

Smt.Madhu vs Smt.Mahadevamma on 21 May, 2018

IN THE COURT OF THE XVI ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY

Dated: This the 21st day of May, 2018

Present:- Smt. Saraswathi.K.N, B.A.L., LL.M.,
XVI Addl.C.M.M., Bengaluru City.
JUDGMENT U/S 355 OF Cr.P.C.,

Case No. : C.C.No.5625/2014 & C.C.No.6896/2014
C/w
C.C.No.10414/2015

Complainant : SMT.MADHU
W/o.Sri.Lakshman,
Aged about 31 Years,
R/at No.25, I Cross,
Marenahalli,
Vijayanagar,
Bengaluru - 560 040.

(Rep. by Sri.D.Seshadri and another, Advs.,)

- Vs -

Accused : SMT.MAHADEVAMMA,
W/o.Kemparaju,
R/at No.22, II Floor,
1st 'B' Main Road,
Papanna Garden,
Basaveshwaranagara,
KHB Colony,
Bengaluru - 560 079.

(Rep. by Sri.R.Manjunatha, Adv.,)

Cases instituted : C.C.No.5625/2014 - 4.2.2014;
C.C.No.6896/2014 - 12.12.2013;
C.C.No.10414/2015 - 21.7.2015.
2 C.C.No.5625/2014 J & C.C.No6896/2014 J
C/w
C.C No.10414/2015 J

Offence : U/s 138 of N.I. Act
complained
of
Plea of : Pleaded not guilty
Accused
Final Order : Accused is Acquitted

Date of order : 21.5.2018

JUDGMENT

The Complainant has filed this complaint against the Accused for the offence punishable u/Sec.138 of the Negotiable Instruments Act.

2. Before the proceeding the matter, it is necessary to note that, the connected matters between the same parties in C.C.No.5625/2014 & C.C.No.6896/2014 have been clubbed with this case as per the ordered of this court dated:

1.10.2016, as both the parties and their counsels submitted before this court that, to avoid conflicting judgments, it is necessary to club the 3 cases. Accordingly a common judgment is passed in respect of all these three matters and the pleadings and the evidence of all the three cases is discussed in common to avoid repetition.

C/w C.C No.10414/2015 J

3. Briefly stated the case of the Complainant is that, the Accused was running the business in the name of Thirumala Milk Dairy and Milk products in the shop situated at Govindarajanagara, Nagarabhavi Main Road, Bengaluru, at the same time, the former was running her beauty parlour business in the name and style of Apoorva Beauty Parlour in front of the shop of the Accused. Thus, both of them became close friends and acquainted each other and as such, the Accused was in the habit of taking hand loans from her. Thus, the Accused developed her confidence and thereby in order to help the Accused, the Complainant has been lending the money to her, as and when she was approaching for the same.

4. The Complainant has further submitted that the Accused had taken hand loan from her for her personal purpose, for the improvement of her business for shop advance and for the expenses of marriage of her daughter Jayashree and in all number of times the Accused availed a total sum of Rs.20,00,000/= from her on number of occasions, assuring her that she would repay the said amount to her within a short time and she had further assured her that, she would get the immovable property from her mother's side and C/w C.C No.10414/2015 J that by disposing off the said property, she would clear the loan amount or else that she would give the property in her name. Therefore she waited patiently with a confidence that, the Accused would return the loan amount as assured by her, but the Accused postponed the repayment of the loan amount to her by citing one or the other false and frivolous reasons.

5. Finally, when she demanded for the repayment of the loan amount, on 23/9/2013, in order to discharge the above said loan amount, the Accused has issued 4 cheque leaves in her favour on different dates, drawn on the Syndicate Bank, Vijayanagar, CHBS Layout Branch, Bengaluru and she has also executed a loan agreement in her favour. While issuing the same, she had assured her that, she would maintain sufficient balance in her account to honour the said cheques.

6. The Complainant has further submitted that, as per assurance given by the Accused, when she presented the cheque bearing No.738504 dated:

4.1.2014 for Rs.5,00,000/= drawn on the Syndicate Bank of the CHBS Layout, Vijayanagar Branch, Bengaluru (the subject cheque of the present case) C/w C.C No.10414/2015 J the same returned dishonored as "Account Closed"

vide bank endorsement dated: 31.1.2014.

7. Likewise, when she presented the cheque bearing No.738503 dated: 4.12.2013 for a sum of Rs.5 Lakhs drawn on the Syndicate Bank of the CHBS Layout, Vijayanagar Branch, Bengaluru (Subject cheque of C.C.No.5625/2014), even the said cheque returned dishonored as "Account Closed" vide Bank endorsement dated: 5.12.2013.

8. Similarly, when she presented the cheque bearing No.738502 dated:4.11.2013 for a sum of Rs.5,00,000/= drawn on the Syndicate Bank of the CHBS Layout, Vijayanagar Branch, Bengaluru (subject cheque of C.C.No.6896/2014) even the said cheque returned dishonored as "Account Closed" vide Bank endorsement dated: .6.11.2013.

9. Thereafter, she got issued legal notices to the Accused in respect of all the aforesaid three cheques by RPAD calling upon her to pay the cheques amount to her within 15 days from the date of the receipt of the said legal notices. Though the said legal notices have been duly served upon the Accused, she has neither C/w C.C No.10414/2015 J replied nor has she paid the cheques amount to her. Hence the present complaint.

