

R.Bhagayalakshmi vs M/S. Apna Sapna on 25 October, 2021

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

Dated this the 25th day of October - 2021

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

C.C.NO.20080/2013

And

C.C.NO.8491/2013

Complainant : R.Bhagayalakshmi,
{In C.C.No.20080/2013} W/o.Pradeep Kumar Desphande,
{In C.C.No.8491/2013} Aged about 40 years,
R/at No.65-66-67, 3rd Floor,
Sri Sadguru Complex,
Opp. to IIM-B Main Gate,
Doresanipalya, Bannerghatta Main Road,
Bengaluru-76.
(Rep. by Sri.D.Kiran Kumar, Adv.)

V/S

Accused : 1. M/s. Apna Sapna,
{In C.C.No.20080/2013} #83, 5th Floor, Farah Towers,
M.G.Road, Bengalur-560 001.
Rep. by its partner,
Sunil Baberwal,

2. Sunil Baberwal,
S/o.Biharilal Baberwal,
Aged about 44 years,
Partner of M/s. Apna Sapna,
#83, 5th Floor, Farah Towers,
M.G.Road, Bengaluru-560 001.

Also at:
Sunil Baberwal,
S/o.Biharilal Baberwal,
Aged about 44 years,

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M/s. Apna Sapna,
Green Leaf Cafe Bar,
Mylesandra Village,
Begur Koppa Main Road,

Next to DLF, Bengaluru.

(Rep.by Sri.H.V.Praveen Gowda, Adv.)

Accused : Sunil Baberwal,
{In C.C.No.8491/2013} S/o.Biharilal Baberwal,
Managing Director,
M/s. Apna Sapna, 1st Floor,
No.65-67, Sri Sadguru Complex,
Opp. IIMB Main Gate,
Bannerugatta Road, Doresanipalya,
Bengaluru-76.
(Rep.by Sri.H.V.Praveen Gowda, Adv.)

OFFENCE COMPLAINED OF : U/Sec. 138 of Negotiable
Instruments Act.
PLEAD OF THE ACCUSED : Not guilty.
FINAL ORDER : Accused Nos.1 and 2 in
both the cases are Acquitted.
DATE OF ORDER : 25.10.2021.

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

COMMON JUDGMENT

These complaints have presented by the complainant
against the accused Nos.1 and 2 on 17.06.2013 and 06.02.2013
under Section 200 of Cr.P.C., for the offence punishable under
Section 138 of Negotiable Instruments Act, for dishonour of
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cheques of Rs.2 crores and Rs.1,65,42,000/-, in all
Rs.3,65,42,000/-.

2. Since, the complainant and accused in both the cases are
one and the same. On the memo submitted by both the parties,
both the cases are clubbed and in order to avoid the repetition of
appreciation of evidence in both the cases, the common judgment

has been passed.

3. The brief facts of the complaint in C.C.No.20080/2013 are as under:

The complainant is an absolute owner of the building situated at No.65-66-67, 3rd Floor, Sri Sadaguru Complex, Opp. to IIM-B Main Gate, Doresanipalya, Bannerghatta Main Road, Bengaluru. During the year 2004, complainant had leased out 1 st and 2nd floor situated at No.65-66-67, Sri Sadaguru Complex, Opp. to IIM-B Main Gate, Doresanipalya, Bannerghatta Main Road, Bengaluru to accused for the purpose of his real estate business under the name and style of M/s. Apna Sapna as a tenant on monthly rental basis and he occupied the same. In this regard, both are entered into separate rental agreements on 19.04.2006.

The complainant has further contended that during February, 2008, the accused has approached the complainant
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and sought for hand loan of Rs.2 crores for his real estate business and accused immediately required the said hand loan amount for his difficult situation. At that time, the complainant does not have that much amount, then accused induced the complainant to raise funds by mortgaging her property. Thereafter, the complainant approached her banker viz., M/s. Kotak Mahindra Bank Ltd., for loan to her on mortgage of her property situated stated supra and the said bank has sanctioned the loan amount of Rs.2 crores to the complainant as mortgaged

her property in favour of the said bank.

The complainant has further contended that the accused No.2 is the Managing Director of accused No.1 firm. The complainant has transferred sum of Rs.1 crore through RTGS from her bank account to bank account of 1 st accused firm as per 1st agreement dated 07.07.2008. As per the said agreement, the accused has agreed and promised to repay the same on or before 09.06.2012 and also agreed to pay the interest at the rate of 4% p.m. on the aforesaid amount subject to tax deduction at source on the interest amount of Rs.4 lakhs. The accused also agreed to repay the part of monthly interest payable to Kotak Mahindra Bank towards discharge of the loan availed by the complainant and to pay the balance amount of interest by way of cheque in her Judgment -5- C.C.No.20080/2013 C/w C.C.No.8491/2013

favour to her Bank i.e., Bank of Baroda, Banashankari Branch, Bengaluru. In lieu of the said transaction, the accused has issued two cheques bearing Nos.556311 and 556312, drawn on ICICI Bank, J.P.Nagar Branch, Bengaluru as security.

The complainant has further contended that according to 2nd agreement dated 26.09.2008, another amount of Rs.1 crore was also transferred by way of RTGS from her bank account to accused personal bank account. As per the said agreement accused has agreed and promised to repay the same on or before 26.08.2012 and also agreed to pay the interest at the rate of 4% p.m. on the aforesaid amount subject to tax deduction at source

on the interest amount of Rs.4 lakhs. The accused also agreed to repay the part of monthly interest payable to Kotak Mahindra Bank towards discharge of the loan availed by the complainant and to pay the balance amount of interest by way of cheque in her favour to her Bank i.e., Kotak Mahindra Bank Jayanagar Branch, Bengaluru. In lieu of the said transaction, the accused has issued two cheques bearing Nos.556249 and 556250, drawn on ICICI Bank, J.P.Nagar Branch, Bengaluru as security.

