

Sri.P.Nanje Gowda vs Smt.G.L.Manjula on 23 December, 2022

KABC030879922017

Presented on : 03-08-2017
Registered on : 03-08-2017
Decided on : 23-12-2022
Duration : 5 years, 4 months, 20 days

IN THE COURT OF THE XVIII ADDL.CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY

PRESENT: MANJUNATHA M.S. B.A., LL.B.
XVIII ADDL.C.M.M., BANGALORE

DATED : THIS THE 23 rd DAY OF DECEMBER 2022
Criminal Case No.20071/2017

COMPLAINANT:- Sri.P.Nanje Gowda,
S/o Late.Papanna,
Aged about 50 years,
R/at No.331, 22nd 'A' Main,
28th Cross, Judicial Layout,
G.K.V.K.Post,
Bangalore-560 065.
(By Sri.G.N.D- Advocate)

ACCUSED:- Vs
Smt.G.L.Manjula,
W/o.A.N.Ramappa,
Aged about 43 years,
R/at No.1880, 8th Cross,
Tank Road, Sanjeevini Nagara,
Sahakaranagara Post,
Bangalore-560 092.
(By Sri.N.G.B -Advocate)

Offence complained : U/Sec.138 of Negotiable
Instrument Act.
2 Judgment C.C.20071/2017

Name of the complaint : Sri.P.Nanje Gowda,
S/o Late.Papanna
Date of commencement

of evidence : 13-12-2018

Date of closing evidence : 16-11-2022

Opinion of the Judge : Accused found not guilty.

(MANJUNATHA M.S.)
XVIII A.C.M.M. , BANGALORE
JUDGMENT

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 of the Negotiable Instruments Act (in short referred as "N.I. Act") against the accused alleging that she has committed the offence punishable under section 138 of NI Act.

02. The sum and substance of the complaint is as follows; The accused and her family and complainant are known to each other for several years through one Mr.Sampath Kumar who was close relative of the complainant. The husband of the accused Sri.A.N.Ramappa is a carpenter by profession who has done the 3 Judgment C.C.20071/2017 entire carpenter work in Sampath Kumar's house during the year 2006. The accused and her family had friendship and closeness with the complainant through Sampath Kumar, because of said friendship and closeness the accused and her husband have approached the complainant in the month of October 2014 for a hand loan of Rs.4,00,000/- for purpose of their elder daughter's marriage and also promised to repay the same within 3 years. Considering the request of accused and her husband the complainant has paid Rs.4,00,000/- to the accused by way of cash on 27-10-2014 in the presence of Mr.Sampath Kumar. On the same day the accused has executed hand loan agreement on e-stamp and issued post dated cheque bearing No. 507343 dated 27.06.2017 for Rs.4,00,000/-drawn on Corporation Bank, Sahakara Nagar, CPB, Bangalore. The said Sampath Kumar has also signed the said agreement. After two years, i.e., 2016 the complainant has approached the accused and requested to repay the loan amount, the accused and her husband told that they are making arrangements to sell their agricultural land situated at Manchenahalli village, Gouribidhanur Taluk and there is slight delay because of some documents are to be updated at the revenue department and 4 Judgment C.C.20071/2017 promised that the entire loan amount will be repaid. Again in the year 2017 the complainant has approached the accused to repay the loan amount. The accused assured and promised that the hand loan amount will be paid on 27.6.2017. On 27.6.2017 the complainant approached the accused regarding repayment of the loan amount, at that time the accused has suggested the complainant to present the above said post dated cheque on 29.7.2017 and also assured that cheque will be honoured on its presentation. As per the assurance of the accused, the complainant has presented cheque bearing No. 507343 dated 27.6.2017 for Rs.4,00,000/- drawn on Corporation Bank, Sahakara Nagara Branch, Benglauru for encashment on 29.6.2017 through his banker. But said cheque was dishonored for "Funds Insufficient" on 30.6.2017. Therefore, the complainant has got issued demand notice on 11-07-2017 to the accused by demanding the payment of cheque amount. The said notice duly served to the accused. Despite of Service of legal notice the accused has not paid the cheque amount and issued untenable reply dated 20.7.2017. On these

allegations, present complaint is filed.

