

## M.Munikrishna vs G.Varalakshmi on 2 June, 2018

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

Dated this the 2nd day of June - 2018

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,  
XXIII Addl.C.M.M., Bengaluru City.  
C.C.NO.27618/2015

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : M.Munikrishna,  
S/o.Late.Minimarappa,  
Major in age,  
R/at No.13, 7th Cross,  
Byrahanumanna Compound,  
BCC Layout, Vijayanagar,  
Bengaluru-40.

(Rep. by Sri.A.N.Radhakrishna, Adv.)

V/S  
Accused : G.Varalakshmi,  
W/o.K.Channabasappa,  
Major,  
No.2286, 14th Cross, 4th Main,  
Hampinagara, RPC Layout,  
Vijayanagar 2nd Stage,  
Bengaluru-40.  
(Rep.by Sri. Prakash.T.S, Adv.)

OFFENCE COMPLAINED OF : U/Sec. 138 of Negotiable  
Instruments Act.

PLEAD OF THE ACCUSED : Not guilty.

Judgment 2 C.C.27618/2015

FINAL ORDER : Accused is Acquitted.

DATE OF ORDER : 02.06.2018.

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

JUDGMENT

The complainant has presented the instant complaint on 17.10.2015 against the accused under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.20,00,000/-.

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

The accused is the absolute owner of the property bearing No.1987 (New No.52) situated at 2nd Main Road, Hampinagara, R.P.C. Layout, Railway Pipe Line, Chord Road Extension, BBMP Ward No.34. The accused has entered into an agreement to sell the said property on 25.01.2013 with the complainant and further, the accused has agreed to sell the aforesaid property for a sum of Rs.40,00,000/- to clear debts and for establishment of Boutique Shop. The accused has received a sum of Rs.20,00,000/- as advance sale consideration on 25.01.2013 from the complainant by way of cash at the time of executing the sale agreement. The accused agreed to receive the balance sale consideration of Rs.20,00,000/- at the time of registration and further the accused has agreed to execute the sale deed within 6 months from 25.01.2013.

The complainant further has alleged that, he approached the accused and requested her to execute the sale deed after taking remaining/balance sale consideration and however, the accused has requested him to grant another six months to execute the sale deed, which was also expired on 24.07.2014.

The complainant has further contended that, the accused went on postponing the same/dragged on the same by giving false assurances on one pretext or the other.

The complainant has further alleges that, having no other alternative, he has sent legal notice on 21.07.2015 through his advocate by R.P.A.D to the accused, calling upon her to execute the sale deed after receive the balance sale consideration of Rs.20,00,000/-. The said legal notice was served on the accused on 23.07.2015. Thereafter, the accused had approached the complainant and orally requested him and expressed her inability to execute the absolute sale deed for the reasons best known to her, however, she agreed to repay the advance money received by the complainant on 25.01.2013 and for which, the accused got issued a cheque bearing No.000006, dated 09.08.2015 drawn on HDFC Bank, Magadi Chord Road Extension, Vijayanagar Club Road Branch, Bengaluru in favour of the complainant for a sum of Rs.20,00,0000/-. The accused assured the complainant to present the said cheque and the same will honour the same.

The complainant has further contended that, on the assurance of the accused, he presented the said cheque for realization on 03.08.2015 through his banker viz., State Bank of Mysore, Chandra Layout Branch, Bengaluru and to his dismay the aforesaid cheque is dishonoured and returned unpaid as per endorsement stating "Account Closed" and the same came to known the complainant on 26.08.2015.

The complainant has further alleges that, in respect of the dishonour of the cheque, he caused legal notice on

03.09.2015 through his advocate to the accused and calling upon her to pay the amount covered under the cheque. The same was duly served upon accused on 04.09.2015. After service of notice the accused neither paid the money nor gave reply. The accused knowing full well that, she has executed the sale agreement and received a sum of Rs.20,00,000/- and she has failed to perform her part of contract. And cheque issued by her was dishonoured as she wantonly closed the account in order to cheat or deceive the complainant. Thereby, she committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, the complaint.

3. After presentation of the complaint before this court, my predecessor in office took the cognizance for the offence punishable under Section 138 of Negotiable Instruments Act against the accused and process was issued.

4. In response to the process, the accused was appeared before this court through his counsel and obtained the bail. The complaint copy was furnished to the accused as required section 207 of Cr.P.C. Thereafter, the accusation was read over and explained to the accused, she denied the same and claimed to have the defence.

5. In support of the case of the complainant, himself chosen to examined as PW.1 and got marked Exs.P1 to P15, and also subjected for cross-examination by the advocate for the accused. With that closed the side.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and the answer was given by her was recorded. In support of the defence, the accused herself is examined as DW.1 and got marked Exs.D1 and D2 and also subjected for cross-examination by the advocate for the complainant.

