

## Sri. Thousiff Ahmed vs Aged About 30 Years on 4 April, 2022

IN THE COURT OF THE LXXII ADDL. CITY CIVIL  
& SESSIONS JUDGE AT MAYO HALL  
BENGALURU, (CCH-73)

Present:

Sri.Abdul-Rahiman. A. Nandgadi,  
B.Com, LL.B., (Spl.,)

LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 4th day of April, 2022.

CrI. Appeal. No.25118/2020

Appellant/  
Accused:- Sri. Thousiff Ahmed,  
Aged about 30 years,  
S/o Althaf,  
R/at No.488, 17th Cross,  
Near Archid Public School,  
Govindapura, Arabic College  
Post, Nagavara,  
Bengaluru- 560 045.

[By Sri. K. Ram Singh & Associates -  
Adv]

[By Smt. GVP Adv Nominated by DLSA,  
Bengaluru]

Respondent/  
Complainant: V/s  
Sri. R. Prakash,  
S/o Late K. S Ramaiah,  
Aged about 53 years,  
R/at No.44, 8th Cross,  
Pillanna Garden, I Stage,  
Near Tannery Road Circle,  
Bengaluru- 560 045.

(By Sri. Venkatesh. M -Adv.)

2 CrI.Appeal.No.25118/2020

### JUDGMENT

This Appeal is preferred by the Appellant U/Sec. 374(3) of Cr.P.C, being aggrieved by the Judgment and sentence passed by the XXXIII Addl. CMM, Bangalore in CC. No.58288 of 2018, dtd.18.05.2020, convicting the Appellant for the offence punishable U/Sec. 138 of NI Act, sentencing him to pay fine of Rs.5,000/-. In default to undergo Simple Imprisonment for a period of three months. Further directed to pay an amount of Rs.1,38,500/- to the Complainant, as compensation U/Sec. 357 of Cr.P.C. In default to pay the said compensation, the Accused shall undergo Simple Imprisonment for a period of one year.

2. The Brief facts leading to filing of the present appeal are:

The present Respondent filed a Complaint U/Sec. 200 of Cr.P.C. against the present Appellant, alleging that, the Respondent was the tenant under him. He was due to the tune of Rs 4,32,000/- as arrears of rent. Towards part payment, he has issued a Cheque bearing No 012233 dated 27.03.2018 for Rs 1,00,000/-, drawn on the Bank of Commerce, Mosque Road Branch, Frazer Town, Bengaluru. The said Cheque was presented by him through his banker Canara Bank, DJ Halli, Bengaluru, but the same has returned unencashed with an endorsement "Funds Insufficient" on 28.03.2018. The same was intimated to the Appellant. Thereafter he got issued a Notice through his Counsel on 09.04.2018 by RPAD, which was served on the Appellant on 11.04.2018. The Appellant has neither complied nor replied the said notice.

On completion of the stipulated period, he was constrained to file the Complaint under Sec.200 of Cr.PC before the Trial Court for the offence punishable under Sec.138 of NI Act.

3. On being satisfied, the Trial Court has issued summons U/Sec.204 of Cr.P.C. to the Appellant on 27.09.2018. The Appellant appeared before the Trial Court on 11.12.2018 and he was enlarged on bail. Plea/Substance of Accusation of the Appellant was recorded by the Trial Court on 11.12.2018, wherein the Appellant did not plead guilty and claims to be tried.

4. The Complainant in order to prove her case, has got herself examined as P.W.1 and got marked 05-documents as Ex.P.1 to Ex.P.5. PW.1 was cross examined on behalf of the Accused on 04.05.2019.

Statement of the Appellant/Accused was recorded by the Trial Court on 10.05.2019. The Appellant got himself examined as DW1 on 31.07.2019. ExD1 to ExD3 were got marked and DW1 was cross examined on behalf of the Complainant on 27.08.2019 & 05.11.2019. Appellant got examined his witness as DW2. DW2 was cross examined on behalf of the Complainant on 24.12.2019 & 24.01.2020.

5. The Trial Court heard the Respondent and has recorded the order of conviction, against the Appellant. Hence, the Appellant is before this Court, being aggrieved by the said Judgment of conviction.

