

Smt.Uma.K vs Sri.V. Venu on 3 August, 2022

KABC030562832018

Presented on : 31-07-2018
Registered on : 31-07-2018
Decided on : 03-08-2022
Duration : 4 years, 0 months, 3 days

IN THE COURT OF XX ADDL.CHIEF METROPOLITAN
MAGISTRATE AT BENGALURU CITY

PRESENT: BHOLA PANDIT,
B.Com., LL.M.,
XX ADDL. C.M.M.
Bengaluru.

Dated this the 3rd day of August 2022

C.C.No.20800/2018

Complainant : Smt.Uma.K
Aged about 37 years,
D/o Sri.Krishnappa.K,
R/at No.831,GAYATHRI NILAYA,
1st Floor, 5th Cross, 5th Main, MC Layout, ,
Viayanagar,
Bangalore- 560 040.

{ By Sri.Srinivas Rao Nadig - Advocate }
2 C.C.20800/2018

Vs.

Accused : Sri.V. Venu,
S/o M.Venkatesh,
Major,
R/at No.24, Old No.410, 12th Cross, Upper
Palace, Sadashivanagar,
Bengaluru - 560 080.

{ By Sri.M.V.Srinivasa - Advocate }

Offence complained : U/S. 138 of N.I. Act.,

Plea of accused : Plead not guilty

Final Order : Accused is Acquitted

Date of Order : 28-07-2022

JUDGMENT

The present complaint is filed under section 2(d) read with section 200 of code of criminal procedure against the accused seeking to punish him for the offence punishable under section 138 of the Negotiable Instruments Act (in short referred as "N.I. Act").

02. The factual matrix of the complaint is summarized as under;

It is averred in the complaint that, the complainant had purchased flat No.FF1 in flat bearing No.22/1 in the building known as "Gayathri - villa" towards western portion of properties No.22, 23 and 24, new renewal Katha No.22 situated at Nagashettyhalli, Bengaluru under BBMP ward No.100 from the father of the accused by ame Mr.M.Venkatesh under a registered sale deed dated 17.06.2014. It is further alleged that, after purchase of schedule property by the complainant, the accused wanted said flat on rent for his personal use. Since, the accused was known to the complainant, she has rented out the purchased flat to the accused on 10.07.2014 on a monthly rent of Rs.20,000/-. However, after entering into a rental agreement, the accused has failed to pay monthly rent to the complainant. On the request of the complainant, the accused has issued a cheque bearing No.538192 dated 09.04.018 for Rs.5,00,000/- drawn on Canara Bank, RMV Extension Branch, Bengaluru towards the arrears of rent. The complainant has presented the said cheque for encashment through her banker, but it returned unpaid with banker's endorsement dated as "Funds Insufficient". Therefore, the complainant issued demand notice to the accused , inspite of receipt of the said notice, the accused neither has paid the cheque amount nor has given any reply. On these grounds, it is sought to convict the accused for the offence punishable under section 138 of NI Act and grant compensation as per section 357 of Code of Criminal Procedure.

03. On presentation of complaint, this court has verified the averments of complaint along with records and thereby had taken cognizance for the offence punishable under section 138 of NI Act. Thereby, as per the verdict of the Hon'ble Apex court reported in AIR 2014 SC 1983 in the case of Indian Bank Association and others V/s Union of India and others, the sworn statement of the complainant has been recorded as PW.1 and got exhibited seven documents at Ex.P.01 to 07. Having been made out the prima-facie case, the complaint has been registered in Register No. III and issued

process against the accused.

