

Ashok Prabhu vs D.Ravi Kumar on 1 April, 2021

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

Dated this the 1st day of April - 2021

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

C.C.NO.18077/2013

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : Ashok Prabhu,
S/o.Late.K.Devadas Prabhu,
Aged about 45 years,
R/at No.D2-508, L & T South City,
Arkere, MICO Layout,
Off Bannerughatta Road,
Bengaluru-76.

(Rep. by Sri.M.S.Ashwin Kumar, Adv.)

Accused V/S : D.Ravi Kumar,
S/o.Doraiswamy,
Aged about 43 years,
No.E 1201, Mantri Elegance,
N.S.Palya, Bannerghatta Road,
Bengaluru-76.

Also at:
No.74/75, 3rd Cross, I Main,
N.S.Palya, Bannerghatta Road,
Bengaluru-76.

And:
Villa No.25, 349,
Adarsh Palm Meadows,
Old Airport Varthur Road,
Bengaluru-66.

(Rep.by Sri.C.S.Nagendra, Adv.)

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OFFENCE COMPLAINED OF	: U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	: Not guilty.
FINAL ORDER	: Accused is Acquitted.
DATE OF ORDER	: 01.04.2021.

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

JUDGMENT

The complainant has presented the instant complaint against the accused on 27.05.2013 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of two cheques of Rs.35 lakhs.

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

The complainant has pleaded that, the accused had entered into a Memorandum of Understanding on 11.11.2011 with the complainant under which he agreed to purchase 50,000 equity shares, bearing following details:

Registered Sl.No. Certificate No. Distinctive Nos.

Folio No.

1. 154 10 985001 to 1000000

2. 122 10 420001 to 430000

3. 155 10 12501 to 32500

4. 139 07 300001 to 305000 Judgment 3 C.C.No.18077/2013 of Rs.10/- each of a company called Kinfotech Private Limited, Brigade Corner, Yediyur Circle, Kanakapura Road, 7th Block, Jayanagar, Bengaluru-82, for Rs.100/- per share, totally amounting to Rs.50,00,000/-. The said Memorandum of Understanding dated:11.11.2011 is herewith produced.

The complainant has averred that, the accused had agreed to pay the same at the rate of 30% on 31.12.2011, 35% of the sale price on 30.04.2012 and the balance 35% of the share price on 15.07.2012. Based on the above assurance, the accused had issued 3 cheques bearing No.455355 dated:31.12.2011 for sum of Rs.15 lakhs, cheque bearing No.455381 dated:30.04.2012 for sum of Rs.17,50,000/- and another cheque bearing No.455386 dated:15.07.2012 for sum of Rs.17,50,000/-, all the cheques are drawn on United Bank of India, Kempegowda Road Branch, Bengaluru-09, on an assurance that, cheques would be presented for payment on the receipt of dates and no extension of time would be sought in that regard as per Clause 4 of the said Memorandum of Understanding.

The complainant has further alleged that, contrary to the said undertakings, he did not honour his commitment, on the other hand, he replaced the said 3 cheques referred in the Judgment 4 C.C.No.18077/2013 Memorandum of Understanding and issued the fresh cheques each time. Accordingly, by replacing the earlier cheques, the accused issued cheque bearing No.455340 dated:14.01.2013 and another cheque bearing No.452252 dated:24.01.2013 for sum of Rs.17,50,000/- each, both the cheques are drawn on United Bank of India, Kempegowda Road Branch, Bengaluru-09, on an assurance that, they would be honoured on the date of their presentation. The said cheques amount of Rs.35 lakhs were portion of the total amount due to the complainant.

The complainant has further contended that, the said cheques were presented by the complainant for encashment through his banker viz., Corporation Bank, Arikeregate Branch, Bannerghatta Road, Bengaluru. But as per the endorsement dated:21.03.2013 the said cheques came to be dishonoured for the reasons "Funds Insufficient". Thereafter, intimation of the said fact were made to the accused, he expressed his helplessness over the issue, but promised to do the best to clear the cheques amount at the earliest. But that was not to be. Having no other alternative, the complainant has issued legal notice on 15.04.2013 demanding the accused to pay the amount covered under the cheques by way of Speed Post as well as R.P.A.D. Despite that, the accused has not complied the same.

Judgment 5 C.C.No.18077/2013 The R.P.A.D., was served on the accused on 16.04.2013 as found in postal acknowledgment. Since, the accused has not paid the amount covered under the cheques nor replied to the said notice. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. On the presentation of the present private complaint, the then Presiding Officer took cognizance and got registered the PCR No.1208 of 2013 and thereafter the sworn statement came to be recorded and since found the prima-facie materials to proceed against the accused got registered the criminal case in register No.3 and ordered to issue process.

4. In response to the summons, the accused appeared through his counsel and enlarged on bail. As required, complaint copy was supplied to the accused. Thereafter, accusation as required was read over and explained to the accused by the then Presiding Officer on 12.01.2015, wherein, the accused denied the same and claimed to have the defence.

5. To prove the case of the complainant, he himself chosen to examined as PW.1 and filed affidavit evidence on oath and got marked documents at Exs.P1 to P15. Thereafter, the advocate for accused took time and partly cross-examined the PW.1 on Judgment 6 C.C.No.18077/2013 22.02.2016 and further took time for cross-examination. Accordingly, at the request of the advocate for accused adjournment was given and despite, gave sufficient opportunities, the advocate for accused not cross-examined the PW.1. Therefore, the further cross-examination of PW.1 was taken as nil from the side of accused.

