

Aged About 62 Years vs R/At No.119 on 26 February, 2021

1

IN THE COURT OF XIV ADDL. CHIEF METROPOLITAN
MAGISTRATE, MAYO HALL, BENGALURU

DATED THIS THE 26th DAY OF FEBRUARY, 2021

PRESENT

Sri. K. GURUPRASAD, B.A., LL.B (Spl.)
XIV ADDL. C.M.M., BENGALURU

CASE NO	C.C. NO.58922/2018
COMPLAINANT	Mr. Mathai Mathew S/o. Late Mathai Aged about 62 years, R/at No.203/44, Maruthi Soudha, III B Main, OMBR Layout, Banaswadi, Bengaluru - 560 043.
ACCUSED	Mr. Sandith Kumar S/o. Shankar, R/at No.119, Royal Enclave, Srirampura, Jakkur Post, Bengaluru - 560 064.
OFFENCE	U/s.138 of Negotiable Instruments Act
PLEA OF THE ACCUSED	Pleaded not guilty
FINAL ORDER	Accused is convicted

(K. GURUPRASAD)
XIV ADDL. C.M.M., BENGALURU

2

JUDGMENT

The present complaint is filed under Sec.200 Cr.PC for the offence punishable under Section 138 of Negotiable Instruments Act.

2. It is the case of the complainant that, the accused was known to complainant for past several years. The accused borrowed from the complainant from time to time total sum of Rs.91,50,000/- between the year 2012 to 29.04.2015 promising to repay the same with interest @ 18% per annum.

However, in spite of several demands, the accused failed to pay the amount with interest. The accused also agreed to sell his property in the Neeleswaram Farka, Sub-District, Neeleswaram, Hosdurg Taluk, Neeleswaram Village, Kasargod District, measuring one acre for sale consideration of Rs.1,00,00,000/- and received in all Rs.97,00,000/- as advance sale consideration between the period from 1.5.2013 to 9.3.2018 and executed an agreement of sale in favour of complainant on 4.5.2018. The accused has also failed to execute registered sale deed in favour of the complainant. Finally the accused issued a cheque bearing No.906166 dtd.1.8.2018 drawn on Corporation Bank, Malleshwaram branch, Bengaluru for a sum of Rs.91,50,000/- in favour of the complainant towards repayment of said loan. The accused also issued a cheque bearing No.906167 dtd.4.8.2018 for Rs.97,00,000/- drawn on Corporation Bank, Malleshwaram branch, Bengaluru in favour of the complainant towards refund of advance sale consideration under the Agreement of Sale. In the mean time, the accused got issued notice dtd.3.8.2018 putting up false story that he borrowed total sum of Rs.32,50,000/- and handed over original documents of title of the property at Neeleswaram by way of security for the hand loan and also executed promissory note and issued two blank signed cheques. When the complainant presented said cheque of Rs.91,50,000/- to his banker i.e South Indian Bank Ltd., Brigade Road, Bengaluru on 16.8.2018, the said cheque was dishonored for "insufficiency funds" on 16.8.2018 itself and complainant received the return memo on 20.8.2018. The complainant got issued reply notice to the notice of the accused dtd.3.8.2018 on 27.8.2018. On the same day i.e on 27.8.2018 complainant got issued demand notice calling upon the accused to pay the cheque amount in question. The said notice which was sent by registered post was received by the accused and accused sent false reply notice dtd.5.9.2018 to the complainant. The accused has failed to pay the cheque amount and as such the accused is guilty of the offence punishable under Section 138 of N.I. Act. Hence this complaint.

3. In order to prove his case, the complainant himself examined as CW.1 (PW.1) and got marked Ex.P1 to P22 and also examined another witness as PW.2 and closed complainant side of evidence. Thereafter, statement of the accused U/s.313 of Cr.PC was recorded. The accused denied incriminating materials in the evidence of complainant against him. Thereafter, the accused examined himself as DW.1 and got marked Ex.D1 to D25 and also summoned and examined two witnesses as DWs.2 and 3 and closed defence side of evidence.

4. Heard both sides. Perused the complaint, evidence on record, written arguments filed by both parties and court records.