04. In response to the summons, the accused put his appearance before the court through his counsel and filed bail application under section 436 of Code of Criminal Procedure, the accused has been enlarged on bail. The substance of accusation has been recorded and read over to the accused, he pleaded not guilty and intends to put forth his defense. On filing application by the complainant under section 145(1) of NI Act, sworn statement of the complainant has been treated as examination in chief. Similarly, on filing application under section 145(2) of NI Act, the accused has been permitted to cross examine PW.1. On completion of the trial of the complainant's side, the statement of accused under section 313 of Code of Criminal Procedure has been recorded and read over to the accused, the incriminating material found in the trial of the case of the complainant. The accused has denied the same in toto and gave explanation stating that, legal notice not served on the accused and he is not liable to pay amount to the complainant. The accused also wants to lead his defense evidence. Similarly, the accused has filed his evidence in the form of affidavit. As per the judgment of the Hon'ble High Court of Karnataka in Cr.Pet.No.9331/2017 dated 02.07.2019 in the case of Vittal Sambrekar Vs. Manjunath, the accused is permitted to lead his defense evidence by way of affidavit and got exhibited five documents at Ex.P.01 to 05.

05. The Learned counsels for both the parties have filed written arguments. Perused the materials available on record.

In support of his written arguments, the Learned defense counsel has relied the following verdicts;

01. 2009(1) KCCR 508, Karnataka High Court, A.Viswanatha Pai Vs. Vivekananda S Bhat

02. ILR 2008 KAR 4629 Shiva Murthy Vs. Amruth Raj

03. AIR 2003 SC 182 C.Antony Vs. K.G.Ragavan Nair

04. 2014 AIR SCW 2158= 2014 CRI.L.J.2304 John K.Abraham Vs. Simon C Abraham & Anr

05. 2012(3) KCCR 2057 Veerayya Vs. G.K.Madivalar

06. (2006) 6 SCC 39 M.S.Narayana Menon @ Mani Vs. State of Kerala

07. 2018(1) DCR 322 Rampal Sharma Vs. Ashok Kumar & Anr

08. Judgment dated 16.04.2009 in Crl.Apl.No.199-2009 H.R.Nagarathna Vs. Jayashree Prasad

09. (2014) 12 SCC 625 Ramdas Vs. Krishnanand

10. 2018 o Supreme (Bom) 637=2018(1) DCR 762 Rajesh Vs. Miss.Sanjana I have carefully and meticulously gone through the above relied precedents.

o6. The following points that arise for my consideration are as under;

POINTS

1. Does the complainant proves beyond reasonable doubts that, the accused has issued a cheque bearing No.538192 dated 09.04.018 for Rs.5,00,000/-

towards the discharge of his lawful liability of the complainant and when the said cheque was presented for encashment, it was returned unpaid due to "Funds Insufficient" in the account of the drawer as per banker's memo and inspite of issuance of demand notice , the accused has failed to pay the cheque amount, thereby has committed the offence punishable under section 138 of NI Act?

2. What Order or sentence ?

o7. My findings to the above points is as follows;

1. Point No.1: In the negative

2. Point No.2: As per final order for the following;

REASONS

o8. POINT No.1: It is the specific case of the complainant that, towards the arrears of rent, the accused has issued a disputed cheque to the complainant and when the said cheque was presented for encashment, it returned unpaid due to "Funds Insufficient" in the account of the drawer and inspite of receipt of demand notice, the accused has failed to make the payment of the cheque amount.

o9. To substantiate and establish this fact before the court beyond reasonable doubts as per the verdict of the Hon'ble Apex court in the case of Indian Bank Association and others V/s Union of India and others , the sworn statement of the complainant has been treated as affidavit evidence. In his affidavit evidence, PW.1 has replicated the averments of the complainant. To corroborate the evidence of PW.1, the complainant has placed on record in all seven documents as per Ex.P.1 to 7. Ex.P.1 is the disputed cheque dated 09.04.2018, Ex.P.1 (a) is the signature of accused, Ex.P.2 is the banker's memo dated 18.06.2018, which shows the reasons for the return of the cheque at Ex.P.1 for unpaid is as "Funds Insufficient" , Ex.P.3 is the legal notice dated 25.06.2018 demanding for payment of cheque amount by replicating the averments of complaint. Ex.P.4 is the the postal receipt about sending legal notice at Ex.P.3, Ex.P.5 is the postal acknowledgement about receipt of the demand notice, Ex.P.6 is the absolute sale deed dated 17.06.2018 & Ex.P.7 is the Form No.15. PW.1 has been substantially cross examined by the counsel of accused.

