

Sri.Charles.S vs Sri.Shivanand @ Anand on 25 October, 2019

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

Dated:- This the 25th day of October, 2019
i.

Present: Sri.S.B.HANDRAL, B.Sc., L.L.B(SPL).,
XVI Addl.C.M.M., Bengaluru City.

JUDGMENT U/S 355 OF Cr.P.C.,
Case No. : C.C.No.3210/2014

Complainant : Sri.Charles.S,
S/o. Selvaraj,
Age 33 years,
No.19/2, 1st Floor,
Muthappa Compound,
Nagawra Main Road,
Arabic College Post,
Bengaluru -560 045.

(Rep. by Sri. S.A.LAW Associates.,
Adv.,)

- Vs -

Accused : Sri.Shivanand @ Anand,
S/o. Nanjundappa,
Kalpavruksha Building,
No.323, 1st Floor,
BEML Layout,
5th Main, 1st Stage,
Kamakshipalya,
Bengaluru -560 079.

(Rep. by Sri. S. Shankarachar
Adv.,)

Case instituted : 21.12.2013
Offence complained : U/s 138 of N.I Act
of
Plea of Accused : Pleaded not guilty
Final Order : Accused is convicted
Date of order : 25.10.2019

JUDGMENT

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

2. Briefly stated the case of the Complainant is that, in respect of chit transaction, the Accused became due and liable to pay the complainant a sum of Rs.13,81,000/- and towards discharge of a part of liability being a legally dischargeable debt the Accused issued a cheque bearing No.803060 dated:

5.11.2013 for Rs.11,81,000/- drawn on Canara Bank, Vijayanagar branch, Bengaluru-560040 assuring the complainant the said cheque would be honoured on its presentation. It is further case of the complainant that, believing the assurance and promises of the Accused he presented the cheque for realization through his banker i.e., Kotak Mahindra Bank Ltd., Kammanahalli branch, Bengaluru but to the utter shock and surprise of him the said cheque was came to be returned dishonoured with shara of 'Funds Insufficient' dated: 9.11.2013, hence he got issued a legal notice dated: 23.11.2013 through his advocate by way of RPAD calling upon the Accused to discharge liability covered under the cheque and the said notice was served on him, after receipt of the notice, the Accused has not chosen to comply with the demand made in the notice and willfully deliberately, negligently issued the cheque without depositing sufficient funds in his account and thus committed an offence punishable U/s.138 of Negotiable Instrument Act. Hence he has filed this present complainant against the Accused for the offence punishable U/s.138 of Negotiable Instruments Act.

3. Before issuing process against the accused, the Complainant has filed his affidavit-in-lieu of his sworn statement, in which, he has reiterated the averments of the complaint and submitted original documents. Prima-facie case has been made out against the accused and summons was issued against the accused in turn he has appeared before the court and got enlarged on bail and the substance of the accusation has been read over to him, to which he pleaded not guilty and claims to be tried.

4. Thereafter the complainant himself examined as PW.1 by filing his affidavit in lieu of examination in chief. In support of his oral evidence, P.W.1 has relied upon the documentary evidence as per Ex.P.1 to P.36 i.e, the Original Cheque dated: 5.11.2013 as per Ex.P.1, the signature on the said cheque identified by P.W.1 as that of the accused as per Ex.P.1(a), the Bank Memo as per Ex.P.2, the copy of Legal Notice as per Ex.P.3, the two Postal Receipts as per Ex.P.4 and P.5 the postal acknowledgements as per Ex.P.6, reply notice as per Ex.P.7, complaint as per Ex.P.8, signature of the complainant as per Ex.P.8(a). Subsequently the Ex.P.9 i.e the statement got marked by confronting the same with the Accused, signature of the Accused as per Ex.9(a). Thereafter the complainant has produced the I.T. Returns records pertaining to the year 2010-11 to 2016 which are marked as Ex. P.10 to P.22, statement of accounts pertaining to his bank account as per Ex.P.23 and relevant entries marked as Ex.P.23(a) to 23(d), certified copy of the letter given to the Manager of Corporation Bank, Kamakshipalya dated: 4.2.2014 marked as Ex.P.24 and true copies of the cheques dated: 12.2.2011, 23.2.2011, 10.11.2011, 2.2.2012 marked as Ex.P.25 to P.28, the original

bank challan dated: 2.2.2012 marked as Ex.P.29. The original cheques dated:

12.2.2011, 23.2.2011, 10.11.2011, 2.2.2012 marked as Ex.P.30 to P.33, original bank challan as per Ex.P.34, true copy of the account opening form of the Accused marked as Ex.P.35, signatures of the Accused as per Ex.P.35(a), true copy of the Statement of account pertaining to the account of the Accused marked as Ex.P.36 through PW.2 and closed his side.

5. Thereafter, the statement of the accused as required under Sec.313 of the Cr.P.C. has been recorded. He has denied the incriminating evidence appearing against him and has chosen to lead his rebuttal evidence subsequently the Accused examined himself examined as DW.1 and has produced certified copy of the Judgment passed in C.C.No.3209/2014, depositions of CW.1 are marked as Ex.D.1 and D.2, zerox copy of the cheque bearing No.140143 and bank memo as per Ex.D.3, certified copy of the notice dated: 23.11.2013 , certified copy of the Reply notice dated: 7.12.2013 marked as Ex.D.4 and D.5, certified copy of the PCR No.383/2014 marked as Ex.D.6 certified copy of the deposition of DW.1 in C.C.No.3209/2014 dated:

5.8.2015 as per Ex.D.7, copy of the non disclosure agreement as per Ex.D.8, copy of the legal notice dated: 23.11.2013 as per Ex.D.9, copy of the order sheet along with copy of the complaint in PCR No. 15640/2014 as per Ex.D.10, copy of the letter issued by the ICICI Bank, is as per Ex.D.11, letter dated: 10.8.2011 written to the management of FIRE COOLS BENGALURU is as per Ex.D.12, copies of the emails marked as per Ex.D.13 to D.19 and closed his side.

6. Heard the arguments of both learned counsels for the complainant and the accused and perused materials on record.

7. On the basis of complaint, evidence of complainant and documents and having heard the arguments of both learned counsels for the complainant and the accused, the following points that are arise for consideration are:-

1. Whether the complainant proves that the accused has issued cheque bearing No.803060 dated:

5.11.2013 for sum of
Rs.11,81,000/= drawn on Canara
bank, Vijayanagar Branch,
Bengaluru to discharge legally

recoverable debt to the complainant and when the complainant has presented cheque for encashment through his banker but the said cheque has been dishonoured for the reasons "Funds Insufficient" on 9.11.2013 and the complainant issued legal notice to the accused on 23.11.2013 and inspite of it the accused has not paid the cheque amount within prescribed period there by the accused has committed an offence

U/s.138 of the Negotiable instruments Act?

