

## Indudhar Rajasekhar Kori vs Prakash on 30 July, 2020

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

Dated this the 30th day of July - 2020

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,  
XXIII Addl.C.M.M., Bengaluru City.

C.C.NO.22896/2016

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : Indudhar Rajasekhar Kori,  
S/o.Rajashekar Kori,  
Aged about 53 years,  
No.2144, 3rd A Main Road,  
Hampinagar,  
Bengaluru-40.

(Rep. by Sri.T.Mohandas Shetty, Adv.)

V/S

Accused : 1. Prakash,  
S/o.Nanjappa,  
Aged about 43 years,  
Proprietor,  
'Padmapriyaa Productions,  
No.405H, 9th F Main,  
Vijayanagar,  
Bengaluru-40.

2. Padmapriyaa Productions,  
No.405H, 9th F Main,  
Vijayanagar, Bengaluru-40.  
Rep. by its Proprietor,  
Prakash.  
(Rep.by Sri.C.Sunil Kumar, Adv.)

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

PLEAD OF THE ACCUSED : Not guilty.  
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FINAL ORDER : Accused Nos.1 and 2 are  
Convicted.

DATE OF ORDER : 30.07.2020.

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

### JUDGMENT

The complainant has presented the instant complaint against the accused Nos.1 and 2 on 08.09.2016 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.1 crore.

2. In a nut shell, the case of the complainant is:

The accused No.1 and complainant were known to each other. The accused No.1 is proprietor of accused No.2 concern. The accused No.1 herein had started the production at feature film by name "Vijayaadithya" and he was in search of an investor, accordingly, he approached the complainant and requested him to lend sum of Rs.70 lakhs. Accordingly, the complainant had paid sum of Rs.70 lakhs to the accused No.1 in the following manner:

a) Cheque bearing No.624667, dated:19.07.2014 sum of Rs.12 lakhs.

b) Cheque bearing No.624668, dated:09.08.2014 sum of Rs.20 lakhs.

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c) Cheque bearing No.624269, dated:21.08.2014 sum of Rs.1,50,000/-.

d) Cheque bearing No.624670, dated:05.09.2014 sum of Rs.2 lakhs.

e) Cheque bearing No.624671, dated:26.09.2014 sum of Rs.3,50,000/-, all cheques were drawn on Janatha seva Co-operative Bank Ltd., Vijayanagar, Bengaluru.

f) Cheque bearing No.582038, dated:29.07.2014 sum of Rs.14 lakhs.

g) Cheque bearing No.582039, dated:20.08.2014 sum of Rs.14 lakhs.

h) Cheque bearing No.582040, dated:21.09.2014 sum of Rs.1,20,000/-.

i) Cheque bearing No.582041, dated:30.09.2014 sum of Rs.1,30,000/-.

j) Cheque bearing No.582042, dated:28.11.2014 sum of Rs.1 lakh and

k) Cheque bearing No.582043, dated:20.12.2014 sum of Rs.1 lakh, all cheques drawn

on ICICI Bank Jayanagara Branch, Bengaluru, in favour of accused No.1.

The complainant has further alleged that, during December 2015, the accused No.1 had approached the complainant and convinced him that, he would return sum of Rs.70 lakhs together with additional sum of Rs.30 lakhs, in all the accused had agreed to pay sum of Rs.1 crore to the complainant on or before 30.06.2016 as full and final settlement. The accused No.1 had executed necessary documents to that effect and towards return of the said amount, the accused got issued 3 cheques bearing Nos.292880, 292881 and 720514 dated:30.06.2016 sum of Judgment 4 C.C.No.22896/2016 Rs.37,50,000/-, Rs.32,50,000/- and 30 lakhs respectively, all cheques drawn on Corporation Bank, Vijayanagar Branch, Bengaluru and he assured the complainant that, he had sufficient funds in his account and on the date of their presentation would be honoured.

The complainant has further contended that, the accused No.1 has requested the complainant not to present the said cheques on 30.06.2016 and requested the complainant to grant some time till 18.07.2016 and present them on 19.07.2016, so as to enable him to arrange the fund. Accordingly, the complainant had presented those cheques for encashment on 19.07.2016 through his banker viz., Janatha Seva Co-operative Bank Ltd., Vijayanagar Branch, Bengaluru. On presentation of the said cheques, the same came to be dishonoured as per shara and intimated to the complainant on 20.07.2016 stating, "Payment Stopped by the Drawer".

The complainant has further averred that, he got issued legal notice to the accused here in on 02.08.2016, calling upon the accused herein to pay sum of Rs.1 crore towards the cheques within 15 days from the date of receipt of said notice. The said notice was served upon accused on 04.08.2016, but he failed to Judgment 5 C.C.No.22896/2016 make payment within 15 days from the date of receipt of notice, even not caused reply. The accused got issued the said cheques towards consideration received by him and towards debt liability. Though he promise to maintain sufficient balance in his account on the date of their presentation, but he failed to do so. With an intention to cheat the complainant and for making wrongful gain and cause wrongful loss to the complainant did so. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, file the present complaint.

3. After receipt of the private complaint, 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 for the alleged offence, got issued process.

4. In response to the summons, the accused No.1 himself and also on behalf of accused No.2 appeared through his counsel and obtained the bail. As required, complaint copy was supplied to the accused No.1. Thereafter, accusation was read over and explained to them, wherein, they denied the same and claimed to have the defence.

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5. To prove the case of the complainant, he himself choosen to examined as PW.1 and got marked Exs.P1 to P24. In order to prove his case, the complainant has also choosen to examined one witness

by name Gopalakrishna as PW.2. The PW.1 & PW.2 subjected for cross-examination by the advocate for the accused. In the cross-examination of PW.1, accused counsel got confronted thirteen documents and same are marked as Exs.D1 to D13.

6. Thereafter, incriminating evidence made against the accused Nos.1 and 2 were recorded under Section 313 of Cr.P.C, wherein the accused denied the same and the answer given by accused No.1 himself and also on behalf of accused No.2 were recorded. In support of the defence, the accused No.1 himself was examined as DW.1 and got marked Exs.D14 to D28. To prove his probable defence, the accused No.1 has also chosen to examine one witness by name Sadayoga orally as DW.2. The DW.1 and DW.2 subjected for cross-examination by the advocate for the complainant.

7. I have heard the arguments of both side counsels.

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8. On going through the rival contentions, based on the substantial evidence available on record, the following points have been arising for determination:

- 1) Whether the complainant proves beyond the reasonable doubt that, the legal notice was duly served or not to the accused persons?
- 2) Whether the complainant proves beyond the reasonable doubt that, the amount made mentioned in Exs.P1 to P3 cheques for sum of Rs.1 crore is the legally existing debt payable by the accused Nos.1 and 2 to the complainant?
- 3) Whether the complainant proves the guilt of the accused Nos.1 and 2 for the offence punishable under Section 138 of Negotiable Instruments Act?
- 4) What Order?

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

Point No.1 : In the Affirmative Point No.2 : In the Affirmative Point No.3 : In the Partly Affirmative Point No.4 : As per final order, for the following:

REASONS UNDISPUTED FACTS:-

10. The fact that, the complainant, accused No.1 and 2, PW.2 and DW.2 were known to each other is not in dispute. The fact Judgment 8 C.C.No.22896/2016 that, the cause title addresses of the complainant and accused No.1 and 2 as mentioned in the complaint is not in dispute. The fact that, the complainant and accused No.1 in the name of accused No.2 - M/s. Padmapriya Productions came forward to produce or make a film by name Vijayadithya is not in dispute. The fact that, in connection to the same sum of Rs.65,80,000/- has admitted by the accused in his evidence pass on from the account of complainant to the accused No.1 and 2 is not in dispute. The fact that, the

genuineness of the documents at Exs.P1 to P6, which are 3 cheques and bank memos are is not in dispute. The fact that, the questioned cheques and signatures therein belongs to accused No.1 and 2 is not in dispute. The fact that, the bankers slips produced at Exs.P4 to P6 and its contents is not in dispute. The fact that, the legal notice at Ex.P7 got issued to the address of accused No.1 is not in dispute.

The fact that, as per Ex.P10 Memorandum of  
Understanding dated 15.12.2015 the signatures of the

complainant and accused No.1 coupled with signatures of PW.2 and DW.2 is not in dispute. The fact that, as found in Ex.P11 with its attachment the bankers statement of the complainant got issued by Janatha Seva Co-operative Bank Ltd., with regard to Judgment 9 C.C.No.22896/2016 the financial transaction exchanged between complainant and accused No.1 as referred therein is not in dispute.

The fact that, whatever the signatures found on On demand promissory notes as per Ex.P19 to P25, very particularly the signature marked at Ex.P19(a), P20(c), P21(a), P22(a), P23(a) and P24(a), pertaining to accused No.1 is not in dispute. The fact that, at Exs.P20, P22 and P24 signatures of witnesses PW.2 and DW.2 appears is not in dispute. It is equally important to note here itself that, whatever the signatures of the complainant as found at Exs.P19 to P24 is not in dispute. The fact that, the questioned cheques were issued by the accused No.1 to the complainant is not in dispute.

The fact that, as found in Exs.D1 to D13 which are paper publications made with regard to project of making Vijayadithya film by active participation of complainant and accused Nos.1 and 2 is not in dispute. The fact that, complainant being a co-producer got participated in the so many functions pertaining to the said film inauguration and its promotion is not in dispute. The fact that, the person visible in the said paper publication and articles made mentioned therein by quoting the complainant as one of the co- producer along with accused No.1 is not in dispute.

Judgment 10 C.C.No.22896/2016 The fact that, on the investment of the complainant and accused 70% of the film by name Vijayadithya were reached is not in dispute. The fact that, the Exs.D14 and D15 bank pass books pertaining to the account of accused No.2 maintained by accused No.1 is not in dispute. The genuineness of the entries made mentioned therein is not in dispute. The fact that, as per Ex.D16 ledger account extract pertaining to the accused No.2, pertaining to the period of 01.04.2014 till 31.03.2015 is not in dispute, subject to proof of the investment of the complainant of Rs.70 lakhs. The fact that, as found in Ex.P19 to P26, the accused No.1 has availed loan from various financial sectors on various dates is not in dispute. The fact that, Ex.P28 is the bank pass book of DW.2 is not in dispute.

11. POINT NO.1: The PW.1 to prove his case choosen to examined himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P24, they are:

a) Exs.P1 to P3 are the cheques bearing Nos.292880, 292881 and 720514 issued by the accused Nos.1 and 2 for sum of Rs.37,50,000/-, Rs.32,50,000/- and Rs.30 lakhs

respectively, in all Rs.1 crore, dated:30.06.2016, drawn on Corporation Bank, RPC Layout Branch, Vijayanagar, Bengaluru.

b) Exs.P1(a) to P3(a) are the alleged signatures of accused No.1.

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c) Exs.P4 to P6 are the Bank Memos dated:20.07.2016.

d) Ex.P7 is the Legal Notice dated:02.08.2016.

e) Exs.P8 & P9 are the postal acknowledgment cards.

f) Ex.P10 is the Memorandum of Understanding dated:15.12.2015 entered into between accused and complainant herein.

g) Ex.P10(a) to P10(g) are the signatures of complainant, accused and witnesses.

h) Ex.P11 is the letter of details of transactions of cheques dated:03.09.2016 pertaining to complainant herein issued by Janatha Seva Co-

operative Bank Ltd.

i) Ex.P12 is the Summary of Account as on 31.07.2014 pertaining to complainant herein issued by ICICI Bank.

j) Ex.P13 is the letter dated:14.07.2016 written by complainant herein to accused regarding submission of 3 cheques to bank for encashment as per Memorandum of Understanding.

k) Ex.P14 is the postal receipt.

l) Ex.P15 is the letter of assurance.

m) Exs.P16 and P17 are the postal receipts.

n) Ex.P18 is the acknowledgment issued by postal authority.

o) Exs.P19 to P24 are the On demand promissory notes and consideration receipts dated:19.12.2015 executed by accused in favour of complainant and

p) Exs.P19(a) to P24(b) are the signatures of accused and witness by name G.Gopala Krishna.

12. That apart, to prove his case, the complainant got choosen to examined one Gopala Krishna as witness and he chosen to filed affidavit evidence and examined as PW.2on oath. The PW.1 Judgment 12 C.C.No.22896/2016 and PW.2 were subjected to the cross-examination by the advocate for the accused.

13. In order to prove the defence of the accused, he himself choosen examined as DW.1 and got produced Exs.D1 to D28. They are:

- a) Exs.D1 to D13 are the Vijayadithya film paper publications.
- b) Exs.D14 and D15 are the bank pass books pertaining to accused No.1 issued by Corporation Bank.
- c) Ex.D16 is the ledger account pertaining to complainant herein for the period from 01.04.2014 to 31.03.2015.
- d) Ex.D17 is the accounting ratio pertaining to accused No.2 concern.
- e) Ex.D18 is the loan amount details.
- f) Ex.D19 is the home equity loan sanction letter dated:30.01.2016 issued by Tata Capital Financial Service Ltd.
- g) Exs.D20 to D22 are the loan repayment schedule letters.
- h) Exs.D23 to D26 is the policies loan sanction letters pertaining to accused herein issued by LIC.
- i) Ex.D27 is the completion of project required amount investors details.
- j) Ex.D27(a) is the some portion of entries at Ex.D27 and
- k) Ex.D28 is the bank pass book pertaining to DW.2 issued by Karnataka Bank Ltd.

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14. That apart, to prove his probable defence, the accused got choosen to orally examined one witness by name Shri. Sadayoga as DW.2. The DW.1 and DW.2 were subjected to the cross-

examination by the advocate for the complainant.

