

Sri. Krishna Murthy @ Gopi vs Sri. Rajesh Narrian A.S on 28 November, 2022

KABC0C0263492018

IN THE COURT OF XXXIII ADDL. CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT,
BENGALURU
-: PRESENT :-
M.Vijay, BAL, LLB.
XXXIII ADDL.CHIEF METROPOLITAN MAGISTRATE,
BENGALURU.
DATED THIS THE 28TH DAY OF NOVEMBER, 2022.
C.C.NO.58005/2018

COMPLAINANT : Sri. Krishna Murthy @ Gopi
S/o C. Bhakthavathsalam Naidu,
Aged about 41 years,
Residing at 55, Shivena Chetty
Garden, Opp., Muneshwara Temple,
Bangalore-560042.
Vs.

ACCUSED : Sri. Rajesh Narrian A.S
S/o Sridhar Narrian A.K, Aged about
50 years, Residing at Fernville
apartments, Flat No.'3', C,.
Infantry road, Bangalore-560001

JUDGMENT

The complainant has filed this private complaint U/s.200 of Cr.P.C., against the accused for the offence punishable U/s 138 of Negotiable Instrument Act.

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2. The factual matrix of the case are as follows:□The complainant averred that, accused is well known to him from past several years, on this acquaintance, the accused allegedly approached him for financial assistance of Rs.20,00,000/□in the month of September 2016 for the business purpose as well as to clear debts with an assurance that, he would repay it, within 2 years with interest, accordingly, he arranged sum of Rs.20,00,000/□and paid to the accused on 06.09.2016 by way of cash as a hand loan, on it receipt, the accused executed 2 separate loan agreements dated 06.09.2016, agreed to pay Rs.10,00,000/□on or before 2017 and agreed to pay sum of Rs.10,00,000/□within 2018, on this terms of agreement allegedly accused issued 4 post dated cheques in his favour i.e., 1). cheque bearing No.031392,

2).cheque bearing No.031393, 3).cheque bearing No.031394 and 4). cheque bearing No.031395 for sum of Rs.1,00,000/□each, all the cheques dated 23.03.2018 drawn on Axis bank Basaveshwara Nagar branch, with a request to present all the 4 cheques on 23.03.2018 with an assurance that, cheques would be honored.

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3. Accordingly, in pursuance of request and believing the accused, he claims to have presented all the cheques through his banker Axis Bank Cooks town branch, but, all the cheques came to be dishonored on 06.04.2018 with an endorsement that, "funds insufficient", immediately, he informed the dishonor of the cheques to the accused, but, he once again requested to present on 28.05.2018, accordingly, he claims to have presented the cheques once again for encashment, hence, he presented the cheques for encashment on 28.05.2018, even, for the 2 nd time cheques came to be dishonored for "funds insufficient"

vide memos dated 31.05.2018.

4. In pursuance of dishonor of cheques, the complainant claims to have issued demand notice to the accused on 28.06.2018, demanding to pay the cheques amount through RPAD same was served upon the accused on 30.06.2018, despite of service, the accused not came forward to pay the cheques amount nor replied to his notice, accordingly, he alleged that, the accused towards discharge of partial loan amount have issued 3 cheques in his favour, deliberately with an intension to cheat him knowingly well that, he did not have sufficient balance C.C.No.58005/2018 in his account to honor the cheques, accordingly, alleged that, the accused has committed an o/p/u/s 138 of N.I Act, accordingly, prays to convict the accused in accordance with law.

5. Based on the complaint, the sworn statement affidavit, the documents etc., the court took cognizance of an offense punishable under Sec.138 of N.I. Act by following the guidelines of Apex Court issued in Indian Bank Association case and ordered to be registered a criminal case against the accused for the o/p/u/s. 138 of N.I. Act.

