

# Manjunatha.H vs M/S. Focus Entertainment on 30 January, 2023

KABC030518652020

Presented on : 22-10-2020  
Registered on : 22-10-2020  
Decided on : 30-01-2023  
Duration : 2 years, 3 months, 8 days

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

Dated this the 30th day of January - 2023

PRESENT: SRI. N.K.SALAMANTAPI, B.A., LL.B.,  
XXIII Addl.C.M.M., Bengaluru City.

C.C.NO.13775/2020

Complainant : Manjunatha.H,  
S/o.Huchappa,  
Aged about 44 years,  
R/at No.7, 1st Cross Road,  
B.R.I Colony, Ambedkar Ground,  
Agrahara Dasarahalli,  
Bengaluru-79.  
  
(Rep. by Sri.D.T.Vinod Kumar, Adv.)  
V/S

Accused : 1. M/s. Focus Entertainment,  
No.35, 4th Cross, Sriramanagar,  
Ittamadu, BSK 3rd Stage,  
Bengaluru-85.  
Rep. by it Proprietor  
Vinay.S.

2. Vinay.S,  
S/o.S.N.Sathyanarayana,  
Proprietor,

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M/s. Focus Entertainment,  
No.35, 4th Cross, Sriramanagar,  
Ittamadu, BSK 3rd Stage,  
Bengaluru-85.  
(Rep.by Sri.Balareddy.R, Adv.)

OFFENCE COMPLAINED OF : U/Sec. 138 of Negotiable  
Instruments Act.  
PLEAD OF THE ACCUSED : Not guilty.  
FINAL ORDER : Accused Nos.1 and 2 are  
Acquitted.  
DATE OF ORDER : 30.01.2023.

(N.K.SALAMANTAPI)  
XXIII Addl.CMM., Bengaluru.

#### JUDGMENT

The complainant has presented the instant complaint against the accused Nos.1 and 2 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act for dishonour of cheque amount of Rs.10 lakhs.

#### 2. The brief facts of the complaint are as under:

The complainant has submitted that the accused being well known to him since 8 years. He is a Director of Television Serials and accused is a production manager and producer of Television Serials. During the month of March 2017, the accused Judgment 3 C.C.No.13775/2020 approached him for financial assistance of Rs.10 lakhs for production of Television Serials. Considering the request of accused, he paid an amount of Rs.5,25,000/- by way of cash and Rs.4,75,000/- by way of RTGS to the accused on 09.03.2017.

While borrowing the said amount, the accused promised to repay the same within 3 months.

The complainant has further contended that after expiry of said agreed period of 3 months, when he demanded the accused for repayment of the said amount, at that time, the accused have sought time for one or other reasons and finally towards discharge of their liability, the accused have issued a cheque bearing No.698952 dated 19.06.2020 for sum of Rs.10 lakhs drawn on Andhra Bank, Jambusavari Dinne Branch, Bengaluru in his favour and assured that the said cheque would be honoured on its presentation.

The complainant has further contended that on 20.07.2020 the accused have lodged a complaint before the C.K.Achukattu Police Station against him by making false allegations and in view of the same, he gave his statement before the said police and thereafter, the said police have advised the accused to repay the Judgment 4

C.C.No.13775/2020 amount of Rs.10 lakhs to him. Then, the accused have instructed him to present the cheque which was already issued.

The complainant has further contended that as per instructions of accused, he presented the said cheque for encashment through his banker viz., Canara Bank, Basaveshwaranagar, Bengaluru on 27.07.2020, the same came to be dishonoured with an endorsement dated 28.07.2020 stating "Account Blocked Situation Covered in 2125" . Immediately, he approached the accused and intimated about dishonour of cheque and demanded for repayment of the cheque amount, but the accused have failed to repay the cheque amount. Hence, he got issued legal notice to the accused through his counsel on 07.08.2020 and the same was sent on 10.08.2020 by way of R.P.A.D calling upon them to repay the cheque amount within 15 days from the date of receipt of the legal notice and the same was duly served upon accused on 12.08.2020. Despite, the accused neither paid the cheque amount nor replied the notice. Thus, the accused Nos.1 and 2 committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

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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 Nos.1 and 2 for the alleged offence, got issued process.

4. In response to the summons, the accused No.2 appeared through his counsel and obtained bail. As required, complaint copy was supplied to the accused. Thereafter, accusation was read over and explained to accused Nos.1 and 2, wherein, the accused No.2 himself as well as on behalf of accused No.1, he denied the same and claimed to have the defence.

