

Rep By Gpa Holder M.Shambulingaiah vs Aged About 47 Years on 19 February, 2021

BEFORE THE COURT OF XXIV ADDITIONAL SMALL
CAUSES JUDGE AND THE MOTOR ACCIDENT CLAIMS
TRIBUNAL & A.C.M.M. (SCCH-26) AT BENGALURU

DATED THIS THE 19th DAY OF FEBRUARY 2021

PRESENT: SRI.R.MAHESHA B.A.L., LLB.,
XXIV ADDL. SCJ &
ACMM & MEMBER - MACT
BENGALURU.

1. Sl. No. of the Case CC.No.2754 of 2018
2. The date of commencement of evidence 11-05-2018
3. The date of closing evidence 02-12-2020
4. Name of the Complainant Maruthi Finance Enterprises (Regd.),
Rep by GPA holder M.Shambulingaiah,
Office at No.3445, 1st floor,
Service road, RPC layout,
(Beside Bunt's Sangha),
Vijayanagar, 2nd stage,
Bangalore-560 040,

(By Sri.R.K.N.-Advocate)
5. Name of the Accused A.T.Seenaiah S/o Thimmaiah,
Aged about 47 years, R/at No.222,
5th C main road,
Remco layout,
Vijayanagar 2nd stage,
Bangalore-560 040.

Also at

A.T.Seenaiah
S/o Thimmaiah,
Aged about 47 years, No.50/2,
2 C.C.No.2754 OF 2018

5th main, RPC layout,
Vijayanagar,
2nd stage,
Bangalore-560 040.

(By Sri.S.N.-Advocate)
6. The offence U/s.138 of the Negotiable Instruments Act

complained of
7. Opinion of the judge Accused found not guilty

JUDGMENT

The complainant filed this complaint Under Section 200 of Cr.P.C against the accused alleging that the accused has committed the offence punishable Under Sec.138 of the Negotiable Instruments Act, 1881. (In short for N.I.Act)

2. The brief facts of the complainant case is as under:

The accused is one of the customer who had obtained loan from the complainant and in view of the same the accused had approached the institution on different dates during the month of September 2014 to April 2016 and applied for a loan to the tune of Rs.1,33,00,000/- through different loan applications to develop his business and the entire amount is repayable within 200 days from the date of receiving that amount and Rs1,33,00,000/- was disbursed to the accused on different dates. The accused had executed an on demand promissory notes. The accused obtained the loan amount from the complainant and had paid the loan installments for few days and stopped making the payment. That inspite of several reminders to the accused to clear the loan amount the accused was not making payment to them and complainant approached the accused to clear the loan amount, the accused had issued fifteen cheques in favour of the complainant firm vide cheque bearing Nos as details under:-

Sl.No	Cheque No.	Date	Amount	Bank drawn on	Bank Memo
01	238430	27-02-2018	Rs.5,23,720/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
02	220815	27-02-2018	Rs.5,64,690/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
03	228431	27-02-2018	Rs.3,30,870/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
04	340662	27-02-2018	Rs.5,00,000/-	Canara Bank, Account closed Chandra Layout branch, Bangalore	
05	781695	27-02-2018	Rs.5,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
06	021882	27-02-2018	Rs.6,00,000/-	Canara Bank, Account closed Chandra Layout branch, Bangalore	
07	734953	27-02-2018	Rs.6,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
08	238437	27-02-2018	Rs.4,62,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
09	217509	27-02-2018	Rs.3,53,500/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
10	789505	27-02-2018	Rs.6,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
11	789506	27-02-2018	Rs.6,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
12	734954	27-02-2018	Rs.4,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
13	781693	27-02-2018	Rs.5,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	
14	781694	27-02-2018	Rs.5,00,000/-	Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore	

15 789507 27-02-2018 Rs.4,00,000/- Canara Bank, Funds Chandra Layout Insufficient branch, Bangalore That as per the instructions and assurance of the accused to present the cheques, the complainant presented the cheque for encashment through his banker i.e., Canara Bank, Chandra Layout branch, Bengaluru on 16-3-2018, but the said cheques came to be returned with a shara "Funds Insufficient" and "Account closed". The complainant has got issued legal notice on 26-3-2018 to the accused and the said notice has been returned with a shara "Left" on 27-3-2018.

