

# Has Paid A Sum Of Rs.4 vs That He Paid Rs on 11 February, 2020

IN THE COURT OF THE XXVIII ADDL. CHIEF

METROPOLITON MAGISTRATE NRUPATHUNGA ROAD,

BENGALURU CITY

Present:- Sri. ABDUL RAHIM HUSSAIN SHAIKH  
B.Sc, B.Ed, LLB(Spl)  
XXVIII A.C.M.M  
Bengaluru City.

Dated this the 11th day of February, 2020

CC.No.25150/2018

## JUDGMENT

1. Sl.No. of the case : C.C.No.25150/2018

2. The date of commence of Evidence : 11.09.2018

3. The date of Institution : 09.07.2018

4. Name of the Complainant : B. T Suresh S/o B.T Thimmegowda, Aged about 50 years, Authorised signatory of M/s Lazzari Machines India Pvt Ltd, having its Regd Office at No.11, 8th main, 5th cross SLV Industrial Area, Peenya 2nd stage, Bangalore.

5. Name of the Accused : Sri. T.V Venkataramaiah S/o Ramaiah, Aged about 38 years, Thigalarapalya Colony, Behind Muneshwara temple, Peenya 2nd stage and post, Bangalore-560098.

And Also R/at No.75, 76 & 77, 14th cross, Keshav Layout, Karihobanahalli Village, Thigalarapalya Main road, Peenya 2nd stage, Bangalore- 560058.

6. The offence complained : U/s.138 of N.I. Act

7. Plea of the accused on his examination : Pleaded not guilty

8. Final Order : Accused is Convicted

9. Date of such order : 11.02.2020 JUDGMENT

1. This case has been registered against the accused on the basis of the complaint filed by the complainant u/s 200 of Cr.P.C for the offence punishable u/s 138 r/w 142 of N.I. Act.

2. The gist of the complainant's case is that :

The complainant submits that they are the tenant under the accused in respect of the premises bearing No.75, 76 & 77, situated at 14th Cross, Keshav Layout, Karihobanahalli village, Thigalarapalya main road, Peenya 2nd stage, Bangalore-560058, consisting RCC roofing construction measuring is ground floor about 3000sqft. It is further submits that the complainant and accused have entered into an rental agreement on 1st January 2017 and as per the rental agreement the complainant has paid a sum of Rs.4,50,000/- as security deposit to the accused by way of two cheques (1) bearing No.371842 dt:12.12.2016 for Rs.3,00,000/-

and (2) No.371843 dt:31.01.2017 drawn on Axis bank for Rs.1,50,000/- and also agreed to pay rent Rs.35,000/- per month for rental premises. It is the case of the complainant company that the Managing Director of the complainant company died and after his death other directors were unable to run the company so they have decided to vacate the rental premises. The said fact was informed to the accused and as per the request of the complainant, the accused agreed and issued the post dated cheque bearing No.263804 dt:28.02.2018, State Bank of India, Barath Nagar branch, Bangalore-19 for an amount of Rs.1,20,000/- towards refund of security amount. The complainant as per the request of the accused presented the said cheque for encashment in his bank i.e., Axis bank Ltd, Peenya branch, Bangalore on 17.05.2018, the same was dishonoured and returned with the reason 'Funds Insufficient' as per the banker memo dated 19.05.2017. After the receipt of the memo the complainant issued a notice on 31.05.2018 through RPAD requesting the accused to repay the cheque amount within 15 days from the date of receipt of the said notice and inspite of the service of the said notice accused neither paid the said amount nor replied to the said notice. Accordingly, the complainant filed the complaint against the accused for having committed an offence punishable u/s 138 of N.I. Act on 09.02.2018.

3. In pursuance of the summons, the accused has appeared through Counsel and got enlarged on bail by executing necessary documents. The copy of the complaint was furnished to the accused, as required under law. As there was sufficient material, plea was recorded against the accused on 05.02.2019 and explained to the accused in her vernacular, for which the accused pleaded not guilty and claims to be tried.

4. In order to prove the case, the Authorised signatory of the complainant Company Sri. B.T Suresh examined as PW1 and got marked Ex.P1 to 8. Then the statement u/s 313 Cr.P.C was recorded on 03.06.2019, wherein the incriminating evidence appeared against the accused was read over and explained which was denied by the accused. Accused examined himself as DW1 and got marked 2 documents as Ex.D1 & 2 on his behalf.