6. On filing of this appeal, execution and operation of the Judgment under challenge was stayed for a period of three months on 08.07.2020. Notice of appeal memo and I.A.No.1/2020 was issued to the Respondent. Respondent set in his appearance on 12.02.2021. Trial Court records were secured on 22.12.2020.

Since there was no representation from the side of the Appellant/Accused from 15.10.2020, this Court by following the guiding principles laid down by the Hon'ble Apex Court, in the case of Shankar V/s The State of Maharashtra, (Crl. Appeal No.1106/2019, date of decision 23.07.2019), requested the Registry to have necessary correspondence with the legal services authority, to get

appointed/nominate an amicus curie/counsel to represent the Appellant, in this case, as the Appeal is preferred by the convict Accused.

Accordingly, Smt. G. V. P. Adv. was nominated by the DLSA to represent the Appellant in this case.

The Nominated counsel for the Appellant has filed her Written Arguments on 23.02.2022 .

Heard the Learned Counsel for the Respondent on 14.03.2022.

I have carefully gone through the Written Arguments submitted on behalf of the Appellant.

7. The Appellant has preferred this appeal on the following grounds:

Grounds of Appeal:

a) The Trial Court has gravely erred in convicting the Appellant for the offence punishable U/Sec. 138 of N.I. Act, which is manifestly erroneous and opposed to the facts and circumstances of the case;

b) The Trial Court has miserably failed to appreciate the oral and documentary evidence on record, in a proper and perspective manner;

c) The Trial Court has failed to consider that, the Appellant had issued the Cheque in question as security under the transaction of purchase of the property, which is misused by the Respondent and filed the present Complaint;

d) The Trial Court has failed to consider that the Respondent has failed to prove that the Appellant is due to pay arrears of rents to him, as contended by him;

e) The Trial Court has failed to consider that, the Complainant / Respondent has failed to get marked the Complaint; and

f) The Trial Court ought to have acquitted the Accused/Appellant for the offence punishable U/Sec.138 of NI Act, considering the defence of the Accused, as a probable defence.

Hence, prayed to allow the said appeal and set aside the Judgment of Conviction passed by the Trial Court.

8. Following points arise for my consideration;

1. Whether the Respondent/ Complainant is entitled for the initial benefit of presumption available U/Sec. 139 of N.I. Act?

2. Whether the Appellant/ Accused proves on the basis of preponderance of probabilities that, he had issued Cheque- Ex.P1, as Security under the transaction of purchase?

3. Whether the Trial Court is right in holding that, the Appellant/ Accused has failed to rebut the presumption available U/Sec. 139 of N.I. Act?

4. Whether the Appellant/ Accused shows that the Order of Conviction and Sentence recorded by the Trial Court in CC.No. 58288 of 2018, dtd.18.05.2020, deserves to be set aside, and thereby call for the interference of this Court?

5. What Order?

9. My finding on the above points are as under:

Point No.1 : In the Affirmative; Point No.2 : In the Negative;

Point No.3 : In the Affirmative; Point No.4 : In the Negative;

Point No.5 : As per final order for the following :

#### REASONS

10. The rank of parties will be referred to as they were before the Trial Court.

11. Point No.1:

As per the averments taken up by the Complainant in the complaint, wherein he has contended that, the Accused had to pay arrears of rents to him; and towards part payment of the said amount, he had issued the Cheque -Ex.P1. On presentation of the said Cheque the same has returned with an endorsement "Funds Insufficient"

on 28.03.2018, as per Ex.P2. On receipt of the said endorsement, he got issued a legal Notice through his counsel on 09.04.2018 to the Accused, as per Ex.P3, by RPAD, as per Postal Receipt- Ex.P4. The Notice is received by the Accused, as per the Postal Acknowledgment-Ex.P5.

12. On the basis of the Preliminary evidence, the Trial Court has issued summons to the Accused on 27.09.2018. Perused the said orders. Do not find any error, in it.

13. The Accused has appeared before the Trial Court on 11.12.2018 and he was enlarged on bail. The Trial Court has recorded Plea/Substance of Accusation of the Accused on 11.12.2018, wherein the Accused has pleaded not guilty and claims to be tried.