03. After filing of complaint, this court has taken cognizance of the offence punishable under section 138 of Negotiable Instrument 5 Judgment C.C.20071/2017 Act, sworn statement of the complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, the accused was enlarged on bail and her plea was recorded as per section 251 of Cr.P.C. The accused has not pleaded guilty and submitted that she has defense to make.

04. As per the direction of Hon'ble supreme court in "Indian Bank Association V/s Union of India and others reported in (2014) 5 SCC 590, the sworn statement of the complainant treated as complainant evidence and complainant has examined himself as PW1 by filing affidavit of chief-examination and got marked Ex.P.1 to 7 and he also examined one witness by name Sampath Kumar as PW2. The accused has filed application under section 145(2) of NI Act for recall of PW1 for the purpose of cross-examination. The said application came to be allowed and defence counsel has fully cross- examined PW1. After completion of complainant's evidence the statement of accused as contemplated under section 313 of code of criminal procedure was recorded. The accused has denied all the incriminating material appears against her in the complainant's evidence. To prove her defence the accused herself examined has 6 Judgment C.C.20071/2017 DW1 and Ex.D1 document was marked on her behalf. The complainant counsel has fully cross examined DW1.

05. Heard the arguments of learned counsel for complainant and accused. The Defence counsels has filed written arguments along with memo with decision. The complainant counsel filed memo with decisions reported in Judgment of Hon'ble Supreme Court of India in SLP No. 407/2006 in Cr.A.No.1020/2010 Rangappa Vs Mohan. The accused counsel has filed memo with decision in Cr.A.No. 271/2020 APS Forex Service Pvt Ltd Vs Shakti International Fashion Linkers and ors, 2) SLP No. 407/2006 in Cr.A.No.1020/2010 Rangappa Vs Mohan 3) SLP No. 10030/2016 in Cr.A.No.803/2018 Kishan Rao Vs Shankargouda 4) SLP No. 8641/2018 in Cr.A.No.636/2019 Basalingappa Vs Mudibasappa 5) SLP No. 969/2001 in Cr.A.No.1066/2001 K.N.Beena Vs Muniyappan and anr 6) SLP No. 955/2007 in Cr.A.No.2045/2008 M/s Kumar Exports Vs M/s Sharma Carpets,7) SLP No. 1883/2018 in Cr.A.No.508/2019 Rohitbhai Jivanlala Patel Vs State of Gujara & anr . I have perused the materials available on record.

06. The points that arise for my consideration are as follows;

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1. Whether the complainant has proves that the accused has issued cheque bearing No.507343 dated 27-06-2017 for Rs.4,00,000/- towards discharge of her liability, which was returned unpaid on presentation for the reason "Funds Insufficient" and despite of notice she has not paid the cheque amount and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

07. My answer to the above points is as follows;

Point No.1: In the Negative.

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

08. POINT No.1: The Complainant has filed this complaint alleging that the accused has committed offence punishable under section 138 of N.I. Act. The complainant has pleads and asserts that, the accused availed hand loan of Rs.4,00,000/-and towards repayment of the said loan amount she has issued cheque in question for Rs.4,00,000/-. He has presented the said cheque for encashment through his banker. But said cheque was dishonored for "Funds Insufficient" on 30.6.2017. Thereafter, he got issued demand 8 Judgment C.C.20071/2017 notice on 11.07.2017 to the accused by demanding the payment of cheque amount. Despite of service of notice the accused has not paid the amount within 15 days, which gave raise cause of action to file this complaint.

09. To substantiate his case, the complainant himself stepped into witness box and examined as PW.1 and got marked Ex.P-1 to 7 documents. The complainant has reiterated the contents of the complaint in his affidavit evidence about lending of hand loan Rs.4,00,000/- to the accused, issuance of cheque by the accused towards the discharge of said debt and its dishonour for "Funds Insufficient", issuance of legal notice to the accused calling upon her to pay the amount covered under cheque and her failure to comply the same. The complainant also examined one Samath Kumar as PW2, who is the signatory to the loan agreement Ex.P7 and has deposed in the same line as deposed by the complainant.