7. The complainant counsel not choosen to address the arguments. Heard the arguments from the accused counsel.

8. Based upon the rival contentions, the following points have been arising for determination:

1) Whether the complainant proves that, in respect of the purchase of the property of the accused, the complainant has paid sum of Rs.20,00,000/- as advance sale consideration and for refund of the same, the accused has issued the cheque at Ex.P1 bearing No.000006, dated:09.08.2015 drawn on HDFC Bank, Magadi Chord Road, Bengaluru to the complainant?

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

3) What Order?

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

Point No.1 : In the Negative Point No.2 : In the Negative Point No.3 : As per final order, for the following:

#### REASONS UNDISPUTED FACTS

10. The fact that, the husband of the complainant and accused are known to each other is not in dispute. The fact that, the Ex.P1 cheque belongs to the accused is not in dispute. The fact that, the signature found at Ex.P1(a) is also belongs to the accused is not in dispute. The fact that, some of the payment has made from the account of the accused to the account of the complainant as found at Ex.D1 is not in dispute.

11. POINT NOS.1 and 2: Since these two points are connected with each other, they have taken together for common discussion in order to avoid repetition of facts.

On going through the materials available on record, to prove the case of the complainant, the PW.1 is examined. The PW.1, in his substantial examination affidavit evidence, he reiterating the complaint averments and got marked Exs.P1 to P15, which are:

a) Ex.P1 is the cheque alleging to be issued by the accused bearing No.000006 for sum of Rs.20 lakhs, dated:09.08.2015 drawn on HDFC Bank.

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

c) Ex.P2 is the Bank Memo.

d) Ex.P3 is the Legal Notice dated:02.09.2015.

e) Exs.P4 and P5 are the Postal receipts.

f) Exs.P6 and P7 are the Postal Acknowledgment Cards.

g) Ex.P8 is the alleged sale agreement dated:25.01.2013 executed by the in favour of the complainant.

h) Ex.P8(a) and P8(b) are the alleged signatures of accused.

i) Ex.P9 is the copy of registered agreement of sale dated:08.06.2015.

j) Ex.P10 is the certified copy of order sheet and private complaint pertaining to C.C.No.5356/2016.

k) Exs.P11 and P12 are the Certified copies of order sheets and private complaints pertaining to C.C.Nos.398/2016 and 9683/2016.

l) Ex.P13 is the notice dated:21.07.2015 issued by the complainant herein to the accused.

m) Ex.P14 is the postal receipt, and

n) Ex.P15 is the Postal Acknowledgment Card.

The PW.1 was subjected to the cross-examination by the advocate for the accused.

12. Apart from cross-examining the PW.1, the accused herself chosen to examined as DW.1. In her affidavit evidence as well as during the course of cross-examination of PW.1, she has taken the specific defence in brief that:

She has not executed an agreement of sale at Ex.P8 in favour of the complainant at any point of time, but when she obtained the hand loan of Rs.50,000/- from the complainant, at that point of time she gave the blank signed cheque and blank signed stamp paper for security purpose of the hand loan amount. So many times, she demanded the complainant to return the said documents, but he has not returned and misused the same by fraudulently created the bogus agreement at Ex.P8 for wrongful gain. The said bond paper was taken in respect of the hand loan and she never taken sale consideration of Rs.20 lakhs from the complainant at any point of time and she has not necessity to take that huge amount from the complainant.

Moreover, she had not intention to sell her property in favour of the complainant or anybody and she not executed the sale agreement and misused the blank signed cheque and blank signed bond paper created the document and filed the false case against her.

13. On going through the rival contentions of the parties, it made clear that, the accused not admitted the case put forth by the complainant, but she has strongly harping on the claim made out by the complainant. Apart from that, she produced the document at Exs.D1 and D2, they are:

a) Ex.D1 is the pocket book

b) Ex.D2 is the letter dtd:02.12.2016

14. The DW.1 was subjected to the cross-examination by the advocate for the complainant. In support of his case, the accused through her counsel has produced the citations and relied upon same, they are;

a) LAWS (SC)2008 10 106

b) (2015) I Supreme Court Cases 99

c) (2009) 2 SCC 513

d) (2007) 12 SCC 714

e) Laws (KAR) 2011 1135

f) ILR 2007 KAR 1708

g) 2009 Cri. L.J 3777

h) 2016 (5) KCCR 1341

i) ILR 2007 KAR 2709

j) 2009 (1) Crimes 264

k) 2015 AIR SCW 64

15. No doubt, as per Section 118 of Negotiable Instruments Act, the initial presumption is drawn in favour of the complainant that, for discharge of legally recoverable debt, the accused got issued the questioned cheque in favour of the complainant. Even Section 139 of Negotiable Instruments Act, also draw the presumption in favour of the complainant regarding statutory presumption. But, the contrary if raised by the accused definitely, the burden is reverse on the complainant to prove his case beyond the reasonable doubt. In view of the strong defence taken by the accused and production of documents, definitely, it is the reverse burden casted upon the complainant to establish his case beyond the reasonable doubt.

