

Dr.Vishwanath Siddalingaiah vs Girisha.K on 20 February, 2021

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

Dated this the 20th day of February - 2021

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

C.C.NO.706/2018

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : Dr.Vishwanath Siddalingaiah,
S/o.M.S.Siddalingaiah,
Aged about 44 years,
R/at No.1165, 4th A Main Road,
13th Cross, M.C.Layout,
Vijayanagar,
Bengaluru-40.

Rep. By his GPA Holder,
M.S.Siddalingaiah.

(Rep. by Sri.D.Hanumantharayappa, Adv.)

Accused : V/S
Girisha.K,
S/o.Krishnappa,
Aged about 35 years,
R/at. No.285, 6th C Main Road,
15th D Cross, 2nd Stage,
2nd Phase, Mahalakshmi Layout,
Bengaluru-40.

(Rep.by Sri.Mahesh Kiran Shetty, Adv.)

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

PLEAD OF THE ACCUSED : Not guilty.

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FINAL ORDER : Accused is Acquitted.

DATE OF ORDER : 20.02.2021.

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

JUDGMENT

The complainant though his GPA Holder by name M.S.Siddalingaiah has presented the instant complaint against the accused on 08.12.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.10 lakhs.

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

The complainant has pleaded that, he has executed a General Power of Attorney in favour of his father by name M.S.Siddalingaiah in respect of 2 cheques bearing Nos.000067 and 000066 dated:10.09.2017 and 15.10.2017 for total sum of Rs.10 lakhs issued by accused in his favour towards the loan transaction held between them. Since, the father of the complainant is well aware of the said loan transaction and the complainant is moving to UK and he is not in a position to attend the case in person, hence, got executed the General Power of Attorney.

Judgment 3 C.C.No.706/2018 The complainant has averred that, the accused had approached the complainant during the 1st week of November, 2015 for a financial assistance to the tune of Rs.10 lakhs. As the accused is a close relative of the accused, has agreed to pay the said loan amount to the accused and accordingly, by way of cheque for the purpose of purchase the property bearing No.70, 4th Cross, Vijayagiri Nivasa, Concorde Garden City Rajarajeshwarinagar, Bengaluru and the accused got encashed the said cheque on 17.11.2015 and assured to repay the said loan amount within one month.

The complainant has further alleged that, accused has not repaid the loan amount to the complainant within the stipulated period as agreed by him and sought for some time to repay the said loan amount. By considering his request, the complainant has agreed for the same. Subsequently, when the complainant has approached and requested the accused on several occasion to repay the said loan amount, accused gave multiple reasons and sought more time to clear the loan amount. Further, the accused told him that, his amount had been held up with some third person and he is in financial stringency. Since, the accused close relative of the complainant by taking into consideration of the same, the complainant has agreed for the same.

Judgment 4 C.C.No.706/2018 The complainant has further contended that, subsequently, inspite of repeated requests and demands, during the 1st week of August, 2017, the accused got issued 2 cheques bearing Nos.000067 and 000066 respectively dated:10.09.2017 and 15.10.2017 for sum of Rs.5 lakhs each, drawn on HDFC Bank, Mahalakshmiipuram Branch, Bengaluru, in favour of complainant towards discharge of legal debt and assured to honour the same on the date of their presentation.

The complainant has further alleged that, infact the accused had agreed to pay the interest at the rate of 2% p.m. on the said loan amount. Thereafter, in the 1st week of September, 2017, the accused had contacted the complainant and requested him not to present the said cheques for encashment, but requested to present them during the last week of October, 2017, however, with no other option, the complainant had agreed for the same.

The complainant has further contended that, thereafter, on the instructions of the accused, he presented the said 2 cheques for encashment through his banker viz., Axis Bank, Vijayanagar Branch, Bengaluru. But utter shock and dismay to the complainant, the said cheques came to be returned with endorsement "Payment Stopped by Drawer" on 02.11.2017 and Judgment 5 C.C.No.706/2018 ultimately, his banker was intimated to him on the very same day. Thereafter, calling upon the accused to pay the cheques amount, he got issued legal notice through his counsel by way of Courier as well as R.P.A.D., on 09.11.2017, the same came to be served on the accused on 11.11.2017. Thereafter, the accused had sent untenable reply, but not paid the amount covered under the cheques to the complainant. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After receipt of the private complaint, my predecessor in office took the cognizance and got registered the PCR and recorded the sworn statement. Since made out prima-facie grounds to proceed against the accused for the alleged offence, got issued process.

4. In response to the summons, the accused appeared through his counsel and obtained bail. As required, complaint copy was supplied to the accused. Thereafter, accusation was read over and explained to him, wherein, he denied the same and claimed to have the defence.

5. To prove the case of the complainant, he choosen to examined his General Power of Attorney Holder by name Judgment 6 C.C.No.706/2018 M.S.Siddalingaiah, who is the father of complainant herein as PW.1 and through him got marked Exs.P1 to P13. The PW.1 was subjected for cross-examination by the advocate for the accused.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and answer given by him was recorded. In support of the defence, the accused himself was examined as DW.1 and got marked Exs.D1 to D3 and also subjected for cross- examination by the advocate for the complainant.

7. Both side counsels have addressed their oral arguments.

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

- 1) Whether the complainant has proves beyond the reasonable doubt that, the accused had issued the Exs.P1 and P2 cheques bearing Nos.000067 and 000066, dated:10.09.2017 and 15.10.2017 for sum of Rs.5,00,000/- each, in all Rs.10 lakhs, drawn on HDFC Bank, Mahalakshmpuram Branch, Bengaluru for discharge of

legally recoverable debt?

2) Whether the complainant has proves the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act?

3) What Order?

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

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

REASONS

-: UNDISPUTED FACTS :-

10. The fact that, the knowingness of the complainant and accused as well as GPA holder of the complainant, being relatives of each other is not in dispute. The fact that, the cause title addresses of the complainant and accused as made mentioned in the complaint is not in dispute. The fact that, the accused through the complainant herein by way of cheque got received sum of Rs.10 lakhs as hand loan, for purchase the property is not in dispute. The fact that, questioned cheques at Exs.P1 and P2 belongs to the accused is not in dispute.

The fact that, as found in Exs.D1 and D2 portion of amount of Rs.90,000/- as reflected therein got paid by the accused to the account of complainant herein very particularly during March, 2016, on 14.06.2016, 07.08.2016 for Rs.20,000/-, Rs.20,000/- and Rs.50,000/- respectively as found in Ex.D1 to 3 in all paid Judgment 8 C.C.No.706/2018 Rs.90,000/- against the loan borrowed by the accused from the complainant is not in dispute.

The fact that, after came to dishonour of the Exs.P1 and P2 cheques as per the banker slip, the complainant got issued legal notice to the accused and in turn, the accused as found in Ex.P11 caused reply notice through his counsel on 04.12.2017 is not in dispute.

11. POINT NOs.1 and 2: Since both the points are connected with each other, they have taken together for common discussion in order to avoid repetition of facts.