Hence filed this complaint.

3. After filing of this complaint, case was registered as P.C.R. and sworn statement of the complainant was recorded. Thereafter cognizance was taken and registered in Crl.Reg.No.III and summons issued to the accused. In response of summons, accused appeared through his counsel and got enlarged on bail. The plea was recorded, read over and explained to accused, he pleaded not guilty and claims to be tried. Hence the case is posted for complainant evidence.

4. In order to establish his case, GPA holder of the complainant company himself examined as PW-1 and got marked 49 documents as Ex-P1 to 49 and closed his side. The accused A.T.Sreenaiah got examined himself as DW-1 and got marked Ex-D1 to 26.

5. Accused was examined under section 313 of Cr.P.C. incriminating material appearing in the complainant evidence was read over and explained to the accused, who denied the same, he claims to lead defence evidence.

6. Heard oral arguments from both side. Both advocates have filed written arguments and relied and produced list of authorities.

7. The list of authorities relied by complainant:

1. Baskaran Vs Sankaran Vaidhyan Balan and Ors SC para 18 to 26
2. Kotak Mahindra Bank Ltd., Vs Hermonite Associates Ltd., and Ors. Delhi HC para 15 to 21
3. N.Parameswaran Unni Vs G.Kannan and Ors. SC para 11 to 15.

8. The list of authorities relied by Accused:

1. M.S.Narayana Menon Vs State of Kerala and Ors reported in AIR 2006 SC 3366
2. National Agricultural cooperative Marketing Federation of India (Nafed) v.Disha Impex (pvt) Ltd., and Ors. Crl.Apeel No.1072/2013 dt- 6-1-2021

9. Upon hearing the arguments and perusal of the material placed on record, the following points arise for my consideration :-

POINTS

1. Whether the complainant has made-out the case that the accused has issued fifteen cheques (1) 238430 for Rs.5,23,720/- (2) 220815 for Rs. 5,64,690/- (3) 228431 for Rs.3,30,870/- (4) 340662 for Rs.5,00,000/- (5) 781695 for Rs.5,00,000/- (6) 021882 for Rs.6,00,000/- (7) 734953 for Rs.6,00,000/- (8) 238437 for Rs.4,62,000/- (9) 217509 for Rs.3,53,500/- (10) 789505 for Rs.6,00,000/-

(11) 789506 for Rs.6,00,000/- (12) 734954 for Rs.4,00,000/- (13) 781693 for Rs.5,00,000/- (14) 781694 for Rs.5,00,000/- (15) 789507 for Rs.4,00,000/- to discharge the legally enforceable debt or liability due to the complainant and on presentation of cheques which were returned without encashment with an endorsement as "Funds Insufficient" & "Account closed" and accused failed to make any payment within the stipulated period and thereby accused had committed an offence punishable under section 138 of N.I Act?

2. What order?

10. 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

11. Point No.1: The provision of Section 101 of the

Indian Evidence Act provide that the burden of proof rests on the party who substantially asserts it and not on the party who denies it, in fact burden of proof means that a party has to prove an allegation before he is entitle to a judgment in her favour. Further law U/s 103 of Indian Evidence Act amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the fact in issue.

12. The burden lies on the complainant to prove the complainant complied with mandatory requirements of Section 138 of NI Act.

13. The three ingredients of offence U/s 138 NI Act are as under.

1. That there is a legally enforceable debt

2. That cheque was drawn from the account of bank for discharge in whole or in part of any debt or any other liability which presuppose legally enforceable debt

3. That the cheque so issued had been returned due to insufficiency of funds.

The proviso appended to the said section provides for compliance with legal requirements before the complaint/petition can be acted upon by court of law.