2. What Order?

8. The above points are answered as under:

Point No.1: In the Affirmative Point No.2: As per final order for the following:

REASONS

9. Point No.1 : Before appreciation of the facts and oral and documentary evidence of the present case, it is relevant to mention that under criminal jurisprudence prosecution is required to establish guilt of the Accused beyond all reasonable doubts however, a proceedings U/s.138 of N.I.Act is quasi criminal in nature. In these proceedings proof beyond all reasonable doubt is subject to presumptions as envisaged U/s.118, 139 and 136 of N.I.Act. An essential ingredient of Sec. 138 of N.I.Act is that, whether a person issues cheque to be encashed and the cheque so issued is towards payment of debt or liability and if it is returned as unpaid for want of funds, then the person issuing such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act pre-supposes conditions for prosecution of an offence which are as under:

1. Existence of legally enforceable debt or liability and issuance of cheque in discharge of said debt or liability;
2. Cheque shall be presented for payment within specified time i.e., from the date of issue before expiry of its validity.
3. The holder shall issue a notice demanding payment in writing to the drawer within one month from the date of receipt of information of the bounced cheque and
4. The drawer inspite of demand notice fails to make payment within 15 days from the date of receipt of such notice.

If the above said conditions are satisfied by holder in due course gets cause action to launch prosecution against the drawer in respect of bounced cheque and as per Sec.142(b) of the N.I. Act, the complaint has to be filed within one month from the date on which cause of action arise to file complaint.

10. It is also one of the essential ingredient of Sec. 138 of N.I.Act that, a cheque in question must have been issued towards legally recoverable debt or liability. Sec.118 and 139 of N.I.Act envisages certain presumptions i.e.,U/s.118 a presumption shall be raised regarding 'consideration' 'date' 'transfer' 'endorsement' and holder in course of Negotiable Instrument. Even Sec.139 of the Act are rebuttable presumptions shall be raised that, the cheque in question was issued regarding discharge

of a legally recoverable or enforceable debt and these presumptions are mandatory presumptions that are required to be raised in cases of negotiable instrument, but the said presumptions are not conclusive and or rebuttable one, this proportion of law has been laid down by the Hon'ble Apex Court of India and Hon'ble High Court of Karnataka in catena of decisions.

11. In the present case the complainant got examined as PW.1 by filing her affidavit evidence wherein the complainant has reiterated the entire averments of the complaint, the complainant/PW.1 in his evidence stated that, the Accused by saying that, he is doing a chit business, in respect of a chit transaction the Accused used to borrow money from him since he failed to repay the amount he became due and liable to pay a sum of Rs.11,81,000/= to him and towards discharge of part of liability, being a legally dischargeable debt has issued a cheque bearignNo.803060 dated: 5.11.2013 for sum of Rs.11,81,000/= to him by promising that, it would be honoured on its presentation. The PW.1 further testified that, he has presented the said cheque for realization through his banker but the said cheque was returned dishonoured with an endorsement of "Funds Insufficient" dated: 9.11.2013. The PW.1 further testified that, he got issued legal notice dated: 23.11.2013 through his advocate by way of RPAD calling upon him to discharge liability covered under the cheque and the said notice was served on him but he has not complied with the demands made in the notice by denying the contents of a notice in his reply notice dated: 11.12.2013.

12. In support of the oral evidence of the complainant, initially the complainant has produced the Original Cheque dated: 5.11.2013 as per Ex.P.1, the signature on the said cheque identified by P.W.1 as that of the accused as per Ex.P.1(a), the Bank Memo as per Ex.P.2, the copy of Legal Notice as per Ex.P.3, the two Postal Receipts as per Ex.P.4 and P.5 the postal acknowledgements as per Ex.P.6, reply notice as per Ex.P.7, complaint as per Ex.P.8, signature of the complainant as per Ex.P.8(a).

13. In the present case, there is no dispute between the parties in respect of their acquaintance. It is also not in dispute by the accused that, the cheque in question is belongs to his account and signature appearing on the cheque is also that of the accused and the said cheque has been presented for encashment and dishonoured for the reason of "Funds Insufficient" is also not disputed, as matter on record proved by return memo i.e. P.2 issued by the concerned bank dated: 9.11.2013, therefore it is a matter on record and has been proved that, the cheque in question was presented within its validity period and dishonoured as per the bank endorsement issued by the banker of accused. It is also not in dispute that, in relation to the service of legal notice i.e Ex.P.3 as the accused has issued reply to the said notice as per Ex.P.7 dated:

11.12.2013. It is also fact that, even after receipt of the legal notice, the accused did not repaid the alleged cheque amount, finally the complainant has filed this complaint within the limitation, hence the only question remaining for determination is whether the legal, valid and enforceable debt is in existence and the cheque in question was issued towards discharge of the said debt or liability.

14. Hence, from careful perusal of the oral and documentary evidence of the complainant and Ex.P1 to P6 makes it clear that, the complainant has proved that, the cheque in question i.e. Ex.P1 is issued by the accused and signature thereon is belonging to the accused i.e. Ex.P1(a) thereafter the

complainant got issued legal notice to the accused and the said notice was served on him, even after service of the said notice, the accused denied the loan amount advanced by the complainant as contended by him, therefore the complainant has discharged his initial burden casted upon him. Consequently it is for the accused to rebut the presumption as available U/s.118a and 139 of N.I. Act and to show that, the cheques in question were not issued either to the complainant or towards any legally recoverable debt or liability by producing cogent and convincing evidence but not mere suggestions or even by plausible explanations.

15. The accused in this case in his reply notice and during the course of cross-examination of complainant i.e. PW.1 has taken specific defence that, he has not borrowed any loan from the complainant and has not involved in any chit transaction and neither he is liable to pay any amount to the complainant under any debt or liability. The Accused has also taken defence that, he had issued the disputed cheque in favour of his relative Shivaprakash proprietor of M/s. Fire Cools and it was intimated to him that, the said Shivaprakash had kept the disputed cheque in his office and latter found that, same was missing and only after the cheque is presented the banker instructed him that, a cheque of huge amount was returned and when he contacted Shivaprakash it was intimated to him that, the complainant had committed breach of trust where he was employed and committed the act of theft of several cheques belonging to the said Shivaprakash and complainant and his wife have misused the cheques including his cheque though there was no transaction or contact of liability on him. The Accused during the course of cross-examination of complainant has also taken specific defence that, complainant is not having sufficient source of income to lend loan amount. Hence in this back ground the oral and documentary evidence adduced by both parties have to be examined.

