

## Manjunath.B vs Ravindra Kumar on 5 October, 2020

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

Dated this the 5th day of October - 2020

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

C.C.NO.29179/2015

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : Manjunath.B,  
S/o.Basavaraju,  
Aged about 31 years,  
R/at No.63/2, 2nd Floor,  
10th Cross, Choularapalya,  
Vijayanagar,  
Occupation: Junior Engineer,  
Bengaluru-23.  
(Rep. by Sri.C.T.Parameshwarappa, Adv.)

Accused : V/S  
Ravindra Kumar,  
S/o.Mudalagiriyappa,  
Aged about 50 years,  
R/at. No.2585, 11th Main Road,  
'E' Block, Subramanya Nagar,  
Rajajinagar, Bengaluru-10.

And also:  
No.1824, 7th A Main,  
'E' Block, 2nd Stage, Rajajinagar,  
Bengaluru-10.

(Rep.by Sri.J.Manjunath Reddy, Adv.)

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

(SHRIDHARA.M)

### JUDGMENT

The complainant has presented the instant complaint against the accused on 05.10.2015 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.16 lakhs.

2. The facts given raised to this private complaint are as follows:

The accused and complainant are friends and known to each other since from several years. The complainant has submitted that, accused assured him that, he is the owner in possession of the property bearing Sy.No.109/1, 2, 3 and 110, situated at Halkur Village, Near Arehalli Village Gate, Sira- Madhugiri Highway Road, Sira Taluk, measuring 4 acres of land and he agreed to sale 2 acres of land to the complainant for sale consideration of Rs.16 lakhs.

The complainant has further contended that, on consideration and assurance of oral agreement, the complainant Judgment 3 C.C.No.29179/2015 had paid sum of Rs.16 lakhs to the accused in installments from last week of August, 2012 to 1st week of June, 2014 by way of cash as well as by way of online.

The complainant has further alleged that, after paying the entire agreed sale consideration to the accused, he approached him on several times to execute sale deed in his favour. However, the accused had postponed the execution of registered sale deed in his favour on one or other reasons and finally he refused to sale his property in favour of complainant, since there is rise in landed properties and demanded enormous amount.

The complainant has further averred that, thereafter, he requested the accused many times to execute sale deed in his favour or to return the amount received under oral agreement, in the meanwhile intervention of friends and well-wishers, accused had agreed to refund the entire amount of Rs.16 lakhs on or before 18.06.2015 and on that day, he issued a cheque for Rs.8,50,000/- as part payment bearing No.385895 drawn on Syndicate Bank, as per advise of the accused, he presented the same on 17.04.2015. However, the said cheque came to be dishonoured and the said fact was intimated to the accused personally. Thereafter, he advised the complainant to present it Judgment 4 C.C.No.29179/2015 once again on 07.05.2015, accordingly, when he represented it for encashment, he got shock and surprise to see the endorsement stating, the said cheque came to be dishonoured for the reasons "Funds Insufficient". Immediately, he intimated the said fact to the accused and demanded and requested to pay the full amount, which received from the complainant and he agreed.

The complainant has further submitted that, once again, intervention of friends and well-wishers, the accused had issued post dated cheque bearing No.385894 for sum of Rs.16 lakhs dated:18.06.2015 drawn on Syndicate Bank and also had executed a loan agreement dated:29.05.2015 in the presence of witnesses by promising that, cheque would be honoured on the said date. After taking back the earlier dishonoured cheque bearing No.385895 for sum of Rs.8,50,000/- drawn on Syndicate Bank and its endorsement.

The complainant has further alleged that, thereafter, on repeated requests and demands made by the complainant, the accused advised him to present the said cheque on 18.06.2015, on that day, he presented it for encashment and the same also came to be dishonored for the reasons "Funds Insufficient". The complainant had intimated the said fact to the knowledge of the Judgment 5 C.C.No.29179/2015 accused, then he advised the complainant to represent it once again. Accordingly, on 27.07.2015, when he represented the said cheque for encashment, it also came to be dishonoured for the reasons "Funds Insufficient" as per memo dated:28.07.2015. Once again, the complainant met the accused personally and intimated the said facts to him and he promised the complainant that, the said cheque would be dishonoured (as mentioned in the complaint) without fail on 20.08.2015.

The complainant has further alleged that, believing the words of accused, once again he represented the said cheque for encashment however, the said cheque came to be dishonoured as per the endorsement dated:21.08.2015 by stating "Account Closed". On seeing the same, the complainant got shock and surprise and thereafter, he intimated the said fact to the accused and asked him to repay the said amount. But he not properly responds and gave evasive reply. The accused try to escape and avoid to pay the amount covered under the cheque for the reasons better known to him and to cheat him without maintaining sufficient funds. Hence, on 28.08.2015 through his counsel, he got issued legal notice to the accused and the same was got served on him and he gave evasive reply. Thereafter, the complainant gave suitable rejoinder to the reply of the accused.

Judgment 6 C.C.No.29179/2015 Since, accused had 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 P19. The PW.1 is also chosen to examine two witnesses to the said transaction by names Narehdra.G and T.Girish as PW.2 and PW.3. The PW.1 to PW.3 were subjected for cross-examination by the advocate for the accused. In the cross-examination of PW.1, accused counsel got confronted five documents and same are marked as Exs.D1 to D5.

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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.D6 to D37 and also subjected for cross-examination by the advocate for the complainant.

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

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

1) Whether the complainant proves beyond the reasonable doubt that, the amount covered under the Ex.P1-cheque is the existence of legally enforceable debt payable by the accused?

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

3) Whether the accused proves beyond the reasonable doubt that, he is only liable to pay sum of Rs.1 lakh to the complainant?

4) What Order?

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

Point No.1 : In the Negative Judgment 8 C.C.No.29179/2015 Point No.2 : In the Negative Point No.3 : In the Affirmative Point No.4 : As per final order, for the following:

REASONS

-:UNDISPUTED FACTS:-

10. The fact that, the complainant is Junior Engineer in BESCOM is not in dispute. The fact that, the cause title addresses of the complainant and accused made mentioned in the complaint is not in dispute. The fact that, the accused was Class-I contractor is not in dispute.

The fact that, the accused father, mother and his brother are the owners of the property bearing Sy.No.109/1, 2, 3 and 110 situated at Halkur Village as found in the RTCs produced by the accused as per Exs.D6 to D37 is not in dispute. The fact that, its total measurement about 7 acres of land is not in dispute.

The fact that, cheques bearing Nos.385895 and 385894 drawn on Syndicate Bank belong to the accused is not in dispute. The fact that, the questioned cheque at Ex.P1 and signature found therein belongs to the accused is not in dispute. The fact that, the genuineness of banker slips as per Exs.P2 to P4 Judgment 9 C.C.No.29179/2015 pertaining to the Ex.P1 - cheque is not in dispute. The fact that, as per Ex.P5 the complainant gave legal notice to the accused and in turn, after receipt of same, the accused got issued reply as per Ex.P9 to the complainant is not in dispute. The fact that, in response to reply, the complainant got issued rejoinder notice as per Ex.P10 and as found in Ex.D1, accused got issued reply to the complainant to the same is not in dispute.

The fact that, the complainant used to help the accused in submit online tender through e-procurement is not in dispute. The fact that, the genuineness of e-procurement document produced as per Ex.P19 is not in dispute. The fact that, as per Ex.P19 on 21.08.2012 sum of Rs.1,16,000/- was remitted for e-tender from the account of accused is not in dispute. It is equally important to note the factum on the very same day, the said direct debt made as EMD pertaining to e-procurement was refunded and the same came to be approved as refund at Ex.P19 is not in dispute.

The fact that, sum of Rs.1 lakhs as per Ex.D4 was paid by the accused account through the account of complainant is not in dispute. The fact that, on 11.10.2013 sum of Rs.15,000/- as per Ex.D5 transmitted from the account of the accused to the complainant is not in dispute. The fact that, in respect of the Judgment 10 C.C.No.29179/2015 property covered at Exs.D6 to D37 pertaining to the family of the accused partition not yet taken place is not in dispute. The fact that, the PW.2 - Narendra.G and PW.3 - Girish.T were colleagues of the complainant, while he work earlier is not in dispute. The fact that, sum of Rs.2 lakhs were transmitted from the account of the complainant to the account of accused on 27.08.2012 as per Ex.D15 is not in dispute.

The fact that, the genuineness of bank statement produced by the complainant as per Ex.P15 and P16 pertaining to his banker Axis Bank and State Bank of India, is not in dispute. The fact that, as per Exs.P15 and P16 major payments were made for e-procurement Cell Gok from the account of the complainant is not in dispute. The fact that, as found in Ex.P15 bank statement of the complainant, to the account of Vijayakumar.N, who is one of the attested witness to the Ex.P14 - loan agreement, sum of Rs.1202.81 was remitted to his account by way of NEFT on 26.12.2012 is not in dispute. The fact that, as per the bank statement at Ex.P16 on 15.07.2013 sum of Rs.50,000/- was remitted by way of NEFT to the account of the said witness Vijayakumar.N and in turn, he was repaid on 22.07.2013 to the complainant is not in dispute.

Judgment 11 C.C.No.29179/2015 The Ex.P16 also reveals, on 27.09.2013 sum of Rs.10,000/- was remitted to the account of the said witness Vijayakumar.N by way of NEFT from the account of complainant and in turn, on 17.10.2013 he was repaid the said amount is also not in dispute. The fact that, the bank statement of the complainant produced at Ex.P17 drawn on State Bank of India, Rajajinagar, maximum entries reveals payment made to e-procurement, NEFT as well as withdrawal is not in dispute.

11. POINT NOs.1 to 3: Since all these 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 herself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P19, they are:

- a) Ex.P1 is the cheque bearing No.385894 issued by the accused for sum of Rs.16 lakhs dated:18.06.2015, drawn on Syndicate Bank, Rajajinagar II Stage, Bengaluru.
- b) Ex.P1(a) is the alleged signature of accused.
- c) Exs.P2 to P4 are the Bank Memos dated:20.06.2015, 28.07.2015 and 21.08.2015.
- d) Ex.P5 is the Legal Notice dated:28.08.2015.
- e) Exs.P6 & P7 are the Postal receipts.
- f) Ex.P8 is the Postal Acknowledgment Card.