The complainant has further contended that accused has paid only interest amount of 1st agreement for the period of 45 months. With regard to the aforesaid agreements even after lapse of about 7 months and 4 months respectively, the accused has failed to repay the principal amount of Rs.2 crores along with interest at the rate of 4% to her. Thereafter, the complainant has presented the cheques bearing Nos.556311 and 556249 for Rs.1 crore each for encashment through her bankers viz., Bank of Baroda and Kotak Mahindra Bank on 14.12.2012 and 15.12.2012 respectively. But, both the cheques were dishonoured as per bankers memo dated 17.12.2012 and 18.12.2012 stating "Funds Insufficient". Thereafter, she got issued a legal notices to accused and the same were served on them. In spite of service of said notice, the accused have failed to honour their commitments. Hence, complainant got initiated criminal proceedings against the accused in PCR No.2245/2013, pending before the learned XVI ACMM, Bengaluru.

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The complainant has further contended that in spite of several remainders made by her to accused, the accused had failed to honour his commitments and obligation to repay the interest amount of Rs.1,65,42,000/- on the principal amount of Rs.2 crores, after deducting the amount already paid by the accused, presented the cheque bearing No.556250 dated

08.04.2013 drawn on ICICI Bank Ltd., J.P.Nagar Branch

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Bengaluru through her banker viz., Bank of Baroda, Banashankari Branch, Bengaluru. The said cheque was drawn from the account of 1st accused and accused No.2 has signed the said cheque.

The said cheque came to be dishonoured for the reason "Refer to Drawer" vide endorsement dated 08.04.2013. Thereafter, the

complainant got issued a legal notice dated 06.05.2013 to the accused and the same was served to accused on 08.05.2013.

Despite, service of legal notice, the accused neither paid the cheque amount nor replied the same. Thus, the accused Nos.1 and 2 committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

4. The brief facts of the complaint in C.C.No.8491/2013 are as under:

The complainant is an absolute owner of the building situated at No.65,66,67 formed in Sy.Nos.154/11, 151/3, 152/8C and 152/7, katha No.667/94, present BBMP khatha No.667/1-788/151/3065, 66 and 667/2-788/151/3-67. The complainant had

leased out 1st and 2nd floors of the said building to the accused on first 24 months monthly rental of Rs.25,000/- each and another 24 months monthly rental of Rs.27,500/- each as per agreements entered into between complainant and accused dated 01.05.2006 and 15.05.2006.

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The complainant has further contended that the accused had approached the complainant and requested to pay sum of Rs.2 crores as loan for his financial necessity and obligation with a promise to repay the said amount with interest.

The complainant has further contended that she has mortgaged her building property to Kotak Mahindra Bank Ltd., in the year 2008 and availed sum of Rs.2 crores as loan and the sum of Rs.1 crore was transferred through RTGS to the accused concern firm viz., M/s. Apna Sapna's ICICI Bank account bearing No.040105000305 and another Rs.1 crore was transferred to the accused's personal account from complainant's account. In this regard, the accused and complainant were entered into two agreements on 07.07.2008 and 26.09.2008 respectively. As per 1st agreement dated 07.07.2008, the accused had promised to repay the partial loan amount of Rs.1 crore on or before 09.06.2012 with interest at the rate of 4% amounting to Rs.4 lakhs subject to TDS deduction on the interest amount as applicable and as per agreement dated 26.09.2008, the accused has promised to repay the loan amount of Rs.1 crore on or before 26.08.2012 with interest at the rate of 4% p.m. subject to TDS

deduction on the interest amount as applicable. For the above

said transactions, as security, the accused have issued 4 cheques
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bearing Nos.556311, 556312, 556249 and 556250 drawn on ICICI
Bank Ltd., J.P.Nagar Branch, Bengaluru.

The complainant has further contended that as per
agreements, the accused defaulted in payment of monthly
installments of loan with the Kotak Mahindra Bank as on
12.06.2012 of Rs.77,74,809.12. Thereafter, the said bank issued
a possession notice to the complainant on 05.11.2012 under
Section SRFAESI Act, 2002, and directed her to pay the balance
amount of Rs.77,74,809.12 within 60 days from the date of receipt
of said notice or hand over the physical possession of the
building. Thereafter, the complainant has demanded the accused
for payment of monthly installments to the bank, but the accused
went on postponing the same.

The complainant has further contended that the accused
intimated her to present the security cheques issued in favour of
complainant. As per instructions of accused, the complainant out
of four cheques got presented two cheques for encashment
bearing Nos.556311 and 556249 for sum of Rs.1 crore each with
her bankers viz., Bank of Baroda, Banashankari Branch and
Kotak Mahindra Bank, Jayanagar Branch on 14.12.2012 and

15.12.2012 respectively. The said cheques came to be
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dishonoured with an endorsement dated 17.12.2012 for the reasons stated "Funds Insufficient". Thereafter, on 26.12.2012, the complainant brought this fact to the knowledge of accused by issuing demand notice through RPAD, and the said demand notice was duly served upon accused on 31.12.2012. Despite, service of legal notice, the accused neither paid the cheques amount nor replied the same. Thereby, he committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

5. After receipt of the private complaints, my predecessor in office took the cognizance and got registered the PCR and recorded the sworn statement. Since made out prima-facie grounds to proceed against the accused Nos.1 and 2 for the alleged offence, got issued process.

6. In response to the summons, in C.C.No.20080/2013, the accused No.2 himself as well as on behalf of accused No.1 appeared through his counsel and obtained bail. In C.C.No.8491/2013, the accused appeared through his counsel and obtained bail. As required, complaint copies were supplied to the accused. Thereafter, accusation was read over and explained to them, wherein, the accused No.2 himself as well as Judgment - 11 - C.C.No.20080/2013 C/w C.C.No.8491/2013

on behalf of accused No.1/accused denied the same in both the cases and claimed to have the defence.

7. To prove the case of the complainant in C.C.No.20080/2013, she chosen to examine her SPA Holder by name Pradeep Kumar, who is the husband of complainant herein as PW.1 and got marked Exs.P1 to P8 and the complainant in C.C.No.8491/2013, in order to prove her case, she chosen to examine her SPA Holder by name Pradeep Kumar, who is the husband of complainant herein as PW.1 and got marked Exs.P1 to P12(a). In the cross-examination of PW.1 in C.C.No.20080/2013, accused counsel got confronted two documents and same are marked as Exs.D1 & D2 and in the cross-examination of PW.1 in C.C.No.8491/2013, accused counsel got confronted one document and same is marked as Ex.D1. In both the cases, the PW.1 was subjected for cross-examination by the advocate for the accused.