5. The following points arise for my consideration and determination;

1) Whether the complainant proves that the accused has issued cheque in question in discharge of legally enforceable debt or liability as contended by him?

2) Whether the complainant further proves that the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act?

3) Whether the complainant is entitled for the relief's as prayed in the complaint?

4) What Order?

6. The above points are answered as under;

Point No.1 to 3 : In affirmative,
Point No.4 : As per the final order,
for the following.....

REASONS

7. Point Nos. 1 and 2: Since these two points are inter linked and to avoid repetition they are taken together for discussion.

8. As regard to limitation to file this complaint, it is clear from Ex.P2 to P5 that when the complainant presented the cheque in question to his banker within three months from the date of said cheque, said cheque came to be dishonoured with bank shara "funds insufficient" and that when the complainant got issued statutory notice U/s.138 of N.I. Act to the accused by registered post (within 30 days from the date of intimation of dishonour of said cheque) calling upon the accused to pay the cheque amount, the said notice was served on the accused and got replied by him. Hence, the present complaint which is filed after expiry of 15 days from the date of receipt of said notice and within 30 days thereafter is well within time.

9. As regard to legally enforceable debt or liability, in 2010 (11) SCC 441 - (Rangappa Vs Sri. Mohan), it is held that;

" The presumption mandated by Sec.139 of the Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the complainant"....."when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the presumption can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own".

10. If the facts and circumstances of this case are considered in light of above said principle of law, it is clear that the accused has admitted that Ex.P2-cheque bears his signature. Therefore, statutory presumption arises U/s.139 of N.I. Act in favour of the complainant that the cheque in question is issued in discharge of debt or liability. The burden of rebutting the said presumption by probable defence is on the accused.

11. It is the case of the complainant that the accused availed hand loan of Rs.91,50,000/- from the complainant during the period from 2012 to 29.4.2015 and executed hand loan agreement dtd.29.4.2015 as per Ex.P1 in favour of the complainant. It is further case of the complainant that the accused has also agreed to sell his property in Neeleswaram for total consideration amount of Rs.1 crore and received advance sale consideration of Rs.97 lakhs during the period from 1.5.2013 to 9.3.2018 and finally executed agreement of sale dtd.4.5.2018 as per Ex.P21 in favour of the complainant. It is further case of the complainant that the accused failed to repay the hand loan with interest as per the terms of Ex.P1 and also failed to execute the sale deed in favour of the complainant as per the terms of Ex.P21. It is further case of the complainant that the accused issued cheque as per Ex.P2 for repayment of loan amount of Rs.91,50,000/- and also issued cheque as per Ex.P22 in favour of the complainant towards refund of advance sale consideration of Rs.97 lakhs. It is further case of the complainant that the accused got issued false legal notice to the complainant on 3.8.2018 as per Ex.P6 that he has availed hand loan of Rs.32,50,000/- only. It is further case of the complainant that when the complainant presented Ex.P2 and Ex.P21-cheques for collection to his banker, the said cheques came to be dishonored.