16. It is the specific defence of the accused that, at the time of she borrowing loan of Rs.50,000/-, the complainant got obtained the signed blank cheque and signed stamp paper and the same has been misused. Very particularly, she contended the said stamp paper was purchased for the purpose of obtaining loan. On meticulous reading of the Ex.P8 the alleged agreement of loan, it discloses that, the same is not registered. Wherein, the sale consideration is made mentioned as Rs.40 lakhs, out of which alleges to be paid sum of Rs.20 lakhs to the accused by the complainant. The said factum has been denied by the accused. On going through the purpose of purchasing the stamp paper, it discloses that, it does not mentioned for purchase the same for the purpose of "Sale of Property", but specifically described the purpose as "Loan Agreement" as contended by the accused. Therefore, it made clear that, the purchaser of the stamp paper, who is none other than the accused herein, purchased the said stamp paper only for the purpose of loan agreement. But contrary to the said purpose, it is the complainant has to establish for purchase the same other than the said purpose. No doubt, the recitals of the said agreement discloses in respect of selling the property No.987, new No.52, the accused alleged to be come forward to execute the said agreement in favour of the complainant.

17. On meticulous reading of the recitals at page No.2 it has been stated that, the accused is the absolute owner of the portion of the house property. The Ex.P9, the agreement of sale dated:08.06.2015 executed by the accused and other 9 persons in favour of Narendrakumar and Manju Devi, inspite of the very same property discloses that, along with the accused other 9 persons have right. Under such circumstances, how the accused alone came forward to execute the sale agreement as alleged by the PW.1 as per Ex.P9 is created doubt in the mind of the court. It is not recited in the said sale agreement regarding, in respect of which portion of the property, the accused got received Rs.20 lakhs as advance sale consideration, if so, what will be the shares of other persons, whether the complainant has paid their respective shares or not to them is not been explained. Any how, the Ex.P8 has been seriously disputed by the accused. The accused admitted that, Ex.P8(a) and 8(b) signatures found therein is of her. But, denies the other contents of sale agreement. Though, there is mentioning of witnesses name of Uma.V and H.M.Mayanna, to prove its execution or passing of consideration of Rs.20 lakhs in favour of the accused, the complainant not choosen to examined any one of the witness. Therefore, the defence put forth by the accused has to be accepted that, the said stamp paper was purchased only for loan agreement, not for the sale agreement. The PW.1 not choosen to remove the cast clouded on the genuineness of the said sale agreement. Since, the accused proved that, the said stamp paper was purchased for loan agreement, the genuineness of the sale agreement cannot be discussed, because it has to be discussed in specific performance suit, if the complainant opt for specific performance. In this case, the PW.1 brought the present case for recovery of sum of Rs.20 lakhs and contended based on Ex.P8, he paid sum of Rs.20 lakhs to the accused, therefore, he shall prove the passing of consideration. During the course of cross-examination of PW.1, he admitted that:

"DgÉÆÃ|UÉ gÀÆ.20 @PÀë °Àt PÉÆqÀÄªÁUÀ GªÀiÁª ªÄvÄÄÜª ªÀiÁiÀÄtÜ JÉÄÄªªªÄgÄÄ EzÄÝgÄÄ. DgÉÆÃ|UÉ °ÀtªÆÄÄª ¢£ÁAPª ¢.25.01.2013gÄAzÄÄ ªÄrgÄÄvÉÜÄ£É. °ÀtªÆÄÄª £ÄªÄÄª ªÄ£ÉAiÄÄ°è ªÄrgÄÄvÉÜÄ£É. DgÉÆÃ|UÉ ªÄrzÄ °ÀtªÆÄÄª ªÄAQªAzÄ vÄAzÄÄ PÉÆnÖgÄªªÄ¢®è. DgÉÆÃ|UÉ ªÄrzÄ gÀÆ.20 @PÀë °ÀtzÄ ¥ÉÊQ, ªé®à °Àt C°è E°è £Ä£Äª, ÉßÄ»vÄgÄ §½ ¥ÄqÉzÄÄPÉÆAqÄÄ DgÉÆÃ|UÉ ªÄrgÄÄvÉÜÄ£É. £Ä£Äª, ÉÆÄzÄgÄ ¥ÄÄÖYÄªªAzÄ gÀÆ.5 @PÀë °Àt, £Ä£Äª, ÉßÄ»vÄ UÄAUÁzÄsgÄ JÉÄÄªªAzÄ gÀÆ.2 @PÀë °Àt ¥ÄqÉzÄÄPÉÆAqÄÄ, G½zÄ °Àt gÀÆ.13 @PÀë °Àt £ÄªÄÄª ªÄ£ÉAiÄÄ°è EzÄÄÝzÄ£ÄÄª, ÉÄj¹ MÄÖ DgÉÆÃ|UÉ gÀÆ.20 @PÀë °ÀtªÆÄÄª ªÄrgÄÄvÉÜÄ£É. £Ä£Äª, ÉÆÄzÄgÄª ªÄvÄÄÜª, ÉßÄ»vÄ£Ä£Äª £ÄªAiÄiÄ®AiÄÄPÉÌ PÄgÉvÄAzÄÄ, ÄQë £ÄÄr, Ä®Ä £Ä£ÄUÉ AiÄiÁªªÄzÉÄ vÉÆAzÄgÉ EgÄªªÄ¢®è."