Section 118A of N.I Act deals with special rule of evidence and stated that, every negotiable instrument act is deemed to have been drawn for consideration. Section 139 of NI Act enables the court to presume, unless contrary is proved, that the holder of the cheque received the cheque of the nature referred in Section 138, in whole or in part, of any debt or other liability.

14. The presumption available U/s 118 and 139 of NI Act is rebuttal in nature, the accused can rebut the same by either entering into the witness box or effectively cross examine the complainant and his witness.

15. To prove the case of the complainant the authorized person of the complainant company examined as PW-1, he produced documents which are marked as Ex-P1 to 49. During cross examination, PW-1 has stated that he knew the facts as a GPA holder of the complainant company. The complainant company conducted financial business since 25 years, the said company get licence for conducting financial business, he agreed to produce the said licence. The complainant company maintained loan applications, money payment receipt, monthly statement and notice in his company. He agreed and undertake to produce all the above documents before this court. He clearly admitted that they have not produced the documents belongs to accused to show how much amount accused had paid to complainant company. The accused obtained Rs.5,00,000/- loan in the year 2012, he has been regularly paying the said loan repayment since 2016. The complainant company transfer the loan amount through cheques. The said document was not produced before this court. The accused has conducted liquor business on lease. The complainant company took loan application and document pertaining to advance paid by accused to conduct liquor business and vacant land document, but said documents not produced before this court. The accused regularly daily and weekly once use to repay loan amount to complainant company. As per Ex-P24, the accused ought to repay the loan amount within April 2015. The complainant company has advanced further loan as per April 2015. The complainant company collected disputed cheques from accused in February 2018. The accused himself handover his cheques in the complainant company office. The complainant company did not send individual notice to accused in all 26 loan account of the accused. The complainant contending during cross examination that they orally and over phone asking accused for repayment of loan arrears amount and further contended that the accused himself in own handwriting filled up cheques and handed over to complainant company. The complainant company GPA holder clearly admitted during cross examination that our company regularly paid income tax, the loan advanced to accused clearly declared in particular assessment year. He agreed and undertake before this court to produce said IT related documents. PW-1 clearly denied the specific suggestions of accused regarding Ex-P1 to 15, accused handover only signed blank cheques, accused had handover Ex-P1 to 15 for security purpose. The complainant company presented said Ex-P1 to 15 without giving any intimation to accused and said Ex-P1 to 15 got bounced. The amount claimed in the present complaint is not legally enforceable debt against the accused. The other suggestions put forth by the accused counsel are clearly denied by PW-1.

16. To disprove the case of the complainant, accused himself filed chief affidavit and examined as DW-1 and produced documents as Ex-D1 to 26. The accused specifically stated in his affidavit that, the allegation made in the complaint against accused are false and have been made with malafide intention of making illegal gain at accused cost and complainant is abusing the due process of law for his illegal motives. The accused mainly took the defence that he has no longer a resident of the first and 2nd address given by the complainant, he use to reside in the above said address till the year 2012, no notice issued by the complainant were not served on him which are collectively returned as Unserved. The complainant company has intentionally not issued any notice to accused at his place of business, though business address mentioned in the loan agreement, the complainant company has not satisfied the basic ingredients of Section 138 of NI Act.