6. In pursuance of summons, the accused appeared through his counsel, he was enlarged on court bail, further, substance of plea was recorded, the accused pleaded not guilty and he claimed to be tried, the complainant in order to prove his case got examined himself as P.W.1 and placed reliance on Ex.P1 to P16 and Ex.P17 to 19 are marked in connected C.C. 58004/2018 are adopted. After closure of complainant side evidence, the court examined the accused U/S 313 of Cr.PC, but, the accused denied the financial transaction and contended that, complainant has forcibly obtained his C.C.No.58005/2018 cheques near Sub Registrar office situated near HRBR layout and claims that, he is not liable to pay the claimed amount to prove his defence, the accused got examined himself as DW1 and placed reliance on Ex.D1 to D5 in connected C.C.No.58004/2018 and requested to adopt the documents to his defence.

7. Heard both the sides, that apart, the accused has filed his written submission as a party in person commonly in connected C.C. No.58004/2018 and requested to considered the same, that apart, he

also placed reliance on following decisions in connected case C.C.No.58004/2018 i.e., CT Cases/622113/2016, Photo copy of PCR 51677/2017, Order sheet in C.C.No.61112/2017, Copy of the Judgment in C.C.No.52198/2018, photo copy of Order sheet in C.C.No.51537/2019, copy of Order sheet in C.C.No.53994/2016, photo copy of Order in Crl.Misc No.25291/2022.

8. Perused the materials on record, the following points arise for my determination.

C.C.No.58005/2018 Whether the complaint proves beyond all reasonable doubt that, accused has committed an o/p/u/s 138 of Negotiable Instruments Act?"

What Order?

9. My findings to the above points are follows;

Point No1: In the Affirmative.

Point No.2: As per final order for forgoing;

REASONS

10. POINT No:1: The accused denied alleged borrowal of Rs.20,00,000/□by way of cash from the complainant on 06.09.2016 as well as issuance of cheques bearing No.031392, 031393, 031394 and 031395 for sum of Rs.1,00,000/□each, in favour of complainant towards discharge of allegedly enforceable debt as well as the service of demand notice, hence, it is burden on the complainant to prove the debt liability claimed as well as issuance of cheques towards partial discharge of alleged liability and the compliance of Sec.138(a) to (c) of N.I Act.

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11. The complainant in order to prove his case got examined himself as PW1, he almost reiterated the complainant averments in his examination chief affidavit, the accused subjected the PW1 for cross examination, wherein, he firstly denied the service of demand notice Ex.P13 by suggesting that, the address of the accused mentioned in cause title, legal notice as well as agreement Ex.P17 and 18 is not that of him, accordingly, the notice was not delivered to him, despite Ex.P16 discloses otherwise to his contention, but, the summons issued by this court admittedly duly served upon the accused issued to very same address mentioned in cause title as well as legal notice, further, the Ex.D1 Adhaar produced by the accused discloses very same area or locality i.e., Fernville apartment situated at Infantry road Bangalore, therefore, Ex.D1 produced by the accused does not helpful to his defence that, demand notice was not served to him since, the court summons was issued to the very same address was duly served upon the accused, and the identity i.e., name of the accused as well as his father and the apartment name not disputed by the accused, hence, the complainant has complied Sec.138(a) to (c) of N.I Act.

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12. Further, the complainant in order to prove the loan transaction allegedly held on 06.09.2016 has relied upon Ex.P1 to 4 cheques and certified copies of loan agreements dated 06.09.2016 as well as affidavit, which are mainly marked in C.C No.58004/2018 has stated that, the accused in the month of September 2016 approached him for hand loan of Rs.20,00,000/□for his business purpose as well as to clear certain debts, accordingly, considering the acquaintance with the accused, he claims to have paid sum of Rs.20,00,000/□by way of cash, in turn, the accused acknowledged the receipt of Rs.20,00,000/□and agreed to repay sum of Rs.10,00,000/□on or before 2018 and issued Ex.P1 to 4 cheques, on the same day towards partial discharge of loan amount of Rs.4,00,000/□by executing an hand loan agreement as well as affidavit to that effect, as per Ex.P17 to 19, however, the accused denied the loan transaction as well as execution of Ex.P17 to 19, but, specifically contended that, the complainant on 06.09.2019 forcibly collected his 8 to 9 signed blank cheques near Sub□Registrar office situated at HRBR layout, out of it, Ex.P1 to 4 have been misused and filed this false case.