"ª|-8 SÁ° ªÄqí ¥ÉÄYÄgi£ÄÄª DgÉÆÃ| ¢.03.12.2012gÄAzÄÄ RjÄ¢¹, Ä®zÄ ªÄszÄævÉUÁV £Ä£ÄUÉ, ª»ªÀiÄrzÄ SÁ° ªÄqí ¥ÉÄYÄgi£ÄÄª ªÄrzÄÝgÄÄ JAzÄgÉ, ÄjAiÄÄ®è. ª|-8gÄ°è ªÆÄ£i CVæªÉÄAmi JAzÄÄ §gÉ¢zÉ JAzÄgÉ, Äj. DgÉÆÃ|UÉ gÀÆ.20 @PÀë °Àt ªÄqÄ®Ä £Ä£ÄUÉ vÉÆAzÄgÉ EgÄ®è JAzÄgÉ, ÄQë DgÉÆÃ| ZÉPiªÄÄÆ®PÄ ªÄqÄ JAzÄÄ °É½zÄÝgÉAzÄÄ GvÄÜj¹gÄÄvÄÜgÉ. gÀÆ.20,000/- QÄvÄªÉÄÄ®ÄlÖ °ÀtªÆÄÄª ªÄ£ÉAiÄÄªjUÉ PÉÆqÄªªÄPÄzÄgÉ CzÄ£ÄÄª ZÉPiªÄÄÆ®PÄ PÉÆqÄªªÄPÉ£ÄÄªªªAiÄªªÄ UÉÆvÄÄÜª. ¥ÄÄÖYÄªªgÄªJAzÄ gÀÆ.5 @PÀë ªÄvÄÄÜª UÄAUÁzÄsgÄ gÄªJAzÄ

gÀÆ.2 ®PÀë °Àt ¥ÀqÉzÄÄPÉÆArzÉÝ JAzÄÄ vÉÆÄj, À®Ä AiÀiÁªÄÄzÉÄ  
zÁR¯ÉAiÄÄ£ÄÄß F PÉÄ¹£Ä°è °ÁdgÄÄªÄiÁr®è."

18. On going through the above testimony of PW.1, in the 1st part clearly discloses that, at the time of paying the alleged part sale consideration of Rs.20 lakhs, one Uma and Mayanna were present, they were the relative and friend of PW.1. The PW.1 also specifically deposed that, on 25.01.2013, he gave the said money in his house to the accused and not bought the said money from his bank account, but specifically contended that, out of Rs.20 lakhs money gave to the accused, portion of money was adjusted by him from his friends, accordingly, from his brother by name Puttappa took Rs.5 lakhs, from his friend by name Gangadhar took Rs.2 lakhs and Rs.13 lakhs was with him and mobilized the same and gave it to the accused. In order to show that, he collected money from his brother and friend he has not impediment to examined them. If at all, the PW.1 borrowed money from his brother and friend, definitely to substantiate his contention could have been examined them, but not choosen todo so, for the reasons best known to him. If at all, the PW.1 arranged the Rs.13 lakhs with him, as per his own say it is not withdrawn from his bank account, but it was with him. How he maintained Rs.13 lakhs with him, he being the retired employee and on which source he possessed the Rs.13 lakhs also no satisfactory explanation is forth coming from the side of the complainant. In this case, the accused has challenged the financial capacity of the complainant, therefore for paying the alleged money of Rs.20 lakhs definitely it requires to establish the same. In that regard, it is just and property to focus on the decisions reported in (2015) 1 SCC 99 (K.Subramani V/s. K.Damodara Naidu). Wherein, it was pleased to held by the Hon'ble Apex court that:

"Debt, Financial and Monetary Laws - Negotiable Instruments Act, 1881 - Ss.138, 118 and 139 - Dishonour of cheque - Legally recoverable debt not proved as complainant could not prove source of income from which alleged loan was made to appellant-accused - Presumption in favour of holder of cheque, hence, held, stood rebutted - Acquittal restored".