10. The Complainant submits that, the dishonour of the cheques by the Accused has been malafide, intentional and deliberate. Feeling aggrieved by the conduct of the Accused, she has filed the respective complaints praying that the Accused be summoned, tried and punished in accordance with Sec.138 of the Negotiable Instruments Act.

11. The Complainant has led her pre-summoning evidence in respect of all the three cases by filing her affidavits-in-lieu of her sworn-statements, in which, she has reiterated the complaint averments.

12. Prima-facie case has been made out against the Accused in respect of all the three cases and she has been summoned vide the orders of the respective dates in the said cases.

13. The Accused has appeared before the court and she has been enlarged on bail in all the three cases. The substance of the accusation has been read over to over to her in all the three cases, to which, she C/w C.C No.10414/2015 J has pleaded not guilty and has stated that she has the defence to make in all these cases.

14. In her post summoning evidence, the Complainant examined herself as P.W.1 and she has relied upon the following documentary evidence:-

i) In C.C.No.10414/2015:- As per Ex.P1 to P19:-

Ex.P1 is the cheque, Ex.P1(a) is the signature identified by P.W.1 as that of the Accused, Ex.P2 is the Bank memo, Ex.P3 is the office copy of the Legal Notice, Ex.P4 is the Postal Receipt, Ex.P5 is the Postal cover, Ex.P6 is the original Loan Agreement, Ex.P7 is the Certified copy of the order sheet in M.C.No.447/2015, Ex.P8 is the Certified copy of the application in M.C. No.447/2015, Ex.P9 to P11 are the Certified copies of the memo, the Memorandum of Settlement and Decree in M.C.No.447/2015, Ex.P12 is the office copy of complaint dated:8.10.2013, Ex.P13 is the Postal Receipt, Ex.P14 is the Certified copy of the order sheet in PCR No.22272/2013, Ex.P15 is the certified copy of the Final Report in respect of Crime No.671/2013 of Vijayanagar Police Station, Ex.P16 is the certified copy of the FIR in Crime No.671/2013 of Vijayanagar Police Station, Ex.P17 is the certified copy C/w C.C No.10414/2015 J of the Private Complaint in PCR No.22272/2013, Ex.P18 is the certified copy of the Endorsement dated: 3.12.2013 and Ex.P19 is the office copy of the complaint dated: 9.12.2013.

ii) In C.C.No.5625/2014:- As per Ex.P1 to P6:-

Ex.P1 is the cheque, Ex.P1 (a) is the signature identified by P.W.1 as that of the Accused, Ex.P2 is the Bank memo, Ex.P3 is the office copy of the Legal Notice, Ex.P4 is the Postal Receipt, Ex.P5 is the Postal acknowledgement and Ex.P6 is the certified copy of Loan Agreement dated: 23.9.2013.

iii) In C.C.No.6896/2014:- As per Ex.P1 to P7:-

Ex.P1 is the cheque, Ex.P1(a) is the signature identified by P.W.1 as that of the Accused, Ex.P2 is the Bank memo, Ex.P3 is the Bank Challan, Ex.P4 is the office copy of the Legal Notice, Ex.P5 is the Postal Receipt, Ex.P6 is the Postal acknowledgement and Ex.P7 is the certified copy of the Loan Agreement dated: 23.9.2013.

15. It is seen that, though P.W.1 has been examined in C.C.No.5625/2014 and C.C.No. 6896/2014, as the said two cases have been clubbed C/w C.C No.10414/2015 J with C.C.No.10414/2015, the subsequent cross- examination of P.W.1 has been done in C.C.No. 10414/2015 is considered to be common evidence in respect of the aforesaid two other cases and as such the said evidence has been discussed commonly in respect of all the three cases.

16. The statements of the Accused under Sec.313 of the Cr.P.C., has been recorded in all the three cases by explaining to her the incriminating evidence found against her. She has denied the incriminating evidence found against her and has chosen to lead her rebuttal evidence.

17. The Accused has examined her as D.W.1 and during her evidence, she has filed her affidavit, which has been accepted by this court as per the direction of our Hon'ble High Court in the case of Afzal Pasha Vs., Mohamed Ameerjan, reported in LAWS (KAR) 2016 (8) 131, by relying upon one of

the directions of the Hon'ble Apex Court in the case of Indian Bank Association Vs., Union of India and others, reported in 2014 (5) SCC 590.

C/w C.C No.10414/2015 J

18. The gist of the defence of the Accused in her affidavit evidence is that, she had sought for a hand loan for Rs.4,50,000/= from the Complainant in the month of August-2012, as she was badly in requirement of the said amount for performing her daughter's marriage and then the Complainant had assured her that she would give the said amount to her in time. Accordingly she believed her assurance and when the marriage date was nearing, again she approached the Complainant to lend loan of Rs.4,50,000/=-, who encashed her urgency and arranged the amount of Rs.4,30,000/= by charging the interest by way of weekly finance, monthly finance, etc., As such the Complainant had charged interest at the rate which has been exorbitant and illegal.

19. Further according to the Accused, at the time of lending the said loan, the Complainant had taken her four signed blank cheques from her pertaining to her Syndicate Bank account for security from her and she has paid more than Rs.10,00,000/= to the Complainant towards the repayment of the principal and it's interest and cleared the entire loan with interest by pledging her gold ornaments and also by being the member of the chit with the Complainant in C/w C.C No.10414/2015 J the year 2013. Regarding the said chit transaction, the Complainant herself has given a calculation letter to her.