5. The learned Counsel for complainant argued that they are the tenant under the accused in respect of the premises bearing No.75, 76 & 77, situated at 14th Cross, Keshav Layout, Karihobanahalli village, Thigalarapalya main road, Peenya 2nd stage, Bangalore- 560058, consisting RCC roofing construction measuring is ground floor about 3000sqft. It is further submits that the complainant and accused have entered into an rental agreement on 1st January 2017 and as per the rental

agreement the complainant has paid a sum of Rs.4,50,000/- as security deposit to the accused by way of two cheques (1) bearing No.371842 dt:12.12.2016 for Rs.3,00,000/- and (2) No.371843 dt:31.01.2017 drawn on Axis bank for Rs.1,50,000/- and also agreed to pay rent Rs.35,000/- per month for rental premises. It is the case of the complainant company that the Managing Director of the complainant company died and after his death other directors were unable to run the company so they have decided to vacate the rental premises. The said fact was informed to the accused and as per the request of the complainant, the accused agreed and issued the post dated cheque bearing No.263804 dt:28.02.2018, State Bank of India, Barath Nagar branch, Bangalore-19 for an amount of Rs.1,20,000/- towards refund of security amount. The complainant as per the request of the accused presented the said cheque for encashment in his bank i.e., Axis bank Ltd, Peenya branch, Bangalore on 17.05.2018, the same was dishonoured and returned with the reason 'Funds Insufficient' as per the banker memo dated 19.05.2017. After the receipt of the memo the complainant issued a notice on 31.05.2018 through RPAD requesting the accused to repay the cheque amount within 15 days from the date of receipt of the said notice and in spite of the service of the said notice accused neither paid the said amount nor replied to the said notice. Accordingly, the complainant filed the complaint against the accused for having committed an offence punishable u/s 138 of N.I. Act on 09.02.2018. It is submitted by the complainant that the ingredients of Sec.138 and 142 are duly complied with and prayed to convict the accused.

6. The learned Counsel for accused contended that the property that has been rented belong to him and his sister Muddamma. It is further admitted by DW1/accused that he has received an amount of Rs.4,50,000/- advance and an amount of Rs.35,000/- rent per month. It is contended that he had suggested the complainant that if they vacate the property within the agreed period they have to pay one year rent for which the complainant had agreed for the said condition. It is further deposed that the complainant were in possession of a tenant only for a period of six months and without informing they have vacated the property by paying only three months rent. Further it is contended by the accused that when he demanded the key of the house the complainant harassed him to repay the entire security deposit. It is the case of the accused that he paid Rs.1,90,000/- to the account of the complainant and paid an amount of Rs.35,000/- to the woman representative of the complainant company who handed over the said amount to the complainant Suresh in his presence. Further it is the case of the accused that the complainant had obtained blank signed cheque and by filling the said cheque for Rs.1,20,000/- have filed a false complaint against the accused. Hence, the learned Counsel for accused prayed to acquit the accused. In support of his contention the learned counsel for accused placed the following citations:-

1.Crl. Appeal No.2043/2013, Supreme Court of India, (John K. Abraham v/s Simon C Abraham).

2.Crl. Appeal No.1742/2006 High Court of Karnataka, (M.B Rajshekar v/s Savitramma).

3.ILR 2010 KAR 4242 ( Shivappa Reddy v/s C.K Jaganath.

4. 2007 (2) DCR 608, Karnataka High Court (M. Senguttuvan v/s Mahadevaswamy)

7. Heard arguments and perused the material placed on record.

8. On the basis of the above facts, the following points arise for my consideration:

1. Whether the complainant proves that the accused towards discharge of legal recoverable debt issued cheque bearing No.263804 dt:28.02.2018 for Rs.1,20,000/- drawn on State Bank of India, Barath Nagar branch, Bangalore, in favour of complainant, on presentation for encashment it was returned as 'Funds Insufficient' and in spite of receipt of legal notice, the accused failed to pay the cheque amount within the statutory period and thereby the accused has committed an offence punishable u/s 138 of N.I. Act?