8. Thereafter, in both the cases the incriminating evidence made against the accused Nos.1 and 2 were recorded under Section 313 of Cr.P.C, wherein the accused No.2 himself as well as on behalf of accused No.1 denied the same. In support of the defence, in C.C.No.20080/2013, the accused No.2 himself as well as on behalf of accused No.1 was examined as DW.1 and got
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marked Exs.D3 to D5 and Exs.D78 to D97. The DW.1 is also chosen to examine Chief Manager of Bank of Baroda, Banashankari Branch by name Smt.S.N.Meera as DW.2 and through her got marked the documents at Exs.D5 to D34. The accused is also chosen to examine Senior Manager of Manipal

Housing Finance, Syndicate Limited by name Smt.Shanthi

V.Shenoy as DW.3 and through her got marked the documents at Exs.D35 to D77. The accused is also choosen to examine one witness by name Smt.Hemalatha M.Singh as DW.4. The DW.1 to DW.4 subjected for cross-examination by the advocate for the complainant.

In support of the defence, in C.C.No.8491/2013 the accused himself was examined as DW.3. The DW.3 is also choosen to examine Chief Manager of Bank of Baroda, Banashankari Branch by name Smt.S.N.Meera as DW.1 and through her got marked the documents at Exs.D2 to D31. The accused is also choosen to examine Senior Manager of Manipal Housing Finance, Syndicate Limited by name Smt.Shanthi V.Shenoy as DW.2 and through her got marked the documents at Exs.D32 to D74. The DW.1 to DW.3 subjected for cross-examination by the advocate for the complainant.

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9. Both side counsels have submitted their detailed written arguments and additional arguments, apart from adduced oral arguments.

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

In C.C.No.20080/2013

- 1) Whether the complainant proves beyond the reasonable doubt that the accused Nos.1 and 2 got issued Ex.P2-cheque bearing No.556250 to the complainant towards discharge of legally recoverable debt or liability and the said cheque was dishonoured, thereby the accused No.1 and 2 have committed an

offence punishable under Section 138 of Negotiable Instrument Act?

2) What Order?

In C.C.No.8491/2013

1) Whether the complainant proves beyond the reasonable doubt that the accused got issued Exs.P2 & P3-cheques bearing Nos.556311 and 556249 to the complainant towards discharge of legally recoverable debt or liability and the said cheques were dishonoured, thereby the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act?

2) What Order?

11. On appreciation of materials available on record, my findings on the above points in both the cases are as under:

Point No.1 : In the Negative

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

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REASONS

12. POINT No.1 IN BOTH THE CASES: The complainant has filed these complaints for the offence punishable under Section 138 of Negotiable Instruments Act against the accused Nos.1 and 2 and prayed to punish them for the offence punishable under Section 138 of Negotiable Instruments Act.

13. To attract Section 138 of Negotiable Instruments Act, complainant should prove that; (1) the accused have issued cheques for discharge of legally recoverable debt. (2) The same were presented through her banker. (3) They were dishonoured on presentation. (4) The notice in terms of provisions was served on the accused and (5) Despite service of notice neither any payment was made nor other obligations, if any were complied

within 15 days from the date of receipt of notice.

14. In order to prove her case, the complainant in C.C.No.20080/2013, she choosen to examine her SPA Holder by name Pradeep Kumar and filed his affidavit and examined as PW.1, wherein, he has reiterated the averments made in the complaint. In support of his contention, he relied upon the documents at Exs.P1 to P8. Among them, Special Power of Attorney dated 12.01.2016 executed by complainant herein in Judgment - 15 - C.C.No.20080/2013 C/w C.C.No.8491/2013

favour of Sri.Pradeep Kumar, who is the husband of complainant regarding prosecute the above matter on behalf of complainant is marked as Ex.P1. Ex.P2 is the cheque bearing No.556250 issued by the accused Nos.1 and 2 for sum of Rs.1,65,42,000/- dated 08.04.2013, drawn on ICICI Bank Ltd., J.P.Nagar Branch, Bengaluru. The signature of accused No.2 is marked as Ex.P2(a). Ex.P3 is the Bank Endorsement issued by ICICI Bank, the contents of Ex.P3 discloses that the cheque bearing No.556250 drawn for Rs.1,65,42,000/- was dishonoured for the reasons "Refer to Drawer". Ex.P4 is the Legal Notice dated 06.05.2013, the recitals of Ex.P4 discloses that the complainant has issued this notice to the accused Nos.1 and 2 through her counsel. By issuing this notice, complainant called upon the accused Nos.1 and 2 to repay the cheque amount of Rs.1,65,42,000/- within 15 days from the date of receipt of notice. Exs.P5 and P6 are the Postal receipts. Ex.P7 is the postal acknowledgment card. Ex.P8 is the unserved R.P.A.D. cover, the

same was returned as insufficient address. The PW.1 was subjected to the cross-examination by the advocate for the accused Nos.1 and 2.

15. In order to prove her case, the complainant in C.C.No.8491/2013, she chosen to examine her SPA Holder by Judgment - 16 - C.C.No.20080/2013 C/w C.C.No.8491/2013

name Pradeep Kumar and filed his affidavit and examined as PW.1, wherein, he has reiterated the averments made in the complaint. In support of his contention, he relied upon the documents at Exs.P1 to P12(a). Among them, Special Power of Attorney dated 12.09.2017 executed by complainant herein in favour of Sri.Pradeep Kumar, who is the husband of complainant, regarding prosecute the above matter on behalf of complainant is marked as Ex.P1. Exs.P2 and P3 are the cheques bearing No.556311 and 556249 issued by the accused for sum of Rs.1 crore each dated 14.12.2012 and 15.12.2012, drawn on ICICI Bank Ltd., J.P.Nagar Branch, Bengaluru. The signatures of accused are marked as Exs.P2(a) and P3(a). Exs.P4 and P5 are the Bank Endorsements issued by Kotak Mahindra Bank Ltd., and ICICI Bank, the contents of Exs.P4 and P5 disclose that the cheques bearing Nos.556249 and 556311 drawn for Rs.1 crore each were dishonoured for the reasons "Funds Insufficient". Ex.P6 is the Legal Notice dated 29.12.2012, the recitals of Ex.P6 discloses that the complainant has issued this notice to the accused through her counsel. By issuing this notice, complainant

called upon the accused to repay the cheques amount of Rs.2

crores within 15 days from the date of receipt of notice. Ex.P7 is

the Postal receipt. Ex.P8 is the postal acknowledgment card.