17. The accused further contended that in para 6 of his affidavit that he was a business man and during the course of his business he had taken loan from the complainant under different accounts mentioned in para 6 of his affidavit, he have been repaying the loans on weekly basis and by paying amounts to the collection agent of complainant by way of cash. In turn they issued payments receipt in favour of accused. The accused substantially repaid the loan amount as stated in table para 6 of his chief affidavit. The complainant company has collected blank signed security cheques from accused on the respective date of availing the respective loans along with shop lease agreement, rent agreement and sale deeds pertaining to accused immovable properties. The complainant having in possession of all repayment receipts with respect to the above mentioned loan accounts, it has suppressed the same without presenting them before this court. The receipts produced by the accused are only part of the same, other receipts are with the possession of complainant company. The accused has not filled the amount mentioned in the 15 cheques in question, he has repaid substantial loan amount, accused is not liable to pay amount i.e., born out on the 15 cheques in question, the complainant company has misused and got dishonoured and files false case against accused, he was not legally liable to pay amount of Rs.74,34,780/-. The complainant company has unilaterally without even informing to the accused filledup the cheques and attempted to encash amount from the accused account. The complainant company approached this court with unclean hands and try to abuse the due process of law for his malafide intention and get illegal benefit. The complaint filed with respect to any legally recoverable debt for the 15 cheques in question. Hence he pray for dismissal of the complaint with exemplary cost. He subjected cross examination by complainant counsel. During cross examination, he admitted that he having business relation with complainant company since from 5 to 6 years. He used to get loan from the company every year and repay the loan and he again get fresh loan from the complainant company. He admitted that he was doing liquor business. He regularly renewed his liquor shop licence from the authority. During renewal period he had to pay some renewal fee amount to competent authority. He clearly stated during cross examination that, while receiving loan from complainant company, they deduct interest amount and gave principle amount to accused. He contending that he had already completed earlier loan after completion of earlier loan amount, he used to get new loan from the company. He admitted the signature found on Ex-P24 to 49 and amount mentioned in Ex-P24 to 49 as correct and further he admitted that there is a terms and conditions in Ex-P24 to 49, how to repay the loan amount to the complainant company. He clearly and categorically admitted that Ex-P1 to 15 i.e, disputed cheques belongs to accused and signature found on disputed cheques belongs to him (accused). He did not requested or demanding for return of original cheques from

the complainant company. He admitted that the account number of Canara Bank, Chandra layout, Bengaluru still it is currently active. He further admitted that he regularly paying income tax, while filing his income tax, he get entire bank statement of his account, but he denied about he get the knowledge of bounce of the cheques while he get the entire bank statement. He specifically contending during cross examination that, he received complaint copy from the court, he did not received any notice from the complainant company, he received summons from the court only, he clearly admitted that he did not took any legal action against complainant company for misusing of his cheques. He clearly admitted during cross examination that he did not furnish his residential address in writing to complainant company. He undertakes before court during cross examination that he would produce document to show the accused has been residing in the new address. Further he contended that, the complainant company officials even though he paid amount, but they did not gave receipts. He clearly admitted that, in his affidavit wrongly mentioned as he vacated address shown in para 4 in the year 2012 and he contended that he residing in the said address till 2017. Further he clearly admitted that he did not wrote the address shown in Ex-D27 in his affidavit. Further he clearly admitted that when he went to bank, the bank officials gave all particulars of his loan account. Further he admitted and undertake before court that he would furnish or produce entire bank statement of his bank account from 2012 to 2019. The other suggestions put-forth by complainant are clearly and categorically denied.

18. Before going to discuss about disputed facts, it is relevant to mention admitted facts of both parties. Ex-P1 to 15 and signature on Ex-P1 to 15 are belongs to accused, it is not in dispute. The accused get a loan of Rs.1,33,00,000/- for liquor business. The accused conducting liquor business in particular locality and he had furnished shop lease agreement and other security documents to complainant company. The accused get a loan from complainant company for a sum of Rs.1,33,00,000/- is also not in dispute. According to complainant, accused had due of Rs.74,34,780/-. According to accused, the accused had substantially repaid, he was due of Rs.54,08,500/-. There is a difference of more than Rs.20,00,000/- in the two amounts. Admittedly both have not produced I.T return documents, account ledger extract, loan account details etc.,