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13. So, very contention of the accused clearly stands proved that, accused does not disputed cheques relied by the complainant Ex.P1 to 4 are not that of him, likewise, in the cross examination of DW1 accused admitted that, Ex.P1 to 4 and signatures found thereon are belongs to him, so, as rightly argued by the counsel for the complainant that, the accused does not disputed the cheques and signature found thereon are belongs to the accused, so, even though the accused denied the loan transaction and existence of legally enforceable debt, in view of admission presumption U/S 139 r/w 118(a) of N.I Act shall be drawn infavour of the complainant, in view of decision of Hon'ble Apex Court in between Tryambak Hegde Vs Sripad, wherein, the Hon'ble Apex Court by reaffirming the ratio laid down by the Hon'ble Constitutional Bench in Rangappa Vs. Mohan has held that;

"Once the cheque relates to the account of the accused and he accept and admit the signature on the said cheque, then initial presumption as contemplated under Sec.139 of N.I. Act has to be raised by the court in C.C.No.58005/2018 favour of the complainant. The presumption referred to in Sec.139 of N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption."

14. Accordingly, even though the accused denied the existence of legally enforceable debt, but, in view of presumption, it has to be presumed that, the complainant had received all the 4 cheques towards discharge of legally enforceable debt and for consideration, accordingly, initial presumption has been drawn in favour of complainant, however, the presumption drawn infavour of the complainant u/Sec. 139 r/w 118(a) of N.I Act is a rebuttable in nature, therefore, the onus is on the accused to rebut the presumption drawn infavour of the complainant U/S 139 r/w 118(a) of N.I Act and standard of proof is preponderance of probabilities the Hon'ble Apex Court has laid down the ratio for rebutting the presumption in Sumethi Viz Vs. M/s. Paramount Tech. Fab. Industries, held that, C.C.No.58005/2018 " To disprove the presumption, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt didn't exist or their non□existence was so probable that a prudent man would under the

circumstances of the case, act upon the plea that they didn't exist".

15. The accused himself argued party in person and also submitted his written submission, he mainly argued that, by referring to a decision of Metropolitan Magistrate Southeast Delhi in CT cases/622113/16 that, an unaccounted cash is illegal transactions as such in the present case in the complainant claims to have paid a sum of Rs.20,00,000/□by way of cash, but, not disclosed in ITR, as such, it is an illegal transaction, therefore, there was no existence of legally enforceable liability, in addition to that, he also argued by referring to decision of Hon'ble Delhi High Court in Kulvindersing Vs. Kafeel Ahammed 2013(2) AD Delhi 81 that, any hand loan exceeding Rs.20,000/□should be made through cheques C.C.No.58005/2018 or account, therefore, in the present case Rs.20,00,000/□is contravention of Sec.269 SS of IT Act and similar view of also taken in another case Vipul Kumar Guptha case, therefore, any transaction in contravention of Sec.269 SS of IT Act is a illegal transaction, accordingly, the claimed debt is not in existence.

16. That apart, the accused mainly challenged the financial capacity, as the complainant stated that, his annual income is Rs.5,00,000/□and he paid tax to that effect, but, ITR not produced and the alleged advancement of loan is not disclosed in ITR, as well as not produced statement of account to show his financial capacity during 2016, in addition to that, the complainant himself had borrowed loans from many persons and issued cheques, this Hon'ble court has convicted complainant in C.C. 61112/2017 for sum of Rs.8,00,000/□on 15.09.2021, further, one Promod had also filed cheque bounce case against the complainant in C.C. 52198/2018 on the file of Hon'ble 14 th ACMM, it was ended in settlement of Rs.7,85,000/□likewise, one John Peter had also filed cheque bounce case against the complainant in C.C. 51537/2018 before the Hon'ble 14th ACMM in that C.C.No.58005/2018 also the complainant is convicted for sum of Rs.4,00,000/□apart from above one more cheque bounce case also filed against the complainant by one Arun Kumar in C.C.53994/2016, wherein, the complainant has been convicted for sum of Rs.11,63,700/□and non production of statement of account, accordingly, the complainant had no financial capacity to advance huge sum of Rs.20,00,000/□by relying upon decision of Honble Apex Court i.e., Basavalingappa Vs. Mudibasappa, in addition to that, the accused also argued that, there is inconsistency with respect to agreement, produced by the complainant as well as witnesses evidence, further, the complainant not proved close association with the accused to advanced huge sum of Rs.20,00,000/□when the accused met in a Hotel just 6 month before from the date of advancement of amount, accordingly, urged that, he discharged his onus by probablising his defence, hence prayed to acquit him from the charges.

