order to rebut the statutory presumption as well as the case put forth by the complainant. In that backdrop, it requires to appreciate the materials available on record. No doubt, in this case, the accused from the inception by way of caused reply notice as per Ex.P5 has contested the claim put forth by the complainant till the fag end of the case. In that backdrop, the accused also subjected the PW.1 and 2 cross- examination and gave his statement coupled with entered into witness box and led his evidence as DW.1. On going through the Judgment 19 C.C.No.21084/2017 defence set out by the accused, it made clear that, he has denied each and every averments and allegations made in the complaint as to alleged request of loan and its borrowal and got issuance of questioned cheque at Ex.P1 for discharge of repayment of loan, which covers at Ex.P1 cheque in the present case as well as cheque involved in C.C.No.21082/2017.

24. That apart, the accused has placed his specific defence in the present case that, complainant is well aware that, he is a mediator and an agent for getting government contract in respect of LED Bulb Supplies in the rural areas. In that transaction, he approached one Mr.Kumar, who happened to be acquainted to accused and proposed the accused to venture in to the said business, which requires huge deposit of money. Since, accused had no money, he expressed his inability. However, persuaded the accused to do business by assuring to get huge profit and offered unsolicited help stating that, he would pay the deposit money on behalf of accused in pursuance of the same, complainant took signed blank 3 cheques of the accused and 2 blank cheques of his sister-in-law by name Mrs.H.J.Mamatha as security. It was specific understanding between complainant and accused that, the blank stamp paper and signed blank cheques are only meant to be used for securing government LED Bulb contract and not for any other purpose. As Judgment 20 C.C.No.21084/2017 assured by the complainant and undertaken by the complainant, he not procured the LED Bulb contract. Meanwhile, the complainant being a landlord, forced the accused to vacate the rented premises citing, he was in need of same for his personal use and accordingly, on 10.03.2017, he vacated the said house. But he did not returned the security deposit amount till the date, when he asked for refund, he got misused his signed blank cheques and issued legal notice and filed false case.

25. The accused by taken up the specific defence, had contended, before starting the talks of procuring LED Bulb contract, he was the tenant under the complainant in respect of his house by paying advance of Rs.1,50,000/- to the complainant. In that regard, the accused has produced the rental agreement at Ex.D1, which got marked through PW.1. The complainant has admitted, the landlord and tenant relationship as found in Ex.D1. Even the complainant endorsing the same got marked the signature of accused at Ex.D1(a). On going through the said Ex.D1, it discloses, the rent agreement was entered into between complainant and accused on 18.06.2015 for the period of 11 months and wherein also stated, his advance amount of Rs.1,50,000/- were paid by the accused to the complainant and monthly rent was fixed at Rs.10,000/- p.m. coupled with bare other expenses. The complainant has not disputed, the Judgment 21 C.C.No.21084/2017 said document at Ex.D1 entered into between them. As per Ex.D1 on 18.06.2015, the accused was inducted as tenant by paying advance of Rs.1,50,000/-. The complainant has not stated, when the said landlord and tenant relationship was emerged and came to be an ended between them. The accused has

specifically stated that, when he was a tenant under the complainant, complainant persuaded the accused to obtain LED Bulb contract under his assurance, as he had no money, the complainant took his 3 signed blank cheques and 2 signed blank cheques of his sister-in-law by name H.J.Mamatha as security, but as promised not procured. On the other hand, he forcefully evicted the accused from the rented premises on 10.03.2017 without refund security deposit amount.

26. On going through the said testimony of accused, the factum of accused, quit from the rented premises under the instance of complainant very particularly on 10.03.2017 is been denied by the complainant. The accused specifically alleged against the complainant that, the complainant forcefully without refund his security deposit amount of Rs.1,50,000/- quit in from premises. When he demanded for refund of cash security, then the complainant got misused his signed blank cheques and signed blank stamp paper which gave in pursuance of procure LED Bulb contract.

Judgment 22 C.C.No.21084/2017 In that line, the accused has subjected the PW.1 for cross-examination.

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27. The PW.1 Voluntarily deposed that, after return the advance amount to the accused, then only he handed over the key to the complainant. Thereby, the complainant has projected, he refund his advance amount to the accused, then only he quit from his premises. Taken into consideration, as per the accused on 10.03.2017 he quit from rented premises by alleging the complainant has not refund cash security. When he asked for refund, the complainant misused his signed blank cheques and e-stamp paper and filed the false case. The PW.1 has denied the suggestion not refund the advance, but stated, he was refund then only accused quit the schedule premises. In that regard, during the course of cross of PW.1 suggested by the advocate for complainant that, the accused after got received the advance money from the complainant quit the rented premises. But PW.1 has volunteers that, the complainant by cause threat forcefully quit him from the rented premises. Since, he was threat from the complainant as well as still he was stayed in the house of complainant, he not ventured for lodge police complaint. He asserted, asked the complainant for Judgment 23 C.C.No.21084/2017 refund the advance money, no legal notice were issued. The complainant has denied the said answer given by the DW.1.