16. The complainant in order to prove that, he has paid an amount of Rs.13,81,000/= to the Accused and towards discharge of part of the said amount the Accused has issued a cheque in dispute i.e. Ex.P1, in his evidence has stated that, the Accused is doing a chit business, in respect of the said chit transaction used to borrow money from him, since he failed to repay the amount borrowed from him and became due and towards discharge of part of the liability, being legally recoverable debt has issued the cheque in question i.e. Ex.P1 to him. The complainant at the first instance has not produced his bank statement, IT returns and also the cheques through which he has paid money to the Accused but the Accused during the course of cross-examination of complainant has elicited certain facts that, the complainant has paid loan amount to the Accused part of the loan by way of cheque and by way of cash. The complainant in his cross-examination has stated that, he has paid an amount of Rs.1,30,000/- on 12th February 2011 through cheque bearing No. 145 pertains to corporation bank on 23.3.2011 has paid an amount of Rs.1 Lakh through cheque bearing No. 148, on 11.11.2011 an amount of Rs.30,000/= paid through cheque bearing No. 7715, on 2.2.2012 an amount of Rs.50,000/= through cheque bearing No. 7718, in the month of September 2012 an amount of Rs.2 Lakhs, in the month of August 2012 an amount of Rs.4,36,000/= by way of cash in total has paid sum of Rs.13,81,000/= to the Accused. The Accused during the course of cross-examination has denied the said loan amount paid by the complainant by way of cheques and elicited that, the complainant has no hindrance to produce the bank statement to show that, the said payments have been made to the Accused through cheques. Thereafter the complainant has produced I.T>Returns pertains to the Assessment year 2011-12 to 2015-16 which are marked as Ex.P.10 to P.22

respectively, and the statement of accounts pertaining to his bank as per Ex.P.23 and relevant entries as per Ex.P.23(a) to 23(d) and also true copies of the cheques as per Ex.P.25 to P.28 through which the amount has been given to the Accused on various dates and the bank challan as per Ex.P.29. On careful perusal of the Ex.P.10 to P.22 i.e. I.T. returns submitted by the complainant for the Assessment year 2011-12 to 2015-16 that the complainant is having sufficient source of income to lend the loan amount. Ex.P.23 i.e. the Statement of Bank account of the complainant and its relevant entries i.e. Ex.P.23(a) to 23(d) discloses that, the complainant has paid an amount of Rs. 30,000/= on 11.11.2011 paid through cheque bearing No. 7715, on 2.2.2012 an amount of Rs.50,000/= through cheque bearing No. 7718, on 12.12.2011 an amount of Rs.1,30,000/= paid through cheque bearing No. 145 and on 23.3.2011 an amount of Rs.1 Lakh paid through cheque bearing No. 148 in favour of the Accused. The Ex.P.25 to P.28 i.e. the true copies of the cheques discloses that, the above said amounts i.e., as per entries at Ex.P.23(a) to 23(d) have been paid to the Accused by mentioning his name in the cheque and the said amounts have been received by the Accused as per the entry discloses in Ex.P.23 statement, Ex.P.29 is the bank challan which discloses that, the Accused has received an amount of Rs.50,000/= from the account of complainant.

17. The learned counsel for the defence after production of the Ex.P.23 to P.29 during the course of cross-examination has disputed the signature of the accused appearing on the Ex.P.25 to P.29 and also disputed the authenticity of the Ex.P.23 and P.25 to P.29, thereafter the complainant has summoned the Sr. Branch Manager of Corporation Bank, with a direction to produce original cheques and bank challan along with account opening form and statement of account of the Accused, accordingly the said bank manager has produced the above said documents i.e. original cheques and bank challan and true copy of the account opening form and statement of account of the Accused and also examined as PW.2 and the said documents have been marked as Ex.P.30 to P.36 respectively. The Accused has also cross examined the bank manager i.e PW.2 in length but has not disputed the original cheques dated: 12.2.2011, 23.3.2011, 2.2.2012, and bank challan dated: 2.2.2012, account opening form of the Accused and statement of account of the Accused which are produced by PW.2 and marked as Ex.P.30 to P.36 respectively. But has disputed the signatures appearing on the hind side of the Ex.P.25 to P.27 and with Ex.P.35(a) by contending that, there is difference between the signature found on the back side of Ex.P.25 to P.27 and those at Ex.P.35(a) i.e. the specimen signatures of the Accused. The PW.2 during the course of his cross- examination admitted that, there is little variation in the signatures on Ex.P.25 to P.27 that of Ex.P.35(a).

18. Thereafter when the Accused has disputed the signature appearing on the original cheques i.e. Ex.P.30 to P.33 and challan i.e. Ex.P.34 with that of Ex.P.35(a) i.e. specimen signatures of the Accused , the complainant has filed an application U/s.45 of Indian evidence Act to refer the cheque i.e. Ex.P.1, signature P.1(a) , Ex.P.9 , P.30 to P.35 along with the signature found in the vakalathnama of the Accused to the handwriting expert to give opinion with regard to them and submit the records, the said application was opposed by the Accused but the court has allowed the said application filed by the complainant and referred the cheque i.e. Ex.P.1, signature P.1(a) , Ex.P.9 , P.30 to P.35 along with the signature found in the vakalathnama of the Accused to the handwriting expert for getting opinion about the disputed signatures, the hand writing expert after conducting the examination on 14.6.2019 has submitted a detailed report along with the comparison chart for opinion i.e. comparison of the questioned signature with the admitted signatures and

standard signatures and also gave his opinion stating that, the person who wrote the standard signatures marked at S.1 to S.24 i.e. the admitted signatures of the Accused also wrote the questioned signature marked as Ex.P.1(a), P.9(a), P.30(a) P.31(a) and P.32(a), P.33(a), P.34(a), P.35(a) to P.35(e), thereafter case was posted for say by both sides on expert report but the Accused has not filed his objections to the report submitted by the hand writing expert. Even the Accused has not made any efforts to examine the handwriting expert to prove that, the opinion formed by the handwriting expert is false or it cannot be acceptable one as the said hand writing experts opinion is not based on qualified or scientific method or the expert has not examined the disputed and admitted signature as stated by him in his report, hence in view of non disputing of the handwriting expert opinion dated;14.6.2019 and non examination of the hand writing expert by the Accused, the report submitted by the handwriting expert can be taken into consideration along with the other evidence led by both parties. It is true that, the report submitted by the handwriting expert is not conclusive one or binding on the court but the said report can be seen along with the other evidence adduced by both parties.