17. Per contra, the learned counsel for the complainant argued that, the accused admitted his signature, found on each page of loan agreements as well as affidavit, as such, the evidence in contrary to the terms and conditions of C.C.No.58005/2018 written agreements cannot be considered as there is clear recital about receipt of Rs.20,00,000/□by way of cash as well as issuance of cheque in question, on these ground, urged that, the complainant not only produced the cheques to prove the existence of the claimed debt he also produced loan agreement as well as an affidavit executed by the accused, that apart, the accused admittedly not taken action against the complainant, even though he claimed that, complainant and his family members have forcibly obtained his 8 to 9 cheques as well as signatures on stamp paper, as such, the defence of the accused

can not be acceptable.

18. Considering the rival contentions with the materials on record, the accused firstly taken specific contention that on 06.09.2016 the complainant and his henchmen had detained him wrongfully for a period of four hours in his car near Sub Registrar office at HBR Layout and forcibly obtained his signatures on repayment agreements Ex.P17 and 18 as well as 8 to 10 signed blank cheques from him, however, to substantiate alleged collection of cheques signed stamp paper, the accused admittedly not taken legal action against the complainant till date, that C.C.No.58005/2018 apart, the accused admitted the contents of the cheques were written by him, however, he claimed that, due to fear he wrote all the cheques, so, it is crystal clear that, accused is the author of the cheques, but, he claimed due to fear he did not choose to give complaint to the Police or stop payment instruction to his banker, so, despite the alleged collection of cheques, signed stamp papers, the accused did not choose to take legal action, even though, he being a business as well as prudent man, therefore, in absence of proof, the defence contentions of the accused that, complainant had collected Ex.P1 to 4 cheques by force can not be acceptable, as no prudent man would keep quite without taking any action, despite knowing the fact that, his signed blank cheques and stamp papers, with the custody of the complainant, that too, not one or two, but, 8 to 9 signed blank cheques, 3 signed blank stamp papers.

19. Further, the accused challenged the financial capacity of the complainant to advance huge sum of R.20,00,000/□ by way of cash on the ground that, as per Ex.D3 & 4 cheque bounce cases were pending against the complainant, and as per Ex.D3 this court has convicted C.C.No.58005/2018 the accused, which clearly proved his defence, that apart, the complainant not produced the statement of account to show that he had cash of Rs.20,00,000/□ on 06.09.2016, in addition to that, the complainant in his evidence stated that, his monthly income 5 to 6 lakhs but, he claims to have paid tax for Rs.5,00,000/□ and he also admitted that he does not shown the alleged transaction in ITR, therefore, it is unaccounted transaction which is illegal and also contravention of Sec.269 of ITR, accordingly, he claimed that, the claimed debt is not a legally enforceable debt and it was not in existence, the accused in support of his contention has relied upon decision of Hon'ble Apex Court i.e., Basavalingappa Vs. Mudibasappa, decision of Metropolitan Magistrate South East Delhi in CT cases 622113/2016.

20. On this specific contention, the court meticulously examined the materials on record, it is well settled law that, rightly as argued by accused by relying upon decision of Hon'ble Apex Court Basavalingappa Vs. Mudibasappa that, whenever, the accused challenges the financial capacity the complainant required to prove his financial capability to advance the alleged amount, herein C.C.No.58005/2018 this case the complainant has claimed to have advanced Rs.20,00,000/□ to the accused on 06.09.2016 by way of cash, it is not a meager/paltry amount, however, the accused admitted the signatures found on loan agreements as well as an affidavit produced by the complainant, but, the accused claims that, the stamp papers as well as 10 cheques with contents, written in his own hand writing were collected by the complainant forcibly, but, as held supra, the said incident not been proved by the accused and also admittedly not taken any legal action against the complainant, even though it was allegedly occurred on 06.09.2016, therefore, the said defence nothing but an after thought.