20. According to the Accused, regarding the said chit transaction the Complainant had made her to become a member with one Sudha of Pattegarapalaya, who is also her friend and doing chit business and the Complainant herself has taken the chit amount from the said Sudha in the year 2013 and as such, she has cleared the total amount that she had availed from the Complainant and in this regard, even the said Sudha had given calculation letter in writing to her. Thus after the clearance of the above said loan with interest, she demanded the Complainant to return her signed blank cheques to her and at that time, the Complainant illegally demanded to give further interest to her and also gave her life threat and threatened that she would file a cheque bounce cases against her by filling up the blank cheques. Hence left with no other alternative, she lodged a complaint against the Complainant before the Kamakashipalya Police Station on 12.7.2013, who registered a complaint against the Complainant in NCR No.703/2013, in pursuance of which, the Complainant has given a statement on C/w C.C No.10414/2015 J 30.8.2013, in which she has admitted that, she has the 4 cheques belonging to the former in her custody.

21. According to the Accused, the reply notice that she has caused in respect of C.C.No.6896/2014, C.C.No.5625/2014 and C.C.No.13776/2014 holds good for the legal notice pertaining to C.C.No.10414/2015, in which, she has not been served with the legal notice.

22. According to the Accused, the Complainant does not have the financial capacity to lend such huge sum of Rs.20,00,000/= to her and moreover, she also had no necessity to avail such huge loan from the Complainant at any point of time. After the lodging of the complaint on 12.7.2013, she closed her bank account and as such, there is no malafide intention on her part in closing her bank

account and thus she is not liable to pay any amount to the Complainant. Accordingly she has prayed for the dismissal of the complaint.

23. In support of her evidence, D.W.1 has relied upon the following documentary evidence as per Ex.D1 to D16 which are as follows:-

C/w C.C No.10414/2015 J Ex.D1 to D3 are the Manually maintained account Slips, Ex.D4 is the true copy of the complaint dated 12.7.2103 lodged by D.W.1 before the Kamakshipalya Police Station against the Complainant, Ex.D5 is the true copy of the statement given by the Complainant in pursuance of the complaint at Ex.D4 on 30.8.2013, Ex.D6 is the certified copy of the Order sheet of C.C.No.13776/2014, Ex.D7 is the certified copy of private complaint in PCR No.26156/2013, Ex.D8 is the office copy of the Reply Notice dated 5.12.2013 caused by the Accused to the counsel for the Complainant, Ex.D9 is the Postal Receipt, Ex.D10 is the Postal Acknowledgement, Ex.D11 is the office copy of the Reply Notice dated 20.1.2014 caused by the Accused through her counsel to the counsel for the Complainant, Ex.D12 is the Postal Receipt, Ex.D13 is the Postal Acknowledgement, Ex.D14 is the office copy of the reply notice dated 31.1.2014, Ex.D15 is the Postal Receipt and Ex.D16 is the Postal Acknowledgement.

24. D.W.1 has been cross-examined exhaustively by the learned counsel for the Complainant.

C/w C.C No.10414/2015 J

25. The learned counsel for the Complainant has addressed his arguments, during the course of which he has prayed for the conviction of the Accused on the following grounds:-

- i) The acquaintance between the parties is admitted;
- ii) The monetary transaction between the parties is admitted;
- iii) Police Complaints mutually between the parties;
- iv) The dispute is only with regard to the quantum of loan;
- v) According to the Complainant, the loan amount is Rs.20 Lakhs, while according to the Accused it is Rs.4.5 Lakhs;
- vi) The Accused claims she has repaid the loan of Rs.4.5 Lakhs with interest to the Complainant;
- vi) But no proof of discharge of loan by the Accused;

vii) The Accused has admitted her loan from the Complainant in her Reply Notice and cross examination of the Complainant as C/w C.C No.10414/2015 J well as in her chief -evidence. Therefore, only the quantum of loan to be decided.

26. It is also argued that, the Loan Agreement at Ex.P6 came to be executed by the Accused in favor of the Complainant after the police complaint. The Accused has not issued the cheques along with the police complaint. The language used in the loan agreement at Ex.P6 with regard to the issuance of the four cheques is in past tense and in view of the said loan agreement, the Complainant need not prove the said document, since the same is admitted by the Accused.

27. It is also argued that, till date the Accused has not taken any steps against the Complainant. The Accused has not sought for any declaration in respect of Ex.P6 to declare the said agreement as "Null and Void".

28. It is also argued that, in her cross- examination, the Accused pleads innocence and ignorance. The transaction in question was before the marriage of the elder daughter of the Accused and in C/w C.C No.10414/2015 J such circumstance the Accused could have taken the help of her daughter in this transaction.

29. It is lastly argued that, if the blank cheques and blank papers of the Accused were misused by the Complainant, then she could have written more amounts. Accordingly he has prayed for the conviction of the Accused.

30. Per contra, the learned Defence Counsel has addressed his arguments, during the course of which, he has prayed for the acquittal of the Accused on the following grounds:-

- i) The acquaintance between the parties is admitted;
- ii) The Complainant claims 4 cheques of Rs.5 Lakhs each was given by the Accused to her, which claim is contrary to Ex.D4;
- iii) No exact dates of alleged lending of the amounts pleaded by the Complainant;
- iv) Among the four cases, one case came to be dismissed for non-prosecution, against which, till recently the C/w C.C No.10414/2015 J Complainant did not take any action for the restoration of the said case;
- v) After a lapse of three years the Complainant filed a CrI.RP;
- vi) When the Complainant claims that her husband paid Rs.4 Lakhs to her in the year 2010, then she has to explain as to where she had kept that amount from 2010 to 2102?
- vii) Divorce Petition was filed only in the year 2015;

viii) Then the question of the Complainant having received Rs.4 Lakhs from her husband in the year 2010 is absolutely false;

ix) There is no reference to the lender of the loan and the receiver of the loan in Ex.P6;

x) Stamp paper in respect of Ex.P6 purchased by the Complainant and not by the Accused;

xi) Ex.P6 contains the signature of the Accused only on one page, while that of the Complainant on both the pages;