14. Now coming to the ocular evidence with regard to issuance of the Cheque-ExP1, more specifically, cross examination of DW1 at Page No 4, Para No 3, Line Nos 1 & 2, which reads as under:

"It is true that Ex.P1- Cheque belongs to me and Ex.P1(a) is my signature. ..."

As per this evidence Accused/DW1 admits that, the Cheque -Ex.P1 belongs to him and the signature on the said Cheque, also belongs to him.

15. Thus, as per the ocular and the documentary evidence produced by the Complainant, as per Ex.P1 to Ex.P9, referred to supra, it can be said that the Complainant has initially proved that, the Cheque - Ex.P-1 belongs to the Accused and the signature on it, is of the Accused. And on presenting the said Cheque, the same has been returned un- encashed, as per Ex.P2, for which it had issued Legal Notice as per Ex.P3, which is served to the Accused as per Postal AOD-Ex.P.5.

Thus, the above documentary and oral evidence will suffice the Complainant, to have initial benefit of presumption available U/Sec.138, 139 of N.I. Act.

Therefore, Complainant has shown that, he is initially entitle for the benefit of Presumption available U/Sec. 139 of N.I. Act. The Trial Court has considered the said aspect. No fault can be attributed on the Trial Court in this regard.

Hence, POINT NO.1 IS ANSWERED IN THE AFFIRMATIVE.

16. POINT NO.2:

As per the trite Principle of law dealing with the presumption U/Sec.138 & 139 of N.I.Act and as per the dictum laid down by the Hon'ble Apex Court in the case of K. Subramani V/s K. Damodara Naidu, reported in 2014 (12) SCALE 677, as well as in the case of Rangappa V/s Mohan, reported in (2010) 11 SCC 441, wherein it is held that, "Presumption U/Sec.139 of N.I.Act accrues to the benefit of the Complainant, unless the Accused rebut that presumption".

Now it is for the Accused to rebut the said presumption available to the Complainant U/Sec.139 of N.I.Act.

17. The first defence taken by the Accused that he was the tenant, under the wife of the Complainant i.e., DW2; and not under the Complainant, as DW2 was the owner of the said premises. This line of defence can be seen as per the cross examination of PW1 at Page No 1, Line Nos 10 to 15, which reads as under:

"It is false to suggest that the rent agreed was in the name of my wife. It is false to suggest that initially advance amount was Rs.70,000/- and monthly rent was Rs.2500/-. It is true that as per agreement the rent has to be increased at the rate of 10 % every year. It is false to suggest that the said property was standing in the name

of my wife Smt. Latha. ..."

As per this evidence, the Complainant/PW1 has denied the suggestion made to him on behalf of the Accused that, the Rent Agreement was in the name of his wife; initially advance amount was Rs 70,000/- and monthly rents was Rs 2,500/-; and the said property was standing in the name of the his wife Smt Latha.

17.01. Further the Accused has produced Rent Agreement at ExD1. As per this document it is seen that, a Commercial Rent Agreement is entered inbetween Mrs P. Latha and M/s Silver Star Infrastructure, inrespect of the property bearing Shop No 186, Ist Main Road, Rachenhalli, Anjanadri Layout, Dr SRK Nagar Post, Bangalore, wherein advance amount of Rs 70,000/- and rental amount of Rs 2,600/- is fixed. The said Agreement is for 11 months from 10.02.2010 to 09.01.2011.

18. Percontra, the Complainant contends that, he is the owner of the premises; and he has let the said premises to the Accused on rental basis. This type of contention can be seen, as per the cross examination of PW1 at Page No 1, Line Nos 6 to 8, which reads as under:

".. I have rented out the said premises to the accused about 10 to 12 years back. ..."

19. So now first we have to ascertain, as to who had leased the premises to the Accused, whether the Complainant; or his wife Smt Latha.

19.01. Coming to the ocular evidence on this point, more specifically,

a) cross examination of DW1 at Page No 4, Para No 2, Line Nos 10 to 12, which reads as under:

".. It is false to suggest that in the year 2018 I have issued the Ex.P1 cheque in favour of the complainant. It is true that in the year 2018 the complainant was the owner of the premises wherein I am running the business. ..."