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Ex.P9 is the receipt/agreement dated 07.07.2008 executed by

accused in favour of complainant regarding transfer of sum of

Rs.1 crore from the complainant's account to the account of M/s.

Apna Sapna's. Ex.P9(a) and P9(b) are the signatures of

complainant and accused. Ex.P10 is the lease agreement dated

19.04.2006 entered into between complainant and accused

regarding the premises taking on rent situated at No.65, 66, 67,

2nd Floor, Sri Sadguru Complex, Bannerghatta Road, Bengaluru.

Ex.P10(a) and P10(b) are the signatures of complainant and

accused. Ex.P11 is the receipt/agreement dated 26.09.2008

executed by accused in favour of complainant regarding transfer

of sum of Rs.1 crore from the complainant's account to the

account of accused. Ex.P11(a) and P11(b) are the signatures of

complainant and accused. Ex.P12 is the private complaint and

Ex.P12(a) is the signature of complainant. The PW.1 was

subjected to the cross-examination by the advocate for the

accused.

16. In support of her case, the complainant through her counsel

has relied upon the decisions as under:

a) (1987) 3 SCC 684 in the case of U.P.Pollution Control

Board V/s. Messrs Modi Distillery and others.

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- b) (2015) 9 SCC 609 in the case of S.R.Sukumar V/s. S.Sunaad Raghuram.
- c) 2014 12 RCR (Cri) 474 in the case of Amol Shripal Sheth V/s. M/s. Hari Om Trading Co. & Others.
- d) AIR 2007 SC 1682 in the case of N.Rangachari V/s. Bharat Sanchar Nigam Limited.
- e) 2001 CrL.L.J 4745 SC in the case of K.N.Beena V/s. Muniyappan and another.
- f) ILR 2006 KAR 4672 in the case of J.Ramaraj V/s. Iliyaz Khan.
- g) AIR 2010 SC 1898 in the case of Rangappa V/s. Mohan.
- h) (2015) 17 SCC 368 in the case of H.Pukhraj V/s. D.Parasmal.
- i) (2015) I SCC 99 in the case of K.Subramani V/s. K.Damodara Naidu.
- j) AIR 2018 SC 3601:: 2018 Cri LJ 4315 in the case of T.P.Murugan V/s. Bojan.
- k) 2019 CrL.L.J. 1498 in the case of Anss Rajashekar V/s. Augustus Jeba Ananth.
- l) AIR 2019 SC 2446 in the case of Bir Singh V/s. Mukesh Kumar.
- m) AIR 2019 SC 1876 in the case of Rohitbhai Jivanlal Patel V/s. State of Gujarat.
- n) AIR 2019 SC 4003 in the case of M/s. Shree Daneshwari Traders V/s. Snajay Jain.
- o) AIR 2018 SC 3173 in the case of Krishna Rao V/s. Shankargouda.
- p) 2020 (1) KCCR 467 in the case of Maxworth Realty India Ltd., and another V/s. M.K.Veerendra Babu.

I have gone through the above decisions.

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

"Until the contrary is proved, the following presumptions

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

Section 139 of Negotiable Instruments Act provides that:

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

17. In order to rebut the presumption available under Sections 118(a) and 139 of Negotiable Instruments Act, the accused No.2 himself as well as on behalf of accused No.1 has filed his affidavit and examined himself as DW.1 and DW.3 in C.C.No.20080/2013 and C.C.No.8491/2013 respectively and filed his defence in writing separately mentioning reasons for issuance of blank cheques to the complainant. Further in support of his defence, he relied upon the documents at Exs.D1 to D97 in C.C.No.20080/2013 and Exs.D1 to D74 in C.C.No.8491/2013 respectively. I have gone through the above oral and Judgment - 20 - C.C.No.20080/2013 C/w C.C.No.8491/2013

documentary evidence. The DW.1 to DW.4 in C.C.No.20080/2013 and the DW.1 to DW.3 in C.C.No.8491/2013 were subjected to the cross-examination by the advocate for the complainant.

18. In support of his case, the accused through their counsel have relied upon the decisions as under and Sections 5, 11 and 28 of Karnataka Money Lenders Act.

a) 2009 (4) AIR Bom R 436 in the case of Sanjay Mishra

- V/s. Ms. Kanishka Kapoor @ Nikki and another.
- b) 2010 Cri.L.J. 1217 :: 2010 (1) AIR Bom R 434 in the case of Anil Baburao Kataria V/s. Purshottam Prabhakar Kawane.
 - c) 2014 Cri.L.J. 576 in the case of A.C.Narayanan V/s. State of Maharashtra and another.
 - d) AIR 2008 SC 1325 in the case of Krishna Janardhan Bhat V/s. Dattatraya G. Hegde.
 - e) 2012 Crl.L.J 2525 in the case of Anil Hada V/s. M/s. Godfather Travels and Tours Pvt. Ltd.,
 - f) AIR Online 2019 MAD 970 :: (2019) 2 MADLW (Cri) 291 in the case of Rangabashyam V/s. Ramesh.
 - g) 2014 Cri.L.J. 576 in the case of A.C.Narayanan V/s. State of Maharashtra and another.
 - h) AIR 2010 (NOC) 874 (BOM) :: AIR 2010 (NOC) 874 (B)M) in the case of Nanda Dharma Nandanwar V/s. Nandkishor Talakram Thaokar.

I have gone through the above decisions and provisions.

19. On going through the rival contentions of the parties, it is made clear that the accused in both the cases has seriously
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attacked on the claim put forth by the complainant. On going through the materials on records, it discloses that the complainant has brought these cases against the accused based on the questioned cheques. Therefore, it needs to draw the presumption as per Sections 118 and 139 of Negotiable Instruments Act. Under Section 139 of Negotiable Instrument Act, there is a legal presumption that the cheque was issued for discharging liability and that presumption can be rebutted only by the person who drew the cheque. Therefore, by virtue of above said provision it requires to draw statutory presumption in favour of complainant

that the accused got issued alleged cheques in both the cases for discharge of existence of legally recoverable debt. Therefore, as per above provisions, it is the initial onus on the accused to prove his case based on the principles of 'Preponderance of Probabilities'.