In another decision reported in ILR 2009 KAR 1633 (Kumar Exports V/s. Sharma Carpets). Wherein, it was pleased to held by the Hon'ble Apex court that:

(D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof required rebuttal -

HELD, Rebuttal does not require proof beyond reasonable doubt - Something probable has to be brought record - Burden of proof can be shifted back to complainant by producing convincing circumstantial evidence - Thereafter the said presumption arising under Section 118 and 139 case to operate - To rebut said presumption accused can also rely upon presumptions under Evidence Act, 1872 Section 114 (common course of natural even human conduct and public and private business) - Evidence Act, 1872 - Section 114 - Presumptions of fact under".

In another decision reported in AIR 2011 (NOC) 75 (KAR) (Amzad PashaV/s. H.N.Lakshmana). Wherein, it was pleased to held by the Hon'ble Apex court that:



(B) Negotiable Instruments Act (26 of 1881). S. 138 -

Dishonour of cheque - Accused alleged to have taken loan from complainant - Complainant has not placed any evidence to show that he had financial capacity to lend substantial amount of Rs.4,50,000/- - Admittedly no document evidencing the loan transaction has come into existence - Case of complainant that he had lent Rs.4,50,000/- to the respondent is highly impossible and not acceptable - None of witnesses in presence of whom loan amount was paid by complainant examined by complaint - Adverse inference can be drawn against complainant - Accused liable to be acquitted". In another decision reported in Criminal Appeal No.2402 of 2014, between K.Subramani V/s K.Damodara Naidu, the Hon'ble Apex court held that:

"The Hon'ble Apex Court confirmed the Judgment of Trial Court acquitting the accused on the ground of capacity to pay the amount of cheque. In the above said ruling the Trial Court acquitted the accused on the ground that the complainant had no source of income to lend sum of Rs.14,00,000/-. In the appeal the 1st Appellate Court set aside the order and remanded the matter to the Trial Court to give an opportunity to complainant to prove the same. The accused went in appeal before the Hon'ble Apex Court and the Hon'ble Apex Court has set aside the order of the 1st Appellate Court and upheld the acquittal order passed by the Trial Court".

19. From the above said dictums, it is responsibility of the complainant to prove his financial capacity to arrange the money of Rs.20 lakhs in order to pay as part of sale consideration amount. The said proof is very much required as the accused borrowing money including the execution of sale agreement of Ex.P8 has been strongly denied. Though, he claimed to mobilize the funds through his friend and brother, he not choosen to examine them for the best reasons known to them, it discloses that, the PW.1 was not having that much financial capacity to pay sum of Rs.20 lakhs to the accused.

It is relevant to cite the decisions reported in AIR 2008 SC 278 between John K John V/s. Tom Verghees, the Hon'ble Apex court it is held that:

"the presumption under Section 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque. Whenever there is huge amount shown in the cheque, though the initial burden is on the accused, it is equally necessary to know how the complainant advanced such a huge amount".

In another decision reported in 2008 (7) SCC 655: 2008 (8) SCR 1210 (Mallavarupu Kasivisweswara Rao V/s. Thadikonda Ramulu Firm). Wherein, it was pleased to held that:

"By virtue of clause (a) of section 118 Court is obliged to presume that, the promissory note was made for consideration until the contrary is proved. Initial burden lies on the defendant to prove to non existence of consideration which would lead the Court to believe the non existence of consideration either by direct evidence

or by preponderance of probabilities showing that, the existence of consideration was improbable, doubtful or illegal".

In another decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

"Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, his admission in his evidence that, the cheque in question bares his signature would not be sufficient proof of the fact that, he delivered the said cheque to the complainant and the latter received it from the former".

20. From the point of above dictums also, it is the burden on the complainant to prove the possession of the said huge amount with him for paying the same as part of sale consideration to the accused.

21. On going through the 2nd part of the re-production of the above testimony it also made clear that, though the PW.1 has denied the Ex.P8 - blank stamp paper was purchased by the accused and affixed her signature. But it does not disclose that, who bought the said stamp paper. If at all, it was purchased by him, definitely it should be in his name and sale agreement purpose has to be assigned in the said stamp paper, but the same is lacking at Ex.P8. The PW.1 has admitted that, it was mentioned in the said agreement that, it was purchased for the purpose of loan agreement. Therefore, it is him to demonstrate that, the said stamp paper was purchased only for the purpose of execution of sale agreement, but no acceptable explanation forth coming from his side.

22. The PW.1 has deposed that, he was not impeded to pay the said money through cheque, but at the instance of the accused paid in cash. It is the responsibility of the complainant, who passes on the consideration more than Rs.20,000/- shall be made through the cheque as required under Section 69 of SS of Income Tax Act.