6. Thereafter, whatever the incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C by the then Presiding Officer, wherein the accused denied the the incriminating evidence made against him and admitted the entered into Memorandum of Understanding between complainant and accused and got issued the cheques to the complainant, but gave his statement that, the complainant have not issued shares to him. Even he denied the service of legal notice, though stated, he had defence, but not entered into witness box nor produced any documentary evidence.

7. Further, the accused counsel once again brought the application under Section 311 of Cr.P.C. seeking for further cross of PW.1, the then Presiding Officer on heard both, had passed considered order on 22.07.2016 got dismissed the very successive application filed by the accused. The said order as Judgment 7 C.C.No.18077/2013 well as dismissal order passed on the application filed by the accused under Section 91 r/w 243(2) of Cr.P.C. came to be challenged by preferring in Crl.P.No.1892/2017 and 1893/2017 as well as W.P.No.6435/2020 before the Hon'ble High Court of Karnataka.

8. The stay has been granted in all 3 referred matters connecting to the instant case and it has been extended from time to time. This court has been await production of further stay order, but, both side counsels have not produced the further stay order from the Hon'ble High Court of Karnataka referred supra, by considering the judgment passed by the Hon'ble Apex Court in Crl.A.P.No.1375-1376/2013 (Asian Re Surfacing of Road Agency Pvt. Ltd., and another V/s. CBI) as well as by virtue of the General Circular No.07/2018 RSB:149/2018, dated:06.08.2018 issued by the Hon'ble High Court of Karnataka, since both the parties to the present proceedings, have not furnished further extension of stay order, this court by observing so, in the proceeding dated:02.02.2021, taken up the matter for further disposal in accordance with law.

9. In this case, the accused not choosen to enter into witness box and also not produced any document.

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10. After, this court taken the matter for disposal by virtue of the proceedings dated:02.02.2021, the advocate for complainant has submitted his written arguments and despite gave sufficient opportunity to the accused, his advocate not came forward to address his side arguments, therefore, by giving liberty to him to submit written arguments within 10 days from the proceedings dated:16.03.2021 and the stage is set for judgment to this day.

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

- 1) Whether the complainant proves beyond the reasonable doubt that, in pursuance of Ex.P1-

Memorandum of Understanding entered into between complainant and accused during November, 2011, the complainant has transferred 50,000 equity shares of Rs.10,000/- each being a holder of Kinfotech Private Limited as detailed in the complaint as well as Ex.P1 transferred in favour of accused?

2) Whether the complainant proves beyond the reasonable doubt that, the amount covered under the Exs.P1 and P2 - cheques are the existence of legally enforceable debt payable by the accused?

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

4) What Order?

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12. 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 : In the Negative
Point No.4 : As per final order, for the following:

REASONS

13. POINT NOS.1 to 3: Since all these points are connected with each other, they have taken together for common discussion in order to avoid repetition of facts.

To substantiate the case of complainant, for the averments and allegations made mentioned in the complaint, himself choosen to examined as PW.1 and filed affidavit in lieu of his chief-examination and produced the documents at Exs.P1 to P15, they are:

a) Ex.P1 is the Memorandum of Understanding entered into between complainant and accused in the month of November, 2011

b) Exs.P2 and P3 are the cheques bearing Nos.455340 and 452252 issued by the accused for sum of Rs.17,50,000/- each dated:14.01.2013 and 24.01.2013, drawn on United Bank of India, Kempegowda Road Branch, Bengaluru.

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

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d) Exs.P4 and P5 are the Bank Memos
dated:21.03.2013.

e) Ex.P6 is the Legal Notice dated:15.04.2013.

f) Exs.P7 to P12 are the Postal receipts and

g) Exs.P13 to P15 are the postal acknowledgment cards.

14. The advocate for accused choosen to cross-examined the PW.1 in part and further cross-examination of PW.1 as observed earlier was taken as nil, and the same was under challenged before the Hon'ble High Court of Karnataka, but the accused so far not secured any final verdicts from the Hon'ble High Court of Karnataka. However, this court as observed earlier based on the General Circular No.07/2018 RSB:149/2018, dated:06.08.2018, as well as dictum of the Hon'ble Apex Court rendered in Crl.A.P.No.1375-1376/2013 referred supra, took the matter for further disposal.

15. No doubt, in the case on hand, the advocate for accused has subjected the PW.1 for part cross-examination as well as thereafter, incriminating evidence made against the accused were read over and explained and answer given by him was recorded. Wherein, he denied the incriminating evidence made against him, as to his liability for payment of amount covered under the Exs.P2 and P3 cheques for the tune of Rs.35 lakhs and specifically he Judgment 11 C.C.No.18077/2013 gave his statement that, Memorandum of Understanding has entered into between complainant and accused and he issued cheques, but complainant has not transferred shares in his favour and he denied the service of legal notice.

16. No doubt, in this case, the accused has not choosen to enter into witness box to lay his defence.

17. On going through the rival contentions of both the parties, from the point of portion of defence as well as the statement given by the accused available on record, it appears this court that, whatever the probable defence placed by the accused needs to be appreciate in proper perspective and mere because of he not further cross-examined the PW.1 nor entered in to witness box, the same cannot be ignored, unless made out strong grounds.