10. To disprove the case of the complainant as well as to rebut the statutory presumption which could be drawn in favour of the complainant and also to prove the probable defense to the touch stone of preponderance of probabilities, the accused adduced his oral evidence before the court by

way of filing his affidavit in the form of examination of chief as DW.1. He testified in his affidavit that, on 17.06.2014, the complainant has purchased flat No.1 from his father under registered sale deed No.930/14/15 and on the same day, the possession of the flat was delivered. He further deposed that, the addresses shown in the sale deed and the addresses shown in the complaint relating to them is one and the same. Since, the father of the accused having own flat, he has been residing with his father since his childhood. He deposed that, the complainant had purchased their flat with an intention to residing in the said flat, as such prior to the purchase of their flat, she did not own any house. Accordingly, after purchase their flat, she occupied the purchase flat. Therefore, at no point of time, he took the flat of complainant on rent or lease and also he was not required the flat of the complainant.

DW. 1 further stated in his affidavit evidence that, himself and his father have borrowed loan from the "Shushruthi Souharda Sahakara Bank Niyamitha", wherein the complainant has been working. He deposed that, without a consent and knowledge of accused and his father, the employees of the said bank have illegally created loan accounts on their names and thereafter cheated them and also have issued many demand notices for the payment of the said loan amounts and whenever they visits to the branches of aforesaid bank to make an enquiry in respect of demand notices. They could not get proper and reasonable reasons. Interalia, the bank staffs dares to file the cheque bounce cases against them. Therefore, in this regard they have lodged complaint with a Police Commissioner, Bengaluru, Principal Secretary Co-Operative Department, RBI and the Register of Co-Operative Societies in the year 2016. He stated that, while at the time of availing loan from the aforesaid bank, some signed cheques were taken as security for the repayment of the loan availed and mis- utilizing those cheques and out of those cheques one the cheque has been mis-utilized and filed this present complaint. Like this, the employees of the aforesaid bank have filed many cheque bounce cases and also initiated recovery proceedings. He stated that, he did not received any notice sent by the complainant. Since, the employees of aforesaid bank starting doing benami transactions by mis- utilizing the amount of the bank and also documents of the customers have been mis-utilized and in order to control to inflammation, the RBI has issued circular on 07.04.2022 thereby had banned the transaction of the aforesaid bank. He further deposed that, the complainant colluding with the aforesaid bank in order to cheat him has filed this false complaint against him. He do not owes any rent amount to the complainant and also he never taken the flat of the complainant on lease or on rent. On these grounds he has sought to dismiss the complaint and acquit him. In support of his oral testimony, he produced before the court in all five documents marked at Ex.D.1 to 5. Ex.D.1 & 2 are the copies of the complaint lodged before the Principal Secretary Co-Operative Department, Karnataka Government Secretariat and The Commissioner of Police Bengaluru dated 05.12.2019 against the Director, Chairman and members of the "Shushruthi Souharda Sahakara Bank Niyamitha",. Ex.D.3 is the Kannada daily news paper cutting, wherein a news article is published in respect of "Shushruthi Souharda Sahakara Bank Niyamitha" with regard to issuance of restriction orders for the withdrawal of amount from the said bank by RBI. Ex.D.4 is the copy of the RBI direction dated 07.04.2022 and Ex.D.5 is the certificate under section 65-B of Evidence Act. The Learned counsel for the complainant has cross examined DW.1 at length.