As per this evidence the Accused/DW1 admits that, in the year 2018, the Complainant was the owner of the premises, wherein he was running the business.

b) cross examination of DW2 at Page No 1, Para No 1, which reads as under:

"Complainant is my husband. the accused was tenant in our property since 2007. When it is questioned to the witness that whether the property was in your name in the year 2007 ; the witness said that the said property was given to her and she has gifted the property to the complainant in the year 2003. It is true that the property has been transferred to the complainant under a registered sale deed. When it is questioned to the witness that sale consideration of the said sale deed is Rs.1,80,000/- ; the witness said that the said amount was the then market value of the property. It is true that since from the date of sale deed the complainant is the

owner of the said property. When it is questioned to the witness that there was a shop in the said premises wherein this accused was tenant ; the witness said that it was factory since 2007. It is true that the complainant has leased the premises to the accused."

As per this evidence, DW2- the Wife of the Complainant, who is the witness of the Accused contends that, Complainant is her husband; the Accused was tenant in their property, since 2007; in the year 2007, the property was in her name and she has gifted the said property to her husband in the year 2003; the said property was transferred to her husband- the Complainant under a Registered Sale-deed for a consideration of Rs 1,80,000/-; since the date of the said Sale-deed, her husband is the owner of the said property; a factory was run by the Accused in the said premises, since 2007; and her husband-the Complainant had leased the said premises to the Accused.

c) cross examination of DW2 at Page No 1, Para No 2, which reads as under:

"In the year 2010 I have executed the rental agreement in favour of the accused. When it is questioned to the witness that on what basis your have executed the rental agreement in favour of the accused; the witness said that she being the wife executed the rental agreement. It is false to suggest that we are living separately. we are residing in same house. the complainant is residing in the 2nd floor and I am residing in the 1st floor. No cases are pending between me and the complainant before any court."

As per this evidence, DW2- the Wife of the Complainant, who is the witness of the Accused contends that, she had executed Rental Agreement infavour of the Accused in 2010, being the wife of the Complainant.

19.02. Thus from the above ocular evidence, it is clear that, the Complainant was the owner of the premises and he had leased the said premises to the Accused, to run a factory. ExD1 will not come to the help of the Accused, to contend that the Wife of the Complainant was the owner of the said premises and she had let the said premises to him, on rental basis, as claimed.

So the defence takenup by the Accused, cannot be believed.

20. The Second defence taken by the Accused is that, he had issued signed blank Cheque in the transaction of sale of the property and the same is misused by the Complainant. This type of defence of the Accused can be found in the ocular evidence, more specifically,

a) cross-examination of PW.1, at Page No.1, Line No.19 to Page No 2, Line No 4, which reads as under:-

"It is false to suggest that in the year 2016 this accused has issued the signed blank signed cheque to me requesting me not to sell the property to anybody else. The witness volunteers that the accused has issued the cheque towards the payment of

rent."

As per this evidence, a suggestion is made to the PW.1 on behalf of the Accused that, the Accused had issued signed blank Cheque in the year 2016 to him, requesting him not to sell the property to anybody else. But he contends that, the Accused had issued the Cheque towards payments of rent.

b) cross-examination of PW.1, at Page No.2, Line Nos.18 to 20, which reads as under:-

"It is false to suggest that I have misused the blank signed cheque by entering the date payees name and amount in the cheque. ..."

As per this evidence, the Complainant had denied the suggestion made to him on behalf of the Accused that, he has misused the Signed blank cheque by entering the date, Payees name and amount in the Cheque.

20.01. But the Accused contends that the Complainant and his wife have sold the said property to his brother in law Mr M Umer Mukthiyar on 05.03.2018 by executing the Registered Sale- deed. This contention of the Accused can be found in the ocular evidence of the Complainant/PW1, in the form of suggestion, more specifically,

a) cross examination of PW1 at Page No 1, Line Nos 17 to 19, which reads as under:

".... It is false to suggest that prior to filing of this case I have sold the aforesaid property to the brother in law of accused namely M. Umer Mukthiyar on 05.03.2018. ..."

b) cross examination of PW1 at Page No 2, Line Nos 13 & 14, which reads as under:

".... It is false to suggest that myself and my wife together executed the sale deed in favour of Umer Mukthiyar on 05.03.2018. ..."

20.01.01. So as per this ocular evidence/ suggestion made to the Complainant on behalf of the Accused, it can be seen that as per the Accused, the Complainant and his wife have sold the said property to the brother-in-law of the Accused on 05.03.2018.