C/w C.C No.10414/2015 J

xii) The Complainant admits the difference in the ink and the hand writing in respect of Ex.P1;

xiii) The Complainant has not examined any witness to Ex.P6, though they are said to be her close relatives;

xiv) The Complainant has failed to prove her source of funds;

xv) The Complainant has admitted that she has not transacted in her account from Ex.P1 to P6;

xvi) No date of approach/date of lending pleaded in Ex.P6;

xvii) Ex.P6 cannot be considered in isolation;

xviii) The cross marks in Ex.P6 before the signature of the Accused creates a serious doubt about the said document;

xix) If all the parties to the said document were present at the time of it's alleged execution, then there was no necessity for inserting the cross mark.

xx) Ex.P6 is not a loan agreement at all;

C/w C.C No.10414/2015 J xxi) The court can compare the writings on the cheque under Sec.73 of the Evidence Act;

xxii) The Complainant claims she has allegedly lent interest free loan to the Accused;

xxiii) The defence of the Accused is that she had availed a loan of Rs.4,30,000/= from the Complainant in the month of March 2012 for interest and she has repaid the same to her with interest; xxiv) The Complainant does not say Ex.D1 and D2 are concocted;

xxv) Ex.D1 and D2 are not denied by the Complainant;

xxvi) Ex.P7 to P19 produced by the Complainant subsequently;

xxvii) They are not relevant since they are subsequent events;

xxviii) There are contradictions in the case of the Complainant about the source of her funds;

xxix) As per documents, the husband of the Complainant paid Rs.4 Lakhs to her in C/w C.C No.10414/2015 J the year 2012, which is contrary to her oral evidence;

Hence he has prayed for the acquittal of the Accused.

31. The learned Defence Counsel has also filed his written arguments.

32. By way of his reply arguments, the learned counsel for the Complainant has argued that, the conduct of the Accused is evident from Ex.D4, in which she has claimed that she knows the Complainant since 4 years. The Accused has admitted in Ex.D4 that there was financial transaction between the parties and the Accused has claimed in Ex.D4 that she was paying 40 % interest for a month, which is highly impossible to believe. The entire defence of the Accused is falsehood and the Accused did not seek for the return of her cheques in the police station. It is not the defence of the Accused that her signed blank cheques were collected by the Complainant.

33. It is also argued that, in her reply notice at Ex.P8, the Accused has not stated the cheque numbers of the remaining three cheques. The conduct C/w C.C No.10414/2015 J of the Accused in remaining silent about her cheques leads to an adverse inference against her.

34. It is also argued that, according to the Accused, Ex.P6 is a created document. If the Complainant really misused the blank cheques of the Accused, then she could have filled them up for more amounts. The documents at Ex.D1 to D3 are created by the Accused. They are not genuine documents and as such the Accused is liable to be convicted. Accordingly he has prayed for the conviction of the Accused.

35. In support of his arguments, the learned Defence Counsel has relied upon the following decisions:-

i) Sri.A.Viswanatha Pai V/s Sri Vivekananda S.Bhat reported in ILR 2009 KAR 172;

ii) Kumar Exports Vs., Sharma Carpets, reported in AIR 2009 SC 1518;

iii) Shiva Murthy Vs., Amruthraj, reported in ILR 2008 Kar 4629;

iv) K.Subramani Vs., K.Damodara Naidu, reported in (2015) Cr.L.J., 912;

v) Krishna Janardhan Bhat Vs., Dattatraya G Hegde, reported in AIR 2008 SC 1325;

C/w C.C No.10414/2015 J

vi) C.Antony Vs., K.G.Raghavan Nair, reported in AIR 2003 SC 182;

vii) M/s. Kanahiyalala Ghamandi Lal Vs., Subhash, reported in (2013) 1 BC 391;

viii) M.B.Rajashekar Vs., Savithramma decided by the Hon'ble High Court of Karnataka in Cr.A.No.1742 of 2006.

36. I have considered the submissions and perused the record carefully.

37. Sec.138 of the Negotiable Instruments Act has been enacted to lend credibility to the financial transactions.

The main ingredients of the offence under Section 138 Negotiable Instruments Act are:-

(i) Drawing up of a cheque by the Accused towards the payment of the amount of money, for the discharge, in whole or in part, of any debt or any other liability;

(ii) Return of the cheque by the bank as unpaid;

(iii) The drawer of the cheque fails to make the payment of the said amount of money within 15 days of the receipt of the notice under the proviso

(b) to Section 138.

C/w C.C No.10414/2015 J The Explanation appended to the Section provides that, the "debt or other liability" for the purpose of this Section means a legally enforceable debt or other liability.

38. Apart from this, Sec.139 of the Negotiable Instruments Act lays down a presumption in favour of the holder of cheque in the following terms:-

"It shall be presumed, unless the contrary is proved, that:-

The holder of a cheque received the cheque, of the nature referred to in Sec. 138, for the discharge, in whole or in part, of any debt or other liability".