11. The Learned counsel for the complainant had filed written argument. In his written argument, the averments of the complaint reiterated. Further, he submits that, accused has not disputed the

cheque and signature on cheque and he has not disputed particulars of the cheque by filling application stating that, there is a difference in ink and hand writing. Further submits that, the accused admitted his residential address shown in the cause title and during cross examination also he admitted that, he used to receive letters to the said address, but he denied the service of legal notice at the same place, which shows the conduct of the accused and his defense regarding the same is not acceptable. It is contended that, complainant has proved the case and accused has issued the cheque in order to discharge his legal debts/ liability. Therefore, Learned counsel for the complainant has sought to convict the accused for the offence punishable under section 138 of NI Act and grant compensation to the complainant.

On the other hand, the Learned Defense Counsel has advanced his oral argument and also filed his written argument. The Learned defense counsel contended that, the complainant had purchased flat from the father of accused for the purpose of her residence, as such she did not own any house, then how could she allowed the accused to reside in the said flat on rental basis. It is further contended in the argument that, the accused and his father have obtained loans from the "Shushruthi Souharda Sahakara Bank Niyamitha" and at that time they have given some of the cheques as a security to the said loans, but the employees of the said bank mis-utilizing their cheques have filed present case. The complainant not produced any document before the court to show that, there was a rental agreement between complainant and him, therefore it is sought to dismiss the complaint and thereby acquit the accused.

12. Before to appreciate the argument of the defense counsel and also the oral and documentary evidences produced on behalf of both the parties, it is necessary to find out whether the present complaint has been filed in consonance with the provisions of section 138 of NI Act or not?. At the time of recording the substance of accusation, the accused did not put forth his defense and has simply denied the accusation. But, while explaining to him the incriminating evidence under section 313 of Code of Criminal Procedure , the accused simply denied that, he has not indebted towards the complainant and also denied the service of demand notice. Even during the cross examination of PW.1 and also in his evidence as DW.1, the accused has specifically denied his signature on Ex.P.5- postal acknowledgement and the service of demand notice. However, during the cross examination of PW.1, a suggestion has been made that, demand notice at Ex.P.3 was issued to the same address found in the complaint and sale deed produced at Ex.P.6. On perusal of the address of the accused shown on Ex.P.5- postal acknowledgement and the address of the father of the accused shown in Ex.P.6 appears to be one and the same and even this fact has been re-iterated during his examination in chief by DW.1. Therefore, though the accused is denied his signature on Ex.P.5 and receipt of demand notice as per Ex.P.3, but since he has admitting his address shown in Ex.P.5 is the correct address, under such circumstances as per section 27 of General Clauses Act, when the demand notice has been issued to the correct and proper address of the accused, even though the said notice was not served or received, the said service shall be held as deemed service of notice, therefore there is a deemed service of demand notice on the accused as per section 27 of General Clauses Act. In this regard, it is profitable to refer the decision reported in the Judgment of Hon'ble Apex Court in the case of State of MP Vs. Hiralal reported in 1996(1) J.T.(SC) 669, it is held that;

" The endorsements such as, " not available in the house" , "house locked", "shop closed" and "left, not known" shall be taken as deemed services."

Therefore, the contention of the accused about non service of demand notice upon him cannot be acceptable. On perusal of the date of cheque, date of the banker's memo, date of the demand notice and deemed service of demand notice, so also the present complaint is filed on 16.07.2018 and it appears that, the present complaint filed in compliance of section 138(a) to (c) of NI Act.