5. To prove the case of the complainant, he himself choosen to examine as PW.1 and got marked Exs.P1 to P24. The PW.1 was subjected for cross-examination by the advocate for the accused. In the cross-examination of DW.1, complainant counsel got confronted two documents and same were marked as Exs.P25 and P26.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein, the accused No.2 himself as well as on behalf of accused No.1 denied the same. In support of the defence, the accused No.2 Judgment 6 C.C.No.13775/2020 himself as well as on behalf of accused No.1 was examined as DW.1 and got marked Ex.D2. The DW.1 was subjected for cross-

examination by the advocate for the complainant. In the cross- examination of PW.1, accused's counsel got confronted one document and same was marked as Ex.PD1.

7. Both side counsels have addressed their arguments. The complainant's counsel has also submitted his detailed written arguments.

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

1) Whether the complainant proves beyond all reasonable doubt that towards discharge of legally recoverable debt or liability, the accused have issued Ex.P1 - cheque in his favour and the same came to be dishonoured for the reasons 'Account blocked situation covered in 2125' and even after service of notice, the accused have failed to repay the cheque amount and thereby accused Nos.1 and 2 have committed an offence punishable under Section 138 of N.I.Act?

2) 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 : As per final order, for the following:

#### REASONS

10. POINT No.1: The complainant has filed this complaint for an offence punishable under Section 138 of Negotiable Instruments Act against the accused Nos.1 and 2 and prayed to punish the accused Nos.1 and 2 for an offence punishable under Section 138 of Negotiable Instruments Act.

11. To attract Section 138 of Negotiable Instruments Act, complainant should prove that; (1) the accused have issued a cheque for discharge of legally recoverable debt. (2) The same was presented through his banker. (3) It was dishonoured on presentation. (4) The notice in terms of provisions was served on the accused and (5) Despite service of notice neither any payment was made nor other obligations, if any were complied within 15 days from the date of receipt of notice.

12. In order to prove his case, the complainant filed his affidavit and himself examined as PW.1, wherein, he has reiterated the Judgment 8 C.C.No.13775/2020 averments made in the complaint. In support of his contention, he relied upon the documents at Exs.P1 to P26. Among them, cheque bearing No.698952 issued by the accused for sum of Rs.10,00,000/- dated 19.06.2020, drawn on Andhra Bank, Jambusavari Dinne Branch, Bengaluru is marked as Ex.P1. The signature of accused No.2 is marked as Ex.P1(a). Ex.P2 is the Bank Endorsement issued by Canara Bank, the contents of Ex.P2 disclose that the cheque bearing No.698952 drawn for

Rs.10,00,000/- was dishonoured for the reasons "Account blocked situation covered in 2125". Ex.P3 is the Legal Notice dated 07.08.2020, the recitals of Ex.P3 disclose that the complainant has issued this notice to the accused through his counsel. By issuing this notice, complainant called upon the accused to repay the cheque amount of Rs.10,00,000/- within 15 days from the date of receipt of notice. Exs.P4 and P5 are the Postal receipts. Exs.P6 and P7 are the postal acknowledgment cards. Ex.P8 is the bank challan counter foil. Ex.P9 is the bank passbook. Ex.P10 is the police complaint. Ex.P11 is the statement given by complainant before the C.K.Achukattu Police Station. Ex.P12 is the acknowledgment dated 20.07.2020 issued by C.K.Achukattu police. Exs.P13 and P14 are the rent agreements. Ex.P15 is the Deed of Agreement dated 09.07.2017 Judgment 9 C.C.No.13775/2020 executed by accused in favour of complainant. Exs.P16 to P19 are the RTC Extracts. Exs.P21 and P22 are the electricity bills.

Ex.P23 is the Aadhaar Card. Ex.P24 is the CD. Ex.P25 is the copy of RC Card and Ex.P26 is the certified copy of private complaint in C.C.No.2409 of 2021 on the file of learned XVI ACMM Court, Bengaluru. The PW.1 was subjected to the cross- examination by the advocate for the accused.

Section 118 (a) of Negotiable Instruments Act provides that:

"Until the contrary is proved, the following presumptions shall be made: (a) of consideration; that every negotiable instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

Section 139 of Negotiable Instruments Act provides that:

"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

The above presumptions are rebuttable in nature.