The PW.1 to prove his case choosen to examined himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P13(a), they are:

a) Ex.P1 is the General Power of Attorney dated:27.11.2017 executed by complainant herein in favour of his father, who is the GPA Holder herein by name M.S.Siddalingaiah.

b) Exs.P2 and P3 are the cheques bearing Nos.000067 and 000066 issued by the accused for sum of Rs.5 lakhs each dated:10.09.2017 and 15.10.2017, drawn on HDFC Bank, Mahalakshmipuram Branch, Bengaluru

c) Exs.P2(a) and P3(a) are the alleged signatures of accused.

d)	Exs.P4 and P5	are	the	Bank	Memos
	dated:02.11.2017.				
Judgment		9			C.C.No.706/2018

e) Ex.P6 is the Legal Notice dated:09.11.2017.

f) Ex.P7 is the Postal receipt.

g) Ex.P8 is the postal acknowledgment card.

h) Ex.P9 is the professional courier receipt.

i) Ex.P10 is the copy of consignment details pertaining to the Professional Couriers.

j) Ex.P11 is the reply notice dated:04.12.2017 issued by accused through his counsel to the complainant counsel.

k) Ex.P12 is the statement of account pertaining to the complainant for the period from 01.11.2015 to 01.12.2015 issued by HDFC Bank, Vijayanagar Branch, Bengaluru.

l) Ex.P13 is the private complaint and

m) Ex.P13(a) is the signature of PW.1.

The PW.1 was subjected to the cross-examination by the advocate for the accused.

12. After detailed cross-examination done by the advocate for accused to the PW.1, the complainant got closed his side. Thereafter, whatever the incriminating evidence made against the accused was read over and explained to him as required under Section 313 of Cr.P.C., wherein, he denied the same and gave his statement that:

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Judgment 10 50,000/-
C.C.No.706/2018

8,50,000/- ,

1,50,000/- . ,

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13. In order to prove the defence of the accused, the accused himself chosen to entered into witness box and examined orally as DW.1 on oath. To prove the contents of deposition, the accused has deposed that, during November, 2015 he had borrowed the loan of Rs.10 lakhs from the complainant on the security of signed blank 2 cheques as well as agreement. The said loan amount was repaid by the accused by way of making payment through cash or through his bank account with interest to the complainant entirely. That too, the complainant has not returned the security documents such as, signed blank 2 cheques as well as agreement, but demanded more interest from the accused. Since the accused has not paid more interest to the complainant by misusing the security blank cheques, the complainant has filed the present case by mentioning more amount, in that regard, through his advocate he caused necessary reply notice to the complainant. In order to show that, he got transferred money to the account of the complainant through his bank, he got produced the documents at Exs.D1 to Judgment 11 C.C.No.706/2018 D3. Through the said documents he got transferred Rs.90,000/- through his bank account and rest of money at the request of complainant, got paid in cash and no amount is due or payable to the complainant.

14. That apart the accused also chosen to produced the documents at Exs.D1 to D3. They are:

a) Exs.D1 to D3 are the bank statements of the accused pertaining to his HDFC Bank.

The DW.1 was subjected to the cross-examination by the advocate for the complainant. Apart from lead defence evidence, the DW.1 through his counsel has produced the citation and relied upon same. It is:

a) Crl.A.No.855 of 2010

15. While appreciate the materials on records and evidence, this court has gone through the decision stated supra apart from the other relevant decisions referred

herein below.

16. On going through the rival contentions of the parties, it made clear that, the accused in this case has seriously attack on the claim put forth by the complainant. On going through the materials it discloses that, the GPA Holder of complainant has brought the present case against the accused, based on the Judgment 12 C.C.No.706/2018 questioned cheques at Exs.P2 and P3. Therefore, it needs to draw the presumption as per Sections 118 and 139 of Negotiable Instruments Act. As per Section 118(g), it shall be presume that, unless the contrary is prove, the holder of the cheques, the complainant received the cheques for discharge of legal liability.

This presumption is rebuttable. Accordingly, Sections 139 and 138 of Negotiable Instruments Act, it also requires to presume that, cheques were drawn for discharge of liability of drawer, it is presumption under law. Therefore, it made clear that, by virtue of the above said sections stated, it made clear that, it requires to draw statutory presumption in favour of complainant that, in respect of discharge of existence of legally recoverable debt, the accused got issued the Exs.P2 and P3-cheques unless and until contrary prove. Therefore, as per those sections, it made clear that, it is the initial onus on the accused to prove his defense based on the principles of 'Preponderance of Probabilities'.

It is require to cite the decision reported in AIR 2010 SCC 1898, in a case between Rangappa V/s Mohan. Wherein, the Hon'ble Apex Court pleased to observe that, the obligation on the prosecution may be discharged with the help of presumption of law or facts, unless the accused adduce evidence showing the reasonable probability of non-existence or presumed fact.

Judgment 13 C.C.No.706/2018 Wherein also, it was pleased to observed that, the accused can prove the non-existence of consideration by raising probable defence. If accused is able to discharge the initial onus of proof of showing that, the existing of consideration was improbably or adverse or the same was illegal, the onus would shift to the complainant, who will be obliged to prove it as a matter of fact, and upon its failure to prove would dis-entitle his to grant the relief on the basis of Negotiable Instruments Act. The burden on the accused of proving the non-existence of consideration can either direct or by bringing on record the preponderance of probabilities by referring to the circumstances upon which, he relies could bare denial of passing consideration apparently does not appears to be any defence. Something which is probable has to be brought on record for getting benefit of shifting the onus of proving to the complainant. To disprove the presumption, the accused has to bring on record such facts and circumstances upon the consideration of which the court may either believe that, consideration did not exist or its non-existence was so probable that, a prudent man would, under the circumstances of the case, act upon that, it did not exist. Therefore, it made clear that, the accused need to take the probable defence mere denial is not enough.

Judgment 14 C.C.No.706/2018 That apart, in a decision reported in ILR 2006 KAR 4672, in a case between J.Ramaraj V/s Hiyaz Khan. Wherein, it was pleased to observed that, mere denial of issuing cheque, whether is sufficient to discharge the initial burden is to be looked into. In that dictum, it

was pleased to held that, mere denial of issuing cheques would not be sufficient as it is time and again noted that, once the cheque issued duly signed by the accused, the presumption goes against him as per Section 139 of Negotiable Instruments Act.

17. On going through the provisions referred supra, it made clear that, whereas the presumption must prove that, guilt of accused beyond the reasonable doubt. The standard or proof so as to prove a defence on the part of the accused is 'Preponderance of Probabilities'. Inference of 'Preponderance of Probabilities' can be drawn, not only from the materials brought on record by parties, but also by reference to the circumstances upon which he relies.

18. On going through the above authorities as well as dictums, it made clear that, it is the initial burden on the accused to prove his probable defence in order to rebut the statutory presumption as well as the case put forth by the complainant. In this case, the Judgment 15 C.C.No.706/2018 accused has clearly admitted the borrowing loan of Rs.10 lakhs from the complainant by means of cheque on 17.11.2015. The accused has clearly denied that, the questioned cheques at Exs.P1 and P2 were not issued by him for payment of Rs.10 lakhs payable to the complainant, but it was the signed blank cheques issued by him as security to the complainant. As per undertaken made by the accused to the complainant, by way of account as well as cash the accused got repaid sum of Rs.8,50,000/- to the complainant and he was in due of Rs.1,50,000/-. In the evidence of DW.1 stated that, even he got cleared the whole sum with interest to the complainant, but he conceded the said fact brought the present case by demanding more money by misusing his 2 signed blank cheques and security agreement. The DW.1 has clearly contended that, on the one hand he admitted the borrowing of loan from the complainant on 17.11.2015 through account payee cheque. On the other hand, he taken up the defence stating that, 2 signed blank cheques and security agreement were given by him to the complainant as security. Despite, he cleared the said loan, the complainant without returning the said documents, by demanding more interest, misusing those cheques and presented and got dishonoured. Thereby, the accused attack on the claim of complainant has Judgment 16 C.C.No.706/2018 specifically contended, whatever the amount so he borrowed, got repaid to the complainant through account as well as by way of cash in between the period December, 2015 till August, 2017.