13. As per sections 118(a) & 139 of NI Act are two important provisions and they provides for raising mandatory presumptions in favour of the complainant until the contrary is proved by the accused. Even in the catena of decisions i.e., in the case of Rangappa Vs. Mohan reported in 2010(11) SCC 441, in the case of Bir Singh Vs. Mukesh Kumar reported in 2019(4) SCC 197, in the case of APS Forex Services (P) Ltd., Vs.Shakthi International Fashion Linkers reported in 2020(12) SCC 724, in the case of Rajeshbai Muljibhai Patel Vs. State of Gujarat, reported in 2020(3) SCC 794, in the case of Triyambak S. Hegde Vs. Sripad reported in Live Law 2021 SC 492 and it is laid down that, " Once the issuance of cheque and the signature thereon is admitted by the accused, the court is required to raise presumption in favour of the complainant stating that, the accused has issued the cheque for some consideration towards discharge of his legal debt or liability of the complainant and that the complainant is the due holder of the said cheque. Even during his cross examination, the accused has clearly admitted that, the cheque at Ex.P.1 belongs to his account and the signature on Ex.P.1(a) is also belongs to him. The burden shifts on the accused to rebut the statutory presumptions under sections 118(a) & 139 of NI Act." Now, it is well established law that, the presumption mandated by section 139 of NI Act, thus indeed includes the existence of legally enforceable debt or liability and it is open for the accused to raise a probable defense wherein the existence of legally enforceable debt or liability can be contested and he shall prove before the court on preponderance of probabilities, only thereupon a statutory presumption raised in favour of the complainant stands rebutted.

14. In the land mark judgment of the Hon'ble Apex Court reported in AIR 2019 SC 1983 , in the case of Basalingappa Vs. Mudibasappa in para No.19, the top court of the country held that;

"Applying the rule of the word 'proved' under section 3 of Evidence Act, it became evident that in a trial under section 138, a prosecution will have to be made out every negotiable instrument was made or drawn for consideration and that it was extended for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges burden to prove that instrument was executed by the accused, the rules of presumptions under section 118 & 139 help him to shift the burden on the accused.

The presumptions will live, exists & survive & shall and only when the contrary is proved by the accused, that is the cheque was not issued for consideration and in discharge of any debt or liability. A presumption itself is not evidence, but only makes a prima-facie case for a party to whose benefits it exists.

The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated, but bare denial of the passing of consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is possible has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration & debt did not exist or their non-existence was so probable, that a prudent man would under the circumstances of the case act upon the plea that they did not exist."

In the instant case on hand, though the accused has not given any reply to the demand notice issued at Ex.P.3, since the service of demand notice has been held as deemed service, therefore there was no chance of giving reply notice to the demand notice on behalf of the accused, under such circumstances the accused had lost an opportunity to raise his probable defense at the beginning itself. Therefore, for not giving any reply to the demand notice at Ex.P.3, no adverse inference can be drawn against the accused. As per the own evidence of DW.1 and also during cross examination of PW.1, it is the defense of the accused is that, himself and his father have obtained loans from the "Shushruthi Souharda Sahakara Bank Niyamitha", at various branches and while availing the said loan, signed blank cheques were obtained from them as a security and the present cheque was given as security to the one of the loan account, the same has been mis-utilized by the complainant and has filed the present false complaint. By this defense of the accused, he has clearly admitted the cheque at Ex.P.1 belongs to his account and he put his signature on the cheque as per Ex.P.1(a). Therefore, the legal presumption shall go in favour of the complainant that the accused has issued the cheque at Ex.P.1 towards the discharge of his legal debt of the complainant and the complainant is the due holder of the said cheque. Now, the burden shifts on the accused to rebut the said legal presumption. To rebut the said legal presumption, the accused has substantially cross examined PW.1 and also has adduced his oral evidence as DW.1 and further has produced in all four documents marked at Ex.D.1 to 4. Ex.D.5 is the certificate under section 65-B of Evidence Act in respect of internet copy extracted by Ex.D.4.