28. On the other hand, it made clear that, the complainant has projected his case that, after refund the advance, the accused quit from rented premises. Whereas, the accused has seriously attack on the complainant that, without refund his advance, the complainant forcefully quit him from rented premises, when he asked for refund, he got misused the signed blank cheques and signed blank e-stamp paper coupled with misusing security cheques of his sister-in-law and complainant filed the false case through one Manjunath. No doubt, the complainant has admitted, Manjunath was his friend and through the same advocate, they have filed cheque bounce cases against the accused herein and sister-in-law of accused. From which, only one inference can draw that, through the said

Manjunath and complainant herein same advocate has appeared, therefore, complainant must know the proceedings and transaction held in separate cases initiated by them. No doubt, case filed by Manjunath against the sister-in-law of accused is not subject matter of the present case, but it only draw the inference that, through the same advocate, complainant and Manjunath have prosecuted against the accused as well as sister-in-law of accused, Judgment 24 C.C.No.21084/2017 therefore, the some nexus in transaction between complainant and Manjunath.

29. In order to show that, the complainant has deposed in the witness box to show that, he got refund the advance amount of Rs.1,50,000/- received from the accused and he quit from rented premises on 10.03.2017. To substantiate the said contention, complainant has not produced any document before this court. Therefore, the say of the accused has to be accepted. If at all, any loan lent by the complainant to the accused as alleged in the complaint on 21.06.2016 itself, that too, for the tune of Rs.6 lakhs definitely, question of complainant without deducting the portion of the said loan amount, got refund the entire advance amount of Rs.1,50,000/- to the accused does not arise. Hence, the said rival contentions and sequences placed by both the parties, it would leads for draw only one inference that, complainant has not refund the advance amount of Rs.1,50,000/-, which got received by him as per Ex.D1 on 18.06.2015.

30. That apart, the complainant throughout his pleading not whispered about the procurement of LED bulb contract, either he was authorized to do or he got entered into contract with the authorized dealer, which excite him to entered into contract with either the accused or any other as alleged by the accused, nothing Judgment 25 C.C.No.21084/2017 has been contended by the complainant. In that regard, to prove the probable defence of the accused, as the complainant forcefully brought the accused though, he expressed his inability to funding to procure LED bulb contract, on the assurance of complainant as he assured to get the highest profit, accused got issued 3 signed blank cheques and one signed blank stamp paper coupled with security of 2 signed blank cheques of his sister-in-law. The same got misused by th complainant, when he demanding for refund of advance amount. In that regard, it was the suggestion made to PW.1, wherein he deposed that:

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21.12.2015

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31. On going through the testimony of PW.1, suggestion made to PW.1 as to knowingness of securing LED bulb contract from the Judgment 26 C.C.No.21084/2017 government were made to PW.1, then he deposed, he does not know. More particularly, it was asked to him that, in that regard, was there

any contract entered into between accused and others, he categorically deposed, no such agreement was entered into. Then, the advocate for accused has tendered him a xerox copy of agreement dated:21.12.2015 entered into between JOS E Techno Services Pvt. Ltd., through its Managing Partners by names Mr.Kumar and Mr.Deen Kumar, then complainant has identified his signature at Ex.D3(a). Though his advocate has opposed the marking of the said document as the said document pertaining to the complainant and the said concern, except the accused secure the secondary evidence, question of expect to produce unconcern document, the objection raised by the complainant was rejected and got marked the said document at Ex.D3 as the accused already laid foundation under which circumstance questioned cheque was came to the custody of the complainant. The complainant has admitted his signature at Ex.D3, but denied no such agreement was entered into. But the subsequent cross-examination when questioned based on Ex.D3 he deposed that:

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32. The PW.1 has categorically admitted, under the said agreement at Ex.D3, he entered into contract with for supply of LED bulb from Government. Thereby, though earlier he denied the entered into such agreement between the said concern and complainant, subsequently, he categorically admitted his role in supplying LED bulb contract.

33. No doubt, as per Ex.D2 the complainant only entered into contract with JOS E Techno Services Pvt. Ltd. It is significant fact to note that, if at all, the defence suggested by the accused were not to be true, then why complainant brought the signature of the accused at Ex.D3 as witness to the said transaction is also not been narrated by the complainant. Since, the role of complainant appears to be true, as he assured the accused to do the said business for getting higher profit, he made the accused as witness to the Ex.D3 has to be presume. On going through the Ex.D3, wherein not mentioned about any monetary transaction, but discloses, terms and conditions binding on the complainant as to supply of LED bulbs and its distribution. The signature of the accused brought under Ex.D3 leads the presumption that, the complainant has assured the accused to get the said business. From the say of PW.1, though earlier he denied his role in entered into contract as per Ex.D3 subsequently, on seeing document he categorically admitted.

Judgment 28 C.C.No.21084/2017

34. That apart, during the course of cross of DW.1, the acknowledgment given by the Police Sub-Inspector of Vidyaranyapura Police Station, was tendered, then he on seeing the name and address pertaining to him, he admitted, hence, the said document got marked at Ex.D2. Subsequently, he volunteers that, it was not the

complaint lodged by him and he does not know, who lodged the same. When he categorically admitted the address of him subsequently, he got twisted his evidence by stating, he does not know, in his name who lodged the complaint. Then it requires to focus on Ex.D2.