12. On the other hand the accused has denied execution of Ex.P1-Hand loan agreement and Ex.P21-Agreement of sale in favour of the complainant and issuance of Ex.P2-cheque towards repayment of hand loan and issuance of Ex.P22- cheque towards refund of advance sale consideration. It is specific defence of the accused that he has not availed loan of Rs.91,50,000/- but availed only total loan amount of Rs.32,50,000/- from the complainant and that the accused has neither agreed to sell his property at Neeleswaram in favour of the complainant nor received advance sale consideration amount of Rs.97 lakhs. It is specific defence of the accused that when accused was in need of money to close his overdraft account in South Indian Bank, he approached DW.2-Sibu B. George who in turn introduced to the accused, the complainant who lent Rs.15 lakhs in cash on 30.4.2015 and Rs.10 lakhs on 4.5.2015, on the condition to repay said total loan amount of Rs.25 lakhs with interest @ 3% per month i.e Rs.75,000/- per month. It is further defence of the accused that on 30.04.2015 the complainant took two blank signed cheques I.e Ex.P2 and P22 by way of security to the said loan and that on 4.5.2015, the accused handed over original property documents of his property at Neeleswaram to the complainant by way of security. It is further defence of the accused that the complainant lent Rs.5 lakhs to the accused on 30.01.2016 on the condition to repay the same with interest @ 5% per month i.e Rs.25,000/- per month, by taking six cheques by way of security. It is further defence of the accused that the complainant lent Rs.2,50,000/- to the accused on 25.05.2016 for medical expenses of younger brother of the accused on the condition to repay the said loan in ten installments of Rs.30,000/-. It is further defence of the accused that since the accused was unable to pay interest amount after September 2016, the complainant began to demand more money by calculating interest on daily basis and also communicated that if the accused was unable to pay the amount, property of the accused would be transferred in his name, to which accused replied that he is not willing to transfer his property but would repay the loan amount. It is further defence of the accused that there were exchange of text messages between the complainant and accused as per Ex.D2 to Ex.D5, Ex.D8 to Ex.D15, Ex.D17 to Ex.D19 and Ex.D23. It is further defence of the accused that on 4.5.2018 DW.2- Sibu B. George and his wife came outside the house of the accused at 11.45 P.M and forcibly took signatures of the accused on agreement of sale and that the accused could not fully go through the contents thereof

but roughly went through the contents of said agreement. It is further defence of the accused that complainant has filed this false complaint on the basis of Ex.P1- Hand loan agreement and Ex.P2-cheque, though accused is not liable to pay the cheque amount and that complainant has filed false complaint in C.C. No.58923/2018 on the basis of Ex.P21- Agreement of sale and Ex.P22-cheque, though accused has not agreed to sell his property nor has he received advance sale consideration amount.

13. I have meticulously gone through the complaint, evidence on record and court records. In order to prove hand loan transaction between the complainant and accused, complainant has produced Ex.P1 which is an original Hand Loan Agreement dtd.29.04.2015, executed by accused in favour of the complainant. It discloses that the accused borrowed total hand loan amount of Rs.91,50,000/- by way of cash at different dates between 2012 to 29.04.2015 and agreed to repay the said amount with interest @ 18% per annum within 24 months. Ex.P1-Hand Loan Agreement is signed by accused and complainant in the presence of two witnesses i.e Aravindakshan (PW.2) and Jose Mathew. No doubt, the accused has denied his signature on Ex.P1-Hand Loan Agreement and also disputed the execution of Ex.P1-Hand Loan Agreement. However, the complainant has examined PW.2-Aravindakshan in this case who has identified signatures of complainant at Ex.P1(a) and

(c) and signatures of accused at Ex.P1(b) and (d) and signature of himself at Ex.P1(e) and signature of another witness i.e., Jose Mathew at Ex.P1(f). PW.2 has deposed that Ex.P1-Hand Loan Agreement was signed and executed on 29.04.2015 in Hotel Tamarind near his house in Banaswadi and that the contents of Ex.P1-Loan Agreement were readout in the presence of parties and witnesses. It is pertinent to note that PW.2 is financial consultant who knew both accused and complainant and hailed from Kerala State to which both accused and complainant belonged to. Furthermore, though PW.2 has been cross- examined at length by accused, nothing has been elicited which damages varacity of evidence of PW.2. The accused has tried to discredit PW.2 by confronting signatures and writings of name and address of PW.2 in Ex.P1 and pointing out the differences in signature and name of PW.2 found in Ex.P1 and P17. It is pertinent to note that Ex.P17 is certified copy of sale deed dated 29.11.2012 executed in favour of the complainant in which PW.2 is one of attesting witnesses. PW.2 has denied the suggestion during cross-examination that there are differences in name, address and signature of PW.2 in Ex.P1 and P17. Even otherwise since there is time gap of three years between execution of Ex.P1 and P17, slight difference in signatures of PW.2 etc., is quite possible and the same cannot be blown out of proportion to disbelieve the evidence of PW.2 in the present case. Hence, evidence of PW.2 appears to be probable and reliable and as such sufficient to prove Ex.P1-loan agreement. As a result, the complainant has proved the execution and contents of Ex.P1-loan agreement.