When the property was sold on 05.03.2018, so till then the Complainant was the owner of the property;

Secondly, when property is sold on 05.03.2018, where was the necessity for the Accused to issue the Cheque-Exp1, that to a signed blank cheque to the Complainant, under the transaction of sale of the said property.

Thirdly, the said property is purchased by the brother in law of the Accused by name M Umer Mukthiyar and not by him. Again what was the necessity for him to issue the signed blank cheque to



the Complainant.

These aspects have remained unexplained from the Accused.

20.02. Further the said defence has been twisted by the Accused, contending that he had issued the signed blank Cheque to wife of the Complainant. This type of defence can be seen, in the ocular evidence, more specifically,

a) Examination in chief of DW1 at Page No 1, Line Nos 4 to 10, which reads as under:

".... After the registration of sale deed when I have asked the complainant and his wife to return the cheque they have told that the cheque have been misplaced and they will return after tracing the said cheque. ..."

b) Cross examination of DW2 at Page No 3, Para 2, Line Nos 1 to 5, which reads as under:

"According to me accused issued the cheque to me inconnection with site at Rachenahalli. I was the owner of the said property in the year 1996 and that has been gifted to me by my mother. It is true that the complainant was the owner of property at Rachenahalli since 2004 to 05.03.2018. ..."

20.02.01. Firstly this type of defence is taken by the Accused, only during his evidence, i.e., in his Examination chief and in the evidence of his witness-DW2. But the said defence is not suggested by the Accused in the cross examination of PW1/Complainant.

Secondly, though the Accused had received the Notice-Exp3, but he had not issued the reply, contending the said defence. Receipt of Notice-Exp3 is admitted by the Accused, as per the cross examination of DW1 at Page No 6, Line Nos 4 to 9. But the reason attached by the Accused by not replying the notice, is not satisfactory.

Thirdly, this defence that he had issued signed blank Cheque to the wife of the Accused i.e., DW2, runs contrary to his earlier defence, taken up by him, during the cross examination of PW1 that, he had issued the signed blank Cheque to the Complainant.

Fourthly, the wife of the Complainant-DW2 was not the owner of the said property, then what was the necessity for the Accused to issue signed blank cheque to her, under the transaction of sale of the property.

Fifthly, there was no cordial relationship inbetween the Complainant and the Accused, which can be seen as per the ocular evidence,

a) cross examination of DW1 at Page No 4, Para No 2, Line Nos 1 to 9, which reads as under:

"I do not know how long the complainant and his wife living separately. I do not know that there was a dispute between complainant and his wife. I do not know about the pending of case between complainant and his wife. I do not know where exactly complainant and his wife is residing. It is false to suggest that I am aware that there was a dispute between complainant and his wife since 18 years. It is false to suggest that I am also aware of divorce case and other connected cases between complainant and his wife. ..."

b) cross examination of DW2 at Page No 2, Para Nos 2 & 3, which reads as under:

"It is true that in the year 2016 I have filed a case in Crl. Misc. No. 149/2016 on the file of MMTC 1st court. When it is questioned to the witness that you have received Rs.32 lakhs in the said case and withdrawn the case ; the witness said that the said money has been given to perform the marriage of daughters. It is also true that divorce case is pending before me and complainant before the 5th Addl. Family court at Bengaluru. It is true that in the year 2014 I have filed a complaint against the complainant and his labourers at Banaswadi police station. It is false to suggest that since 2014 I am not in talking terms with the complainant."

So it appears that taking the disadvantage of the relationship inbetween the Complainant and his wife-DW2, the Accused has twisted his defence and contended that, he had issued signed blank Cheque to her. But even the Accused has failed to show as to what was the reason for him to issue the said Cheque to the wife of the Complainant, when the Complainant was the owner of the said property; and when the said property is not purchased by him, but by his brother in law M Umer Muthiyar.

Sixthly, looking to the change attitude of defence of the Accused, it is seen that the subsequent defence taken by the Accused, that he has issued signed blank cheque to the wife of the Complainant, appears to be an after thought defence.

20.03. Thus the Accused has failed to show on the basis of preponderance of probabilities that he had issued signed blank cheque either to the Complainant or to his wife-DW2, under the transaction of sale of the property, in the year 2016.