10. In this scenario, let me scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. Ex.P.1 is cheque dated 27.06.2017. The said cheque was returned unpaid with 9 Judgment C.C.20071/2017 an endorsement "Funds Insufficient" as per Ex.P.2 bank endorsements dated 30-06-2017, Ex.P.3 is legal notice dated 11-06-2017, but it was posted on 11.7.2017 under which the complainant has demanded the payment of cheque amount, Ex.P.4 is Postal Receipt, Ex.P.5 is Postal acknowledgment, Ex.P.6 is Reply Notice dated 20.7.2017 and Ex.P.7 is loan agreement dated 27.10.2014 . This complaint is came to be filed on 03-08-2017. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act have been complied with and this complaint is filed within time. The complainant by examining himself as PW1 and by examining one more witness as PW2 and by producing aforesaid documents has discharged his initial burden.

11. The accused has specifically denied the borrowing of hand loan of Rs. 4,00,000/- from the complainant and issuance of Ex.P.1 cheque for discharge of said alleged debt. The accused has put-forth her defence that one Channamma was doing a chit business and the accused and others have subscribed the chit with her. In the said chit transaction she has issued a blank cheque for security. The complainant has collected the said cheque from Chenamma and 10 Judgment C.C.20071/2017 misused the same to file present case. Therefore, the cheque in question was not issued for discharge of any debt or liability. The cheque in question is not supported by any

consideration as such section 138 of NI Act is not attracted to the same. On these grounds the accused prays to acquit her from the case.

12. In the back drop of aforesaid rival contentions, this court has given anxious consideration to the material on record and the submissions made by both counsels. At the outset, it is pertinent to mention that during the cross-examination the accused has clearly admitted that cheque in question belongs to her bank account and it bears her signature. From the above admissions it goes without saying that the accused has not disputed the cheque in question as well as signature found in the said cheque. The only contention of the accused is that she has issued blank cheque as security to one Chennamma in the chit transaction. When the drawer has admitted the issuance of cheque as well as the signature present therein, the presumptions envisaged under section 118 read with section 139 of NI Act, would operate in favour of the complainant. The Hon'ble Supreme Court in *M/S Kalamani Tex and another V/s P. Balasubramanian* (2021) 5 SCC 283 has held that the Statute 11 Judgment C.C.20071/2017 mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative, such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Therefore once the drawer has admitted the issuance of cheque as well as on the signature present therein or it is established that signature in cheque belongs to accused, then the presumption envisaged under section 118 and 139 of NI Act, would operate in favour of the complainant. The said provision lays down a special rule of evidence applicable to negotiable instrument. The presumption is one of law and thereunder court shall presume that the Negotiable instrument was endorsed for consideration. So, also in the absence of contrary evidence on behalf of the accused, the presumption under section 118 and 139 of NI Act goes in favour of the complainant. In the present case also as stated above the complainant has established that signature found in Ex.P1 cheque belongs to the accused by way admissions elicited in the cross-examination of accused. As such presumption under section 118 and 139 of NI Act has to be drawn in favour of the complainant. Section 118 reads as here:- "That every negotiable instrument was made or 12 Judgment C.C.20071/2017 drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration". Further Section 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as here: - "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, or any debt or other liability." A combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability.

13. No doubt, the said statutory presumptions are rebuttable in nature. It is for the accused to place cogent and probable defence to rebut presumption raised in favour of the complainant. As discussed above when the complainant has relied upon the statutory presumption enshrined under section 118 read with section 139 of NI Act, it is for the accused to rebut the said presumption with cogent and convincing evidence. To put it other way, the burden lies upon the accused to prove that Ex.P.1 cheque was not issued for discharge of any debt, but it was issued for security to one 13 Judgment C.C.20071/2017 Chennamma in the chit transaction. It is worth to note that section 106 of Indian Evidence Act postulates that, the burden is on the accused to establish the fact which is especially

within his special knowledge. This provision is exception to the General Rule that, the burden of proof is always on the prosecution to establish their case beyond all reasonable doubt. In that view of the matter the burden is on the accused to prove that cheque in question was issued for security to one Chenamma in the chit transaction and not for discharge of any debt or liability in favour of the complainant.