15. After cross-examination of PW.1, the incriminating evidence made against the accused Nos.1 and 2 were read over and explained to them as required under Section 313 of Cr.P.C., wherein the

accused No.1 himself as well as on behalf of accused No.2 has denied the incriminating evidence made against them. In order to prove his probable defence, the accused No.1 chosen to entered into the witness box by filing affidavit evidence and examined on oath as DW.1. Since, the complainant has not opposed the affidavit evidence of the accused No.1, the same was taken on record. In brief of the affidavit evidence of accused No.1 that:

The accused No.1 has averred that, the accused No.1 and complainant are the walking friends and also part of yoga classes in park. The complainant has acquainted to the accused from 2012. The complainant and accused No.1 had discussed for a movie project in the name and style of 'Vijayadithya'. Also further both of them were discussed to invest around Rs.5 crores for the Judgment 14 C.C.No.22896/2016 said project. For which, the complainant had agreed to invest an amount of Rs.2,40,000/-. Both have orally agreed to invest for the said 'Vijayadithya Kannada Movie Project' and further agreed to make that, movie under 'Padmapriya Productions'. Thereafter, in respect of the same, the complainant had transferred the following his part of investment amount to the account of accused No.2 as follows:

- a) Sum of Rs.12 lakhs on 23.07.2014,
- b) Sum of Rs.14 lakhs on 31.07.2014,
- c) Sum of Rs.20 lakhs on 12.08.2014,
- d) Sum of Rs.14 lakhs on 23.08.2014,
- e) Sum of Rs.3,50,000/- on 27.09.2014,
- f) Sum of Rs.1,30,000/- on 09.10.2014 and
- g) Sum of Rs.1 lakh on 01.12.2014, in all Rs.65,80,000/-.

The accused No.1 has further alleged that, he had invested sum of Rs.1,22,46,383/- by way of cash and Rs.1,50,60,917/- by way of bank loan, in all he had invested Rs.2,73,07,300/-, the investment for the said project made by the accused No.1 was Rs.2,73,07,300/- and complainant had invested sum of Rs.65,80,000/-, in all they were invested sum of Rs.3,38,87,300/-. Thereafter, film shooting for the said movie was been finished Judgment 15 C.C.No.22896/2016 around 70% in the year 2015 and remaining formalities are still pending for the release.

The accused No.1 has further contended that, in the year 2015, the complainant informed him that, he is unable to invest the said amount as agreed between them for the movie project and he was facing lot of other problems in investing the same. The accused No.1 shocked after hearing from the complainant, for which, the accused No.1 informed the complainant that, "what sir, I have obtained bank loan and invested of my earnings and savings for the said project, which is around Rs.2,73,07,300/- and now you are not co-operating to me and the movie is set for the finalization,



you are showing your incapability by saying all this to him, on the keeping great trust on him have invested crores together money on the said project. The accused No.1 also contended that, he already invested his part of share as agreed between them for the project; it is only left with and required the part of share/investment of the complainant. The complainant will be getting the investment within a week from releasing the movie. Hence, kindly co-operate for the completion of the said movie, if not, then the accused No.1 will be to great loss and he will become bankrupt". Then complainant somehow agreed by saying that, he would seeking financial assistance from his friends and Judgment 16 C.C.No.22896/2016 known sources. Thereafter, the complainant used to drag on the issue whenever he requested him for his investment.

The accused No.1 has further alleged that, in the month of June or July, 2015, the complainant had approached the accused No.1 and informed him that, he had sought for hand loan from his friends to invest the same on this project. Hence, the complainant informed the accused No.1 that, his friends who are willing to give hand loan to the complainants are asking him complainant's cheque and his partner i.e., complainant's for security. Considering the position of accused No.1 and he wanted finish and release the said movie project, he agreed for the same and handed over 3 cheques, which are present disputed cheques, presented by the complainant in this case. At the time of handing over the cheques to the complainant, accused No.1 had only signed on the cheques without name, date and mentioning of the amount in that cheques.

The accused No.1 has further contended that, thereafter, on 15.12.2015, the complainant had come to his office at accused No.2 and asked to sign on the blank e-Stamp paper along with some other blank sheets explaining to accused No.1 that, complainant friends are asking for papers to sign on it for the Judgment 17 C.C.No.22896/2016 purpose of hand loan. On 19.12.2015, the accused No.1 was with his friend by name Sadayoga, the complainant came to him and shows the blank e-Stamp paper and some blank sheets signed by the accused No.1 on 15.12.2015 and complainant had created those documents as Memorandum of Understanding and shown to him. Thereafter, the accused No.1 asked the complainant that, "Sir, why you have created those documents as Memorandum of Understanding without my knowledge and consent, why you are troubling me like this?, you have assured him to get loan as an investment from friends for the movie project for which I have signed on the blank e-Stamp paper and cheques, but now you have typed and created those documents like this? Now his friend Mr.Sadayoga had come forward to invest on the movie project. Kindly Co-operate with him". But after these communications, the complainant demanded the accused to return his investment money on the movie project and picked up quarrel. At that that, the complainant made his friend Sadayoga to sign on Memorandum of Understanding as witness. Thereafter, during January, 2013, when accused No.1 gone to Hyderabad for a movie discussion, the complainant had came to his office at accused No.2 and took the seal on some On demand promissory notes, which bares the seal of accused No.2 office.

Judgment 18 C.C.No.22896/2016 The accused No.1 has further contended that, the complainant either offered any loan from his friends or invested remaining portion of his share on the movie project picked up quarrel with the accused No.1 to return his invested amount and threatened him if not, he will not allow the accused to finish the movie project. Further, the complainant started to conspire for those who have come forward to invest on the said movie project. The whole act of the

complainant made the movie not to get release. Also, the accused No.1 unable to pay the interest for the loan were he borrowed from bank and invested in the movie project. The accused No.1 had deep faith and trust on the complainant, but he cheated him and the accused No.1 is now in a great financial crisis, which unable to come out of it.

The accused No.1 has further contended that, the complainant had threatened him by showing his signed blank cheques and Memorandum of Understanding stating that, he will not allow to release move and he will filed a case and stays the movie not to release. When the complainant continuously demanded for return of his investment amount, the accused No.1 craved him that "Sir, kindly co-operate to him in releasing the movie, he also assured him that, he will certainly get his invested amount within a day after the movie is released. Kindly, do not Judgment 19 C.C.No.22896/2016 interrupt him". But even after his several requests, the complainant was stubborn and kept demanding him to settle his invested amount; if not stay order would be obtain from the court from releasing the movie. Further, he threatened that; he would present those cheques for encashment and filed case against him. Subsequently, accused No.1 visited his bank and issued instructions to 'stop payment' letter not to honour the disputed cheques. So also filed caveat petition before Hon'ble City Civil Judge.

The accused No.1 has further contended that, he was not in a station and he was in Hyderabad, at the time of issuing legal notice by the complainant, at that time, the complainant came to the office of accused No.1, at the accused No.2 and received the legal notice issued by the complainant himself. When accused No.1 got returned from Hyderabad during August, 2016, the complainant intimated the accused No.1 that, he had sent a letter by post and he only got received the same. But accused No.1 has not received any letter or post as alleged in the complaint by the complainant. Thereafter, the accused No.1 requested the complainant to co-operate in release the movie and assured to return his investment soon after the movie release. But the complainant had not even co-operated for releasing the movie Judgment 20 C.C.No.22896/2016 and act of the complainant had made the other investors also not invest on the same.

The accused No.1 has further contended that, the cheques, Memorandum of Understanding and On demand promissory notes produced by the complainant is for the purpose of fulfillment of the intention of the complainant herein. The complainant had filled up those documents, wherein, accused No.1 was signed when it was completely blank. The PW.2, who deposed before this court is false and far from truth by creates cock and bull story. The complainant had falsely implicated the accused. On account of act of complainant, the accused No.1 undergo for mental and physical agony, loss and injury. The complainant is sole responsible for all these issues to happen. The accused No.1 deprived his status and respect in the society by the act of the complainant. In order to harass the accused and to deceive him for the purpose of making unlawful gain filed the false case. Therefore, prayed for his acquittal.

16. That apart, to prove the probable defence of the accused No.1, he choosen to orally examined one witness by name Mr.Sadayoga as DW.2. Who on oath has deposed in the witness box that, accused No.1 is his friend. Through the accused No.1, Judgment 21 C.C.No.22896/2016 complainant came into introduce DW.2 in the year 2015. The complainant and accused together produce a film and

since there was financial crisis, the complainant was not able to mobilize his share of investment; the accused No.1 was asked the DW.2 to invest the money on behalf of complainant. By that time, accused No.1 told him that, for make a film it was in need of Rs.2,75,00,000/- investment and asked the DW.2 to invest on the same.

The DW.2 has further deposed that, for prepare Vijayadithya movie already invested about Rs.2,50,00,000/- to Rs.2,75,00,000/- investment and complainant was invested Rs.65 lakhs was informed to him, but he not remember exactly. The complainant before the DW.2 got invests in the said film, asked the DW.2 to return his investment, but the DW.2 was not agreed for the same. By that time, the DW.2 was told to complainant that, after release film and whatever the amount received would return to the complainant.

The DW.2 has further deposed that, the Ex.P10 Memorandum of Understanding was prepared on 15.12.2015, to the same he affixed his signature at Ex.P10(b). He stated that, on the said date, the said document was prepared and by mentioning Judgment 22 C.C.No.22896/2016 the date, he affixed his signature to the said document. On 15.12.2015 the Memorandum of Understanding was not prepared. The Exs.P1 to P3 cheques were issued by the accused No.1 to the complainant for the purpose of arrange fund to make film. The complainant also told that, he was also tried to mobilize the fund. Those cheques were issued by the accused No.1 to the complainant for the purpose of rise fund and they were issued before the complainant was raised talk, accused No.1 were given to the complainant.

The DW.2 has further deposed that, he got invested sum of Rs.45 lakhs to the said film. Out of which, sum of Rs.25 lakhs were paid to accused No.1 through his Karnataka Bank account as well as got paid money through various persons of film shooting unit. In that regard, he got produced bank pass book at Ex.P28. The complainant also knew that, DW.2 got invested in the said film. The complainant informed the DW.2 that, they were prepared the film nicely, but filed present case; hence, they are unable to invest money in the said film. Therefore, the said film remains incomplete. The complainant never lent loan to the accused No.1, but he was invested sum of Rs.65 lakhs being a co-producer. The DW.1 and DW.2 were subjected for cross- examination in detail by the advocate for complainant.

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17. The complainant choosen to examined one Shri. Gopala Krishna as PW.2 and he choosen to filed his affidavit evidence in lieu of his chief examination. Wherein, the PW.2 has contended that, he knew the complainant and accused in the present case, as they used to attend his yoga classes since 10 years. He also stated that, the accused No.1 for the purpose of make Vijayadithya cinema, requested the complainant to arrange finance accordingly, complainant were help sum of Rs.70 lakhs to the accused No.1 and he knew the same.

The PW.2 had further contended that, the accused in respect of money so received as well as got received entire amount and executed 3 On demand promissory notes. On the wishes of accused No.1, the PW.1 himself got written on the On demand promissory notes. Thereafter, the accused

No.1 affixed his signature to the On demand promissory notes and later handed over to the complainant. On the wishes of accused No.1, the dates on the On demand promissory notes were rectified in respect of the said all transaction, being an eye witness, the PW.2 got signed the same. He is able to identified his and accused signatures.

Judgment 24 C.C.No.22896/2016 The PW.2 has further contended that, the accused No.1 on 15.12.2015 got executed one agreement in favour of complainant. The matter pertaining to the said agreement were discussed and same were took place in his presence and later it was reduced in to writing. In connection to the said agreement matter, the accused No.1 in respect of the amount payable to the complainant got issued 3 cheques in favour of complainant by himself got prepared the same and for clear the loan amount got issued the same to complainant. The said consent agreement, the PW.2 got affixed his signature as a witness and in his presence only the said transaction were took place and prepared the said document and he affixed his signature to the same. The accused No.1 in respect of the amount repayable to the complainant and for the payment of Rs.1 crore, informed the complainant and present those cheques on the date made mentioned therein. The PW.2 became the witness to all the transaction. Later, the accused No.1 when the complainant got presented the said cheques for encashment, the same came to be dishonoured for the reasons stop payment instructions given by the accused No.1, knew to the PW.2. The accused No.1 liable to be pay the amount covered under the cheques. Accordingly, through PW.2, he admitted the signatures of him as found in Exs.P19 to P24, therefore, the same Judgment 25 C.C.No.22896/2016 got marked as Ex.P10(c), Ex.P20(a), P22(b) and P24(b). Similarly, the PW.2 got identified the signature of accused No.1 and got marked as Ex.P19(a) (b), P20(a) to P20(c), P21(b) and

(c), P22(a), and P23(b) and (c), P24(a) and (c). Likewise, he also identified the signature of accused at Ex.P10(a) and P10(e) to (g). The PW.2 was subjected for cross-examination.

18. On going through the rival contentions of the parties involved in the present case, it is made clear that, based on the questioned cheques at Exs.P1 to P3, the complainant has brought the present case before this court, stating that, the amount made mentioned therein of sum of Rs.1 crore is the legally recoverable debt payable by the accused Nos.1 and 2. Hence, they were issued those cheques, when the movement of their presentation, the same came to be dishonoured, despite, got issued legal notice to the accused Nos.1 and 2, they have not paid the amount covered under the cheques, therefore, the complainant alleging, the accused Nos.1 and have committed the offence punishable under Section 138 of Negotiable Instruments Act.

19. It is pertinent to note that, the accused Nos.1 and 2 have appeared before this court through their advocate and contested the claim of complainant and seriously alleged the claim put forth Judgment 26 C.C.No.22896/2016 by the complainant and contended that, whatever the amount made mentioned in the cheques at Exs.P1 to P3 is not the legally recoverable debt payable by the accused, but whatever the amount, the complainant got invested at Rs.65,80,000/- in making the Vijayadithya film being a producer and co-producership of the accused No.1 and complainant, on account of the complainant unable to arrange the residual fund in completion of the said film. After reaching 70% of making of film, the same was stalled. If at all, the complainant let other co-producer

to join on his behalf and made further investment by the new co-producer, then only the film could have been release and out of the income gain could have repay the amount invested by the complainant. In order to mobilize the fund to conclude the Vijayadithya film as assured by the complainant, gave singed questioned cheques at Exs.P1 to P3 coupled with singed On demand promissory note and consideration receipts produced as per Exs.P19 to P24. In spite of complainant co-operate to assist the insertion of co-producer, he got misused those documents and filed the false case. Hence, they are not liable to pay money. More categorically, the accused Nos.1 and 2 have took the defence that, they have not borrowed any loan from the complainant as alleged, and when the accused No.1 went to Hyderabad, at the time of Ex.P7 legal notice was Judgment 27 C.C.No.22896/2016 sent to his address, the very complainant herein came to his office as mentioned in the address of accused No.2 and by affixing his signature on behalf of accused Nos.1 and 2 and got received the legal notice as found in Exs.P8 and P9. Hence, the legal notice at Ex.P7 was not served on the accused. Hence, they are not liable to pay any money to the complainant.