20. The standard of proof so as to prove a defence on the part of the accused is 'Preponderance of Probabilities'. Inference of 'Preponderance of Probabilities' can be drawn, not only from the materials brought on record by parties, but also by reference to the circumstances upon which he relies.

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21. On going through the above provisions, it is made clear that it is the initial burden on the accused to prove his probable defence in order to rebut the statutory presumption as well as the cases put forth by the complainant. It is the case of complainant in C.C.No.8491/2013 is that on 07.07.2008, the complainant transferred sum of Rs.1 crore to the account of M/s. Apna Sapna's and transferred sum of Rs.1 crore on 26.09.2008 to the personal account of accused herein and accused has promised to repay the said amount on or before 26.08.2012 with an interest of 4% p.m. For security of the said transaction, the accused has issued four cheques bearing Nos.556311, 556312, 556249 and 556250. In order to prove the defence in both cases, the accused has cross-examined the PW.1 in length.

22. In the cross-examination, the PW.1, in C.C.No.8491/2013

has deposed that:

" -9 -11

,

,

."

23. In the above testimony of PW.1, he admitted that the

amount given by the complainant to accused is not mentioned as

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C.C.No.8491/2013

loan in Exs.P9 and P11. The PW.1, in his cross-examination,

further admitted that he did not produce any document before this

court regarding obtaining of money lending license and income

tax returns of the complainant to prove the transaction held

between complainant and accused.

The PW.1, in his cross-

examination, in C.C.No.8491/2013 has admitted that as per Ex.D1

- (receipt / agreement), the complainant has received blank

cheques from the accused and he was witness to the said

agreement. The PW.1, further admitted that more transactions

were held between complainant and accused and accused had

registered 2 sites in the name of complainant in Apna Sapna's

Layout.

24. The PW.1, during his cross-examination in

C.C.No.8491/2013 has deposed that:

"DgÉÆÃ;

“ÁâAPi

SÁVÉ~ÄAzÀ

PÉÆÃlPi

ªÄÄ»ÄAzÀæ

“ÁÁAQ£À°ègÀÄªÀ ¡gÁÄçAiÄÄ SÁvÉUÉ gÀ£.2,74,30,354/- °ÀtªÀ£ÄÄß
dªAiÁªÀiÁrzÁÝgÉAzÁgÉ,ÁQèªÀiÁrgÄÄvÁÜgÉ JAzÄÄ £ÄÄrAiÄÄvÁÜgÉ.
,ÁQèªÀÄvÉÜªÄÄÄzÄÄªÄjzÄÄ JµÄÄÖ °Àt dªAiÁªÀiÁrzÁÝgÉAzÄÄ
UÉ£wÜ®è JAzÄÄ £ÄÄrçgÄÄvÁÜgÉ. DgÉ£Ä! SÁvÉ-ÄAzÄ £ÄªÄÄ
SÁvÉUÉ dªAiÁ DzÄ “ÁÁAPi,ÉÖÄmiªÉÄAmi£ÄÄß £ÄÄAiAiÁªÀiÄÄzÄ°è

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°ÁdgÄÄªÀiÁr®è. FªÄªªÀ°ÁgÄzÄ “ÄszÄævÉUÁV DgÉ£Ä! 4,Ä»
ªÄÄvÄÄÜ °É,ÁgÄÄ §gÉzÄÄ ZÉPÄÄIUÄÄ£ÄÄß ¡gÁÄçUÉªÄrzÁÝgÄÄ."

25. On appreciation of the above testimony of PW.1, he clearly

deposed that the accused has transferred sum of

Rs.2,74,30,354/- from his account to the account of complainant,

the PW.1 did not produce the bank statement of complainant

before this court. The PW.1, further stated that he has not

produced the bank statement of complainant regarding the

amount transferred from the account of accused to their account.

The PW.1, further admitted that for security of the said

transaction, the accused has issued signed 4 cheques to the

complainant. From this, it is made clear that the accused has

given 4 blank cheques to the complainant as security not for

discharge of any legally enforceable debt and transferred sum of

Rs.2,74,30,354/- from his account to the account of complainant.

26. No doubt, under Section 139 of Negotiable Instrument Act,

there is a legal presumption that the cheque was issued for

discharging liability and that presumption can be rebutted only by

the person who drew the cheque.

The complainant herself

admitted that cheques produced by her in both the cases were

issued by the accused for only security purpose. When the said

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cheques were issued by the accused for security purpose, the complainant cannot not use for encashment of interest of Rs.1,65,42,000/- in C.C.No.20080/2013 and she cannot not use for encashment of Rs.2 crore in C.C.No.8491/2013.

27. No doubt, the complainant has transferred an amount of Rs.1 crore on 07.07.2008 and another sum of Rs.1 crore on 26.09.2018 to the account of accused Nos.1 and 2. The complainant stated that the accused paid interest for the period of 45 months on the said principal amount. Therefore, the complainant should prove that she is having money lending license from the concerned authority to lend the huge amount by imposing exorbitant rate of interest at 4% p.m. to the accused. No person can lend the huge amount on interest basis without obtaining license from the competent authority as per Section 5 of Karnataka Money Lenders Act, 1961.

Section 5 of Karnataka Money Lenders Act, 1961 speaks that:

"No person can carry on the business of money lending in the state, except in accordance with the terms and conditions of the license and on payment of security deposit."

Section 28 of Karnataka Money Lenders Act, 1961 speaks that:

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"The Notification dated 28.08.2003 issued from the Government of Karnataka, wherein it is stated that in exercise of the powers conferred under (1) of Section 28 of the Karnataka Money Lenders Act, 1961 and in suppression, all previous orders or notifications in this regard, the Government of Karnataka hereby fixed the

following maximum rates of interest in respect of secured and unsecured loans for all clauses of business of money lending; (i) secured loan... 14% p.a. (ii) unsecured loan... 16% p.a."

28. The Ex.P9 and P11 which produced by the PW.1, reveals that the complainant lent amount to the accused on exorbitant rate of interest at 4% p.m. (48% per annum). It shows that the complainant has lent the amount to the accused for profit. Therefore, as per Section 5 of Money Lenders Act, unless there is a license it cannot become a legally recoverable debt.