14. To rebut the said presumption, the accused has fully cross- examined PW1 and PW2 and also led defence evidence by examining herself as DW1 and produced Ex.D1. The accused in her chief-examination has deposed that she and Bhagyamma who is the accused in CC.No.22962/20217 have not taken any financial assistance from the complainant. One Channamma who is the monther-in-law of Sampath Kumar was conducting chit business in the year 2010 and she was also a member in the said chit and had taken the chit from her. While taking the said chit amount the said Channamma had insisted to give a blank cheque, as such she had given blank cheque without making the signature on the said 14 Judgment C.C.20071/2017 cheque. She further deposed that the complainant is a stranger to her and she never issued any cheque to him. The complainant mis-utilized the cheque issued to said Channamma as security in the chit transaction. During the cross-examination the accused has admitted that Ex.P.1 cheque belongs to her bank account and it contained her signature as Ex.P1(a). She also admitted her signature in the Ex.P.7 agreement and same was marked as Ex.P.7(a). She denied the suggestion that by executing Ex.P.7 agreement she has borrowed Rs.4 lakhs from the complainant and issued Ex.P.1 cheque for repayment of the said loan amount. She deposed that after receipt of the notice she has enquired said Channamma regarding the cheque and said Channamma has told her to come after the marriage of her daughter but she does not know when the said Chanamma's daughter's marriage was performed. She has not given any notice to said Channamma demanding the return of cheque and even she has not taken any legal action against her. She denied the suggestion that in order to escape from the liability to pay the cheque amount she is falsely deposing before the court.

15. The learned counsel for the accused has cross-examined PW1. During the cross-examination, PW1 has stated that he has paid the 15 Judgment C.C.20071/2017 amount to the accused on 27.10.2016 but he is not remember the time when exactly he has paid the same to the accused. He further deposed that on the same day he has lent a amount to one Bhagyamma but he is not remember the exact time. He knows the contents of the agreement. The accused herself has brought the stamp paper to prepare agreement. The accused herself has typed and brought the said agreement. He denied the suggestion that the accused is getting monthly salary of Rs.35,000/- as such she has no necessity to borrow the loan from him. He has not given any document to show where he has withdrawn the amount. He deposed that he is not an income tax assessee. He further deposed that 15 days before from the date of agreement the accused and Bhagyamma have requested him for hand loan. On the date of execution of the agreement the accused has issued post dated cheque for security. He deposed that he knows Chanamma since 15 years but he denied the suggestion that she is doing a chit business. He also denied the suggestion that said Channamma doing a chit business and in the said chit the accused and Bhagyamma have participated. He admitted that there is a difference in the signature and other writings in Ex.P.1 cheque. He further deposed that the 16 Judgment C.C.20071/2017 accused has written the amount and he has written his name and date in the cheque. He denied the suggestion that he has forged the signature of the

accused in the cheque and agreement. He shows his ignorance about the date of marriage of the accused's daughter. He denied the suggestion that on 27.10.2013 the accused has performed her daughter's marriage. He has admitted that the signature and amount in the cheque are in different ink. He denied the suggestion that one Channamma was running a chit and the accused has given blank cheque to said Channamma. The complainant has also denied the suggestion that he has collected the said cheque from Channamma and misused the same to file present case. He denied the suggestion that he had no financial capacity to lend Rs.4 lakhs. The defence counsel also cross-examined PW2. During the cross- examination he has denied the suggestion that he and his mother-in- law have forged the signature in the Ex.P1 cheque. He denied the suggestion that he, his mother-in-law and complainant have forged the signature of accused in the Ex.P7 agreement and created the same for the purpose of this case. He denied the suggestion that his mother-in-law Channamma was running chit and misused the blank cheque which was issued by the accused in the said chit transaction.