At this stage this court has gone through the decision reported in 2008 SAR (Criminal) 224 between Krishna Janardhan Bhat V/s. Dattatraya G.Hegde, the Hon'ble Supreme Court has observed that:

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

23. But in the present case, the complainant has not complied the same. If at all, he possesses the huge amount in his hand or account or collected through his friend and brother, definitely, he would have examined them to prove the same nor produce the necessary documents in that regard, but no such document has been produced by him. If at all, he really got executed the Ex.P8

- Sale Agreement, definitely, within the stipulated period he could have initiate necessary action for got execution of the sale deed nor recover the money by filing separate suit, but he not choosen todo so. The Ex.P2 bank memo discloses that, the cheque was dishonoured on account of 'account closed'. From the documents produced by the accused at Ex.D2, the certificate issued by the HDFC Bank, clearly discloses the fact that, the said account was closed on 04.07.2015. But, the alleged cheque was issued as per the say of PW.1 in the month of August, 2015. Therefore, it made clear that, as on the date of placing the questioned cheque in the hand of the complainant the accused of the accused already been closed for the reasons "High Cheque Return Weedout". If really, the complainant gave the said money to the accused, definitely, why collecting the questioned cheque, he could have alert in verifying the same. But he was not deligent in doing so.

24. Apart from that, the PW.1 has produced the documents at Exs.P10 to P12, which are none other than the private complaint copy with order sheet pertaining to the cases filed by the L.Sathyanarayana, Sadashiva and Hamsa Kumari against the accused herein in C.C.No.5356/2016, C.C.No.398/2016 and C.C.No.9683/2016. On going through the complainant allegations at Exs.P10 to P13 the L.Sathyanarayana was alleged that the accused borrowed Rs.10 lakhs on July, 2015, Sadashiva was alleges that, the accused borrowed sum of Rs.8 lakhs in the month of April, 2015 and Hamsa Kumar was alleges that, the accused was borrowed sum of Rs.6 lakhs on 15.11.2015. The said filing of separate cases are no where giving to weight to present case in deciding the present obligation of the accused. The every transaction asserted and denied by the respective parties has to be appreciated in each cases depends upon the facts and circumstances and materials made out in respect of each case. Admittedly, based on the cheques the Ex.P10 to P13 cases were filed against the accused. If really, she borrowed the money or issued the cheques, definitely it was subject to the trial and prove, but no such word its is obtained against the accused in the other cases. How the other cases are helpful to the PW.1 in proving the present case is also not been explained. If really, the accused in the habit of borrowing the loan and issuing cheque as alleged in the Exs.P10 to P13, definitely it is not the contention of the present complaint that, he lent sum of Rs.20 lakhs to the accused. But it is his case that, since the accused not come forward to execute the registered sale deed, for repayment of Rs.20 lakhs, she gave the questioned cheque, therefore the filing of other cases, definitely not could in the way of present case in deciding the liability of the accused.

25. During the course of cross-examination of DW.1, it was the suggestion made to her by the advocate for the complainant that:

"-8gÀ°è w1/21zÀ ±ÉqÀÆã¯i D1ÛAiÀÄ°è £À£ÀUÀÆ MAzÀÄ ¨sÁUÀ EzÉ JAzÀgÉ ,ÀjAiÀÄ®è. -8£ÀÄß £Á£ÀÄ |gÀâçUÉ §gÉzÀÄPÉÆnÖzÉÝ£ÉAzÀgÉ ,ÀjAiÀÄ®è. ,ÁQëUÉ aÀÄvÉÛ -8£ÀÄß vÉÆj1 CzÀgÀ°è vÉÆj1gÀÄa D1ÛAiÀÄ°è aÀÄUÉ CçüPÁgÀ EvÀÄÛ JAzÀÄ ,ÀÆa1zÁUÀ ,ÁQë EzÉ JAzÀÄ °ÉÄ1/2zÁÝgÉAzÀÄ £ÀÄrçgÀÄvÁÛgÉ. £Á£ÀÄ, £À£Àß vÀAzÉ vÀ-Ä, ,À°ÉÆÄzÀgÀ, ,À°ÉÆÄzÀgÀ ,À°ÉÆÄzÀjAiÀÄgÀÄ ,Éj ç.08.06.2015gÀAzÀÄ £ÀgÉÄzÀæ PÄÄaAiÁgi aÀÄvÀÄÛ aÀÄAdÄ1/4 zÉÄ« J£ÀÄßaÀjUÉ PÄæAiÀÄ ¥ÀvÀæaÀ£ÀÄß §gÉzÀÄPÉÆmÉÖaÀÄ JAzÀgÉ ,Àj. ,ÀzÀj PÄæAiÀÄ ¥ÀvÀæzÀ°è £À£ÀÄ 8£ÉÄ aÀAiÁgÁUÁgÀ1/4ÁVgÀÄvÉÛ£ÉAzÀgÉ ,Àj. ,ÀzÀj zÁR¯ÉAiÀÄ£ÀÄß -9 JAzÀÄ UÀÄgÀÄw,À¯Á-ÄvÀÄ."