18. The complainant has brought the present case based on Exs.P2 and P3 cheques by contending that, the accused liable to pay Rs.35 lakhs as per Ex.P1 in respect of purchase of 50,000 shares of Rs.50 lakhs and for payment of portion of amount, questioned cheques were issued by him, the same came to be dishonoured, despite gave legal notice and its service on the accused, he not paid the amount covered under the cheques. The initial statutory presumption as per Sections 118 and 139 of Judgment 12 C.C.No.18077/2013 Negotiable Instruments Act, needs to be drawn in favour of complainant, unless and until contrary prove by the accused, it shall presume that, questioned cheques were issued by the accused for discharge of existence of legally recoverable debt.

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. 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 Judgment 13 C.C.No.18077/2013 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.

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 cheques issued duly signed by the accused, the presumption goes against him as per Section 139 of Negotiable Instruments Act.

19. On going through the provisions referred supra, it made clear that, whereas the presumption must prove that, guilt of Judgment 14 C.C.No.18077/2013 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.

20. 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.

21. No doubt, in the present case on hand, the accused has denied the very claim put forth by the complainant has been denied while record 313 of Cr.P.C. statement including service of legal notice. Since, he denied the service of legal notice, subject to prove its service, if the complainant able to prove the service of legal notice, then question of issue reply would arise. In the case on hand, the accused denied the service of legal notice, therefore, expecting reply at the inception consequent to the issuance of legal notice would not arise. However, in pursuance of service of summons, the accused has been appeared before this court and enlarged on bail, while record 313 of Cr.P.C. statement he denied, Judgment 15 C.C.No.18077/2013 whatever the accusation as well as incriminating evidence made against him. Though, accused subjected to PW.1 for part cross-examination, he extracted the colour of work of complainant as well as his company. Wherein, not revealed the defence of the accused. However, while record 313 of Cr.P.C. statement, the accused has

specifically gave his statement by denying his liability, as to payment of Rs.35 lakhs covered under Exs.P2 and P3 cheques in respect of the payment of purchase of shares. But he categorically denied as false and admitted the entered into Memorandum of Understanding and issuance of cheques, but categorically asserted that, complainant has not issued the shares. Thereby, defence revealed in his 313 of Cr.P.C. statement, though he admitted by entering into Memorandum of Understanding, he contended shares were not transferred by the complainant. Therefore, the same has to be considered as the defence taken by the accused. Though, either on the fault of accused or his advocate, for the reasons better known to them, in a matter like 2013, not subjected the PW.1 for further cross- examination, as to the liability of the questioned cheques at Exs.P2 and P3. The said statement only revealed the defence that, inspite of entered in to Memorandum of Understanding at Ex.P1, and the accused got issued the cheques to the Judgment 16 C.C.No.18077/2013 complainant, he alleged to be not transferred the shares, which covered under Memorandum of Understanding, therefore, it is to be consider, as the specific defence of the accused.

22. No doubt, in this case the accused has not entered into witness box to prove his probable defence. However, it is an appropriate to cite the decisions of the Hon'ble Supreme Court in (2008) 2 Supreme Court Cases (Criminal) 166 (Krishna Janardhan Bhat V/s. Dattatraya G Hegde) and 2010 AIR SCW 2946 (Rangappa V/s. Mohan).

"The accused need not enter into witness box and he could rebut the presumption envisage under Section 139 of Negotiable Instruments Act by setting up a probable case. As such, there is no strict rule that, the accused should enter into the witness box in support or proof of his defence. The accused has got every right to prove his defence from the cross- examination of PW.1 or the materials already brought on record. It is also held that, the standard of evidence be to led by the accused is preponderance of probabilities and no proof beyond reasonable doubt. On the contrary, for the complainant he should prove his case beyond all reasonable doubt".

23. As per the said dictum, the accused need not require to enter in to the witness box, to prove his probable defence, but he Judgment 17 C.C.No.18077/2013 can prove his defence by way of cross-examining the PW.1 and relied upon the documents of the complainant. From the point of above dictum, the non entering into the witness box by the accused is not a fatal to prove his probable defence. His part of evidence could be seen while cross-examining the PW.1. Therefore, the defence which observed above, is available on record to appreciate the things of record to determine the liability of accused, which emerged out of Exs.P2 and P3.

24. It is significant fact to note that, the issues revealed between complainant and accused based on Ex.P1 - Memorandum of Understanding that, in respect of purchase the shares made mentioned in the said Memorandum of Understanding, the accused got issued cheques earlier a made mentioned therein and subsequently by returning those cheques, the accused gave the questioned cheques for payment of shares amount. The accused though admitted the entered into Memorandum of Understanding and got issuance of cheques, he specifically contended, the complainant has not transferred the agreed shares made mentioned in the Memorandum of Understanding produced at Ex.P1. Thereby, the accused has placed his strong defence which goes to the root of the transaction

as to transferring of cheques as well as coming into Judgment 18 C.C.No.18077/2013 force of the contract entered into between complainant and accused as per Ex.P1. Thereby, the accused got attack on the claim of complainant indirectly alleging that, the claim put forth by the complainant is not in accordance with Ex.P1 - Memorandum of Understanding, as he not transferred the shares, the accused not liable to pay the amount covered under the Exs.P2 and P3 cheques.

25. No doubt, though the accused has not placed specific defence, but from the version of PW.1 while he gave his statement, his probable defence revealed by alleging the complainant has not transferred the shares. The same has to be considered as the probable defence, thereby, it clearly manifest that, whatever the alleged transaction held between complainant and accused is required to be done through the documentary evidence in terms of Ex.P1. Therefore, thereby the accused has creates doubtful circumstances and rebutted the statutory presumption as well as case put forth by the complainant, as to his liability regarding payment of Rs.35 lakhs, as portion of Rs.50 lakhs.