17 Judgment C.C.20071/2017 He denied the suggestion that the complainant has not lent any amount to the accused.

16. On perusal of the materials on record it appears that it is the specific case of the complainant that the accused and her husband are well acquainted with him from several years through one Sampath Kumar who is a close relative of the complainant. The accused and her husband have approached the complainant and requested hand loan of Rs. 4 lakhs during the month of October 2014 to meet the expenses of their elder daughter's marriage and assured that they will repay the said loan amount within 3 years. Considering their request, the complainant has paid Rs. 4 lakhs to the accused by way of cash on 27.10.2014 on executing Ex.P.7 loan agreement and issued post dated cheque for security. But the accused has not kept up her promise and on repeated demand she has instructed the complainant to present the above said post dated cheque for encashment. Accordingly, the complainant has presented the said cheque on 29.6.2017 for encashment through his banker, but said cheque was returned unpaid the reasons "Funds Insufficient" in the account of the accused as per endorsement dated 30.6.2017. Thereafter, the complainant got issued demand notice to the accused 18 Judgment C.C.20071/2017 calling upon her to pay the cheque amount but despite of the service of the legal notice the accused has failed to pay the cheque amount and issued untenable reply.

17. The accused during the trial has taken a specific defence that one Channamma was running a chit and she has subscribed a chit with her, while taking a chit amount she has issued blank cheque as a security to her. The complainant who is totally stranger to her has collected the said cheque from the said Channamma and misused the same to have unlawful gain. The accused specifically denied the borrowing of any loan much less the disputed hand loan of Rs. 4 lakhs from the complainant. But in the reply notice the accused has taken contention that she has borrowed loan from her friends and he has issued said cheque to him and the complainant has utilized the said cheque and issued notice. The accused has not pressed the said stand during the trial. However he has specifically denied the borrowing of loan from the complainant and issuance of cheque in question for repayment of said loan in the reply notice.

18. In order to prove said loan transaction apart from his oral testimony the complainant has produced Ex.P.7 loan agreement 19 Judgment C.C.20071/2017 dated 27.10.2014. During the cross-examination PW1, the defence counsel has suggested that the complainant has forged the signature of accused in the Ex.P.7 loan agreement. Even in the cross-examination of PW2, the defence counsel has put similar suggestion to him. But during the cross-examination the accused specifically admitted her signature in the Ex.P.7 and on her admission the said signature was marked as Ex.P.7(a). There is no proper explanation on behalf of the accused how she has signed the said agreement. Therefore it appears that the accused has falsely taken contention that the complainant has forged her signature in the Ex.P7. There is recital in the agreement that on 27-10-2014 the accused has borrowed hand loan of Rs. 4 lakhs from the complainant for family necessities and marriage expenses of her elder daughter. The said contention has been reproduced by the complainant in the notice, complaint and chief examination affidavit.

19. The learned counsel for the accused vehemently argued that in the complaint the complainant has contended that he has lent the loan of Rs.4 lakhs to the accused on 27.10.2014 but in the cross-examination he has deposed that he has lent loan on 27.10.2016. The said contradiction shows that the complainant has put forth a false 20 Judgment C.C.20071/2017 story and he has not at all lent any amount to the accused. It is true that during the cross-examination the complainant deposed that he has lent loan to the accused on 27-10-2016 instead of deposing 2014 he deposed as 2016. The said version of the complainant is totally contradictory to the facts stated in the complaint and his chief-examination and it shows that the complainant is not certain in his case when exactly he lent the loan.

20. The learned counsel for the accused contended that the accused has performed her daughter's marriage on 27.10.2013 as per Ex.D.1 marriage invitation card. Therefore, question of borrowing loan on 27.10.2014 for the purpose of marriage does not arise at all. It is the specific case of the complainant that the accused has borrowed Rs.4 lakhs on 27-10-2014 for the purpose of marriage expenses of her daughter. The accused has taken contended that she has performed her daughter's marriage on 27.10.2013 itself. Hence, question of borrowing loan on 27.10.2014 from the complainant for the purpose of her daughter's marriage does not arise at all. In support said contention the accused has produced Ex.D.1 marriage invitation card of her daughter's marriage. As per Ex.D1 marriage invitation card the marriage of accused's daughter was performed on 21 Judgment C.C.20071/2017 27.10.2013. To that effect the defence counsel has cross-examined PW1 but he has give answer showing his ignorance about the date of marriage. To the contrary the complainant has not produced any materials. The Ex.D1 has fully corroborates the defence of the accused and falsify the contention of the complainant. Ex.D1 clearly established that the recitals made in the Ex.P7 are not correct. Therefore merely because the accused admitted the signature in the Ex.P7 it does not mean that recitals made in the said agreement are proved. The accused by raising probable defence and producing Ex.D1 has proved that there was no necessity to borrow loan on 27-10-2014 for marriage expenses of her daughter which was performed one year prior to the date of alleged loan. The learned counsel for the complainant contended that the accused has not taken any legal action for take back the blank cheque allegedly issued to said Channamma, it shows that she has voluntarily issued Ex.P1 cheque in fvaour of the complainant. The accused due to lack of knowledge might have failed to take legal action against said Channamma to take back her cheque.

