

## Smt.A.Sulochanamma vs Srikanth.M.U on 6 November, 2019

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

Dated this the 6th day of November 2019

PRESENT: KALPANA.M.S.,  
B.Sc., LL.M.,  
XX ADDL. C.M.M. Bengaluru.

C.C.No.1408/2017

Complainant : Smt.A.Sulochanamma,  
Aged about 58 years,  
W/o K.N.Mohan Kumar,  
R/a Jayamma Building,  
Sai Baba layout,  
Andrahalli, Main Road,  
Peenya 2nd Stage,  
Bengaluru - 560 058.

Vs.

Accused : Srikanth.M.U,  
Aged about 28 years,  
S/o Umashankar,  
R/o No.117, 1st Cross,  
V.P.Road, Madivala,  
Bengaluru - 560 068.

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

Plea of accused : Pleded not guilty  
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C.C.1408/2017

Final Order : Accused is Convicted

Date of Order : 06-11-2019

### JUDGMENT

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 of Negotiable Instruments Act ( in short referred as "N.I. Act") against the accused

alleging that, accused has committed the offence.

02. The sum and substance of the complaint, is as follows;

The accused being friend of complainant's son by name M.Nagaraj, had taken hand loan of Rs.10,00,000/- by way of cash from the complainant to meet his personal commitments. On the very same day, accused has entered into a loan agreement undertaking to return the said amount within three months and handed over two blank cheques as security and has further advised the complainant to present the same for encashment as per his instructions. After two months, the accused has once again approached the complainant with a request for a hand loan of Rs.6,00,000/- for his personal necessities and further agreed to return the said amount along with the amount received on 12.08.2015 viz., Rs.10,00,000/- and further there was no written agreement for the aforesaid additional amount of Rs.6,00,000/- and accused has issued one more cheque as security and has further advised the complainant to present it as per his instructions. Accused has not returned the amount as agreed upon. Complainant approached the accused during the second week of September 2016 and at that stage, accused has stated that, he would settle the amount and further has instructed the complainant to present all the three cheques issued by him in favour of the complainant. Hence, complainant has filled up the three cheques in the following manner.

1. Cheque bearing No.129304 dated 13.08.2016 for Rs.10,00,000/-, drawn on Standard Chartered Bank, Koramangala branch, Koramangala Bengaluru,

2. Cheque bearing No.121805 dated 16.08.2016 for Rs.5,00,000/-, drawn on City bank, N.A., Bengaluru &

3. Cheque bearing No.129303 dated 16.08.2016 for Rs.1,00,000/-, drawn on Standard Chartered Bank Koramangala Branch, Koramangala, Bengaluru. The complainant has presented the said cheques through his banker. All the cheques dishonoured for the reasons "Funds Insufficient". Thereafter, complainant got issued legal notice, which was duly served to the accused. Accused neither replied the notice nor paid the cheque amount. Hence, this complaint.

03. On filing of complaint, this court has taken cognizance for the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, accused enlarged on bail and plea was recorded as per section 251 of Cr.P.C. Accused has not stated the defence.

04. Learned Counsel for complainant prays to treat sworn statement as examination-in-chief and to consider the documents marked as Ex.P.1 to 13. The statement under section 313 of code of criminal procedure is recorded, read over and explained to the accused. The defence of the accused is total denial. Further accused examined himself as DW.1 and got marked documents as Ex.D.1 & 2 and subjected for part cross examination. In the course of cross examination, the Postal acknowledgement available in the court record, was marked as Ex.C.1 on confrontation. In spite of sufficient opportunities, accused has not chosen to subject him for further cross examination.

Hence, evidence of accused was taken off from the record and therefore not remained for consideration of the court.

05. In this case, the evidence on record shows that summons trial procedure was adopted instead of summary trial. As per the judgment passed by Supreme Court reported in 2014 Cr.L.J. 1953, in a case of Mehsana Nagarik Sahakari Bank Limited V/s. Shreeji CAB Company Limited and others, conducting Denova trial does not arises.

06. Complainant relied on the following citations;

1. 2015(8) SCC 378 T.Vasanthakumar Vs. Vijayakumari
2. LAWS (DLH) 2017 (5) 275 Ramesh Goyal Vs. State and another
3. LAWS (MAD) 2017 (6) 19 P.Ethiraj Vs. M.Nowsath Seth
4. LAWS (DLH) 2017 (5) 272 Sanjay Arora Vs. Monika Singh
5. 2017 (1) DCR 791 Pushap Raj Vs. Ramdhan

07. Heard the Learned Counsel for complainant and accused. Perused the written arguments filed on behalf of the complainant, citations and materials on record.

