

Basavaraj.M.S vs T.A.Suresh on 7 July, 2020

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

Dated this the 7th day of July - 2020

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

C.C.NO.26310/2017

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	Basavaraj.M.S, S/o.Siddaiah, Aged about 39 years, R/at No.6, 13th B Cross, Agrahara Dasarahalli, Magadi Main Road, Bengaluru. (Rep. by Sri.D.Harish Kumar, Adv.)
	V/S	
Accused	:	T.A.Suresh, S/o.Illaswamy, Aged about 36 years, R/at. No.735, 3rd Floor, Satyanarayana Layout, 1st Cross, 15th Main, Basaveshwaranagara, III Stage, 4th Block, Bengaluru-79. (Rep.by Sri.Kiran Kumar.H.S, 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	:	07.07.2020.

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

The complainant has presented the instant complaint against the accused on 25.10.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act,

for dishonour of cheque of Rs.2,50,000/-.

2. In precise, the facts of the complainant case is:

On 22.04.2016, the complainant had leased out his house for sum of Rs.6 lakhs and at that time of agreement, the accused herein also present and at the same time the accused insisted the complainant to lend a hand loan of Rs.5 lakhs, as he is in great difficulty to settle the bank loan in Karnataka Bank Ltd., and his building was about to be auctioned by the bank, if the amount is not settled within time and also assured the complainant to repay the same with interest as soon as he sell the said property. The complainant informed the accused that, he also in need of funds and told his inability to arrange the funds. In spite of that, accused pressurizing the complainant for issue hand loan, as such, as there is no other go, the complainant had mobilized the fund of Rs.2,50,000/- out of leased amount paid by way of cash on 14.05.2016. While receiving the said money, the accused got executed On demand promissory note and also an agreement in favour of complainant.

Judgment 3 C.C.No.26310/2017 The complainant has further contended that, in spite of repeated demands, the accused had failed to repay either principal amount or interest thereon, ultimately, during the month of October, 2016, on the pretext of settling the amount, after selling his property as it is already be in possess, he got issued post dated cheque bearing No.141475 for sum of Rs.2,50,000/-

dated:10.08.2017 drawn on Karnataka Bank Ltd., Basaveshwaranagar Branch, Bengaluru in favour of complainant with instructions to encash the same on the due date. The accused also assured to pay the interest within short period, believing the version of accused, the complainant got accepted the said cheque.

The complainant has further alleged that, on the instruction of the accused, he got presented the said cheque for encashment through his banker viz., Syndicate Bank, Vijayanagar Branch, Bengaluru, for realization, but on seeing the memo dated:14.08.2017, he got shod and dismay, as the said cheque came to be dishonoured for the reasons stating "Funds Insufficient". Immediately, he brought the said fact to the notice of accused and demanded for repayment, but he dodging the time on one or other pretext.

Judgment 4 C.C.No.26310/2017 The complainant has further contended that, without any other go, he got issued legal notice through his counsel on 08.09.2017, demanding him to pay the amount covered under the cheque by way of R.P.A.D, the said notice was duly served on accused on 13.09.2017. Despite that, the accused not paid the amount covered under the cheque nor issued reply. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present case.

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 choosen to examined as PW.1 and got marked Exs.P1 to P9. The PW.1 was subjected for cross-examination by the advocate for the Judgment 5 C.C.No.26310/2017 accused. In the cross-examination of PW.1, accused counsel got confronted one document and same is marked as Ex.D1.

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

7. I have heard the arguments of both side counsels.

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.2,50,000/- on 14.05.2016 as hand loan to the accused, and in turn, for discharge of legal recoverable debt, the accused issued the Ex.P1 cheque bearing No.141475, dated:10.08.2017 for sum of Rs.2,50,000/- drawn on Karnataka Bank Ltd., Basaveshwaranagar 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

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

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 P9, they are:

a) Ex.P1 is the cheque bearing No.141475 issued by the accused for sum of Rs.2,50,000/-

dated:10.08.2017, drawn on Karnataka Bank Ltd., Basaveshwaranagar Branch, Bengaluru.

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

c) Ex.P2 is the Bank Memo dated:14.08.2017.

d) Ex.P3 is the Legal Notice dated:08.09.2017.

e) Ex.P4 is the Postal Acknowledgment Card.

f) Ex.P5 is the loan agreement dated:14.05.2016 executed by accused herein in favour of complainant.

g)	Ex.P5(a) and P5(b) are	the	signatures	of
	complainant and accused.			
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h) Exs.P6 and P7 are the On demand promissory note and consideration receipt dated:14.05.2016 executed by accused in favour of complainant.

i) Exs.P6(a) and P7(a) are the signatures of accused.

j) Ex.P8 is the photograph and

k) Ex.P9 is the house warming ceremony invitation. The PW.1 was subjected to the cross-examination by the advocate for the accused.

11. After cross-examination of PW.1, 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 gave his statement by contending that, he not received notice as alleged by the complainant, he not borrowed any loan from the complainant and for payment of alleged loan, he not issued the questioned cheque to the complainant.

12. In order to prove the defence of the accused, he himself chosen to entered into witness box and led his evidence on oath and examined as DW.1 and produced document at Ex.D1. It is:

a) Ex.D1 is the statement of account (True copy of bank passbook).

The DW.1 was subjected to the cross - examination by the advocate for the complainant. He also chosen to entered Judgment 8 C.C.No.26310/2017 into witness box and led his oral evidence on oath. Wherein, the accused in brief has contended that:

Accused being a contractor, he got constructed residential house to the complainant, which consists of 3 floors, at the expenses of Rs.35 lakhs. When accused was agreed to make construction of 3 floors with the cost of Rs.35 lakhs, the complainant when he constructed the house on 3rd floor, he requested the accused to make further construction of 4th floor part portion more. Accordingly, he did the construction. The accused further stated that, before commencing the construction work of the complainant, for the purpose of work should not be stop in the middle, he obtained security for the work continuation; complainant took 2 - 3 blank On demand promissory note and consideration receipt with signatures and singed blank 5 cheques from the accused. That apart, he also took blank signed e-Stamp paper from him.

The accused has further contended that, he completed the construction work and enable the complainant to conduct house opening ceremony. In respect of the construction made by him to the complainant, the complainant was due of Rs.6 lakhs to the accused. When the accused was asked the complainant to return Judgment 9 C.C.No.26310/2017 documents and pay the due amount to him, but he not returned. The legal notice issued by the complainant is not served on the accused. The complainant got typed the security document and filed the present case. He not borrowed any hand loan from the complainant, for repayment of alleged loan, he not issued questioned cheque to the complainant. Hence, he is not liable to pay the amount covered under the cheque. The complainant by misusing security document and got filed the false case. The DW.1 was subjected for cross-examination.