20. No doubt, by virtue of sections 118 and 139 of Negotiable Instruments Act, it shall be presume that, in respect of discharge of existence of legally recoverable debt, the accused Nos.1 and 2 unless and until contrary prove. The rider is found in the said provisions that, it is initial burden on the accused Nos.1 and 2 got issued questioned cheques at Exs.P1 to P3 to rebut the statutory presumption of facts and circumstances by way of furnish probable defence. Hence, it made clear that, it was the initial burden on the accused Nos.1 and 2, to rebut the case of complainant. In that backdrop it requires to appreciate the evidence led by the parties to the present case.

21. First of all, the accused Nos.1 and 2 has specifically contended that, legal notice at Ex.P7 got issued by the complainant were not served on accused Nos.1 and 2, but when accused No.1 at Hyderabad, the complainant came to his office Judgment 28 C.C.No.22896/2016 as mentioned in cause title address of accused No.2 got received Exs.P8 and P9 postal acknowledgments, hence, legal notice as required under the statute not served on the accused, therefore, not caused reply. Since, the said aspect involved regarding the compliance of mandatory provision, it requires to be adjudicate, whether legal notice was duly served on accused Nos.1 and 2 or not is very much warranted. Therefore, it requires to focus on the evidence of PW.1 in that regard.

22. The PW.1 during his cross-examination has deposed that:

" ॥.8 aÄvÄÄÛ 9 CAZÉ 1éÄPÀÈwAiÄÄ°è £Ä£Äß °É, ÄgÄÄ EzÄÄÝ, CÄÄÄUÄ¼Ä£ÄÄß £Ä£ÉÄ 1éÄPÄj¹zÉÝÄ£É. D ¥ÄæPÄgÄ ॥.7 £ÉÆÄn, i£ÄÄß £Ä£ÄÄ 1éÄPÄj¹zÉÝÄ£ÉÄzÄgÉ, Äj. , ÄQë , ÄévÄB aÄÄÄzÄÄaÄgÉzÄÄ ॥.8 aÄÄvÄÄÛ 9 PÄ¼ÄÄ»¹PÉÆIÖ £ÉÆÄn, iUÉ £Ä£ÄÄ , Ä» aÄiÄrzÉÝÄ£É, ॥.8 aÄÄvÄÄÛ 9 PÄAqÄÄßgÄÄaÄ vÄ£Äß , Ä»AiÄÄ£ÄÄß £ÉÆÄr UÄÄgÄÄw¹zÄ aÉÄÄgÉUÉ ügÄÄc ¥ÄgÄ aÄQÄ@gÄ , ÄaÄÄPÄèaÄÄzÄ aÉÄÄgÉUÉ ॥.8(J) aÄÄvÄÄÛ 9(J) JÄzÄÄ UÄÄgÄÄw, ÄÄÄÄÄÄÄ. ॥.8gÄ 1éÄPÀÈwAiÄÄ°è, ÄQë , Ä» aÄiÄrgÄÄaÄ PÉ¼ÄÄV£Ä "sÄUÄ °ÄjzÄÄ°ÉÆÄVzÉ. D °ÄjzÄÄ °ÉÆÄzÄÄ "sÄUÄ £Ä£ÄÄ , Ä» aÄiÄrzÉÝÄ£ÉÄzÄÄ £ÄÄrAiÄÄÄvÄÜgÉ. ॥.8 aÄÄvÄÄÛ 9£ÄÄß DgÉÆÄ| «¼Ä, ÄPÉÎ PÄ¼ÄÄ¹PÉÆnÖzÉÝÄ£É, ॥.8 gÄ°è EgÄÄaÄ , Ä» AiÄiÄgÄÄ aÄiÄrzÄÝgÉÄzÄÄ £Ä£ÄUÉ UÉÆwÜ®èaÉÄzÄÄ £ÄÄrAiÄÄÄvÄÜgÉ. DzÄgÉ CzÄ£ÄÄß DgÉÆÄ|

« ¼ Á , À P É Ì P À ¼ Ä » ¹ P É Æ n Ö z É Ý Æ É . ¤ | . 7 g À É É Æ Ä l , ï D É g À Æ Ä | U É e Á j A i À i Á V ® è , C z À É Ä Æ Æ É Á É É Ä ¹ é Ä P À j ¹ z É Ý Æ É É A z À g É Judgment 29 C.C.No.22896/2016 , Ä j A i Ä Ä ® è . É Á É É Ä D É É Æ Ä l , ï É Ä Æ Æ ¹ é Ä P À j , Ä z À P Á g À t D g É Æ Ä | C z À P É Ì Y Ä æ v Ä Ä ä v Ä Ü g Ä ¤ Ä r ® è ª É A z À g É , Ä j A i Ä Ä ® è . »

23. On going through the clear cut admission made by the PW.1, that too, on the second day of cross-examination reproduced supra, it made clear that, he categorically admitted that his signature is found at Exs.P8 and P9. More particularly he deposed that, he got received Exs.P8 and P9 attached postal covers. More categorically he admitted that, he himself got received Ex.P7 legal notice issued by the complainant. The PW.1 further volunteers that, to the legal notice at Exs.P8 and P9 got issued to the accused, he himself got signed the same. On meticulous perusal of the Ex.P7, it does not disclosed the signature of complainant as he deposed, but it discloses the 3 pages of legal notice were signed by his the than advocate Mohan Das Shetty. Therefore, the complainant evidence as to, he signed the Ex.P7 legal notice is not proved.

24. It is significant fact to note that, from the appraisal of above piece of cross-examination of PW.1, he categorically on seeing his signature as found in Exs.P8 and P9 in the recipient column and identified, therefore, his signature that marked as Exs.P8(a) and P9(a). It also made clear that, the portion of signature as Judgment 30 C.C.No.22896/2016 found in Ex.P8 at right side below it was torn and initial word and below that the initial 3 letters 'ind' were found. More particularly the PW.1 has categorically admitted that, he himself got signed in the torn portion at Ex.P8. The PW.1 has deposed that, he does not know who put signature to the Exs.P8 and P9 and he deposed that, those notices were issued to the accused Nos.1 and 2 and denied the suggestion that, the complainant himself got received legal notice were issued in the address of accused Nos.1 and 2, therefore, the accused Nos.1 and 2 unable to give reply.

25. From the above said piece of reproduction of evidence clearly manifest that, the signature and name column of recipient of the legal notice issued by way of R.P.A.D. were admittedly belongs to the complainant. Why, the complainant affixed his signature and under what compelling circumstances inspite of the person who received legal notice at Ex.P7 got issued by way of R.P.A.D. as found in Exs.P8 and P9 are anyone person on his above authorized but signed there, but ignoring the same, why the complainant has affixed his signature though there was no roll of him to affix his signature is not been satisfactorily explained. Infact, the acknowledgment at Exs.P8 and P9 clearly discloses, it was issued to the address of accused Nos.1 and 2 and it was returnable to the advocate of complainant by name T.Mohan Das Judgment 31 C.C.No.22896/2016 Shetty, but contrary to the same, the complainant though he had no roll to interrupt to affix his signature, but in order to clarify the defence of accused No.1, those notices were not served them, it made clear that, the complainant himself got affixed his signature and not let the postal authority to deliver the same to the accused Nos.1 and 2.

26. That apart, during the course of cross of DW.1 against the contention of DW.1, as to denial of receipt of legal notice, suggestions were made to him from the side of complainant that:

27. The complainant by way of made such suggestions got clearly admitted that, along with the accused No.1, his parents were also resided in the house. Even they were suggested to him that, in the absence of accused No.1, inmates if accused No.1 would receive the letter correspondence made to his address, the DW.1 volunteers that, on his consent they may receive. Even the DW.1 has clearly admitted that, on seeing Ex.P7 legal notice and address made mentioned therein, he categorically admitted the address made mentioned therein is of him. More particularly, he clearly admitted that, either in his house or office, the complainant was not reside in the same. Even the DW.1 has deposed that, in the office of accused No.2, about 4 to 5 persons were working and on his permission his employees used to collect paper correspondence made to his address.

28. On carefully going through the said suggestion made to the DW.1, they were not stated and suggested the names of persons, who resided along with the address of the accused Nos.1 and 2. Even there is no suggestion made to DW.1, though he fought against the complainant by contending that, legal notice at Ex.P7 were not served on him as per Exs.P8 and P9, no suggestions were made as to whom the said notices were delivered. Even not clarified by tendering Exs.P8 and P9-postal acknowledgments, Judgment 33 C.C.No.22896/2016 wherein discloses, the small signature at the left side. The said small signature either not marked by the complainant nor suggested that, the said signatures is of the inmates of accused No.1 to establish the due service of legal notice at Ex.P7. It is significant to note that, as discussed earlier the PW.1 categorically admitted that, the signature of the recipient of legal notice at Ex.P7 as found in Exs.P8 and P9, he himself put signature. It is significant fact to note that, apart from the admitted signature of the complainant, it also reveals the small signature affixed near the signature of the receipt of the legal notices. Though, complainant no need to put his signature, why he affixed he gave explanation in the evidence. On account of signature made by the complainant at Exs.P8 and P9 in the place of recipient of legal notice, he got invited the risk as the

receipt of legal notice in the address of accused Nos.1 and 2. Hence, the same is need to appreciate in order to clear the doubt.

29. On careful going through the postal acknowledgment, wherein it has clearly mentioned that, notice was issued by the advocate for the complainant by name T.Mohan Das Shetty and addressed to accused Nos.1 and 2. Therefore, there was no roll on the part of complainant to affix his signature to the postal acknowledgment. By way of affixed the signature, as he admitted Judgment 34 C.C.No.22896/2016 on behalf of accused Nos.1 and 2, he not authorized to collect the same, against the interest of the accused Nos.1 and 2. If the complainant has not given any explanation as well as produce the small signature found in the acknowledgement and documents attached to Exp18 issued by the Department of Posts, India as to service of legal notices and obtained the signature of the receipt, then it has to be presume that, he himself got received the legal notice by affixing his signature and name. Hence, it require to appreciate as to compliance of Sec.138(c) of Negotiable Instruments Act.

30. No doubt, the complainant got produced the reply given by postal authority at Ex.P18. On meticulous perusal of the same, the postal authority had certified that, the article delivered to intended person and has received it. Another document attached to the said document of the postal department, which is copy of person to whom the service of legal notice. On meticulous perusal of the said notice, the article No.ARK277182251IN and No.ARK277182265IN, as found in column No.6 and 7, the signatures of the complainant as found in acknowledgment at Exs.P8 and P9 has not been seen. But it discloses that, altogether different signature and almost appears to be similar to Judgment 35 C.C.No.22896/2016 the small signature found at left side of the postal acknowledgment which unmarked.

31. On going through the delivery slip of registration department issued by the postal authority attached to Ex.P18, it discloses that, the signature found which unmarked at the left side of the signature and name of the recipient are appears to be one and the same. On going through the document attached to Ex.P18 issued by the postal authority, it made clear that, the small signature at the left side of the recipient signature of the legal notice are appears to be one and the same. Therefore, it made clear that, whatever the signature found in the delivery slip attached to Ex.P18, it made clear that, the complainant had not received the Exs.P8 and P9 in the address of the accused Nos.1 and 2. If at all, the complainant affixed his signature in the Exs.P8 and P9 postal acknowledgments definitely, the signatures who have been placed in the delivery slip attached at Ex.P18, but the same is lack.

32. It is worthy to re-produce the cross-examination of PW.1 that:

" 8 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 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aÄÄÄzÄÄÄgÉzÄÄ ¤|.8 aÄÄvÄÄÛ 9 PÄ¼ÄÄ»¹PÉÆIÖ £ÉÆÄn, iUÉ £Á£ÄÄ ,Ä»  
 aÄiÄrzÉYÄ£É, ¤|.8 aÄÄvÄÄÛ 9 PÄÄqÄÄ§gÄÄaÄ vÄ£Äß ,Ä»AiÄÄ£ÄÄß £ÉÆÄr  
 UÄÄgÄÄw¹zÄ aÄÄgÉUÉ |ügÄâ¢ YÄgÄ aÄQÄ@gÄ ,ÄaÄÄPÄëaÄÄzÄ aÄÄgÉUÉ  
 ¤|.8(J) aÄÄvÄÄÛ 9(J) JÄzÄÄ UÄÄgÄÄw, Ä-ÄvÄÄ. ¤|.8gÄ ¹éÄPÄÈwAiÄÄ°è,  
 ,ÄQë ,Ä» aÄiÄrgÄÄaÄ PÉ¼ÄV£Ä ¨sÄUÄ °ÄjzÄÄ°ÉÆÄVzÉ. D °ÄjzÄÄ °ÉÆÄzÄ  
 ¨sÄUÄ £Á£ÄÄ ,Ä» aÄiÄrzÉYÄ£ÉÄzÄÄ £ÄÄrAiÄÄvÄÄUgÉ. ¤|.8 aÄÄvÄÄÛ 9£ÄÄß  
 DgÉÆÄ| «¼Ä ,ÄPÉÌ PÄ¼ÄÄ¹PÉÆnÖzÉYÄ£É, ¤|.8 gÄ°è EgÄÄaÄ ,Ä» AiÄiÄgÄÄ  
 aÄiÄrzÄYgÉÄzÄÄ £Ä£ÄUÉ UÉÆwÛ®èaÄÄzÄÄ £ÄÄrAiÄÄvÄÄUgÉ. DzÄgÉ  
 CzÄ£ÄÄß DgÉÆÄ| «¼Ä ,ÄPÉÌ PÄ¼ÄÄ»¹PÉÆnÖzÉYÄ£É. ¤|.7gÄ £ÉÆÄI, i  
 DÉgÄÆÄ|UÉ eÄjAiÄiÄV®è, CzÄ£ÄÄß £Á£ÄÄ ¹éÄPÄj¹zÉYÄ£ÉÄzÄgÉ ,ÄjAiÄÄ®è.  
 £Á£ÄÄ D £ÉÆÄI, i£ÄÄß ¹éÄPÄj ,ÄzÄ PÄgÄt DgÉÆÄ| CzÄPÉÌ YÄævÄÄvÄÄUgÄ  
 ¤Är®èaÄÄzÄgÉ ,ÄjAiÄÄ®è."