35. On meticulous perusal of Ex.D2 it discloses, the admitted name and address of complainant. Wherein, it was define the purpose of lodge of complaint, one Kumar residing at Vinayakanagar, Vidyaranyaapuram of receiving Rs.5 lakhs from the complainant for supply of LED bulbs, not returned the money and has troubled the complainant. On going through the Ex.D2 it reveal that, the complainant by alleging paid Rs.5 lakhs to Kumar, who is none other than one of the partner in JOS E Techno Services Pvt. Ltd., as found in Ex.D3. If at all, the complainant paid Rs.5 lakhs to the said Kumar, why the complainant has denied that, he not lodged complaint to the jurisdictional police station. Then it is him to explain, who lodged complaint in his name, if it was false, definitely, Judgment 29 C.C.No.21084/2017 could have initiate necessary action, but he did not explain anything on the same. Therefore, from the say of PW.1, in view of he denied the lodging of complaint in his name as per Ex.D2, only one inference could be drawn against the complainant that, he not approached this court with clean hands. Though he already entered into agreement as per Ex.D3 and lodged complaint as per Ex.D2 for the reasons better known to him, he deposed contrary to his own document. Thereby, it creates doubt as to the bonafidness and approach of the complainant, as to the genuineness of transaction. The complainant clearly admitted the documents at Exs.D1 to D3. Thereby, the accused has proved the role of complainant in doing LED bulb contract service pvt. Ltd., as per Ex.D3.

36. Based on the defence taken by the accused, it was suggested to PW.1 that:

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1,50,000/-  
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Judgment 30 C.C.No.21084/2017

37. The accused specifically placed his defence by way of suggestion made to PW.1 that, as per Ex.D3 - Service Provider Agreement, the complainant assured the accused to procure LED bulb contract and got obtained signed blank cheques and singed blank e-stamp paper from him and not procured the said business, but misused his 2 signed blank cheques which subjected in the present case as well as in C.C.No.21082/2017. That apart, it was also suggested, even the cash security of Rs.1,50,000/- were also not refund to the accused and by cause threat on accused forcefully quit from rented premises. The said evidence clearly manifest the defence

of the accused that, complainant was obtained the Ex.D3 - Service Provider Agreement, but as assured not returned the document obtained as security as suggested by the accused. Even, in the subsequent cross-examination it was suggested to PW.1 that, for procuring LED bulb contract business as security the complainant took signed blank cheques of his sister-in-law and by misusing the same got filed the case through Manjunath, but the complainant has denied the same.

38. It was also suggested to PW.1 that, as assured and promise made by the complainant, the complainant has not procured LED bulb contract business to the accused, though he got obtained his 2 signed blank cheques and signed blank e-stamp paper and by Judgment 31 C.C.No.21084/2017 misusing the same got filed the false case, hence, accused is not liable to pay money to the complainant. But the PW.1 has denied the same. Though serious allegations were made against the complainant as to misuse of questioned cheque at Ex.P1 and e- stamp paper coupled with misusing of guarantee cheque of his sister-in-law, when tendered for cross-examination by the DW.1, no worthy suggestion is made and failed to extract any admission from the accused as to the alleged loan transaction. Even during the course of cross of DW.1, whatever the averments and allegations made mentioned by the complainant, as to alleged request made by the accused seeking for loan with its purpose and alleged receipt of loan and questioned cheque issued by the accused for discharge is also not been specifically suggested, but made general suggestion by stating for repayment of loan of Rs.6 lakhs obtained by the accused for the development of his business, accused gave questioned cheque involved in the present case as well as in C.C.No.21082/2017 and deposed falsely. The accused has denied the suggestion made by the complainant and withstood his contention by deposing that:

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Judgment 32 C.C.No.21084/2017

39. On meticulous perusal of the evidence of DW.1, the suggestion made by the advocate for complainant stating that, with regard to LED bulb business as well as transaction held with complainant are not interlinked, but the DW.1 has deposed to show that, he did the said business to establish the same he put his signature to the Ex.D3 as witness and produced before this court. Though complainant has suggested both the business are altogether different, but the said suggestion leads to draw the inference that, there were talks held with regard to procure LED bulb contract as projected by the accused. Now the complainant cannot bifurcated both the business as altogether different. If at all, the complainant had paid the loan of Rs.6 lakhs to the accused, it is him to suggest the DW.1, when accused was requested for the same and what was the compelling circumstances was made such approach and how the complainant had mobilized the fund and exactly on whose presence, on which

security he paid the money to the accused. Nothing has suggested in that regard. Whether LED Bulb procurement transaction was concluded between the complainant and accused or not?. Even no exact suggestion is made, on which date the accused got issued and executed the Ex.P1 cheque in favour of complainant. The DW.1 withstood his contention successfully and thereby rebutted the statutory presumption and Judgment 33 C.C.No.21084/2017 facts and circumstances narrated by the complainant. When the case of the complainant itself is surrounded with several contradiction, inconsistency different signature made by the accused in respect of the cheques involved in the present case as well as in C.C.No.21082/2017 itself is not a ground accept the claim of the complainant.