19. The learned counsel for the Accused has cross examined the complainant i.e. PW.1 in length but nothing has been elicited to discard or discredit the evidence of the PW.1. it is true that, the complainant has admitted in his cross-examination that, he has not mentioned the how much amount given by him through the cheques to the Accused and in cash in his legal notice, complaint and affidavit filed in lieu of examination in chief but only on that ground the entire oral evidence and documents produced by the complainant cannot be thrown out , however the law does not prescribe to mention such details of payment made by the complainant in his complaint, notice and evidence and in view of non mentioning of the details of the same by the complainant in his legal notice or complaint or in his affidavit evidence by itself the transaction in question would not invalidates and mere non mentioning of the said details of payment is also not fatal to the case of complainant. The PW.1 in his cross-examination has clearly stated about the part of the loan amount given by him through the cheques and part of the amount given by way of cash to the Accused. The learned counsel for the Accused during the course of cross- examination of the complainant though he has denied that, the complainant has not paid the amount to the Accused through the cheques and by way of cash but the complainant has produced the documentary proof to show that, he has paid part of the loan amount through the cheques and though the said cheques and signature appearing on the hind side of the cheque denied by the Accused but the complainant has proved the same by examining concerned bank manager and also by producing the original cheques and also by getting opinion from the handwriting expert, in such circumstances the discrepancies which have been elicited in the cross- examination of the complainant cannot be taken into consideration to discard evidence of complainant as the complainant has successfully proved the said by way of documentary proof.

20. It is a relevant here to mention that, the Accused has specifically denied his signatures appearing on Ex.P.9 and Ex.P.23(a) to P.23(d) and on Ex.P.30 to 35 by contending that, the complainant has forged his signature on the hind side of the Ex.P.25 to P.28 and has mentioned the name of the Accused on the said cheques and withdrawn the amounts by him only. But in order to prove the same except the oral suggestions made to the Pw.1 in the cross-examination the Accused has not produced any documents or even the Accused has not stated anything in his evidence about the

Ex.P.9, 23(a) to 23(d) and Ex.P.30 to 35, in such circumstances the Accused has not able to disprove the amount received by him from the complainant through the cheques i.e. Ex.P.30 to 35.

21. It is true that, the learned counsel for the Accused during the cross-examination of PW.1 has elicited certain discrepancies, that, the complainant had admitted that, he has mentioned in the legal notice and complaint that, he has lend a loan of Rs.13,81,000/= to the Accused but in his affidavit, has stated that, Accused is due of Rs.11,81,000/= to him, but the complainant in his cross-examination made it clear that, the Accused is due of Rs.13,81,000/= to him but has issued cheque for Rs.11,81,000/=. It is also admitted that, the Accused has to pay remaining sum of Rs.2,00,000/= to him but has not initiated any action in respect of remaining amount of Rs.2,00,000/=. Hence, on careful reading of statements made by the complainant makes it very clear that, the complainant has specifically stated tht, the Accused is due of Rs.13,81,000/= to him out of the said amount, has issued cheque for a sum of Rs.11,81,000/= ie.. Cheque in dispute. It is true that, the complainant has admitted that, has not initiated action in respect of remaining amount of Rs.2,00,000/= against the Accused, but mere non taking of action in respect of remaining amount of Rs.2 Lakhs itself is not a ground to suspect the transactions in question, it is for the complainant either to take action or not hence mere eliciting the fact that, the complainant has not taken action in respect of remaining amount of Rs.2 Lakhs is not a ground to disbelieve the evidence of complainant or that, itself does not create any doubt to disbelieve the transaction in question.

22. It is also relevant here to mention that, the learned counsel for the Accused during the cross-examination of PW.1 has suggested that, if really the amount has paid through cheques to the Accused, the same would have been mentioned in the pass book of the Accused, but the complainant has specifically stated that, he has not paid the amount through cross-cheques, but has issued bearer cheques, hence it goes to show that, the complainant has clearly established that, he has paid loan amount through cheques, it is also elicited from PW.1 that, the complainant has admitted that, he has not stated that, the amount has not been paid to the Accused through his wife but in Ex.P.9 at Sl.No.1 to k the name of his wife Parimala Charles has been mentioned and the name of one chikku & Anand has been mentioned at Sl.no.1 and 2 and Ex.P.9 is with him prior to filing of complaint and no hindrance for him to mention in the complaint or affidavit. But it is not the case of the complainant that, as per Ex.P.9 he has paid the loan amount to the Accused or the loan amount has been paid through wife for which the Accused has issued Ex.P.9, on confronting only the Accused has admitted signature on Ex.P.9, hence the admissions made by the PW.1 in respect of Ex.p.9 are not helpful for the Accused to disprove the case of complainant or to prove his defence, at the most it can be held that, Ex.p.9 is no where connected to the transaction in question, the said document is only considered for admitted signature of the Accused i.e. Ex.P.9(a) for comparison with the disputed signatures.

23. The learned counsel for the defence during the course of argument, much argued that, the complainant in his legal notice and complaint ha specifically stated that, the Accused in respect of chit transaction, became due and liable to pay a sum of Rs.13,81,000/= and in his evidence, for the first time has stated tht, the Accused is doing chit business in respect of chit transaction, the Accused used to borrow money from him and since the Accused has failed to repay the amount

borrowed from him and became due and liable to pay sum of Rs.11,81,000/= to him and towards discharge of part of liability, Accused has issued cheque for Rs.11,81,000/= i.e. Ex.P.1, hence it goes to show tht, the complainant in one breath, in the notice and complaint has contended that, he is conducting chit business and in connection with chit business Accused is due of Rs.13,81,000/= and in another breath in his evidence changed his version that, Accused is running chit business and has only due of Rs.11,81,000/= to him, hence the alleged loan transaction itself creates doubt and complainant has not proved that, whether the Accused has taken alleged loan from him and is due of Rs.13,81,000/=. It is also argued that, the complainant in his cross- examination for the first time disclosed that, Accused has received alleged loan amount through cheques and cash and has produced Ex.P.9, Ex.P.23 to P.28, but complainant has not stated about the Ex.P.9, Ex.P.23 to P.28 either in legal notice, complainant or evidence, hence the Ex.p.9, P.9 to P.28 are after thought documents and there is no pleadings in the notice, complaint or evidence. It is also argued that, if really the complainant has paid the amount through cheques, he would have transfer the said amount to the account of Accused as admittedly the Accused and complainant are having their respective accounts in the same bank and even bank manager PW.2 has also stated that, Accused is also having account in the same bank, hence the complainant has failed to prove that, he has paid loan amount to the Accused. It is also argued that, Ex.P.30 to P.34 cannot be acceptable one without examination of the expert as the Accused has disputed his alleged signatures have been appearing on back side of Ex.P.30 to P.34, hence complainant has failed to prove the alleged transaction and payment made to Accused though cheques.