21. Coming to the financial capability of the complainant has not produced his statement of account or any documents to prove the financial sources to advance huge sum of Rs.20,00,000/□ however, the accused in contrary to his defence specifically suggested in the cross examination of PW1 that, complainant is doing money lending business and charging interest at the rate of 10% p.m., that apart, also suggested the complainant has filed 15 cheque bounce cases against others, which clearly C.C.No.58005/2018 stands proved the financial sources of the complainant as well as advancement of loans to many others, as such, the accused can not approbate and reprobate, in other words, the accused can not blow hot and cold in one breath, as such, though the complainant not produced statement of account, as well as ITR which does not fatal to the case of the complainant, since, the accused himself has 3 to 4 times suggested the PW1 that, "complainant is doing money lending business financing people for higher interest." Therefore, the contention of financial incapability of the complainant cannot be acceptable, that apart, the accused by relying upon Ex.D3 the conviction recorded by this court against the complainant herein has argued that, the complainant himself had borrowed loans from V.Rama Murthy, M.Arun Kumar in C.C.53994/2016, C.C.51537/2019, C.C.52198/2018, therefore, the complainant was not in position to advance huge sum of Rs.20,00,000/□ as such, the advancement of loan of Rs.20,00,000/□ is doubtful in nature, however, on careful perusal of Ex.D3 and other photocopies of first and last sheet of judgments, which clearly discloses that, as per Ex.D3 this court recorded conviction and directed the complainant to pay compensation of Rs.2,55,000/□ C.C.No.58005/2018 however, the complainant has challenged the conviction recorded by this court, further, in C.C.52198/2018 the complainant has settled case by paying Rs.7,80,000/□ with respect to transaction held in the year 2013, all these cases admitted by the complainant, which clearly discloses the complainant also capable to clear all the his dues and liabilities, since, admittedly the complainant doing real estate business in the said field borrowing the loan as well as advancing the loans is common and it is a regular process which does not itself is not a ground to consider the complainant was not financially capable to advance the loan to others, since, the accused himself taken contention that, the complainant has financed loans to many other for an interest, as such, the conviction recorded by this court as well as other two courts is not is not at all fatal the case of the complainant.

22. Further, the accused by relying upon a decision of Metropolitan Magistrate South East Delhi in CT Cases 622113/2016 argued that, by referring to Sec.269 SS of IT Act that, complainant allegedly advanced hand loan of Rs.20,00,000/□ but, as per Sec. 269 SS of IT Act advancing the hand loan more than sum of Rs.20,000/□ in C.C.No.58005/2018 cash is illegal and unaccounted money, as such, it is illegal transaction, therefore, it is not a legally enforceable debt, does not attract Sec.138 of N.I Act, he further contended that, complainant admittedly not shown the alleged transaction in his ITR, even though, he admitted he was an income tax assessee, hence, he claimed that, it is an illegal transaction, but, the decision relied by Metropolitan Magistrate is confined to the fact and circumstances of that case, that apart, it is not binding on this court, moreover, the accused simply asked the complainant that, whether, he disclosed the advancement of loan in ITR, but, that itself does not ipso facto ground to disbelieve the case of the complainant, the accused further required to be posed relevant questions to that effect that, what are the income required to be disclosed in IT, at this stage, it is worth to note decision of Hon'ble High Court of Karnataka Yogesh Poojari V/s K.Shankar Bhatt has relied that;

"mere making a suggestion to the complainant that, he he has not disclosed the alleged loan transaction in his income tax returns or eliciting the statement from C.C.No.58005/2018 the complainant that, he has not disclosed the alleged loan transaction in his income tax returns by itself is not sufficient, it is also required for the accused to establish that the complainant is an income tax assessee required to be an assessee and that the nature of his income tax assessment and the income tax returns which he filed, requires him to disclose the alleged transaction or the liability in question in the absence of eliciting those details, by merely making a suggestion that, the alleged debt or liability in question. In the absence of eliciting those details. By merely making a suggestion that the alleged debt or liability. Has not been reflected in the income tax returns would not by itself suffice to draw an adverse inference and to hold that there was no legally enforceable debt or the presumption standing in favour of the complainant and as successfully rebutted by the accused'.