40. That apart, the accused got marked the xerox copy of e-stamp paper which bares the signature of the accused and same were marked subject to the objection to the advocate for complainant at Ex.D4 and signature at Ex.D4(a). The complainant advocate has objected to mark the said document, but the accused has projected his defence that, in order to procure LED bulb contract business from the complainant, he got issued signed e-stamp paper and signed blank cheques coupled with signed blank cheques of his sister-in-law, the same got misused by the complainant. The complainant by way of creating Ex.D5 the alleged loan agreement. Since, the accused has placed the foundation, under which circumstance he gave signed blank e-stamp paper at Ex.D4 and its original placed by the complainant as per Ex.D5, the said xerox copy got marked as secondary evidence as per Ex.D4.

41. On going through the Ex.D4 coupled with Ex.D5 it discloses, the front side blank sheet without type, the accused has affixed his Judgment 34 C.C.No.21084/2017 signature as found in Ex.D4(a). Contrary to the said Ex.D4, in the Ex.D5 the same signature at Ex.D5(a) is found. But the interesting thing is that, in Ex.D5 three lines typed matter is found. In Ex.D4 the backside e-stamp paper kept blank. But in Ex.D5 backside it was contra print out is been seen, wherein also found the alleged signatures of complainant and accused and 2 witnesses. But those recitals and signatures and particulars of witnesses were not been seen in Ex.D4.

42. On meticulous perusal of the Ex.D5 as well as Ex.D4 which discloses, before handed over the Ex.D5 e-stamp paper, the accused got xeroxed including his signature on blank stamp paper on the front page. The accused has denied his signature found at backside of Ex.D5. In order to show that, back side of the same he not signed, back side he not chosen to got xerox in blank. On close perusal of the same to the bare eyes the signature at front and backside appears to be different. If at all, the accused got executed the said document at Ex.D5 definitely, the signature of accused must be in similar on both sides. But, back side of the said documents appears to be slight different. However, the said document is only not criteria to either to accept or suspect the alleged signature of the accused. From the available documents, on record it discloses, the accused not in the habit of sign documents in uniformed manner.

Judgment 35 C.C.No.21084/2017 Though, the accused signatures changes on every stages, it is not enough to accept the claim of the complainant. When the front page the admitted signature of the accused is been seen, how without his knowledge, the said document got executed as Ex.D5 itself created doubt.

43. By way of production of Ex.D1, the accused has successfully established that, he gave signed blank cheque at Ex.P1 to the complainant in connection to the procure LED bulb contract business. Therefore, the accused by way of producing convincing, corroborative evidence has successfully rebutted the case of complainant as well as statutory presumption. Therefore, it goes reverse burden on the complainant as per Sections 118 and 139 of Negotiable Instruments Act to prove the guilt of the accused, as he alleged.

It is well worthy to cite the decision reported in ILR 2009 KAR 1633 (Kumar Exports V/s. Sharma Carpets). Wherein, it was pleased to held by the Hon'ble Apex court that: (D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof required rebuttal - HELD, Rebuttal does not require proof beyond reasonable doubt -

Something probable has to be brought record -

Judgment 36 C.C.No.21084/2017 Burden of proof can be shifted back to complainant by producing convincing circumstantial evidence - Thereafter the said presumption arising under Section 118 and 139 case to operate - To rebut said presumption accused can also rely upon presumptions under Evidence Act, 1872 Section 114 (common course of natural even human conduct and public and private business) -

Evidence Act, 1872 - Section 114 - Presumptions of fact under".

Added to that, in a decision of 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".

44. From the point of above dictums also, it was the reverse burden casted upon the complainant to establish the very case beyond the reasonable doubt in order to convict the accused.

Judgment 37 C.C.No.21084/2017



45. On going through the contention of the complainant, he was alleged that, the accused during 1 st week of June, 2016 approached the complainant being a tenant seeking for loan of Rs.6 lakhs, to meet out expenses in developing his flower decoration business and purchase materials. Was it necessary for doing the said business, the need of Rs.6 lakhs is created doubt and it is the complainant needs to explain by utilizing Rs.6 lakhs, what kind of development were done in doing flower decoration business is not been satisfactorily pleaded and explained. That apart, on which date, the accused exactly approached the complainant, when he was tenant under him is also not been satisfactorily explained. However, the complainant has pleaded that, on 21.06.2016 he gave Rs.6 lakhs to the accused and he undertakes to repay the same within 6 months and got executed the Ex.D5 loan agreement on the same day itself. If at all, the complainant was possessed Ex.D5 as on the date of made pleading definitely, what was the recitals in the agreement, who were the witnesses present as eye witnesses to the said transaction could have pleaded, but the said Ex.D5 were placed by him during his evidence only. In that regard, it requires to appreciate the evidence of PW.1.