14. The counsel for the accused has argued in the written arguments that Ex.P1 is executed on 29.4.2015 and as such time period for legal claim under Ex.P1 has expired on 29.4.2018 and as such the claim of the complainant is time barred. However, the said contention of the accused cannot be accepted, because it is clear from the contents of Ex.P1-loan agreement that the loan amount under Ex.P1- loan agreement is due and payable within 24 months from the date of agreement. Hence the limitation commences only when the loan amount becomes due and as such the present claim of the complainant which is within three years from the date on which to loan amount becomes due is in

time. Hence, it cannot be said that claim of the complainant under Ex.P1-agreement is time barred and that Ex.P2-cheque is issued towards time barred debt.

15. On the other hand, though accused has contended that he availed total loan amount of Rs.32,50,000/- only from the complainant, the accused has utterly failed to prove said fact through documentary evidence of Ex.D1 to D25. Ex.D1 is certificate issued by South Indian Bank that O.D account of Rs.10 lakhs has been cleared by means of one time settlement on 5.5.2015. However the said document by itself is not sufficient to prove the defence of the accused. Moreover, it is the defence of the accused that complainant lent Rs.15 lakhs in cash on 30.04.2015 and Rs.10 lakhs on 4.5.2015. However it is disclosed in Ex.D1 that the loan amount was cleared on 5.5.2015. There is nothing on record to indicate that said O.D account was cleared off out of the money lent by complainant to the accused. The complainant has also produced Ex.D2 to D5 and D8 to D15, Ex.D17 to Ex.D19 and D23 which are text messages exchanged between the complainant and accused. Except Ex.D19 message, there is nothing in other text messages to show that complainant has lent total loan of Rs.32,50,000/- only, though there is reference to interest amounts in said text messages. No doubt, it is disclosed in Ex.D19 text message that accused has contended in the said text message that he had availed hand loan of Rs.25 lakhs for 3%, Rs.5 lakhs for 5% and Rs.2,50,000/- for 5% (for ten months). However, it is pertinent to note that Ex.D19- text message was sent on 16.8.2018 which is subsequent to issuance of Ex.P6-legal notice got issued by the accused to the complainant. Therefore Ex.D19-message which is sent at subsequent and later stage cannot be given much evidentiary value. Merely because, there is reference to interest amounts of Rs.25,000/- Rs.75,000/- and Rs.30,000/-, it does not lead to conclusion that the accused has borrowed only Rs.32,50,000/- (i.e Rs.25 lakhs, Rs.5 lakhs and Rs.2,50,000/-). Even otherwise, if one calculates interest amount of Rs.2,50,000/- at the rate of 5% for ten months, it does not come to Rs.30,000/-. It is also pertinent to note that there is reference of payment of interest amount of Rs.49,990/- in Ex.D3 text message dated 13.07.2015. The accused has not clarified towards which loan amount, said interest amount of Rs.49,990/- has been paid by the accused. There is also reference to payment of Rs.76,000/- as interest amount in text message in Ex.D4 text message dtd.3.8.2015. Even though accused has tried to clarify and explain that the said amount of Rs.76,000/- consisted of interest amount of Rs.75,000/- plus delayed charges of Rs.1,000/-, such explanation of the accused does not inspire confidence of this court because the complainant has neither insisted nor has accused paid such delayed charges prior to or subsequent to 3.8.2015. There is reference to Rs.6.5 lakhs in text message dtd.19.12.2016 while there is reference to Rs.3,00,000/-in text messages dtd.28.5.2017 and 29.5.2017. DW.1 has deposed that the said reference to Rs.6.5 lakhs is initial request for loan sought by him and that said reference to Rs.3 lakhs make it clear that complainant borrowed the amount to lend it to DW.1. However request for loan of Rs.6.5 lakhs and payment of loan of Rs.3 lakhs for brother are not at all defence of accused. Therefore the text messages exchanged between the complainant and accused are not sufficient to prove the defence of the accused that complainant has lent only Rs.32,50,000/- and not Rs.91,50,000/-, though the said text messages indicate that accused has made some payments towards interest amounts in respect of loan amount borrowed by the accused. Furthermore, accused has produced Ex.D6 and D16 which are bank statements of Corporation Bank standing in the name of the accused. They disclose that on 17.3.2016 accused has made payment of Rs.2 lakhs to complainant through RTGs as shown in Ex.D5 and on 4.11.2015 and 7.10.2015, accused has made