2. What order?

9. My findings on the above points are as under :

Point No.1: In the Affirmative Point No.2: As per final order, for the following:

#### REASONS

10. Point No.1:- In order to prove the case, the Managing Director of the complainant Company Sri. B. T Suresh filed affidavit by way of examination-in- chief and has reiterated the allegations made in the complaint on oath and got marked Ex.P1 to P.8. On perusal of Ex.P1 it is found that it is the board resolution authorizing PW1 to contest the case on behalf of the complainant and Ex.P2 is authorization issued by the Managing Director to represent the complainant in contesting a case against the accused. It is pertinent to note that though in the cross examination the accused had taken the contention that the complainant company had only authority to file a civil case against the accused which is denied by PW1 contending that since the cheque has been dishonoured the complainant company has the right to file a cheque bounce case against the accused. It is pertinent to note that though the accused counsel have taken the contention that the board resolution and authorization has been signed by only Managing Director but failed to produce relevant document to prove that Ex.P1 and P2 does not authorize the complainant to contest the case on behalf of the complainant. In the evidence of DW1 the accused has not produced a relevant document to prove the same fact that PW1 had no authority to contest the case on behalf of the complainant against him as Ex.P1 and P2.

11. Further in the evidence PW1 deposed that the complainant firm was a tenant under the accused in respect of the premises bearing No.75, 76 & 77, situated at 14th Cross, Keshav Layout, Karihobanahalli village, Thigalarapalya main road, Peenya 2nd stage, Bangalore-560058, consisting RCC roofing construction measuring is ground floor about 3000sqft agreeing to pay an advance amount of Rs.4,50,000/- and rent of Rs.35,000/- per month. From this fact it is found that there is no dispute regarding the tenancy as per the rent agreement between the parties. In the cross examination of PW1 the accused counsel had confronted the original rent agreement which was marked as Ex.D1 which also clearly discloses that there was a rent agreement between the accused

and the complainant regarding the tenancy of premises bearing No.75, 76 & 77, situated at 14th Cross, Keshav Layout, Karihobanahalli village, Thigalarapalya main road, Peenya 2nd stage, Bangalore-560058, consisting RCC roofing construction measuring ground floor about 3000sqft agreeing for an advance amount of Rs.4,50,000/- and rent of Rs.35,000/- per month. In view of the same it is crystal clear that the complainant were the tenant of accused and his sister Mudamma as per the rent agreement Ex.D1 for a monthly rent of Rs.35,000/-. It is equally important to note that in the cross examination DW1 admitted that he and his sister Mudamma who are the owners of the property have equally shared the advance amount of Rs.4,50,000/-. Further in the cross examination DW1 admitted that the complainant had informed him regarding termination of lease agreement and admits that his sister Mudamma had also issued a cheque of her account to the complainant for an amount of Rs.1,90,000/- on 01.12.2017. In the evidence the accused/DW1 has produced the pass book of Mudamma marked as Ex.D2 with relevant portion of transfer of money Ex.D2(a) an amount of Rs.1,90,000/- which also supports the contention of the accused that the said amount has been transferred from Mudamm's account to the complainant. From this documentary and oral evidence it is found that accused/DW1 along with his sister Mudamma being the joint owner of the leased property had received advance amount of Rs.4,50,000/- from the complainant and shared the said amount equally in between themselves. It is vehemently argued by the complainant counsel that Mudamma has paid her share of amount but the accused instead of paying his share had issued the disputed cheque/Ex.P3 for an amount of Rs.1,20,000/- which on presentation was dishonoured for the reason 'fund insufficient' as per Ex.P4 . It is very pertinent to note that in the cross examination of DW1 accused admitted the disputed cheque Ex.P3 and the signature on the said cheque Ex.P3(a). From this it is clearly established that accused had issued the cheque for the repayment of his share of advance amount which he had obtained from the complainant as advance rent deposit. In the evidence of DW1 he had deposed that he had paid Rs.35,000/- cash amount and the complainant had obtained an cheque of Rs.1,20,000/- from him. By analyzing this evidence it is found that accused has never taken any defence in his evidence nor in the cross examination as to why he has issued the cheque of Rs.1,20,000/- or a blank cheque for the complainant. If at all there was no question of payment of the advance amount definitely accused would have initiated criminal action against the complainant for having obtained the blank cheque by force. In this case no criminal action has been initiated against the complainant for having obtained blank cheque from him nor he has produced and evidence to show that he and his sister Mudamma had repaid the entire advance amount of Rs.4,50,000/- which they had obtained at the time of handing over the possession of their property for rent to the complainant. In the cross examination DW1 had clearly admitted that he was intimidated by the complainant regarding the termination of the rent agreement Ex.D1. In view of it, it is found the lease is terminated with the knowledge of accused/DW1. On careful perusal of the entire document produced by the accused it is found that no single piece of document has been produced by the accused except payment of Rs.1,90,000/- as per Ex.D2(a), to show that accused and his sister Mudamma have repaid the entire advance amount of Rs.4,50,000/- which they had obtained as a advance of rent to the rental property. In the instant case accused had taken the contention that other than Rs.1,90,000/- he had paid an amount of Rs.35,000/- to the complainant but has not produced any evidence in support of the same. If at all it is considered that accused along with his sister Mudamma has paid Rs.1,90,000/- including Rs.35,000/- then also accused is in due of remaining payment of balance amount to the complainant. The evidence discloses that in discharge of remaining legal due and