Judgment 19 C.C.No.18077/2013 It is appropriate to cite the decision reported in (2020) 3 SCC 321 in a case between Varinder Kumar V/s The State Of Himachal Pradesh. The Hon'ble Apex Court has pleased to observe that:

"Criminal Jurisprudence mandates the balancing the rights of the accused and prosecution."

26. As per the said dictum it made clear that, in the present case on hand, it needs to balance the rights of the prosecution and accused, while appreciate the materials available on record with regard to fixing the burden.

27. That apart, as per Section 106 of Evidence Act, it also made clear that, when any act is specifically within the knowledge of any person, the burden of proving that fact is upon him. Therefore, from which, it made clear that, the burden of proving the fact specifically within the knowledge of the said person.

28. Taken in to said analogy it made clear that, the accused herein resisted the claim of complainant by alleging, though he entered into Memorandum of Understanding as well as got issued the cheques, the complainant has not transferred the shares in his favour. When the accused has made the said contention, it was within his knowledge, therefore, he require to prove negatively Judgment 20 C.C.No.18077/2013 does not arise. Therefore, it is the reverse burden on the complainant to prove that, in accordance with Memorandum of Understanding, he got transferred the shares made mentioned therein in favour of the accused, despite that, the accused has not paid the amount covered therein, as the existence of legally recoverable debt.

It is also appropriate to cite the decision reported in 2019 SCC Online SC 389, in a case between Rohith Bai Jeevan Ltd., V/s State of Gujarat. Wherein, the Division Bench of Hon'ble Apex Court pleased to observed that:

The onus though shifts on the accused to establish a probable defence so as to rebut such presumption. Wherein, it was also observed that, presumption it was needed to be drawn by the Court Under Section 118 of Negotiable Instruments Act, would oblige the court to presume that cheque had been issued for consideration and only contrary is prove, such presumption would hold the ground. Wherein, it was also observed that, the test of proportionality should guide the construction and interpretation reverse onus clauses and the accused cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justification, Judgment 21 C.C.No.18077/2013 reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. It is settled position that, when accused has to rebut the presumption under Section 139 of Negotiable Instruments Act, the standard of proof doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise the probable defence, which creates a doubt or the prosecution can fail. As clarified in the citation, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that, in some cases the accused may not need to adduce evidence of his own. In the said dictum, it also observed that, the accused also may rely upon presumption of fact, for instance, those mentioned in Sections 114 of the Evidence Act, to rebut the presumption arising under Sections 118 and 139 of Negotiable Instruments Act. Accordingly, it made clear that, it is the initial burden on the accused needs to prove his probable defence under the principle of preponderance of probabilities. It is capable to raise doubts as to the existence of legally recoverable debt or liability, then whatever the statutory presumption supports the case of complainant would fail. Therefore, it is just and proper to appreciate the evidence of accused on priority coupled with appreciation of the defence taken during the course of cross of PW.1.

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29. Looking in to the said dictum, it made clear that, on account of specific defence taken by the accused, it was reverse burden casted on the complainant and he needs to discharge by producing the evidence. As per the reverse burden, it is the duty casted on the complainant to prove the evidentiary burden and not persuasive burden. The accused has appraised above as able to raised the probable defence, which creates doubt, as to the existence of legally recoverable debt or liability. Therefore, it is the complainant needs to prove that, he got transferred the shares as per terms and conditions of Ex.P1 in favour of complainant and in turn, the accused liable to pay the amount covered under the cheques. The accused no need to prove his defence, with high standard of proof. The accused can also rely upon presumption made mentioned in Section 114 of Evidence Act, apart from Sections 118 and 139 of Negotiable Instruments Act, to prove his probable defence.

30. Only because of accused advocate not cross-examined the PW.1, the accused should not made scapegoat for the liability, unless proved liability on him as per law.

As per the rival contention of the parties, it made clear that, both are claiming their right and responsibilities as well as liabilities based on the Ex.P1.

Therefore, the present issue revolves surrendering the Ex.P1.

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31. Since, the accused took upon the defence that, as the complainant has not transferred the shares as per Ex.P1, he claimed not liable to pay the amount covered the cheque as per Ex.P2 and Ex.P3. If at all, the complainant able to demonstrates that, inspite of he got transferred the shares made mentioned in Ex.P1, the accused has not paid the amount which covers under the questioned cheques. Then only alleged liability covered under the questioned cheques would arise. Therefore, it made clear that, in all practical purpose even from the point of reverse burden as per Sections 118 and 139 of Negotiable Instruments Act, it made clear that, it is the 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:

Judgment 24 C.C.No.18077/2013 (D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof 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".

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32. 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.

33. As observed earlier, though accused not subjected the PW.1 for detail cross-examination, but from the rival contentions it made clear that, the claim put forth by the complainant and accused are purely based on documentary evidence revolves over Ex.P1. Therefore, whatever the documents placed by the complainant in the case on hand, needs to be appreciate in determining the liability of the accused person.