33. On going through the above piece of cross of PW.1, in the witness box he honestly admittedly the signature at Exs.P8 and P9 in the place of signature and name as found. He admitted the suggestion made by the advocate for the accused that, as found in Exs.P8 and P9, since, the signature is of the complainant wherein, he admitting that, he got received legal notice at Ex.P7. But he volunteers that, since he got issued legal notice, he had signed therein. Though, he admitted the signature at Exs.P8(a) and P9(a), he clearly explained that, to the address of the Judgment 37 C.C.No.22896/2016 accused, he got issued legal notice at Exs.P8 and P9. More particularly PW.1 has deposed that, in the Ex.P8 he does not know, who had signed. But he clearly deposed that, it was issued to the address of accused. He categorically denied the suggestion made from the advocate for the accused that, the legal notice at Ex.P7 were not served on the accused, but the complainant himself has received the same. Therefore, accused had not issued reply. After the cross-examination of PW.1, as re- produced above since the advocate for accused strongly attack on the contention of the complainant, as to denial of service of legal notice at Exs.P8 and P9 to the address made mentioned therein, on the subsequent stages the complainant got collected the delivery slip of registration department of postal authority attached to Ex.P18. By way of production of Ex.P18 and its attached document, the complainant got clearly explained that, though he admittedly affixed his signature to the postal acknowledgments at Exs.P8 and P9, he explained that, since he got issued legal notice to the accused Nos.1 and 2, he affixed his signature. If at all, wherein found the signature of complainant alone definitely, it would have treat as complainant had stage managed to avoid the service of legal notice, he himself got received. But contrary to the same, the said acknowledgment as well as the document Judgment 38 C.C.No.22896/2016 maintained by the postal authority at Ex.P18 and its attached document, clearly manifest that, in the correct address of accused Nos.1 and 2, some of his inmates or employees could have receive the said legal notice.

34. Even, the DW.1 has re-produced above, in his cross- examination has clearly admitted that, sometimes he permitted to inmates of his house or his employees, in his absence permitted to collect the paper correspondence or postal correspondence made to his address. Therefore, it made clear that, on behalf of accused Nos.1 and 2 someone and family members or employees of the accused Nos.1 and 2 had collected the Ex.P7 legal notice to the correct address made mentioned therein.

It is worthy to cite the decision reported in 2006 (4) KCCR 2375 (Mr. Umraz Khan and others V/s. Mr.A.Jmeel Ahmed and another). Wherein, Hon'ble High Court of Karnataka was pleased to held that:

"Once there is proof of posting of notice to correct address, it is deemed to have been served, the judgment of acquittal is bad in law".

In the decision reported in ACD 2011 page 1507 (SC), the Hon'ble Apex Court, in the said ruling held that;

Judgment 39 C.C.No.22896/2016 "The notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that the complainant had not complied with the requirements of giving notice in terms of Section 138(b) of Negotiable Instruments Act".

35. By virtue of the said dictum, it made clear that, though accused No.1 not directly received the legal notice issued by the complainant, some of the inmates of his family or the employees in the address of accused No.1 had received the legal notice at Ex.P7. Despite that, the accused Nos.1 and 2 at the proper stage though knew that, there was financial dispute between complainant and accused, he not came forward to take any specific defence to rebut the claim of complainant. Though, accused had sufficiently proved that, the signature at Exs.P8 and P9 is of the PW.1, but the very signature found left side to the postal acknowledgment and as found in Ex.P18 attached delivery slip document, it made clear that, the notice was served to the address of accused Nos.1 and 2. Therefore, it has to be presume that, the legal notice as required under Section 138(c) of Negotiable Instruments Act, were served to the address of the accused Nos.1 and 2, despite that, for the reasons better known to them, not caused any reply. Thereby, the complainant has Judgment 40 C.C.No.22896/2016 successfully proved that, legal notice at Ex.P7 as per Exs.P8 and P9 duly served on the accused. Though, accused No.1 has contended that, by the time of got issuance of legal notice at Ex.P7, he was at Hyderabad, failed to suggest on the same to the PW.1 or produce any documentary evidence, as to his stay at there, in order to rebut or disbelieve the case of complainant. Hence, it made clear that, complainant has successfully proved his contention that, legal notice at Ex.P7 was served to the address of accused Nos.1 and 2, despite that, they not caused any reply. Thereby, the complainant got complied the mandatory provision under Section 138(a) to (c) of Negotiable Instruments Act. Hence, Point No.1 is answered in the Affirmative.

36. POINT NOs.2 AND 3:- As discussed above, the complainant had successfully proved the compliance of mandatory provision as enumerated under Section 138(a) to (c) of Negotiable Instruments Act, in order to maintain the present case. Therefore, the initial statutory presumption as required under Sections 118 and 139 of Negotiable Instruments Act has to be drawn in favour of complainant, unless and until contrary prove. In order to prove the case of complainant, apart from he himself entered into witness box coupled with production of documents, Judgment 41 C.C.No.22896/2016 he choosen to examine another witness by name Gopala Krishna as PW.2.

37. Whereas, the accused also though admitted the receipt of Rs.65,80,000/- from the complainant as investment for the movie by name Vijayadithya, had strongly attack on the claim of complainant by contending that, since there were shortage of money and complainant had stopped for making further investment in conclusion of movie, as he agreed only 70% of shooting were concluded and for finishing remaining formalities and conclusion of shooting since the complainant assured to arrange the funds through other finance persons in order to obtain loan by the complainant for investment made in the film, at his instance since accused No.1 being a partner to the said movie as a security, he collected singed 3 blank cheques and singed e- Stamp paper with other blank sheets by explain him that, his friends were asking those papers for the purpose of hand loan. Accordingly, he gave those signed blank documents and when on 19.12.2015 accused No.1 was with DW.2 by name Sadayoga, the complainant came to him by showing blank e-stamp paper and some blank sheets singed by him on 15.12.2015 and created those documents in the style of Memorandum of Understanding and showed to him. By that time, he questioned the complainant, Judgment 42 C.C.No.22896/2016 why he did so without his consent and knowledge. By that time, the complainant without co-operating the accused No.1 for conclusion of movie project and he demanded the accused No.1 to return the invested money on the movie project and picked up quarrel. At that time, the complainant made his friend DW.2 to sign Memorandum of Understanding as witness. When in the month of January, 2016, he went to Hyderabad for movie discussion, complainant came to his office at accused No.2 and took his seal on some On demand promissory notes which bares seal of his office and got misused the same. The accused No.1 also attack on the contention of the complainant that, the complainant as agreed has not invested the amount in order to finish the movie, but quarreled to return his investment amount. The whole act of the complainant made movie not to get release and he is unable to pay interest for the loan, which he had obtained from bank as well as his own investment for the said movie project. The complainant had cheated the accused, hnce the accused No.1 is now in a great financial crisis and unable to come out of it. By way of took those documents, the complainant has created at Ex.P10 as well as other documents at Exs.P19 to P24 and filed the false case. Hence, he is not liable to pay any money to the complainant. Even he contended, he not borrowed Judgment 43 C.C.No.22896/2016 any loan whatever the investment made by the complainant is the investment as co-producer and after finishing of the production of film and its release, out of profit only the amount of the complainant could have been return, but he filed false case, he not borrowed any loan from him.

38. The accused No.1 has also contended that, since the complainant were stopped investing money, later DW.2 came forward to invest on his movie project. The complainant falsely implicated by way of filled all the documents by misusing blank singed documents and created cock and bull story. Thereby, made the accused No.1 to undergo for mental and physical agony, loss and injury. Hence, the complainant is sole responsible for all these issues happened. From the act of the complainant, the accused No.1 deprived from his status and responsibility in the society. Hence, prayed for acquittal. To prove his contention of the accused No.1, he got marked documents at Exs.D1 to D28 and to prove his contention, he got examined one witness as DW.2.

39. On going through the rival contentions of the parties, it made clear that, the complainant and accused No.1 strongly contested the matter. As per Sections 118 and 139 of Negotiable Judgment 44 C.C.No.22896/2016 Instruments Act, the initial statutory presumption shall be drawn in favour of

complainant that, for discharge of existence of legally recoverable debt, the accused Nos.1 and 2 got issued questioned cheques at Exs.P1 to P3 in favour of complainant, unless and until contrary prove. Therefore, it is the initial burden on the accused to prove his probable defence.

40. At the outset it require to appreciate that, the complainant in the complaint had pleaded that, the accused No.1 was in searching of investor and approached the complainant and requested lend sum of Rs.70 lakhs. Accordingly, as made mentioned in the complaint, he claimed to be paid sum of Rs.70 lakhs on various dates through cheques. The accused No.1 had disputed that, he not borrowed any loan from the complainant, but being an investor, the complainant had invested sum of Rs.65,80,000/-. During the course of cross of PW.1, he clearly admitted that:

"DgÉÆÃ| aÄÄvÄÄÛ ðÃªÄÄ F PÉÃ¹£Ä°ègÄÄªÄªÄªªÄ°ÁgÄªÄ£ÄÄß  
°ÉÆgÄvÄÄÝÄr¹ ¨ÉÃgÉ AiÄiÄªÄÄzÄzÄgÄÆªÄªªÄ°ÁgÄªÄ£ÄÄßªÄiÄrçÝÄgÄ  
JAzÄÄÝÄæ²ß¹zÄgÉ,ÁQëE®èJAzÄÄ£ÄÄrçgÄÄvÄÛgÉ."

41. By deposing so, the PW.1 has clearly admitted that, except the present case money transaction, he had no other financial Judgment 45 C.C.No.22896/2016 transaction with the accused Nos.1 and 2 herein. Therefore, it made clear that, the money transaction held involved in the present case as alleged and counter alleged by the parties are the only one transaction held between complainant and accused Nos.1 and 2. The complainant by way of pleaded as well as production of documents at Exs.P10 to P2 has contended that, he had invested sum of Rs.70 lakhs with the accused Nos.1 and 2 in respect of production of film by name Vijayadithya. It is pertinent to note that, the genuineness of bank statement produced by the complainant as found in the statement attached to Exs.P11 and P12 is not been disputed.

42. On meticulous perusal of the said statement, it does not discloses, the payment of Rs.70 lakhs, but it is discloses, the payment was made for the tune of Rs.65,80,000/- as contended by the accused No.1. On going through the contention of the complainant, in paragraph No.3 of the complaint, through claiming to be paid Rs.70 lakhs on various dates through cheques. On meticulous perusal of the payment particulars which discloses, the investment of Rs.70 lakhs made by the complainant with the accused Nos.1 and 2. On the particulars furnished by the accused in his affidavit evidence as well as by way of suggestion, it discloses, he claimed to be got received sum of Rs.65,80,000/-

Judgment 46 C.C.No.22896/2016 as investment made by the complainant in his film. Therefore, it requires to appreciate the evidence of PW.1 as to the investment made by the complainant, whether it was Rs.70 lakhs or Rs.65,80,000/-, as he contended is to be seen.

43. It is relevant to note here itself that, the accused had clearly admitted that, he got received Rs.65,80,000/-. But he denied that, remaining amount of Rs.4,20,000/- is not been received by him. When the cross-examination of PW.1, the PW.1 has reasserted the payment of Rs.70 lakhs to the accused Nos.1 and 2 in respect of production of film. But the advocate for the accused had denied the said contention of PW.1. In respect of other Rs.4,20,000/-, whether it was invested by the complainant with the accused Nos.1 and 2 which is to be seen. The bank statement produced by

the complainant, though it does not disclose, the entire amount of Rs.70 lakhs, but as admitted by the accused No.1 as to the receipt of Rs.65,80,000/-. Therefore, the remaining amount of Rs.4,20,000/- is to be proved by the complainant. Though, accused has attack on the very contention of the complainant, as to denial of investment of Rs.70 lakhs made by the complainant, he utterly failed to suggest to him that, exactly what portion amount got received from the complainant in respect of production of film not been seen. Therefore, in respect of other Judgment 47 C.C.No.22896/2016 payment made by the complainant, the suggestion made from the accused is to be seen.

44. During the course of cross of PW.1, it was suggested by the accused side that:

"£À£Àß zÀÆj£À ¥ÁâgÀ £ÀA.2 gÀ°è PÁtô¹gÀÄªÀ ªÀÄ°ÀzÉÄªÀAiÀÄªÀ DgÉÆÄ| PÀ¼ÄÄ»¹zÀ ZÁ®PÀ. DvÀ AiÀiAgÉAzÀÄ , À°À DgÉÆÄ|UÉ UÉÆwÛ®è JAzÀgÉ , ÀjAiÀÄ®è. DvÀ £À£Àß PÀqÉ ªÀÄQÛ JAzÀgÉ , ÀjAiÀÄ®è. £À£Àß zÀÆj£À PÀ®A £ÀA.r £À°è PÁtô¹gÀÄªÀ gÀÆ.2/-®PÀè °ÀÁUÀÆ gÀÆ.1,20,000/- ªÉÆvÀÛ DgÉÆÄ|UÉ vÀ®Ä|®è JAzÀgÉ , ÀjAiÀÄ®è."

45. On meticulous perusal of the said suggestion made to PW.1, it discloses that, Mahadevaiah was the driver of accused No.1. But suggestion were made that, the said person were unknown to accused. The PW.1 has denied the suggestion that, the said Mahadevaiah was the fellow of the complainant. Even it was suggested that, the amount alleged to be paid as found in paragraph (d) in para No.3 of the complaint made mentioned as to payment of Rs.2 lakhs and Rs.1,20,000/- were not reached to the accused Nos.1 and 2. But the PW.1 has denied the same. On meticulous perusal of the said contention, it discloses that, as mentioned in said para No.(d) and (h) of para No.3, it was mentioned about the payment of Rs.2 lakhs and Rs.1,20,000/- by Judgment 48 C.C.No.22896/2016 way of cheque bearing No.624070 and 582040 in the name of accused No.1 being a proprietor of accused No.2 had been found. When the complainant has stated that, by way of cheques only paid the said amount of Rs.3,20,000/-, therefore, to establish that, the said amount was not remitted, either to the account of accused No.1 or to the account of accused No.2, it is the accused Nos.1 and 2 have to produce the document, but simply suggested that, those amounts were not reached to the accused Nos.1 and

2. Therefore, in the absence of production of bank statement of the accused Nos.1 and 2 relating to the said payment of Rs.3,20,000/-, it has to be presume that, the said amount for Rs.3,20,000/- along with agreed amount of Rs.65,80,000/-, in all Rs.69 lakhs were paid by the complainant with the accused Nos.1 and 2 as invested in production of the feature film has to be accepted. Thereby, the complainant got proved the payment of Rs.69 lakhs.