13. On going through the rival contentions of the parties, it made clear that, complainant brought the present case based on the questioned cheque at Ex.P1 as well as alleged hand loan agreement and On demand promissory note and consideration receipt alleged to be executed by the accused at Exs.P5 to P7. Whereas, the accused has denied the very contention taken by the complainant.

14. No doubt, the present case filed by the complainant by invoking the relevant provision under Section 138 of Negotiable Instruments Act. The complainant has alleged that, for repayment of hand loan of Rs.2,50,000/-, the accused got issued questioned cheque, despite, his assurance, he presented the same for Judgment 10 C.C.No.26310/2017 encashment, the same came to be dishonoured and inspite of got issued legal notice, calling upon him to pay the amount covered under the cheque, not paid the money, thereby committed the offence. On the other hand, the accused has seriously alleged against the complainant that, he only did the construction work of house of accused up to 3rd floor and at his request the portion of 4th floor also constructed by him and complainant still liable to pay Rs.6 lakhs and for the completion of the work as a security 3

singed blank On demand promissory note and consideration receipt, 5 signed blank cheques and signed e-Stamp paper collected by him and despite, he finished the work, not paid the amount due to him nor return the documents and misused the same, filed the false case. The rival contentions of the parties, it made clear that, they alleging different, one is claiming the liability of cheque as legally recoverable due and another is claiming misused the security documents obtained by the accused.

The object of introduction of amended Negotiable Instruments Act, runs thus:

"The objects and reason clause of the bill which introduced the Amending Act would show that, the knew Chapter was incorporated specifically to "enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of Judgment 11 C.C.No.26310/2017 funds in the accounts of for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

15. From the above object of introduction of the Amended Act, it made clear that, in order to avoid misuse of Negotiable Instrument the penal provision has been introduced. It has to be safeguard the interest of drawer and also simultaneously it should not be misuse of the Negotiable Instrument for the sake of parties other than the transaction or credibility of the transaction. The purpose of behind the incorporation of Section 138 of Negotiable Instruments Act is to lend credibility for cheque transaction.

As per dictum reported in AIR 2006 SC 128:(2006) 3 SCC 658:2006 Consideration receipt.L.J.1683, in a case between Mosaraf Hossain Khan V/s. Bhagheeratha Engg. Ltd. Wherein, it was pleased to observed that:

"The object of the provision of Section 138 of Negotiable Instruments Act is that, for the property and smooth functioning of business transaction in a particular, use of cheques as Negotiable Instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that, cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. Dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire Judgment 12 C.C.No.26310/2017 credibility of the business transactions within and outside the country suffers a serious setback. Remedy available in a civil Court is a long drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

16. Under the above backdrop of the object of introduction of the Negotiable Instruments Act, it requires to appreciate the rival contention of the parties from the point of appropriate provisions and statutory presumptions with necessary case laws.

17. On going through the contention of the complainant, he brought the present case based on questioned cheque at Ex.P1 contending that, for discharge of legal liability of Rs.2,50,000/-, the

accused got issued the questioned cheque and by complying the required mandatory provision brought the present case before this court. To prove his contention himself got entered into witness box and produced the documents cited supra and subjected for cross-examination, apart from cross-examining the PW.1. Therefore, the initial statutory presumption shall be drawn in favour of complainant that, for discharge of existence of legally recoverable debt, the accused got issued the questioned cheque, unless and until contrary prove.

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18. From the reading of those provisions, it is a rider which creates burden on the accused to prove his probable defence in order to rebut the statutory presumption as well as facts and circumstances raised by the complainant. Therefore, it is the initial burden on the accused to prove his probable defence and negatived the case of complainant.

19. In this case, accused has put up altogether different set up defence, which attack on the claim of complainant. More particularly, the accused has denied the very facts and circumstances coupled with the allegations made by the complainant and specifically attack on the same by contending that, he was a contractor, constructed 3 floor + portion of 4th floor building at his request at the cost of Rs.35 lakhs and he took several signed blank On demand promissory notes, 5 signed blank cheques and blank stamp paper as a security for the purpose of completion of work from the part of accused. Despite, he got cleared the construction of house and towards due of Rs.6 lakhs was still payable by the complainant, when he asked for the same and return of documents, so far not returned, but filed the false case. Thereby, the accused has brought the present case with different set up defence, which attack on the claim of complainant and sake the very case of complainant to the alleged Judgment 14 C.C.No.26310/2017 loan transaction held between complainant and accused. No doubt, as discussed earlier, the statutory presumption as per Sections 118 and 139 of Negotiable Instruments Act always stood in favour of complainant, therefore, it is the accused to prove probable defence and destroy the case of complainant. In that regard, not only he taken such defence and also subjected for cross-examination.

20. On going through the rival contention of the parties, the fact that, the complainant is working in KSRTC, the accused is doing contractor business is not in dispute. The fact that, the complainant has assigned the construction work of his house on the agreed cost and accordingly, accused has undertaken got cleared the construction work and handed over to the complainant is not in dispute. The fact that, after handed over the possession of constructed building to the complainant as found in Ex.P8 and P9-photographs and invitation furnished by the complainant, the complainant got inaugurated the house and occupied the same is not in dispute. The fact that, the complainant subject to prove signed blank cheques and On demand promissory note and consideration receipt coupled with e-Stamp paper was handed over to the complainant as security, thereby, he clearly admitted the signature found therein at Ex.P5 - loan agreement Judgment 15 C.C.No.26310/2017 dated:14.05.2016, On demand promissory note and consideration receipt dated:14.05.2016 is of him coupled with admitting signature cheque at Ex.P1.