19. The specific case of the accused is that he admitted loan obtained by the complainant company. at the time of obtaining loan, the complainant company get blank signed 15 cheques of accused and get shop lease agreement, rental agreements of accused and sale deed pertaining to immovable property of accused, other documents obtained from complainant company. The accused had regularly repaid loan amount substantially. He was due towards company a sum of Rs.54,08,500/-. The complainant company filed for recovery of Rs.79,92,500/- by utilizing his security cheques, he did not received any notice from the complainant company. The complainant company suppressed the material facts and filed false complaint against accused by abusing process of law. The learned accused counsel mainly argued that he was no longer resident of the first address given in the cause title by the complainant i.e., No.222, 5th main, C cross, Ramco layout, Vijayanagara, Bangalore-40. He use to reside in the above address till the end of December 2014. Further accused resident of the 2nd address given by the complainant i.e., No.50/2, 2nd stage, 5th main, RPC layout, Vijayanagar, Bangalore-40. The accused use to reside in the above address till the year 2012. The complainant intentionally not issued any notice to accused at his place of business. Though the business address is mentioned in the loan agreements. Such loan agreements have been produced before complainant

company. Admittedly Ex-P19 to 22 returned as Unserved. The legal notice has been not served on accused. The complainant not satisfied the basic ingredients of Section 138 of NI Act. Therefore he praying on this ground, the complaint needs to be dismissed. On the other hand, the complainant argued on this point that the complainant company sent a legal notice, last resident address of accused, the same was returned as Unserved. The main ingredients of Section 138 of NI Act, he has to make a demand by "giving" a notice in writing, it was only requirement to complete the offence on failure of the drawer to pay the cheque amount within 15 days from the date of such notice, the prosecution would be essential. In the present case, Ex-P19 to 22, returned as Unserved. The complainant company, knows the residential address of accused, he sent two notices to two different addresses. The accused intentionally did not furnish his actual residential address. Hence he would not be possible to serve the notice on accused. He relied on 3 decisions of Hon'ble Supreme Court of India, it was held in case *K.Bhaskaran Vs Sankaran Vaidhyan Balan and others*. And another decision *Kotak Mahendra Bank Ltd., Vs Hermonite Associates Ltd., and others* High Court of Delhi dd 22-12-2010 company application No.893/2008 and company petition No.71/2007. In this case, Apex court held that, "on the part of the payee, he has to make a demand by giving a notice in writing. If that was only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such giving the travails of the prosecution would have been very much lessened."

20. The learned counsel for complainant has relied and produced *Parameshwara Unni Vs G.Kannan and others* Supreme Court of India CrI.Appeal NO.455/2006 dd on 1-3- 2017. Hon'ble Supreme Court held that, Section 138 gives an opportunity to drawer of the cheque to make payment within 15 days of receipt of such notice sent by the drawee. It is further clear that Section 27 of General Clause Act 1897 and Section 114 of Indian Evidence Act 1872 that once notice is sent by registered post by correctly addressing to the drawer of the cheque the service of notice is deemed to have been effected. Then requirements under proviso clause (B) of section 138 stand complied, if notice is sent in the prescribed manner. However the drawer is at liberty to rebut this presumption. In this background on perusal of Ex-P19 to 22, the legal notice sent to two different addresses of accused as per Ex-P19 to 22. Ex-P19 and 20, returned as No such person in the address, hence returned to sender. In Ex-P21 and 22 returned as left no instruction returned to sender. No legal notice served on accused. During cross examination of DW-1, he admitted that he was residing in the year 2018 in "Door No.63, 1st main road, Raju layout, Nagadevanahalli, Bengaluru-56." He admitted that he was residing at the address shown in Ex-P18 from 2012 till 2015. The accused had produced Ex-D27 to 29, Ex-D29 statement of bank account pertaining to account number 2614101004428 i.e., A/c belongs to disputed cheques Ex-P1 to 3, 5, 7 to 15. In Ex- D29, the accused residential address shown as No.63, Lakshmi Nilaya, 4th cross, Raju layout, Nagadevanahalli, Bengaluru. Ex-D28 gas consumer receipt, the residential address shown as No.63, Lakshmi Nilaya, 4th cross, Raju layout, Nagadevanahalli, Bengaluru-56. In Ex-D27, it is a residential rental agreement entered between one H.Varadaraju and present accused on 15-5-2017, the accused used to reside from 15-5-2017 till 11 months in the house situated at Door No.63, Nagadevanahalli, Jnabharathi post, Bangalore-56. Ex-P18 was dispatched from the complainant company on 26-3-2018. The accused claiming to reside in the year 2018, the address shown in Ex-D27 to 29. It is settled principle of law various catena of judgments of Hon'ble Apex courts Section 27 of General Clause Act draw a presumption in favour of complainant regarding deemed service of notice through registered postal