08. The points that arise for my consideration are as follows;

#### POINTS

1. Whether the complainant proves that, accused issued cheques

1. Cheque bearing No.129304 dated 13.08.2016 for Rs.10,00,000/-,

2. Cheque bearing No.121805 dated 16.08.2016 for Rs.5,00,000/- and

3. Cheque bearing No.129303 dated 16.08.2016 for Rs.1,00,000/-, towards discharge of his liability, which were returned unpaid on presentation and also not complied the notice issued by the complainant and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

09. My answer to the above points is as follows;

1. Point No.1: In the Affirmative

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

## REASONS

10. POINT No.1: Complainant has filed this complaint alleging that accused has committed offence under section 138 of N.I. Act. She pleads and asserts that, towards discharge of his liability, accused has issued the following cheques;

1. Cheque bearing No.129304 dated 13.08.2016 for Rs.10,00,000/-, drawn on Standard Chartered Bank, Koramangala branch, Koramangala Bengaluru,

2. Cheque bearing No.121805 dated 16.08.2016 for Rs.5,00,000/-, drawn on City bank, N.A., Bengaluru &

3. Cheque bearing No.129303 dated 16.08.2016 for Rs.1,00,000/-, drawn on Standard Chartered Bank Koramangala Branch, Koramangala, Bengaluru. The said cheques came to be dishonoured on presentation. Complainant has issued notice within time stipulated calling upon the accused to pay the amount covered under cheque. In spite of service of notice, accused has not paid the amount within 15 days, which gave rise cause of action to file this complaint. She further relied on the documents from Ex.P.1 to 13. This witness was subjected to cross examination.

11. In this scenario, let us scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. Ex.P.1 to 3 are the cheques dated 13.08.2016 and 16.08.2016, the said cheques returned with an endorsement "Funds Insufficient". Ex.P. 4 to 6 are the bank endorsements dated 14.09.2016, 21.09.2016 & 27.09.2016, Ex.P.3 is legal notice dated 05.10.2016, Ex.P.8 & 9 are postal receipts, Ex.P.10 is the Postal acknowledgement, Ex.P.11 returned postal cover, Ex.P.12 is the loan agreement and Ex.P.13 is the bank account statement. This complaint came to be filed on 07.11.2016. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act is complied with and this complaint is filed within time. Thus, complainant relied on the statutory presumptions enshrined under section 118 read with section 139 of N.I. Act.

12. No doubt, the said presumptions of law are rebuttable in nature. The accused can take probable defence and rebut the presumption available to the complainant. Let us examine whether accused has successfully rebutted the presumptions of law. In the course of cross examination, accused put forth the chit transaction and issuance of cheques in question and blank signed On Demand Promissory note towards security. On these contentions, accused sought for dismissal of the complaint and consequent acquittal. To endorse this contentions, accused examined himself as DW.1 and relied the documents from Ex.D. 1 & 2. Ex.D.1 is the police complaint dated 01.03.2016 and Ex.D.2 is the copy of the FIR. Subsequently, accused was partly cross examined and continuously remained absent and failed to subject himself for further cross examination.

13. In the back drop of the rival contentions, this court has given anxious consideration to the case papers. At the outset, accused has admitted the cheques as well the signatures present on the said

cheques and also admitted the issuance of cheques in favour of the complainant. Thus, legal presumptions enshrined under section 118 read with section 139 of the NI Act, is available to the complainant. The said provisions lays down a special rule of evidence that, unless contrary is proved, it shall be presumed, the complainant is the holder in due course of the cheque and it was issued for consideration. No doubt, the statutory presumptions are rebuttable in nature. In case, accused is successful in rebutting the presumptions by raising probable defence, the reverse onus shifts on the complainant to prove the contrary, that the accused is liable to pay the cheque amount and there exists legally enforceable debt.

14. This proposition of law is laid down by the Hon'ble High Court of Karnataka in the decision reported in ILR 2006 KAR 4672 - J.Ramaraj V/s Iliyz Khan, wherein it is held that;

"Mere denial of issuing cheque would not be sufficient as it is time and again noted that once the cheque is issued duly signed by the petitioner, the presumption goes against him as per Sec.139 of the Negotiable Instruments Act."