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- g) Ex.P9 is the reply notice dated:14.09.2015 issued by accused through his counsel to the complainant counsel.
- h) Ex.P10 is the rejoinder dated:29.09.2015 issued by complainant through his counsel to the accused counsel.
- i) Ex.P11 is the postal receipt.
- j) Ex.P12 is the Postal Acknowledgment Card.
- k) Ex.P13 is the private complaint.
- l) Ex.P13(a) is the signature of complainant.
- m) Ex.P14 is the loan agreement dated:29.05.2015 executed by accused in favour of complainant.

n) Ex.P14(a) to P14(c) are the signatures of accused, complainant and PW.3.

o) Exs.P15 to P18 are the statement of accounts pertaining to complainant herein issued by Axis Bank and State Bank of India and

p) Ex.P19 is the statement of e-procurement.

12. That apart, to prove his case, the complainant got choosen to examined Shri. Narendra.G and Shri.T.Girish as witnesses to filed affidavit evidence and examined as PW.2 and PW.3. The PW.1 to PW.3 were subjected to the cross-examination by the advocate for the accused. In support of his case the complainant through his counsel has produced the citations and relied upon same, they are;

a) 2016 (3) KCCR 2149

b) AIR 2010 SC 1898  
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c) (2010) 11 SCC 441

d) Crl.A.No.1545/2019 in SLP (Crl) No.3452/2019.

13. After detailed cross-examination done by the advocate for accused to the PW.1 to PW.3, the complainant got closed his side. Thereafter, whatever the incriminating evidence made against the accused was read over and explained to him as required under Section 313 of Cr.P.C., wherein, he denied the same. In order to prove his probable defence, the accused himself choosen to entered into witness box and orally examined as DW.1. Wherein, he deposed that, since 2010, he knew the complainant. The accused while comply for online tender in the PWD Department, one Shivakumar was got prepared Digital Key and through him only he came to know the complainant herein. The accused when submit online tender at his instruction, he used to pay commission to the complainant on several times.

The accused has further deposed that, since he had financial necessity, on 27.08.2012 he asked for the loan of Rs.2 lakhs from the complainant in the morning. On the said day itself, evening the complainant through online got transmitted sum of Rs.2 lakhs to the account of accused subject to pay 5% monthly interest. For the period of 2 years, he paid monthly interest at Rs.10,000/- to the complainant. While borrow the said Rs.2 lakhs Judgment 14 C.C.No.29179/2015 loan from the complainant, he took signed blank cheques drawn on Axis Bank, on 16.11.2012 itself, out of Rs.2 lakhs loan amount borrowed from the complainant, on 05.01.2013 the accused got remitted sum of Rs.1 lakh through his banker at Rajajinagar to the account of complainant held at Axis Bank. In that regard, he produced bank challan counter foil at Ex.D4.

The accused has further deposed that, in respect of remaining amount of Rs.1 lakh, he used to pay the interest. In the month of July, 2014, the complainant asked the accused for repay the loan amount, by that time, the accused took six months time. By that time, the complainant for the security of balance amount of Rs.1 lakh took 2 signed blank cheques drawn on Syndicate Bank on 03.08.2014. The Ex.P1-cheque is also one among it. While take those cheques by the complainant, he not returned the earlier cheques obtained. But he stated, it was got fold, hence, destroyed and it because useless, therefore, he asked fresh cheques from the accused. Except his signature the other writings are not made on from his hand writing at Ex.P1, he not filled the same. On 10.07.2014, along with the said 2 cheques the complainant took one signed blank bond paper and now it has been produced as loan agreement, without his knowledge got typed and produced before this court. The witnesses signed in Judgment 15 C.C.No.29179/2015 the said agreement are not known to him. On 01.10.2013, the accused got paid interest of Rs.15,000/- to the balance loan of Rs.1 lakh as per Ex.D5.

The accused has further contended that, when he approached the Karnataka Bank Ltd., then they told him that should not take O.D Loan from other banks, therefore, asked him to close the account at the earliest held in other banks. Accordingly, on 30.07.2014, he went to his Syndicate Bank, Rajajinagar Branch, Bengaluru and verified his bank statement dated:21.04.2015, 08.05.2015 Rs.8,50,000/- cheque came to be dishonoured. On 20.06.2015 and 28.07.2015 the same cheques for sum of Rs.16 lakhs were presented through his account and the same also came to be dishonoured. Before presenting those cheques for encashment, the complainant had not intimated. Later, the accused enquired the complainant over phone and questioned him, why presented his cheques for encashment, though he asked to pay balance loan amount, the complainant over phone made galata with him and demanded the additional interest at 10% per month.

The accused has further alleged that, on 18.08.2015, when he was far away from his house, his family members were Judgment 16 C.C.No.29179/2015 telephoned him and intimated that, the complainant and other 3 - 4 persons came to his house and quarreled with his family members by stating, accused was not paid the money, when presented his cheques for encashment there were no found in his account. The accused over phone contacted the complainant and requested not to made galata and he gave complaint to the Police. He told the complainant that, he would repay the Rs.1 lakh loan amount to the complainant, but he demanded interest at 10% p.m. and would teach lesson to the complainant.

The accused has further alleged that, he not assured the complainant about selling of his properties, but he told him that, some properties would come and would have to see in future. In respect of his properties the accused got produced RTC extracts at Exs.D6 to D37. Even he deposed, the said properties stood in the name of his father, mother and brother and in his name not mutated. He also stated, the total extent of those properties measuring 7 acres 20 guntas and which are situated at abutting to the road and in the year 2012-13 it was valued Rs.15 lakhs to Rs.20 lakhs per acre. In respect of his joint family properties no partition taken place.

Judgment 17 C.C.No.29179/2015 The accused has further contended that, on 21.08.2012 the complainant took money from him and then submitted e-tender for Rs.1,16,000/- which is his



money. The complainant used to do the e-tender business on receipt of commission. The accused only liable to pay the balance loan of Rs.1 lakh, the complainant by mentioning more money in the Ex.P1-cheque got dishonoured. Hence, he is not liable to pay the same.

14. Apart from the accused also chosen to produce the documents at Exs.D1 to D37. They are:

a) Ex.D1 is the office copy of reply notice dated:08.10.2015 issued by accused through his counsel to the complainant counsel.

b) Ex.D2 is the postal receipt.

c) Ex.D3 is the Postal Acknowledgment Card.

d) Exs.D4 and D5 are the bank challan counter foils and

e) Exs.D6 to D37 are the RTC extracts pertaining to family properties of accused.

The DW.1 was subjected to the cross-examination by the advocate for the complainant.

15. While appreciate the materials on records and evidence, this court has gone through the decisions stated supra apart from the other decisions.

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16. On going through the Section 118(g) of Negotiable Instruments Act, it shall be presumed that, unless the contrary is proved, the whole of the cheque, the complainant received the same for discharge of legal liability. This presumption is rebuttable. Sections 139 and 138 of Negotiable Instruments Act, it also leads to draw the presumption that, cheque was drawn for discharge of liability of drawer, it is presumption under law. By virtue of those relevant provisions, it made clear that, initial statutory presumption stands in favour of complainant and leads to presumption that, questioned cheque was issued by the accused for discharge of existence of legally recoverable debt, unless and until contrary proved. Therefore, it made clear that, by virtue of those provisions, it is initial burden on the accused to rebut the statutory presumption as well as presumption as to facts. In that regard, mere denial of issuing cheque is not sufficient to discharge his initial burden. But, in a decision reported in ILR 2006 KAR 4672, in a case between J.Ramaraj V/s Hiyaz Khan. Wherein, it was held to observe that, mere denial of issuing cheque, would not be sufficient as its time and again noted that, once the cheque is issued duly signed by petitioner, the presumption goes against him as per Section 139 of Negotiable Instruments Act. By virtue of the said dictum, once the Judgment 19 C.C.No.29179/2015 cheque is issued by the drawer, in favour of the holder in due course, got the presumption and it is required to rebut by the accused.

17. In the case on hand, it is clear that, the complainant based on the questioned cheque at Ex.P1 brought the present case by contending that, earlier, the accused for sell his property got receive the sale consideration of Rs.16,00,000/- in between the period of last week of August 2012 to first week

of June 2014 by way of cash as well as online. In view of hike of price, he declined to sell the property and for refund of the sale consideration paid by the complainant, by executing loan agreement at Ex.P14 got issued the questioned cheque at Ex.P1, the same came to be dishonoured and despite, issued legal notice, the accused not rectified his mistake by paying the amount covered under the cheque, thereby, he committed the offence. No doubt, by virtue of Sections 118 and 139 of Negotiable Instruments Act, the initial statutory presumption shall be drawn in favour of complainant, as he is holder in due course of the said cheque, the same were issued by the accused for discharge of existence of legally recoverable debt, unless and until contrary prove.

Judgment 20 C.C.No.29179/2015 In decision reported in AIR 2010 SCC 1898, in a case between Rangappa V/s Mohan, it was observed that, whereas presumption against prove that, guilt of the accused beyond the reasonable doubt, the standard of proof so as to prove a defence on the part of accused is 'preponderance of probabilities'. Inference of 'preponderance of probabilities' can be drawn not only from the materials brought on record by the parties, but also by reference to the circumstances upon which he relies.

18. Wherein it was pleased to observe that, the obligation on the prosecution may be discharged with the help of presumption of law or fact unless the accused adduce evidence showing the reasonable probability of non-existence of presumed fact.

19. As per the said dictum, it is burden on the accused of proving the non-existence of the consideration either by direct or by bringing on record the 'Preponderance of Probabilities' by reference to the circumstances upon which he relies. The bare denial of passing of consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the complainant. To disprove the presumption, the accused has Judgment 21 C.C.No.29179/2015 to brought on record such facts and circumstances upon the consideration of which the court may either believe that consideration did not exist or non-existence was so probable, that a prudent man would, under circumstances of the case acted upon that, it did not exist. Therefore, by virtue of the said dictum as well as Sections 118 and 139 of Negotiable Instruments Act, it is the initial burden on the accused to prove the contra evidence which rebut the case of complainant.