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13. In order to rebut the presumption available under Sections 118(a) and 139 of Negotiable Instruments Act, the accused has filed his affidavit and examined himself as DW.1. In his evidence, he has stated that he sought loan of Rs.5 lakhs from the complainant in the month of March 2017 and the complainant has transferred an amount of Rs.4,75,000/- to his account on 09.03.2017, he has not borrowed an amount of Rs.10 lakhs from the complainant at any point of time and he has no capacity to lend such huge amount to him, in the month of June 2020, towards security of the above said amount, he gave 3 signed blank cheques to the complainant and after receipt of 3 cheques, the complainant has threatened and demanded him to pay Rs.10 lakhs, hence, he lodged police complaint against the complainant. After obtaining his signature on e-stamp paper, the complainant

has created and concocted the loan agreement as per Ex.P15, he did not fill up the contents on the questioned cheque, the instant complaint is barred by limitation, the legal notice sent by complainant was not served on him, he has not received the amount as alleged in complaint from the complainant at any point of time and he has not issued the alleged cheque to the complainant for discharge of legally enforceable debt, hence, he prayed for acquit him. In support of his contention, he relied upon Judgment 11 C.C.No.13775/2020 the documents at Exs.D1 and D2. Among them, Ex.D1 is the copy of legal notice dated 02.08.2021 issued by complainant herein through his counsel to one Ganesha Sastry and Ex.D2 is the Aadhaar Card pertaining to accused. The DW.1 was subjected to the cross-examination by the advocate for the complainant.

14. The advocate for complainant has argued that the legal notice sent by complainant was served on accused as per Exs.P6 and P7. If the accused is not liable to pay the amount covered under Ex.P1-cheque, he would have issued reply notice to the complainant against the statutory notice of complainant. But in this case, the accused has not issued reply notice. Therefore, the accused is liable to pay the cheque amount. In support of his arguments, he relied upon the decisions as under:

- a) 2021 ACD 32 (JHA) in the case of M/s. Noddy Auto Pvt. Ltd and others V/s. State of Jharkhand and another.
- b) 2014 ACD 663 (Bom) in the case of Rekha Mahindra Shah V/s. Gautam Umed Parmar and another.
- c) 2004 (2) DCR 384 in the case of Nirdosh Enterprises, Hyderabad V/s. State of A.P and another.
- d) 2016 CrI.L.J. 842 in the case of Vijay Kumar Gupta V/s. Pankaj Sharma.
- e) 2009 (2) DCR 411 in the case of Ashok Kumar Agarwal V/s. State.

I have gone through the above decisions.

Judgment 12 C.C.No.13775/2020 In the above decisions, their lordships observed that sending of legal notice by register post along with under certificate to correct address is sufficient service of notice. In the present case, the complainant has sent the notice by registered post to the correct of address of accused.

15. The address mentioned in the cause title of complaint, the address mentioned in the legal notice and postal acknowledgment cards are all one and the same. Further on perusal of the signatures appear on postal acknowledgment cards, it reveals that the accused has received the legal notice by putting his signature on the postal acknowledgment cards. In order to disprove the service of demand notice, the accused did not try to adduce the evidence of concerned post master, who got issued Exs.P6 and P7. In the absence of such evidence before the court, it is difficult to come to conclusion that the notice was not served on accused. It appears that the complainant has sent the demand notice to the correct address of accused and the same got served on him. Therefore, the

accused cannot say that the legal notice was not served on him and he does not aware about the notice sent by the complainant.

It is relevant to cite the decision reported in 2006 (4) KCCR 2375 in the case of Mr.Umrax Khan and others V/s. Mr.A.Jameel Judgment 13 C.C.No.13775/2020 Ahmed and another, wherein, Hon'ble High Court of Karnataka was pleased to held that:

"Once there is proof of posting of notice to correct address, it is deemed to have been served, the judgment of acquittal is bad in law".

16. On going through the said dictum, it is also made clear that if the notice was sent with correct address of the accused, it is suffice to draw the inference that the notice was duly served on the accused. If the accused failed to accept the notice and failed to claim the notice sent to him under register post, there is deemed service of notice upon him. In the present case on hand, it appears that the address mentioned in the cause title of complaint, legal notice and postal acknowledgment cards are one and the same. From which, it made clear that the legal notice as required under Section 138(b) of Negotiable Instruments Act was served upon accused and complainant has complied the Section 138(b) of Negotiable Instruments Act.

17. Further the advocate for complainant argued that issuance of blank cheque by putting his signature, it authorized the complainant to fill up the contents on the cheque. In support of his arguments he relied upon the decisions are as under:

a) 2010 (1) DCR 336 in the case of Latha K.Nair V/s.