acknowledgment due, the said presumption is rebuttable presumption, the burden now shifted on the accused to rebut the presumption drawn in favour of the complainant at the time of sending legal notice by the complainant company, he was not residing in the address mentioned in Ex-P19 to 22. To prove this fact, accused has produced Ex-D27 to 29, the above documents show the accused used to reside in the address clearly shown and mentioned in Ex-D27 to 29 from the date of 15-5-2017 upto 11 months. So from these documents, it can be presumed that accused was not residing in the address mentioned in Ex-P19 to 22. The complainant company has a burden to prove the accused's last known address was Ex-P19 to 22. The complainant company produced Ex-P24 to 49 as loan application of different accounts of accused. In Ex-P24 to 36, the accused himself provided his residential address to complainant company as i.e., No.222, 5th C main road, Remco layout, Vijayanagara, Bangalore-40 and accused himself provided his residential address in Ex-P37 to 49 as No.141, 1st main road, 5th cross, ITI layout, RR Nagar, Bangalore-39. Ex-P24 to 36 are from 9-9-2014 to 2-11-2014. Ex-P37 to 49 from 22-12-2015 to 6-4-2016. In Ex-P27 in column No.11, it is mentioned that, shop rent agreement paper dated 1-6-2009, 1-4-2004, 1-4-2004, 11-08-2011 were handed over by the accused to complainant company as details of securities offered. The accused himself signed on Ex-P27 on 22-09-2016 received back rental agreement paper and agreed to furnish new rental agreement paper on 24-09-2016. So from this admission given by Ex-P27, it can come to clear on facts that the accused himself taken back his original rent agreement with assuring he would furnish new rental agreement paper to complainant company and returned back his old rental agreement paper on 24-09-2016, he did not produce his further residential address to complainant company. DW-1 in his cross examination admitted that he regularly visiting the bank and bank officials informed about bounce of cheques. It is worthwhile to refer decision of Hon'ble Supreme Court in Rajakumari Vs Subbarama Naidu 2004(3) KLT 799 SC was dealing with two different situations, one in which notice was refused and the other in which notice was returned as addressee being not found, it was considered in detail therein whether there was any significant difference between the above two situations, so far as the presumption of service is concerned. Hon'ble Supreme Court referred Section 27 of General Clause Act and held that, no doubt Section 138 of the Act does not require that the notice should be given only by post, nonetheless the principle incorporated in Section 27 of General Clause Act can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have served on the sendee unless he proves that, he was not really served and that he was not responsible for such non service. Any other interpretation can lead to a very tenuous position as a drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice. So there is a clear law laid down by Supreme Court, the burden lies on accused to show there is no clear proof notice was actually not served on the sendee and accused has not contributed to the non service. In present case, accused having regular business with the complainant company, he returned back his rental agreement on 24-09-2016 and agreed to furnish new rental agreement, but he did not do so. The accused is mutually responsible for non service of notice. During recording of 313 statement, the accused stated the notice was not been served, but looking into the entire facts, the accused intentionally change the residential address and he is also contribute responsibility for non service of legal notice. Accused admitted Ex-P27, he would furnish new rental agreement/ new residential address to complainant company on 24-09-2016, thereafterwards he did not produce rental agreement and not furnished new residential address to complainant company. The address shown in Ex- P24 to 49, last known

address to complainant company, they send notice to all address, same was returned as Unserved. Under the circumstances it can be held that the complainant has caused statutory notice to the accused at his admitted address. This attracts presumption laid down U/s.27 of the General Clauses Act. For the aforesaid reasons, the defence raised by the defence party regarding non service of notice on the accused is not at all sustainable and same is hereby rejected. The decisions relied by the complainant counsel squarely applicable to the case of complainant company. Hence the complainant complied basic ingredients of Section 138 (b) of N.I Act.