29. The fact that the complainant charged interest on the money lent by her to the accused. In the circumstances unless the loan falls within any one of the exceptions under clauses (a) to (I) of Section 2 (9) of the Act, the same shall be treated as to be a loan for the purpose of Karnataka Money Lenders Act.

30. In the present case on hand, the complainant has not proved that the loan lent by her to the accused falls within any one of the exceptions under clauses (a) to (I) of Section 2 (9) of
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Karnataka Money Lenders Act, 1961. Admittedly, in the present case on hand, the complainant did not have money lending license. Therefore, the complainant cannot say that the alleged cheques amount become a legally recoverable debt.

31. The complainant contended that the accused has issued cheque bearing No.556250 in C.C.No.20080/2013 for the purpose of payment of interest of Rs.1,65,42,000/- . In the chief

examination para No.9, the complainant has stated that the accused has issued cheques bearing Nos.556311 and 556250 in C.C.No.20080/2013 and cheque Nos.556311 and 556249 in C.C.No.8491/2013, all the cheques are drawn on ICICI Bank, J.P.Nagar Branch, Bengaluru for security purpose. It shows that the above cheques were not issued by the accused for discharge of legally recoverable debt in favour of complainant.

It is relevant to cite the decision reported in ILR 2008 KAR 3635 (K.Narayana Nayak V/s. Sri.M.Shivarama Shetty). Wherein, it was pleased to held that:

"Negotiable Instruments Act, 1881 - Section 138 -
Offence under - Acquittal - Complainant's Appeal -
Cheque issued not for discharge of any existing debt,
but issued as a security for advancing loan -
Presumption - HELD, That the cheque issued by the
respondent to the appellant is only as a security and not
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C.C.No.8491/2013

for discharge of any existing debt. So far as the presumption as to issuance of the cheque for consideration and in discharge of debt, the respondent/accused need not disprove the appellant's case in its entirety. He can discharge his burden on the basis of preponderance or probabilities through direct or circumstantial evidence, for which he can also rely on the evidence adduced by the complainant - Evidence on record clearly establishes that the cheque was not issued towards discharge of any legally enforceable debt, but the blank signed cheque was issued as security - Order of acquittal is Justified".

32. In view of the above decision, in the present case on hand, the alleged cheques were issued by the accused for security purpose, therefore, it cannot be considered as the accused has issued alleged cheques for discharge of legally enforceable debt.

33. In the present case on hand, Exs.D13 and D14 got marked

through DW.2 in C.C.No.20080/2013. Note portion in paragraph

No.3 of Exs.D13 and D14 disclose that:

"For the above loan, as security we have issued 2 blank cheques bearing Nos.556249 and 556250 both drawn on ICICI Bank Ltd., J.P.Nagar Branch, Bengaluru-78."

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Further Exs.P9 and Exs.P11 got marked through PW.1 in

C.C.No.8491/2013. Note portion in paragraph No.3 of Exs.P9

and P11 disclose that:

"For the above loan, as security we have issued 2 blank cheques bearing Nos.556311 and 556312 both drawn on ICICI Bank Ltd., J.P.Nagar Branch, Bengaluru-78."

34. From this, it is made clear that the accused has issued cheques bearing Nos.556249, 556250, 556311 and 556312 to the complainant for security purpose, not for any discharge of legally enforceable debt. Therefore, the Exs.P9 and P11/Exs.D13 and D14 agreements/receipts do not come to the help of the complainant to establish that the accused issued alleged cheques in her favour for discharge of legally enforceable debt.

35. It was not in dispute that Rs.2 crores amount was transferred to the account of accused. The accused has stated that the said amount was paid by the complainant for payment of due amount of Villa No.19 and Villa Plat No.20, renovation work of Rakesh Singh's house and construction of Mandya commercial complex work etc. In para No.3 of cross of DW.1 in

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C.C.No.20080/2013 dated 20.09.2021 the counsel for complainant suggested that:

" ₹ 2,79,32,254/- .15 . ₹ ...,, ₹ .
₹ 2,79,32,254/- . ₹ . ₹ ₹ .
₹ ₹ ₹ ₹ ₹ ₹ ., ₹ ₹ ., . ₹ ₹ . ₹ .
₹ ₹ . ₹ , " . , ₹ . ₹ ₹ ₹ . ₹ . ₹ . ₹ , ₹ ₹
₹ ₹ ₹ . »»»» ₹ ₹ . , . ₹ ₹ ₹ ₹ ₹ ."

36. The counsel for accused suggested that already accused has repaid Rs.2,79,32,255/- to the complainant for repayment of loan amount. This amount is more than the amount said to be lent by the complainant to the accused. The suggestions of advocate for complainant in para No.3 of cross-examination of DW.1 dated 20.09.2021, itself is sufficient to presume that the accused has repaid the amount more than of Rs.2 crores to the complainant.

37. The complainant has stated that for security of Rs.2 crores the accused has issued 4 cheques, out of 4 cheques she has presented a cheque before the bank for encashment of interest amount of Rs.1,65,42,000/- which filed in C.C.No.20080/2013, the said cheque was given by the accused to the complainant for security purpose. Therefore, complainant cannot present the said cheque for encashment of interest amount.

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C.C.No.8491/2013

38. On carefully going through the section 138 of Negotiable Instrument Act, it is very much clear that complainant should

prove that cheques were issued for discharge of existence of legally enforceable debt. In the present case on hand, admittedly the alleged cheques were issued by the accused for only security purpose and not for discharge of any legally enforceable debt. Therefore, the complainant cannot present the alleged cheques for encashment, which were given by the accused for security purpose.

39. Mere because of the alleged cheques in both the cases consists of the signatures of accused, it would not draw the presumption under Sections 118(a) and 139 of Negotiable Instruments Act, for passing of consideration. The complainant has failed to prove that accused have issued the alleged cheques for repayment of amount. The hand writing of the questioned cheques is also not admitted by the accused, therefore, it is the complainant has to prove the due execution and issuance of disputed cheques in both the cases for discharge of existence of legally enforceable debt. But, she failed to prove the same by producing clear, convincing and clinching evidence before the court.