26. From the case of complainant, Ex.P8 executed by the accused for the total sale consideration of Rs.40 lakhs, out of which Rs.20 lakhs as advance paid by him. If at all, the accused was sole owner of the said property, why the said suggestion has introduced above is made to the DW.1 that, she also having one share in the said property. If at all, she had one share, why the complainant came forward to entered into sale agreement for the consideration of Rs.40 lakhs without ascertain the right and share of other co-owners is created doubt in the mind of the court. The DW.1 from the earliest point go on denying the execution of Ex.P8, and successfully withstood for her cross-examination in that regard. The right of other persons in respect of the property bearing No.987, new No.52 is also admitted by the complainant by contending that, along with the accused some other 9 persons have sold the said property in favour of Narendrakumar and Manju Devi on 08.06.2015. The said factum is very much clear that, the accused not only having absolute right in respect of the said property, but other persons also having right, therefore, the Ex.P9 sale agreement was came to entered into. But the said contention the PW.1 has not produced any counter document. The DW.1 in her cross-examination, denied the very suggestion made by the complainant regarding creating the obligation as per Ex.P1.

27. Apart from that, to prove the contention of the accused, as she borrowed only the loan of Rs.50,000/- in the month of December, 2012, at that time, the complainant got obtained the signed blank cheque despite she repaid the money with interest as per Ex.D1, the complainant not returned the said cheque and got misused by presenting the same for encashment and filed the present case. The Ex.D1 discloses the borrowing of Rs.50,000/- on 04.12.2012 and in daily installment basis the accused paid the said money with interest to the same, there was counter signature for the person received the money was made. As per the say of DW.1, it was the signature of the complainant, but he denies the same. But was suggestion from the complainant with regard to the Ex.D1, the said document does not consists the signature of the complainant, but it was created. If really created, how it possible to the accused to mention the payment in different dates and ink with the alleged signature of the complainant. If the complainant is not affixed the said signature, it is the complainant has to prove the existence of Ex.D1. Except mere suggestion regarding denial nothing elicited from the mouth of DW.1 regarding the genuineness of entries made mentioned at Ex.D1. Whatever the suggestion made by the complainant in regard to Ex.D1 was straightaway denied by the DW.1 and she successfully withstood the said contention. Mere suggestion of denial regarding the existence or genuineness of Ex.D1 itself is not enough, when the document itself was in the hand of the accused and produced before this court, the rebuttable circumstances has to be made out by the complainant, but he fails to demonstrate the same. The Ex.D1 prima facie discloses the other financial transaction made between the complainant and accused.

28. During the course of cross of PW.1, he deposed that, except the sale transaction at Ex.P8, no earlier loan transaction was entered into between the complainant and accused. If such being the fact that, the Ex.D1 loan transaction for sum of Rs.50,000/- on 04.12.2012 was done is not explained by the complainant. Any how, the defence of the accused is probable and she can take any kind of inconsistency plea, but keeping in the mine of object as well as the decisions reported supra, it is the burden on the complainant to prove his case beyond the reasonable doubt. The complainant in order to show the passing of consideration of Rs.20 lakhs from him to the accused on account of sale transaction at Ex.P8 is not proved by him. Even, he fails to demonstrate that, the amount

covered under the said cheque is legally recoverable debt. If he possessed the Rs.20 lakhs or Rs.13 lakhs in his hand, it was not auditable money and no income tax has been submitted by him. Under such circumstances, he fails to demonstrate that, the amount covered under the cheque or alleged payment of advance money made by him is not the legal money. When he fails to prove the legal money, definitely, mere because of cheque consists of the sign of the accused and mentioning of money at Ex.P1, definitely, it does not create any legal obligation on the accused to pay the same. Moreover, the same is not legally recoverable debt, therefore not entitled to claim by the complainant from the accused. As discussed above, the complainant has failed to prove his case beyond the reasonable doubt. Therefore, the benefit of doubt has to be given to the accused and consequently she has to be acquitted.

29. On going through the materials available on record as appreciated above, it appears that, the complainant has utterly failed to prove the passing of consideration from him to the accused, as he put forth and the accused has issued the Ex.P1 cheque for the repayment of existing legally recoverable debt. When the complainant is failed to discharge the onus of reverse burden, it does not requires to discusses other things, as he utterly fails to prove his case beyond the reasonable doubt.

30. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, he fails to demonstrate his very case. While appreciate the materials available on record, this court has humbly gone through the decision reported in 2010 (2) DCR 80 Karnataka High Court (Matheson Bonsanquet V/s. K.V.Manjunatha). Wherein the Hon'ble Court held that:

"In a criminal case, the complainant has to prove beyond the reasonable doubt in his case against the accused as alleged in his complaint but not a case which is contrary to one alleged in the complaint. Further, it is also held that, cheque was issued as security for performing his part of contract entered into between himself and the complainant and further it is also not the case of the complainant that, the accused did the breach of contract then no offence arises under Section 138 of Negotiable Instruments Act".