liability accused had issued a cheque for an amount of Rs.1,20,000/- to the complainant. It is pertinent to note that in the cross examination of PW1 accused contended that the ink that has been used to sign and fill the content of the cheque are different for which complainant had deposed that accused has filled the said cheque and handed over for the repayment of the due amount.

12. At this juncture I would like to refer the dictum of law reported in the judgment of Hon'ble Supreme Court:

2019 SAR 2446 (Criminal) 309 Supreme Court, ( Bir Singh v/s Mukesh Kumar).

(E) Negotiable Instruments Act (26 of 1881), S, 138, 139 - Dishonour of cheque - Presumption as to legally enforceable debt - Rebuttal - Onus to rebut presumption that cheque issued in discharge of debt or liability is on accused. (Para 36)  
(G) Negotiable Instruments Act, (26 of 1881), Ss.138, 139 - Presumption as to legally enforceable debt - Rebuttal - Signed blank cheque- If voluntarily presented to payee, towards payment, payee may fill up amount and other particulars and it in itself would not invalidate cheque - Onus would still be on accused to prove that cheque was not issued for discharge of debt or liability by adducing evidence.

(Para-38).

(H) Negotiable Instruments Act (26 of 1881), Ss, 138- Dishonour of cheque - Complainant can fill up amount or particulars in blank cheque. (Para 38).

(J) Negotiable Instrument Act 26 of 1881), Ss. 138, 139 - Dishonour of cheque - Absence of finding that cheque was not signed by accused or not voluntarily made over to payee- No evidence regarding circumstances in which blank signed cheque given to complainant - Cheque presumed to be filled in by complainant being payee in presence of accused, at his request or with his acquiescence- No change in amount, its date or name of payee- Subsequent filing in of an unfilled signed cheque is not alteration- Accused liable to be convicted. This ruling is applicable to the present facts and circumstances of the case since in para-36, 37, 38 & 40 the Hon'ble Supreme court has clearly laid down the dictum of law that the onus to rebut the presumption u/s 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque may be post dated does not absolve the drawer of the cheque of a penal consequences of sec.138 of the N.I Act. In the instant case accused though contended that the disputed cheques have been obtained by the complainant illegally and misused the same, but failed to prove the said fact by producing cogent evidence and relevant document. In view of the dictum of law laid down by the Hon'ble Supreme Court the contention that has been taken by the accused counsel in the cross examination that the dispute cheque Ex.P3 has been filled as per the convenience by the complainant cannot be taken into consideration and accepted. On perusal of the said ruling the Hon'ble Supreme Court had made it very clear that if a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill of the amount and other particulars. This in itself would not invalidate the cheque. The Onus would still be on the accused to prove that the cheque was not in discharge of debt or liability by adducing evidence. It is further held that even blank cheque leaf, voluntarily signed and

handed over by the accused, which is towards some payment, would attract presumption u/s 139 of the Negotiable Instrument Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. It is also held that the provisions of Sec.20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. As per the dictum of law laid down by Hon'ble Supreme Court in this ruling is squarely and aptly applicable to the present facts and circumstances of the case. From the above reasons and discussions accused has utterly failed to rebut the presumption existing in favour of the complainant u/s 139 of the N.I Act and also failed to establish that the cheque Ex.P3 has never been issued by him in discharge of his legal debt and liability.