C.C.No.58005/2018 Therefore, non disclosure of alleged transaction in ITR is not fatal to the case of complainant, further, mere advancement of loan exceeding sum of Rs.20,000/- by way of cash though it's contravention of Sec.269 SS of IT Act, but, i.e., not an illegal and the matter required to be considered by the IT Department, if at all the contravention of 269 SS of IT Act, hence, that can not be concluded that, the transaction claimed herein is illegal.

23. Further, as held supra the complainant to prove the existence of liability, not only produced cheques in question, but, also produced 2 agreements and affidavit at Ex.P17 to 19, the accused admitted the signature found on Ex.P17 to 19, however, he contended that, the agreements Ex.P17 and 18 are not genuine documents as his signatures obtained on blank stamp papers and there after the contents of agreements were typed, therefore, they cannot be considered as they are created, but, on careful perusal of Ex.P17 to 19 which clearly discloses stamp papers of Ex.P17 and 18 were purchased by the complainant and stamp paper of Ex.P19 an affidavit purchased by the accused herein, that too, at the same time and station at Kalyan Nagar, so, the stamp papers of C.C.No.58005/2018 Ex.P17 to 19 were purchased by the complainant as well as the accused, further, the recital of Ex.P19 affidavit clearly discloses that, the accused had acknowledged the receipt of Rs.20,00,000/- from the complainant and issued a cheque bearing No.031388 (which is subject matter of C.C.No.58004/2018) towards partial discharge of loan amount, in addition to that, the accused admitted the signature found on each page of both the agreements, however, he denied the contents of loan agreements, but, what for he executed Ex.P19 affidavit affirming the fact of receipt of Rs.20,00,000/- not been explained, in absence of that the execution of Ex.17 to 19 can not be doubted, as the agreements does not required compulsory attestation, as such, in view of admission of accused in each page of Ex.P17 to 19 clearly establishes the fact of acknowledging the receipt of Rs.20,00,000/- by the accused from the complainant and issued cheques in question towards partial discharge of loan amount the complainant also proved the execution of Ex.P17 to 19 which corroborates the financial transaction held in between the parties therefore, the genuineness of agreements can not be doubted.

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24. So, considering the entire materials on record, it clearly reveals that, though the accused denied the hand loan transaction claimed by the complainant on 06.09.2016, but, admitted Ex.P1 to 4 cheques as well as signatures found thereon is of him and also the contents of the cheques is in his own hand writing, however, he contended that, complainant had forcibly collected signed blank cheques, signed stamp papers from him on 06.09.2016, but, admittedly, not taken any legal action against the complainant for alleged collection of his 8 to 10 signed blank cheques as well as signed stamp papers and the accused is B.com graduate but not a layman, he claims to have not taken legal action because of fear as he got 2 minor children, but, that can not be acceptable, since the complainant has claimed huge amount, even then, the accused kept quite, which clearly indicates the defence of the accused is nothing but an after thought to escape from the liability.

25. Further, as held supra, the accused challenged the financial capacity in contrary to his own suggestion made during the course of cross examination of PW1 that, complainant is a money lender, had advanced loans to C.C.No.58005/2018 many persons for an interest and charging interest at 10% p.m., which clearly proved the capability of the complainant to advance the loan, in addition to that, the complainant to strengthen his case also produced Ex.P17 and 18 loan agreements, the signatures found on each page of the agreements have been admitted by the accused, but, denied the execution of agreements, on the ground that, his signatures have been forcibly obtained by the complainant, but, no action have been taken against the complainant, that apart, Ex.P19 affidavit clearly proved the acknowledgment of Rs.20,00,000/□by the accused, the stamp paper of Ex.P19 purchased by the accused himself, but, in contrary, the accused contended that, the complainant might have purchased stamp papers Ex.P17 to 19 advancely to obtain his signatures forcibly, therefore, the execution of Ex.P17 to 19 cannot be doubted, as it clearly corroborates the loan transaction held between the parties as well as issuance of Ex.P1 to 4 cheques towards repayment of loan amount.