Hence, I answer POINT NO.2 IN THE  
NEGATIVE.

21. POINT NO 3:

Further the Learned Counsel for the Appellant would contend that, the Complainant has to prove the fact that the Accused was to pay arrears of rents to him and towards part payment of the same, he had issued the Cheque-ExP1, beyond all reasonable doubt.

21.01. The Learned Counsel for the Respondent would contend that, the Respondent has shown that he was the owner of the property till he sold the same to the brother-in-law of the Accused by name M Umer Mukthiyar; and till that time the Accused was running a factory in the said property, on rent.

21.02. On the basis of the ocular evidence brought by both the parties on record, suggest that the Complainant was the owner of the property, which was letout to the Accused, wherein the Accused was running a factory. The said property was sold by the Complainant to the brother in law of the Accused by name M Umer Muthiyar on 05.03.2018.

Secondly, when the Accused contends that he has paid entire rentals either to the Complainant or to his wife, then it was for the Accused to prove the said fact, by leading cogent evidence, on the basis of Preponderance of probabilities, which the Accused has failed to do so.

21.03. As per the decision of the Hon'ble Apex Court, in the case of M S Narayana Menon Alias Mani Vs State of Kerala & Another, reported in (2006) 6 SCC 39; in the case of wherein it is held that;

"Initial burden is on the Accused to rebut the presumption U/Sec 118(a) and 139, as to the issuance of cheque for consideration and discharge of debt, by raising probable defence. If the accused discharges the said burden, the onus thereafter shifts on to the complainant to prove his case.

Burden of proof on accused is not heavy. Accused need not disprove the prosecution case in its entirety. Accused can discharge the burden on the basis of preponderance of probabilities through direct or circumstantial evidence."

21.04. Applying the above said principles of law to the instant case at hand, it is seen that, in the present case though the Accused has questioned about the relationship inbetween him and the Complainant, as that of a tenant and landlord; and issuance of the Cheque-ExP1 towards part payment of arrears of rents, on contending that he had issued the signed blank cheque either to the Complainant or to his wife, under the transaction of sale of the property, but the same is not supported with probable defence. Hence, the said stand of the Accused is not acceptable.

22. Under these circumstances, the Accused / Appellant should have led some cogent evidence to show that,

a) he had had intended to purchase the said property, in which he was a tenant;

b) towards token of his intention to purchase the said property, he had issued the signed blank cheque;

c) the said cheque was either issued to the Complainant or to his wife, representing the Complainant.

Unless the Accused leads cogent evidence to this effect, the defence of the Accused will not become probable, but it will be merely a palpable defence, which will not be sufficient to discharge his duty, to rebut the presumption available U/Sec. 139 of the N.I. Act, to the Complainant.

23. Thus, as per the above oral and documentary evidence, it can be said that, the Accused has taken various contradictory stands in his defence. On looking to the line of defences and the various contentions taken up by the Accused in his defence, the version of the Accused is not inspiring the confidence of this Court. Hence, the contention of the Appellant/Accused cannot be accepted at all.

24. Considering the inconsistent contentions raised by the Accused in the cross examination of PW1 and on leading evidence as DW1 and DW2, it can be said that, the stands taken up by the Accused, is not fortified with cogent evidence, on the basis of preponderance of probabilities, in order to rebut the presumption available to the Complainant, U/Sec 139 of NI Act. So, in the absence of material evidence, the different and distinct stands, taken up by the Accused, cannot be accepted at all.

25. Thus, the presumption available to the Complainant U/Sec. 139 of N.I. Act, has remained unrebutted, from the side of the Appellant/Accused. Hence, presumption available to the Complainant U/ Sec.139 of N.I.Act stands unrebutted. I have gone through the Judgment of the Trial Court, rightly the Trial Court has concluded that, the Accused has failed to rebut the presumption available to the Complainant U/Sec.139 of N.I.Act.

HENCE, I ANSWER POINT NO.3 IN THE AFFIRMATIVE.