20. No doubt, in the present case the accused has not admitted the liability created by the complainant as per Ex.P1 under the backdrop of the allegations pleaded in the complaint. Contrary, the accused has specifically deposed that, the complainant is Junior Engineer and he used to submit e-tender on the information supplied by the accused and for doing so, he used to pay commission. It is significant fact to note that, as found in e-procurement document at Ex.P19 maintained to the account of the accused, it clearly reveals that, he was also participated in the e-tender. Earlier, for EMD of Rs.1,16,000/- direct debit on 21.08.2012 was initiated as found therein. It is also significant fact to note that, the said entry also reveals on the said day, the said direct debit amount was refunded and same came to be approved, which was pertaining to e-procurement, wherein, Judgment 22 C.C.No.29179/2015 accused was participated. The complainant has not disputed that, he was doing the service of uploading e-tender at the instruction of the concerned parties accordingly, from the accused also. Whatever the bank statement produced by the complainant at Exs.P15 to P18,

it clearly discloses, the complainant was also rendered the service of e-procurement to the needy persons, accordingly, accused took the benefit of service to complainant. Therefore, Ex.P15 made it clear, the involvement of the complainant in the e-procurement process and some extent he went to pay online payment from his account. Accordingly, as per Ex.P15 on 21.08.2012 the complainant, as he admitted on behalf of accused, he remitted the amount of Rs.1,16,000/- on 21.08.2012. The said document does not discloses, the amount received from the accused. The PW.1 in his cross-examination categorically admitted, on behalf of accused he paid sum of Rs.1,16,000/- from his account on 21.08.2012. In that regard, the suggestion made to DW.1 is also to be seen:

"|AiAiÁðç £À£ÀUÉ D£ĩ-ÉÊ£ĩ mÉAqÀgĩ£ÀÄß ,À°è ,À®Ä ,À°ÁAiÄÄ<sup>a</sup>ÄiÄqÄÄwÛzÀÝgÄÄ JAzÀgÉ ,Äj. ¤|.19 £À£ÄÄ D£ĩ-ÉÊ£ĩ<sup>a</sup>ÄÄSÁAvÀgÄ E-¥ÉÇæPÄÆgĩ<sup>a</sup>ÉÄAmĩ£ÄÄß<sup>a</sup>ÄiÄrzÄ zÁR-É JAzÀgÉ ,Äj. D ¥ÄæPÁgÄ gÄÆ.1,16,000/- £À£ÄÄ ¥ÄÄw<sup>a</sup>ÄiÄrzÉÝÄ£ÉAzÀgÉ ,Äj. D<sup>a</sup>ÉvÄÛ |AiAiÁðçAiÄÄ SÁvÉ-ÄAzÄ d<sup>a</sup>ÄiÄ DVzÀÉ JAzÀgÉ ,Äj. ,ÁQëAiÄÄÄ Judgment 23 C.C.No.29179/2015 ,ÄévÄB<sup>a</sup>ÄÄÄAzÄÄ<sup>a</sup>gÉzÄÄ D<sup>o</sup>Ät<sup>a</sup>Ä£ÄÄß<sup>a</sup>ÉÆzÄ-ÉÄ £À£ÄÄ |AiAiÁðçUÉ PÉÆnÖzÄÄÝ, ¤|.19£ÄÄß ,À°è ,ÄÄ<sup>a</sup>ÁUÄ D<sup>o</sup>Ät<sup>a</sup>Ä£ÄÄß £À£Äß ¥ÄgÄÄV DvÄ d<sup>a</sup>ÄiÄ<sup>a</sup>ÄiÄrgÄÄvÄÛgÉAzÄÄ £ÄÄrAiÄÄÄvÄÛgÉ. ,ÄzÄj<sup>o</sup>Ät<sup>a</sup>Ä£ÄÄß £À£ÄÄ |AiAiÁðçUÉ ¤ÄrzÄ §UÉÎ zÁR-É E®è, DzÀgÉ D<sup>o</sup>Ät<sup>a</sup>Ä£ÄÄß £ÄUÄzÁV £À£Äß<sup>a</sup>ÄÄPĩ¤AzÄ JgÄqÄÄ-<sup>a</sup>ÄÄÆgÄÄ ç£ÄUÄ¼Ä<sup>a</sup>ÉÆzÄ®Ä C<sup>a</sup>ÄÄUÄ¼Ä£ÄÄß<sup>o</sup>ÉÆAç¹ ELÄÖPÉÆArzÉÝ JAzÄÄ £ÄÄrAiÄÄÄvÄÛgÉ. ¤|.19 £ÄÄß ,À°è ,ÄÄ<sup>a</sup>ÁUÄ |AiAiÁðçUÉ AiÄiÄ<sup>a</sup>ÄÄzÉÄ<sup>a</sup>ÉvÄÛ<sup>a</sup>Ä£ÄÄß ¤Är®è, £ÄAvÄgÄzÄ°è ¤ÄqÄÄ<sup>a</sup>ÄÄzÁV DvÄ¤UÉ w¹²¹zÉÝ JAzÀgÉ ,ÄjAiÄÄ®è. ç£ÄÄPÄ 05.01.2013 gÄAzÄÄ gÄÆ.1 ®PÄë, 11.10.2013 gÄ°è gÄÆ.15,000/-<sup>a</sup>Ä£ÄÄß |AiAiÁðçUÉ PÉÆnÖzÉÝ JAzÀgÉ ,Äj. ,ÁQëAiÄÄÄ ,ÄévÄB<sup>a</sup>ÄÄÄAzÄÄ<sup>a</sup>gÉzÄÄ CzÄÄ mÉAqÀgĩUÉ ,ÄA\$zÄs¥ÄlÖ<sup>o</sup>Ät<sup>a</sup>Ä®è, DzÀgÉ ç£ÄÄPÄ 27.08.2012 gÄ°è |AiAiÁðç £À£Äß SÁvÉUÉ gÄÆ.2 ®PÄë<sup>a</sup>Ä£ÄÄß<sup>o</sup>ÄQzÄÄÝ, D<sup>a</sup>Ä\$ÄÛ ,ÄzÄj<sup>o</sup>Ät<sup>a</sup>Ä£ÄÄß<sup>a</sup>ÄÄgÄ¼²¹zÉÝÄ£ÉAzÄÄ £ÄÄrAiÄÄÄvÄÛgÉ. ,ÄzÄj<sup>o</sup>Ät<sup>a</sup> mÉAqÀgĩ£ÄÄ<sup>a</sup>Ä\$ÄÛ £À£ÄÄ ¤ÄrzÄ<sup>o</sup>Ät<sup>a</sup>ÄVzÄÄÝ, ,ÄÄ¼ÄÄi<sup>o</sup>ÉÄ¼ÄÄwÛzÉÝÄ£ÉAzÀgÉ ,ÄjAiÄÄ®è."

21. On meticulous perusal of the cross of DW.1, it clearly revealed the admission by way of suggestion made by the advocate for complainant as well as defence reasserted by the accused. The DW.1 has categorically admitted, the complainant did online tender work and assisted to the accused. Even categorically admitted, as found in Ex.P19 - e-procurement was uploaded through online. The DW.1 and complainant have clearly Judgment 24 C.C.No.29179/2015 admitted that, as found in Ex.P19 sum of Rs.1,16,000/- was paid from the account of complainant on behalf of accused. Though, DW.1 has admitted, the remittance of the said money, he gave is further voluntary explanation that, the said money was earlier paid by him to the complainant and the said money was remitted by the complainant as found in Ex.P19 on behalf of accused. The DW.1 has admitted that, to show that, he paid the said amount to the complainant, he had no document, but he gave explanation stating that, by withdrawing money from his bank account about 2 to 3 times, he kept with him. It was suggested to DW.1 that, as found in Ex.P19, on submission of online e-procurement, accused was not paid money to the complainant and assured to pay it later.

22. It is also suggested to DW.1 that, if at all, complainant pay the said huge amount for the benefit of accused, was it possible he being a Junior Engineer, without receipt of the said huge amount of Rs.1,16,000/- for the benefit of accused for secure e- tender remit the said huge amount on the assurance of pay the said money later period is highly unbelievable. If at all, the complainant did so, without receiving the said money, it is him to explain on which assurance; he paid the said huge amount on behalf of accused. Therefore, it creates doubt as to the Judgment 25 C.C.No.29179/2015 genuineness of the contention as to without receiving the said money from the accused, he himself got remitted for e- procurement. The DW.1 has denied the said suggestion and categorically submitted that, whatever the amount he paid for the tune of Rs.1 lakhs on 05.01.2013 and Rs.15,000/- on 11.10.2013 as found in Exs.D4 and D5, it was not in respect of the amount of Rs.1,16,000/- paid as per Ex.P19, but it was the amount repaid by the accused against the repayment of loan of Rs.2 lakhs borrowed on 27.08.2012. The suggestion made by the complainant that, the amount so paid as found in Ex.D4 and D5, it is the repayment of the amount paid by the complainant as found in Ex.P19, the said amount was deposited by him on behalf of accused. What ever the amount deposited by the complainant on behalf of the accused, on the same day itself refunded. The accused categorically denied the same and put forth his defence by way of reassertion that, it was against the payment of Rs.2 lakhs, the Rs.1 lakh was the repayment of loan and another Rs.15,000/- was paid and not in respect of the e-tender amount. Therefore, it is require to focus on the contention of the complainant by way of production of documents at Exs.P1 to P19.