34. At the outset, on close perusal of the pleading of the complainant, he does not discloses, as to how complainant being the owner or possessor of shares made mentioned in Sl.Nos.1 to 4 of para No.3 of the complaint for the tune of Rs.50 lakhs. Straightaway the complainant has pleaded, the accused entered into Memorandum of Understanding as found in Ex.P1 on 11.11.2011 and he agreed to purchase the 50,000 equity shares made mentioned therein for the tune of Rs.50,000/-. In that regard, when complainant was purchased, as on the date, were they entered into Memorandum of Understanding or not? No better particulars have furnished in the complaint. Even, as he Judgment 26 C.C.No.18077/2013 pleaded in the complaint, to establish, either he possessed or , he was the owner, the complainant has not produced any necessary documentary evidence before the court. Therefore, it made clear that, till the fag end of the case, the complainant either to establish, he was owner or possessor of shares made mentioned in para No.3 of the complaint or as narrated in Ex.P1, he not furnished better particulars nor produced the share certificates. Therefore, it made clear that, to prove, the complainant has possessed the alleged share as mentioned in the the said Memorandum of Understanding produced at Ex.P1, he not chosen to produce the subject matter of the shares or its particulars before the court. Thereby, the complainant has failed to prove that, he possessed the shares as such, enable him to entered in to the Memorandum of Understanding as per Ex.P1.

35. In the Memorandum of Understanding the complainant has mentioned the date:11.11.2011. No doubt, the complainant has produced one Memorandum of Understanding as per Ex.P1. On close perusal of the said document, it prima-faice appears to the bare eyes that, it was made on white blank paper with computerized typing. On close scanning of its contents and recitals, it also revealed the date has been mentioned as 11.11.2011.

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36. On going through the said recitals it also revealed that, it was entered into between complainant and accused. Wherein also it made mentioned that, the complainant being a first party is the share holder of Kinfotech Private Limited and presently hold 50000 equity shares of Rs.10/- each in the company, and also contended that, he being the legal and beneficial owner of the same intends to sell the following shares; with regard to share certificate No.122 Folio No.10 issued on 07.02.2005 for Rs.10000 shares, the share certificate No.139 Folio No.7 issued on 05.12.2005 for 5000 shares, the share certificate No.154 Folio No.10 issued on 09.01.2007 for 15000 shares and share certificate No.155 Folio No.10 issued on 17.11.2008 for 20000 shares.

37. The said recitals of the Ex.P1 it discloses, the complainant claimed to be the legal and beneficial owner of the same. In order to show that, as on 11.11.2011 as per Ex.P1 or as on the date of filing the complaint or during the pendency of the present case, either he owned the shares as such or as recited in Ex.P1 or he got transferred to the accused being a willing purchaser is not been produced any documents or evidence before this court. The said Ex.P1 also recited that, both the parties agreed that, sale price at Rs.100/- per share and for total consideration of Rs.50 Judgment 28 C.C.No.18077/2013 lakhs it was sold by the complainant. Though it was recited as such, in order to transfer the said shares in the name of accused as per recitals at Ex.P1, whether any token amount was paid by the accused or the complainant got transferred the shares is also not been recited and no pleading nor explanation in the affidavit evidence of PW.1.

38. That apart, it also revealed that, the complainant has declared as per Ex.P1, he is the legal owner of the said shares and has not sold, hypothecated, pledged or alienated anyway and the same are free from all encumbrances whatsoever. For making such declaration and to ascertain the complainant has possessed those shares as found in Ex.P1, it is the complainant needs to produce necessary document to establish earlier, he was owner and it was free from all encumbrances and got transferred to the accused, nothing has been pleaded or produced any documentary evidence in that regard.

39. That apart, as per Ex.P1 it recited that, the accused agreed to pay sale price at the rate of 30% on 31.12.2011, 35% on 30.04.2012 and balance 35% sale price on 15.07.2012. Therefore, the said recitals also made clear that, the accused no need to pay the said sale price of the shares at in one lumpsum, Judgment 29 C.C.No.18077/2013 but it was as stipulated in the Memorandum of Understanding needs to pay in installments stated ratio supra. Even the pleading of the complainant revealed that, the accused has not paid the sale price of Rs.50 lakhs, but for the payment of part sale price of Rs.35 lakhs got issued the Exs.P2 and P3 cheques in his favour by taken back earlier cheques. Therefore, it also made clear that, whatever the

condition stipulated for pay the sale price in slabs appears to be not paid by the accused to the complainant. Therefore, it made clear that, the accused has not complied the said conditions.

40. It is also significant fact to note here itself from the recitals of Ex.P1 that, for the ratio stated supra at 30%, 35% and 35% respectively, the complainant claiming accused earlier gave his cheques bearing Nos.455355 dated:31.12.2011 for Rs.15 lakhs, cheque bearing No.455381 dated:30.04.2012 for sum of Rs.17,50,000/- and another cheque bearing No.455386 for sum of Rs.17,50,000/-. The factum of handed over those cheques to the complainant is not been disputed. It is significant fact to note that, those cheques were handed over by the accused to the complainant subject to the rider that, those cheques can be presented for encashment on the date made mentioned therein and no extension of time will be sought in that regard. Therefore, Judgment 30 C.C.No.18077/2013 it also made clear that, subject to the rider those earlier cheques were alleged to be issued by the accused to the complainant, the same for any reason cannot be expended. As per the said recitals, the accused has not complied, as pleaded by the complainant, those cheques were returned to the accused and in turn for payment of portion of amount, the accused gave Exs.P2 and P3 cheques in his favour. Thereby, the said terms and conditions stipulated in Sl.No.3 of Memorandum of Understanding at Ex.P1 also not complied by the accused. Those conditions revealed that, the accused has not performed his part of contract with regard to making sale price of purchasing of shares at 3 slabs under 3 different cheques. When he utterly failed to pay the amount covered under the said cheques, definitely, whether the complainant was enable to transfer the shares in the name of accused without there being receipt of sale price of purchase of shares would arise.