46. During the course of cross of PW.1, he deposed, he had Bar and Restaurant and it was leased out and hence, he had no other Judgment 38 C.C.No.21084/2017 income. In his cross-examination it does not disclose, to whom for what amount he leased out his business is not been explained. During the course of cross-examination, the PW.1 categorically admitted that:

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47. On going through the testimony of PW.1, he reasserted, during the 1st week of June, 2016, accused asked for the loan. He more categorically admitted, on the day he made request, since he had no such amount in his hand, therefore, he was not paid money to the accused. By deposing so, the complainant had clearly admitted, on the date of request made by the accused, he had no requisite fund in order to pay loan to the accused. Thereby, it is made clear that, as on the request made by the accused, the complainant had no financial capacity. Though he deposes as such, the complainant has not explained, how he mobilized Rs.6 lakhs in order to enable to be paid to the accused. When he admitted, as on the date of request made by the accused, he had no money, then how he mobilized the fund, he needs to explain.

Judgment 39 C.C.No.21084/2017

48. On going through the previous portion of cross-examination, the PW.1 has deposed that:

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49. The PW.1 has deposed that, the alleged loan lent to the accused for the tune of Rs.6 lakhs which he asserted in this case as well as in C.C.No.21082/2017, he leased out his bar and restaurant to one Mr.Vishal and got obtained the leased amount of Rs.6 lakhs. He categorically deposed, he not produced any document with regard to receipt of lease amount as he alleged. But he deposed, he gave lease to the same in the year 2015, but he does not remember the date and month. By deposing so, the complainant has projected that, the leased amount received from Mr.Vishal in the year 2015 was with him, and claimed to be paid the same to accused, complainant though he not explained, it conveys meaning as such. If at all, he got received leased amount of Rs.6 lakhs in the year 2015, he must depose, as on the date of request made by the accused during 1st week of June, 2016, he had leased money.

#### Judgment 40 C.C.No.21084/2017

50. As discussed earlier, the cross-examination of PW.1, though he stated, he had leased amount which received in the year 2015 and very particularly deposed, Rs.6 lakhs was with him. But in the cross-examination he categorically deposed, since he had no requisite fund of Rs.6 lakhs on the date of alleged request made by the accused, he had not paid to the accused. Therefore, the above said contradictory statement of the PW.1 clearly manifest that, though he had leased out his bar and restaurant in the year 2015, to show that, he had requisite fund of Rs.6 lakhs during 1 st week of June, 2016 or as on the alleged date on 21.06.2016, he needs to produce some document or explanation, in that regard, no effort is forthcoming from the side of complainant. However, the advocate for complainant try to demonstrate the financial capacity of the complainant during the course of cross of DW.1. Wherein, he suggested to DW.1 that, the complainant was leased out his bar and restaurant for monthly rent of Rs.2,50,000/- and got obtained the advance of Rs.35 lakhs, but the accused has denied the same. If at all, the complainant got received the advance money of Rs.35 lakhs and monthly rent of Rs.2,50,000/- definitely, he had every opportunity to produce necessary document, at least the lease agreement or any document which reveals the receipt of rentals or advance as such. Mere making suggestion does not suffice to Judgment 41 C.C.No.21084/2017 establish the financial capacity of the complainant. Thereby, the complainant has failed to demonstrate the financial capacity of Rs.6 lakhs as on 21.06.2016.

51. The complainant has alleged that, on 21.06.2016 he gave loan of Rs.6 lakhs to the accused in turn, he got executed the Ex.D5 agreement. It is pertinent to note that, there is no pleading from the part of complainant, as to the due execution and issuance of loan agreement at Ex.D5. Even not stated about who were the attested witnesses to the said document. All of sudden, the complainant without gave necessary description with regard to due execution and the names of the participants to the said document, got produced at Ex.D5. In that regard, he was questioned in the witness box. Wherein, he deposed that:

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. . .21082/2017	.		21.06.2016

Judgment

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C.C.No.21084/2017

21.06.2016

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52. On going through the said testimony of PW.1, he deposed, on the date of he gave loan to accused, he got executed loan agreement from the accused on the day itself. Though, he contended as such, the complainant for the reasons best known to him, and his claim is based on the said document, he not chosen to Judgment 43 C.C.No.21084/2017 produce its original or its certified copy. When

matter is tried separately, it is the complainant needs to produce the said documents, but not did so. Even, not produce the said documents in the present case, the complainant has not assigned any valid reason. However, the accused got produced the certified copy of the alleged agreement produced by the complainant herein in C.C.No.21082/2017 at Ex.D5.

53. The advocate for the accused has attack on the alleged agreement relied by the complainant. Wherein, the PW.1 has deposed that, the accused brought e-stamp paper on the said day itself. Even he deposed, accused himself got typed and brought the same and he was not instructed about the recitals of the said agreement. As per say of PW.1, he deposes, accused himself got purchased the e-stamp paper and got typed the recitals. From which, it made clear that, before the complainant alleged to be handed over the alleged loan to the accused, the accused himself got typed the recitals. Therefore, it made clear that, the complainant is not instructed the recitals of the Ex.D5. Then, how the accused has anticipated that, the complainant is going to pay the huge loan of Rs.6 lakhs to him and what was the terms and conditions as to the payment of interest and time bond for its repayment needs explanation. Therefore, as per say of complainant, he not dictated Judgment 44 C.C.No.21084/2017 the terms. Therefore, the person who is going to get the loan without got received the loan amount, himself got typed the terms and conditions itself is unilateral document and unknown to law. After the receipt of money, then got executed and issued the loan document, then it could have been accepted, but before doing so, the accused shown his extraordinary interest to got prepare the Ex.D5 recitals itself creates doubt and hence, it is not safe rely upon the contention of complainant.