19. No doubt, it is initial burden on the accused to prove his probable defence and rebut the case of complainant as well as statutory presumption. It is significant fact to note that, immediately after receipt of the demand notice issued by the complainant as per Ex.P6, the accused through his counsel caused reply as per Ex.P11 on 04.12.2017 and strongly denied the theory put forth by the complainant and discloses altogether different theory and denied the alleged liability covered under the cheques. Wherein, he categorically contended that, against the borrowing loan of Rs.10 lakhs he got issued 2 signed blank cheques bearing Nos.000067 and 000066, which are none other than questioned cheques herein at Exs.P1 and P2 as well as blank stamp paper as security and he started paying installments every month till the date, he got repaid Rs.8,50,000/-. In the reply notice the accused has specifically contended that, against the loan of Rs.10 lakhs he got paid Rs.8,50,000/-. More specifically contended, questioned cheques signed in blank were given by him to the complainant as a security together with blank stamp paper. The said reply notice clearly revealed the defence taken Judgment 17 C.C.No.706/2018 by the accused, as to the allegation of repayment of

loan to the complainant.

20. On careful scanning of the complaint pleading, legal notice as well as affidavit evidence of PW.1, though the PW.1 being the father of the complainant by contending that, he is well aware of the loan transaction inter-se held between the complainant and accused, nothing has whispered in the present case as to the repayment of loan made by accused as urged in the line of reply notice of the accused. Even in the witness box he against the suggestion made by complainant, straightaway deposed that:

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Judgment 18 C.C.No.706/2018

21. The accused, whatever the defence he taken were suggested to PW.1 during his cross-examination. Wherein, he specifically contended that, as found in Ex.P12, which is none other than the HDFC Bank Statement stood in the name of complainant pertaining to the period from 01.11.2015 to 01.12.2015. On the same, the accused counsel were questioned him that, as per the said documents what amount was repaid by the accused, the PW.1 has deposed, the accused has not repaid any amount to complainant. Thereby, the PW.1 has deposed that, the accused has not paid any money to the complainant against the loan, so he borrowed. It was specific suggestion made to PW.1 that, the accused to the bank account of the complainant as well as by way of cash, in respect of the repayment of the loan, the accused had repaid the entire loan to the complainant is been denied by the PW.1 herein. The said suggestion clearly discloses, the defence taken by the accused, as to he got repaid the entire loan amount to the complainant, but PW.1 has denied the same. It was the suggestion also made to PW.1 that, despite the loan cleared by the accused to the complainant, the signed blank cheques got filled by the complainant and misused by way of presentation is also denied by the PW.1. Even it was suggested to him that, the accused is not liable to pay any money to the Judgment 19 C.C.No.706/2018 complainant. The accused not only made simple suggestion as to repayment of loan to the complainant, but in that regard, he made suggestion to the PW.1, but he for the reasons better known to him got denied the same.

22. On going through the Ex.P12 the bank statement of the complainant, it does not discloses, the amount repaid by the accused, but only reflected the factum that, on 17.11.2015 by way of cheque sum of Rs.10 lakhs were remitted to the account of the accused. Thereby, the said document is the best evidence with regard to passing of consideration of Rs.10 lakhs from the hands of complainant to the accused, but it does not discloses the repayment made by the accused. However, during the course of cross of PW.1, the accused got suggested to accused also made repayment of loan through the account of the complainant. In that regard, the accused chosen to produce his bank statements

as per Exs.D1 to D3.

23. On meticulous perusal of the said document, it revealed the factum that, sum of Rs.50,000/- was remitted by the accused to the account of complainant on 07.08.2015, sum of Rs.20,000/- on 14.06.2016 and sum of Rs.20,000/- on 28.03.2016. The said payment of loan made by the accused for the tune of Rs.90,000/-

Judgment 20 C.C.No.706/2018 is been clearly admitted by the PW.1 by way of cross-examining the DW.1. In that regard, it also needs to focus on the suggestion made to DW.1 which runs thus:

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17.11.2015

14.06.2016

20,000/-

50,000/-

20,000/-

07.08.2016

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90,000/-

Judgment 21 C.C.No.706/2018

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24. On going through the said testimony of DW.1, he got clearly admitted the borrowing of loan of Rs.10 lakhs from the complainant and purchased the apartment at Rajarajeshwarinagar. He also categorically admitted the said loan is reflected in the bank statement of accused at Ex.D3. More categorically the DW.1 has voluntarily deposed that, he got cleared the said loan. Even the

suggestion was made to DW.1 that, the accused was told the complainant to repay the said loan with interest. Even then, the DW.1 volunteers that, he got repaid the loan with interest and got cleared the same.

25. It is pertinent to note that, despite the accused oftenly reasserted that, he got cleared the loan to the complainant with interest, there is no counter suggestion made to him, as to not repaid the said loan or asking about any other particulars by questioning the same. No doubt, the subsequent piece of cross- examination discloses, as found in Exs.D1 to 3 amount of Rs.90,000/- through bank account, got remitted to the account of complainant is also been admitted by the PW.1 by way such suggestion. The DW.1 has denied that, the said amount was paid Judgment 22 C.C.No.706/2018 with interest. But he volunteers that, the said amount was paid for principal loan amount. But in the Ex.D2 it is mentioned as interest. On going through the Ex.D2, it discloses, whatever the amount paid by the accused in the said document it mentioned as payment is made with regard to interest. The accused also deposed that, he asked the complainant that, whatever the amount so paid through bank account, asked him to consider as principal amount and requested to issue the receipt for having payment of the said loan, but he not issued any receipt. The accused has admitted, for not issuing receipt, he not issued legal notice through his counsel, but the suggestions were made by the advocate for complainant that, whatever the amount so paid as per Ex.D2 for interest only, not for the principal amount. From the said say of DW.1 as well as suggestion made from the advocate for the PW.1, it discloses, the complainant has taken up the defence that, whatever the amount so paid by the accused were adjusted towards the interest. In order to deduct the major portion of amount paid by the accused, as he pleaded, it is the complainant needs to produce necessary document or agreement entered into between complainant and accused, with regard to payment of interest, the accused has borrowed the said loan. No doubt, the complainant has pleaded that, the PW.1 being a father Judgment 23 C.C.No.706/2018 was very well aware of the said loan transaction, therefore, he by stepped into the shoes of complainant. To prove the case of the complainant, his father the PW.1 entered into witness box.

26. In the complaint, the complainant has pleaded that, accused has agreed to pay the interest at the rate of 2% p.m. on the loan amount. In order to the accused agreed to pay the said interest, definitely, it should be the complainant has made proposal, then only accepting the same and borrowing the loan by the accused would arise. In order to show that, the terms and conditions as to payment of rate of interest at 2% p.m. as pleaded by the complainant, admittedly, there were no such agreement was entered into between them. Then on which basis, the complainant being a relative of the accused expected the exorbitant rate of interest at 24% p.a. is also not been clearly explained. Even there is no pleading as to the accused got executed any document with regard to the borrowing of loan as well as payment of agreed interest. The complainant is working as Doctor and to do money lending business for the exorbitant rate of interest, there is no pleading as to obtaining of money lending license from the competitive authority. Under such circumstances, the accused being the relative of the complainant, how he projected the accused got agreed to pay interest 2% p.m. Judgment 24 C.C.No.706/2018 is also not been satisfactorily explained. Though, DW.1 has deposed, he got repaid the entire amount with interest, the PW.1 has deposed contrary. Therefore, whether accused was agreed to pay the interest or not, is to be seen from the evidence of PW.1, as he stepped into the shoes of complainant by stating, he is very well the transaction held between

complainant and accused. In that regard, during the course of cross of PW.1, he deposed that:

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27. On the first date of cross-examination, the PW.1 has categorically admitted that, the accused was not discussed about the payment of interest to him. He categorically admitted that, accused being a relative, but denied the suggestion that, till the Judgment 25 C.C.No.706/2018 date, the accused got paid Rs.8,50,000/- against the loan of Rs.10 lakhs. The PW.1 has categorically admitted that, accused to the account of complainant herein, sometimes got deposited the amount. He denied the suggestion that, the accused got repaid the loan of Rs.10 lakhs. If at all, the accused got repaid any money to the account of complainant, it is him to disclose, what amount was remitted to the account of the complainant, nothing has been explained by him, but categorically admitted, the remittance of amount by the accused to the account of complainant. The PW.1 has denied the suggestion that, the fillings are made in the questioned cheques at Exs.P2 and P3 were made by the PW.1 itself, but he denied the same. It was suggested to PW.1 that, by filling those cheques by the PW.1, himself in order to swindle more money from the accused, got filed the false case. The said evidence discloses, first of all, the accused was not agreed or discussed for payment of any interest.

28. On the subsequent date of cross-examination, the PW.1 has reasserted that:

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C.C.No.706/2018

29. On going through the said piece of cross-examination, the PW.1 has categorically admitted that, for the payment of interest he not lent loan. But stated that, for the purpose of purchase house and undertakes to repay the said loan within one month, he gave the said loan. The said evidence has made clear that, the complainant has not lent the loan to the accused with interest. Against the true affairs of the transaction, the complainant has falsely pleaded, accused agreed to pay the interest at 2% p.m. and also suggested to DW.1 by the advocate for the complainant is strong doubtful circumstances arise, as to the payment of interest require to be paid by the accused to the complainant on the agreed loan amount of Rs.10 lakhs. From the said evidence of PW.1 it made clear that, the complainant not lent the loan to the accused for payment of any interest, therefore, as suggested by the advocate for the complainant to the DW.1, accused liable to pay the interest does not arise and even for doing the said money lending business, the complainant has not secured any valid license. Therefore, the contention of the complainant seeking for interest at 2% p.m. is ruled out.

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30. The accused has specifically contended in the reply notice against the loan of Rs.10 lakhs, he got repaid Rs.8,50,000/- to the complainant. But in the cross-examination of PW.1 as well as in the evidence of DW.1, he reasserted that, got repaid the said loan amount, even including interest. When the interest was not discussed between complainant and accused, question of paying the interest does not arise, but the accused as stated, earlier he got repaid Rs.8,50,000/-, even the same has reasserted in the statement given by him under Section 313 of Cr.P.C. Therefore, till he gave statement, it made clear that, he stick on to his contention that, against the loan of Rs.10 lakhs, he got repaid Rs.8,50,000/-. As admitted by the advocate for the complainant by way of suggestion made to DW.1 that:

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31. By way of making such suggestion, the PW.1 has clearly admitted that, as found in Ex.D1 and D2, the accused got repaid Rs.90,000/- against the loan amount of Rs.10 lakhs and suggested that, no more money was repaid to him. The PW.1 in his cross-examination has categorically admitted, the accused some times got repaid money to the account of complainant and Judgment 28 C.C.No.706/2018 denied the payment of Rs.8,50,000/- or Rs.10 lakhs to the complainant and got cleared the loan. In the reply notice issued by the accused as found in Ex.P11, he categorically contended as such. Even the accused in his evidence has strongly contended that, he got repaid the said loan to the complainant and complainant got misused the questioned cheques. In the cross of DW.1, he categorically deposed that:

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Judgment 29 C.C.No.706/2018
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32. On going through the said testimony of DW.1, he categorically admitted that, in the Ex.D2 it does not disclose more money to the complainant, but he deposed, he repaid money to the complainant. More categorically he deposes, every month before 15th date, he used to pay sum of Rs.50,000/-, Rs.40,000/- respectively to the complainant, but he not obtained receipt in that regard. The said explanation given by the DW.1, as to payment made to the complainant for repayment of the loan is not been denied by the advocate for complainant. Only suggested that, acknowledgment in that regard is not been received. Even he deposed, with regard to making payment to complainant withdraw money from his bank account, he able to produce the document. More categorically he deposes, in between December, 2015 till August, 2017, he got cleared the loan amount to the complainant. The said contention of the accused with regard to the repayment of entire loan within the said duration was not been denied by the complainant by way of any suggestion. The DW.1 specifically stated that, he himself went to the house of complainant in the presence of father and mother of complainant, he got paid cash to the complainant. He Judgment 30 C.C.No.706/2018 categorically deposed, under which compelling circumstances he gave the said cash to the complainant by contending that, since complainant insisted the accused to pay the loan, by way of cash otherwise it would problem to the complainant in mentioning income tax. It was suggested to DW.1 that, though the accused got transferred loan through the account and know falsely deposed, the complainant was told him, to give the said loan amount by way of cash. But DW.1 has denied the said suggestion. The DW.1 has deposed that, more than Rs.15 lakhs he got paid to the complainant, but he stated, he does not remember as to reporting the

same earlier before the court.

33. First time the accused has deposed, he paid Rs.15 lakhs. Therefore, against the contention raised in the reply notice as well as 313 of Cr.P.C. statement, he got paid more than Rs.8,50,000/- to the complainant, the said testimony is not enough. Even he stated that, in his reply notice he not discloses, earlier as to the same. Therefore, the said evidence of DW.1 made it clear that, in between December, 2015 till August, 2017, he got cleared the loan amount to the complainant. There was clear suggestion made to PW.1 in his cross-examination, as to payment of Rs.8,50,000/- against the loan of Rs.10 lakhs. Therefore, the said evidence cannot be consider more than Rs.8,50,000/-, the Judgment 31 C.C.No.706/2018 accused has not paid the loan amount to the complainant. Whether, the accused got paid the cash in monthly installments to the complainant or not, how he gathered money is to be seen from his bank statement at Exs.D1 to D3. As he deposed, he had no impediment to produce bank statement to establish, he got encashed the said amount from his bank account, then paid to the complainant by way of cash. To that effect the accused has produced his bank statement to the period 01.04.2017 till 31.03.2018 and 01.04.2016 till 31.03.2017 at Exs.D1 and D2.

34. On meticulous perusal of the said bank statements it clearly manifest, as admitted by the complainant, by way of suggestion made to DW.1 on various dates, the accused got paid Rs.90,000/- to the complainant to his bank account. It is significant fact to note that, the complainant has not whispered anything about the receipts of said money through the bank account of the complainant. But PW.1 for the reasons better known to him against the said documentary evidence, has deposed that, the accused has not paid any money. On going through the statements at Exs.D1 and D2 it clearly manifest that, on several dates, the accused got withdrawn money from his bank account in lumpsum. The accused has stated that, apart from he paid money to the complainant by way of bank account also paid by Judgment 32 C.C.No.706/2018 way of cash. The accused has stated that, by withdrawing money from his bank account at the instance of complainant to avoid any inconvenience in filing income tax returns, at his request, he got paid hard cash. To show that, he withdraw money from his bank account the Exs.D1 and D2 bank statement discloses, on various dates in between the period of December, 2015, till April, 2017, the accused apart from remitting money to the account of complainant, the accused also withdrawn from his bank account. Therefore, the contention of the accused needs to be accepted by withdrawing money from the bank account of the accused got paid by way of cash to the complainant.