21. During the course of cross of DW.1, though he earlier deposed that, for the cost of Rs.35 lakhs he undertakes to construct the house and he did construction work up to 3 floors and portion of 4th floor also constructed by him at his request and to that effect, he undertake to made construction worth of Rs.40 lakhs. The same can be seen in his cross-examination that:

"|AiAiÁðç-ÄAzÀ PÄlÖqÀ PÁªÄÄUÁj "Á§ÄÛ gÄÆ.40 ®PÄëPÉÌ £Á£ÄÄªÀ»¹PÉÆArzÄÝgÄÆ, DvÀ gÄÆ.34 ®PÄëªÄ£ÄÄßªÄiÁvÀæ PÉÆnÖzÄÝgÉ, E£ÄÆß gÄÆ.6 ®PÄë ¤ÄqÀ®Ä "ÁQ EzÉ. |AiAiÁðç ¤ÄrzÀ °ÄtzÀ°è, ZÉPìªÄÄvÄÄÛ £ÄUÄzÄÄ ,ÉÄjgÄÄvÄÄÛzÉ. PÉÆ£ÉAiÄÄ ÝÄªÄwAiÄÄ£ÄÄß |AiAiÁðç AiAiÁªÄUÄªÄiÁrzÄÝgÉAzÄÄ £É£Ä|®è. |AiAiÁðç °Ät ¤ÄqÄzÉÄ EzÄÝ°è, PÁªÄÄUÁj C°èUÉ ¤°è,À®Ä vÉÆAzÄgÉ EgÄ®è JAzÄgÉ ,Äj."

22. On going through the testimony of DW.1, in his chief- examination, he stated, he agreed for the construction work of Rs.35 lakhs and when construction went up to 3rd floor, he requested for further construction of forth floor and did completed the work. But the said piece of cross-examination reveal that, the Judgment 16 C.C.No.26310/2017 accused undertakes to construct the work for Rs.40 lakhs, out of which admittedly received Rs.34 lakhs from the complainant and still he is liable to pay Rs.6 lakhs. During the course of cross of PW.1, he also deposed that, accused undertakes to finish the construction work at the cost of Rs.35 lakhs in the year 2013 and claiming accused completed that work in the year 2014. Therefore, the fact made clear that, as deposed by the PW.1 and DW.1, the accused agreed for construction work for Rs.35 lakhs. The accused in his chief-examination has stated that, he agreed for the said amount for construction of 3 floors and in the middle of construction work of 3rd floor, complainant demanded to construct work in the 4th floor, at his request he made construction including that, the complainant is payable to Rs.40 lakhs, out of which only Rs.34 lakhs were been paid and Rs.6 lakhs still pending. As per the say of accused, complainant got paid only Rs.34 lakhs. The accused has seriously alleging against complainant that, though he did got work worth of Rs.40 lakhs from the complainant only paid Rs.34 lakhs and remaining amount is not been paid. None of the parties have produce any document as to agreement entered into between complainant and accused, with regard to at what cost, the accused undertakes to conclude the construct work and what are the terms and conditions, no document is been placed Judgment 17 C.C.No.26310/2017 before this court. Therefore, whether the accused has did the work at worth of Rs.40 lakhs or not, is to be seen from the evidence of PW.1 in the absence of any documentary evidence or witness examine in that regard.

23. It is appropriate to focus on the evidence of PW.1, during his cross-examination, he deposed that:

",ÄzÄj £Ä£ÄßªÄÄ£ÉAiÄÄ£ÄÄß PÄnÖ ,À®Ä DgÉÆÄ|UÉ gÄÆ.35 ®PÄëPÉÌ UÄÄwÜUÉUÉ PÉÆnÖzÉÝ£É. 2013 gÄ°è DvÀªUÉªÀ»¹PÉÆnÖzÄÄÝ, 2014 gÄ°è DvÀ PÁªÄÄUÁjªÄÄV¹PÉÆnÖzÄÝgÄÄ. DgÉÆÄ|UÉªÄÄ£ÉAiÄÄ ¤ÄiÁðtzÀ "Á§ÄÛ °ÄtªÄ£ÄÄß ©qÄÄUÄqÉªÄiÁqÄªÄªÄUÄ DvÀªAzÀ ,ÀªÄiÁrzÀ SÁ° ZÉPÄÄiUÄ¼ÄÄªÁUÄÆ D£i-rªÄiÁÄqì ¥ÉÇæ£ÉÆÄmïªÁUÄÆ E- ,ÁÖAYï ¥ÉÄÝÄgì£ÄÄß ¥ÄqÉzÄÄPÉÆArzÉÝ JAzÄgÉ ,ÄjAiÄÄ®è. £ÄªÄÄªÄªÄ£ÉAiÄÄ£ÄÄß DgÉÆÄ| 2016 gÄ°è PÄnÖªÄÄV¹zÄÝgÄÄ JAzÄgÉ ,ÄjAiÄÄ®è. 2014 gÄ°èªÄÄVzÄ

§UÉÎ £À£Àß°è UÀÈ°À¥ÀæªÉÃ±ÀzÀ DªÀÄAvÀæt ¥ÀwæPÉ EzÄÄÝ, DgÉÆÄ|AiÄÄ °É, ÀgÀ£ÀÆß PÀÆqÀªÄÄÄ¢æ¹zÉÝÃ£É. ,ÀzÀj UÄÄwÛUÉ ¤ÄrzÁUÀ DgÉÆÄ|AiÄÄ ¯Élgì °Éqì£À°è DvÀªAzÀ §gÀªÀtôUÉªAiÁr¹PÉÆArzÉÝÃ£É. UÀÈ°À ¥ÀæªÉÃ±À DzÀ §½PÀ D zÁR¯ÉAiÄÄ£ÄÄß DgÉÆÄ| £ÀªBAzÀªÄÄgÀ½ ¥ÀqÉ¢zÀÝgÄÄ. D ¥Àæw £À£Àß §½ E®è. ,ÀzÀjªÄÄ£ÉAiÄÄ£ÄÄß PÀlÖ®Ä MmÁÖgÉ ,ÄÄªAiÁgÄÄ gÀÆ.43 ®PÄë RZÁðVzÉ."

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24. On going through the above testimony of PW.1, he deposed that, for the amount of Rs.35 lakhs, he assigned construction work to the accused. Accordingly, in the year 2013, he assigned the work, the accused got concluded the work in the year 2014. The PW.1 has denied the suggestion made by the advocate for accused that, whenever the complainant release the construction amount to the accused, by that time, he used to collect the singed blank cheques, On demand promissory note and consideration receipts and e-Stamp paper from him is been denied by the complainant. The PW.1 has denied the suggestion that, the house construction was completed in the year 2016, but he stated, it was concluded in the year 2014. No doubt, in that regard, the invitation card for house warming ceremony and photographs produced at Exs.P8 and P9 clearly manifest that, the complainant got inaugurated the house on 02.05.2014, wherein, the accused was also participated the function. It is not the contention of the complainant that, accused got completed the construction work up to 3rd floor as well as alleged portion of 4th floor. He could have produce necessary documents or photographs pertaining to the construction work carried out by the accused by that time.