54. That apart, the said evidence of PW.1 it also discloses that, after got typed the agreement in the presence of complainant and accused, themselves have singed the same and no other persons were singed. No doubt, in the deposition on close reading of the sentence, it prima-facie appears that, except the word has left. Hence, from the say of the complainant, it made clear that, except the complainant and accused none were present. Even he deposed, after he gave money to the accused got received the Ex.D5, he went back to home. The accused has denied the very execution and issuance of Ex.D5 loan agreement in favour of complainant, but strongly alleged that, on obtaining signed blank e- stamp paper as tendered at Ex.D4, the PW.1 took the blank document from the accused and later it was got created by the complainant.

Judgment 45 C.C.No.21084/2017

55. On going through the Ex.D5 it prima-facie discloses, two witnesses are singed as E.N.Divakara and P.Kannan, other than the signature of the complainant and accused. The PW.1 has deposed, except the complainant and accused none were singed, then it is the complainant needs to explain, how their signatures came on Ex.D5 as witnesses is not been explained. Therefore, the participation of the said witnesses itself creates doubt as to due execution and issuance of Ex.D5 loan agreement.

56. That apart, there was suggestion made to PW.1 that, the admitted signature of Ex.D5 in front page and the alleged signature found in backside of the said document appears to be altogether different is been suggested to PW.1, but he not denied the same and deposed, the accused wrote the same. By way of suggesting so, the accused was taken up the contention that, whatever the signature

found backside in Ex.D5 is not of him and it was got created by the complainant. The very evidence of PW.1 rather convinced his claim as to the alleged lent of loan by him to the accused and in turn, accused got executed Ex.D5 in favour of the complainant.

57. On going through the said Ex.D5, it discloses, the complainant and accused were friends and accused was tenant under the Judgment 46 C.C.No.21084/2017 complainant. If at all, the accused was friend rather tenant under the complainant, was it permissible to make recital as such itself created doubt. It also pleaded by the complainant for the purpose of development of flower decoration business and prepare iron frames and for purchase of decorated items, the accused was in need of Rs.6 lakhs and accordingly, in the presence of witnesses signed in the document, the accused alleged to be received Rs.6 lakhs and undertakes to repay the same within 6 months with monthly interest at 18% p.a. On going through the said recitals, if at all, the accused himself borrowed loan for the reasons urged in ExD5, definitely, it is the complainant needs to furnish necessary explanation. For the said requirement as contended by the complainant, was it need of Rs.6 lakhs, is also created doubt.

58. That apart, if at all, the witnesses were signed and Ex.D5 was already in the hands of complainant as on the date of alleged issuance of legal notice or prepare the complaint definitely, the presence of witnesses with their particulars might have been mentioned, but the same is lapse. That apart, PW.1 has deposed, except the complainant and accused, none other were signed the Ex.D5, which indicates the signature of the alleged witnesses were came subsequently. Hence, there is some force in the defence of Judgment 47 C.C.No.21084/2017 the accused that, Ex.D5 is created for the convenience of complainant.

59. That apart, the Ex.D5 also discloses, accused himself undertakes to pay the interest at 18% p.m. amounting to 216% p.a., which is unknown to the law and against the banking rules and regulations. No prudent man for the huge amount of Rs.6 lakhs would not agreed to pay the monthly interest at 18% p.m. amount to 216% p.a. Taken in to consideration of the said recitals, if the accused undertakes to pay the interest at 18% p.m., he needs to pay 18% interest per Rs.1 lakh and accordingly, for Rs.6 lakhs, he needs to pay Rs.1,08,000/- per month. Was it permissible to pay the interest of Rs.1,08,000/- p.m. for the loan of Rs.6 lakhs is created doubt. If accused agreed to borrow loan for the said huge amount, for the agreed period of 6 months if any taken in to interest of Rs.1,08,000/- p.m. amounting to Rs.6,48,000/- it will be beyond the alleged loan of Rs.6 lakhs. The very contention of the complainant is reckless and not safe to relied upon. No prudent man for the huge interest of 18% p.m. would not borrow loan that too being a flower seller/decorator. Therefore, on going through the Ex.D5 rather it support the claim of complainant, it created doubt as to the alleged claim of complainant.