41. No doubt, as per Sl.No.5 of the terms and conditions at Ex.P1, it also made clear that, the complainant has agreed to execute the necessary transfer deeds and to all such other things as may be necessary to transfer the shares in the name of purchaser. That apart, it was also contended that, the seller hereby undertakes to declare the purchaser is the owner of the Judgment 31 C.C.No.18077/2013 said shares and all accruals that may arise on account of dividend, rights bonus and swapped shares with other companies etc. The said terms and conditions made it clear that, the question of transfer the shares or the execution of transfer deeds by the complainant to the accused is consequent to the payment of agreed amount as per the earlier cheques bearing Nos.455355, 455381 and 455386 stated supra only.

42. On going through the Ex.P1 it discloses, though the sale price of share was involved at Rs.50 lakhs, the complainant and accused in order to get execute or claim specific performance, they have not chosen to get prepare the said Memorandum of Understanding on the required stamp paper or get registration in order to enforce the same on one another. The said Ex.P1 was made in white paper and even to prove that, the same terms and conditions were entered into between complainant and accused which binding on the parties, it was not in accordance with law. Though, provision

were made to mention the name of witnesses at Ex.P1, none of the witnesses were secured to the said document to its execution.

43. On appraisal of Ex.P1, it discloses, it is only the agreement made on white paper, it cannot be enforced on each other, as Judgment 32 C.C.No.18077/2013 there is default clause or time is not stipulated for its enforcement. The creation of the said Memorandum of Understanding on white sheet, without their being getting attestation or registration or at least made on stamp paper nor taken the signature of witnesses to assign on the purpose, simply it was prepared, therefore, at the most it can be consider as Memorandum of Understanding made on white paper, it is not enforceable between the parties as no binding effect can seen from there.

44. That apart, the Memorandum of Understanding also discloses, there is no default clause or rider, as to the performing the agreement on either side. It only discloses, the willingness of the seller and purchaser with regard to the purchase of shares. Therefore, failed to comply the same, no obligation is fixed on the either side of the parties. Even the said agreement cannot be enforceable before the court of law, as it was not in accordance with law. Even at least to establish, either of the parties have performed their part of obligation in accordance with the terms and conditions made mentioned therein, no documents have been placed. The contents of Ex.P1 and allegations made in the complaint it revealed that, somehow accused has performed his part of obligation by way of issued earlier 3 cheques cited supra for sum of Rs.50 lakhs. It is not the contention of the complainant Judgment 33 C.C.No.18077/2013 throughout the case that, based on the earlier cheques so issued by the accused, he got transferred the shares or got executed necessary transfer deed in favour of the accused. Even it is not his contention that, he got transferred the shares in the name of accused by virtue of Ex.P1. Even he not stated, as per the said terms and conditions, as he undertaken, he made declaration as to accused is the purchaser or the owner of the said shares in order to get benefit thereon. Simply without performing part of any obligation by the complainant, he projected the present case by contending that, the accused is liable to pay the amount covered under the cheques. First of all, as per the earlier 3 cheques, the accused has not paid amount to the complainant, as he pleaded. Which clearly discloses, the accused has not performed his part of obligation as per the bilateral Memorandum of Understanding entered in to between complainant and accused. Even to enforce the said Memorandum of Understanding, the complainant not initiated any proceedings for specific performance as per law. Unless, the complainant got transferred those shares in the name of accused as per Ex.P1, the liability of the accused with regard to he undertakes to pay the amount covered under Exs.P2 and P3 cheques in favour of Judgment 34 C.C.No.18077/2013 complainant with regard to the payment of purchase of many of shares, the accused gave cheques to him, does not arise.

45. The complainant has utterly failed to prove that, as he pleaded, he was lawful owner or possessor of the shares as made mentioned in para No.3. Even to show that,

based on the earlier 3 cheques which were returned to the accused as observed earlier, the complainant has not come forward to perform his part of obligation by way of execute or transfer deed by way of sell the shares. Through out the pleading, it does not revealed, the complainant has transferred the shares by way of execute the transfer deed or declare that, the accused is the owner of those shares with its particulars. In the absence of pleading as well as necessary evidence, which appears that, mere because of the complainant possessed the questioned cheques of the accused as per Exs.P2 and P3, it does not mean that, the said amount is legally recoverable debt. In order to show that, worth either of Rs.50 lakhs as per the shares made mentioned in Ex.P1 or with regard to the portion of amount, the accused gave cheques at Exs.P2 and P3, the complainant to an extent of Rs.35 lakhs got transferred the shares to the accused, he not been produced any document. Unless the shares transferred in the name of accused and in that regard the complainant made declaration as he Judgment 35 C.C.No.18077/2013 admitted in Ex.P1, question of liability of the accused to pay the amount as such, does not arise. Therefore, the Ex.P1 though admitted by the accused, it clearly discloses, either the complainant or accused have not performed their part of obligation. In order to compelling the accused to pay the amount covered under Exs.P2 and P3 cheques, it is the complainant as to demonstrate, he got transferred the shares worth covered under the cheques. But he failed to prove the same nor he pleaded or produced any documentary evidence before this court.