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25. No doubt, when the house warming ceremony was did on 02.05.2014, definitely, they could have obtained the photographs of entire building. If at all, produce the same before this court is the good piece of evidence, which depicts, how much work done by the accused, whether it was concluded or incomplete could have been revealed, but for the reasons better known to him, not produced three floors building photographs.

26. Further, in the further cross-examination of PW.1, he categorically admitted that, at the time of work assigned to the accused for the construction of work in the letter head of the accused, he got obtained endorsement. Even, he further deposes that, after finishing the house warming ceremony, the accused took back the said documents and copy of the same is not retained by him. If at all, there was any written agreement was entered into between complainant and accused with regard to the construction work, it made clear that, there was written agreement was entered into between them. The complainant has contended that, the said document was returned to the accused. When there is alleged dispute arose since, 2016, definitely,

the complainant could have retained the copy of the same or to produce any other evidence as to the terms and conditions of the agreement. Nothing has furnished by the complainant.

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27. On the one stretch, the complainant has deposed for Rs.35 lakhs he assigned the construction work to the accused. The fact end of the above reproduction of testimony, it discloses for construction of the said house Rs.43 lakhs were expended by him. He not clarified, whether the said expenses were incurred by the complainant personally or through accused. As per say of PW.1, for the construction of house he took Rs.43 lakhs, as against his own say of Rs.35 lakhs. Therefore, it made clear that, Rs.43 lakhs worth work has been extracted by the complainant through the accused. In order to show that, whenever the accused got finished his part of work got paid money to the accused, no document is been produced by the complainant. The accused not denied the payment of Rs.34 lakhs, but claiming that, Rs.64 lakhs, out of Rs.40 lakhs work has to be payable by the complainant. The accused stated, Rs.40 lakhs worth work has been done by him, but the complainant stated, he spend Rs.43 lakhs for the construction of said house, as against the agreed amount of Rs.35 lakhs. Taken in to consideration as to the contention of the complainant, if at all, he paid Rs.35 lakhs, he require to produce necessary documents. As the accused alleged that, only paid Rs.34 lakhs and remaining Rs.6 lakhs has to be payable. Whatever it may be, rival contention of the parties taken Judgment 21 C.C.No.26310/2017 as to completion or non-completion of house work and its balance payment is not subject matter of the present case. But, factum of issues arose between complainant and accused with regard to the construction of the work. Under such circumstances, was it possible to the complainant to pay the alleged loan to the accused to be prove by the complainant.

28. In the cross-examination of PW.1, he clearly admitted that, he spent sum of Rs.43 lakhs for the construction of the house. More particularly, he deposed that:

" , ÀzÀj °ÀtªÀ£ÀÄß ¨ÁâAPï£À , Á®, CvÉÛ, ªÀiÁªÀ gªªÀjAzÀ ¥ÀqÉzÀÄ °ÉÆA¢¹zÀÝ®èzÉÃ, £À£Àß §½ |.JYsï.£À °Àt gÀÆ.75,000/-, ¹ArPÉÃmï ¨ÁâAPïªAzÀ , ÄªªÀiÁgÀÄ gÀÆ.1 ®PÀë¢AzÀ gÀÆ.1,50,000/- , Á®, CzÀPÀÆÌ ªÉÆzÀ®Ä ªÄ£ÉAiÀÄ£ÀÄß ¨ÀsÉÆÃUÀâPÉÌ °ÁQzÀÄÝ CzÀjAzÀ §AzÀ gÀÆ.3,50,000/- °Àt °ÉÆA¢¹ ªÄ£É PÀnÖzÉÝÃ£É. £À£ÀÄ , ÀAYÀÇtð , Á®ªÀ£ÀÄß ¥ÀqÉzÉÄ ªÄ£ÉAiÀÄ£ÀÄß PÀnÖzÉÝÃ£É JAzÀgÉ , ÀjAiÀÄ®è. , ÀzÀj °Àt £À£Àß §½ EvÀÄÛ JA§ÄzÁV vÉÆÃj , À®Ä ® ¨Àsà EzÀÝ zÁR ¨É °ÁdgÀÄ ¥Àr, À§ ¨Éè."

29. As per say of PW.1, for construction of the said house, he mobilized fund through bank and received money from his father- in-law and mother-in-law and adjusted his PF amount of Rs.75,000/- coupled with borrowed up to Rs.1,50,000/- loan from Judgment 22

C.C.No.26310/2017 Syndicate Bank and also by leased out his house gathered Rs.3,50,000/-. The PW.1 denied that, by obtained entire loan, he constructed the said house. Even he deposed, that much amount was with him, if he has any document capable to produce before this court, but no such document is been produced by him.

30. It is significant fact to note that, as he said, he mobilized fund through PF, Syndicate Bank, leased out his house as well as received sum of Rs.10 lakhs each from his father-in-law and mother-in-law, definitely, could have produce necessary document. But in that regard, at least his father-in-law and mother-in-law were not examined in this case. The factum discloses, the complainant by arrange the fund through various source, as he had not sufficient money to construct the said huge construction work. The complainant being KSRTC driver, how he mobilized the said huge fund, he require to produce necessary document as to mobilization of fund, but in that regard, no document is been produced nor examined any witness. The mobilization of fund through various source discloses that, since complainant had no sufficient money, therefore, arranged from the various source put up the construction. Therefore, his priority may to clear the said loan not for any money lending business.

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31. The PW.1 has deposed that, at the instance of accused, he leased out the 2nd floor Nandi Door House to one Ramesh for Rs.6 lakhs. In that regard, he had agreement and received the amount through cash. If at all, he possessed such agreement to show that, he got received Rs.6 lakhs from Ramesh as lease amount, as he projected this case, on knowing about receipt of said Rs.6 lakhs from the complainant on 22.04.2016, and requesting for the loan. But the accused has denied the very allegation. Therefore, either the said lease agreement entered into between complainant and Ramesh, Ramesh himself should be examine in support of the contention of the complainant, but nothing has done by him. In order to show that, the said Rs.6 lakhs received by him, if at all, received such much amount, since he was in the financial crisis, as he incurred all the expenses by borrow the loan, definitely, if he could have been utilized for clear his dues not use for lent the loan to the accused for interest as contended in Exs.P5 to P7. The accused has withstood his contention successfully by denying the case of complainant that, the accused borrowed loan of Rs.2,50,000/- from the complainant on 14.05.2016 by executing the loan agreement and On demand promissory note and consideration receipt. But he repeatedly re- asserted that, those documents were secured by the complainant Judgment 24 C.C.No.26310/2017 in blank as security for conclusion of construction work undertaken by him.