35. It is significant fact to note that, the contents of documents at Exs.D1 to D3 as to transfer of money from the account of the complainant by the account of the accused is not been denied. Likewise, whatever the amount withdrawn from the account of the accused on various dates is also not been denied. Even the PW.1 has not posed any suggestion to the accused, what purpose the accused had withdrawn the said money as found in the bank statement is also not been suggested. Therefore, the

Exs.D1 to D3 made it clear that, on various dates the accused had repaid the amount to the complainant as found therein. In order to deny the handed over hard cash of the accused to the complainant as Judgment 33 C.C.No.706/2018 repayment of loan, the accused has deposed, the said money was repaid to the complainant, in the presence of PW.1 as well as his wife. Therefore, the wife of PW.1 is also eye witness to the said transaction. The said eye witness is not been examined by the complainant to rebut the said evidence.

36. That apart, though PW.1 is very much present, as appreciated earlier, he not denied the suggestion made by the accused during his cross-examination that, the accused through his bank account, to the bank account of the complainant some times got paid money is not been denied by the PW.1. Thereby, the PW.1 categorically admitted, the accused had repaid sum of money to the account of complainant. Therefore, the entire bank statement pertaining to the complainant in between the period of December, 2015 to August, 2017 is the vital document. Though, PW.1 has admitted, the accused got repaid the said money to the complainant, he not choosen to examine the very complainant herein as well as his bank statement is not been produced. No doubt, the complainant choosen to produce his bank statement at Ex.P12 which is pertaining to the period 01.11.2015 to 01.12.2015. No doubt, during those period the accused has not contended, not repaid the loan amount, but he admitted the said loan was disbursed to the accused by way of bank cheque of the Judgment 34 C.C.No.706/2018 complainant on 17.11.2015. The said factum only revealed from Ex.P12.

37. Though, the accused strongly attack on the claim of complainant, as to repayment of Rs.8,50,000/- to the complainant by way of bank account as well as cash, in between the period December, 2015 till August, 2017, either the complainant or the PW.1 not choosen to produce the bank statement. If the complainant has been produced the said material document, definitely, it revealed the truth. If at all, the version of the accused is not correct, as to repayment of said loan during those period definitely, the complainant has no hesitation to produce the said document. But since, the complainant has withheld the said material piece of document, it revealed the payment made by the accused definitely, it leads to draw the inference that, the accused has repaid Rs.8,50,000/- as contended in his reply notice as well as statement given under Section 313 of Cr.P.C. Therefore, the complainant has projected the present case through the PW.1.

38. No doubt, the complainant has pleaded, since he needs to move abroad and hence, he gave GPA to the PW.1. During the course of cross of PW.1, he deposed that, on obtaining GPA the PW.1 has deposed before the court. More categorically he Judgment 35 C.C.No.706/2018 admitted that, after presenting the instant complaint, the complainant herein got present before the open court and participated in the proceedings more then 4 - 5 times. There was serious suggestion made to PW.1 that, the complainant by gave false reason stating needs to visit abroad, the PW.1 himself

got obtained the GPA and deposited false. It was also suggested to the PW.1 that, from the innocent people, he took the cheques and for extract money is in the habit of filing cases. As he had experience in which, he himself took the GPA and represented the complainant falsely.

39. No doubt, the PW.1 has denied the said suggestion, but categorically admitted that, his son the very complainant herein participated in the proceedings after he gave GPA. Therefore, it clearly manifest that, apart from give GPA, it made clear that, the complainant is in at Bengaluru and participated in the proceedings. Therefore, at least the accused after attack on the claim of complainant by way of suggestion made to PW.1, definitely, the complainant could have been enter in to witness box and depose, as to whether he got received the repayment of loan of Rs.8,50,000/- from the accused by way of cash as well as account, but for the reasons better known to complainant, though it was convenient to him to enter into witness box and depose, he Judgment 36 C.C.No.706/2018 avoided the same. Therefore, it is also one of the circumstances to draw the inference that, the complainant in order to avoid disclose the truth, he not choosen to enter into witness box, therefore, projected the case through his father. Whatever the evidence led by the PW.1, it is stepped into the shoes of complainant. Though PW.1 has admitted, his son - complainant herein used to attend the court, for non examination of him, he not given any satisfactory explanation. Apart from executing General Power of Attorney as per Ex.P1, the complainant attended the court more than 4 - 5 times, therefore, it leads to draw the inference that, complainant had no impediment to enter into witness box and depose his case. Therefore, it needs to draw the presumption that, since the complainant got received the money of Rs.8,50,000/- from the accused as suggested to PW.1, the complainant has avoided to enter into witness box.

40. That apart, the PW.1 categorically admitted that, the accused through his bank account to the bank account of complainant, some times got repaid the loan amount. Therefore, it clearly discloses, the PW.1 has admitted the repayment of the loan made by the accused, therefore, it is the PW.1, since he projected, he knew the loan transaction, definitely, he is a fit person to disclose, what extent of money was repaid by the Judgment 37 C.C.No.706/2018 accused. But in that regard, no explanation is forth coming from his side. No doubt, though the accused has stated, during December, 2015 till August, 2017, he got repaid Rs.8,50,000/- to the complainant. Therefore, it is the complainant needs to produce his bank statement and examine himself as well as his his mother to prove the case, as the accused has created doubtful circumstances in respect of the claim put forth by the complainant. On the one hand, the PW.1 has admitted, the accused got remitted amount to the account of complainant sometimes. But on subsequent cross-examination he deposed that, accused has not remitted any amount to the complainant's account as per Ex.P12. Therefore, the PW.1 has took dual stand on the one hand admitted the payment of sum amount to the account of complainant, therefore, it is not safe to rely upon the evidence of PW.1 to the repayment made by the accused. The PW.1 without admitting

the repayment made by the accused as found in Exs.D1 to D3, his advocate got suggested to the DW.1, as to repayment of loan of Rs.90,000/- and not stated anything about the repayment of cash to the complainant. Whatever the repayment found in Exs.D1 to Ex.D3 as admitted by the complainant for the tune of Rs.90,000/-, the said loan amount was not lent to the accused on interest. Hence, definitely, at least Rs.90,000/- needs Judgment 38 C.C.No.706/2018 to be deducted by the complainant, but without doing so, he projected the present case as good as the liability of the accused of Rs.10 lakhs. The very act of the complainant discloses, as on the date of cheque the liability of the accused at least by deducting admitted amount of Rs.90,000/- his it was not Rs.10 lakhs. One cannot lose sight that of loan transaction where loan as actual being advance and its repayment is due on the date of the cheque. Accordingly, taken in to the said analogy of the complainant on admitting the receipt of Rs.90,000/- as found in Exs.D1 to D3 it made clear that, the liability of the accused as on the date of cheque was not Rs.10 lakhs, the said sum has to be deducted, but the complainant without deducting has projected his case. The PW.1 for the reasons best known to him, he not disclosed the factum of receipt of money from the accused, it revealed the conduct of the complainant.

41. That apart, the accused has projected, he got repaid Rs.8,50,000/- to the complainant by way of cash as well as through account, as found in Exs.D1 to Exs.D3. It only revealed the payment of Rs.90,000/- to the account of complainant. The accused in his cross-examination has deposed, on every month before 15th date, he used to pay installment of Rs.50,000/- or Rs.40,000/- in between December, 2015, till August, 2017. To that Judgment 39 C.C.No.706/2018 effect, withdrawing money from his bank account the Exs.D1 to D3 bank statements clearly manifest. The accused has projected that, by withdrawing money from his account, he got repaid to the complainant in the presence of his father and mother. Therefore, the complainant and his mother are the material witnesses to disclose, the repayment of cash by the accused. The payment of Rs.8,50,000/- is not a smaller amount, since, the accused has projected at the instance of complainant to avoid the risk of income tax at his request, he got repaid by way of cash. Therefore, the repayment suggested by the accused as to Rs.8,50,000/- to the complainant cannot be ignored, unless the complainant has discharged the reverse burden by examining himself as well as his mother, as they are alleged to be the eye witnesses.