Gold Mohar Foods and Feeds Ltd.

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b) 2013 (1) DCR 98 in the case of Kuppayammal V/s. A.Sitheswaran.

c) 2015 ACD 607 (Mad) in the case of S.Ponnusamy alias S.P.Samy V/s. K.Mani.

d) 2004 (2) DCR 605 in the case of L.Mohan V/s. V.Mohan Naidu.

e) 2013 Kar.L.J 347 in the case of M.D.Ramakrishnaiah V/s. V.Javaregowda.

f) 2001 (4) Kar.L.J. 122 in the case of S.R.Muralidar V/s. Ashok.G.Y.

g) 2010 (1) DCR 582 in the case of Bank of India, Adiyapur, Jamshedpur V/s. M/s. Aswi Electricals and others.

I have gone through the above decisions.

In the above decisions, their lordships observed that as per Section 20 of Negotiable Instrument Act where one person signs and delivers to another person a signed blank cheque, then he thereby gives prima-facie authorities to the holder thereon to make it complete.

Therefore, in view of the above decisions, accused cannot say that signed blank cheque issued by him to the complainant is not entertained.

18. It is the main defence of accused is that the complainant has transferred only an amount of Rs.4,75,000/- to his account on 09.03.2017 and he has not borrowed an amount of Rs.10 lakhs from the complainant at any point of time, in the month of June Judgment 15 C.C.No.13775/2020 2020, towards security of Rs.4,75,000/-, he gave 3 signed blank cheques and one signed blank e-stamp paper and he has not issued the alleged cheque to the complainant for discharge of legally enforceable debt. Further it is defence of accused is that the complainant was not having financial capacity to lend an amount of Rs.10 lakhs to him and he cannot seek time barred debt and Section 138 of Negotiable Instrument Act does not attract against him, hence, he prayed to acquit him.

19. The advocate for complainant has argued that the complainant was having sufficient funds to lend an amount of Rs.10 lakhs to the accused. As such, he has lent the amount of Rs.10 lakhs to the accused and towards repayment of the said amount, the accused has issued the alleged cheque in favour of complainant and when the said cheque was presented for encashment, the same came to be dishonoured and returned as "Account blocked situation covered in 2125". Thereby, the accused has committed an offence punishable under Section 138 of Negotiable Instruments Act. Further argued that when the accused has issued the alleged cheque for repayment of amount, it cannot be said that he has issued the cheque for payment of time barred debt. Even the cheque issued for time barred debt Judgment 16 C.C.No.13775/2020 also attracts Section 138 of Negotiable Instruments Act. In support of his arguments, he relied upon decisions as under:

a) AIR Online 2021 Kar 937 in the case of Shreeyansh Rayappa Nandeshwar V/s. Prakash Ponde decided on 28.01.2021, wherein, it was pleased to held that:

"Plea of accused that transaction is time barred, so he cannot be made criminally liable - Same is to be decided after regarding evidence in trial - Hence, proceedings not liable to be quashed."

b) AIR Online 2019 Kar 2165 in the case of S.V.Enterprises V/s. Tulasiram.V decided on 04.12.2019, wherein, it was pleased to held that: "Once cheque is proved and same was issued in discharge of any debt - Even if it is time barred, such stand is not available to accused - Offence u/S.138 made out."

c) 2007 Crl.L.J. 1486 :: 2007 (5) AIR Kar R 814 in the case of Ramakrishnan V/s. Gangadharan Nair and another decided on 08.08.2006, wherein, it was pleased to held that:

"Dishonour of cheque - Legally enforceable debt/liability - Cheque issued for discharge of time barred debt - Would still fall within purview of S. 138 in view of S.



25(3) of Contract Act and S. 46 of N.I. Act."

d) AIR Online 2019 Bom 1159 in the case of M.Shantilal and Co. V/s. Abbaji Maruti Jadhav and another decided on 14.11.2019, wherein, it was pleased to held that:

"Once a cheque is drawn for discharge of time barred debt it creates a promise which becomes when Judgment 17 C.C.No.13775/2020 enforceable contract and therefore, it cannot be said that cheque is drawn in discharge of debt or liability is not legally enforceable - Complaint as per Section 25 (3) of Contract Act is maintainable."

e) 2020 ACD 1 (MAD) in the case of Anbarasu V/s. Mukanchand Bothra (deceased) decided on 24.07.2019, wherein, it was pleased to held that:

"Cheque not issued towards time barred debt but for live debt - Prosecution under S. 138 proper."

I have gone through the above decisions.