24. The learned counsel for the complainant argued that, the complainant has proved that, the Accused has borrowed a loan of Rs.13,81,000/= borrowed by him in respect of chit transaction conducted by him and towards discharge of part of the liability has issued the cheque in question i.e. Ex.P.1 for Rs.11,81,000/=. It is also argued that, initially the complainant was not produced documents i.e. the amount lent by the complainant to the Accused through the cheques but during the course of cross-examination of complainant, the learned counsel for the Accused suggested to produce the cheques which are issued to the Accused towards hand loan, therefore the complainant subsequently has produced the true copies of the cheques, even then the Accused disputed the signature on the cheques i.e. Ex.P.23(a) and P.23(b) and Ex.P.25 to P.28 and thereafter the complainant summoned the original cheques of Ex.P.25 to P.28 from the concerned bank through PW.2 the said cheques have been produced which are marked as Ex.P.30 to P.34 and again the Accused has disputed the signatures appearing on Ex.P.30 to P.34 as they are not his signatures, thereafter the complainant filed application U/s. 45 of Indian Evidence Accused seeking reference of admitted and disputed signatures of the Accused for handwriting expert to submit report with regard to disputed signature and the said application was allowed by the court and documents were sent to the handwriting expert for comparison of the disputed and admitted signatures and the hand writing expert submitted his report stating that, the person who wrote the signatures on admitted documents wrote the signature on disputed documents i.e., Ex.P.30 to P.34 and the said report was not disputed by the Accused, hence the complainant has proved that, he has lend part of the loan amount through the cheques and part of the amount by way of cash. The complainant has also proved that, the Accused has issued the cheque in question towards part of liability of the loan amount due by him.

25. On careful considering the rival arguments of both learned counsels, at the outset it can be held that, it is true that, the complainant has not mentioned details of loan amount lent by him in favour of the Accused i.e. the loan amount paid by him through the cheques and by way of cash but he has stated in his cross-examination that, he has paid part of loan amount to the Accused through the cheques and also produced the said cheques which are marked as Ex.P.25 to P.28 and original cheques are at Ex.P.30 to P.34. It is also true that the complainant in his complaint and notice has stated that, in respect of chit transaction the Accused became due and liable to pay a sum of Rs.13,81,000/= to him and in the evidence has stated that, the Accused used to borrow the money from him as he is doing chit business and became due a sum of Rs.13,81,000/= to him and towards discharge of part of liability has issued the cheque in question for Rs.11,81,000/=.

26. It is relevant here to mention that, though the complainant has stated in his notice and complaint that, the Accused became due and liable to pay sum of Rs.13,81,000/= in respect of chit transaction, but it does not mean that, the complainant is conducting the chit business and in respect of his chit business the Accused is due of Rs.13,81,000/= as argued by the learned counsel for the Accused but the complainant in his evidence has made it clarify that, the Accused is doing chit business and in respect of the said business she used to borrow the money from him. It is also relevant here to mention that, mere non mentioning of the details of the loan amount lend by the complainant to the Accused as stated by him in his cross-examination in the legal notice and complaint itself is not fatal to the case of the complainant as there is no statutory mandate that, the notice and complaint should narrate the details of the loan amount lend by the complainant or nature of debt or liability, hence omission or error in notice and complaint to mention nature of debt or liability does not render the notice as invalid or the transaction in question itself invalidates. It is also important to note here that, no requirement that, the complainant must specifically alleged in the complaint that, there was subsisting liability and there is no need to make such specific averment in the complaint, this preposition of law finds support from the decision of Hon'ble High Court of Kerala reported in 2019 (2) KLT 895 in the case of B. Surendra Das Vs. State of Kerala, therefore in view of the principles of law laid down by the Hon'ble High court of Kerala and for the above said reasons the arguments canvassed by the learned counsel for the Accused cannot be acceptable one.

27. In addition to the above, as it is already held while discussing the oral and documentary evidence adduced by the complainant that, the complainant has discharged his initial burden by adducing oral and documentary evidence that, the cheque in question was issued by the accused and signature on the cheque in question is also that of the accused, under such circumstances it is for the Accused to prove that, there was no legally enforceable debt or liability and the cheque in question was not issued towards any debt or liability. In this regard it is relevant here to refer the decisions reported in 2001 AIR Karnataka HCR 2154 between 'M/s.Devi Tyres V/s.Navab Jan' and in 2011 ACD 1521 (KAR) between 'Smt. Usha Suresh V/s. Shashidharn', in 2010 SC 1898 between 'Rangappa Vs. Mohan' and 2011 ACD 1412 (KAR) between 'N.Hasainar Vs. M.Hasainar, S/o. Ibrahim'. The Hon'ble High Court of Karnataka in the above decision i.e., 2001 AIR Karnataka HCR 2154 at para No.6 was pleased to hold that issuance of cheque itself was adequate proof of existence of debt or liability. The Hon'ble Apex Court has also held in the decision referred above, the Hon'ble Apex Court in 2010 SC 1898 in case of 'Rangappa Vs. Mohan' that, presumptions U/sec.118(a) and 139 of N.I. Act indeed

does extend to the existence of legally recoverable debt, of course the said presumption is rebuttable one, the accused has to rebut the presumption by taking probable defence. In another decision of Hon'ble Apex court of India reported in CRIMINAL APPEAL NO. 508 OF 2018 DT 15-03-2018 between ROHITBHAI JIVANLAL PATEL Vs STATE OF GUJARAT AND ANR held that "Negotiable Instruments Act facts like source of funds are not relevant if the Accused has not been able to rebut the presumption. It is further held that "When such a presumption is drawn, the facts relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the Accused has been able to rebut the presumption or not". In another decision of Hon'ble High Court of Karnataka reported in ILR 2019 KAR 493 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat, wherein the Hon'ble High Court held that, the presumption mandated by Sec.139 of N.I Act includes the presumption that, there existed a legally enforceable debt or liability, however such presumption is rebuttable in nature".