32. Even, in the cross-examination of DW.1, whatever the suggestion made by the advocate for complainant, as to alleged borrowal of loan as pleaded in the complaint is been clearly denied by him. He also denied that, he got executed the Exs.P5 to P7 for having receipt of loan by affixing his signatures and thumb impression. The accused volunteers that, he gave only singed blank papers and handed over to the complainant as security.

33. That apart, it is pertinent to note that, the complainant has not discloses, after institution of present case, he received sum of Rs.60,000/- from the accused. But during the course of cross of

PW.1, he categorically admitted that, after filing of the present case, in pursuance of issuance of warrant by this court, he received sum of Rs.60,000/- from accused, as found in the bank statement at Ex.D1. Even he deposed that, the factum of receipt of money was intimated to his advocate, not to this court. The accused has contended that, the complainant by filing the present case and at the time of for warrant is pending against him, the complainant by threaten his wife took Rs.60,000/- from him.

Judgment 25 C.C.No.26310/2017 Therefore, it is also made clear that, after filing the present case, the complainant got received Rs.60,000/- from the account of accused. It is pertinent to note that, the complainant not brought the said fact before this court unless, suggested by the advocate for accused in his cross-examination, he did not discloses the same. The very approach of complainant discloses the bonafidness of the complainant.

34. That apart, in the complaint he stated that, the cheque was issued by the accused during the month of October, 2016 by stating that, settle the amount after selling accused property. But in the cross-examination of PW.1, contrary to the said pleading and averments, he deposed that:

"çŁÁAPÀ:09.08.2017 gÀAzÀÄ DgÉÆÄ| ¤|.1 gÀ ZÉPÀÏÆÄÄß, DvÀÆÄ ¤ÄÆÆÄÉAiÄÄ °ÀwÛgÀ EgÄÄ ¤Ä ¤ÉÄPÀjUÉ PÀgÉ-Ä¹, nÄ AiÄÄÆÄÄß PÉÆr¹ ZÉPÀÏÆÄÄß PÉÆnÖzÀÝgÄÄ. ¤|.1 gÀ ZÉPÏÆÄ ¤Äswð ¤ÄiÁrgÄÄ ¤Ä °Ä, ÁÛPÀëgÀ DgÉÆÄ|AiÄÄzÄÄ C®è JAzÀgÉ, ÀjAiÄÄ®è. DgÉÆÄ| ÆÄÆÄUÉ ZÉPÏ ¤ÄqÄÄ ¤ÄUÄ ¤ÉÆzÄ ¤Ä ¤Äswð ¤ÄiÁr¹ vÄAçzÀÝgÄÄ. ÆÄÆÄ ¤ÉÄ¹²zÄ çŁÁAPÀzÄAzÄÄ D ZÉPÀÏÆÄÄß ¤Är®è, ÆÄ ¤ÄÄ ¤ÄÆÆAiÄÄÆÄÄß PÀnÖ, À®Ä ¤ÄszÄævÉUÁV DgÉÆÄ| ¤ÄAzÄ ¤|.1 gÀ ZÉPÀÏÆÄÄß ÆÄÆÄ ¤ÄqÉçzÉÝ JAzÀgÉ, ÀjAiÄÄ®è. D ZÉPÀÏÆÄÄß ÆÄÆÄ ¤Äswð ¤ÄiÁrPÉÆArzÉÝÆÉ JAzÀgÉ, ÀjAiÄÄ®è."

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35. In the cross-examination of PW.1, he clearly deposed that, on 09.08.2017 the accused brought the complainant to the Bakery near of his house and after had tea got issued the said cheque. The PW.1 has denied the suggestion that, the hand writing made in the cheque is not of the accused. But PW.1 stated, before handed over those cheques to him, it was filled. The accused has denied that, as said by the complainant, those cheques were not issued by the accused, but issued as security for construction of the house and the complainant got filled the same. But, the said allegation in the form of suggestion is denied by the PW.1.

36. On meticulous perusal of the above testimony of PW.1, one thing clear that, he discloses the truth that, cheque was given by the accused on 09.08.2017 near Bakery. But in the complaint contrary to the said factum alleged that, cheque was issued during the month of October, 2016. There was 10 months gap as to alleged issuance of cheque, as contended by the complainant in the pleading as well as his cross-examination. If at all, accused got issued the cheque in the month of October, 2016, what happened to the said cheque, whether it was dated or not, is not been

explained. If at all, accused gave the cheque in the month of October, 2016, what happened to the said cheque is not been explained. Contrary to the said pleading he deposed that, on Judgment 27 C.C.No.26310/2017 09.08.2017, the accused gave cheque, but on perusal of the Ex.P1-cheque it discloses the date:10.08.2017. In the complaint it was stated, it was post dated cheque, but in the cross- examination it was stated, one day earlier to the date of cheque it was issued. Therefore, it create doubt, as to the due execution and issuance of cheque by the accused to the complainant.

37. In this case, the accused has strongly harping on the claim of complainant, as to the alleged lent of loan of Rs.2,50,000/- by virtue of the loan agreement at Ex.P5 as well as On demand promissory note and consideration receipt produced at Exs.P6 and P7. It was serious defence of the accused that, at the time of complainant handed over the construction of house to the accused for the security to conclude the construction, he took singed blank e-Stamp paper and singed blank On demand promissory note and consideration receipt as well as questioned cheque along with other cheques as alleged by the accused.

38. On meticulous perusal of the documents at Exs.P5 to P7 it discloses that, all are in typing. The loan agreement requires to be typed in order to understand the terms and conditions. But On demand promissory note and consideration receipt found at Exs.P6 and P7 it was in the typed formats, thereafter, blank were Judgment 28 C.C.No.26310/2017 filled by way of typing. The complainant in his pleading stating that, the accused borrowed loan of Rs.2,50,000/- on 14.05.2016 and while receive the amount, he got executed On demand promissory note and consideration receipt and loan agreement. As per his say, the accused himself got executed Exs.P5 to P7. On meticulous perusal of the said documents, it discloses, the witness name Hanumanthappa and does not mentioned about his particulars and address. Even the complainant not secured him to examine as to due execution and issuance of the Exs.P5 to P7 in the presence of Hanumanthappa alleged transaction took place, in view of accused strongly attack on the execution and issuance of said documents in connection to the same. The complainant stated, the accused himself got prepared and executed the Exs.P5 to P7. In that regard, require to appreciate evidence of PW.1.