20. On the other hand the learned counsel for accused has argued that the time barred debt is not legally enforceable debt and complainant cannot seek relief under Section 138 of Negotiable Instrument Act. In support of his arguments, he relied upon the decisions as under:

a) Crl.A.No.545/2010 in the case of K.V.Subba Reddy V/s. N.Raghava Reddy decided on 28.02.2014, wherein, it was pleased to held that:

"Section 138 of Negotiable Instrument Act is attracted only legally recoverable debt and it cannot be said that time barred debt is legally recoverable debt."

b) Crl.A.No.200057/2010 in the case of The Bidar Urban Co-operative Bank Ltd. V/s. Girish decided on 17.12.2020, wherein the Hon'ble High Court of Karnataka held in Para No.37 that:

"Further as per Section 13 of N.I Act "negotiable instrument" means a "promissory note" "bill of exchange", or "cheque" payable either to order or to Judgment 18 C.C.No.13775/2020 bearer. The definition of promissory note as stated in section 4 of the N.I Act indicates that, it contains an unconditional undertaking signed by the maker, to pay a sum of money only to, or to the order of, a certain person, or to the bearer of instrument. The definition of "bill of exchange" as stated in Section 5 and the definition of cheque contain only an unconditional order which clearly distinguish them from the definition of promissory note. In promissory note there must be an express undertaking upon the face of instrument to pay the money. Therefore in promissory there is unconditional undertaking i.e., promise to pay, but the definition of bill of exchange and cheque contain only an unconditional order. This distinction needs to be kept in mind while considering whether the cheque itself constitutes a promise in writing by the accused so as to bring that cheque within the

ambit of section 25 (3) of the Indian Contract Act 1872 and penal provision under section 138 of N.I Act."

In para No.39 observed that: In view of the principles stated in the above referred decision and discussion it is evident that the penal provision of Section 138 of the N.I.Act is applicable only to the cheques which are issued for the discharge in whole or in part, of any debt or other liability, which according to explanation must be a legally enforceable debt or other liability. A cheque given in discharge of a time barred debt will not constitute an unconditional undertaking or promise in writing either expressly or impliedly so as to attract the criminal offence under Section 138 of N.I Act. This was elaborated in Sasseriyil Joseph's case (supra) which is affirmed by the Hon'ble Supreme Court as stated above.

Judgment 19 C.C.No.13775/2020 A cheque given in discharge of a time barred debt will not constitute a promise in writing not even an implied promise so as to attract a criminal liability under Section 138 of N.I Act.

c) 2001 Crl.L.J.24 in the case of Sasseriyil Joseph V/s. Devassia, wherein, it was pleased to held that:

"Cheque in question was issued in discharge of time barred debt - No valid acknowledgment of debt before expiry of 3 years from the date of loan - Accused cannot be convicted for dishonour of cheque."

The said judgment was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.1785/2001 by Hon'ble Supreme Court by judgment dated 10.09.2021 affirmed the said view of Hon'ble Kerala High Court.

d) (2006) 6 SCC 39 in the case of M.S.Narayana Menon Alias Mani V/s. State of Kerala and another, wherein, it was pleased to held that:

"Initially burden of proof on accused to rebut the said presumption by raising a probable defence. If he discharges the said burden the onus thereafter shifts on the complainant to prove his case. Accused can discharge its burden on the basis of preponderance of probabilities."

e) Crl.R.P.No.1571/2010 in the case of Shivamurthy V/s. Amruthraj, wherein, it was pleased to held that:

"Mere issuance of cheque itself would not be sufficient unless it is shown that the said cheque was issued towards discharge of legally recoverable debt."

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f) Crl.A.No.636/2019 in the case of Basalingappa V/s.

Mudibasappa decided on 09.04.2019, wherein, it was pleased to held that:

Accused cannot be expected to discharge an unduly high standard of proof and further observed that complainant should prove his financial capacity.

g) CrI.A.No.473 of 2019(A) in the case of Purandara Rai V/s. Naveendra Naik it is decided on 10.02.2021, wherein, it was pleased to held that:

In para No.5: "It is an admitted fact that as per the oral evidence given by the complainant before the trial Court, it was a time barred debt. Ex.P6 is the receipt dated 22.06.2009, which is executed by the accused- respondent in favour of the complainant for having borrowed a loan of Rs.90,000/- for his family necessities, but according to the complainant cheque was issued on 05.01.2013, which is beyond the period of three years.

Under these circumstances, the trial Court has rightly come to the conclusion that it was a time barred debt and the cheque issued for clearance of the time barred debt cannot be entertained."