42. As discussed above, the accused has successfully placed his rebuttable evidence, as to the questioned cheques at Exs.P2 and P3 were issued by him to the complainant at the time of borrowing of loan of Rs.10 lakhs from the complainant. So also, he specifically taken the contention that, along with the said 2 cheques, he also gave blank e-stamp paper to the complainant at that point of time. In that backdrop, he placed his evidence before this court. It is significant fact to note that, the complainant has Judgment 40 C.C.No.706/2018 placed reliance on the Exs.P2 and P3 cheques and either to claim interest as he pleaded, not produced any documentary evidence. Without any documentary evidence, the complainant was not enough to

plead with regard to claim of interest at 2% p.m. specifically. If at all, he possessed some documents which the contract entered into between complainant and accused, as to payment of interest, definitely, it should be on e-stamp paper. The accused has specifically stated, he gave blank e-stamp paper, but complainant though claimed the interest not produced any loan agreement or other documents. Therefore, it also leads one of the circumstances to draw the adverse inference that, since the contention of the accused were to be true, as to the handed over the blank e-stamp paper to the complainant, the complainant has avoided to place before this court. Had really the loan issued by the complainant to the accused, was repayable together with interest any particular thereon, nothing had prevented the complainant from producing the relevant documents, which are supposed to be in his custody. Even, the complainant has not disclosed, on which security has paid the said huge loan to the accused. Even to show, to claim monthly interest at 2% against the provision under Section 117 of Negotiable Instruments Act, the complainant has not contended as to the alleged execution of Judgment 41 C.C.No.706/2018 any agreement or obtaining of cheques as security. The accused has specifically stated that, on the security of his cheques and signed blank e-stamp paper, the complainant had disbursed the loan amount. The cheques at Exs.P2 and P3 are worth about Rs.5 lakhs each. In order to disbelieve the theory of complainant, the accused at the earliest point of time by way of caused reply at Ex.P11 took the said defence, therefore, it is the complainant needs to prove his case beyond the reasonable doubt.

43. It is pertinent to note that, as discussed earlier, as admitted by the PW.1 himself, the accused had made repayment to the complainant. But he not specified, what quantum amount was repaid by the accused. The accused has contended that, Rs.8,50,000/- he got repaid. The Exs.D1 to D3 clearly revealed that, to the account of the complainant on record Rs.90,000/- was repaid by the accused is been admitted. However, the accused has strongly contended that, in the presence of father and mother of complainant herein, he got repaid hard cash in his house. Therefore, to disprove the contention of accused, as to repayment of other amount, then Rs.90,000/- by way of cash is to be disproved by the complainant by examining himself as well as his mother, but he did not choosen to do so. Thereby, the complainant has created doubtful circumstances to disbelieve his Judgment 42 C.C.No.706/2018 contention and to believe the probable defence placed by the accused in the present case on hand. The accused in the reply notice while suggested to PW.1 as well as in his 313 of Cr.P.C. statement got deposed about the repayment of Rs.8,50,000/- to the complainant, but contrary to the same he got deposed, in his cross-examination got repaid the entire amount. Therefore, the version of the accused also cannot be believed as to repayment of entire loan to the complainant with interest, then Rs.8,50,000/-.

44. As discussed above, the accused has made out sufficient grounds and created doubtful circumstances as to conduct of the PW.1 with regard to conceding the repayment of Rs.8,50,000/- made by the accused to the complainant in the presence

of PW.1 and his wife. Even taken in to consideration of Rs.90,000/- repayment as found in Exs.D1 to D3, the said amount since complainant was not remitted the loan on interest, definitely, the said amount has to be deducted against the cheques amount of Rs.90,000/-, but the complainant for the reasons better known to him, he did not choosen to do so.

45. That apart, as projected by the accused, he able to prove that, he got repaid Rs.8,50,000/- to the complainant as appreciated above, including the amount of Rs.90,000/- covered Judgment 43 C.C.No.706/2018 under Exs.D1 and D2, therefore, the entire amount of Rs.8,50,000/- on account of repayment made by the accused, the same has to be deducted out of Rs.10 lakhs. Therefore, Rs.1,50,000/- only is liable to be paid by the accused, but the complainant without deducting the said amount, brought the present case by projecting, accused got issued cheques at Exs.P2 and P3 for repayment of Rs.10 lakhs as legally recoverable debt. Then, it also creates one of the strong doubtful circumstances before this court, the questioned cheques were not issued by the accused for repayment of loan of Rs.10 lakhs, it needs to be drawn the adverse inference that, those cheques were issued by the accused to the complainant as security while obtaining loan as contended by the accused. Since, accused himself got filled and gave the said cheques to the complainant without mentioning the date as security, despite, he got repaid Rs.8,50,000/-, it was inevitable to the complainant to deduct the repayment made by the accused for the tune of Rs.8,50,000/- and in order to trouble him brought the said cheques for presentation by affixing the date. Since, to the bare eyes the dates mentioned in Exs.P2 and P3 cheques prima-faice discloses, in different hand writing then the other fillings, therefore, it clearly manifest that, the said cheques were undated, since complainant took undated Judgment 44 C.C.No.706/2018 cheques as security for lent of loan of Rs.10 lakhs, after lapse of years together, against the repayment of Rs.8,50,000/-, the complainant brought the present case. The very conduct of the complainant is to be deprecated.

46. As on the dates of cheques dated:10.09.2017 and 15.09.2017 definitely, there is no legally recoverable debt of Rs.10 lakhs payable by the accused to the complainant. On going through the detailed appraisal of the evidence as discussed above, it appears that, the complainant perhaps got misused the security cheques and presented the said cheques for encashment by mentioning dates and got dishonoured. It is significant fact to note that, as per Exs.D1 to D3, the accused was familiar in dealing banking transaction. The Exs.P4 and P5 bank memos which clearly manifest that, those cheques were dishonoured for the reasons payment stopped by drawer. From the said endorsements it made clear that, since the accused was not liable to pay the amount covered under the cheques definitely, to avoid future consequences, the accused could have got issued the stop payment instructions to his banker, therefore, those cheques came to be dishonoured for the said reasons. The accused took all precautions to avoid misuse of cheques. The very approach of complainant conceding the receipt of repayment of loan of Judgment 45 C.C.No.706/2018 Rs.8,50,000/- and

got presented those cheques for encashment to misuse of those cheques pertaining to the accused. Therefore, the accused as discussed above, has successfully proved his probable defence which rebutted the very loan transaction as well as the statutory presumption. The accused has proved his probable defence and created reverse burden on the complainant by virtue of Section 139 of Negotiable Instruments Act. Therefore, it is the reverse burden on the complainant to prove his case beyond the reasonable doubt.

It is well worthy to cite the decision reported in 2008 AIR SCC 7702 (P. Venugopal V/s.Madan P. Sarathi). Wherein, it was pleased to held by the Hon'ble Division Bench of the Hon'ble Apex Court that:

"The presumption raised does not extent to the expenditure that cheque was issued for the discharge of any debt or liability. Which is required to be proved by the complainant. However, it is essentially a question of fact".