21. Further the specific defence of the accused is that the accused get loan of Rs.1,33,00,000/- from the complainant company as mentioned in para 6 of his written argument, different loan account numbers. From the date of taking the respective loans from the complainant, he has been paying the loans on a weekly/daily basis by paying amounts to the collection agent of the complainant by way of cash, same was duly acknowledged by issuing receipts in favour of accused. The accused substantially repaid the loan amount to the complainant. The accused only due an amount of Rs.54,08,500/-. The accused has paid higher amount for which the complainant has not provided him with the vouchers/receipt. The accused has due much lesser than the amount of Rs.74,34,780/-. The complainant company registered legal entity, this is carrying on business of money lending in accordance with law. As per legal requirement, the company maintaining records pertaining to the loans that have been disbursed by company, but in the instant case, the complainant company has not produced the said loan documents before this court. The complainant during cross examination stated that he does not remember the exact amount that has been repaid by the accused and exact balance amount i.e., liable to be paid by the accused under each of the loan accounts. Further PW-1 admitted that no written notice was issued to the accused pertaining to the exact amount that was due under each of the loan accounts. The non production of the loan accounts by the complainant proves fatal to the case of complainant. The complainant intentionally hide the account and he trying to encash security cheques which were belongs to accused. The complainant company having no right to recover the said amount because, the accused had been substantially paid all loan amount. There is no due and payable by the accused to the complainant. In support of his case, the accused relied judgment of Hon'ble Supreme Court of India in the case of M.S.Narayana Menon @ Mani Vs State of Kerala and others reported in AIR 2006 SC 3366 wherein Apex court clearly held ad stated that once the burden of proving the amount of debt due shifts on the complainant, if he is unable to prove the same by providing the underlying loan accounts the complaint is liable to be dismissed. Further the accused relied recent judgment of Hon'ble High Court of Karnataka dated 6-1-2021 in the case of National Agricultural cooperative Marketing Federation of India (NAFAD) Vs Disha Impex Pvt., Ltd., and others reported in Manu/KA/0008/21. wherein Hon'ble High court of Karnataka relying upon several other judgments of the Hon'ble Supreme Court and other High Courts held that " admission of the signature on the cheques by the accused and admission of certain amount will not necessarily lead to conviction, the complainant is able to prove satisfactorily that, the amount mentioned in the cheque was clearly due and payable by the accused and that non production of loan accounts proves fatal to the case of the complainant ".

20. Per contra to substantiate complaint averments, the complainant company did not placed any materials to show that the accused was due of Rs.74,34,780/- as on the date of presentation of the cheques. The complainant produced Ex- P24 to 49, they are loan applications, the account number

written in pencil, such documents did not reflect any details of payment made by accused and due by the accused.

22. The main crux of the argument of advocate for complainant is that, the accused has admitted his signature on disputed cheques, issuance of cheque towards discharge of legally recoverable debt, need to be presumed in view of the statutory presumption U/S 139 of NI Act. Hence complainant argued that the court has to draw the presumption in favour of complainant. Moreover accused himself admitted during cross examination that he did not took any legal action against complainant company for alleging misusing of security cheques. When that it is so, it is contended that, accused is liable to be convicted. But as rightly pointed out by advocate for accused, initial burden had been successfully discharged by the accused, the burden thereafter shifted on complainant to prove his case, he failed to do so.