23. On meticulous perusal of the bank statement of the complainant at Ex.P15, it reveal that, on 21.08.2012 sum of Judgment 26 C.C.No.29179/2015 Rs.1,16,000/- was paid for e-procurement cell. The said amount is reflected in Ex.P19. The Ex.P19 also reveals another debt whatever the amount so deposited or debited from the account of the complainant was refunded on the very same day, it was also approved. Ex.P19 it clarify that, whatever the amount debited from the account of complainant on behalf of accused for the tune of Rs.1,16,000/- as reflected in Exs.P15 and P16, it made clear that, it was refunded and the same was approved. From Ex.P19, the inference can draw that, whatever the alleged amount paid on behalf of accused for the tune of Rs.1,16,000/- was refunded to his account and the same was approved. Therefore, the said Ex.P19 discloses, Rs.1,16,000/- remitted from the account of the complainant was refunded and there is no documentary evidence before this court, to show that, the said amount was subsequently debited from the account of complainant on behalf of accused. The Ex.P19 is the vital document discloses, the factum debited amount was refunded, therefore, no sanctity can be attached to the Ex.P19 as well as Ex.P15 as to the remittance of sum of Rs.1,16,000/- to the e-procurement is not been proved by the complainant. Therefore, in order to show that, sum of Rs.1,16,000/- on behalf of accused, the complainant had transmitted for e-procurement in connection to the e-tender is not Judgment 27 C.C.No.29179/2015 been produced by the complainant. The Ex.P15 is the bank statement pertaining to the complainant, but Ex.P19 is the e- procurement held between accused and concern department with regard to e-tender and the complainant has contended Rs.1,16,000/- was paid by him on behalf of accused. But whatever the amount paid from the account of accused as found in Ex.P19 was refunded.

24. The Ex.P19 document is pertaining to the account of accused, which discloses, he participated in e-procurement. From the said document, it can draw the inference that, if at all, on behalf of

accused as found in Ex.P15, the complainant had remitted the amount of Rs.1,16,000/- towards the payment of e- tender, once again why the same has reflected in the Ex.P19 as debited from the account of accused on 21.08.2012 as EMD and the same were refunded as approved therein pertaining to the account of B402545/E/D/02 53042536. The Ex.P19 also discloses, the said payment was made from the account of accused on 21.08.2012 and same was refunded to him. Then, what amount was paid by the complainant, whether it was refunded to the accused and in turn, he was repaid to the complainant or not, no such contention has raised by the complainant. However, Ex.P19 reflects whatever the amount Judgment 28 C.C.No.29179/2015 direct debited from the account of accused was refunded. If at all, the complainant himself remitted amount as found in Ex.P15 for e- procurement for the tune of Rs.1,16,000/-, definitely, unless he received the money from accused question of he remitted the same for e-procurement does not arise. If at all, he deposited as such, immediately, after refunded the said amount to the account of accused as found in Ex.P19, definitely, the complainant could have collected back, but in that regard, no doubt has been raised by the complainant. Therefore, when the e-procurement amount deposited by accused for obtaining e-tender was refunded to him as found in Ex.P19, therefore, the accused after lapse of 4 months, he got received sum of Rs.1,15,000/- as found in Exs.D4 and D5 as suggested by the complainant is not believable. Whatever the amount found in Exs.P15 and P19 deposited by the complainant on behalf of accused was refunded as per Ex.P19, therefore, in connection to the said transaction after lapse of 4 months, the accused got paid the amount as found in Exs.D4 and D5 is not been proved by the complainant.

25. Whereas, the accused has specifically taken up the defence that, on 27.08.2012 in the morning he requested the loan of Rs.2 lakhs to the complainant and on the same day evening through online, the complainant has remitted the said amount on monthly Judgment 29 C.C.No.29179/2015 interest at 5% on the security of 2 signed blank cheques drawn on Axis Bank to the complainant and regularly paid interest. Later, as per Ex.D4 he repaid part loan of Rs.1 lakh on 05.02.2013 and Rs.16,000/- were interest as found in Ex.D5 were paid. When the complainant asking for repayment balance loan of Rs.1 lakh, on his request for the security again, he got issued 2 signed blank cheques of Syndicate Bank and one signed bond paper without returning earlier cheques, he took the same and got misused by filing present case by mentioning huge amount in the cheque and got prepared the loan agreement as per Ex.P14. Except the balance amount of Rs.1 lakh, he is not liable to pay any amount.

26. The complainant is very much silent as to the remittance of Rs.2 lakhs to the accused as loan. No doubt, in the pleading he contended, during the period of last week of August, 2012 to 1st Week of June, 2014, by way of installments including cash and online payment he made the payment of Rs.16 lakhs to the accused. But he not specified, when he made online payment. However the accused has taken up the specific defence on 27.08.2012, he borrowed Rs.2 lakhs from the complainant. The said receipt of money is been admitted as on the said day as found in Ex.P15, the said sum was transmitted to the account of accused. The complainant has not disputed the payment of said Judgment 30 C.C.No.29179/2015 money to the account of accused. After receipt of said Rs.2 lakhs on 27.08.2012, the accused as founding Exs.D4 and D5 on 05.01.2013 got paid Rs.1 lakhs and on 11.10.2013 he got repaid Rs.15,000/-, in all he paid Rs.1,15,000/-. The accused has contended that, as found in Ex.D4, he got repaid the portion of loan amount of Rs.1 lakh against the loan

amount of Rs.2 lakhs. His contention is that, every month he is paying the interest, accordingly, for the remaining balance of Rs.1 lakh, after repay Rs.1 lakh principal loan amount, he got paid interest as per Ex.D5. Therefore, as per his clear cut admission is liable to pay only Rs.1 lakh and as alleged by the complainant, he not borrowed any loan. In that regard, from the inception itself he taken up the said defence by caused reply to the rejoinder notice issued by the complainant by raising same contention.

27. The DW.1 has withstood his contention during the cross- examination by contending that, while borrow loan of Rs.2 lakhs, the complainant took 2 signed blank cheques, despite, he got repaid Rs.1 lakh with interest, not returned the earlier cheques. But, stating earlier cheque became useless, hence, for the guarantee of balance loan of Rs.1 lakh, he took 2 signed blank cheques drawn on Syndicate Bank and one signed blank bond paper and got misused the same. Since, the complainant gone to Judgment 31 C.C.No.29179/2015 an extent of reproduce his cheques for encashment on 21.04.2015 and 08.05.2015 for Rs.8,50,000/- each got dishonoured and once again got dishonoured Rs.16 lakhs cheque dated:20.06.2015 and 27.08.2015, then he got enquired the complainant. Earlier to that, when he went to Karnataka Bank for obtain O.D. Loan facility on their instructions, he got closed his Syndicate Bank account. Hence, he is not liable to pay the money covered under the cheque. The factum of accused got closed the account pertaining to Ex.P1-cheque is seen as per banker slip produced by the complainant as per Ex.P4.

28. The accused has contended much earlier his account was closed for securing O.D. Loan facility and alleging the complainant got misused the same. In that line, he withstood for cross-examination done by the advocate for complainant. On going through the said contention, the remittance of Rs.1,15,000/- as found in Exs.D4 and D5 is been proved by the accused. As per his say, he took the loan of Rs.2 lakhs on 27.08.2012. As per Exs.D4 and D5 he got cleared the loan of Rs.1 lakh and towards the interest of balance loan of Rs.1 lakh he got paid the interest as found in Ex.D5. Though, accused has defended his case as such, as to the alleged borrowing of loan amount from the complainant as he pleaded in the last week of August, 2012 to 1st week of Judgment 32 C.C.No.29179/2015 June, 2014, the complainant has not suggested, on which date, when, where, what quantum of money, that too, in installments were paid to the accused is not been suggested. It was the suggestion made to DW.1 that, in order sale 2 acres of land pertaining to the family of the accused which covered under Exs.P6 to P37, for Rs.8 lakhs per acre the accused had agreed to sell to the complainant and got received Rs.16 lakhs is been denied by the accused.

29. As contended by the complainant, the alleged amount was paid in between the period of 20 months. If at all, the accused was agreed for sell the property, it was for his benefit or to meet out any exigency could have been sell the properties. The person for meet out the urgent requirement or to make alternative property then sell his properties, but contrary to the same, by selling the property got received the amount years together, was it necessary to any person to sell his property is created doubt. If at all, the accused came forward to sell his properties in favour of complainant definitely, it could have been done through written document, such as sale agreement etc., but no such contention is taken by the complainant. As per the say of complainant, it was oral agreement entered into between complainant and accused and he paid the entire sale consideration of Rs.16 lakhs within the Judgment 33 C.C.No.29179/2015 span of 20 months, that too, borrowing

Rs.5,50,000/- from the PW.2. The complainant though he deposed in his cross- examination that, he borrowed Rs.5,50,000/- from his colleague PW.2 in 20 installments and paid to accused. In that regard, no suggestion is made to DW.1, as to how he mobilized the fund and on which date certainly complainant got paid money to the accused is not been suggested. The DW.1 from the point of his defence he withstood his contention as well as by producing documents at Exs.D4 and D5, it made clear that, sum of Rs.1,15,000/- was repaid by him against the loan of RS.1 lakh. More categorically he admitted his liability of Rs.1 lakh payable to the complainant as against the loan of Rs.2 lakhs.

30. The documents produced by the accused which record of rights produced at Exs.D6 to D37, which made clear that, the name of the accused is not been seen. On close perusal of the Exs.D6 to D37 - RTC Extracts, which made clear that, the accused is not an absolute owner of those properties, but the names of his father, mother and brother are been seen in the same. Under such circumstances, the accused came forward to sell portion of those properties for the extent of 2 acres in favour of complainant is not acceptable contention of the complainant. No prudent man would not come forward to entered in to sale Judgment 34 C.C.No.29179/2015 agreement unless ascertaining the marketable right, title and interest of the vendor. Therefore, as found in Exs.D6 to D37, the accused is having marketable right, title and interest over those properties in order to enter into sale agreement and got received the huge amount of Rs.16 lakhs on installments, the complainant required to be proved with necessary evidence. But, the complainant has utterly failed to demonstrate the said theory. Hence, it is not safe to rely upon his contention.

31. As on the dates of alleged receipt of money for the period of 20 months, the accused is not become the owner and the right of the joint family members is not been adjudicated. Hence, not being the owner of those properties, the accused entered into sale agreement with the complainant and got received sum of Rs.16 lakhs from the complainant is not been proved by the complainant by extract any admission from the mouth of DW.1. The DW.1 successfully withstood his contention and rebutted the statutory presumption as well as facts and circumstances raised by the complainant in the present case. Therefore, it is reverse burden created on the complainant to prove the passing of consideration of Rs.16 lakhs either as part of sale consideration or as loan as found in Ex.P14.