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C.C.No.8491/2013

40. On overall appreciation of the material facts available on record, it discloses that complainant failed to demonstrate her case. While appreciating the materials available on record, this court has gone through the decisions relied by both parties apart from the following decisions.

In the decision reported in ILR 2009 KAR 2331

(B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble High Court of Karnataka held that:

"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 bears 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, so as, to raise the presumption under Section 139 of Negotiable Instrument Act".

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

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At this stage, this court has also relied upon decision reported in AIR 2007 NOC 2612 A.P. (G.Veeresham V/s. Shivashankar and another). Wherein, it was pleased to held that:

"Negotiable Instruments Act (26 of 1881). S. 138 Dishonour of cheque - Presumptions available to complainant under S. 118 and S. 139 of Act - Rebuttal of cheque in question was allegedly issued by accused to discharge hand loan taken from complainant. However, no material placed on record by complainant to prove alleged lending of hand loan said fact is sufficient to infer that accused is liable to rebut presumptions available in favour of complainant under Sections 118 and 139 of Act, Order acquitting accused for offence under S. 138 proper".

42. The principle of law laid down in the above decision is applicable to the facts of this case. In the case on hand also as discussed above, the complainant has failed to prove with cogent evidence as to the accused issued the disputed cheques in favour of complainant for discharge of legally enforceable debt. Thus, that fact itself is sufficient to infer that accused is able to rebut presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

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C.C.No.8491/2013

43. The sum and substances of principles laid down in the rulings referred above are that once it is proved that cheques 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 cheques in question were 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.

44. Thus, on appreciation of evidence on record, I hold that the complainant has failed to discharge the burden to prove her contention as alleged in the complaint. Further it is seen that the accused Nos.1 and 2 have not issued the disputed cheques of both the cases to the complainant for discharge of legally

enforceable debt, therefore, Section 138 of Negotiable Instruments Act is not attracted.

45. The accused in both the cases by leading oral and documentary evidence have rebutted the presumption available in Judgment - 35 - C.C.No.20080/2013 C/w C.C.No.8491/2013

complainant under Sections 118(a) and 139 of Negotiable Instruments Act. The evidence placed on record clearly probablized that complainant/PW.1 has failed to prove that the accused issued the cheques for discharge of legally recoverable debt. Therefore, as discussed above, the complainant/PW.1 has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act in both the cases beyond reasonable doubt. In view of the above said reasons, I hold Point No.1 in both the cases in the Negative.

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

ORDER

Acting under Section 255(1) of Cr.P.C. the accused Nos.1 and 2 in C.C.No.20080/2013 and accused in C.C.No.8491/2013 are acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

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

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(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 25 th day of October - 2021) (N.K.SALAMANTAPI) XXIII Addl.

Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE IN C.C.NO.20080/2013 List of Witnesses examined on behalf of Complainant:

PW-1 : Pradeep Kumar.S List of Exhibits marked on behalf of Complainant:

Ex.P1 : Special Power of Attorney Ex.P2 : Original Cheque Ex.P2(a) : Signature of accused No.2 Ex.P3 : Bank endorsement Ex.P4 : Office copy of legal notice Exs.P5 & P6 : Postal receipts Ex.P7 : Postal Acknowledgment card Ex.P8 : Unserved R.P.A.D., cover List of Witnesses examined on behalf of the defence:

DW.1	:	Sunil Baberwal
DW.2	:	S.N.Meera
DW.3	:	Shanthi V Shenoy
DW.4	:	Hemalatha M.Singh

List of Exhibits marked on behalf of defence:

Exs.D1 & D2 : CC of Agreements/Receipts Ex.D3 : MOU Judgment - 37 - C.C.No.20080/2013 C/w C.C.No.8491/2013 Ex.D3(a) to D3(c) : Signatures of complainant, accused and witness Exs.D4 and D5 : Copies of letters dtd: 06.09.2018 Ex.D5 : Statement of account Ex.D6 : True copy of Bank form Ex.D7 : True copy of Pan card and voters ID card Ex.D8 : Letter of proposal for term loan & its enclosures Ex.D9 : True copy of ITR-V & its enclosures Ex.D10 : True copy of construction agreement Ex.D11 : True copy of letter dtd 10.01.2008 Ex.D12 : True copy of letter dtd 21.06.2008 Exs.D13 & D14 : True copies of agreements/receipts Ex.D15 : True copy of letter of release of construction amount dtd:12.05.2008 Ex.D16 : True copy of legal opinion Ex.D17 : True copy of sanction inspection report Ex.D18 : True copy of progress report Ex.D19 : True copy of details of the proposal Ex.D20 : True copy of valuation report Ex.D21 : True copy of letter dtd 03.08.2008 Ex.D22 : True copy of quotation Ex.D23 : True copy of loan disbursement letter Ex.D24 : True copy of bill of commercial complex Ex.D25 : True copy of release of loan amount letter Ex.D26 : True copy of receipt Ex.D27 : True copy of letter of quotation for supplying of granite stone Ex.D28 : True copy of release of loan amount letter Ex.D29 : True copy of completion of construction work letter Ex.D30 : True copy of release of final installment of loan letter dtd 09.07.2009 Ex.D31 : True copy of letter dtd 16.03.2016 & its enclosures Ex.D32 : True copy of letter dtd 06.09.2018 Ex.D33 : True copy of letter dtd 14.12.2018 Ex.D34 : True copy of memo Exs.D35 & D36 : True copies of loan offer letters Ex.D37 : True copy of loan agreement Ex.D38 : True copy of evidencing deposit of title deed Exs.D39 & D 40 : True copies of sale deeds Exs.D41 & D 42 : True copies of loan account statements Ex.D43 : True copy of land tax assessment extract Judgment - 38 - C.C.No.20080/2013 C/w C.C.No.8491/2013 Ex.D44 : True copy of tax demand register extract Ex.D45 : True copy of land tax assessment extract Ex.D46 : True copy of tax demand register extract Exs.D47 to D50