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

"ç£ÁAPÀ:14.05.2016 gÀAzÀÄ DgÉÆÄ|UÉ gÀÆ.2,50,000/- , Á® £ÀªÄÄä ªÄÆ£ÉAiÄÄ-ÉèÄ PÉÆnÖzÉÝÄ£É. DUÀ , ÀAeÉ 5.00 jAzÀ 6.00 UÀAmÉ, £Ä£Äß ªÄÆ£ÉAiÄÄ°è £Ä£Äß °ÉAqÀwAiÄiÁzÀAvÀ°À CxvÁ gÀªÄgÄÄ EzÄÝgÄÄ. £Ä£ÄÄ ªÄÆ£ÉAiÄÄ£Äß gÀªÉÄÄ±i gÀªjUÉ "ÀsÉÆÄUÀâPÉi °ÁQzÀÄÝ, §AzÀ °ÀªÄ£ÄÄß DgÉÆÄ|UÉ PÉÆnÖzÉÝÄ£É. DgÉÆÄ|UÉ gÀÆ.500/-

Judgment 29 C.C.No.26310/2017 ªÄÄÄR-É-ÉAiÄÄ 5 PÀlÄÖUÀ¼À°è PÉÆnÖzÉÝÄ£É. °Àt 1éÄPÀj1zÁUÀ, DgÉÆÄ|ÄÄzÀ D£i-rªAiÄâAqí ÝÁæ«Ä, Àj £ÉÆÄmí ªÄÄvÄÄÛ CVæªÉÄAmí£ÄÄß DvÀ "ÉgÀ¼ÄZÄÄÑ ªAiÄr1PÉÆAqÄÄ

vÀAzÀÄ PÉÆnÖzÀÝgÀÄ. DgÉÆÄ|AiÉÄÄ PÀgÁgÀ£ÀÄß "ÉgÀ¼ÀZÀÄÑ
 aÀiÁr¹zÀÝgÀÄ, DUÀ £Á£ÀÄ EgÀ°@è. DÈi-r²ÀiÁÄAqï YÉÇæÄ£ÉÆÄ£ÀÄß PÀÆqÀ
 DgÉÆÄ|AiÄÄ °ÉAqÀw aÀiÁr¹zÀÝgÀÄ, £Á£ÀÄ EgÀ°@è. ¤|.5 jAzÀ 7 zÁR-ÉUÀ½UÉ
 ,À» aÀiÁqÀÄaÁUÀ, °À£ÀÄaÀÄAvÀÝÀà aÀÄvÀÄÛ £À£Àß °ÉAqÀw °ÁUÀÆ
 aÀÄPÀi¼ÄÄ £ÀaÉÆäAçUÉ EçÝzÀÝgÀÄ. £À£Àß °ÉAqÀw aÀÄPÀi¼ÄÄ ,À»
 aÀiÁr@è. PÁgÀt CzÀgÀ CªÀ±ÀÄPÀvÉ EgÀ°@è. ¤|.7 gÀ°è PÀtô¹gÀÄaÀ
 °À£ÀÄaÀÄAvÀÝÀà£À£ÀÄß «ZÁgÀuÉUÉ M¼ÀÝÀr, ÄÄvÉÛÄ£É. DgÉÆÄ|UÉ
 £Á£ÀÄ gÀÆ.2,50,000/- ,Á® ¤Är@è aÀÄvÀÄÛ DvÀ ¤|.5 jAzÀ 7 gÀ
 zÁR-ÉUÀ¼À£ÀÄß £À£ÀUÉ §gÉzÀÄPÉÆnÖgÀ°@è JAzÀgÉ ,ÄjAiÄÄ@è. £ÀaÀÄä
 aÀÄ£É PÀiÄÖªÁUÀ, PÀgÁgÀÄ aÀiÁrPÉÆArzÀÄÝ, D ,ÄAzÀ"Àsð DgÉÆÄ|ÄÄzÀ
 ,À» aÀiÁrzÀ SÁ° bÁÝÁ PÁUÀzÀ aÀÄvÀÄÛ DÈi-r²ÀiÁÄAqï YÉÇæÄ£ÉÆÄÄmï °ÁUÀÆ
 °Àt, ÄAzÀ gÀ²ÄçAiÄÄ£ÀÄß ÝÀqÉzÀÄPÉÆArzÀÄÝ, §½PÀ CzÀ£ÀÄß "Àswð
 aÀiÁrPÉÆAqÀÄ ,Ä¼ÄÄi ÝÀæPÀgÀtaÀ£ÀÄß zÁR®Ä aÀiÁrzÉÝÄ£É JAzÀgÉ
 ,ÄjAiÄÄ@è."

40. On meticulous perusal of the said testimony of PW.1, he deposed that, on 14.05.2016 alleged to be paid loan of Rs.2,50,000/- to the accused in his house in between 5.00 p.m. to 6.00 p.m., by that time, in his house his wife Smt.Anitha was present. He stated that, out of the lease amount received from Judgment 30 C.C.No.26310/2017 one Sri.Ramesh, he gave the said money to the accused, which consists of Rs.500/- denomination notes in 5 bundles. More particularly he deposed that, while he received the money, he got prepared On demand promissory note and consideration receipt and agreement by way of typing himself and also stated that, by that time he was not present while prepare the said documents at Exs.P5 to P7. More particularly he deposed, the wife of accused got prepared On demand promissory note and consideration receipt and he was not there at that time. More particularly he stated, while put signature to Exs.P5 to P7, witness by name Hanumanthappa, his wife and children were also there and his wife not signed the same, as it is not required. More particularly, he deposed, he would examine the witness by name Hanumanthappa, but till the fag end of the trial not made any effort to secure his presence. Though, he stated, at the time of lent money to the accused, his wife and children were there. In that regard, none of them were examine to substantiate his contention. From the say of PW.1, it also create that, before handed money by the complainant to the accused, he got prepared Exs.P5 to P7. How the accused came to know that, complainant is going to pay the money of Rs.2,50,000/-, without any previous assure made by him. Unless, physically handed Judgment 31 C.C.No.26310/2017 over to him is also not been explained. It is the complainant for security of repayment of the alleged loan, if at all given, it is him to narrate the conditions, not the burden on the accused to get prepare himself about the documents at Exs.P5 to P7 before the receipt of money.