Judgment 35 C.C.No.29179/2015 In that regard, it requires to cite the decision reported in 2008 AIR SCC 7702 (P. Venugopal V/s.Madan P. Sarathi). Wherein, it was pleased to held by the Hon'ble Division Bench of the Hon'ble Apex Court that:

"The presumption raised does not extent to the expenditure that cheque was issued for the discharge of any debt or liability. Which is required to be proved by the complainant. However, it is essentially a question of fact".

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".

32. 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. As per the said dictum as well as by virtue of Section 139 of Negotiable Instruments Act, it is the reverse burden on the Judgment 36 C.C.No.29179/2015 complainant to prove his case beyond the reasonable doubt. In that backdrop, it requires to appreciate the case of complainant.

33. As discussed earlier, though the complainant has pleaded that, the accused was his friend and knew him since several years and assured him that, the accused is the owner in possession and enjoyment of the property bearing Sy.No.109/1, 2, 3 and 110, he utterly failed to produce any document as to the right, title and interest accrued to the complainant. As per Exs.D6 to D37, it made clear that, the accused is not having marketable right, title and interest over the said properties. The said properties still remains as family properties of the father, mother and brother of accused. Therefore, he came forward to sell 2 acres of land in favour of the complainant is not been proved by the complainant.

34. The complainant has alleged that, on the assurance of the accused and oral agreement, he got paid Rs.16 lakhs as sale consideration in several installments during last week of August, 2012 to 1st week of June, 2014 by way of cash as well as by way of online. In order to show that, there was oral agreement and assurance made by the accused in respect of sell those properties in favour of complainant, necessary particulars has not been cited. Even no witnesses deposed as to the alleged oral agreement was Judgment 37 C.C.No.29179/2015 entered into between complainant and accused. Whatever the evidence led by PW.2 and PW.3 are insufficient to prove the oral agreement between complainant and accused as alleged.

35. That apart, the complainant has alleged that, during last week of August, 2012 to 1st week of June, 2014 about the period of 20 months, he got paid Rs.16 lakhs in installments by way of cash as well as online. On going through the bank statement of the complainant as per Exs.P15 to P18, it does not disclose any transmission of amount as sale consideration directly to the account of accused. Those statements discloses, at the most complainant did transaction for e-procurement, withdrawal and transfer of money. That apart, it also discloses to the some persons, like Vijayakumar.N, who is witness to Ex.P14, the complainant on several times got paid money and he got repaid to him as found in Exs.P15 and P16. How he transferred amount to the said Vijayakumar.N through online as found in Exs.P15 and P16, definitely, it at all, any amount was transmitted by the complainant to the account of accused, definitely, could have been done through the account transaction, but he did not choosen todo so. Except, the admitted transaction of Rs.1,16,000/- remitted to e-tender by the complainant and Rs.2 lakhs paid to accused on 27.08.2012, no other document reveal Judgment 38 C.C.No.29179/2015 the amount transferred to the account of accused. Though complainant has contended, he got paid money to the accused on installments by way of cash as well as online, he utterly failed to suggest, on which date, what quantum of money, where, on whose presence, he handed over to the accused. In that regard, it requires to appreciate the evidence of PW.1.



36. No doubt, the PW.1 during his cross-examination has deposed that:

"ಖ|.15 ಜÀÀ ಖ|.18 ಗÀ°è, ಖRgÀ°ÁV AiÀiÁÀ ¢ÉÁAPÀzÀAzÀÄ DgÉÆÄ|UÉ °Àt PÉÆnÖzÉYÁÉÆAzÀÄ ÉÉÉÀ|®è. DgÉÆÄ|UÉ °Àt ಖÃqÀÄªÀ ,À®ÄªÁV ÉÀÉÀB DQì, ì CxÀªÁ J, ì©L "ÁªAPïÉÀ SÁvÉ-ÀAzÀ °ÀªÀÉÀÄB ÉÀUÀ¢ÃPÀj¹®è JAzÀgÉ ,ÀjAiÀÄ®è. DgÉÆÄ|UÉ ಗÀÆ.16 ®PÀè °ÀªÀÉÀÄB ÉÀÉÀB "ÁªAPïÉÀ SÁvÉ-ÀAzÀ, ¢ÉÁAPÀ 27.08.2012 ಗÀAzÀÄ D£ï-ÉÉ£ïªÀÄSÁAvÀgÀ ಗÀÆ.2 ®PÀè, ¢ÉÁAPÀB14.12.2012 ಗÀAzÀÄ ಗÀÆ.35,000/-, ¢ÉÁAPÀB21.12.2012 ಗÀAzÀÄ ಗÀÆ.20,000/-, ¢ÉÁAPÀB15.01.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB28.01.2013 ಗÀAzÀÄ ಗÀÆ.50,000/-, ,É-ïª qÀæªÀiÁr ¢ÉÁAPÀB23.03.2013 ಗÀAzÀÄ ಗÀÆ.1 ®PÀè, ¢ÉÁAPÀB11.04.2013 ಗÀAzÀÄ ಗÀÆ.38,000/- ÉÀUÀ¢ÃPÀj¹ DgÉÆÄ|UÉ PÉÆnÖzÉYÁÉÆAzÀÄ ,ÁQëAiÀÄÄ "ÁªAPïÉÀ ,ÉÖÄmïªÉÄAmïÉÀÄB ÉÉÆÄr ÉÄÄrAiÀÄÄvÁÛgÉ."

Judgment 39 C.C.No.29179/2015

37. The PW.1 during his cross-examination has further deposed that:

"ಖ|.16 ಗÀ ¥ÀæPÁgÀ J, ì©L "ÁªAPïÉÀ SÁvÉAiÀÄªÀªÀSÁAvÀgÀ ¢ÉÁAPÀB20.06.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB30.07.2013 ಗÀAzÀÄ ಗÀÆ.30,000/-, ¢ÉÁAPÀB07.08.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB18.09.2013 ಗÀAzÀÄ ಗÀÆ.30,000/-, ¢ÉÁAPÀB08.10.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB07.11.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB23.11.2013 ಗÀAzÀÄ ಗÀÆ.30,000/-, ¢ÉÁAPÀB28.12.2013 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB13.02.2014 ಗÀAzÀÄ ಗÀÆ.30,000/-, ¢ÉÁAPÀB12.04.2014 ಗÀAzÀÄ ಗÀÆ.40,000/-, ¢ÉÁAPÀB10.04.2014 ಗÀAzÀÄ ಗÀÆ.20,000/-, ¢ÉÁAPÀB01.05.2014 ಗÀAzÀÄ ಗÀÆ.40,000/-ªÀvÀÄÛ ¢ÉÁAPÀB04.06.2014 ಗÀAzÀÄ ಗÀÆ.15,000/- DgÉÆÄ|UÉ ÉÉÉÀ ¥ªÀªªÀªÀÉÆAzÀÄ ÉÄÄrAiÀÄÄvÁÛgÉ. G½zÀ ಗÀÆ.5,50,000/- °ÀªÀÉÀÄB ÉÀÉÀB ,ÉBªªvÀgÀzÀAvÀ°À ÉÀgÉÄAzÀæ.f ಗÀªjAzÀ ÉÀUÀzÁV ¥ÀqÉzÀÄ DgÉÆÄ|UÉ PÉÆnÖgÀÄvÉÛgÉ."

38. On going through the said testimony of PW.1, he categorically deposed that, he does not remember, on which date, he gave month to the accused as found in Exs.P15 to P18. He denied the suggestion that, for the purpose of pay money to the accused, he not withdraw money from his Axis Bank and State Bank of India, accounts. The PW.1 on seeing the bank statement and deposed that, on 27.08.2012 through online he paid Rs.2 Judgment 40 C.C.No.29179/2015 lakhs to the accused and on 14.12.2012 sum of Rs.35,000/-, on 21.12.2012 sum of Rs.20,000/-, on 15.01.2013 sum of Rs.40,000/-, on 28.01.2013 sum of Rs.50,000/- got self withdraw from his account and on 23.03.2013 sum of Rs.1 lakh and on 11.04.2013 sum of Rs.38,000/- got withdraw from his account and paid to the accused. As per his say, he clearly admitted that, all the said amounts were self withdraw by the complainant. In order to self-withdraw the said money, definitely, could have been directly pay to the accused, but he did not choosen todo so. Taking the calculation of the said amount, it would become Rs.4,83,000/-.

39. At the 2nd face of the above cross-examination on seeing Ex.P16, the PW.1 has deposed that, on various dates, he withdraw money from his account which amounts to Rs.3,95,000/-. Even, the Ex.P16 discloses, whatever the amounts withdraw by the complainant, which were in his name, not in the name of accused. Why the complainant took the risk to withdraw the money himself and alleged to be paid to the accused is not been satisfactorily explained. From the Ex.P16 he alleged to be paid Rs.3,95,000/-. Taken into calculation of both, Exs.P15 and P16, it would reaches Rs.8,75,000/-. As said by the PW.1 remaining amount of Rs.5,50,000/- were taken by his friend by Judgment 41 C.C.No.29179/2015 name Narendra.G and paid to the accused. On calculation of the amount deposed by the PW.1 as above, he had withdraw sum of Rs.8,78,000/- + if at all, the amount received from his friend Rs.5,50,000/-, it would become Rs.14,28,000/-, not become Rs.16 lakhs. Then what about the difference amount, the complainant has not been explained.