39. Also, Sec. 118 of the Negotiable Instruments Act states, "Until the contrary is proved, the following presumptions shall be made:-

(a) That every Negotiable Instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or

transferred, was accepted, indorsed, negotiated or transferred for consideration;"

40. Thus, the Act clearly lays down the presumptions in favour of the Complainant with regard C/w C.C No.10414/2015 J to the issuance of the cheque by the Accused, towards the discharge of his liability in favour of the Complainant.

41. Under the scheme of the Act, the onus is upon the Accused to rebut the presumptions in favour of the Complainant by raising a probable defence.

42. It is a well settled position of law that the defence of the Accused, if in the nature of a mere denial of the case of the Complainant will not be sufficient to hold it as a probable defence. The bare denial of the passing of consideration apparently does not appear to be any defence. Something which is probable must be brought on record for getting the benefit of shifting the onus of proof to the Complainant.

43. It is also a well settled position of law that, once the cheque is proved to be relating to the Account of the Accused and he accepts and admits the signature on the said cheque, then the initial presumption as contemplated under Sec.139 of the N.I.Act has to be raised by the courts in favour of the Complainant. The presumption referred to in Sec.139 of the N.I.Act is a mandatory presumption and not a C/w C.C No.10414/2015 J general presumption, but the Accused is entitled to rebut the said presumption. What is required to be established by the Accused in order to rebut the presumption is different from each case under given circumstance. But the fact remains that a mere plausible explanation is not expected from the Accused and it must be more than a plausible explanation by way of rebuttal evidence. The defence raised by the Accused by way of rebuttal evidence must be probable and capable of being accepted by the court.

44. No doubt the initial mandatory statutory presumptions under Sec.118 and 139 of the N.I.Act are in favour of the Complainant. However they are rebuttable presumptions and the Accused is expected to rebut the presumptions by raising a probable defence.

45. Such being the legal position, it would be pertinent to refer to the defences raised by the Accused to rebut the presumptions in favour of the Complainant in this case.

46. Admittedly there is no dispute with regard to the acquaintance between the parties as well as the existence of the loan transaction between them and C/w C.C No.10414/2015 J also the fact that the cheque in dispute of all the 3 cases belonging to the Accused with her signatures on them. However there is no serious dispute on the part of the Accused with regard to the alleged existence of her liability in favour of the Complainant in respect of the cheques involved in all the 3 cases.

47. No doubt, the moment the Accused admits the cheques, the signatures on it and issuance of the same by her in favour of the Complainant, the mandatory statutory presumptions U/s. 118 and 139 of the N.I.Act are to be drawn in favour of the Complainant. However when the very existence of the legally payable debt by the Accused in favour of the Complainant is seriously disputed by the former, the onus of proving the existence of such debt is upon the Complainant, for which proof beyond

reasonable doubt is expected on the part of the Complainant.

48. In the light of these well settled positions of law, when the case of the Complainant is carefully analyzed in the light of both orally and documentary evidence, which is admittedly exhaustive, as rightly pointed out by the learned Defence Counsel during the course of his arguments, though the amount involved C/w C.C No.10414/2015 J is a huge sum of Rs.20,00,000/=, there is no pleading either in the legal notice or in the complaint or in the affidavit of the Complainant with regard to the dates on which, the Accused had allegedly approached her seeking financial assistance as well as the dates of such alleged lending of the loan amounts by her to the Accused.

49. The law is well settled by virtue of the various decisions of the Hon'ble Apex Court as well as our Hon'ble High Court that, the pleading with regard to the material particulars in respect of the date/s of approach by the Accused and the date/s of lending of loan/s by the Complainant to the Accused and the date/s of issuance of the cheque/s by the Accused are relevant, more particularly when the transaction as claimed by the Complainant is seriously in dispute.

50. In this regard, it is pertinent to note that, there is no clarity and preciseness in the complaint, as to when the Accused approached the Complainant seeking for financial assistance and when were such amounts allegedly lent by the Complainant to the Accused. It is for the first time, in her cross-examination that, the Complainant has come up with C/w C.C No.10414/2015 J a claim that, she has lent the loan amounts to the Accused not at one stretch, but by way of part payments commencing from 2011 to August 2012 and that too by way of cash without collecting any security documents from the Accused.

51. Though in the complaint, it is pleaded by the Complainant that, the Accused has taken loan for her personal purpose and for the improvement of her business for shop development and for the expenses of the marriage of her daughter, in her cross- examination, the Complainant has introduced a new fact that, the Accused had availed the loan of Rs.5,00,000/= from her after marriage of her daughter so as to repay the loan to someone else and to purchase a vehicle, for the engagement of her daughter, to purchase the gold ornaments for the marriage of her daughter, so as to pay to the wedding hall. Though the purpose of the loan as stated above corroborates with the ones pleaded in the complaint, the fact that the Accused has allegedly received the loan amounts from the Complainant on different dates has been introduced by the Complainant for the first time only in her cross-examination. Moreover, C/w C.C No.10414/2015 J according to the Complainant, the Accused had availed such loan amounts from her as interest free loans.

52. However considering the fact that the amount involved in the alleged transaction being Rs.20,00,000/=, the Accused has also raised the defence with regard to the financial capacity of the Complainant.

53. It is pertinent to note that, for the first time, in her cross-examination, the Complainant has claimed that, her husband had paid Rs.4,00,000/= to her in the year 2010-2011 and she had some amount from her savings and that with the aforesaid source, she managed to lend a total sum of Rs.20,00,000/= to the Accused.