46. The complainant specifically pleaded that, he got invested sum of Rs.70 lakhs and since the accused Nos.1 and 2 got not finished their film project and agreed to return the amount invested by the complainant with them, accused No.1 got executed the Memorandum of Understanding at Ex.P10 in the presence of witnesses and he got executed the On demand Judgment 49 C.C.No.22896/2016 promissory note and consideration receipts as found in Exs.P19 to P24. However, the accused have specifically attack on the genuineness of Exs.P10 and P19 to P24. In the

cross- examination of PW.1, he clearly deposed that:

"...10 JAMAIÄÄÄÄÄÄ°è £Ä£Äß£ÄÄß ¥Ä®ÄzÄÄjPÉ-ÄÄzÄ °ÉÆgÄUÉ °ÄQzÄ §UÉÎ MPÄÎuÉ °ÄiÄr®è JAzÄgÉ , ÄjAiÄÄ®è. £Ä£ÄÄ gÄÆ.70/- ®PÄè °Ät°Ä£ÄÄß DgÉÆÄ|AiÄÄ°ÄjUÉ 1°ÄiÄ vÄAiÄiÄj , Ä®Ä §AQÄ°ÄÄ¼Ä°Äv vÉÆqÄV¹®è JAzÄgÉ , ÄjAiÄÄ®è. , ÄQë C°ÄÄUÄ¼Ä£ÄÄß °ÄÄPî °ÄÄÆ®PÄ °ÄiÄrzÉÝÄ£É JAzÄÄ °ÉÄ¼ÄÄvÄÜgÉ. ...1 jAzÄ 3 ZÉPÄÄÜUÄ¼ÄÄ ¢£ÄAPÄ °ÄÄvÄÄÜ «°ÄgÄUÄ¼Ä£ÄÄß ...10 JAMAIÄÄÄÄÄÄ°è PÄtô¹®è JAzÄgÉ , ÄjAiÄÄ®è. ...10 £ÄÄß DgÉÆÄ| mÉÉYî °ÄiÄr¹gÄÄvÄÜgÉ. CzÄgÄ°è §gÉzÄ «µÄAiÄÄ°Ä£ÄÄß N¢ w¹/2zÄÄ , Ä» °ÄiÄrzÉÝÄ£É JAzÄgÉ , Äj. D zÄRÉUÉ , ÄzÄAiÉÆÄUÄ °ÄÄvÄÄÜ UÉÆÄYÄ®PÄÈµÄÜ J£ÄÄß°Ä°ÄgÄÄ , ÄQëAiÄiÄv , Ä» °ÄiÄrzÄÝgÉ JAzÄgÉ , Äj. ...10 gÄ°è ¢.30.6.2015 gÄÄzÄÄ 1°ÄiÄ ©qÄÄUÄqÉAiÄiÄzÄ §½PÄ £Ä£ÄUÉ , Ä®è °ÄÄPÄzÄ °Ät°Ä£ÄÄß PÉÆqÄÄUÄÄ°ÄÄzÄÄ J£ÄÄß°ÄÄzÄV MPÄÎuÉAiÄÄÄVzÉ JAzÄgÉ , ÄjAiÄÄ®è. ...10 PÉÎ , ÄQëAiÄiÄv , Ä» °ÄiÄrgÄÄ°Ä UÉÆÄYÄ®PÄÈµÄÜ £Ä£Äß ¥ÄgÄ°Äv , ÄQëAiÄiÄv , Ä» °ÄiÄrzÄÝgÄÄ °ÄUÄÆ , ÄzÄAiÉÄÄÄUÄ 1£ÉÉÄ DgÉÆÄ|AiÄÄ , ÄQëzÄgÄ£Äv , Ä» °ÄiÄrzÄÝgÄÄ. DvÄ £Ä£Äß£ÄÄß ¥Ä®ÄzÄjPÉ-ÄÄzÄ °ÉÆgÄ °ÄQzÄ £ÄÄvÄgÄ , Ä°Ä ...ÄiÄÄÝÄPÄ£Äv 1£ÄÉÄ DgÉÆÄ| , ÉÄj¹PÉÆArgÄÄvÄÜgÉ JAzÄÄ , ÄQë £ÄÄrAiÄÄÄvÄÜgÉ. D 1°ÄiÄ E£ÄÆß ©qÄÄUÄqÉAiÄiÄv®è JAzÄgÉ , ÄQë, Judgment 50 C.C.No.22896/2016 £Ä£ÄUÉ UÉÆwÜ®è, £Ä£ÄÄ FÜÄUÄÉÄ D ¥Ä®ÄzÄjPÉ-ÄÄzÄ °ÄÉÆgÄ §Ä¢ÉÝÄ£É JAzÄÄ °ÉÄ¼ÄÄvÄÜgÉ."

47. On going through the said portion of cross-examination of PW.1, he denied the suggestion made by the advocate for accused that, to show that, complainant was expelled from the partnership of the accused Nos.1 and 2, there is no recitals in the Ex.P10. He also denied the suggestion that, he was not invested sum of Rs.70 lakhs with the accused Nos.1 and 2 for the production of film. But the PW.1 volunteers that, the said payment were made through the bank. Even then, there is no suggestion from the side of accused Nos.1 and 2 to non-reaching of Rs.70 lakhs to the account of accused Nos.1 and 2, as contended by the complainant. Thereby, indirectly admitted the investment made by the complainant with the accused Nos.1 and 2 for the tune of Rs.70 lakhs. Even he denied the suggestion that, in respect of got issuance of cheques at Exs.P1 to P3, there dates and other particulars are not made mentioned in the Memorandum of Understanding at Ex.P10. It is significant fact to note that, the PW.1 as re-produced above has clearly deposed that, accused No.1 himself got typed the recitals at Ex.P10. It was the suggestion made to the PW.1 that, on reading of the recitals and understanding the same, the complainant got signed and Judgment 51 C.C.No.22896/2016 witnesses by name PW.2 and another were also signed the same. By way of making such suggestion, it made clear that, the accused had not denied the execution of Ex.P10. By making such suggestion to PW.1, it made clear that, the complainant and witnesses on reading and understanding the contents of Ex.P10 got signed the same is been proved. The recitals were suggested to the PW.1 was denied by the complainant stating that, the amount payable to the complainant were only after releasing the film on 30.06.2015 only made as recited therein is been denied by the PW.1. Even on behalf of complainant, the PW.2 got signed and on behalf of accused his witness DW.2 were signed the Ex.P10 is also stands proved. The PW.1 got furnished the explanation by stating that, the DW.2 after the complainant were thrown from the partnership of the accused Nos.1 and 2 and inserted the DW.2 as co-producer.

48. The PW.1 has deposed that, he does not know, whether the said film was released or not, but stated, he is went out from the partnership with them. Thereby, it made clear that, the investment made by the complainant as found in Ex.P10 as well as deposed by the PW.1 for the tune of Rs.70 lakhs stands proved and to disbelieve his contention, the complainant has not produced any contra evidence. With regard to the Ex.P10 is concern to prove Judgment 52 C.C.No.22896/2016 due execution made by the accused No.1 in the presence of witness of PW.2 and DW.2, the complainant choosen to examined the PW.2. The PW.2 entered into witness box and has deposed that, the complainant at the request of the accused Nos.1 and 2 provided the financial assistance of Rs.70 lakhs to them. On receipt of the said money, the accused Nos.1 and 2 got executed 3 On demand promissory note and consideration receipt and he filled the same, thereafter, complainant and accused were singed the same. At the instance of the accused, he got filled the said document. Even then, he deposed that, in respect of the said transaction he was the eye witness and accused No.1 on 15.12.2015 got executed one agreement in favour of the complainant in respect of the financial transaction held between them. By admitting the liability of accused Nos.1 and 2 for its repayment accused No.1 got issued 3 cheques to the complainant in his presence and got entered into agreement in his presence and singed them. Even stated that, the accused is liable to pay sum of Rs.1 crore and for its payment got issued cheques at Exs.P1 to P3, later while presenting the same, the same got dishonoured for the reasons 'stop payment'. The PW.2 was subjected for cross-examination.

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49. During his cross-examination, the PW.1 has identified the signature of the accused, therefore, it was marked at Ex.P10(e) to P10(g) and his signature at Ex.P10(c). During the course of cross of PW.2, he reasserted that, the complainant on various dates paid sum of Rs.70 lakhs to the accused No.1 and 2 by stated, he does not remember the dates and its particulars, but he specifically deposed that, the said payment were made through cheques, but denied the suggestion, as that much amount was not paid by the complainant to the accused No.1. With regard to Ex.P10, the PW.2 has deposed that:

"!gÁâ¢ PÀÆqÀ «dAiÀiÁ¢vÀâ 1ªªÀiÁzÀ ,À°À ªªÀiÁðYÀPÀgÀÄ JAzÀgÉ, ,ÁQë YsÉÉÁiÀÄgî JAŞÄzÁV £ÄÄrAiÀÄÄvÁÛgÉ. ª|.10ªÉÄÄªÉÆgÉAqÀªÄiï CYsî CAqÀgî,ÁÖArUïUÉ, CzÉÄ ¢£À ,À»ªÀiÁrzÉYÄ£É. ,ÀªÄÄAiÄÄ £É£À|®è. !gÁâ¢ £Ä£Äß §½UÉ ª|.10£ÄÄß vÀAzÄÄPÉÆLÄÖ, £Ä£Äß ,À»YÀqÉzÀ PÁgÀt, ,ÀªÄÄAiÄÄ £É£À|®è JAzÀgÉ ,Àj. ª|.10PÉÏ £Ä£ÄÄ ,À»ªÀiÁqÄÄªÁUÀ 1£ÉÄ DgÉÆÄ| EgÀ°®è JAzÀgÉ ,ÀjAiÄÄ®è. !gÁâ¢AiÉÄÄ £Ä£Äß §½ ª|.10£ÄÄß vÀAzÄÄ ,À»YÀqÉzÀ ,ÀAzÄÄÀsð DgÉÆÄ| EgÀ°®è JAzÀgÉ ,ÀjAiÄÄ®è."

50. In the above testimony, the PW.2 has deposed to the suggestion made to him by the advocate for the accused that, the complainant was the co-producer in Vijayadithya movie, but he deposed, he was the financier. More particularly, PW.2 has Judgment 54 C.C.No.22896/2016 deposed that, on the same day, he got signed to Ex.P10- Memorandum of Understanding but stated does not remember time. He also deposed that, complainant gave the Ex.P10 and obtained his signature and he does not remember the time. He denied the suggestion made by the advocate for the accused

that, while brought the Ex.P10, the accused No.1 were not there. From the said evidence of PW.1, it made clear that, the Ex.P10 is entered into and its contents as well as the participation of PW.2 being the witness is not been denied by way of suggestion to PW.2. The evidence of PW.2 made clear the execution of Ex.P10 Memorandum of Understanding entered into between complainant and accused No.1, as to termination of co-producer status of the complainant in Vijayadithya film and for repayment of Rs.70 lakhs to the complainant, the accused No.1 got issued the questioned cheques at Exs.P1 to P3. The genuineness of recitals and termination of transaction held between complainant and accused at Ex.P10 is recited is not been denied by the accused nor disproved its recitals. With regard to the Ex.P10 Memorandum of Understanding, it requires to appreciate the evidence of DW.1, as he and his concern is the party to the same, hence, he is only right person to say on its genuineness.

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51. It is worthy to re-produce the portion of cross-examination of DW.1 as to Ex.P10. Which runs thus:

"५|-10 gÀ YÀæPÁgÀ ¢ÉÁAPÀ 15.12.2015 gÀAzÀÄ ÉÀÉÀß ªÄvÀÄÛ |AiAiÁð¢AiÄÄ ÉÀqÄÄªÉ memorandum of understanding DVzÉ JAzÀgÉ , ÁQëAiÄÄÄ , ÀévÀB ªÄÄÄAzÄÄªÄgÉzÄÄ MAZÄÄ bÁYÁ PÁUÀzÀPÉÌ °ÁUÀÆ ªÄÄÆgÄÄ SÁ° PÁUÀzÀPÉÌ ªÄÄvÀÄÛ YÀzÄä|æAiAiÁ YÉÇqÀPÀè£ïiÉÀ ¯Élgī °ÉqīÉÀ SÁ° PÁUÀzÀPÉÌ , À»AiÄÄÉÄÄß YÀqÉ¢zÁYgÄÄ JAzÄÄ ÉÄÄrAiÄÄÄvÁÛgÉ. ५| 10 gÀ°ègÄÄªÄ , À»UÀ¼ÄÄ ÉÀÉÀßzÉÄ JAzÀgÉ , Àj. , ÀzÀj bÁYÁ PÁUÀzÀªÄÉÄß ÉÀÉÀß °É , ÀjÉÀ°è ÉÁÉÄÄ RjÄ¢¹zÉYÄÉÉ JAzÀgÉ , Àj. ¢ÉÁAPÀ 15.12.2015 gÀAzÄÄ SÁ° PÁUÀzÀPÉÌ , À» ªÄiÁqÄÄªÄ CªÀ±ÄÄPÀvÉ KªvÄÄÛ JA§ YÀæ±ÉBUÉ , ÁQëAiÄÄÄ gÄÆ.5 PÉÆÄn ¹ªÄiÁPÉÌ |AiAiÁð¢ gÄÆ.65 ®PÀëªÄÉÄß vÉÆqÀV¹zÄÄY, G¹²zÄ °Àt °ÉÆAzÀtôPÉ ªÄiÁqÄ®Ä zÁR¯ÉUÀ¼ÄÄ ¯ÉÄPÄÄ JA§ PÁgÀt ÉÁÉÄÄ SÁ° PÁUÀzÀPÉÌ , À» ªÄiÁr PÉÆnÖgÄÄvÉÛÉÉ JAzÄÄ ÉÄÄrAiÄÄÄvÁÛgÉ. ५| 10 gÀ°è , ÁQëzÁgÄgÄ , ÀªÄPÀëªÄÉÁÄÄ , À» ªÄiÁrzÉYÄÉÉAzÀgÉ , ÀjAiÄÄ®è."