40. From the above deposition it also discloses, the complainant took sum of Rs.5,5,000/- from his friend, who is PW.2 herein, that too, in installments. To show that, he got received money in installments by admittedly he not executed any acknowledgment in favour of PW.2. Since, the accused asked the money in cash, he alleged to be paid in cash, hence, not paid through cheque or any other mode. The suggestion were made to PW.2 that, whatever the amount withdraw by the complainant himself, it was for his personal purpose not for the purpose of hand over to accused and accordingly, not paid to the accused. The accused advocate by way suggestion has admitted, sum of Rs.2 lakhs on 27.08.2012 only paid to the accused as loan and not paid Rs.16 lakhs and he had no financial capacity to pay the said money. It was the defence suggested to PW.1 that, the Exs.P15 to P18 are not pertaining to the transaction of Rs.16 lakhs. It was alleged that, the complainant took the Ex.P14 -

Judgment 42 C.C.No.29179/2015 stamp paper on 10.07.2014 and got created as loan agreement dated:29.05.2015 and got misused the signed blank stamp paper took from the accused as security for the said loan, but he denied the same. The evidence of PW.1, it made clear that, whatever the amount so he received, it was in his name. In order to show that, the said money was paid to the accused, no evidence has been placed by him. Contrary to the above explanation as to withdrawal of money as fund in Exs.P15 and P16, the PW.1 in the earlier occasion as deposed that:

"D D<sup>1</sup>UÉ ÉÁÉÄÄ "sÉÄn ¢ÄrzÉÝÄÉÉ. DgÉÆÄ|UÉ ,ÄÄ<sup>a</sup>ÄiÁgÄÄ 30 QÌAvÀ °ÉZÄÄÑ  
 "Áj ÉÀUÀzÁV ¢ÄÄvÄÄÜ DÈi<sup>-</sup>ÉÈÉi ¢ÄÄSÁAvÀgÀ gÄÆ.16 ®PÄë ¥Á<sup>a</sup>Äw  
 ¢ÄiÄrzÉÝÄÉÉ. DÈi<sup>-</sup>ÉÈÉi ¢ÄÄSÁAvÀgÀ gÄÆ.2 ®PÄë, G<sup>1/2</sup>zÄ °Ät gÄÆ.14 ®PÄë  
 ÉÀUÀzÁV ¢ÄrzÉÝÄÉÉ. ¢RgÄ<sup>a</sup>ÁV AiÄiÁ<sup>a</sup>Ä AiÄiÁ<sup>a</sup>Ä ¢ÉÁAPÄzÄAzÄÄ  
 ¢ÄrzÉÝÄÉÉAzÄÄ °ÉÄ<sup>1/4</sup>Ä®Ä ÉÉÉÄ|®è. DzÀgÉ °Ät<sup>a</sup>ÄÉÄÄß ÉÀUÄ¢ÄPÄj<sup>1</sup>zÄ §UÉÍ  
 ÉÄÉÄß "ÄÄAPiÉÄ ,ÉÖÄmi<sup>a</sup>ÉÄAmiÉÄ°è ÉÄ<sup>a</sup>ÄÄÆzÄÄ EzÉ, CzÄÉÄÄß °ÄdgÄÄ  
 ¥Är ,Ä®Ä vÉÆAzÄgÉ E®è. ,ÁQëAiÄÄÄ ,ÁévÄB ¢ÄÄÄAzÄÄ<sup>a</sup>gÉzÄÄ gÄÆ.5.5  
 ®PÄë<sup>a</sup>ÄÉÄÄß ÉÄÉÄß ,ÉBÄ»vÄ ÉÄgÉÄÄzÄæ f. gÄ<sup>a</sup>ÄjAzÄ 2013-14 gÄ°è ,Ä<sup>a</sup>ÄiÁgÄÄ  
 14 "Áj CµÄÄÖ ¢ÉÆvÄÜ ,Ä® ¥ÄqÉzÄÄ DgÉÆÄ|UÉ PÉÆnÖgÄÄvÉÜÄÉÉ. DvÄ¢AzÄ  
 M<sup>a</sup>ÉÄä gÄÆ.40,000/-, gÄÆ.30,000/- jÄwAiÄÄ°è ¥ÄqÉ¢zÉÝÄÉÉ. DvÄ ÉÄ<sup>a</sup>ÄÄ  
 E<sup>-</sup>ÁSÉAiÄÄ QjAiÄÄ C"ÄsÄAvÀgÄÁVzÄÄÝ, FUÄ ¥ÄzÉÆÄÉÄßw °ÉÆA¢  
 "ÉAUÄ<sup>1/4</sup>ÄÆjÉÄ<sup>-</sup>ÉèÄ PÉ®, Ä ¢ÄiÁQÄÄwÜzÄÝgÉ. DvÄ¢AzÄ °Ät ¥ÄqÉzÄ §UÉÍ  
 AiÄiÁ<sup>a</sup>ÄÄzÉÄ zÄR<sup>-</sup>ÉAiÄÄÉÄÄß Judgment 43 C.C.No.29179/2015 DvÄ¢UÉ,

£ÀA©PÉ EzÀÝ PÁgÀt §gÉzÀÄPÉÆnÖ®è. DvÀ£À£ÀÄß F YÀæPÀgÀtzÀ°è  
«ZÁgÀuÉUÉ M¼ÀYÀr ,À®Ä vÉÆAzÀgÉ E®è. ,ÀzÀj «µÀAiÀÄªÀ£ÀÄß F  
ªÉÆzÀ®Ä F YÀæPÀgÀtzÀ°è w½¹®è JAzÀgÉ ,Àj. ,ÀzÀj £ÀgÉÄAzÀæ gÀªAzÀ  
YÀqÉzÀ °ÀªÀÄvÀÄÛ D£i¯ÉÊ£i YÀªAw C®èzÉÄ, ,ÀÄªÀiÁgÀÄ 20 ªÁj DgÉÆÄ!UÉ  
°Àt ªÄrzÉYÄ£É."

41. The PW.1 has deposed, he got visited the property of accused. More categorically he deposed, he gave Rs.16 lakhs to the accused more than 30 times by way of cash and online. As deposed earlier, the cash payment alleged to be made to the accused would not reaches 30 times. He deposed Rs.2 lakhs only paid by way of online, rest of amount were paid by cash. More categorically he deposed, on which date he got paid money as such to the accused, he does not remember. He stated, withdrawal of money would being reflected in his bank statement and he had no impediment to produce the same. No doubt, on the later date, he got produced Exs.P15 and P16 his bank statements, it does not discloses, more than 30 times he got withdraw the money and paid to the accused.

42. That apart, PW.1 has deposed, he not took sum of Rs.5,50,000/- from PW.2 at once, but he deposed, about 14 times in the year 2013-14 he took money from his friend for the tune of Rs.40,000/- and Rs.30,000/- like. From which, it also discloses, Judgment 44 C.C.No.29179/2015 the complainant also not took money directly from PW.2 in one lumpsum, but claimed to be received in installments. When he got received money as such from PW.2 is also not been disclosed. Was it necessary, to took pain as such to withdraw 30 times more from the account of PW.1 and borrowed loan from PW.2 about 14 times then paid to the accused. The very contention of the complainant and PW.2 prima facie appears to be not fare contention. If at all, complainant well-known that, he wishes to purchase the immovable property of the accused, definitely, the small lumpsum of amount no need to pay about the period of 20 months. The alleged payments made in lumpsum prima facie discloses, as the complainant had no such huge amount, he claiming paid the alleged amount in installments. Therefore, the very contention of PW.1 discloses since he had no Rs.16 lakhs amount with him to purchase those properties, he deposed more than 30 times, he got withdraw and 14 times he borrowed loan from PW.2 and paid to the accused is highly impossible contention taken by the complainant. Hence, it is not safe to place reliance on the version of PW.1. No person would sell his property for piece meal prices or prices received in installments years together. Therefore, the very evidence of PW.1 does not repose confidence as to the alleged sale consideration Judgment 45 C.C.No.29179/2015 held between him and accused in connection to his family properties. The PW.1 categorically admitted, to show that, he got received money from PW.2 not executed any document in his favour. He undertakes to examine his friends in the present case.

43. On the one stretch he deposed, he gave amount in 30 installments to the accused and at the fag end he deposed, except on-line payment, about 20 times he paid money to the accused, which discloses inconsistency in the contention of the complainant. If at all, he paid money to the accused, definitely, it is the complainant has to remember the date or at least whenever he paid money to the accused, it is him to got receive the acknowledgment for having receipt of the said money. Without doing so, on which basis, without any piece of records reveals passing of alleged consideration to the accused, the complainant claiming paid such huge amount is also not satisfactorily demonstrated.

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

"DgÉÆÃ|UÉ gÀÆ.16 ®PÀë PÀAvÁV ¢ÃqÀÄªÁUÀ PÉ®ªÉÇAzÀÄ ªÁj  
 ,ÁQëUÀ¼ÁzÀAvÀ°À VjÃ±ï.n ªÀÄvÀÄÛ «dAiÀiiPÀÄªÀiÁgï.JEï gÀªAgÀÄ  
 E¢ÝzÀÝgÀÄ. AiÀiªªÀ AiÀiªªÀ ¢£ÁAPÀzÀAzÀÄ CªAgÀÄUÀ¼ÄÄ °ÁdjzÀÝgÀÄ  
 Judgment 46 C.C.No.29179/2015 JAzÀÄ £££À|®è. CªAj§âgÀ£ÀÄß F  
 YÀæPÀgÀtzÀ°è «ZÁgÀuÉUÉ M¼ÄYÀr ,À®Ä vÉÆAzÀgÉ E®è."

45. The PW.1 has deposed that, sometimes when he paid amount to the accused for the tune of Rs.16 lakhs, the witnesses by name Girish.T and Vijayakumar.N were present. He does not remember when there were present and he had no impediment to examine them. On meticulous perusal of the Ex.P14 it discloses their names as witnesses. On close perusal of the witness name of Vijayakumar.N, it discloses, with whom, the complainant had monetary transaction as found in Exs.P15 and P16. Whatever the amount received by Vijayakumar.N as found in Ex.P16, were repaid by him. So, it reveal that, the said Vijayakumar.N is none other than the colleague of the complainant in order to establish the monetary transaction between complainant and accused, he not chosen to examine him for the reasons better known to the complainant.