21. While cross-examining the PW.1, the accused has partly admitted the case of the complainant. Herein it is necessary to see that whether the said transaction held between complainant and accused is legally enforceable liability within the provisions of Limitation Act to consider legally enforceable debt. Article 21 of the Indian Limitation Act provides that the period of limitation for recovery of loan starts from the date on which the amount has Judgment 21 C.C.No.13775/2020 been paid. The Section 18 of Limitation Act provides that the fresh period of limitation shall be computed if any acknowledgment of debt has been executed by the borrower within the prescribed period of limitation i.e., within 3 years from the date of borrowing of loan. Further Section 19 of Limitation Act provides that a fresh period of limitation shall be computed from the date of payment of some money towards loan in question. As per the averments of the complainant, the amount has been given by the complainant to the accused on 09.03.2017 and towards discharge of his liability, the accused has issued cheque on 19.06.2020. The period for recovery of the said amount ends in the month of March 2020. Therefore, the facts and circumstance of this case clearly goes to show that the dishonour of cheque was issued to discharge time barred debt.

22. In the recent judgments of Hon'ble High Court of Karnataka in the case of The Bidar Urban Co-operative Bank Ltd. V/s. Girish and in the case of Purandara Rai V/s. Naveendra Naik as stated above held that the penal provision of Section 138 of the N.I.Act is applicable only to the cheques which are issued for the discharge in whole or in part, of any debt or other liability, which according to explanation must be a legally enforceable debt or other liability. A cheque given in discharge of a time barred debt will not constitute Judgment 22 C.C.No.13775/2020 an unconditional undertaking or promise in writing either expressly or impliedly so as to attract the criminal offence under Section 138 of N.I Act. Cheque issued for clearance of time barred debt cannot be entertained.

23. In the present case on hand, the disputed cheque was presented for time barred debt and it came to be dishonoured. The complaint averments and the materials produced on behalf of the

complainant goes to show that the alleged loan amount has been given by the complainant to the accused on 09.03.2017 and towards discharge of his liability, the accused has issued questioned cheque on 19.06.2020. The period for recovery of the said amount ends in the month of March 2020. The complainant kept silent for about 3 years 3 months and 10 days without seeking the recovery of the loan amount from the accused. More so, on the date of issuance of Ex.P1-cheque on 19.06.2020, the debt mentioned in the complaint became time barred and the cheque in question has not been issued in respect of legally enforceable debt or other liability for the purpose of involving Section 138 of Negotiable Instruments Act. Therefore, Section 138 of Negotiable Instrument Act does not attract against the accused. Thus, the accused has rebutted the presumption available under Sections 118(a) and 139 of Negotiable Judgment 23 C.C.No.13775/2020 Instruments Act. Therefore, as discussed above, the complainant has utterly failed to prove the guilt of the accused Nos.1 and 2 for the offence punishable under Section 138 of Negotiable Instruments Act beyond all reasonable doubt. Hence, in view of the above said reasons, I hold point No.1 in the Negative.

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

ORDER Acting under Section 255(1) of Cr.P.C the accused Nos.1 and 2 are 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 30 th day of January - 2023)  
(N.K.SALAMANTAPI) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1	:	Manjunatha.H	
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List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of accused
Ex.P2	:	Bank endorsements
Ex.P3	:	Office copy of legal notice
Exs.P4 & P5	:	Postal receipts
Exs.P6 & P7	:	Postal acknowledgment cards
Ex.P8	:	Bank challan counter foil
Ex.P9	:	Bank passbook
Ex.P10	:	True copy of police complaint
Ex.P11	:	True copy of statement
Ex.P12	:	True copy of acknowledgment
Exs.P13 to P15	:	Rental agreements

Exs.P16 to P20	:	Copies of RTCs
Exs.P21 P22	:	Electricity bills
Ex.P23	:	Aadhaar Card
Ex.P24	:	CD
Ex.P25	:	Xerox copy of RC
Ex.P26	:	CC of private complaint in C.C.No.2409/21

List of Witnesses examined on behalf of the defence:

DW.1 : Vinay.S List of Exhibits marked on behalf of defence:

Ex.D1 : Copy of legal notice dated 02.08.2021 Ex.D2 : Aadhaar Card XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment 25 C.C.No.13775/2020 Judgment pronounced in the open court vide separate order.

\*\*\*\*\* ORDER Acting under Section 255(1) of Cr.P.C the accused Nos.1 and 2 are 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.