payment of Rs.75,000/- each to the complainant. These documents are also not helpful to the defence of the accused because mere payment of Rs.2 lakhs or Rs.75,000/- by the accused to the complainant does not lead to conclusion that the said amounts are towards interest amounts towards loan of Rs.32,50,000/- and not towards Rs.91,50,000/-. Further Ex.D7 is bank statement of bank account of the accused in South Indian Bank Ltd. It discloses that on 25.5.2016 complainant has paid Rs.2,50,000/- to the accused. Even this document by itself is not sufficient to prove the defence of the accused that complainant has lent only Rs.32,50,000/- and not Rs.91,50,000/-. Furthermore, accused has produced Ex.D21 and D22 which are cheque record slips pertaining to bank accounts of accused in South Indian Bank and Corporation Bank respectively. However the selfserving entries made by accused in Ex.D21 and D22 are also not sufficient to prove the defence of the accused. Ex.D25 is bank statement of bank account of the accused in Corporation Bank. This bank statement is also not helpful to the defence of the accused because Ex.D6 and D16 do not corroborate entries in Ex.D25. Therefore, documentary evidence of Ex.D1 to D25 is not sufficient and helpful to prove the defence of the accused that he has borrowed only Rs.32,50,000/- and not Rs.91,50,000/-. Even oral evidence of DW.1 is inconsistent with recitals of Ex.P1-loan agreement executed by himself and as such the same cannot be relied upon.

16. In view of my above discussion, I am of view that the complainant has proved the execution and contents of Ex.P1- loan agreement and consequently, the complainant has proved that accused borrowed total loan amount of Rs.91,50,000/-. On the other hand the accused has utterly failed to prove his defence that he has only borrowed Rs.32,50,000/- only and not Rs.91,50,000/-.

17. Counsel for the accused has argued in the written arguments that there are discrepancies in the statements of PW.1, PW.2, DW.2 and DW.3 regarding introduction of accused to the complainant and that there is no proof for any acquaintance the complainant had with accused prior to April 2015. It is further argued that there is no proof either telephonic call records or messages or evidence in any form by the complainant with respect to his claim that he knows the accused from 2011. It is further argued that there is no proof for payment and demands from 2012 to 29.04.2015. There is also no proof for any payment in or on any year or dates from 2012 to 29.04.2015. It is further argued that in any monetary transaction, promissory note or loan agreement will not be normally prepared by the borrower and would be prepared by the lender i.e complainant. But in the present case it is claimed that Ex.P1-loan agreement is prepared by the accused. It is further argued that complainant has not taken any legal measures after 29.04.2017 to recover the alleged due amount from the accused until the accused sent demand notice dtd.3.8.2018. It is further argued that the accused has promptly replied to Ex.P4-demand notice by way of Ex.P5-reply notice denying the transactions and payments as stated in Ex.P4-notice. It is further argued that none of the bank accounts produced and marked as Ex.P8 to P15 show any withdrawal of large amounts on the dates of alleged payments as claimed by the complainant or prior to or near dates of alleged payments. It is further argued that there are discrepancies in the evidence of PWs.1 and 2 regarding note book and diary. It is further argued that there are contradictions in the statements regarding introduction of the accused to the complainant by Pws.1 and 2 and Dws.2 and 3. It is further argued that complainant had lent money to DW.2 and in order to escape from paying back the said amount DW.2 supported the complainant and more over the accused owes money to DW.2 and DW.2 has favoured the complainant at the behest of complainant. It is further argued that the evidence on

record clearly prove that all the claimes about the acquaintance of complainant with accused prior to 2015 and payments prior to 2015 and execution of loan agreement and sale agreement are false. It is further argued that even though initial burden of rebutting statutory presumption U/s. 139 and 118 of N.I. Act is on the accused, the accused has discharged said burden and successfully cast doubts on the consideration and Ex.P1 and P2. It is further argued that in order to extract money from the accused, complainant colluded with other witnesses in this case and forged signatures and created documents and filed this false complaint before this court, only after receiving notice dtd.3.8.2018 from the accused. It is further argued that when accused has admitted signatures on the cheque in question and contends that he has issued the cheque in blank, the burden of proving the writings is on the complainant who produced the documents, particularly when there is difference in ink. It is further argued that PW.2 is an untrustworthy witness. The counsel for the accused has also relied upon decisions in 1984 (4) SCC 16, Basalingappa Vs. Mudibassapa and 1977 AIR 666.