46. However, the complainant examined another witness by name Narendra.G as PW.2. The PW.2 in his affidavit evidence deposed, he knew complainant and accused since several years. In the affidavit evidence he deposed, accused assured the complainant that, he is the owner and possession of the property Judgment 47 C.C.No.29179/2015 cited by the complainant and for sale consideration of Rs.16 lakhs. More carefully reading of para No.4, it only stated, the accused assured that, he was owner and sale consideration of Rs.16 lakhs, whether it was agreed amount or it was paid amount was not been stated by the PW.2. But the para No.5 discloses, complainant had paid Rs.16 lakhs to the accused in different installments by way of cash as well as on-line. In order to show as such, he had lent Rs.5,50,000/- to the complainant on different dates during the year 2013-2014. He not stated about his presence at the time of oral sale agreement entered into between complainant and accused as well as alleged payment of Rs.16 lakhs by the complainant to the accused. The PW.2 was subjected for cross-examination.

47. During his cross-examination, the PW.2 has deposed that, "CgÉÃ°À½î UÉÃmï£À §½  
 EgÀÄªAvÀ°À DgÉÆÃ|AiÀÄ D¹Û ,ÀªÉð £ÀAB109/1, 2, 3 ªÄvÀÄÛ 110 £ÀÄß |AiÀiÁð¢  
 vÉUÉzÀÄPÉÆ¼ÄÄivÁÛgÉAzÀÄ °ÉÃ½zÀÝgÀÄ, D §UÉÎ ªAiAvÀÄPÀvÉ £ÀqÉ¢gÀÄªÀ «µÀAiÀÄ  
 £À£ÀUÉ UÉÆwÛ®è. ,ÀzÀj D¹ÛUÉ ,À§AzÀsYÀlÖ zÁR¯ÉUÀ¼À£ÀÄß £À£ÀÄ £ÉÆÄr®è.  
 £À£Àß YÀæªAiÀt YÀvÀæzÀ°è PÁtô¹zÀAvÉ gÀÆ.16 ®PÀëªÀ£ÀÄß |AiÀiÁð¢, DgÉÆÃ|UÉ ¢ÄrzÀ  
 «ZÁgÀ £À£ÀUÉ UÉÆwÛ®è, DzÀgÉ, £À£ÀÄ |AiÀiÁð¢UÉ gÀÆ.5,50,000/- ª£ÀÄß  
 PÉÆnÖzÉÝ£ÉAzÀÄ £ÀÄrAiÀÄAvÁÛgÉ."

Judgment 48 C.C.No.29179/2015

48. The PW.2 has deposed that, complainant told him that, he would purchase the property bearing Sy.No.191/1, 2, 3 and 110 of the accused. He categorically deposed that, he does not know the conversation made between complainant and accused as to the alleged purchase. He also deposed,

he does not see the document pertaining to the properties. More categorically he deposed, as alleged in the affidavit evidence, he does not know Rs.16 lakhs were paid by the complainant to the accused, but he categorically deposed, he gave Rs.5,50,000/- to the complainant. His evidence reflects, he claiming paid Rs.5,50,000/- to the complainant and he does not know about the alleged Rs.16 lakhs were paid by the complainant to the accused. The said evidence of PW.2 is goes against the case of complainant as to he was witness as to many times, when the sale consideration was passed by the complainant to the accused. Therefore, the evidence of PW.2 is not safe to rely upon as he is eye witness to the contention of payment of Rs.16 lakhs made to the accused by the complainant. If at all, the PW.2 gave Rs.5,50,000/- to the complainant, it is him to disclose on which date, on which source, he mobilized the fund and handed over to the complainant. But no such explanation is forth coming from the evidence of PW.2.

Judgment 49 C.C.No.29179/2015

49. In this case, T.Girish, who is witness No.3 to the Ex.P14 is been examined as PW.3. The PW.3 has deposed that, he knew the complainant and accused since several years. He deposed that, accused assured the complainant that, he is the owner in possession and enjoyment of property bearing Sy.No.109/1, 2, 3 and 110 of Halkur Village, measuring 4 acres of land for sale consideration of Rs.16 lakhs. In the said contention, it does not discloses any sale agreement or any sale talk made between complainant and accused for the said tune. The PW.3 has further contended that, complainant had paid Rs.16 lakhs to the accused in different dates in installments by way of cash and on-line, and they were entered into la on 29.05.2015, at that time, all the parties presence and he affixed his signature as witness to the said loan agreement.

50. On going through the Ex.P14, he identified his signature at Ex.P14(c). Admittedly, another witness by name Vijayakumar.N is not been examined. The affidavit evidence does not disclose the sale conversation between complainant and accused. But he stated, complainant paid Rs.16 lakhs to the accused and in his presence both the parties have signed to Ex.P14. The accused has contended that, after he repay Rs.1 lakh loan against the loan of Rs.2 lakhs for the guarantee of balance loan of Rs.1 lakh, the Judgment 50 C.C.No.29179/2015 complainant took 2 signed blank cheques drawn on Syndicate Bank and one signed bond paper, based on which filed the false case, though he ready to pay balance of Rs.1 lakh. Thereby, the accused has contended, the Ex.P14 loan agreement got created.

51. During the course of cross of PW.3, he deposed that:

"|AiÀiÁðç ,ÀzÀj d«ÄÃ«£À ªÀªªÀ°ÁgÀ ªÀiÁqÀÄªÁUÀ £Á£ÀÄ EgÀ°®è. DUÁUÉÎ DgÉÆÃ| |AiÀiÁðç-ÄAzÀ °ÀªªÀ£ÀÄß vÉUÉzÄÄPÉÆAqÄÄ °ÉÆÄUÄªÁUÀ £Á£ÀÄ EzÉÝ£ÀÄ, |AiÀiÁðç D °ÀªªÀ£ÀÄß d«ÄÃ«UÉ ,ÀA\$AzÀs¥ÀlÖAvÉ vÉUÉzÄÄPÉÆAqÄÄ °ÉÆÄVzÄÝgÀÄ JAzÄÄ w<sup>1/2</sup>zÄÝgÀÄ. £Á£ÀÄ, |AiÀiÁðç ªÀÄvÄÄÛ DgÉÆÃ| QëÄgÀ ,ÁUÄgÀ °ÉÆÄmÉ iUÉ PÁü PÄÄrAiÄÄ®Ä °ÉÆÄzÁUÀ, d«ÄÃ«UÉ ,ÀA\$AzÀs¥ÀlÖAvÉ °ÀªªÀ£ÀÄß PÉÆnÖgÄªÀÄzÁV °ÉÄ<sup>1/2</sup>zÄÝgÀÄ."

52. The PW.3 has deposed that, at the time of property talks were made by the complainant, he was not there. Whenever the accused oftenly took money from complainant, he was present. He deposed that, complainant told him that, in respect of the property, the accused took money from the complainant. He deposed, he went with complainant to had coffee in Ksheera Sagara Hotel, the complainant told him. The said evidence of PW.3 discloses, it was a talk made between complainant and PW.3 not in the presence of accused. In the further cross of Judgment 51 C.C.No.29179/2015 PW.3, he deposed, in between 2012-13 the accused came to the complainant for receive money and he does not remember the date. If at all, any such amount was paid by the complainant to the accused in the presence of PW.3 definitely, either the complainant or PW.3 could have deposes, as he himself entered into witness box by stating that, in his presence money were paid. During the course of cross of PW.3, he deposed, the Ex.P14 was given to the complainant on 10.07.2014 itself. But PW.3 deposed, he does not know. But he stated, the accused brought the said stamp paper during the month of May, 2015. When he deposed, it was brought by the accused during the month of May, 2015.

53. On going through the Ex.P14 stamp paper, it was purchased on 10.07.2014. Therefore, it is the PW.3 has to explain, where it was executed, who got instructed to prepare the same in connection to the said transaction. But PW.3 has deposed, he does not know where it was typed. He denied the suggestion that, in his office he signed the Ex.P14, but stated it was signed by him during 2015 in between 2.30 p.m. to 3.00 pm, after finishing his shift work in between place of his station and Ksheera Sagar Hotel. If the transaction really happened definitely, the PW.3 could have been deposed exactly when it was happened, where he signed and where he saw the others have Judgment 52 C.C.No.29179/2015 signed or not, in that regard, no explanation is forth coming. He categorically admitted, the another witness by name Vijayakumar.N was his earlier colleague, but denied, they are 3 had friends, but stated; they were working together and had contact each other. On going through the Ex.P14 it discloses, stamp paper was purchased on 10.07.2014 by the complainant herein. But PW.3 deposed, the accused brought the stamp paper during May, 2015. When complainant has brought the said stamp paper, why the accused has brought the said stamp paper as alleged by the PW.3 is created doubt. The Ex.P14 discloses, it was purchased for mentioning the description as hand loan agreement between complainant and accused. If at all, any such agreement was entered into or require to enter into definitely, immediately, after purchase of the stamp paper, it could have been emerged. But after lapse of 11 months from the date of purchase the Ex.P14 came in to existence. Why the stamp paper was purchased much earlier and what was the compelling circumstance made to create the said agreement after lapse of 11 months is also created doubt. The accused has contended that, he got issued signed blank e-stamp paper to the complainant in connection to balance loan of Rs.1 lakh and the same was manipulated by the complainant. The date of purchase of stamp Judgment 53 C.C.No.29179/2015 paper and alleged execution agreement after lapse of 11 months is also one of the doubtful circumstances to relied upon the same. The evidence of PW.1 to PW.3 does not repose confidence as to the alleged payment of Rs.16 lakhs made to the accused as well as due issuance and execution of Ex.P1 cheque and the loan agreement at Ex.P14. Thereby, the evidence of PW.1 to PW.3 is insufficient to prove the alleged liability of the accused emerged from the Ex.P1 cheque.