46. From the cross of PW.1 available on record, it discloses, he was working in Kinfotech Private Limited company and the accused got purchased the same. It was also clearly admitted that, before accused got purchased the said company, he was the Senior Vice-President in Sales Department.

47. In the cross of PW.1, he also admitted that, despite, accused got purchased Kinfotech Private Limited company, the name of the said company was not changed and the complainant was working as Country Sales Manager and he was responsible for Sales and Software Division. In his cross-examination he also admitted that, Kinfotech Private Limited company and Acropetal Technology are two different entities, but PW.1 volunteers that, Judgment 36 C.C.No.18077/2013 later Kinfotech Private Limited company is taken over by Acropetal Technology and he is transferred to the Acropetal Technology. From which it also made clear that, the accused has purchased the company by name Kinfotech Private Limited, wherein, the complainant earlier working, then continued, later he was shifted to Acropetal Technology, with the fixed salary, as he deposed. Even he deposed, from the said Acropetal Technology he was relieved on 14.08.2012. The said testimony of PW.1 it discloses that, earlier he was working in Kinfotech Private Limited, later it was purchased by the accused, then it was taken over by the Acropetal Technology and the complainant relieved on 14.08.2012. Thereby, it made clear that, complainant was separated from the said concern on 14.08.2012. Therefore, it is the complainant needs to explain, whether as per the terms and conditions made in Ex.P1, he got

transferred the shares made mentioned therein in favour of the accused and despite that, accused was not paid the amount covered under so. Therefore, in the absence of necessary pleading and evidence, there is no materials before this court to establish the complainant got transferred the shares bearing certificate No.154, Registered Folio No.10, Distinctive Nos.985001 to 1000000, certificate No.122, Registered Folio No.10, Distinctive Nos.420001 to 430000, Judgment 37 C.C.No.18077/2013 certificate No.155, Registered Folio No.10, Distinctive Nos.12501 to 32500 and certificate No.139, Registered Folio No.07, Distinctive Nos.300001 to 305000, of Rs.10/- each of Kinfotech Private Limited for Rs.100/- per share, totally amounting to Rs.50,00,000/-. Unless the complainant transferred his shares in favour of accused, question of the accused pay the money in favour of complainant does not arise. In order to show that, on the assurance of accused, because of he gave earlier 3 cheques, the complainant got transferred the shares is also not been contended by the complainant. Therefore, it made clear that, dispute involved between complainant and accused appears to be Civil in Nature. If the complainant wishes to enforce the terms and conditions as per Ex.P1, he needs to approach jurisdictional Civil Court. Accordingly, if the accused wishes to enforce the said Memorandum of Understanding to purchase the shares made mentioned therein, if the complainant not yet transferred, despite, he is ready and willing to perform his part of obligation. None of the parties have taken any such contention. Therefore, it is consider opinion of this court that, as per bilateral Memorandum of Understanding entered into between complainant and accused, none of them have complied their part of obligation. Therefore, enforce the said terms and conditions does not arise. Unless, the Judgment 38 C.C.No.18077/2013 complainant transferred his shares for the tune of either Rs.50 lakhs or in respect of the cheques amount of Rs.35 lakhs, he cannot demand the accused to pay the said amount. Mere dishonoured of the said cheques is not enough to prosecute the matter against the accused for pay the said amount as legally enforceable debt by invoking the provision of Section 138 of Negotiable Instruments Act, therefore, it is the consider opinion of this court that, the amount covered under the cheques is not the existence of legally recoverable debt. On reading of the Ex.P1 prima-facie discloses, it is in civil nature.

It is worthy to cite the decision reported in ILR 2008 KAR

643. The Hon'ble High Court of Karnataka observed that:

"Negotiable Instruments Act, 1881 - Sections 138 - Offence under - Contract between the parties - Breach of contract - cheque was issued for Rs.2 lakhs by way of damages - Whether attracts the provisions of Section 138 of the Act - On Facts Held, It is purely a matter of civil transaction which the Civil Court has to adjudicate and ascertain as to whether there is a breach of contract or there is any violation of conditions of the agreement and whether the very conduct of the complainant is without any blemish, in a separate enquiry to be held if need be - Order of acquittal is justified".

Judgment 39 C.C.No.18077/2013 The principle of law laid down in the above decision is aptly applicable to the case on hand.

48. In the present case on hand, when the Memorandum of Understanding is not came into effect as per Ex.P1, the question of accused pay the part amount of Rs.35 lakhs covered under the Exs.P2 and P3 cheques, unless the complainant has performed his part of obligation does not arise. When complainant himself is in possession of the subject matter of the business covered under the Exs.P2 and P3 and the accused has not assumed any charge or responsibility as contemplated therein, therefore, the question of fix the liability on the accused does not arise. Therefore, by virtue of the Ex.P1, the amount covered under the Exs.P2 and P3 cheques are not the existence of legally recoverable debt payable by the accused.

49. So far as, the issuance of legal notice is concerned, the complainant as found in Exs.P7 to P12, to the six addresses got issued legal notice. On going through the acknowledgments at Exs.P13 to P15, it discloses, the Exs.P13 and P15 are got delivered to the address of Acropetal Technology concern. On going through the evidence of PW.1 as stated earlier, whatever the accused purchased the Kinfotech Private Limited company, Judgment 40 C.C.No.18077/2013 later it was taken over by the Acropetal Technology. As it is not the contention of complainant that, the accused is the owner of Acropetal Technology or he is working there under, therefore, service of legal notice to the Acropetal Technology concern, without disclosing rank of the accused therein, it cannot be consider as the service made duly. On going through the Ex.P14 acknowledgment, it discloses the address of the accused at Villa No.25, 349, Adarsh Palm, Meadows, Old Airport Varthur Road, Bengaluru-66.