13. The accused has relied a ruling reported in:

LAWS (SC) 2013 12 4 SUPREME COURT OF INDIA Criminal Appeal No.2043 of 2013 @ SLP (Crl) No.9505 of 2011) John K Abraham v/s Simon C. Abraham On perusal of the said judgment the Hon'ble Supreme Court has held that if there are various defects in the evidence of complainant which strikes at root of complaint, conviction of accused not sustainable. This ruling is not applicable to the case of the accused since there is clear evidence from the complainant and admission from the accused that there was a lease transaction between the complainant and the accused on the property of the accused and accused had issued the cheque for the repayment of the advance amount which he had received from the complainant after the termination of the lease.

14. Accused has produced another ruling reported in:

INDIAN LAW REPORTS 2010 KARNATAKA SERIES ILR 2010 KAR 4242 SRI. SHIVAPPA REDDY V/S SRI.

C.K JAGANNATH The dictum of law laid down in this ruling is not applicable to the case of the accused. In the referred case it is held that issue of cheque by the accused which was not in his name but it is in the name of some other institute then the provision of Sec.138 of the Act has not been fulfilled. In the instant case on hand on perusal of Ex.P3 it clearly discloses that the cheque belong to the accused and standing in his personal name. Further it is equally important to note that accused had admitted the cheque Ex.P3 of his account and also admitted his signature Ex.P3(a) on the said cheque. When this is the fact then there is no question that the cheque is not standing in the name of the accused. Accordingly, the ruling cannot be applied to the case of the accused to prove his defence.

15. At this juncture I would like to discuss the ruling reported in:

AIR 2019 SUPREME COURT 1876 Rohitbhai Jivanlal Patel v/s State of Gujarat and another (A) Negotiable Instruments Act (26 of 1881), Ss. 138, 139 - Dishonour of cheque - Rule of Presumption of innocence of accused - Cannot be applied with same rigour to offence u/s 138, particularly where presumption is drawn that holder received the cheque for discharge, the debt or liability.

(B) Negotiable Instruments Act (26 of 1881), Ss.118, 138 - Dishonour of cheque - Presumption in favour of holder - All basic ingredients of Ss.138, 118 and 139 are apparent on fact of record - Therefore, it is required to be presumed that cheques in question were drawn for consideration and complainant received it is discharge of an existing debt. (D) Negotiable Instruments Act (26 of 1881), Ss. 138, 139 - Dishonour of cheque - Principles of presumption - Once presumption of existence of legally enforceable debt drawn in favour of complainant, onus is shifted on accused - unless onus is discharged by accused that preponderance of probabilities are tilting in his favour, doubt on case of complainant cannot be raised for want of evidence regarding source of funds for advancing loan to accused.

On perusal of the ruling it is found that the ruling is applicable to the present facts and circumstances of the case. It is clearly held that an all basic ingredients of Sec.138, 118 and 139 are apparent on actual record then it is required to be presumed that the cheque in question was drawn for consideration and the holder of the cheque i.e a complainant had received the same in discharge of an existing debt. The onus shifts on the accused who has to establish by probable defence so as to rebut such a presumption but in this case the accused has utterly failed to produce probable defence that the cheque's were not issued in discharge of legal debt and liability. It is very pertinent to note that though accused has lead his evidence but failed to prove the said fact that the said cheque was not issued for the discharge of legal debt and liability. It is clearly held in the said judgment that unless the onus is discharged by accused that preponderance of probabilities are tilting in his favour, doubt on case of complainant cannot be raised.