But that itself is not the valid ground to brush aside the entire defence of the accused.

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21. The learned counsel for the accused has argued that the complainant has failed to prove his financial capacity to lend such huge amount of Rs.4,00,000/- during the relevant point of time. The failure to prove financial capacity of the complainant is fatal to his case and on the said ground alone the accused entitle for acquittal. In support of his submission the defence counsel has referred judgment of Hon'ble Supreme Court in Rohitbhai Jivanlal Patel Vs. State of Gujarat (AIR 2019 SC 1876), Basalingappa Vs. Mudibasappa(AIR 2019 SC 1983) and APS Forex Service Private Limited Vs. Shakti International Fashion Linkers (AIR 2020 SC 945).

22. In Rohitbhai Jivanlal Patel v. State of Gujarat(AIR 2019 SC 1876), Wherein the Hon'ble Supreme Court has observed that "The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond 23 Judgment C.C.20071/2017 reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Section 118 and section 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not". In Basalingappa v. Mudibasappa (AIR 2019 SC 1983), the Hon'ble Apex Court observed that "During his cross-examination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts". In APS Forex Service Private Limited v. Shakti International Fashion Linkers (AIR 2020 SC 945), the Hon'ble Apex Court has clarified and explained the issue as follows "Now so far as the reliance is placed by Learned Counsel appearing 24 Judgment C.C.20071/2017 on behalf of the accused on the decision of this Court in the case of Basalingappa (supra), on going through the said decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the accused. In that case before this Court, the defence by the accused was that the cheque amount was given by the complainant to the accused by way of loan. When the proceedings were initiated under Section 138 of the N.I. Act the accused denied the debt liability and the accused raised the defence and questioned the financial capacity of the complainant. To that, the complainant failed to prove and establish his financial capacity. Therefore, this Court was satisfied that the accused had a probable defence and consequently in absence of complainant having failed to prove his financial capacity, this Court acquitted the accused. In the present case, the accused never questioned the financial capacity of the complainant. We are of the view that whenever the accused has questioned the financial capacity of the complainant in support

of his probable defence, despite the presumption under Section 139 of the N.I. Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter the onus shifts again on 25 Judgment C.C.20071/2017 the complainant to prove his financial capacity and at that stage the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque".

23. The crux of the decisions referred to above is that the complainant has no obligation, in all cases under Section 138 of the Act, to prove his financial capacity. But, when the case of the complainant is that he lent money to the accused by cash and that the accused issued the cheque in discharge of the liability, and if the accused challenges the financial capacity of the complainant to advance the money, despite the presumption under Section 139 of the Act, the complainant has the obligation to prove his financial capacity or the source of the money allegedly lent by him to the accused. The complainant has no initial burden to prove his financial capacity or the source of the money. The obligation in that regard would arise only when his capacity or capability to advance the money is challenged by the accused.