15. Further, the accused adduced his oral evidence before the court by way of filing his affidavit in the form of examination of chief as DW.1. In para No.5 to 7 and in para No.9 & 10 of his examination in chief, it is the specific defense of DW.1 that, he and his father have availed loans in the different branches of "Shushruthi Souharda Sahakara Bank Niyamitha" and even the Management of the said branch and officials were used to create loan accounts in their names and cheated them. But, they have promptly repaid the EMI of their loan accounts. In some of the instances, the officials of the said bank were used to issue notices to them for the payment of EMI amount, even though they were not defaulters and thereby causes apprehension in their mind to file complaints against them. In this regard, himself and his father lodged complaint against the Management and officials of the aforesaid bank with the Police Commissioner, Bengaluru, Principal Secretary Co-Operative Department. DW.1 Further deposed that, the complainant being employee of the "Shushruthi

Souharda Sahakara Bank Niyamitha" by mis-utilizing their one of the cheque given as surety for the loan transaction and has filed the present complaint by filling up the sum on her own wishes. DW.1 has further categorically deposed as to how the Management of the aforesaid bank and employees colluded together have cheated to the general public and to the accused and his father. DW.1 further categorically deposed about the steps taken by the RBI against the aforesaid bank prohibiting the limit of withdrawal. The Learned counsel for the complainant has cross examined in length and during cross examination of DW.1, it is elicited from his mouth that, in the complaint made before the competent authority as per Ex.D.1 & 2, there is no mentioning about misuse of disputed cheque by the present complainant. Only by this admission, the entire evidence of DW.1 would not be doubted. Further, DW.1 has admitted in his further cross examination that, he has not lodged any complaint with the police against the complainant for the misuse of his cheque. This evidence of DW.1 also do not leads any doubt in the mind of the court to disbelieve the oral substantive of evidence before the court when the accused has produced before the court those evidence at Ex.D.1 & 2. Inter alia, during entire cross examination of DW.1, even a single suggestion has not been made stating that, Ex.D.1 & 2 were falsely created. Except this, nothing has been elicited from the mouth of DW.1 to disbelieve his oral testimony. On the other hand, looking to the averments of the complaint and sworn statement of complainant wherein she did not whispered or disclosed her occupation. But, only during her cross examination by the Learned counsel for the accused, she disclosed before the court first time that, she did MBA and has been working in the Co-Operative Bank, she knows the accused and his father since 8 years and she had purchased one flat from the father of the accused in the year 2014 as per the sale deed under Ex.P.6. For the benefit of discussion, the relevant portion of the cross examination of the PW.1, is reproduced as under;

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By this evidence of PW.1 in her cross examination, it appears that, the complainant has been working in the "Shushruthi Souharda Sahakara Bank Niyamitha" and also knows the availment of loans by the accused and his father and only on their acquittance she had purchased flat from the father of the accused under Ex.P.6. During her further cross examination, in the last paragraph of page No.8, though PW.1 has declined the suggestion made to her with regard to pendency of various cases between "Shushruthi Souharda Sahakara Bank Niyamitha" and the accused and also further declined to say that, the accused borrowing loan from her bank and also keeping his cheques as security in the said banks. When PW.1 is an employee of the said bank and she came to know the accused and his father only on their having loan transactions in the bank and also only by such knowing, she had purchased flat under Ex.P.6 then, how could she decline to answer the suggestion made to her. Instead of saying as 'do not know', she could have answered to the said suggestion either by answering 'yes' or 'no', by giving answer as 'do not know' clearly goes to show that, deliberately PW.1 has given this answer and for the said answer an adverse inference can be drawn against the PW.1, that in spite of knowing the facts with regard to availment of loans by accused and his father from "Shushruthi Souharda Sahakara Bank Niyamitha", she has hidden the said facts and this evidence strengthen the evidence of DW.1 with regard to availment of loan himself and his father in the various branches of "Shushruthi Souharda Sahakara Bank Niyamitha". The evidence of