31. The principle of law laid down in the above decision is aptly applicable to the case on hand. In the instant case, as appreciated above, it clearly manifested that, without any obligation from the side of the accused, as well as without narrating proper grounds, as to how accused is liable to pay amount covered under the cheque alleged to be issued by the accused is also not demonstrated by the complainant satisfactorily. On the contrary, it can presume that, the said cheque was possessed by the complainant from the unexplainable source, and falsely projected the case and failed to prove the same. Hence, there is no question of drawing presumption under Section 118(a) of the Negotiable Instruments Act, even though the signature in Ex.P1 is admitted by the accused. Just because, the cheque bares the signature of the accused, that, will not mandate the court to draw the presumption under Section 118 of Negotiable Instruments Act.

At this stage, this court relies upon the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

"Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, his admission in his evidence that, the cheque in question bares his signature would not be sufficient proof of the fact that, he delivered the said cheque to the complainant and the latter received it from the former".

32. The principle of law laid down in the above decision is applicable to the facts of this case. Merely because, the accused admits that, cheque bares his signature, that, does not mean that, the accused issued cheque in discharge of a legally payable debt.

In a decision reported in AIR 2006 Supreme Court 3366 (M.S.Narayana Menon Alian Mani V/s. State of Kerala and another). The Hon'ble Apex court held that:

"Once the accused discharges the initial burden placed on him the burden of proof would revert back to the prosecution".

33. In this case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, she is not liable to pay Ex.P1 cheque amount of Rs.20 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the accused has borrowed the cheque amount and he is legally liable to pay the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to initiate a proceeding against the drawer of the cheque, who is not at all liable to pay the cheque amount. The accused has taken her defence at the earliest point of time while record accusation and even in statement under Section 313 of Cr.P.C. by way of denial.

34. Basically, insertion of the penal provision under Section 138 of the Negotiable Instruments Act, 1881, is to maintain a healthy business transaction between the people based on faith, belief and understanding. That is why; the drawer of a cheque should not be allowed to abuse the accommodation given to her by a creditor. At the same time, the payee or holder of a cheque cannot be permitted to use that, penal provision under law as a weapon for unlawful gain or to harass the debtor. To initiate a penal action under Section 138 of Negotiable Instruments Act, against a drawer of cheque, there should not be any kind of lapse or lacuna on the part of the holder of a cheque. Because, the proceeding under Section 138 of Negotiable Instruments Act is not for recovery of money, but to punish a dishonest and incredible debtor, who intentionally tries to escape from his liability. That is why; it is the duty of the complainant in a given case under the Negotiable Instruments Act, 1881, to place a stable and firm case on her behalf before the court. When the case of the complainant itself is shaky, unstable, untrustworthy and doubtful one, then in the option of this court, presumption that, is available under law will come to her help. In the case on hand, the accused has taken several contentions before the court and made out grounds to show that, the case of the complainant is highly improbable.

35. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheque pertaining to the account of the accused is dishonoured and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied then it has to be presumed that, cheque in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases. Now it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

36. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the presumption envisaged under Section 138 of Negotiable Instruments Act. The complainant has failed to discharge the initial burden to prove is contention as alleged in the complaint. Hence, the complainant has not produced needed evidence to prove that, amount of Rs.20 lakhs legally recoverable debt. Therefore, since the complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the complainant in its entirety without the support of the substantial documentary evidence pertaining to the said transaction. The complainant fails to prove his case beyond all reasonable doubt. As discussed above, the complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

37. Point No.3: In view of my findings on point Nos.1 and 2, I proceed to pass the following:

ORDER Acting under Section 255(1) of Cr.P.C.

the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

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

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 2nd day of June - 2018)  
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : M.Munikrishna List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of accused
Ex.P2	:	Bank endorsement
Ex.P3	:	Office copy of legal notice
Exs.P4 & P5	:	Postal receipts
Exs.P6 & P7	:	Postal Acknowledgment cards
Ex.P8	:	Agreement of loan
Ex.P8(a) & P8(b)	:	Signatures of accused

Ex.P9	:	Copy of agreement of sale dtd:8.6.2015
Ex.P10	:	CC of order sheet and private complaint in C.C.No.5356/2016
Ex.P11	:	CC of order sheet and private complaint in C.C.No.398/2016
Ex.P12	:	CC of order sheet and private complaint in C.C.No.9683/2016
Ex.P13	:	Notice dtd:21.07.2015
Ex.P14	:	Postal receipt
Ex.P15	:	Postal Acknowledgment Card

List of Witnesses examined on behalf of the defence:

DW.1 : Varalakshmi List of Exhibits marked on behalf of defence:

Ex.D1	:	Small pocket book
Ex.D2	:	Letter dtd:02.12.2016

XXIII Addl. Chief Metropolitan  
Magistrate, Bengaluru.

02.06.2018.

Comp -

Accd -

For Judgment

Judgment pronounced in the open court vide  
separate order.

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ORDER

Acting under Section 255(1) of Cr.P.C. the

accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

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



XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.