24. In the present case, the accused not only denied the passing of consideration but also challenged the financial capacity of the complainant to lend an amount of Rs.4,00,000/-to her at the relevant 26 Judgment C.C.20071/2017 point of time. On appreciation of ocular evidence of PW1, it is observed that it is the specific case of the complainant that as he is acquainted with the accused, he has lent an amount of Rs.4 lakhs in cash and in discharge of said debt the accused has issued Ex.P1 cheque. While recording his sworn statement the complainant stated his occupation as agriculturist and during his cross-examination he has denied the suggestion that he had no capacity to lend Rs.4 lakhs during relevant point of time. He deposed that he had bank account at Vijaya Bank, Doddballapura and Karuru Vyshya Bank and he had no impediment to produce said statement of accounts. He further deposed that he also lent Rs.4 lakhs to one Manjula on the same date. That means he claims that he has lent loan of Rs.4 lakhs to accused herein and also one Bhagyamma who is accused in CC 22962/2017. Despite of the same the complainant has not made any efforts to prove his financial capacity to lend Rs.8 lakhs on 27-10- 2014. It is true that Rs. 8 lakhs is not a small amount anybody can arrange the same so easily. The complainant has not produced his accounts statement or any other concrete evidence to substantiate that he was possessed such a huge amount at that relevant point of time. Therefore, there is glaring deficiency of evidence as to source 27 Judgment C.C.20071/2017 of income of the complainant and in turn it creates serious doubt about the existence of legally enforceable debt. Under such circumstances very case of the complainant that accused had issued cheque in question for discharge of legally enforceable debt appears to be vague and unbelievable. Therefore having regard to facts and circumstances of the case the complainant's evidence is not suffice to establish the existence of debt.

25. Hon'ble Apex court in the case of Kumar Exports Vs Sharma Carpets, reported in (2009)2 SCC 513 has held that the accused in a trail under section 138 of N I Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstance of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumption an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The

accused may adduce direct evidence to prove that the cheque in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should 28 Judgment C.C.20071/2017 disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, bare denial of passing of the consideration and existence of debt, apparently does not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the cheque in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. In the case on hand, the facts and circumstance discussed above leads to the conclusion that the defence set up by the accused that he has issued a blank cheque as a security in the chit transaction is so probable one. Therefore, the accused by raising 29 Judgment C.C.20071/2017 said probable defence has rebutted the statutory presumptions enshrined under section 118 and 139 of NI Act. The Hon'ble Apex court in the case of Kamala S Vs Vidhyadharan M J, reported in (2007) 5 SCC 264 has held that once the accused has discharged his burden, then onus shifts on the complainant to prove his case beyond reasonable doubt. In the present case, the complainant has failed to prove the existence of legally enforceable debt beyond reasonable doubt.

26. On overall appreciation of evidence, it is forthcoming that the complainant has failed to prove his case beyond reasonable doubt. In other words, the complainant has failed to put forth acceptable and satisfactory evidence in support of the case, to show that the accused has issued cheque Ex.P-1 for legally enforceable debt or liability. In the result, I am of the considered opinion that the complainant has failed to prove that the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act. In view above discussion this court proceeds to answer POINT NO.1 IN THE NEGATIVE.

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27. POINT NO.2:- In view of above said reasons the allegation levelled against the accused is not proved beyond reasonable doubts. Accordingly, this court proceeds to pass following;

ORDER Acting under Section 255(1) of Cr.P.C., accused is acquitted of the offence punishable under Section 138 of Negotiable Instruments Act.

Bail bond of accused stand cancelled.

(Directly dictated to the Stenographer on computer, typed by her, corrected by me and then judgment pronounced in the open court on this the 23rd day of December 2022).

(MANJUNATHA M.S.) XVIII A.C.M.M.,BANGALORE ANNEXURE I. List of witnesses on behalf of complainant:

P.W.1: Sri.P.Nanje Gowda P.W.2: Sri.Sampath Kumar II. List of documents on behalf of complainant:

Ex.P-1 : Original Cheque.
Ex.P-2 : Bank memos.
Ex.P-3 : Legal notice.
Ex.P-4 : Postal Receipt
Ex.P-5 : Postal Acknowledgment
Ex.P-6 : Reply Notice
Ex.P.7 : Loan agreement,

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Ex.P.7(a) : Signature of the accused,

III. List of witnesses for the accused:

D.W.1: Smt.Manjula

IV. List of documents for accused:

Ex.D.1 : Marriage Invitation Card

(MANJUNATHA M.S.)
XVIII A.C.M.M., BANGALORE

Digitally
signed by
MANJUNATHA
MANJUNATHA M S
MS Date:
2022.12.23
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+0530