54. The complainant has pleaded that, since property rate was raised, accused refused to sell his property, hence, he agreed to refund the amount so borrowed from the complainant at the intervention of friends and well-wishers. If at all, any such intervention of friends and well-wishers, in that regard, it needs to produce necessary evidence, but in that regard, no explanation when the said intervention were made by them nothing has been stated. The complainant stated, earlier the accused gave cheque for Rs.8,50,000/- dated:17.04.2015 bearing No.385895 drawn on Syndicate Bank, he got presented again and again on 17.04.2015 and 07.05.2015, the same came to be dishonoured, later, accused gave Ex.P1 cheque bearing No.385894 taken back the earlier cheque in the presence of witnesses. Whereas, the accused has denied that, when he repaid Rs.1 lakh against the Judgment 54 C.C.No.29179/2015 loan of Rs.2 lakhs, the complainant for the guarantee of balance amount without returned the earlier obtained 2 signed blank cheques of the accused, took the 2 cheques of Syndicate Bank and filed false case by filled himself. The complainant has stated, the said cheque bearing No.385897 was returned to the accused. In that regard, no evidence or any explanation is forth coming from the side of PW.1. If at all, he returned the said cheque definitely, he could maintain necessary endorsement or at least maintain the Xerox copies of the same. But no such effort is been made in retaining the evidence. The accused has clearly denied the return of said cheque, but contended the same misused by the complainant.

55. It is pertinent to note that, if at all, accused gave cheque bearing No.385895 by mentioning date:17.04.2015, the same is dishonoured in the movement of accused undertakes to pay the amount by taken back the said cheque and he has to issued subsequent cheques, which appears further numbers. But complainant has contended, the cheque bearing No.385894 was given by the accused by taken back the earlier cheque, definitely, the subsequent number cheque has to be given by the accused. The complainant has contended for Rs.8,50,000/- cheque bearing No.385895 dated:17.04.2015 was given by the accused, but he Judgment 55 C.C.No.29179/2015 pleaded by taken back the said cheque, the previous numbered cheque bearing No.385894 was given by the accused for Rs.16 lakhs dated:18.06.2015, the mentioning of the said cheque itself creates doubt. Once the cheque bearing No.385895 was given much earlier, subsequently if at all, any circumstances came to give the cheque, the subsequent number has to be given, but contrary to the said sequence, the complainant has projected the previous cheque No.385894 was given to the complainant for payment of Rs.16 lakhs is created doubt. When later cheque came to be dishonoured, was there any chance to issue earlier serial number cheque to the complainant, it creates doubt as to hand over the Ex.P1 cheque to the complainant for payment of Rs.16 lakhs, at the time of entered into loan agreement at Ex.P14.

56. From the contention of complainant, as to dishonour of cheque bearing No.385895 and later issued another cheque for Rs.16 lakhs bearing No.385894 itself is created doubt, as to the complainant already possessed both the cheques much earlier and he failed to disclose, under which circumstances he did so. Therefore, the probable circumstances made out by the accused has to be accepted in connection to payment of Rs.1 lakh balance loan against the loan of Rs.2 lakhs, the complainant took the said cheques in blank and without applying his mind by filled the earlier Judgment 56 C.C.No.29179/2015 cheque bearing No.385895 by mentioning date:17.04.2015 for sum of Rs.8,50,000/- and after came to know that, the same would not came into use then, without producing the said copy before this court by contending it was returned to the accused, as projected

the present case is serious lack on the part of complainant.

57. No prudent man can give the later cheque earlier for the payment of legal liability and thereafter, taken back the same and earlier serial number cheque would not be given. If circumstance comes, later cheque only would be given. If at all, the complainant got produced the said dishonoured cheque, it will reflected the pattern of fillings are made, but for the reasons better known to complainant, has withheld the said document, but wrongly contended, was returned to the accused, but utterly failed to establish the same.

58. On meticulous perusal of the Ex.P1 cheque, it made clear that, the admitted signature and other writings are made in different hand writing. From which, it can draw the inference that, the accused voluntarily not executed and issued the questioned cheque to the complainant for discharge of existence of legal liability for the tune of Rs.16 lakhs. It is the complainant got Judgment 57 C.C.No.29179/2015 establishes due execution and issuance of questioned cheque, but he utterly failed to demonstrate the same. The PW.1 though choosen to examined witnesses coupled with production of document, he utterly failed to prove his case beyond the reasonable doubt.

59. Whereas, the accused has successfully proved that, he only borrowed loan of Rs.2 lakhs on 27.08.2012 and as found in Ex.D4 got repaid Rs.1 lakh, apart from repayment of interest. Thereafter, as he admitted the outstanding balance of Rs.1 lakh is payable by him to the complainant and for its security, the complainant took 2 signed blank cheques as security coupled with one e-stamp paper. As per Ex.D5 in respect of the balance of Rs.1 lakh the accused got paid interest at Rs.15,000/-, he sincerely admitted his liability for payment of Rs.1 lakh to the complainant. Even by way of issuing reply notice as well as cross-examining the PW.1 coupled with his own evidence, he admitted the liability of Rs.1 lakh. Therefore, as he admitted the Rs.1 lakh is payable to the complainant, as the same remains unchallenged by the complainant. The accused able to destroy the case of complainant as to the liability of payment of Rs.16 lakhs. On the other hand, he admitted his liability to pay sum of Rs.1 lakh to the complainant. Therefore, it is the consider opinion Judgment 58 C.C.No.29179/2015 of this court that, the complainant has utterly failed to demonstrate his case that, the accused is liable to pay sum of Rs.16 lakhs as existence of legally recoverable debt. On the other hand, the accused is successfully proved that, he is only liable to pay Rs.1 lakh to the complainant. The accused has contended that, by way of caused reply at the earliest point of time as per Ex.P10 and offering the complainant that, he is ready to pay Rs.1 lakh, if complainant got returned the security documents such as, cheques and other documents. By stating so, the accused has submitted, he is ready to pay the balance of Rs.1 lakh, because of the complainant got initiated the present proceedings against the accused, he unavailable circumstances not paid the said money. Therefore, it is the accused has to pay the agreed amount of Rs.1 lakh to the complainant. Therefore, he need not require to pay any interest, because of the method adopted by the complainant in prosecuting the present case. The accused was not paid the balance amount. Hence, he is not require to pay any interest thereon. Moreover, the complainant being Junior Engineer in KPTCL, he not permitted to do any money lending license. Therefore, at the most, he can take the balance amount of Rs.1 lakh from the accused. The accused is directed to pay the said sum of Rs.1 lakh along with additional fine of Rs.5,000/- payable Judgment 59 C.C.No.29179/2015 to the state and major portion has to be payable to the complainant as compensation and meager portion has to be payable



to the state as fine, failing which, he shall undergo simple imprisonment for 2 months.

60. As discussed above, the complainant by way of furnishing clear, convincing, corroborative, oral as well as documentary evidence, has partly proved that, the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act. Thereby, in view of finding given by point Nos.1 and 2, the accused is liable to be punished by way of imposing fine sentence. Therefore, the accused is to be convicted by imposing fine amount of Rs.1,05,000/- against the cheque amount of Rs.16 lakhs. Out of the said fine amount, sum of Rs.1,00,000/- shall be payable to the complainant as compensation and remaining amount of Rs.5,000/- shall be payable to the state as fine amount. Accordingly, if the accused fails to pay the whole fine amount within one month, the accused shall undergo simple imprisonment for two months. Thereby, one more opportunity has provided to the accused to comply the order. Otherwise, the very purpose of filing complaint will be defeated. As discussed above, the complainant has partly proved his case beyond reasonable doubt. In the result, the accused shall sentence to pay the fine amount as Judgment 60 C.C.No.29179/2015 detailed in the order portion. Accordingly, Point Nos.1 and 2 are answered in the Negative and Point No.3 is answered in the partly Affirmative.

61. Point No.4: In view of my findings on point Nos.1 to 3, I proceed to pass the following:

ORDER Accused found guilty for the offence punishable under Section 138 of Negotiable Instruments Act.

Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay fine of Rs.1,05,000/- within 60 days from the date of this order.

Out of the said fine amount, sum of Rs.1,00,000/- shall be payable to the complainant as compensation as per Section 357 of Cr.P.C. Remaining amount of Rs.5,000/- shall be payable to the state as fine amount.

In default of pay the fine amount, the accused shall under go simple imprisonment for 02 (Two) Months.

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

Judgment 61 C.C.No.29179/2015 The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 5th day of October - 2020) (SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW. 1 : Manjunath.B

PW.2 : Narendra.G  
PW.3 T.Girish

List of Exhibits marked on behalf of Complainant:

Ex.P1 : Original Cheque  
Ex.P1(a) : Signature of accused  
Exs.P2 to P4 : Bank endorsements  
Ex.P5 : Office copy of legal notice  
Exs.P6 & P7 : Postal receipts  
Ex.P8 : Postal Acknowledgment card  
Ex.P9 : Reply notice  
Ex.P10 : Rejoinder  
Ex.P11 : Postal receipt  
Ex.P12 : Postal acknowledgment card  
Ex.P13 : Private complaint  
Ex.P13(a) : Signature of complainant  
Ex.P14 : Loan agreement  
Ex.P14(a( to P15(c) : Signatures of complainant, accused and PW.3  
Exs.P15 to P19 : Statement of accounts  
Ex.P19 : e-Procurement

List of Witnesses examined on behalf of the defence:

DW.1 : Raveendra Kumar List of Exhibits marked on behalf of defence:

Ex.D1 : Copy of reply notice  
Judgment 62 C.C.No.29179/2015

Ex.D2 Postal receipt  
Ex.D3 Postal acknowledgment card  
Exs.D4 & D5 Bank challan counter foils  
Exs.D6 to D37 RTC Extracts

XXIII Addl. Chief Metropolitan  
Magistrate, Bengaluru.  
Judgment 63 C.C.No.29179/2015

05.10.2020.  
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.

Judgment 64 C.C.No.29179/2015 ORDER Accused found guilty for the offence punishable under Section 138 of Negotiable Instruments Act.

Acting under Section 255(2) of Cr.P.C.

the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay fine of Rs.1,05,000/- within 60 days from the date of this order.

Out of the said fine amount, sum of Rs.1,00,000/- shall be payable to the complainant as compensation as per Section 357 of Cr.P.C. Remaining amount of Rs.5,000/- shall be payable to the state as fine amount.

In default of pay the fine amount, the accused shall under go simple imprisonment for 02 (Two) Months.

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

The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.