18. However, above said arguments advanced by counsel for the accused cannot be accepted because accused has utterly failed to prove his defence while complainant has successfully proved his claim through oral and documentary evidence on record. Mere minor discrepancies in the evidence of witnesses is not ground to disbelieve their version, particularly when their evidence can be accepted on material facts. When complainant has proved execution and contents of Ex.P1-Hand Loan Agreement, mere non-production of any evidence to show that complainant knew accused even prior to April 2015 and paid loans to the accused even prior to April 2015 is not fatal to the claim of the complainant. There is no legal bar for the borrower to purchase stamp paper and to prepare promissory note or loan agreement. It at all depends upon understanding between borrower and lender. No doubt, the complainant has not taken any legal measures to recover the amount till the accused sent demand notice dtd.3.8.2018. However this fact by itself is not sufficient to disbelieve the version of the complainant, particularly when the complainant has repeatedly demanded to repay his loan in text messages between the complainant and accused. The arguments of the counsel for the accused that since the complainant had lent money to DW.2, DW.2 supported the complainant to escape from paying back said amount, cannot be accepted in absence of any evidence on record. In fact such suggestion has not been made during cross-examination of PW.1 and DW.2 and even DW.1 has not at all whispered regarding this fact. Further evidence on record clearly indicates that accused has utterly failed to discharge initial burden on him by probable defence. Furthermore, the argument that there was collusion with complainant and other witnesses cannot be accepted without clear and cogent evidence to that effect. Mere difference of ink in signature and other contents of Ex.P2-cheque is not ground to dismiss the claim of the complainant because Sec.20 of N.I. Act authorizes payee or holder in due course to fill-up blank cheque to the extent of legally enforceable debt. Even blank cheque given by way of security will come U/s.138 of N.I. Act. The decisions relied upon by counsel for the accused are not helpful to the accused because the accused has utterly failed to prove his defence.

19. In view of my above discussion, I am of considered opinion that the accused has utterly failed to prove or probabalize his defence and thereby to rebut statutory presumption in favour of the complainant. It clearly appears from the evidence on record that defence of the accused is only an afterthought without any basis. Unless and until the accused rebuts the statutory presumption with convincing and cogent evidence, burden cannot be shifted on the complainant. As discussed above,

the complainant has placed sufficient materials on record to establish his contention as put by the complainant. The evidence on record is sufficient to accept the case of the complainant that accused has issued cheque in question towards discharge of legally enforceable debt or liability and the complainant has proved all the requirements of Sec.138 of N.I. Act, so as to constitute the offence against the accused. Therefore, Point Nos.1 & 2 are in affirmative and answered accordingly.

20. Point No.3: As discussed in connection with Point Nos.1 & 2, the complainant has proved his case as to commission of the offence punishable U/s.138 of N.I. Act by the accused. The punishment prescribed for the said offence is imprisonment for a period which may extend to two years or with fine. Considering the facts and circumstances of this case, nature, year of the transaction, nature of the instrument involved, provisions of Sec.117 of N.I. Act, cost of litigation and the rate of interest proposed by Hon'ble Supreme Court in 2012 (1) SCC 260 (R.Vijayan Vs Baby), etc., this court is of the considered view that it is just and desirable to impose fine of Rs.1,00,00,000/- and out of the said amount a sum of Rs.10,000/- has to be remitted to the State and the remaining amount of Rs.99,90,000/- is to be given to the complainant as compensation as provided U/s.357(1) of Cr.PC and accordingly Point No.3 is answered in Affirmative.