26. Accordingly, though the accused examined himself as DW1 and cross examined the PW1 but, nothing has brought out on record to prove that, the debt claimed by C.C.No.58005/2018 the complainant did not exist and the accused has not drawn cheques Ex.P1 to 4 towards discharge of legally enforceable debt, as such, the accused failed to brought out the probable materials on record to rebut the presumption drawn infavour of the complainant either non existence of claimed debt or the cheques were not drawn by the accused for the consideration, so, in absence of that, the complainant has undoubtedly proved the liability i.e., borrowal of Rs.20,00,000/□by way of cash, same is acknowledged by the accused by executing agreements Ex.P17 and 18 and also affirmed the same by way of an affidavit Ex.P19, despite of it, the accused denied the loan transaction in contrary to recitals of Ex.P17 to 19, which are written agreements, therefore, as per Sec.92 of Indian Evidence Act oral evidence, in contrary to the terms and conditions or recitals of a written agreements can not be considered, hence, the complainant has undoubtedly proved the issuance of Ex.P1 to 4 towards partial discharge of loan of Rs.20,00,000/□borrowed from him on 06.09.2016 by executing repayment agreements, accordingly, the accused who failed to pay the cheques amount even after C.C.No.58005/2018 service of demand notice is deserved to be convicted, hence, accused is found guilty of o/p/u/s 138 of N.I. Act.

27. So, far as sentence and compensation is concern, an o/p/u/s.138 of N.I. Act, is a civil wrong and compensatory in nature, punitive is secondary, considering, the above settled principal of law with facts and circumstances of the case, which clearly reveals that, as per Ex.P17 and 18 the accused agreed to be paid a nominal interest, but, rate of interest specifically not been mentioned, therefore considering the nature of transaction, duration of pendency, litigation expenses, I am opinion that, if sentence of fine of Rs.5,05,000/□ is imposed that would meet the ends of justice, accordingly, the accused is hereby sentenced to pay a fine of Rs.5,05,000/□ out of that, the complainant is entitled for sum of Rs.5,00,000/□ as a compensation as per Sec.357(1) of Cr.P.C., remaining amount of Rs.5,000/□ is to be appropriated to the state, in case of default, the accused shall under go simple imprisonment for a period of 6 months. Accordingly, I answered the above point in "Affirmative".

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28. Point No.2: In view of above finding to Point No.1, I proceed to pass following;

ORDER Acting under section 255(2) of Criminal Procedure Code, the accused is convicted for an offence punishable U/s 138 of Negotiable Instrument Act.

The accused is sentenced to pay a fine of Rs.5,05,000/□ (Rupees Five lakh five thousand only) in default, the accused shall undergo simple imprisonment for a period of six months. Out of the fine amount received, Rs.5,000/□ is to be appropriated to the State and by way of compensation as per the provision u/Sec.357(1) of Cr.P.C., the complainant is entitled for Rs.5,00,000/□

The bail bond and surety bond of the accused shall stand cancelled.

C.C.No.58005/2018 Office is directed to furnish a free copy of the judgment to the accused.

(Dictated to the Stenographer transcribed and typed by her, corrected, signed and then pronounced by me in the open court, on this the 28th day of November, 2022) (M.Vijay), XXXIII ACMM, BENGALURU.

ANNEXURE

1. Witnesses examined on behalf of Complainant:

P.W.1 : Sri. Krishna Murthy @ Gopi

2. Documents marked on behalf of complainant:

Ex.P.1 to 4	:	Original Cheques
Ex.P.1(a) to 4(a)	:	Signatures of the accused
Ex.P.5 to 12	:	Bank return memos
Ex.P.13	:	Office copy of the legal notice
Ex.P.14	:	Postal receipt
Ex.P.15	:	Courier receipt
Ex.P.16	:	Postal track

3. Witnesses examined on behalf of Accused:

NIL C.C.No.58005/2018

4. Documents marked on behalf of Accused:

NIL (M.Vijay), XXXIII ACMM, BENGALURU.