DW.1 inspires my confidence that, the defense raised by the accused appears to be believable and probable. Now, coming to the discussion of documentary evidences produced by the accused, Ex.D.1 & 2 are the complaints copies made to Police Commissioner, Bengaluru & to the Principal Secretary Co-Operative Department by the accused. The recitals of these two complaints whispers that, the accused and his father have borrowed various loans from different branches of "Shushruthi Souharda Sahakara Bank Niyamitha" and it is their allegations in these complaints that, by creating loan accounts in their names, the bank officials and Management were used to issue demand notices and called upon them for the repayment of the loan amount of the said false accounts and in this regard they have filed these complaints for initiating action. Further, the accused has also produced one daily news paper dated 08.04.2022 of Prajavani, wherein a news article in Kannada has appeared, which discloses that, the RBI has prohibited the maximum withdrawal of Rs.5,000/- to the customers of "Shushruthi Souharda Sahakara Bank Niyamitha", due to raise its inflation & due to bad financial conditions. This paper produced at Ex.D.3 can be considered as a secondary evidence. The accused also produced the internet copy of the direction of RBI dated 07.04.2022 against the "Shushruthi Souharda Sahakara Bank Niyamitha"

directing to close their business from the date to banning either for granting any loans or making any investments etc., under Ex.D.5. The certificate under section 65-B of Evidence Act relating to Ex.D.4 is also produced. Therefore, this document at Ex.D.4 keeping reliable as a secondary evidence. During the entire cross examination of DW.1, documents produced at Ex.D.1 to 5 neither has been denied nor has been questioned by the complainant's side. On the other hand, looking to the evidence of PW.1 and the averments of her complaint, it is her case that, from 10.07.2014, the accused took her flat on rent for a monthly rent of Rs.20,000/-, but till 01.04.2018, he has has paid any amount of rent and towards the payment of arrears of rent, he has issued the cheque at Ex.P.1. For the sake of discussion if the say of complainant is taken to be as true, then from 10.07.2014 till 01.04.2018, the rent of Rs.20,000/- per month if calculated, approximately it would be at Rs.7,60,000/- and not as Rs.5,00,000/-. That apart, in the last line of para 4 of her complaint, wherein it is averred that, after entering into a rental agreement, the accused have not paid the monthly rent properly to the complainant, which means, there was a written agreement and she has with held the same to produce before the court, for this an adverse inference can be drawn against the complainant. That apart, during her further cross examination, PW.1 stated that, the accused has sublet her flat to somebody else & was collecting rent from the said person and after coming to knowing of that fact, she had issued notice to the sub-tenant and she will produce the copy of the notice to this court. But, she has not produced the copy of the said notice before the court. By considering these evidence found in the case of the complainant, I am of the considered opinion that, the oral substantive evidence of DW.1 coupled with his documents at Ex.D.1 to 5, the accused has raised the probable defense and thereby has proved the same on preponderance of probabilities. Now, the onus shifts on the complainant to establish before the court that, the accused has issued the cheque at Ex.P.1 towards the payment of arrears of rent amount. To prove this fact beyond reasonable doubts, except the oral testimony of PW.1, no documentary

evidence have been produced. That apart, as per her own case of the complainant, when the accused withheld her arrears of rent for the period of more than 3 years, then what was prevented her to get issue notice of eviction of her premises for non payment of rent. No such steps has been taken by the complainant. Moreover, when the complainant has let out her flat on the monthly rent of Rs.20,000/-, there must be a rental agreement between herself and the accused. During her cross examination, PW.1 herself admitted that, the accused has been residing in the apartment of "Gayathrivilla" which belongs to his father then a doubt would arise in the mind of the court about his very getting of flat of complainant on rent. Therefore, the complainant has failed to discharge her onus.