41. The accused clearly admitted that, the signature and thumb impression found in Exs.P5 to P7 of him, but categorically deposed by the DW.1 and suggested to PW.1 that, he was given the singed blank cheques as security to the complainant together with questioned cheque and other cheques in blank. The accused has strongly attack on the contention of the complainant, as to the due execution and issuance of said documents in respect of alleged loan. Therefore, whatever the recital if at all, accused typed prior to receipt of money definitely, it would not suffice to believe that, the complainant got paid money of Rs.2,50,000/- to the accused as loan. If at all, any cash handed over

by the complainant to the accused, definitely, it could have been done in the presence of witnesses and to substantiate that contention, witnesses could have been examine to brought the clear picture about the transaction.

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42. On reading of Exs.P5 to P7, it discloses, it was prepared at the instruction of complainant and accused. But, complainant has stated that, it was got prepared by the accused himself. Then, unilateral preparation of documents without the knowledge of the complainant creates doubt as to the genuineness of the documents. The complainant could have secured the proper address of the witness and examine him to prove the due execution of Exs.P5 to P7, but he did not do so. No need to fill the On demand promissory note and consideration receipt, if at all, the accused got executed the same after receipt of money, definitely, to the knowledge of the parties could have been prepared the document, no need to got typed. From the evidence of PW.1 stated supra, it made clear that, before hand over money from the complainant to the accused, those documents were prepared, it is not sufficient to come to the conclusion for the complainant handed over the amount of Rs.2,50,000/- as to the hand loan. The accused counsel had suggested to the PW.1 that, no money was passed to the hand of accused by virtue of Exs.P5 to P7, but, the complainant got misused those document obtained in blank, which secured as security purpose of handed over the construction work to the accused. The PW.1 has denied the same, but to substantiate his contention, he requires to examine Judgment 33 C.C.No.26310/2017 the witness. In order to clear the cast cloud on the alleged loan transaction, the complainant not examine the witness.

43. More particularly, it has to be consider that, the accused had disputed the monetary transaction and claiming that, Rs.6 lakhs were due by the complainant to the accused with regard to the payment payable by him for the construction work. That apart, the complainant by raised fund/loans from various persons had took the risk of put up the construction as he alleged. Though, he stated, he gave the construction work to the accused for the estimation of Rs.35 lakhs, but it across the same, though accused got finished the work, as per his specification not paid the arrears of Rs.6 lakhs. Therefore, under such circumstances, the complainant has failed to prove that, he had requisite fund of Rs.2,50,000/- as on 14.05.2016 and paid to the accused in the presence of witness.

44. It is pertinent to note that, as observed earlier, the complainant already fall due of loan raised from various persons for the purpose of construction of loan need. Under such circumstances, inspite of he got cleared his risk, he came forward to pay money to the accused, that too, to the tune of Rs.2,50,000/- cannot accepted. Moreover, he not stated anything about for the Judgment 34 C.C.No.26310/2017 payment of interest, he paid money. On going through the Exs.P5 to P7 discloses, the complainant lent the alleged loan to the accused for the monthly interest at 2% p.m. amounting to 24% p.a. Even in the his cross-examination, he stated that, accused in the month of October, 2016 undertakes to repay loan amount and only paid interest Rs.5,000/- for the period of one month. The said evidence of PW.1 it discloses that, though accused already sustained from loans and he mobilized the fund of Rs.2,50,000/- and paid to the accused on the huge interest at 24% p.a. To do money lending business for interest, the complainant not obtained any licence from the competent authority. Though, the complainant being working as a driver in KSRTC, to do the said

money lending business not obtained any permission from his higher authority. Even, the complainant not discloses, in respect of which month interest, he got received from the accused also not been explained. When there was monetary dispute between complainant and accused, regarding payment of arrears of amount, which the expenses incurred by the accused on behalf of complainant for the purpose of completion of construction work, there is no substance in the evidence of PW.1 and his evidence does not repose any confidence. The person who is already suffering from loans, normally he would concentrate to clear the Judgment 35 C.C.No.26310/2017 same, in order to avoid the payment of interest. As loan alleged to be borrowed by the complainant from the bank as well as various persons in spite of he clear the same and lent to accused on interest creates doubt.

45. The complainant has contended that, as agreed the accused not paid the money, when he asked him to repay, finally in the month of October, 2016, he gave post dated cheque. But in the cross-examination he stated, cheque was handed over by the accused on 09.08.2017. There was serious discrepancy and contradiction in the evidence of PW.1 as to the alleged issuance and execution of questioned cheque at Ex.P1. The said discrepancy would come to the help of accused in proving that, he not issued questioned cheque in respect of due discharge of legally recoverable debt. On going through the Ex.P1-cheque, it prima facie discloses, the hand writing and signature in the cheque appears to be different. The complainant has to demonstrate, who got filled the questioned cheque. The signature and hand writings of the accused appeared as found in vakalath, it discloses tallying the signature, but to show that, the accused himself got executed the said document, the complainant has not produced any acceptable evidence before this court. Perhaps, the dispute arose between complainant and accused, as to the Judgment 36 C.C.No.26310/2017 payment of money in respect of construction work carried out by the accused, in order to shut his mouth, the complainant could have been used the questioned cheque, which is in his custody secured through unexplained source. Therefore, it does not sufficient to hold that, in respect of discharge of existence of legally recoverable debt, the accused got issued the questioned cheque.

46. In this case, the accused attack on the contention of the complainant stating that, legal notice was received by the accused on behalf of complainant. But in the cross-examination of PW.1, he deposed that:

"೫|.3 ಗÀ «¼Á, ÀzÀ°è DgÀÉÆÃ! ªÁ, À«®è JAzÀgÉ, ÀjAiÀÄ®è. , ÁQëAiÀÄÄ, DgÉÆÃ! F ¥ÀæPÀgÀt zÁR°, ÀÄªÁUÀ D «¼Á, ÀzÀ°è ªÁ, À«zÀÄÝ, §½PÀ D «¼Á, ÀªÀ£ÀÄß SÁ° ªÀiÁrzÁÝgÉAzÀÄ £ÀÄrAiÀÄÄvÁÛgÉ. DgÉÆÃ! , ÀéAvÀ ªÄ£ÉAiÀÄ°è ªÁ, À«zÀÝgÀÄ JAzÀgÉ, Àj. , ÁQëAiÀÄÄ, ÀévÀB ªÄÄAzÀÄªÀgÉzÀÄ JgÀqÀ£ÉÄ ªj F £ÀªAiÀiÀ®AiÀÄzÀ ªÁgÉAmĩ ªÁrzÀ ¢£ÁAPÀ:24.09.2018gÀ §½PÀ DvÀ , À«ÄÝÀzÀ ªÁrUÉ ªÄ£ÉUÉ °ÉÆVzÁÝgÉAzÀÄ £ÀÄrAiÀÄÄvÁÛgÉ. ¢£ÁAPÀ:13.09.2017 gÀAzÀÄ ೫|.3 ªÄvÀÄÛ 4 gÀ°è PÁtô¹gÀªªÀ «¼Á, ÀzÀ°è DgÉÆÃ! ªÁ, À«gÀ°®è JAzÀgÉ, ÀjAiÀÄ®è. , ÁQëAiÀÄÄ DgÉÆÃ!AiÀÄ °ÉAqÀw gÀªÄÄª £ÉÆÄß ¹éAPÀj¹zÁÝgÉAzÀÄ £ÀÄrAiÀÄÄvÁÛgÉ. DvÀ£À °ÉAqÀw ೫|.4 gÀ°è , ÀªÀiÁr®è, £À£ÉÄ CAZÉ E-ÁSÉAiÀÄ Judgment 37 C.C.No.26310/2017 ¹ªÀ¢AiÉÆA¢UÉ ±Á«ÄÄÁV §gÉ¹zÉÝ£É JAzÀgÉ, ÀjAiÀÄ®è. ೫|.3 ಗÀ £ÉÆÄß, ï DgÉÆÃ!UÉ eÁjAiÀiÁV®è °ÁUÁV GvÀÛj¹®è JAzÀgÉ, ÀjAiÀÄ®è."

47. On going through the said testimony of PW.1, though he denied the address of the accused as found in Exs.P3 and P4, but he categorically deposed that, at the time of filing the complaint, accused was in the given address, later he vacated the same. The said evidence it made clear that, the accused vacated the address made mentioned in the legal notice. During the course of cross of DW.1, he deposed, he resided in the door No.735, 1st Friend Cross, 15th Main, 3rd Stage, 4th Block, Basaveshwaranagar, Bengaluru-79, in the house of his cousin brother by name T.G.Babu. Even, he denied the notice at Ex.P3 as per Ex.P4 not served on him and his wife not signed the same. But the cross of PW.1 discloses, the accused after filing the present case got vacated the said address, it discloses, the accused not resided in the said address. The accused simply denied that, the signature found in the ck is not of his wife. In order to show that, in what manner she used to sign, he not produced any document, when he himself agreed, he is residing in the said address, then there is no ground to suspect the service of legal notice. The Non-reply of notice is not a ground, as complainant himself failed to prove the Judgment 38 C.C.No.26310/2017 possession of requisite cash of Rs.2,50,000/- as on the date of lent and handed over to the accused in turn, the accused got executed the Exs.P5 to P7 duly. Even, he utterly failed to prove that, as he pleaded or as he deposed, the questioned cheque was issued by the accused for discharge of existence of legally recoverable debt. The evidence of PW.1 is not repose confidence in prove the guilt of the accused.

48. It is significant fact to note that, in the name of filing present case under the guise of NBW, the complainant got received Rs.60,000/- from the accused through his wife, but not disclose the said fact during the pendency of the case. Therefore, it made clear that, the complainant has not approached this court with clean hands. Based on the questioned cheque at Ex.P1 in order to prove the guilt of the accused, he not placed sufficient materials before this court. The accused has placed sufficient acceptable evidence before this court, suspect the genuineness of claim put forth by the complainant. In order to establish the due payable by the complainant, the complainant not proved due execution and issuance of questioned cheque.

At this stage this court has gone through the decision reported in 2008 SAR (Criminal) 224 between Krishna Janardhan Judgment 39 C.C.No.26310/2017 Bhat V/s. Dattatraya G.Hegde, the Hon'ble Supreme Court has observed that:

"When huge amount is lend as hand loan the complainant ought to have taken a written document for having lent such amount. If no such document is taken then a strong doubt arises in the case of complainant regarding payment of amount. Further the Hon'ble Supreme Court observed that, any amount lent more than Rs.20,000/-, then as per Section 69 SS of Income Tax was to be made by way of an account payee cheque only".

49. As per the said dictum, the amount more than Rs.20,000/- shall pay through cheque or demand draft. In this case, the complainant has ignored the said provision and alleged to be paid the amount by way of cash. The complainant utterly failed to prove passing of consideration of Rs.2,50,000/- from his hands to the accused as alleged by the complainant. He possessed the questioned cheque through the various source, but projected the present case, he failed to prove the same. As he failed to prove his case beyond the reasonable doubt, in order to prove guilt of the accused. Hence, the

accused is entitled for benefit of doubt for acquittal.

50. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very Judgment 40 C.C.No.26310/2017 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".

51. 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:

Judgment 41 C.C.No.26310/2017 "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".

52. 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.2,50,000/- 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.

53. In the case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, the accused is not liable to pay Ex.P1 cheque amount of Rs.2,50,000/-and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable Judgment 42 C.C.No.26310/2017 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.2,50,000/-. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

54. 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 Section 139 and 118 of Negotiable Instruments Act in favour of the accused.

Judgment 43 C.C.No.26310/2017

55. 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.

56. 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.2,50,000/- 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 Judgment 44 C.C.No.26310/2017 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.

57. 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 7th day of July - 2020)
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.26310/2017

ANNEXURE

List of Witnesses examined on behalf of Complainant:

PW-1 : Basavaraj.M.S 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	:	Loan agreement
Ex.P5(a) & P5(b)	:	Signatures of complainant and accused
Exs.P6 & P7	:	On demand promissory note and consideration receipt
Exs.P6(a) & 7(a)	:	Signatures of accused
Ex.P8	:	Photograph
Ex.P9	:	Invitation

List of Witnesses examined on behalf of the defence:

DW.1 : Suresh.T.A List of Exhibits marked on behalf of defence:

Ex.D1 : Statement of account (bank pass book) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.26310/2017

07.07.2020.

Comp -

Accd -

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.

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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.

Judgment 48 C.C.No.26310/2017

04.06.2020.

Comp -

Accd -

For Judgment

Case called out.

Both side parties and their
respective counsels are absent. In order
bring the notice of pronouncement of
judgment, it require to web-host the
proceedings of the present case.

Accordingly, computer branch is
hereby directed to web-host the status
of the present case by mentioning the
next hearing date. Accordingly, for
pronouncement of judgment adjourned
to:06.06.2020.

XXIII ACMM, Bengaluru.