21. Point No.4: For the reasons discussed in connection with Point Nos.1 to 3 this court proceed to pass the following.....

ORDER Acting under Section 255(2) of Cr.PC accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act. The accused shall pay a fine of Rs.1,00,00,000/- for the offence punishable U/s.138 of N.I. Act. In default of payment of fine amount, the accused shall under go simple imprisonment for a period of eighteen months.

By exercising the power conferred U/s.357(1) of Cr.PC., out of total fine amount of Rs.1,00,00,000/-, a sum of Rs.99,90,000/- is ordered to be paid to the complainant as compensation and Rs.10,000/- is ordered to be remitted to the State.

The bail bond of the accused stands cancelled. The cash security deposited by the accused is ordered to be continued till expiry of the appeal period.

Supply the free copy of this judgment to the accused forth with.

(Dictated to the stenographer, transcript thereof, computerized and print out taken by him is verified, corrected and then pronounced by me in open court on this the 26th Day of February, 2021) (K. GURUPRASAD) XIV A.C.M.M., Bengaluru ANNEXURE Witnesses examined for the complainant:

PW.1 : Mr. Mathai Mathew
PW.2 : Mr. Aravindakshan

Witnesses examined for the defence:

DW.1 : Mr. Sandith Kumar
DW.2 : Mr. Sibub George

DW.3 : Father George Kannthanan

Documents marked for the complainant:

Ex.P1 : Hand Loan Agreement dtd.29.4.2015
Ex.P1(a) &
Ex.P1(c) : Signatures of the complainant
Ex.P1(b) &
Ex.P1(d) : Signatures of accused.
Ex.P1 (e) &
Ex.P1 (f) : Signatures of witnesses
Ex.P2 : Cheque for Rs.91,50,000/-
Ex.P2(a) : Signature of accused
Ex.P3 : Bank endorsement
Ex.P4 : Copy of Legal Notice dtd.27.8.2018
Ex.P5 : Copy of Reply notice dtd.5.9.2018
Ex.P6 : Copy of Notice dtd.3.8.2018
Ex.P7 : Copy of Reply notice dtd.27.8.2018
Ex.P8 : Certified copy of Statement of account
Ex.P9 : Certified copy of Statement of account
Ex.P10 : Notarized copy of Account statement
Ex.P11 : Notarized copy of statement of account
Ex.P12 : Certified copy of Statement of account
Ex.P13 : Certified copy of Statement of account
Ex.P14 : Notarized copy of statement of account
Ex.P15 : Notarized copy of statement of account
Ex.P16 : Notarized copy of statement of account

Ex.P17 : Certified copy of Absolute Sale Deed
Ex.P18 : Certified copy of employment certificate
Ex.P19 : Certified copy of Affidavit
Ex.P20 : Certified copy of evidence of DW.1
Ex.P21 : Certified copy of Agreement of Sale
Ex.P22 : Certified copy of cheque for Rs.97,00,000/-

Documents marked for the defence:

Ex.D1 : Certificate dtd.12.9.2019
Ex.D2 : Copy of text message
Ex.D3 : Copy of text message
Ex.D4 : Copy of text message
Ex.D5 : Copy of text message
Ex.D6 : Account statement of Corporation Bank
Ex.D7 : Statement of Account of South Indian Bank
Ex.D8 : Copy of text message
Ex.D9 : Copy of text message
Ex.D10 : Reply text message
Ex.D11 : Copy of text message
Ex.D12 : Copy of text message
Ex.D13 : Copy of text message
Ex.D14 : Copy of text message
Ex.D15 : Copy of text message

Ex.D16 : Account statement of Corporation Bank
Ex.D17 : Copy of text message
Ex.D18 : Copy of text message
Ex.D19 : Copy of text message
Ex.D20 : Certificate U/s.65-B of Indian Evidence Act
Ex.D21 : Cheque slip of South Indian Bank
Ex.D22 : Cheque slip of Corporation Bank
Ex.D23 : Copy of text message
Ex.D24 : Certificate U/s.65-B of Indian Evidence Act
Ex.D25 : Account Statement of Corporation Bank

(K. GURUPRASAD)
XIV A.C.M.M., BENGALURU