Hence the above principles of law laid down by the Hon'ble Apex Court of India and High Court of Karnataka in the above referred decisions are aptly applicable to the case on hand, since in the present case the complainant has proved that, the cheque in question i.e. Ex.P.1 is belonging to the Accused and signature appearing on the cheque i.e. Ex.P.1(a) is also that of the Accused, hence a presumption can be drawn about existence of legally enforceable debt against the Accused as per Sec. 139 of N.I. Act. Therefore under these circumstances the arguments canvassed by the learned counsel for the defence i.e., the complainant has not produced any documents to show that he had sufficient source of income to lend the amount to the accused and complainant has failed to produce any document to prove his source of income to lend the amount and the complainant has failed to prove that, he has lent an amount of Rs.13,81,000/= to the Accused are not sustainable and acceptable one.

28. In this case, the Accused in order to rebut the presumption available U/s.118 and 139 of N.I. Act in favour of the complainant has examined himself as DW.1 and also produced the documents. The Accused /DW.1 in his evidence has stated that, he knows the complainant as himself and the complainant were working in the year 2004 in M/s. Fire Cools Company as Business Development officers, and the proprietor of said M/s.Fire Cools company by name Shivaprakash is his relative i.e. brother-in-law. He further stated that, he had given blank signed cheque i.e. Ex.P.1 to the said Shivaprakash in respect of Site transaction in the year 2013 and it was intimated to him by the said Shiva Prakash that, the complainant and his wife had committed a theft of 4 to 5 cheques including his cheque i.e. Ex.P.1 from the office of the said Shivaprakash and by misusing the said cheques the complainant has filed the present case against him and his wife has also filed cheque bounce case against the said Shivaprakash and after the cheque is presented to the bank, the banker informed him that, a cheque of huge amount was returned by it then only he came to know that, his cheque was presented to the bank by the complainant, hence the complainant has misused the cheque in question though there was no loan transaction or contract or any contact between himself and the Accused. The Accused /DW.1 further stated that, himself and the owner of the Fire Cools company have filed a private complaint against the complainant herein before the 4th ACMM Court, in respect of the theft of cheques by the complainant. In support of oral evidence of the Accused he has produced certified copy of the judgment in C.C.No.3209/2014, affidavit of CW.1 in

C.C.No.3209/2014, zerox copy of the cheque in, notice, complaint, evidence of DW.1, copy of non disclosure agreement, copy of notice which are marked as Ex.D.1 to D.9 respectively, copy of private complaint, letter and email letters which are marked as Ex.D.10 to D.19 respectively.

29. It is the specific defence of the Accused that, he has not borrowed any amount much less loan amount in question from the complainant and has not issued the cheque in dispute towards discharge of the said loan amount, but he has contended that, he had issued the cheque in dispute i.e. Ex.P.1 in favour of his relative i.e. the owner of M/s. Fire Cools company and in the said company himself and complainant were working as Business Development Officers and the said Shivaprakash had kept the cheque in dispute in his office and later found that, the said cheque was missing and only after the cheque was presented, the banker had informed him that, the said cheque was returned as it was presented for huge amount and then he contacted said Shivaprakash he was intimated that, the complainant and his wife had stolen several cheques belonging to the said Shivaprakash and also his cheque and the complainant and his wife have misused the said cheques including his cheque, therefore in respect of the theft and misuse of the cheque by the complainant the said Shivaprakash has filed a private complaint against the complainant before the 4th ACMM, Bengaluru. The Accused in order to prove his defence i.e. the cheque in dispute was issued in favour of his relative i.e. Shivaprakash for the site transaction purpose, except his self serving statement has not produced any evidence and even the Accused has not examined the said Shivaprakash to prove the fact that, the Accused had issued the cheque in dispute in his favour for site transaction purpose. Admittedly the Accused contended that, the said Shivaprakash is his brother-in-law i.e his relative and as such he is very much available for him to examine the said Shivaprakash before the court but the Accused has not examined the said Shivaprakash, in such circumstances an adverse inference can be drawn against the Accused that, he has purposely withheld the said witness and has not examined before the court. It is also relevant here to mention that, according to the Accused the cheque in dispute had kept by the said Shivaprakash in his office and later he found that, same was missing and he was intimated to him that, the complainant and his wife had stolen several cheques belonging to said Shivaprakash including the cheque in dispute, to prove this aspect the Accused except his oral self serving statement has not produced any documents and even has not stated on which date, he had issued the cheque in favour of said Shivaprakash and on which date, month and year the complainant and his wife had stolen several cheques as alleged by him and even the Accused has not examined the said Shivaprakash to prove his defence that, the complainant and his wife have stolen several cheques including the cheque in dispute. It is true that, the Accused has produced copies of the private complaint filed by the Shivaprakash against the complainant and his wife before the 4th ACMM, Bengaluru, by alleging that, the complainant and his wife have stolen several cheques belonging to Shivaprakash and including the cheque of the Accused herein and also produced certified copy of the order sheet which are at Ex.D.10. The Accused /DW.1 during the course of his cross-examination has specifically admitted that, he does not know the stage of private complaint filed before the 4th ACMM and there is no hindrance for him to produce the copy of sworn statement given by him in the said case i.e. in C.C.No.15640/2014 and has also admitted that, he has filed the said PCR in the month of August 2014 and the said PCR has been filed before the court after receipt of legal notice issued by the complainant in the present case. The Accused has also admitted that, he is not a party to the proceedings initiated by the complainant Shivaprakash shown in Ex.D.1 to D.12 documents. Hence the admissions of the Accused makes it clear that, he has

not filed any complaint either before the police authority or before any court against the complainant by alleging that, the complainant had stolen his cheque in dispute and it was misused by him. On the contrary he has produced the documents i.e Ex.D.1 to D.19, though he is not party to the said proceedings. It is true that, in the private complaint filed by the Shivaprakash against the complainant herein it is alleged against the complainant herein that, has also stolen the cheque in dispute but except the said allegations complainant has not produced any document to show that, on the basis of said private complaint whether the court has referred the matter to the police for investigation or the Accused or his relative Shivaprakash i.e. complainant had given sworn statement in the said case or whether the PCR filed by the said Shivaprakash investigated by the police or by the court and whether the said allegations made in the complaint were found to be true or not, in such circumstances only on the basis of order sheet and PCR complaint it cannot be held that, the complainant and his wife had stolen and misused the cheque in dispute. On careful perusal of Ex.D.1 to D.9 i.e. the certified copy of the judgment in C.C.No.3209/2014 dated: 4.11.2015 passed by this court and depositions of complainant herein in the said case, copies of the cheque bank endorsement, legal notice, reply notice, copy of the complaint and depositions of Shivaprakash, copy of non disclosure agreement, it appears that, the said documents nowhere connected to the present case. In the said judgment this court has not ordered or formed an opinion that, the cheque in dispute had been stolen by the complainant and his wife and misused by the complainant, therefore Ex.D.1 to D.9 are not helpful to the Accused to prove his defence taken in the present case.