52. On going through the said testimony of DW.1, it was the suggestion made to him that, as per Ex.P10 very particularly on 15.12.2015 itself, there were Memorandum of Understanding were entered into between complainant and accused No.1 but, the DW.1 without answer the question, whether it was entered into on the said date or not, but diluting the said question and answer that, the complainant took the signature on blank stamp paper, Judgment 56 C.C.No.22896/2016 blank 3 papers, blank letter head of the accused No.2. He not say anything on the Ex.P10 and itself due execution in favour of the complainant as projected by the complainant. But it is categorically admitted by DW.1 that, whatever the signature found at Ex.P10 - Memorandum of Understanding is of him. He categorically he admitted that, the stamp paper at Ex.P10 was purchased by himself. There were question asked by the advocate for complainant to DW.1 that, what was necessity to the accused No.1 to affix his signature to the blank stamp paper on 15.12.2015, to the same the DW.1 has deposed that, the complainant got invested Rs.65 lakhs and for adjustment of remaining amount, he gave singed blank papers to the complainant. For the adjustment of money to the complainant, why the accused gave those singed blank documents is also not been satisfactorily explained.



53. The DW.1 has denied the suggestion made by the advocate for the complainant that, in the presence of witnesses cited in the Ex.P10, the accused got signed the same. On the one hand, in his chief examination has deposed, the complainant got prepared the Ex.P10 in the stamp paper dated:15.12.2015, as contended in paragraph 5, wherein, he clearly admitted that, the complainant had Ex.P10 on 15.12.2015, but to prove that, it was created and Judgment 57 C.C.No.22896/2016 manipulated the signed blank document, without his consent and knowledge is contrary to his chief evidence. From the chief examination as well as cross-examination, it made clear that, the accused No.1 on 15.12.2015 itself knew that, the Ex.P10 were came in to existence, but to establish that, it was created and fabricated without his knowledge, definitely, immediately or at least after the complainant made use of Ex.P10, the accused could have initiate necessary legal action, but for the reasons better known to him, he not initiated any action nor give any acceptable explanation. In his cross-examination, he clearly admitted that, on 15.12.2015 itself he saw the Ex.P10, later he volunteers that, it was typing error, but explained that, on 19.12.2015 itself the said document were shown to him. From which, it made clear that, at least on 19.12.2015 itself he came to know about the Ex.P10 and he could necessary legal action.

54. The DW.1 in his affidavit evidence has stated that, after the complainant demanded him to return his investment made on movie and picked up quarrel. It also contended that, complainant made DW.2 to sign on Ex.P10 as witness. Therefore, whatever the signature found at Ex.P10 of DW.2 is been clearly admitted by the accused, to prove his contention, he choosen to examined Judgment 58 C.C.No.22896/2016 DW.2. During the course of chief-examination, the DW.2 has deposed that:

"2015 gÀ r, ÉA§gi 15 £ÉÃ vÁjÄT£ÄAzÄÄ ¤|.10 gÀ JAMAIÄÄÄ vÄAiÄiÁgÁVzÄÄÝ, CzÄPÉÌ £Ä£ÄÄ ¤|.10© AiÄiÁV, ÁPÄëä gÄÆYÄzÄ°è, Ä» ¤AiÄrzÉYÄ£É. CzÉÃ ¤£ÄAPÄ vÄAiÄiÁgÁzÄ zÄR¯ÉUÉ £Ä£ÉÄ ¤£ÄAPÄ £ÄÄÄÄÆ¤¹, Ä» ¤AiÄrzÉYÄ£É. ¤£ÄAPÄ 15.12.2015 gÄAzÄÄ ¤|.10 gÀ JAMAIÄÄÄ ¤Ä£ÄÄß vÄAiÄiÁj¹gÄ°è. ¤|.1 jAzÄ 3 gÀ ZÉPÄÄÏUÄ¼Ä£ÄÄß 1£ÉÄ DgÉÆÄ, ÄzÄj ¹¤AiÄ vÄAiÄiÁj, Ä®Ä §AqÄ¹¼Ä ¤ÄÆÆAzÄtôPÉ ¤AiÄqÄ®Ä |AiÄiÄð¤UÉ PÉÆnÖzÄÝgÄÄ. |AiÄiÄð¤ PÄÆqÄ §AqÄ¹¼Ä ¤ÉÆA¤, Ä®Ä vÄ£ÄÄ YÄæAiÄÄvÄß ¤AiÄqÄÄ¹ÄzÄV w½¹zÄÝgÄÄ. ÄzÄj ZÉPÄÄÏUÄ¼Ä£ÄÄß |AiÄiÄð¤AiÄÄ ¤ÉaÑ£Ä §AqÄ¹¼Ä ¤ÉÆA¤, Ä®Ä 1£ÉÄ DgÉÆÄ|AiÄÄ ZÉPÄÄÏUÄ¼Ä£ÄÄß |AiÄiÄð¤UÉ PÉÆnÖzÄÝgÄÄ. ÄzÄj ZÉPÄÄÏUÄ¼Ä£ÄÄß |AiÄiÄð¤AiÉÆA¤UÉ ¤AiÄvÄÄPÄvÉ ¤AiÄqÄÄ¹Ä ¤ÉÆzÄ¯ÉÄ, 1£ÉÄ DgÉÆÄ |AiÄiÄð¤UÉ PÉÆnÖzÄÝgÄÄ."

55. On meticulous perusal of voluntary statement given by the DW.2, he deposed that, on 15.12.2015 itself the Ex.P10 was prepared wherein, he signed at Ex.P10(b). More particularly he deposed, on 15.12.2015 itself got prepared the said document. Later, he deposed that, on the said date it was not prepared. The DW.2 has deposed that, questioned cheque at Exs.P1 to P3 were given by the accused No.1 to the complainant for the purpose of arrange the funds. The complainant was informed that, he will Judgment 59 C.C.No.22896/2016 attempt for arrange the fund. He also deposed that, before did the conversation, accused No.1 got issued those cheques to the complainant. In the cross-examination of DW.2, he deposed that:

"५|.10 PÉÌ, DgÉÆÃ| ªÄvÄÄÛ |AiÄiÄðç Nç ,À» ªÄiÄrzÀ §½2PÀ, £Á£ÄÄ Nç ,À» ªÄiÄrzÉÝÃ£ÉAzÀgÉ ,ÀjAiÄÄ®è. ५|.10 £ÄÄß £Á£ÄÄ |AiÄiÄðç ªÄvÄÄÛ DgÉÆÃ|UÀ¼ÄÄ CzÀgÀ°è §gÉçgÄÄªÄAvÀ°À ¥Á-ÄAmĩ£ÄÄß £Ä£ÄUÉ vÉÆÃj¹zÄÄÝ, £Á£ÄÄ Nç £ÄAvÀgÀ ,À» ªÄiÄrzÉÝÃ£É. £Á£ÄÄ Nç w½2zÄÄPÉÆAqÄAvÀ°À «µÄAiÄÄªÄ£ÄÄß, |AiÄiÄðç ªÄvÄÄÛ DgÉÆÃ|UÀ¼ÄÄ PÀÆqÀ Nç w½2zÄÄPÉÆArzÄÝgÄÄ. |AiÄiÄðç ªÄvÄÄÛ DgÉÆÃ| Nç ,À» ªÄiÄrzÀ £ÄAvÀgÀ, CzÄÄ ,Àj EzÉ JA§ PÁgÀtPÉÌ, £Á£ÄÄ ,À» ªÄiÄrzÉÝÃ£ÉAzÀgÉ ,ÀjAiÄÄ®è. ,AQëAiÄÄ£Á£ÄÄ ,À» ªÄiÄqÄÄªÄ PÁ®PÉÌ DgÉÆÃ|AiÄÄ ,À» ªÉÆzÀ¯ÉÄ ªÄiÄrvÄÄÛ JAzÄÄ £ÄÄrAiÄÄvÁÜgÉ."

56. The DW.1 has denied, after complainant and accused read and signed the Ex.P10, he affixed his signature. More particularly DW.2 has clearly admitted that, the complainant and accused together shown the point made mentioned at Ex.P10 after read the same, he affixed his signature to Ex.P10. More particularly, DW.2 has deposed and explained that, whatever the recitals read and understand by the DW.2 were also knew to the complainant and accused. He denied the suggestion made from the advocate for complainant that, since the complainant and accused were read and signed the said document since it was correct, the DW.2 Judgment 60 C.C.No.22896/2016 got signed the Ex.P10 is been denied by him. But he volunteers that, before DW.2 affixed his signature, the accused already put his signature to the same. In his further cross-examination, he deposed that:

"५|.10 gÀ°è §gÉçgÄÄªÄ «µÄAiÄÄ ,Àj EzÉ JAzÄÄ |AiÄiÄðç °ÉÄ½2zÄ PÁgÀt £Á£ÄÄ CzÀPÉÌ ,AQëAiÄiÄv ,À» ªÄiÄrzÉÝÃ£É."

57. The DW.2 has categorically admitted that, since complainant has informed him that, the recitals at Ex.P10 were correct, he put his signature. Therefore, it made clear that, the DW.2 on knew the due execution and its contents were known to the complainant and accused, he put his signature. Thereby, the complainant got proved the due execution of Ex.P10 Memorandum of Understanding entered into between complainant and accused. Therefore, whatever the recitals found at Ex.P10 has to be considered as to the due transaction held by complainant and accused. On going through the Ex.P10, it made clear that, as alleged by the complainant in the present complaint there is clear recitals of payment of Rs.70 lakhs investment made by the complainant with the accused Nos.1 and 2 for making Vijayadithya film. Therefore, the Ex.P10 made it clear that, by way of accused affixed his signature by admitting the contents at Judgment 61 C.C.No.22896/2016 Ex.P10 had clearly admitted by way of documentary evidence, the complainant got invested sum of Rs.70 lakhs with him in production of film. Therefore, the complainant successfully proved the passing of consideration of Rs.70 lakhs from his hands to the accused Nos.1 and 2 in production of film.

58. The accused has clearly admitted that, whatever the signature found in Ex.P10 is of him. Moreover, in his cross- examination, he clearly admitted that, the complainant has pressurized to return his investment and in the presence of witnesses got obtained signatures at Ex.P10. The complainant has projected that, by way of executing Ex.P10 terminated his role of co-producer and permitted the accused Nos.1 and 2 to bring other co-producers to continue the said film and accused Nos.1 and 2 have agreed to return his investment made mentioned in Ex.P10. During the course of cross of DW.1, he clearly admitted that, he has narrated about the show of Ex.P10 on 15.12.2015 or

" 1.10 Memorandum of understanding 1.10

62. On appraisal of the oral as well as documentary evidence at Ex.P10, the complainant had clearly established the risk taken by him in investing huge amount of Rs.70 lakhs for the production of the said film is stands proved. The relevant portion of the Ex.P10 made also clearly manifest that, the complainant being a 2nd party started investing amount since 19.07.2014 and so far invested Rs.70 lakhs for the production of said film. The said word clearly Judgment 64 C.C.No.22896/2016 discloses that, the investment made by the complainant in the said film together with accused Nos.1 and 2. Therefore, the status of the complainant is being one of the partner with the accused No.1

starting invested in production of the said film. The complainant solely relied upon Ex.P10 Memorandum of Understanding entered into between complainant and accused. But either the complainant or accused Nos.1 and 2 have taken any such contention that, before making investment as contended by the complainant and accused prior to start production of film, they have not whispered anything about entered into agreement relevant to the same. Therefore, it made clear that, in order to start joint venture of production of Vijayadithya Kannada Film, there is no documentary evidence before this court in order to reveal the rights and liabilities of complainant and accused Nos.1 and 2. Therefore, it made clear that, before entered into an agreement or partnership venture, simply the complainant and accused have contended, jointly they have invested money in preparing the film, accordingly, the complainant and accused had to invest 50% equally, but the complainant only invested Rs.65,80,000/- and later he not invested money, but asked for refund of his investment. In partnership business, the respective partners are equally liable for loss and profit. In order to establish Judgment 65 C.C.No.22896/2016 the responsibilities and liabilities of complainant and accused Nos.1 and 2, no such prior contract had been entered into. Therefore, in order to fix the burden or its enforcement either on the complainant or on the accused Nos.1 and 2, there is no previty of contract between them. Even, the evidence led by rival parties does not discloses the same aspect either by way of deposes or by way of any suggestion. Therefore, it made clear that, before took risk of investment made by the complainant and accused in order to fix the liability as to share of profit and loss equally, there is no contract entered into between them before venturing the production of the film. Therefore, whatever the signature admitted by the accused No.1 is of him at Ex.P10 including he came to knew about the recitals made mentioned therein at least as he deposed on 19.12.2015, it made clear that, both the complainant and accused came to know about the existence of Ex.P10 in order to ascertain their rights / liabilities. Therefore, the Ex.P10 is the vital role in decide the responsibilities and liabilities of the complainant and accused. Since, complainant has made his claim based on the contents of Ex.P10, it is equally binding upon him. Therefore, it requires to appreciate the recitals in order to decide the claim put forth by the Judgment 66 C.C.No.22896/2016 complainant or appreciate the probable defence of the accused Nos.1 and 2.

63. As discussed earlier, there is no whisper about the complainant lent money to the accused on interest etc. But the said document clearly manifest that, the complainant being a 2nd party started investing money. Investing money in making film subject to the result of sharing profit and loss. In order to share the profit and loss, the complainant should be remain as an investor or partner with the accused No.1 in finishing the film. As contended by both the parties, only 70% of the film shooting was over and rest of 30% work is still pending, hence, not released. The accused No.1 has contended that, the complainant by projected that, in order to arrange money from his friends, he secured the signed blank cheques, singed blank stamp paper and 3 other signed blank papers of the accused No.1 as security for the loan intended to be borrow and later got created Ex.P10 and got filled the questioned cheques at Exs.P1 to P3 as well as On demand promissory note and consideration receipts at Exs.P19 to P24, filed the present case. He also alleged that, by way of filing present case, the complainant not let other new co-producer to be arrayed in the place of complainant in order to finish the said film. Therefore, he is unable to complete the shooting of said film and Judgment 67 C.C.No.22896/2016 release and by making suggestion to DW.1, if at all, he got profit by releasing the film, he will pay money to the complainant. The said suggestion made to

PW.1 is required to be producing here itself that:

"ÀzÀj 1ªÀiÁ ©qÀÄUÀqÉAiÀiÁzÀ £ÀAvÀgÀ §gÀÄªÀ ¯Á ¯ÀsçAzÀ £À£ÀUÉ , À®è ¯ÉÄPÁzÀ °ÀtªÀ£ÀÄß DgÉÆÄ| ¥ÁªAw , À®Ä FUA®Æ PÀÆqÀ vÀAiÀiÁjzÁÝgÉ JAzÀgÉ , ÀjAiÀÄ®è. £À£ÀÄ DgÉÆÄ|AiÀÄ «gÀÄzÀP , ÄÄ¼ÄÄi ¥ÀæPÀgÀt zÁR®Ä ªÄÄArzÉÝÄ£ÀÉ JAzÀgÉ , ÀjAiÀÄ®è."