50. No doubt, the said notice was received by someone else. On going through the signature found therein is not tallied with the questioned cheques at Exs.P2 and P3 or the signatures of the accused available on plea as well as statement of accused under section 313 of Cr.P.C. Therefore, from the Exs.P13 to P15 cannot be considered as legal notice were duly served on the accused. Though, complainant got issued legal notices to the addresses as per another 3 postal receipts, why the complainant got issued same notices to the other addresses is also not been explained. . The issuance of notices to other 3 addresses, in all six addresses, it revealed that, the complainant has not in conformity with the specific address of the accused. Therefore, to the several addresses as many as to the six addresses he got issued legal Judgment 41 C.C.No.18077/2013 notices and to establish the said notices were served on accused, he not demonstrate before this court. Mere because of the complainant got possessed the questioned cheques of the accused, it does not mean that, it was issued by the accused for discharge of existence of legally recoverable debt.

51. As discussed above, this court has considered opinion that, the complainant has utterly failed to prove beyond the reasonable doubt, he got transferred shares worth of Rs.50 lakhs as made mentioned in Ex.P1 in favour of the accused and even he

utterly failed to prove that, unless he transferred the shares in favour of accused, and accused is liable to pay the amount covered under the Exs.P2 and P3 cheques. Even legal notice is also not duly served on the accused. From the available materials on record, this court has appraised the materials and come to the strong conclusion that, complainant has failed to prove his case beyond the reasonable doubt in establishing the guilt of the accused. Hence, the accused is entitled for benefit of doubt for acquittal.

52. 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 Judgment 42 C.C.No.18077/2013 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, 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".

53. 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 Judgment 43 C.C.No.18077/2013 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".

54. The principle of law laid down in the above decisions is applicable to the facts of this case. In the case on hand also, as discussed above, the complainant has failed to prove with cogent evidence as transferred the shares in favour of accused, and accused is liable to pay the amount covered under the Exs.P2 and P3 cheques. Thus, that fact itself is sufficient to infer that, accused is able to rebut

presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

In a decision reported in AIR 2006 Supreme Court 3366 (M.S.Narayana Menon Alian Mani V/s. State of Kerala and another). The Hon'ble Apex court held that:

Judgment 44 C.C.No.18077/2013 "Once the accused discharges the initial burden placed on him the burden of proof would revert back to the prosecution".

55. 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.35 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 accused is liable to pay the cheques amount to the complainant and he is legally liable to pay 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 cheques amount. 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 partial discharge of liability of Rs.35 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

Judgment 45 C.C.No.18077/2013

56. 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 is 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.

57. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the 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 has not produced needed evidence to prove that, amount of Rs.35 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 Judgment 46 C.C.No.18077/2013 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 to 3 are

Negative.

58. Point No.4: In view of my findings on point Nos.1 to 3, 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.

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 1 st day of April - 2021)
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.18077/2013

ANNEXURE

List of Witnesses examined on behalf of Complainant:

PW-1 : Ashok Prabhu List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Memorandum of Understanding
Exs.P2 & P3	:	Original Cheques
Exs.P2(a) & P3(a)	:	Signatures of accused
Exs.P4 & P5	:	Bank endorsements
Ex.P6	:	Office copy of legal notice
Exs.P7 to P12	:	Postal receipts
Exs.P13 to P15	:	Postal Acknowledgment cards

List of Witnesses examined on behalf of the defence:

- None -

List of Exhibits marked on behalf of defence:

- Nil -

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment

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C.C.No.18077/2013

01.04.2021.

Comp - Sri.MSA

Accd - Sri.CSN

For Judgment

Case called out. The complainant
and accused are remained absent.

The advocate for accused on

23.03.2021 has filed the board application under Section 309 of Cr.P.C. along with board application, another application seeking for permission to make oral submissions.

On going through the order sheet, it discloses, in view of the above matter, this court has given sufficient opportunities to both side counsel to address their oral arguments as well as submission of their detailed written arguments. Now, the said matter is one of the oldest case of this court and that too, in a case like 2013.

That apart, the complainant counsel has submitted his detailed written arguments. Again this court has given sufficient opportunities to the accused counsel either to address oral arguments physically or through video conference nor file written arguments. But, till this day, the accused counsel has not addressed his side arguments or submit his written arguments. When the case stage is set for judgment, at this stage, the accused counsel has brought the instant application seeking for permission to Judgment 49 C.C.No.18077/2013 make his oral submission. When the judgment is prepared and yet to be pronounce, question of considering the instant application does not arise. No grounds made out in the instant application to consider at the stage.

Hence, the application filed by the
advocate for accused is hereby dismissed.

Since, the stage already set for
pronounce judgment, this court proceed to
pronounced the judgment in the open
court vide separate order.

Complainant and his counsel are
remained absent. Accused is also
remained absent. Accused counsel is
present and filed E.P. the same is
allowed.

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.

Ashok Prabhu vs D.Ravi Kumar on 1 April, 2021

XXIII Addl. Chief Metropolitan
Magistrate, Bengaluru.