In another decision reported in ILR 2009 KAR 1633 (Kumar Exports V/s. Sharma Carpets). Wherein, it was pleased to held by the Hon'ble Apex court that:

(D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof Judgment 46 C.C.No.706/2018 required rebuttal - HELD, Rebuttal does not require proof beyond reasonable doubt -

Something probable has to be brought record -

Burden of proof can be shifted back to complainant by producing convincing circumstantial evidence - Thereafter the said presumption arising under Section 118 and 139 case to operate - To rebut said presumption accused can also rely upon presumptions under Evidence Act, 1872 Section 114 (common course of natural even human conduct and public and private business) -

Evidence Act, 1872 - Section 114 - Presumptions of fact under".

Added to that, in a decision of AIR 2008 SC 278 between John K John V/s. Tom Verghees, the Hon'ble Apex court it is held that:

"The presumption under Section 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque. Whenever there is huge amount shown in the cheque, though the initial burden is on the accused, it is equally necessary to know how the complainant advanced such a huge amount".

47. From the point of above dictums also, it was the reverse burden casted upon the complainant to establish the very case beyond the reasonable doubt in order to convict the accused. So Judgment 47

C.C.No.706/2018 it is the complainant needs to discharge reverse burden to prove the guilt of the accused, as accused has successfully rebutted the statutory presumption.

48. On going through the complaint averments and allegations, the complainant has not whispered about either the repayment of Rs.90,000/- as found in Exs.D1 to D3 or Rs.8,50,000/-, in all including the repayment of cash against the loan of Rs.10 lakhs. Without their being any clause with regard to impose interest at 2% p.m. the complainant suo-moto pleaded to claim the interest, but in his cross-examination has deposed altogether different by stating not lent loan for any interest. Though, accused has specifically contended that, he got paid Rs.8,50,000/- by way of cash as well as bank account to the account of complainant, the PW.1 has not denied the same, but stated, may be he got repaid to the complainant. Therefore, it is the complainant or PW.1 needs to explain exactly what amount has repaid by the accused with its particulars, in that regard, the PW.1 is very much silent and complainant for the reasons better known to him, he avoided to enter into witness box to project his case through his father. Though PW.1 took the contention that, he was very much aware about the said transaction, he failed to demonstrate.

Judgment 48 C.C.No.706/2018

49. That apart, the accused has specifically stated that, he got repaid cash by way of installments an amount of Rs.50,000/- or Rs.40,000/- on every month on or before 15th date in between the period of December, 2015 till August, 2017 in the presence of father and mother of complainant, he got repaid Rs.8,50,000/- in his house. But the PW.1 has not took the risk to drag the complainant as well as his wife before the court to disprove the say of accused. The non-examination of complainant herein as well as his mother is vital defect in the part of complainant. The PW.1 has not stated that, complainant is staying or for an employment working at U.K, but he pleaded he move to U.K. Though, he entered into witness box on obtaining General Power of Attorney on complainant, the very complainant herein has admitted by PW.1, on several occasions used to accompanied the PW.1 and follow-up the case. If discloses, the complainant has extended his extraordinary interest, as to the present proceedings without participating, though he being the complainant, is one of the strong drawback on the part of complainant. The accused has specifically attack on the claim of complainant by way of caused reply notice by contending that, on the security of 2 cheques and one blank signed e-stamp paper, the complainant lent loan and despite, he got repaid repayment of Rs.8,50,000/-, the Judgment 49 C.C.No.706/2018 complainant projected the present case as due of Rs.10 lakhs by ignoring his repayment. Therefore, whatever the amount made mentioned in the cheques is not the legally enforceable debt payable to the complainant.

50. The PW.1 has not disclosed anything in his cross- examination by way of denial of got receipt of those cheques and signed blank e-stamp paper. Perhaps, the complainant could have taken the blank e-stamp paper or could have got executed loan agreement by mentioning the interest clause, therefore, in the pleading he whispered about the interest at 2% p.m. Because of the PW.1 has denied the imposition of interest on the loan of the accused, could have been avoided to bring out the said loan document, which got prepared on the e-stamp paper furnished by the accused. The said cheques at Exs.P2 and P3 mentioned about Rs.5 lakhs each, if at all, the complainant not received the repayment of loan from the accused definitely, he had liberty to place the security

cheques for Rs.5 lakhs each for recover the legal debt by the accused is on the date of cheques at Exs.P2 and P3 dated:10.09.2017 and 15.10.2017, it made clear that, accused on the said day, not due of Rs.10 lakhs and the same amount is not legally recoverable debt payable by the accused.

Judgment 50 C.C.No.706/2018

51. That apart, the narration of cheques in the pleading discloses, bearing Nos.000067 dated:10.09.2017 and another cheque bearing No.000066 dated:15.10.2017. Which discloses that, on careful perusal of serial number of cheques, if any prudent person under the compelling circumstances got issued the cheque, after got issued the earlier number of cheque 000066, then only, question of subsequent cheque bearing No.000067 would arise. Contrary to the same, the complainant has contended mentioning the date:10.09.2017 accused gave Ex.P2 cheque bearing No.000067 first and later gave cheque bearing No.000066 by mentioning the date:15.10.2017. The very serial number Clearly discloses that, after giving subsequent cheque, the earlier cheque, at the later stages got issued, it creates strong doubtful circumstances. The said sequence, leads to draw the inference that, perhaps because of the complainant could have possessed undated 2 cheques of the accused at Exs.P2 and P3 as a security, ventured to mention the date and present them for encashment by ignoring the repayment made by the accused either it may be Rs.90,000/- as found in Exs.D1 to D3 or Rs.8,50,000/- as contended by the accused. Therefore, the very made use of or playing use of the questioned cheques of accused at Exs.P2 and P3, the serial number and date, itself is one of the Judgment 51 C.C.No.706/2018 strong doubtful circumstances to suspect the very genuineness of the claim of complainant got issued by the accused for discharge of existence of legally recoverable debt.

52. That apart, the complainant and his mother though accused has cited by stating in their presence, being a relative got repaid Rs.8,50,000/- by way of cash as well as through account, for the reasons best known to them they have been avoided to appear before the court and depose in that regard. The non-appearance of complainant and his mother before this court is one of the strong doubtful circumstances to suspect the very genuineness of claim of complainant. On close perusal of the cheques at Exs.P2 and P3, it made clear that, dates are filled in different hand writing and ink on account of the defence taken by the accused is not rebutted by the complainant. Hence, it also needs presume that, questioned cheques were not issued by the accused during 1st week of August, 2017, but was taken by the complainant as security at the time of lent of loan. Therefore, the complainant has utterly failed to prove the due execution and issuance of questioned cheques at Exs.P2 and P3, as he alleged. Therefore, the very liability fixed by the complainant based on the questioned cheques by contending that, the said amount is legally recoverable debt is been suspected and whatever the doubtful Judgment 52 C.C.No.706/2018 circumstances created by the accused is not been rebutted bt complainant.

53. During the course of address the arguments, the advocate for accused has brought into the notice of this court about the judgment passed in CrI.A.No.855/2010 rendered by the Hon'ble High Court of Karnataka dated:31.01.2019. Pointing out the said judgment, the advocate for the accused has vehemently argued that, from the point of said judgment also the present case is not maintainable. As on the date of the cheque, there was no liability of Rs.10 lakhs payable by the

accused to the complainant. And also argued that, as on the date of cheque, that much amount is not liable to pay by the accused and loan transaction got cleared to an extent of Rs.8,50,000/- by the accused and actually the repayment of loan is not due in accordance with the cheque amount. Mere fact that, the cheque issued as a security would also attract Section 138 of Negotiable Instruments Act, once the said cheque returns dishonoured by the drawer, is also subject to the fact that, as on the date of presentation of cheque, the outstanding liability payable by the drawer/accused towards the complainant should be to the extent of cheque amount or more than the cheque amount. Focus on the observation made by the said judgment, the advocate has submitted, though questioned Judgment 53 C.C.No.706/2018 cheques were issued as security, that amount as found in Exs.D1 and D2 at least Rs.90,000/- as per documentary evidence or Rs.8,50,000/- as demonstrated by the accused got repaid. If at all, complainant wishes to use the security cheque that should be use only in respect of balance amount, but ignoring the same, he projected the present case, as no amount was repaid by the accused and brought the for higher amount, hence, the accused is not liable to pay the cheques amount. On going through the said judgment, it made clear that, one cannot losses sight that of a loan transaction, where loan has actually been advanced and its repayment is due on the date of cheque. In that backdrop, the accused has successfully demonstrated his defence as discussed earlier.