Judgment 48 C.C.No.21084/2017

60. On going through the recitals it discloses, as on the date of alleged execution of Ex.D5 dated:21.06.2016, the accused was tenant under the complainant. As stated earlier, the accused was forcefully quit by the complainant on 10.03.2017. From which, it made clear that, whatever the advance amount paid by the accused was with held by the complainant and if at all, he lent loan of

Rs.6 lakhs to the accused, as he deposed, when accused quit on 10.03.2017 no need to refund the said money, the same could have been adjusted against the alleged loan of Rs.6 lakhs. No prudent man would do so, therefore, the say of complainant rather support his contention, it creates strong doubtful circumstances as to the genuineness of the transaction.

61. No doubt, the complainant without citing the witnesses name in the Ex.D5 in his pleading as well as he deposed, except the complainant and accused none were signed. Then how, all of sudden, the PW.2 came into witness box and deposed, complainant gave Rs.6 lakhs to accused and on that day, Ex.D5 came into force, he got signed as witness. In his cross-examination he deposed as to the alleged transaction that:

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Judgment 49 C.C.No.21084/2017  
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62. On going through the evidence of PW.2, though he is unnecessary witness as his name was not cited earlier, either in the pleading or as deposed by the PW.1, all of sudden he came in to witness box and deposed. In his cross-examination, he deposed, on 21.06.2016 his Venkateshwara Engraves Shop, the shop of Rajanna were situated abutting. Wherein, he saw the accused. The complainant and accused for doing monetary business came there. It was suggested to him that, in that manner no monetary transaction were happened and hence, it is not safe to rely upon the evidence of the PW.2. Taken in to the evidence of PW.2, he disclosed the alleged loan transaction not taken place in the house of complainant or accused. But he was stated, it was alleged to be happened somewhere near the shops. Therefore, the very say of PW.2 also created doubt, as to his presence on the alleged date of execution of loan agreement. The evidence of PW.2 is not clarificatory from the point of evidence led by the complainant. Therefore, the evidence of PW.1 and PW.2 is not safe to place reliance to prove the guilt of the accused.

Judgment 50 C.C.No.21084/2017

63. The complainant has pleaded, as agreed within 6 months, the accused has not repaid money and whenever he requested for repayment he, by stating there were ups and downs in his business on account of demonetization of money and finally on 01.05.2017, he got issued the questioned cheque in his favour. But, the accused

has denied the same by contending that, he was not borrowed any loan nor issued questioned cheque for payment of alleged loan amount. But strongly taken up the defence that, in order to procure LED bulb contract the complainant took his signed 3 blank cheques and 2 signed blank cheques of his sister-in-law without procuring the business, forcefully quit the accused from the rented premises, when he demanded for repayment of advance amount, then got misused his cheque and e-stamp paper. Thereby, contended questioned cheque was given by him as a security for procure LED bulb contract. The complainant not stated that, he was procure LED bulb contract to the accused. The Ex.D2 clearly manifest the role of complainant, in doing the said business. Unless, the accused was not assured by the complainant, definitely, no need to accused to affix his signature as witness to the service provider agreement entered in to between complainant with the concern. The PW.1 in his cross-examination has deposes that, on 01.05.2017 itself the cheque involved in the present case as well as cheque involved in Judgment 51 C.C.No.21084/2017 C.C.No.21082/2017 given by the accused by himself filled. Later, he also deposed, the accused earlier got filled the cheque and not written in his presence. Even he deposed, in his presence accused was not signed the same. More categorically the PW.1 has deposed that:

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64. The PW.1 categorically admitted that, the hand writing in both the cheques as well as the signature are made in different hand writing and ink. Thereby, it made clear that, whatever the fillings are made in the cheque are not of the accused. On meticulous perusal of the Ex.P1-cheque, it clearly discloses, the admitted signature of the accused and other writings are made in different hand writing. The complainant has failed to demonstrate the due execution of cheque by the accused in respect of the alleged loan transaction. When the complainant utterly failed to prove the due execution and issuance of cheque in respect of repayment of portion of loan of Rs.3 lakhs. The accused being an educated, no impediment to get fill the cheque in his own hand writing. If he liable to pay the amount covered under the cheque. Therefore, it made clear that, the accused only gave signed blank cheque to the complainant as the defence placed by him in connection to procure LED bulb contract, Judgment 52 C.C.No.21084/2017 but the same got misused by the complainant and projected the present case, as he lent loan to accused for Rs.6 lakhs. When the complainant himself not able to refund the cash security of Rs.1,50,000/- to accused, as the legal debt payable to him, once again he came forward to pay huge amount loan of Rs.6 lakhs as alleged in the complaint itself created doubt.

65. On going through the Ex.D3 the acknowledgment given by the police, it also creates doubt on another corner that, the complainant as alleged against one Kumar, who is one of the partner in Ex.D2 agreement, despite, he took Rs.5 lakhs, not supplied LED bulbs to him. From which, it has to be gather that, the complainant try to brought the dispute with Kumar by misusing the questioned cheque of the accused in filing the present case. The very case placed by the complainant, no where corroborates his own documents. No doubt, the case filed by Manjunath against Smt.H.J.Mamatha. It discloses, their advocates are one and the same. No doubt, the dispute involved in the said case is

not a subject matter of the present case, but the accused has successfully proved his probable defence that, the questioned cheque was not issued by him to the complainant in respect of payment of any liability. Despite, it creates reverse burden on the complainant to prove the very transaction Judgment 53 C.C.No.21084/2017 beyond the reasonable doubt, he utterly failed to do so. Thereby, the accused is entitled for acquittal.