23. The complainant company being legal entity that carry business of money lending in accordance with law as per legal requirement it is also maintaining records pertaining to loans that have been disbursed by it. There is no impediment for producing the said loan documents. When that is so, the burden is on the complainant to prove that the accused was due to pay of Rs.74,34,780/- as on the date of cheques. But the complainant has not produced ledger extract, loan account details, income tax declared details etc., In this case, further the court is of considered opinion in this case that the complainant company being legal entity when that is so, the complainant company would be maintaining books of account, loan ledger details of individual account regarding transaction with accused, but no such record i.e., books of A/cs, loan account details, income tax declared details etc., produced. When that is so court is of the considered opinion that the complainant company has failed to prove that the accused was due to pay the cheque amount as on the date of presentation of cheques i.e., so, court is of the considered opinion that non production of documentary evidence regarding legally recoverable debt or liability towards the complainant company by the accused is not proved. Whereas the accused has rebutted the presumptions available to the complainant. When that is so the complainant has failed to prove all the ingredients of Section 138 of NI Act and thereby complainant failed to prove the guilt of accused beyond all reasonable doubt. Hence benefit of doubt needs to be extended to accused. The decisions relied by the accused the preposition of law laid down by Hon'ble Apex court and recent view of our Hon'ble High Court of Karnataka, i.e., non production of relevant documents to show as on the date of issuance of cheque there is a clear due by the accused if complainant failed to show due of accused by documents adverse inference can be drawn against complainant. In the present case, the accused admitted disputed cheques and signature and also admitted he having business relationship with complainant company, he get loan of Rs.1,33,00,000/- from complainant company, he substantially repaid amount of Rs.79,92,500/-. He produced Ex-D1 to 26. The accused alleging that, he has been repaying the loans on a weekly/daily basis by paying amount to the collection agent of the complainant by way of cash who has duly acknowledged the payments by issuing receipts in favour of accused. The accused has paid a higher amount to the complainant for which complainant has not provided him with vouchers/receipts. In turn there is no explanation by the complainant, there is a difference of more than Rs.20 lakhs in the two amounts even if the said difference is an account of interest claimed by the complainant. The complainant has not even produced the loan accounts. But complainant company during trial did not choose to produce entire account details of accused. So from this,

doubt arise in the mind of court regarding how much outstanding due amount and how much amount repaid by the accused, it was not clarified by the complainant by producing relevant documentary materials. Hence the Apex court decision aptly applicable to the present facts and circumstances of the case. Hence this court followed the preposition of law of Apex court and court Hon'ble High Court of Karnataka. Hence this court answered the above point in Negative.

24. Point No.2: In the light of the findings given on point No.1 and in the facts and circumstances of the case, I proceed to pass the following ;

ORDER By Acting U/s 255(1) of Cr.P.C the accused is hereby acquitted for the offence punishable U/s 138 of NI Act.

The bail bond of the accused stands canceled. (Dictated to the stenographer, through online computer, thereof is corrected and then pronounced by me in the open Court on this the 19th February 2021) (R.MAHESHA) XXIV ADDL. SMALL CAUSES JUDGE & A.C.M.M. BENGALURU.

ANNEXURE WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT:

PW-1: M.Shambulingaiah DOCUMENTS MARKED ON BEHALF OF THE COMPLAINANT:

Ex.P-1 to 15:	Cheques
Ex.P-1(a) to 15(a)2:	Signature of the accused
Ex.P-16 & 17	Memorandum of cheques unpaid
Ex.P-18:	Legal notice
Ex.P-19 to 22:	Returned postal covers
Ex.P-23:	GPA

Ex.P-24 to 49: Loan applications

WITNESSES EXAMINED ON BEHALF OF THE ACCUSED:

DW-1 : A.T.Seenaiah DOCUMENTS MARKED ON BEHALF OF THE ACCUSED:

Ex.D1 to 26 : Payment receipts

(R.MAHESHA)
XXIV ADDL. SMALL CAUSES JUDGE
& A.C.M.M. BENGALURU.