64. On meticulous perusal of the said suggestion made to PW.1, which clearly reveal that, after release of the said film and accrued profit therein, the accused No.1 still agreed to pay money to the complainant. But the complainant had filed the false case against him. The said suggestion made it clear that, in case the accused No.1 got profit after release of the film, he will able to pay money to the complainant, but he not specified what extent of money payable to the complainant, in case release of film and got profit. The said suggestion made to PW.1, made it clear that, the accused No.1 has undertaken his liability to pay the money back, complainant in respect of the investment made by him in case he gain profit. When as deposed by the parties to the present case, the film shooting is only completed for 70% and rest of shooting Judgment 68 C.C.No.22896/2016 not been concluded. The evidence of DW.2, which is require to appreciate herein itself that, during the evidence of DW.2, he deposed that, since complainant had failed to arrange money in investing production of film with accused No.1, the accused No.1 asked him to join in investment in production of film on behalf of complainant. Accordingly, the DW.2 has deposed that:

"£ÀAvÀgÀ, ÀzÀj 1ªÀiÁ zÀ°è £À£ÀÄ , ÄÄªÀiÁgÀÄ gÀÆ.45 ®PÀë §AqÀª¼À vÉÆqÀV¹zÉÝ£É. , ÄÄªÀiÁgÀÄ gÀÆ.25 ®PÀëªÀ£ÀÄß £À£Àß PÀ£ÁðIPÀ ¯ÄAPi£À SÁvÉAiÄª ªÄÄSÁAvÀgÀ 1 £ÉÄ DgÉÆÄ|UÉ °ÁUAÆ , ÀzÀj awæAPÀgÀt WÀLPÀzÀ ««zÀs ªÀQÛUA½UE ¥ÁªAw ªÀiÁrzÀ §UEÎ PÀAqÀÄ §gÀÄvÀÛzÉ. , ÁQëAiÀÄÄ , ÀzÀj ¯ÄAPi£À ¥Á, i ¥ÄÄ , ÀÛPÀªÀ£ÀÄß °ÁdgÀÄ ¥Ár¹zÀ®Ý CzÀ£ÀÄß ¯|.28 JA§ÄzÁV UAÄgÀÄw, ¯Á-¯AvÀÄ. £À£ÀÄ §AqÀª¼À vÉÆqÀV¹zÀ §UEÎ |AiÀiÁðçUAÆ PÀÆqÀ w½çzÀÄÝ, DvÀ 1ªÀiÁ ªÀ£ÀÄß ZÉ£ÁßV vÀAiÀiÁj , ÄAwÛçÝgÁ JAzÀÄ £À£ÀUÉ w½¹ §½PÀ F ¥ÀæPÀgÀtªÀ£ÀÄß zÁR®Ä ªÀiÁrzÁÝgÉ. F ¥ÀæPÀgÀt zÁR¹zÀ PÀgÀt £ÀªÄÄUA¼ÄÄ , ÀzÀj 1ªÀiÁPÉÎ , ÄA§AzÀsÝÀlÖAvÉ §AqÀª¼À vÉÆqÀV , À®Ä C , ÁzÀsªÁV®è, D PÀgÀtPÉÎ , ÀzÀj 1ªÀiÁ CÝÀÇtðªÁVvÀÄÛ. |AiÀiÁðç 1£ÉÄ DgÉÆÄ|UÉ AiÀiÁªÄZÉÄ jAwAiÀÄ , Á®ªÀ£ÀÄß ¯Ar®è, DzÀgÉ , À° ¯ªÀiÁð¥ÀPÀ£ÁV , ÄÄªÀiÁgÀÄ gÀÆ.65 ®PÀëªÀ£ÀÄß vÉÆqÀV¹gÀÄvÀÛgÉ."

65. As per say of DW.2, it made clear that, the above very complainant and accused No.1 alleged to be invested huge Judgment 69 C.C.No.22896/2016 amount, on the subsequent development of complainant has went out from making of film with the accused Nos.1 and 2, the DW.2 came forward and got invested sum of Rs.45 lakhs. More particularly he deposed, Rs.25 lakhs were paid from his Karnataka Bank account to the accused No.1 as well as he paid to the various persons of film unit as found in Ex.P28 his bank pass book. He also deposed that, complainant knew that, DW.2 got invested money in making of film and he also told him that, nicely prepared film later got filed the present case. Therefore, on the subsequent event, they are unable to invest money in conclusion of the said film; therefore, the said film remains incomplete. He also categorically

deposed that, complainant not lent any loan to the accused No.1, but being a co-producer got invested the said money.

66. The evidence of DW.2 discloses that, after the complainant went out from his partnership with accused No.1 in prepare the film, the DW.2 got continued the same. In the further cross-examination of DW.1 there was suggestion made by the complainant to the DW.2 that, he had not invested money of Rs.45 lakhs with the accused No.1, but whatever the loan received from the accused No.1 were returned to him and the same is not an investment. Therefore, the said suggestion made Judgment 70 C.C.No.22896/2016 it clear that, coupled with the entries at Ex.P28, it made clear that, Rs.45 lakhs were been invested by the DW.2 with the accused No.1 in making of film. Though, it was suggested by the advocate for complainant, it was not an investment, it was the refund of loan amount in making suggestion so, there is no valid grounds in accepting the same, as he failed to demonstrate that, there was any money lending transaction between accused No.1 and DW.2. Therefore, from the evidence of DW.2, it made clear that, consequent to the complainant went out from making out of Vijayadithya film, DW.2 was inducted and took risk to invest Rs.45 lakhs and on account of litigation, the said film remains in- completed. The filing or pending of present case is based on the questioned cheques, hence, mere because of pending case, not ground to stall the further making or prepare the film.

67. That apart, Ex.P10 discloses that, though name of complainant was announced as co-producer for the said film and subsequent to termination of business of making of film between complainant and accused persons, the complainant authorized, the accused No.1 to eliminate his status as co-producer from the said film production. Even the Ex.P10 para No.3 discloses, 2nd party had no objection or claim, if the 1st party admits any other investors provide the financial aid to the accused No.1 in Judgment 71 C.C.No.22896/2016 completion of the film. Therefore, it made clear that, as per Ex.P10, the complainant came out as an investor and for the terms and conditions made mentioned therein, whatever the transaction held between complainant and accused came to be ended, therefore, the terms and conditions are very much important to substantiate the claim of complainant and accused Nos.1 and 2. As per Ex.P10 the responsibility of complainant subject to comply the terms and conditions made mentioned therein were came to be ended can be seen from the evidence of DW.2. The accused No.1 has examined his witness as DW.2, who is subsequently joined as co-producer, who is in the witness box has deposed that:

"«dAiÀiÁçvÀâ 1 ¤ aÀiÁ PÉÌ ¤|.10 PÉÌ , ÁQëAiÀiÁV , À» aÀiÁrzÀ §½PÀ , À°À-¤ aÀiÁðYÀPÀ£ÁV , ÉÃYÀðqÉUÉÆArzÉYÃ£É. |AiÀiÁðç aÀvÀÄÛ DgÉÆÃ|UÀ¼À £ÀqÄÄ«£À aÀaÀ°ÁgÀaÀ£ÄÄß §UÉ°Áj¹PÀÉÆAqÀ §½PÀ £Á£ÄÄ , À°À-¤ aÀiÁðYÀPÀ£ÁV , ÉÃYÀðqÉUÉÆArzÉYÃ£É JAzÀgÉ , Àj. ¤|.10 vÀiÀiÁgÁV £Á£ÄÄ , ÉÃYÀðqÉUÉÆ¼ÀÄiªÁUÀ, |AiÀiÁðç aÀvÀÄÛ DgÉÆÃ|AiÀÄ£ÀqÄÄ«£À «ÁZÀUÀ¼ÄÄ EvÀâxÀðªÁVvÀÄÛ JAzÀgÉ , Àj."

68. On going through the said testimony of DW.2, he categorically admitted that, after affixing his signature to Ex.P10, he came to be joined as co-producer. More categorically he deposed that, after settle the dispute of the complainant and Judgment 72 C.C.No.22896/2016 accused No.1 as per Ex.P10, he joined as co-producer and by the time of prepare Ex.P10, dispute between complainant

and accused were settled. By making such suggestion as well as admission made by the DW.2, it made clear that, though there was no agreement as to entered into production of Vijayadithya film between complainant and accused, by way of entered in to Ex.P10, whatever the oral transaction held between them in connection to the said film were came to be reduced into writing as per Ex.P10. Therefore, as suggested by the complainant, the financial transaction held between complainant and accused came to be ended as per recitals made mentioned therein. It is relevant to re-produce 5th para in page No.2 of Ex.P10, which runs thus:

"During Second Party investment with First Party, it has been agreed mutually that First Party will pay Second Party the assured amount of Rs.30,00,000/- along with principle amount which is Rs.70,00,000/-, amounting to Rs.1,00,00,000/- on the date 30th June, 2016 on release of 'Vijayaaditya' feature film. This agreement has not been executed into writing for the records of each other."

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69. On meticulous perusal of the said bilateral recitals entered at Ex.P10, it made clear that, there was mutual agreed between complainant and accused. As per the same, during 2nd party investment with the 1st party, it has been agreed mutually that, 1st party will pay to 2nd party to assured amount of Rs.30 lakhs along with principal amount, which is Rs.70 lakhs, amounting to Rs.1 crore on the date 30.06.2016 on release of Vijayadithya feature film. This agreement has been executed between them and reduced into writing for the records of each other. First of all, the complainant has successfully established his investment of Rs.70 lakhs with the accused Nos.1 and 2 in making of said film. Secondly, the said recitals made it clear that, when the additional assured amount of Rs.30 lakhs payable by the accused Nos.1 and 2 to the complainant is very particularly on the date 30.06.2016 on release of Vijayadithya feature film. The said recitals made it clear that, on release of Vijayadithya feature film on 30.06.2016, the accused Nos.1 and 2 have to pay Rs.30 lakhs to the complainant. As deposed by the parties to the case with their respective witnesses have deposed, only 70% film shooting was over and on account of pending litigation as per the say of accused No.1 further production is stalled and film is not been released. Unless release the film, question of pay the additional Judgment 74 C.C.No.22896/2016 amount either as profit or as interest would not arise. The mutual understanding made between complainant and accused NO.1, it made clear that, on the date 30.06.2016 on release of Vijayadithya feature film Rs.30 lakhs assured amount in addition to the principal amount have to be paid to the accused Nos.1 and

2. In order to comply the payment, the consequence of release of Vijayadithya feature film on or before 30.06.2016 was warranted. Since film shooting itself is not been concluded, in order to pay the assured or profit amount to the complainant as contended in the said recitals does not arise. The complainant inducted with accused Nos.1 and 2 as co-producer, accordingly, he got invested sum of Rs.70 lakhs subject

to share of profit and loss equally. Accordingly, since film is not concluded payment of profit or assured amount as contended by the complainant in the said mutual agreement does not require, if their contract not concluded as per Ex.P10.

70. No doubt, in the absence of Ex.P10 definitely, the complainant cannot press the accused Nos.1 and 2 to pay whatever the investment made by him, as he is equal responsible for profit and loss with the accused Nos.1 and 2. By way of entered into Ex.P10, the accused Nos.1 and 2 got terminated the Judgment 75 C.C.No.22896/2016 role of complainant as an investor and undertakes to settle his dues in terms of terms and conditions made mentioned in Ex.P10.

71. If at all, once it is recited so, as per Memorandum of Understanding, the assured amount is to be pay on the date of 30.06.2016 on release of Vijayadithya feature film. The complainant has not whispered anything on the said recitals. Therefore, it made clear that, complainant got clearly admitted the consequent to release of said film on 30.06.2016, the said amount is payable by the accused Nos.1 and 2. It is not the contention of complainant that, wrongly recitals were made therein and accused Nos.1 and 2 liable to pay sum of Rs.1 crore as per Exs.P1 to P3 cheques. That apart, the said agreement in para No.14 last 3 lines which runs thus:

"The 1st party after releasing of the said film in Karnataka shall intimate to the 2nd party. For payment of his above mentioned is the respective banks."

72. On conjoint reading of both the recitals made mentioned therein, it made clear that, the complainant is only entitled for the said money after release the said film in Karnataka and accused Nos.1 and 2 shall intimate about the same to the complainant as to the presentation of the said cheques for encashment. In order Judgment 76 C.C.No.22896/2016 to attract the said consequence for presenting those cheques for encashment, the consequent of release of film on 30.06.2016 is warranted, but as stated by both side, the film shooting is not been completed, therefore, release of said film and assured amount does not arise. Since, the said film shooting itself is not completed and the same is stalled on account of filing the present case by the complainant, the hands of the accused Nos.1 and 2 and DW.2 are been tied in concluding the making of film. Therefore, accepting profit from the accused Nos.1 and 2 does not arise. Therefore, after release the film, the accused Nos.1 and 2 secured profit and pay the additional amount of Rs.30 lakhs to complainant against the investment of Rs.70 lakhs made by the complainant does not arise.

73. Ex.P10 discloses that, for payment of Rs.70 lakhs, the accused gave cheques at Exs.P1 to P3 for sum Rs.37,50,000/-, Rs.32,50,000/- and Rs.30,00,000/- respectively, in all Rs.70 lakhs, towards repayment of principle amount invested by the complainant. Therefore, the said amount of Rs.70 lakhs is required to be payable by the accused Nos.1 and 2 as the complainant was quit from the association of accused Nos.1 and

2. Since, the complainant had quit the partnership with the accused Nos.1 and 2 and later the DW.2 has inserted as co-



Judgment 77 C.C.No.22896/2016 producer in the place of complainant, definitely, the DW.2 got inserted in expecting to bare the risk to repay the amount of complainant along with accused Nos.1 and 2, he inducted as co- producer in making of the said film. Therefore, as found in Ex.P10, the Ex.P1 and P2 cheques were issued by the accused Nos.1 and 2 taking risk to repay the investment made by the complainant at Rs.70 lakhs by inducting DW.2 in the place. Whatever the business transaction emerged between the complainant and accused in making of film on joint venture came to be ended by mutual Memorandum of Understanding at Ex.P10. Therefore, since the said film is not concluded in order to release to gain profit or loss. Hence, assess profit as per Exp-10 doesn't arise. Thus, the question of accused pay additional profit amount or assured amount of Rs.30 lakhs which covered under the Ex.P3 cheque does not arise. On account of termination of oral contract entered in to between complainant and accused No.1 and 2, the accused by inviting risk to repay the investment made by the complainant at Rs.70 lakhs coupled with subject to release the said film on or before 30.06.2016 and out of profit undertakes to pay Rs.30 lakhs.