26. POINT NO 4:

Under these circumstances, there is no any hurdle to draw the presumption available to the holder of the cheque U/Sec.118 as well as U/Sec. 139 of N.I.Act. I find force to my above opinion as per the decision of the Hon'ble Apex Court in the case of Hiten Pidalal V.s Bratindranath Banergi reported in 2001 Cr.L.J. 4647 (Supreme Court) as well as in the case of M.S.Narayan Menon @ Mani V/s State of Kerala and Another reported in 2006 SAR.Cr.616 and in the case of Krishna Janardhan Bhat V/s Dattatreya G. Hegde reported in (2008)2 SCC Cr. 166. Rightly, the Trial Court has considered all these aspect and there is no any fault on the part of the Trial Court. I do not find any force in the submission of the learned counsel for the Appellant.

27. Further 313 Statement is recorded by the Trial Court on 10.05.2019, it covers the entire incriminating substance, brought on record by way of evidence, against the Accused. The Trial Court has examined the Accused U/Sec. 313 of Cr.P.C. I have gone through the statement of the Accused recorded by the Trial Court U/Sec. 313 of Cr.P.C., and reply given by him, to the said questions, in the statement. I do not find any fault in the statement of the Accused, recorded by Trial Court U/Sec 313 of Cr.P.C.

28. I have carefully gone through the reasonings given by the Trial Court, while awarding compensation to the Complainant U/Sec.357(1)(b) of Cr.P.C. I do not find any error or material

irregularity in the said findings.

29. Further in order to conclude, the Hon'ble High Court of Kerala has held in *General Auto Sales Vs Vijayalakshmi*, reported in 2005(1) KLT 478, in Paragraph No 8 thereof, that:

"Even if a blank signed cheque has been given towards liability or even as security, then the liability subsists and quantified, if the cheque is filled up and presented to the Bank, the person who had drawn the cheque, cannot avoid the criminal liability under Section 138 of NI Act".

29.01. Further the Hon'ble Apex Court has held in *Rangappa Vs Sri Mohan*, reported in (2010) 11 SCC 441, that;

"Once issuance of cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the Accused to rebut the said presumption, though Accused need not adduce his own evidence and can rely upon the material submitted by the Complainant. However, mere statement of the Accused may not be sufficient to rebut the said presumption".

30. In this case there was really presumption available in favour of the Complainant in terms of Section 138 & 139 of Negotiable Instruments Act, against the Accused who has failed to discharge his burden, to rebut the said presumption.

31. The Trial Court has considered all the aspects, the grounds taken up by the Accused, as defence. The Order of the Trial Court in awarding compensation to the Complainant, is also well-reasoned.

32. When no fault is committed by the Trial Court, in coming to the conclusion, convicting the Accused for the offence punishable U/Sec 138 of NI Act, interference to that effect, by this Court does not arise at all.

33. Thus, I decline to interfere with the findings recorded by the Trial Court.

34. Necessarily the prosecution succeeds. The conviction is therefore confirmed, as the Accused is found guilty of the offence punishable under Section 138 of Negotiable Instruments Act. The Accused is hereby directed to pay an amount of compensation, as ordered by the Trial Court.

Hence, for the above reasons I am constrained to answer POINT NO.4 IN THE NEGATIVE.

35. POINT NO. 5:

For having answered Point Nos.1 and 3 in the Affirmative; Point Nos. 2 & 4 in the Negative, I proceed to pass the following:

ORDER Acting U/Sec.386 of Cr.P.C., the Appeal preferred by the Appellant/ Accused is hereby Dismissed.

In the consequences, the order of conviction passed by the Learned XXXIII ACMM, Bengaluru in C.C.No.58288 of 2018, dtd. 18.05.2020, recording conviction of the Accused, is hereby confirmed.

The order of suspension passed by this Court U/Sec.389 of Cr.P.C. stands revoked.

The Trial Court shall execute its order, as per law.

No order as to costs.

In case, if the Appellant/Accused has deposited the amount, as directed U/ Sec. 148 of N.I. Act, the same may be dealt with, as per Law U/Sec. 143 of the said Act.

Remit the TCR to the Trial Court, on obtaining necessary acknowledgment, from it, alongwith the copy of this Judgment.

(Dictated to the Stenographer directly on computer system, computerized by her and print out taken by her, after correction, signed and pronounced by me, in the open court on this the 4th day of April, 2022.) [Abdul-Rahiman. A. Nandgadi] LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73)