54. However, according to the Complainant, her monthly income from her beauty parlor business is around Rs.40,000/= and that she is an income tax assessee and she has her bank account. In such circumstance, when she has been questioned as to if, she could produce the documents before the court to show as to how she could arrange the amount to the tune of Rs.20,00,000/= through the aforesaid sources, C/w C.C No.10414/2015 J though initially, there was no documentary evidence led by her, subsequently she has produced the additional documentary evidence as per Ex.P7 to P11, which are the certified copies of the order sheet of M.C. No.447/2015, the Petition, the memo and the memorandum of settlement and the Decree and by relying upon the said documentary evidence, she has claimed that, the said documents prove her source of income so as to have arranged the amount to lend the same to the Accused.

55. However when the documentary evidence at Ex.P7 being the order sheet of M.C.No.447/2015 is perused, it goes to show that, the same has been filed by the Complainant and her husband seeking divorce by mutual consent only on 27.1.2015 before the Prl.Judge, Family Court, Bengaluru and the order sheet goes to show that, in the said proceeding, on 30.6.2016, the Accused has received a sum of Rs.3,50,000/= from her husband by way of DD towards the dissolution of her marriage by entering into settlement with her husband.

56. Likewise the certified copies of the memo and the Memorandum of Settlement at Ex.P9 and P10 go to C/w C.C No.10414/2015 J show that, the Complainant and her son had agreed to receive a total sum of Rs.13,00,000/= from her husband towards permanent alimony and out of the said amount, a sum of Rs.4,00,000/= has been paid to them on 14.5.2012, a sum of Rs.2,00,000/= on 27.1.2015, a sum of Rs.3,50,000/= on 30.6.2015 and the balance amount by way of DD on 29.8.2015.

57. However exactly contrary to the said documentary evidence, in her cross-examination, the Complainant has claimed that, she was paid Rs.4,00,000/= by her husband in the year 2010, which is much prior to she and her husband having filed a petition for divorce as per Ex.P8, which cannot be believed by this court to be true.

58. Even otherwise, if this court were to believe the version of the Complainant with regard to her source of Rs.4,00,000/=: it is her bounden duty to explain and prove her source of funds in respect of the balance amount of Rs.16,00,000/=.

59. It is pertinent to note that, throughout her cross-examination, the Complainant has reiterated her claim that, she has arranged the balance amount of C/w C.C No.10414/2015 J Rs.16,00,000/= from her relatives viz., a sum of Rs.3,00,000/= from her maternal aunt Smt.Chandramma, a sum of Rs.4,00,000/= from her maternal Aunt Smt.Anusuyamma and a sum of Rs.4,00,000/= from her uncle Narayana Gowda. Though she had deposed that she had no difficulty to examine the aforesaid persons before this court, she has not chosen to do so, even though her financial capacity came to be seriously questioned by the Accused. As a result, a serious doubt is created in the mind of this court with regard to the said source funds as claimed by the Complainant.

60. Moreover, even if the total amount that the Complainant has claimed to have received from the aforesaid persons is added, it comes to only Rs.11,00,000/= and even then, there is no explanation or proof on the part of the Complainant with regard to the balance amount of Rs.5,00,000/= which she claims to have lent to the Accused.

61. Therefore the non-examination of any of the aforesaid persons as witnesses by the Complainant is fatal to her case, since except her self-serving testimony in respect of her source of funds, there is no C/w C.C No.10414/2015 J corroborative piece of evidence led by the Complainant to substantiate her claim.

62. It is further interesting to note that, for the first time, in her chief-examination, the Complainant has introduced a document titled as the Loan Agreement as per Ex.P6, in which, she has identified the signature at Ex.P6(a) as that of the Accused. No doubt the Accused has not disputed her signature on the said document, but she has categorically denied having allegedly executed any such agreement in favour of the Complainant.

63. It is important to note that, as rightly pointed out the learned Defence Counsel in his arguments, though in the complaint, it is pleaded that, the Accused has executed the Loan Agreement on 23.9.2013 as per Ex.P6, the complaint at Ex.P12 is lodged by the Complainant against the Accused on 8.10.2013 and admittedly there is no reference in the complaint at Ex.P12 about the document at Ex.P6, alleged to have been executed by the Accused in her favour by the Complainant as per Ex.P6.

C/w C.C No.10414/2015 J

64. Therefore it is clearly goes to show that, when the Accused has seriously denied the alleged execution of the loan agreement as per Ex.P6, which contains the signature of one Lalitha and Anusuyamma as the witnesses, the Complainant could have examined either of the aforesaid witnesses so as to prove the said document as per law.

65. No doubt the argument of the learned Defence Counsel with regard to the language of Ex.P6, which is admittedly in the past tense and as such, it is a created document may not be entirely correct, since there is no bar in law to collect any such document/s subsequent to the transaction between the parties.

66. However in the present case when the entire evidence is carefully considered by this court, it goes to show that the document at Ex.P6, being the loan agreement has not been proved by the Complainant as per law and this is serious blow to her case.

67. Moreover the Complainant has claimed in her cross-examination that, it was the Accused who has brought the document at Ex.P6 entirely prepared. However she has admitted the suggestion that the C/w C.C No.10414/2015 J stamp paper in respect of the Loan Agreement Ex.P6 has been purchased by her and not by the Accused.

68. Further as rightly pointed out by the learned Defence Counsel both in the cross-examination of the Complainant as well as in his arguments, the document at Ex.P6 does not bear the signature of the Accused on it's first page, while it bears the signature of the Accused only on its 2nd page. However as rightly argued by the learned Defence Counsel the presence of the cross mark on Ex.P6 before the signature of the Accused also adds to suspicion in the case of the Complainant.