74. As deposed by the parties, in terms of mutual agreement, the film is not concluded and the same is not released on or Judgment 78 C.C.No.22896/2016 before 30.06.2015. Infact only 70% of the film suiting were over and remaining 30% has to be concluded. By that time, the complainant has gone out and filed present case, therefore, the further conclusion of shooting within the stipulated period is not over. From which it made clear that, the said film is not released on or before 30.06.2015, in order to pay the assured amount or profit amount. The Ex.P10 only reveal the factum that, Rs.70 lakhs amount invested by the complainant with the accused Nos.1 and 2 in making of film has to be refunded. If at all, the said film shooting were concluded and got released on or before 30.06.2015, the accused Nos.1 and 2 liable to pay assured amount of Rs.30 lakhs as profit to the complainant, but the same is not done, therefore, whatever the amount covered under the cheque at Ex.P3 for the tune of Rs.30 lakhs, the complainant is not entitled to claim the same, as accused Nos.1 and 2 has not finish the said film and gain any profit.

75. From the Ex.P10 made it clear that, the questioned cheques at Exs.P1 to P3 were handed over by the accused No.1 to the complainant herein. Though he contended that, he got issued signed blank cheques as security, but he utterly failed to demonstrate the same. The issuance of signed blank cheques would authorized to fill the same by virtue of Section 20 of Judgment 79 C.C.No.22896/2016 Negotiable Instruments Act. When the accused Nos.1 and 2 have admitted that, questioned cheques belongs to them and signatures made mentioned therein is of accused No.1 by virtue of documentary evidence at Ex.P10 coupled with oral evidence led by parties, it made clear that, Exs.P1 and P2 cheques were issued by the accused Nos.1 and 2 for discharge of their liability for refund of investment amount of Rs.70 lakhs made by the complainant. Though Ex.P3 cheque for sum of Rs.30 lakhs issued by the accused Nos.1 and 2, it was subject to the consequence of release of film on 30.06.2016. The said incident, so far not happened therefore, accused Nos.1 and 2 not liable to pay the said money to the complainant as the said contingent is not been arised. During the course of cross of PW.1 by way of suggestion made to him, the accused has admitted that, in the event of accused Nos.1 and 2 got profit after release the said film, they are liable to pay the amount to the complainant as discussed earlier.

76. Even the accused Nos.1 and 2 has not specified what amount they are liable to pay as against the recitals at Ex.P10. Since, the said factum is not finished, so far, returning the profit of Rs.30 lakhs to the complainant which covers under the Ex.P3 cheque does not arise. However, the complainant is entitled for Judgment 80 C.C.No.22896/2016 the amount of Rs.70 lakhs, which covered under the Exs.P1 and P2 cheques. In order to pay the said amount, the accused No.1 by affixing his signature pertaining to cheque of accused No.2 of his friends, though got issued the same to the complainant after termination of the contract with the complainant, he is liable to honor the said cheques. Since the complainant on the assurance of accused Nos.1 and 2 got repay the investment made by him, he went out from tie. Therefore, it is the complainant is liable to return the investment made by the complainant of Rs.70 lakhs.

77. Since accused Nos.1 and 2 has deposed, they are already suffered financial loss, therefore, since 2013, despite, he made huge amount in making film of Vijayadithya, asking him to pay the any interest or total amount of the cheque would not arise. Even, since the accused Nos.1 and 2 suffering financial loss, as he not able to conclude the said film within the span of all these years, it is not fare on the part of the court to direct him to pay assured amount of Rs.30 lakhs by way of profit or interest etc. Without any proper plan or condition by fixing the responsibilities and liabilities, the complainant and accused Nos.1 and 2 got started making of film, but they have failed to put an end to the same. However, by way of entered into Ex.P10 agreement whatever the bondage held between them in making of film came to be ended.

Judgment 81 C.C.No.22896/2016 Therefore, accused Nos.1 and 2 liable to pay sum of Rs.70 lakhs covered under the Exs.P1 and P2 cheques. The amount of Rs.30 lakhs which covered under the Ex.P3 cheque is payable by the accused Nos.1 and 2 subject to release of the said film since, the said incident is not happened, therefore, the accused Nos.1 and 2 not liable to pay the said sum to the complainant.

78. So far, the complainant got produced the documents at Exs.P19 to P24. On meticulous perusal of the same, the accused No.1 got admitted his signature at Exs.P19(a), (b), P20(a), (b), P21(b), P22(c), P23(b) and P24(b). However, he strongly denied the other signatures found at right of Exs.P21, P22, P23 and P24, very particularly at Exs.P21(a), P22(a), P23(a) and P24(a). On meticulous perusal of those signatures, it made clear that, it prima-facie discloses, altogether different. The said signatures, why depreciated each other is not been satisfactorily explained by the complainant and his witness. Though, the said agreement was earlier dated:30.06.2016 subsequently, in different ink, date got changed at 19.12.2015. Since, the document goes against the interest of accused Nos.1 and 2, why the discrepancy has made in all the documents in changing the date, itself creates doubt. Though, PW.2 has stated that, he got filled the same and date was changed at the instance of the parties, it is not safe to Judgment 82 C.C.No.22896/2016 believe the same. Even, it is not the contention of the complainant that, as found in Exs.P22 to P24 - consideration receipts dated:19.12.2015, he got paid Rs.37,50,000/- and Rs.32,50,000/- respectively to the accused No.1 very particularly on 19.12.2015. Under such circumstances, there is no value can attached to the said documents as recitals, dates and including signature are not tallied. The said documents no way support the claim of complainant in passing consideration to him to the accused as contended therein. However, the accused No.1 throughout the case got admitted the investment made by

complainant. The same got proved by the complainant by led oral evidence coupled with documentary evidence at Ex.P10. Therefore, to appreciate Exs.P19 to P24 separately does not require.

79. Apart from Ex.P1, the Ex.P15 letter of assurance, which appears signature of complainant and accused, it is suffice that, questioned cheques at Exs.P1 to P3 were handed over by the accused No.1 to the complainant. For the detailed discussion made supra, the amount covered under the Exs.P1 and P2 cheques are legally recoverable debt payable by the accused Nos.1 and 2 to the complainant. After dishonour of those cheques, the Ex.P7 legal notice was issued by the complainant Judgment 83 C.C.No.22896/2016 through his counsel to both the addresses of the accused as per Ex.P7, though the same were served to their address as found in small signature made mentioned in the postal acknowledgment at Exs.P8 and P9, which confirmed in Exs.P18 attached document, the accused Nos.1 and 2 not choosen to cause any reply. If at all, his claim is goes against the complainant including document at Ex.P10 definitely, it was an opportunity to him to pass suitable reply. But he failed to demonstrate the same.

80. Though, he contended, while issue legal notice, he was at Hyderabad, in that regard, no suggestion made to PW.1 and PW.2 nor produced any documents in his evidence. Thereby, he lost precious opportunity to take suitable defence at appropriate stage. Despite, filing the present case, though the contract held between complainant and accused as per Ex.P10 concluded and he took the risk to pay the amount of Rs.70 lakhs to the complainant as per undertaking, he so far not venture to finish the production of movie and repay the amount. The amount of Rs.70 lakhs is huge amount, it has to be repayable to the complainant on account of his termination from the partnership business with the accused Nos.1 and 2 and subsequent induction of DW.2. Though, the accused Nos.1 and 2 had sufficient opportunity to clear the agreed dues covered under Exs.P1 and P2 cheques Judgment 84 C.C.No.22896/2016 payable to the complainant by proceed with making of film with DW.2 or by getting insertion of any other co-producer, he not choosen to do so. Till conclusion of the film, the complainant no more can shown, as he already went out from the said previty of contract entered into between complainant and accused.

81. Despite, legal notice were issued to the accused Nos.1 and 2 not set right the wrong committed by them, therefore, they are liable to pay the cheques amount covered under the Exs.P1 and P2 for sum of Rs.70 lakhs to the complainant. If they failed to pay the said amount within the period of one month, the accused No.1 shall undergo simple imprisonment of one year. The complainant has utterly failed to prove that, he is entitled sum of Rs.30 lakhs, which covered under the Ex.P3 cheque as legally recoverable debt, as assured amount to the principal or investment amount made by the complainant. The complainant is not entitled to recover Rs.30 lakhs, which covered under Ex.P3 cheque as legally recoverable debt. Therefore, keeping in the mind of the object of introduction of Negotiable Instruments Act, it appears this court; it is fit case to convict the accused Nos.1 and 2 coupled with the amount covered under the cheques at Exs.P1 and P2 at Rs.70 lakhs. The same offence has been continued till this day, therefore, the complainant has successfully established Judgment 85 C.C.No.22896/2016 the guilt of the accused Nos.1 and 2, regarding commission of offence punishable under Section 138 of Negotiable Instruments Act. The complainant has complied the mandatory requirement and established his case in part with regard to Exs.P1 and P2 cheques

consequent to Ex.P10-Memorandum of Understanding. Despite that, the accused Nos.1 and 2 have not set right the wrong committed by them as per Section 138 of Negotiable Instruments Act.

82. As discussed above by way of furnishing clear, convincing, corroborative, oral as well as documentary evidence has proved that, the accused Nos.1 and 2 have committed the offence punishable under Section 138 of Negotiable Instruments Act. Thereby, unnecessarily cause the complainant to approach this court of law, therefore, the accused No.1 is liable to be punished by way of imposing fine sentence. Therefore, the accused Nos.1 and 2 are to be convicted by imposing fine of Rs.70,00,000/- which covers the Exs.P1 and P2 cheques. Out of the said fine amount, sum of Rs.69,90,000/- shall be payable to the complainant as compensation and remaining amount of Rs.10,000/- shall be payable to the state as fine amount. Accordingly, if the accused Nos.1 and 2 fails to pay the whole fine amount, the accused No.1 shall undergo simple imprisonment for 12 months. Thereby, one Judgment 86 C.C.No.22896/2016 more opportunity has provided to the accused Nos.1 and 2 to comply the order. Otherwise, the very purpose of filing complaint will be defeated. As discussed above, the complainant has proved his case beyond reasonable doubt. In the result, the accused Nos.1 and 2 shall sentence to pay the fine amount as detailed in the order portion. Accordingly, Point No.2 is answered in the Affirmative and Point No.3 is answered in the partly Affirmative.

83. POINT NO.4: In view of my findings on point Nos.1 to 3, I proceed to pass the following:

ORDER Accused Nos.1 and 2 found guilty for the offence punishable under Section 138 of Negotiable Instruments Act.

Acting under Section 255(2) of Cr.P.C.

the accused Nos.1 and 2 are convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay fine of Rs.70,00,000/-.

Out of the said fine amount, sum of Rs.69,90,000/- shall be payable to the complainant as compensation as per Section 357 of Cr.P.C. Remaining amount of Judgment 87 C.C.No.22896/2016 Rs.10,000/- shall be payable to the state as fine amount.

In default of pay the fine amount, the accused No.1 shall under go simple imprisonment for 12 (Twelve) Months.

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

The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 30th day of July - 2020)

(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : Indudhar Rajasekhar Kori  
PW.2 : Gopal Krishna

List of Exhibits marked on behalf of Complainant:

Exs.P1 to P3 : Original Cheques  
Exs.P1(a) to P3(a) : Signatures of accused  
Exs.P4 to P6 : Bank endorsements  
Ex.P7 : Office copy of legal notice  
Exs.P8 & P9 : Postal Acknowledgment Cards  
Ex.P9(a) : Signature of complainant  
Ex.P10 : Memorandum of Understanding  
Ex.P10(a) to P10(g) : Signatures of accused, complainant and  
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Ex.P11 : PW.2 and DW.2  
Ex.P12 : Letter dtd:03.09.2016  
Ex.P13 : Summary of account  
Ex.P14 : Letter dtd:14.07.2016  
Ex.P15 : Postal receipt  
Ex.P16 : Letter of assurance  
Exs.P16 & P17 : Postal receipts  
Ex.P18 : Letter with delivery slip  
Exs.P19 to P24 : On demand promissory notes and  
consideration receipts  
Ex.P19(a) to P24(c) : Signatures of accused and witnesses

List of Witnesses examined on behalf of the defence:

DW.1 : Prakash.N List of Exhibits marked on behalf of defence:

Exs.D1 to D13 : Paper publications  
Exs.D14 & D15 : Bank pass books  
Ex.D16 : Ledger account  
Ex.D17 : Accounting ratio  
Ex.D18 : Loan amount details  
Ex.D19 : Home equity loan sanction letter  
Ex.D20 : Letter dtd:16.08.2016  
Ex.D21 : Welcome letter  
Ex.D22 : Letter of welcome to religare family  
Ex.D23 : Loan sanction letter  
Exs.D24 to D26 : Loan granted letters  
Ex.D27 : Letter of revenue returnable investors details

Ex.D27(a) : Relevant entries in Ex.D27  
Ex.D28 : Bank pass book

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30.07.2020.

Comp -

Accd -

For Judgment

Case called out.

Complainant and accused Nos.1 and 2 are absent. No representation from both side advocates, despite, the case proceedings and intimate the date of pronouncement of judgment. Hence, as per

Section 353(6) of Cr.P.C. the following judgment is pronounced in the open court vide separate order.

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#### ORDER

Accused Nos.1 and 2 found guilty for the offence punishable under Section 138 of Negotiable Instruments Act.

Acting under Section 255(2) of Cr.P.C. the accused Nos.1 and 2 are convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentence to pay fine of Rs.70,00,000/-.

Out of the said fine amount, sum of Rs.69,90,000/- shall be payable to the complainant as compensation as per Section 357 of Cr.P.C. Remaining amount

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of Rs.10,000/- shall be payable to the state as fine amount.

In default of pay the fine amount, the accused No.1 shall under go simple imprisonment for 12 (Twelve) Months.

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

The office is hereby directed to supply the copy of this Judgment to the accused on free of cost.

XXIII Addl. Chief Metropolitan  
Magistrate, Bengaluru.