30. It is also relevant here to mention that, the Accused in his cross-examination admitted that, after receipt of legal notice issued by the complainant the private complaint i.e. as per Ex.D.10 the said Shivaprakash has filed against the complainant alleging that, the complainant and his wife have committed theft of his several cheques including the cheque in dispute belonging to the complainant which were kept in his office. It is also seen from Ex.D.10 that, the said private complaint has been filed only after receipt of the notice and as admitted by the Accused in his cross-examination has not produced any document to show that, further action has been taken on the basis of complaint filed by said Shivaprakash, hence it goes to show that, further action has not been taken on the complaint filed by the Shivaprakash. If really the said cheque has been stolen, then under such circumstances, the Accused ought to have persuaded the complaint which the Shivaprakash has filed before the 4th ACMM Court, for the purpose of either investigation or by giving sworn statement before the court but no such records are forthcoming as to what happened after the private complaint is filed against the complainant. Be that, as it may, if the disputed cheque has been stolen then the Accused ought to have given the letter to the concerned bank not to encash the said cheque as a disputed cheque has been stolen, no doubt the Accused in his reply notice and also evidence has taken a defence that, only after presentation of the cheque in dispute by the complainant he came to know about the disputed cheque has been stolen by the complainant but in order to believe the said fact the complainant either in his reply notice or in his evidence has not stated particular date, month, about he came to know that, the cheque in dispute was stolen by the Accused, in such circumstances an adverse inference can be drawn against the Accused that, in order to overcome the liability to pay the cheque amount and for the purpose of taking defence has purposely not mentioned the date and month of alleged stolen of the cheque by the complainant. In addition to that, the Accused has admitted the cheque belongs to his account and signature on the cheque is that of his signature, in such circumstances, what was the necessity of keeping the said cheque in the office of the his relative

i.e Shivaprakash and has not produced any document to show that, for what purpose the said cheque has been kept in the office of his relative i.e Shivaprakash, therefore no prudent man will keep the cheque easily accessible after signing it and the conduct of the Accused and Shivaprakash filing of the complaint after receipt of notice by the Accused shows that, the Accused in order to avoid liability and payment of the loan amount has filed the private complaint against the complainant, in such circumstances the Accused has failed to prove his defence that, the complainant and his wife had stolen the several cheques including his cheque i.e., Ex.P.1 and the said cheque has been misused by the complainant by filing this complaint.

31. In addition to the above, the Accused during the course of cross-examination of the complainant has taken the defence that, there is a difference in ink in respect of the writings of the amount mentioned in the disputed cheque and the name of the complainant written in the cheque and the Accused has not issued the cheque in dispute to the complainant. The complainant though he has stated that, he does not know the difference of ink in writings of the amount and his name in the disputed cheque but he nowhere admitted that, the Accused has issued blank signed cheque and same has been filled up by him. For sake of discussion if it is assumed that, the cheque in question has been issued by the Accused and signature on the cheque is also admitted by the Accused as that of his signature in such circumstances also it can be presumed that, he has authorized the holder of the cheque to fill up the rest of the contents in the cheque and a presumption can be drawn against the drawer of the cheque that, the cheque in question was issued by him only towards discharge of legally recoverable debt, this preposition of law finds supports from the decision of Hon'ble Apex Court of India reported in AIR 2019 SC 2446 in the case of Birsingh Vs. Mukesh Kumar., wherein the Hon'ble apex Court held that, presumption U/s.139 is presumption of law, distinguished from presumption of facts and also held that, presumptions are rules of evidence and do not conflict with presumption of innocence which requires prosecution to prove case against the Accused and also held that obligation on the prosecution may be discharged with the help of presumptions of law and presumption of fact unless the accused adduces evidence showing reasonable plausibility of non existence of presumed fact. In the present case though the Accused has adduced oral evidence but the accused has not produced relevant documents or satisfactory evidence to rebut the presumptions as available U/s.139 of the N.I. Act, under such circumstances in view of the above principles of law It can be presumed even on fact also that the complainant has proved his case by discharging his burden and complying the mandatory provisions. In the said decision the Hon'ble Apex court has also held that, presumption as to legally enforceable debt is rebuttable, the signed blank cheque if voluntarily presented to payee towards payment payee may fill up amount and other particulars and it in itself would not invalidate cheque and onus would still be on the accused to prove that, cheque was not issued or discharge of debt or liability by adducing evidence. In the present case though the accused has taken specific defence that, the cheque in question was not issued towards repayment of the loan in transaction, in such circumstances even for sake of discussion if it is assumed that the contents of cheque in question were filled up by the complainant in view of the principles of law laid down in the above decision that itself would not invalidate the cheque in question and it can be presumed that, the cheque was filled in by complainant in presence of the Accused at his request and the said cheque has been issued towards discharge of legally recoverable debt.

32. It is also relevant here to mention that, the learned counsel for the Accused during the course of cross-examination of Accused has elicited certain facts with regard to non mentioning of loan in transaction in I.T. Returns of the complainant which are at Ex.P.10 to p.22. No doubt the complainant admitted that, he does not know as to whether he has declared the loan in transaction in his I.T. Returns but only on that ground the transaction in question would not invalidate. In this regard, it is necessary here to refer the decision of our Hon'ble High court of Karnataka reported in 2019(1) Kar. L.R.185 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat in the said case the Hon'ble High Court of Karnataka held as under:-

Negotiable	Instruments	Act,	1881	-
Sections	138	and	139	-Endorsement

'payment stopped by drawer' - The trial court in the instant case, merely considered a suggestion made from the Accused side in the cross-examination of PW-1 that the complainant was an income tax assessee and that he has not declared the alleged loan transaction in his returns and disbelieved the case of the complainant that too, ignoring that legal presumption under section 139 of the N.I. Act, was operating in favour of the complainant- For these reasons, it has to be held that the complainant has beyond reasonable doubt proved the guilt of the Accused punishable under Section 138 of the N.I. Act. As such, the impugned judgment of acquittal passed by the trial court deserves to be set aside and respondent/Accused is liable to be convicted for the offence punishable under Section 138 of the N.I. Act.