69. However when the Complainant has been cross-examined in respect of this document, she has not able to give any convincing answer for the absence of the signature of the Accused on it's first page and the presence of the cross mark at the place of the signature of the Accused on its 2nd page.

70. Therefore these circumstances also create serious doubt in the mind of this court about the alleged execution of the said document by the Accused in favour of the Complainant.

C/w C.C No.10414/2015 J

71. It is further pertinent to note that, though the learned Defence Counsel has been able to elicit from the Complainant in her cross-examination that, she had collected the cheques from the Accused when she was in cordial terms with her. However she has denied the suggestion that thereafter by giving the said cheques to Mangala and Lakshamma, she has got filed false cases against the Accused.

72. However the fact that remains is that, though the Accused has admitted her loan transaction with the Complainant, it is only of the extent of Rs.4,30,000/= and not to the extent of Rs.20,00,000/= as claimed by the Complainant in the present case.

73. It is pertinent to note that, the defence of the Accused is that for the purpose of her daughter's marriage, she had approached the Complainant in April 2012 and till the 3rd week of July 2012, the Complainant was assuring her that, she would lend such loan amount her and thereafter when she agreed to avail the said loan for compound interest, she has received Rs.1,00,000/= on the basis of weekly interest, Rs.1,00,000/= at the rate of 10% interest per month, C/w C.C No.10414/2015 J Rs.50,000/= at interest of Rs.20,000/= per month and Rs.1,00,000/= by way of monthly interest of Rs30,000/= per month, Rs.30,000/= by way of monthly interest of Rs.3,000/= interest per week and Rs.70,000/= by way of interest at Rs.5,000/= per month and she has claimed that, she has repaid the said loan amount together with interest to an extent of more than Rs.10,00,000/=.

74. No doubt, as rightly pointed out by the learned counsel by the Complainant in his reply arguments, the defense version of the Accused goes to show that, according to the Accused, she used to pay 40% interest for a month as shown in Ex.D4 and according to the Accused she was paying more than Rs.40,000/= per month towards interest.

75. This explanation given by the Accused also seems to be highly doubtful, since she has not placed any cogent reliable evidence in order to prove that, she had the capacity to pay such monthly interest, the law is well settled that, the proof which is expected from the Accused is only proof in probability and not proof beyond reasonable doubt. As such, even if it is assumed for a moment that,

the claim of the Accused C/w C.C No.10414/2015 J that, she has repaid more than Rs.10,00,000/= to the Complainant is utterly false, the Complainant cannot take advantage of the said fact, since it is she, who has to prove her case beyond reasonable doubt and not the Accused.

76. Therefore it clearly goes to show that, the Complainant has utterly failed to establish before this court that she had the requisite source of funds as on the date of the transaction in question and on the contrary, the Accused has been able to create serious doubts in the mind of this court about the case of the Complainant.

77. No doubt there has been complaint and counter complaint between the parties as per Ex.P12 to P19 and Ex.D4 & D5, however when the Accused has been able to raise serious doubts in the case of the Complainant, the burden of removing such doubts is once again shifted in favour of the Complainant, which she has failed to discharge in the present case.

78. It is interesting to note that, the Accused has also relied upon the documentary evidence at Ex.D1 to D3, which are admittedly the manual entries showing C/w C.C No.10414/2015 J some transaction. However, as rightly pointed out by the learned counsel for the Complainant in his argument and as rightly elicited from the Accused in her cross-examination that, these documents at Ex.D1 to D3 do not bear the signature of either the Complainant or her friend Sudha.

79. Moreover, it is also elicited from the Accused that, the transaction shown with different dates in Ex.D1 and D2 are written in the same ink. However she has claimed that, the contents of Ex.D1 to D3 were written when the same were given to her in her shop.

80. It is interesting to note that, when the Accused has claimed so, there is no further suggestion put to her by denying that the said documents were given to her when the contents in them were written.

81. No doubt in the cross-examination of the Accused, it is elicited from her that, she has not documentary proof to show that, she has repaid more than Rs.10,00,000/= to the Complainant as claimed by her and that she has not taken any legal action against Complainant or Sudha alleging that, they have misused her signed blank cheque/s.

C/w C.C No.10414/2015 J

82. However as already pointed out earlier, the Accused, in a criminal trial is not expected to prove her defence beyond reasonable doubt and it is sufficient for her to create doubts in the case of the Complainant, so as to avail the benefit of such doubts in her favour.

83. Therefore, it may be true that, the Accused has not produced any cogent proof in support of her claim, that she was a member to the chit with one Sudha of Pattegarapalya, who is also the friend of the Complainant and that the Complainant has taken her bid amount from the said Sudha, in lieu of the loan amount from her. But the said omission on the part of the Accused cannot confer any benefit on the Complainant, since the case of the Complainant itself suffers from serious doubts and

as such the same cannot be believed by this court.

84. Therefore the appreciation of the entire evidence on record clearly goes to show that, the Complainant has failed to prove the documents at Ex.P6 as per law and that she has lent loan amounts to the tune of Rs.20,00,000/= to the Accused as C/w C.C No.10414/2015 J claimed by her and that, in pursuance of the same, the Accused has issued the subject cheques towards her alleged repayment of the loan. As such, the case of the Complainant is bound to fail.

85. On the contrary, the Accused has been able to raise a probable defence by pointing out serious lapses in the case of the Complainant, which are sufficient to rebut the presumption available in favour of the Complainant U/s.118 and 139 of the N.I. Act. Accordingly, I proceed to pass the following:-

ORDER By exercising the power-

conferred u/s 255(1) of Cr.P.C., the Accused is hereby acquitted of the offence punishable u/s 138 of the Negotiable Instruments Act.