16. The Learned defense counsel has relied the above ten judgments of the Hon'ble High Court of Karnataka as well as Hon'ble Apex Court and Hon'ble High Court of Mumbai. In the judgments relied at Sl.No.1 & 2 reported in 2009(1) KCCR 508 & ILR 2008 KAR 4629, the ratio is laid down that, before raising presumption under section 118(a) & 139 of NI Act, the complainant shall discharge his burden to prove that, the cheque has been issued for the existence of legally enforceable debt or liability and only thereby the presumption shall be drawn. However, as per the land mark judgments of the Hon'ble Apex Court in the case of Rangappa Vs. Mohan , Kalamani Tex and Another Vs. P.Balasubramaniam & Bir Singh Vs. Mukesh Kumar, it is held that, " Once the issuance of cheque and the signature thereon is admitted by the accused, the court is required to raise presumption in favour of the complainant stating that, the accused has issued the cheque for some consideration towards discharge of his legal debt or liability of the complainant". Therefore, these two precedents of the Hon'ble High Court of Karnataka do not help to the accused. Further, in the above judgments at Sl.No. 3, 4, 7 & 9 of the Hon'ble Apex Court wherein the issue involved in the relied judgments was pertaining to advancement of hand loan and that the disputed cheque was issued towards discharge of the said hand loan amount. But, in the case on hand, the issue relating to issuance of cheque at Ex.P.1 for the payment of arrears of the alleged loan amount. Therefore, the law laid down in the above relied judgments shall not be made applicable to the case on hand. Further, the judgments relied at Sl.No.5 reported in 2012(3) KCCR 2057, wherein the accused has questioned the financial capacity of the complainant to advance loan amount, therefore the ratio laid down in the said judgment not applicable to the case on hand. The judgment relied at Sl.No.6 (2006) 6 SCC 39, wherein a law laid down that, in order to rebut the presumption under section 118(a) & 139 of NI Act, the accused shall raise probable defense and discharge the same by leading the evidence to the extent of preponderance of probabilities. This law has been again laid down in the recent judgment of the Hon'ble Apex Court in the case of Basalingappa Vs. Mudibasappa and the law laid down in these two judgments of the Hon'ble Apex Court, are applicable to the case on hand. The Learned Defense Counsel also relied the judgment of Hon'ble High Court of Rajasthan reported in 2018(1) DCR 322 , wherein it is held that, " When the complainant failed to prove legally enforceable liability against the accused, the passing of acquittal order is just and proper". The said law is applicable to the case on hand and would support the defense taken by the accused.

17. Therefore, by considering oral evidence of DW.1 coupled with the documents at Ex.D.1 to 5 and also the material evidence coupled out during the cross examination of PW.1, it can be very clear that, the accused has put forth probable defense and the same has been proved on preponderance of

probabilities. Thereby, the accused has discharged his burden. On the contrary, the complainant has failed to discharge her onus. Hence, I answered Point No.1 in the Negative.

18. POINT NO.2: In view of the above findings, this court proceed to pass the following;

O R D E R
Acting under Section 255(1) of code of
criminal procedure, the accused is

acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

The bail bond of accused stands canceled subject to appeal period.

{Dictated to the stenographer, transcribed and computerized by her, revised corrected and then pronounced in the open court on this 3rd day of August 2022}.

(BHOLA PANDIT) XX ACMM, Bengaluru.

ANNEXURE List of witnesses examined on behalf of complainant:

P.W.1 Smt.Uma.K List of documents produced on behalf of complainant:

Ex.P.1	Cheque
Ex.P. 1(a)	Signature of the accused
Ex.P. 2	Bank endorsement
Ex.P. 3	Copy of the legal notice
Ex.P. 4	Postal receipt
Ex.P. 5	Postal acknowledgement
Ex.P.6	Absolute sale deed
Ex.P.7	Form No.15

List of witnesses examined on behalf of accused:

D.W.1 Sri.V. Venu, List of documents produced on behalf of accused:

Ex.D.1 & 2

Copies of the complaints.

Ex.D.3 Kannada daily news paper
cutting.

Ex.D.4 Copy of the RBI direction dated
07.04.2022.

Ex.D.5 Certificate under section 65-B
of Evidence Act.

XX A.C.M.M.,
Bengaluru.