It is relevant to cite the decision reported in 2015 (1) Supreme Court Cases 99 KCCR 1569 (K.Subramani V/s. K.Damodara Naidu). Wherein the Hon'ble Apex Court observed that:

"Debt, Financial and Monetary Laws - Negotiable Instruments Act, 1881 - Ss. 138, 118 and 139 - Dishonour of cheque - Legally recoverable debt not proved as complainant could not prove source of income from which alleged loan was made to appellant-accused - Presumption in favour of holder of cheque, hence, held, stood rebutted - Acquittal restored".

66. As per the said dictum, it made clear that, in view of the accused attack on the claim of complainant, it is the complainant needs to prove the source of income from the alleged loan was disbursed to the accused. In that regard, no source or accumulation of fund has been demonstrated by the complainant in order to pay the alleged loan to the accused. That apart, whatever the amount of refund of advance payable to the accused was not paid by the complainant at the time of he quit from rented premises. If at all, any amount was really payable by the accused as alleged in the present case, question of refund as deposed by the PW.1 does not arise.

Judgment 54 C.C.No.21084/2017 Normally, no common man without deducting the recoveries, then only would return balance. Therefore, from that point also it creates doubt as to the bonafidness of the complainant. Though the transaction has covered under Exs.D2 and D3 were held between complainant and the concern with regard to supply of LED bulb contract, the complainant has denied the same earlier and later on showing document admitted. Though, he lodged complaint against one of the partner by name Kumar as per Ex.D3, for the reasons better known to him, he denied the same. When he made allegation against Kumar as the payment of Rs.5 lakhs and non-supply of LED bulb materials, once again how the complainant came forward to pay the huge amount of Rs.6 lakhs to the accused, itself created doubt. The complainant has utterly failed to prove his case beyond the reasonable doubt in proving the guilt of the accused. Hence, the accused is entitled for benefit of doubt for acquittal.

67. 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.

Judgment 55 C.C.No.21084/2017 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".

68. 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 Judgment 56 C.C.No.21084/2017 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".

69. 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.6 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".

70. In this case on hand also, on the lapse 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.3 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable Judgment 57 C.C.No.21084/2017 evidence that, the accused has borrowed the 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.3 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

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

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

Judgment 58 C.C.No.21084/2017

71. In the case on hand, accused has questioned the financial capacity of complainant. Complainant has not produced any document to show his financial capacity to lend an amount of Rs.6 lakhs to accused. When complainant has failed to prove the transaction alleged in the complaint, then the question of issuing the cheque for partial discharge of Rs.3 lakhs does not arise. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheque for partial discharge of liability of Rs.3 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

72. 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. 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. Accordingly, as discussed above, the accused has established his probable defense and thereby rebutted the Judgment 59 C.C.No.21084/2017 statutory presumptions as well as the claim put forth by the complainant.

73. 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.3 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.

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

Judgment 60 C.C.No.21084/2017 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 4<sup>th</sup> day of December

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

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1	:	M.Kempaiah
PW.2	:	P.Kannan

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of accused
Ex.P2	:	Bank endorsement
Ex.P3	:	Office copy of legal notice
Ex.P4	:	Postal Acknowledgment card
Ex.P5	:	Reply notice

List of Witnesses examined on behalf of the defence:

DW.1 : G.T.Muralidhar List of Exhibits marked on behalf of defence:

Ex.D1	:	House rental agreement
Ex.D1(a)	:	Signature of accused
Ex.D2	:	Acknowledgment
Judgment	61	C.C.No.21084/2017

Ex.D3 : Xerox copy of service provider agreement

Ex.D3(a) & D3(b) : Signatures of complainant and accused Ex.D4 : Xerox copy of empty e-Stamp paper Ex.D4(a) : Signature of accused Ex.D5 : Copy of loan

agreement XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.21084/2017

09.11.2020.

Comp -

Accd -

For Judgment

While preparing judgment, it was noticed

by both side counsels that, on going through the case records and documents marked by the accused, it discloses, through the PW.1, the accused got marked Exs.D1 to D3 on 07.06.2018. Thereafter, on 25.05.2019, he got marked another document in the evidence of DW.1. Inspite of mark Ex.D5 on the document produced and marked on 25.05.2019, it was wrongly marked as Ex.D1 and signature at Ex.D1(a). Therefore, in order to avoid confusion and asserting the rank of the documents, whatever the document produced by the accused on 25.05.2019 is remarked as Ex.D5 and signature as Ex.D5(a). This order shall be read as part and parcel of the order sheet and deposition dated:25.05.2019.

Kept by Judgment.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.21084/2017

04.12.2020.

For Judgment

Case called out.

Complainant and accused are absent. No representation from both side advocates, despite, web-host the case proceedings and intimate the date of pronouncement of judgment. Hence, as

per Section 353(6) of Cr.P.C. the following judgment is 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.