Her bail bonds in
C.C.No.10414/2015,
C.C.No.5625/2014 and

C.C.No.6896/2014 stand discharged.

The cash security of Rs.3,000/= deposited by the Accused vide order dated 17.10.2015 in C.C.No.10414/2015, Rs.5,000/= in C.C.No.5625/2014 vide order dated 3.6.2015 and Rs.5,000/= in C.C.No.6896/2014 dated 22.5.2015 is ordered to be refunded to her (if not C/w C.C No.10414/2015 J lapsed or forfeited) after the expiry of the appeal period.

Office is directed to keep the original copies of the judgments in all the three cases.

(Dictated to the Stenographer, transcribed and print out taken by her, verified, corrected and then pronounced by me in the open Court on this the 21st day of May, 2018).

(SARASWATHI.K.N), XVI ACMM., Bengaluru City.

ANNEXURE

1. List of witness/s examined on behalf of the Complainant in C.C.No.5625/2014 and C.C.No.6896/2014, and C.C.No.10414/2015:-

P.W.1 : Smt. Madhu;

2. List of documents exhibited on behalf of the Complainant:-

i) In C.C.No.10414/2015:-

Ex.P-1	: Original Cheque;
Ex.P-1(a)	: Signature of the Accused;
Ex.P-2	: Bank Memo;
Ex.P-3	: Office Copy of the Legal Notice;
Ex.P-4	: Postal Receipt;
Ex.P-5	: Postal Cover;
Ex.P-6	: Original Loan Agreement;
Ex.P-7	: C/c of the Order sheet in M.C.No. 447/2015;
Ex.P-8	: C/c of application in M.C.No.447/2015;

C/w
C.C No.10414/2015 J

Ex.P-9 to 11 : C/c of the Memo, Memorandum of Settlement and the Decree in
M.C.No. 447/2015;

Ex.P-12 : Office copy of the complaint Dated:

8.10.2013;

Ex.P-13	: Postal Receipt;
Ex.P-14	: C/c of the Order sheet in PCR No. 22272/2013;
Ex.P-15	: C/c of the Final report in respect of Crime No.671/2013;
Ex.P-16	: C/c of the FIR in Crime No.671/2013;
Ex.P-17	: C/c of the Private Complaint in PCR No.22272/2013;
Ex.P-18	: Endorsement dated: 3.12.2013;
Ex.P-19	: Office copy of the complaint dated: 9.12.2013.

ii) In C.C.No.5625/2014:-

Ex.P-1	: Original Cheque;
Ex.P-1(a)	: Signature of the Accused;
Ex.P-2	: Bank Memo;
Ex.P-3	: Office Copy of the Legal Notice;
Ex.P-4	: Postal Receipt;
Ex.P-5	: Postal acknowledgement;
Ex.P-6	: C/c of the Loan Agreement;

iii) In C.C.No.6896/2014:-

Ex.P-1 : Original Cheque;
Ex.P-1(a) : Signature of the Accused;
Ex.P-2 : Bank Memo;
Ex.P-3 : Bank Challan;
Ex.P-4 : Office copy of the Legal Notice;
Ex.P-5 : Postal Receipt;
Ex.P-6 : Postal Acknowledgement;
Ex.P-7 : C/c of the Loan Agreement
dated: 23.9.2013.

C/w

C.C No.10414/2015 J

13. List of witness/s examined on behalf of the Accused:-

D.W.1 : Smt. Mahadevamma;

14. List of documents exhibited on behalf of the Accused:-

Ex.D-1 to D3 : Manual statement of accounts; Ex.D-4 : True copy of the complaint;
Ex.D-5 : True copy of the Statement ; Ex.D-6 : Office Copy of the Legal Notice; Ex.D-7
: Certified copy of the complaint in PCR No.26156/2013;

Ex.D-8 : Office copy of the Reply Notice dated 5.12.2013;

Ex.D-9 : Postal Receipt;
Ex.D-10 : Postal Acknowledgement
Ex.D-11 : Office copy of the Reply Notice dated
20.1.2014;
Ex.D-12 : Postal Receipt;
Ex.D-13 : Postal Acknowledgement;
Ex.D-14 : Office copy of the Reply Notice dated
31.1.2014;
Ex.D-15 : Postal Receipt;
Ex.D-16 : Postal Acknowledgement.

(SARASWATHI.K.N),
XVI ACMM, Bengaluru City.

C/w

C.C No.10414/2015 J

21/5/2018 Judgment pronounced in the open court vide separate order.

ORDER By exercising the power-conferred u/s 255(1) of Cr.P.C., the Accused is hereby acquitted of the offence punishable u/s 138 of the Negotiable Instruments Act.

Her bail bonds in C.C.No.10414/2015, C.C.No.5625/2014 and C.C.No.6896/2014 stand discharged.

The cash security of Rs.3,000/= deposited by the Accused vide order dated 17.10.2015 in C.C.No.10414/2015, Rs.5,000/= in C.C.No.5625/2014 vide order dated 3.6.2015 and Rs.5,000/= in C/w C.C No.10414/2015 J C.C.No.6896/2014 dated 22.5.2015 is ordered to be refunded to her (if not lapsed or forfeited) after the expiry of the appeal period.

Office is directed to keep the original copies of the judgments in all the three cases.

(SARASWATHI.K.N), XVI ACMM, Bengaluru City.