: True copies of tax paid receipts Ex.D51 : True copy of sanctioned building plan Ex.D52 : True copy of construction licence Ex.D53 : True copy of licence fee receipt Exs.D54 & D55 : True copies of EC Ex.D56 : True copy of loan agreement Ex.D57 : True copy of letter evidencing deposit of title deed with receipt Exs.D58 & D59 : True copies of loan application forms Exs.D60 & D61 : True copies of valuation reports Ex.D62 : True copies of Pan card and Voters ID Card Ex.D63 : True copy of Passport & Election ID Card Exs.D64 to D66 : True copies of lease agreements Ex.D67 : True copy of rental agreement Ex.D68 : True copy of lease deed Ex.D69 : True copy of agreement amenities Exs.D70 & D71 : True copies of ITR-V & acknowledgment Ex.D72 : True copy of Statement of account Ex.D73 : True copy of loan account statement Ex.D74 : True copy of No due certificate Ex.D75 : True copy of Statement of account Ex.D76 : True copy of legal scrutiny report Ex.D77 : True copy of loan account statement Ex.D78 : Statement of account Ex.D79 : True copy of sanctioned plan Exs.D80 to D83 : CC of absolute sale deeds Ex.D84 : Letter dtd: 09.05.2013 Ex.D85 : Profession certificate Villa No.38 Ex.D86 : Release of housing loan installments Exs.D87 & D 88 : CC of Absolute sale deeds Ex.D89 : Repayment of loan lttter dtd: 03.09.2021 Ex.D90 : Xerox copy of Paper publication Ex.D90(a) : Potion of paper publication Ex.D91 : Copy of deed of release Ex.D92 : Copy of purchase order Ex.D93 : Statement of account Exs.D94 & D95 : Computer print of Mobile messages Ex.D96 : Pen drive Ex.D97 : Statement of account Judgment - 39 - C.C.No.20080/2013 C/w C.C.No.8491/2013 ANNEXURE IN C.C.NO.8491/2013 List of Witnesses examined on behalf of Complainant:

PW-1 : Pradeep Kumar.S List of Exhibits marked on behalf of Complainant:

Ex.P1 : Special Power of Attorney Exs.P2 & P3 : Original Cheques 2 Nos.

Exs.P2(a) & P3(a)	:	Signatures of accused
Exs.P4 & P5	:	Bank endorsements
Ex.P6	:	Office copy of legal notice
Ex.P7	:	Postal receipt
Ex.P8	:	Postal Acknowledgment card
Exs.P9 & P11	:	Receipts executed on stamp papers
Exs.P9(a) & P11(b)	:	Signatures of complainant and accused
Ex.P10	:	Lease agreement
Ex.P10(a) & P10(b)	:	Signatures of complainant and accused
Ex.P12	:	Private complaint
Ex.P12(a)	:	Signature of complainant

List of Witnesses examined on behalf of the defence:

DW.1	:	S.N.Meera
DW.2	:	Shanthi V Shenoy
DW.3	:	Sunil Baberwal

List of Exhibits marked on behalf of defence:

Ex.D1	:	CC of receipt/agreement
Ex.D2	:	Statement of account
Ex.D3	:	True copy of account opening form
Ex.D4	:	True copy of voters ID Card
Ex.D5	:	True copy of project report
Ex.D6	:	True copy of ITR-V
Ex.D7	:	True copy of construction agreement
Ex.D8	:	True copy of Apna Sapna Constructions
Ex.D9	:	True copy of letter
Exs.D10 & D11	:	True copies of receipts/agreements
Ex.D12	:	True copy of release of construction amount letter
Ex.D13	:	True copy of legal opinion
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Ex.D14	:	True copy of presumption-sanction inspection report
Ex.D15	:	True copy of Progress report
Ex.D16	:	True copy of details of the proposal
Ex.D17	:	True copy of valuation report
Ex.D18	:	True copy of letter
Ex.D19	:	True copy of quotation
Ex.D20	:	True copy of loan disbursement letter
Ex.D21	:	True copy of first running bill letter
Ex.D22	:	True copy of release of loan amount letter
Ex.D23	:	True copy of receipt
Ex.D24	:	True copy of quotation for suppling of granite stone
Ex.D25	:	True copy of letter
Ex.D26	:	True copy of completion of construction work
Ex.D27	:	True copy of letter dtd 09.07.2009
Ex.D28	:	True copy of letter dtd 16.03.2016
Ex.D29	:	True copy of letter dtd 06.09.2018
Ex.D30	:	True copy of letter dtd 14.12.2018
Ex.D31	:	True copy of memo
Exs.D32 & D33	:	True copies of loan offer letters
Ex.D34	:	True copy of loan agreement
Ex.D35	:	True copy of letter evidencing deposit of title deed
Exs.D36 & D37	:	True copies of sale deeds
Exs.D38 & D39	:	True copies of loan account statements
Ex.D40	:	True copy of land tax assessment extract
Ex.D41	:	True copy of tax demand register extract
Ex.D42	:	True copy of land tax assessment extract
Ex.D43	:	True copy of tax demand register extract

Exs.D44 to D47 : True copy of tax paid receipts Ex.D48 : True copy of sanctioned building plan Ex.D49 : True copy of licence for construction Ex.D50 : True copy of

receipt of licence fee Exs.D51 & D52 : True copies of encumbrance certificates Ex.D53 : True copy of loan agreement Ex.D54 : True copy of letter evidencing deposit of title deed Exs.D55 & D56 : True copies of loan applications Exs.D57 & D58 : True copies of valuation reports Ex.D59 : True copy of Pan card and Voters ID Ex.D60 : True copy of Passport, Pan card and Voters ID Exs.D61 to D63 : True copies of lease agreements Judgment - 41 - C.C.No.20080/2013 C/w C.C.No.8491/2013 Ex.D64 : True copy of rental agreement Ex.D65 : True copy of lease deed Ex.D66 : True copy of agreement amenities Exs.D67 & D 68 : True copies of ITR Assessments Ex.D69 : True copy of Statement of account Ex.D70 : True copy of loan account statement Ex.D71 : True copy of no due certificate Ex.D72 : True copy of Statement of account Ex.D73 : True copy of legal opinion Ex.D74 : True copy of loan account statement XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

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Comp -

Accd -

For Judgment Common Judgment pronounced in the open court vide separate order.

***** ORDER Acting under Section 255(1) of Cr.P.C. the accused Nos.1 and 2 in C.C.No.20080/2013 and accused in C.C.No.8491/2013 are acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

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

Keep the original copy of judgment in C.C.No.20080/2013 and its copy in C.C.No.8491/2013.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.