16. At this juncture I would also like to discuss the citation reported in AIR 2018 Hon'ble Supreme Court 3601 (T.P Murugan (Dead) Thr.Lrs.V Bojan AND Posa Nandhi Rep.Thr, POA Holder, T.P Murugan v. Bojan) In this ruling at para-8 the Hon'ble Supreme Court has laid down the dictum of law that u/s 139 of the N.I Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability by referring to K.N.Beena v/s Muniyappan and Another, (2001) 8 SCC 458, para-6 and Rangappa v/s Shrimohan (2010) 11 SCC 411, para 26 . It is further held that the presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan. The dictum of law laid down by Hon'ble Supreme Court in this case is aptly applicable to the fact and circumstances of the present case since accused has utterly failed to rebut the presumption u/s 139 of N.I Act existing in favour of the complainant that the cheque Ex.P3 issued by him is not for discharge of any legal debt or liability. Per contra, the complainant has proved the case by overwhelming evidence to establish that the accused has issued the cheque for discharge of his legal debt regarding repayment of the advance amount of rent of Rs.4,50,000/- which he had obtained from the complainant company. From all these reason it is crystal clear that accused is not entitle for any relief u/s 138 of N.I Act.



17. It is the evidence of PW1 that after receiving the memo from the bank regarding dishonour of cheque issued Ex.P5 notice on 31.05.2018 through RPAD calling upon the accused to pay the cheques amount within 15 days from the date of receipt of the said notice and inspite of the service of the said notice accused failed to pay the cheques amount nor replied. In order to prove the said fact the complainant has produced the notice Ex.P5 dated:31.05.2018 and the postal receipt Ex.P5(a) & 5(b) and postal acknowledgment Ex.P6 which discloses that the notice has been send through RPAD to the accused and the same has been duly received by the accused. In the cross examination of DW1/accused admitted that the legal notice has been received by him and he has not replied to the said notice. Further in the cross examination DW1 admits his signature on the acknowledgment Ex.P6 which is marked as Ex.P6(a) due to admission by the accused. From this admission it is crystal clear that accused on the date of the service of the notice Ex.P5 was residing in the address mentioned in the complaint Ex.P8, notice Ex.P5 and address mentioned in postal acknowledgment Ex.P6 and obtained the said acknowledgment by impressing his signature Exp6(a) on the said acknowledgment. From this fact it is crystal clear that the complainant overwhelmingly proved that he has complied the mandatory provisions of Sec.138(b) by issuing notice to the proper address of the accused.

18. At this juncture on this point regarding service of notice I would like to reproduce the principle laid down by the Hon'ble Apex Court of India in a decision reported in 2007 (3) Crimes 120 (SC) (C.C. Alavi Haji V/s Palapetty Muhammed & Anr), 2007 AIR SCW 3578 (C.C.Avavi Haji v/s Palapetty Muhammed & Anor).

On perusal the said ruling it is found that the Hon'ble Supreme Court held at para- 8 that :

Sec.138 of the act does not require that the notice should be given only by 'post', yet in a case where the sender as a dispatched the notice by post with correct address written on it, the principle incorporated in section 27 of the General Clause Act 1897 (for short GC Act) could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been affected on the sendee unless he proves that it was not really served and that he was not responsible for such non service. Further at para -10 it is held that : The requirement of clause (b) of the provisions of Sec.138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in clause (c) of the said proviso to Sec.138 for payment by the drawer of the cheque. Nevertheless it would be without prejudice to the right of the drawer to show that he had now knowledge that the notice are brought to his address.

This ruling is aptly applicable to the present case on the hand since the notice Ex.P5 has been duly served to the accused as per the postal acknowledgment Ex.P6. It is pertinent to note that if notice sent through RPAD by correctly addressing drawer of the cheque, mandatory requirement of issue of notice in terms of (b) of proviso to u/s 138 of N.I. Act stands complied with. Therefore, sending legal notice to the correct address of the accused as per the dictum of law laid down in the above case is sufficient to establish that the complainant has complied the mandatory provision u/s 138(b) of N.I. Act.

19. The word 'unless contrary is proved' is discussed by the Hon'ble Apex Court in a decision reported in 2011 CrL.J 4647 (SC). It is observed that "the accused is under the obligation to prove his case in trial by leading cogent evidence that there was no debt or liability to the satisfaction of the Court". 'Unless contrary is proved' means the presumption has to be rebutted by proof and not by a bare explanation which is mere plausible. The said fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that the reasonable man could act on the supposition that it exists. Therefore, unless explanation is supported by proof, the presumption created by the provisions cannot be said to be rebutted. In the instant case accused has utterly failed to rebut the presumption by producing cogent evidence and relevant document that the cheque Ex.P3 has not been issued by him in discharge of his legal debt and liability for the repayment of the advance rent amount.