It is appropriate to cite the decision reported in ILR 2008 KAR 3635 (K.Narayana Nayak V/s. Sri.M.Shivarama Shetty). Wherein, it was pleased to held that:

"That the cheque issued by the respondent to the appellant is only as a security and not for discharge of any existing debt. So far as the presumption as to issuance of the cheque for consideration and in discharge of debt, the respondent/accused need not disprove the appellant's case in its entirety. He can discharge his burden on the basis of preponderance or probabilities through direct or circumstantial Judgment 54 C.C.No.706/2018 evidence, for which he can also rely on the evidence adduced by the complainant - Evidence on record clearly establishes that the cheque was not issued towards discharge of any legally enforceable debt, but the blank signed cheque was issued as security - Order of acquittal is Justified".

54. The said judgment aptly applicable to the case on hand in appreciating the materials available on record and this court has considered opinion that, questioned cheques were issued by the accused for a security, despite, he got repaid substantial amount, the complainant by ignoring the same has projected for recover the huge amount of Rs.10 lakhs, the very act of the complainant is to be deprecated.

In a decision Reported in ILR 2009 KAR 1633 (Supreme Court) (Kumar Exports V/s. Sharma Carpets). The Hon'ble High Court of Karnataka was pleased to observed that:

"The purpose is to facilitate negotiability of an instrument. It is for this purpose Section has departed from general law of contract wherein existence of consideration has to be proved in the first instance. Act also creates special rules of evidence for Negotiable Instruments."

55. From the point of said dictum also it made clear that, looking into the object of introduction of Negotiable Instruments Act, the complainant has utterly failed to demonstrate that, as on Judgment 55 C.C.No.706/2018 the date of cheques at Exs.P2 and P3 the amount covered therein for the tune of Rs.10 lakhs is legally recoverable debt. As discussed above, the accused has successfully proved his probable defence, which attack to the root of the case of complainant. Thereby, the accused has created reverse burden on the complainant to prove his case beyond the reasonable doubt, but in turn, the complainant though knew that, it was the reverse burden to prove guilt of the accused, he utterly failed to discharge the same. Hence, the accused is entitled for benefit of doubt for acquittal.

56. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, he fails to demonstrate his very case. While appreciate the materials available on record, this court has humbly gone through the decision relied by both parties apart from the following decisions.

In the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

"Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, Judgment 56 C.C.No.706/2018 his admission in his evidence that, the cheque in question bares his signature would not be sufficient proof of the fact that, he delivered the said cheque to the complainant and the latter received it from the former".

57. The principle of law laid down in the above decision is applicable to the facts of this case. Merely because, the accused admits that, cheques bare his signatures, that, does not mean that, the accused issued cheques in discharge of a legally payable debt.

At this stage, this court also relies upon another decision reported in AIR 2007 NOC 2612 A.P. (G.Veeresham V/s. Shivashankar and another). Wherein, the Hon'ble Court has held as under:

"Negotiable Instruments Act (26 of 1881). S. 138 Dishonour of cheque - Presumptions available to complainant under S. 118 and S. 139 of Act -

Rebuttal of cheque in question was allegedly issued by accused to discharge hand loan taken from complainant. However, no material placed on record by complainant to prove alleged lending of hand loan said fact is sufficient to infer that, accused is liable to rebut presumptions available in favour of complainant under Sections 118 and 139 of Act, Order acquitting accused for offence under S. 138 proper".

Judgment 57 C.C.No.706/2018

58. The principle of law laid down in the above decisions is applicable to the facts of this case. In this case on hand also, on the lack of the complaint failed to prove the

alleged loan transaction, it can gather the probability that, he is not liable to pay Exs.P2 and P3 cheques amount of Rs.10 lakhs and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the as on the date of issuance of questioned cheques at Exs.P2 and P3, amount made mentioned therein is the legally recoverable debt, but he failed to demonstrate the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to initiate a proceeding against the drawer of the cheques, who is not at all liable to pay the amount covered under the questioned cheques . The accused has taken his defence at the earliest point of time, while record accusation and statement under Section 313 of Cr.P.C. by way of denial. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheques for discharge of liability of Rs.10 lakhs. Hence, complainant / PW.1 has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

Judgment 58 C.C.No.706/2018

59. From the above elaborate discussions, it very much clear that, the complainant has failed to adduce cogent and corroborative evidence to show that, accused has issued cheques at Exs.P2 and P3 for discharge of his legally payable debt, for valid consideration. Hence, rebutted the legal presumptions under Section 139 and 118 of Negotiable Instruments Act in favour of the accused.

60. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheques pertaining to the account of the accused were dishonoured and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied, then it has to be presumed that, cheques in question were issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases. Now, it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

61. Thus, on appreciation of evidence on record, I hold that, the complainant / PW.1 has failed to prove the case by rebutting the Judgment 59 C.C.No.706/2018 presumption envisaged under Sections 118 and 139 of Negotiable Instruments Act. The complainant has failed to discharge the reverse burden to prove his contention as alleged in the complaint. Hence, the complainant / PW.1 has not produced needed evidence to prove that, amount of Rs.10 lakhs legally recoverable debt. Therefore, since the complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the complainant in its entirety, without the support of the substantial documentary evidence pertaining to the said transaction. The complainant utterly

fails to prove his case beyond all reasonable doubt. As discussed above, the complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

62. Point No.3: In view of my findings on point Nos.1 and 2, I proceed to pass the following:

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

Judgment 60 C.C.No.706/2018 The bail bond and cash security/surety bond of the accused stands cancelled. (Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 20 th day of February

- 2021) (SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : M.S.Siddalingaiah List of Exhibits marked on behalf of Complainant:

Ex.P1	:	General Power of Attorney
Exs.P2 & P3	:	Original Cheques
Ex.P2(a) & P3(a)	:	Signatures of accused
Exs.P4 & P5	:	Bank endorsements
Ex.P6	:	Office copy of legal notice
Ex.P7	:	Postal receipt
Ex.P8	:	Postal Acknowledgment card
Ex.P9	:	Professional Courier receipt
Ex.P10	:	Copy of courier consignment details
Ex.P11	:	Reply notice
Ex.P12	:	Statement of accounts

List of Witnesses examined on behalf of the defence:

DW.1 : Girish.K List of Exhibits marked on behalf of defence:

Exs.D1 to D3	:	Statements of account
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XXIII Addl. Chief Metropolitan
Magistrate, Bengaluru.
C.C.No.706/2018

Judgment 61

20.02.2021.

Comp -

Accd -

For Judgment

Case called out.

Complainant and accused are absent. No representation from both side advocates, despite, web-host the case proceedings and intimate the date of pronouncement of judgment. Hence, as

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

Judgment 62 C.C.No.706/2018 Judgment pronounced in the open court vide separate order.

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

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

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.