In view of the principles of law laid down by the Hon'ble High court of India in the above referred decision in the present case also the Accused during the course of cross-examination of complainant, apart from making suggestions as to the absence of any documentation about all the alleged loan transaction and absence of non declaration of the facts in the income tax returns, the Accused has not produced any rebuttable evidence or convincing circumstances which warrants for drawing an adverse inference against the complainant. Therefore in the absence of eliciting such facts by merely making suggestions that, the alleged debt or loan transaction have not been mentioned in the income tax returns could not by itself draw an adverse inference and to hold that, there was no existence of legally enforceable debt or the presumption as envisaged U/s.139 of N.I. Act is successfully rebutted. Therefore for the said reasons the arguments canvassed by the learned counsel for the Accused that, the complainant has not mentioned the alleged loan transaction in Ex.P.10 to P.22 itself shows that, there was no transaction between the complainant and Accused cannot be acceptable one.

33. Therefore for the above said reasons, the Accused has not produced cogent and convincing evidence to rebut the presumption available to the complainant U/s.118 and 139 of N.I.Act. On considering all these aspects of the case and totality of the circumstances and on careful and meticulous appreciation of evidence adduced on behalf of the complainant, the complainant has successfully established beyond all reasonable doubt that, he has lent a sum of Rs.13,81,000/= to the accused as a hand loan and in turn the Accused has issued a cheque in question for Rs.11,81,000/= to the complainant towards discharging part of liability thereafter the complainant has presented the said cheque through his banker and same was returned dishonoured with an endorsement of "Funds Insufficient" and thereafter he got issued legal notice to the accused and

inspite of service of the said notice, the Accused did not repaid loan amount borrowed by him, hence the complainant filed the present complaint against the accused. On the other hand, the accused has failed to rebut the presumption available infavour of the complainant with regard to the existence of legally recoverable debt under Ex.P.1 i.e. cheque. Therefore accused has committed an offence punishable U/s.138 of N.I. Act, accordingly for the above said reasons this point is answered in the Affirmative.

34. Point No.2: Negotiable Instrument Act was enacted to bring credibility to the cheque and the very purpose of enactment is to promote the use of negotiable instrument, while to discourage the issuance of cheque without having sufficient funds in their accounts. Such being the case the intention of the legislature is that, complainant be suitable compensated while accused be punished for his act. Hence while awarding the compensation the said fact is to be kept in mind and suitable compensation is awarded to the complainant certainly it will not cause injustice to the accused, accordingly the complainant is entitled for the compensation as ordered by the court and for the said reasons, it is just and proper to pass the following :-

ORDER Acting U/sec.255(2) of Cr.P.C. the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.12,55,000/= (Rupees Twelve Lakhs and Fifty Five Thousand only) within one month from the date of order, in default she shall under go simple imprisonment for a period of (3) three months for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.12,50,000/= (Rupees Twelve Lakhs and Fifty Thousand only) shall be paid as compensation to the complainant. Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= (Rupees Five Thousand only) shall be defrayed as prosecution expenses to the state.

His Bail bond stands cancelled. . Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

(Directly dictated to the stenographer online, printout taken by her, verified, corrected and then pronounced by me in the open Court on this the 25th day of October 2019).

(SRI.S.B. HANDRAL), XVI ACMM, Bengaluru City.

ANNEXURE

1. List of witness/s examined on behalf of the Complainant:-

P.W.1	: Sri.Charles.S;
PW.2	: Sri.Hari;

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

Ex.P-1 : Original Cheque;
Ex.P-1(a) : Signature of the Accused;
Ex.P-2 : Bank Memo;
Ex.P-3 : Office copy of the Legal Notice;
Ex.P-4 & P-5 : Postal Receipts;
Ex.P-6 : Postal acknowledgement;
Ex.P-7 : Reply Notice;
Ex.P-8 : Complaint;
Ex.P-8(a) : Signature of the complainant
Ex.P-9 : Statements;
Ex.P.9(a) : Signatures of the Accused
Ex.P.10 to : I.T. Returns records pertaining to the
P.22 year 2010-11 to 2016;
Ex.P-23 : Statement of Accounts;
Ex.P.23(a) & : Relevant entries;
23(d)
Ex.P.24 : certified copy of the letter given to the
Manager of Corporation Bank,
Kamakshipalya dated: 4.2.2014;

Ex.P-25 to P- : True copies of the cheques dated:

28 12.2.2011, 23.2.2011, 10.11.2011, 2.2.2012;

Ex.P-29 original bank challan dated: 2.2.2012 Ex.P-30 to : The original cheques dated: 12.2.2011,
P.33 23.2.2011, 10.11.2011, 2.2.2012;

(Marked through PW.2)
Ex.P-34 : Original bank challan;
(Marked through PW.2)
Ex.P-35 : True copy of the account opening form
of the Accused;
(Marked through PW.2)
Ex.P-35(a) : signatures of the Accused;
(Marked through PW.2)
Ex.P-36 : True copy of the Statement of account

pertaining to the account of the Accused; (Marked through PW.2)

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

DW.1 : Sri. Shivanand @ Anand.

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

Ex.D.1 & D.2 : certified copy of the Judgment passed in C.C.No.3209/2014 and depositions of CW.1 ;

Ex.D.3 zerox copy of the cheque bearing No.140143 and bank memo;

Ex.D.4 : certified copy of the notice dated:

23.11.2013;

Ex.D.5 : certified copy of the Reply notice dated:

7.12.2013;

Ex.D.6 : certified copy of the PCR No.383/2014; Ex.D.7 : certified copy of the deposition of DW.1 in C.C.No.3209/2014 dated: 5.8.2015; Ex.D.8 : copy of the non disclosure agreement; Ex.D.9 : copy of the legal notice dated:

23.11.2013;

Ex.D.10 : copy of the order sheet along with copy of the complaint in PCR No. 15640/2014;

Ex.D.11 : copy of the letter issued by the ICICI Bank;

Ex.D.12 : letter dated: 10.8.2011 written to the management of FIRE COOLS BENGALURU;

Ex.D.13 to : Email letters
D.19

(SRI .S .B .HANDRAL) ,
XVI ACMM, Bengaluru City.

25.10.2019 Judgment pronounced in the open court vide separate order.

ORDER Acting U/sec.255(2) of Cr.P.C. the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.12,55,000/= (Rupees Twelve Lakhs and Fifty Five Thousand only) within one month from the date of order, in default she shall under go simple imprisonment for a period of (3) three months for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.12,50,000/= (Rupees Twelve Lakhs and Fifty Thousand only) shall be paid as compensation to the complainant.

Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= (Rupees Five Thousand only) shall be defrayed as prosecution expenses to the state.

His Bail bond stands cancelled.

. Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

XVI ACMM, B'luru.