20. In this case, the court on perusal of the materials placed before the court is satisfied that the mandatory requirements of Sec.138 and 142 of N.I. Act has been duly complied. It is evident that the cheque/Ex.P3 presented for encashment within the validity time, notice Ex.P5 demanding the cheque amount and filing of complaint/Ex.P8 before the court after service of notice are within the period of specified by law.

21. On appreciation of entire evidence, this court is of the opinion that the accused miserably failed to challenge the oral and documentary evidence produced by the complainant. Accused has utterly fails to prove the fact that he has not issued cheques for discharge of legally enforceable debt. On the contrary, the complainant has proved through overwhelming evidence that the accused has issued Ex.P3/cheque for a sum of Rs.1,20,000/- towards discharge of legally enforceable debt and on presentation of the cheques, the same was dishonoured for the reasons 'Funds Insufficient' and even after service of legal notice, the accused has not paid the cheques amount. Hence, in the considered view of this court, the complainant has proved that the accused has committed an offence punishable u/s 138 of N.I. Act. Hence, I answer the above point No.1 in the affirmative.

22. Point No.2:- From the material on record, it appears that the accused is aged about 38 years and doing coolie work. Considering the age, avocation of accused and quantum of the cheque, if the accused is sent to jail, it would cause problem to the accused as well as to his family members. Having regard to the facts and circumstances, prevailing rate of interest in the nationalized Bank and litigation expenses, I proceed to pass the following:

ORDER The accused is found guilty of the offence punishable u/s 138 of N.I. Act.

Acting u/s 255(2) of Cr.P.C. the accused is hereby convicted and sentenced to pay fine of Rs.1,75,000/-, in default shall undergo simple imprisonment for three months.

Out of fine amount of Rs.1,75,000/- a sum of Rs.1,70,000/- is ordered to be paid to the complainant towards compensation u/s 357(3) of Cr.P.C. and the balance amount of Rs.5,000/- shall be remitted to the State.

The bail bond executed by the accused stand cancelled.

Supply free copy of the judgment to the accused. (Dictated to Stenographer directly on the Computer, taken print out corrected, signed by me and then pronounced in the open court this the 11th day of February, 2020) (ABDUL RAHIM HUSSAIN SHAIKH) XXVIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE LIST OF WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT :

PW<sub>1</sub> : Sri. Suresh LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

DW<sub>1</sub> : Venkataramaiah LIST OF DOCUMENTS MARKED ON BEHALF OF THE COMPLAINANT:

Ex.P1	:	Board resolution
Ex.P2	:	Authorization
Ex.P3	:	Cheque
Ex.P3(a)	:	Signature of the accused
Ex.P4	:	Bank memo
Ex.P5	:	Legal Notice
Ex.P5(a)&(b)	:	Postal receipts
Ex.P6	:	Postal acknowledgment
Ex.P7	:	Legal notice found in the returned postal cover
Ex.P7(a)	:	Cover
Ex.P8	:	Complaint

LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENCE:

Ex.D1	:	Rent Agreement
Ex.D2	:	Pass book

XXVIII Addl. Chief Metropolitan  
Magistrate, Bengaluru.

Judgment pronounced in the  
open court vide separate order.

ORDER

The accused is found guilty of the offence punishable u/s 138 of N.I. Act.

Acting u/s 255(2) of Cr.P.C. the accused is

Has Paid A Sum Of Rs.4 vs That He Paid Rs on 11 February, 2020

hereby convicted and sentenced to pay fine of Rs.1,75,000/-, in default shall undergo simple imprisonment for three months.

Out of fine amount of Rs.1,75,000/- a sum of Rs.1,70,000/- is ordered to be paid to the complainant towards compensation u/s 357(3) of Cr.P.C. and the balance amount of Rs.5,000/- shall be remitted to the State.

The bail bond executed by the accused stand cancelled.

Supply free copy of the judgment to the accused.

XXVIII A.C.M.M, Bangaluru.