No doubt, said statutory presumptions are rebuttable in nature. It is for the accused to place cogent and probable defence to rebut the presumptions raised in favour of the Complainant.

15. To discharge the burden of rebuttal, accused has put forth the chit transaction allegedly conducted by the complainant. Per contra, complainant denied the said contention of issuance of the cheque, towards security to the chit amount and reasserted the loan transaction. To prove the impugned transaction, complainant relied on the suggestions posed in his cross examination, which reads as under;

É É ¤|.1 ºÄÄvÄÄÛ 2 ZÉPïUÄ¼Ä£ÄÄß ¤|.12 PÄgÄgÄÄ ¥ÄvÄæzÄ CrAiÄÄºè PÉÆIÖ 10 ®PÄë ºÄtPÄÍV vÉUÉzÄÄPÉÆArzÉÝÄ£É JAzÄgÉ ,Äj. ¤|.1 ZÉPï£Äºè 10 ®PÄë ºÄUÄÆ ¤|.2 ZÉPï£Äºè 05 ®PÄë £ÄºÄÄÆ¢¹zÉÝÄ£É JAzÄgÉ ,Äj. DgÉÆÄ| 06 ®PÄë ºÄt ,Á® ¥ÄqÉzÄUÄ ¤|.3 ZÉPÄÌ£ÄÄß PÉÆnÖzÁÝgÉ JAzÄgÉ ,Äj. É É The cursory reading of the aforesaid evidence leads an inference that, accused has indirectly admitted the money transaction claimed by the complainant. Further more, accused has admitted the purchase of the stamp paper of loan agreement as per Ex.P.12. If at all, accused has not taken the loan from the complainant, there was no obligation cast upon him to purchase the stamp paper and handed over the same to the complainant after affixing his signature. No doubt, accused has taken the contention that, as per recitals of Ex.P.12 (a), complainant is bound to initiate civil proceedings for non payment of the amount and this criminal case is not maintainable. It is worth to note that, this complaint is based on the dishonour of the cheques at Ex.P.1 to 3. There is no bar under law to initiate criminal proceedings on the basis of bounced cheque. As such, this contention of the accused holds no water. That apart, accused has not placed material evidence to prove the alleged chit transaction. Thus, it is incumbent to believe the case of the complainant.

16. Be that as it may, though accused has disputed service of legal notice, but not disputed the address mentioned in the legal notice. In turn, accused has unequivocally admitted that, his address mentioned in the admitted Postal acknowledgement at Ex.C.1 and legal notice, is one and the same.

So also, accused claims that, his name is wrongly mentioned in the cause title of the complaint. Therefore, the legal notice was not served on him. Contrary to this contention, accused admits that, the Postal acknowledgement as per Ex.C.1 carries the signature of his mother. Same address mentioned in Ex.C.1, Ex.P.10 and legal notice at Ex.P.7. Therefore, for all practical purpose, it could be conveniently taken that, legal notice was served on the accused.

17. In this context, it is profitable to refer the decision reported in, 2002 CrL LJ 1926 (Kar), Fakirappa Vs. Shiddalingappa, wherein it is held that;

" The only requirement for the service of demand notice is that, the notice should have been sent to the correct address of the drawer. Since the mode of service is not prescribed by the law, it can be sent either by registered post or under certificate of posting or otherwise. The expressions " Left, not known, ' not available in the house', 'house locked', 'shop closed' etc., are all synonyms. Therefore, if the address of the drawer is proved to be correct, even if the notice is returned with the above remarks, then the notice is deemed to have been served on the drawer."

In the present case, accused has not disputed his address mentioned in the legal notice. Hence, it can be taken that, there is deemed service of legal notice.

18. Further, it could be seen that, inspite of service of legal notice, the accused has not taken steps to issue reply taking all these contentions. The act of the accused in not issuing reply at the earliest point of time immediately after service of the legal notice is one of the strong circumstances in favour of the complainant. This proposition of the law laid down in the following decisions.

19. In decision reported in, 2007 CRI.L.J. (NOC) 520 (KER), in a case of Sanjeev P.R. V/s. Thriveni Credit Corporation, Thodupuzha & Another, wherein it is held that;

"(B). Negotiable Instrument Act (26 of 1881), S.138- Dishonour of cheque- Conviction- Validity-

Signature in cheque is admitted -

Notice of demand though duly received and acknowledged , did not evoke any reply.....- Concurrent finding that complainant has succeeded in proving all ingredients of the offence punishable under section 138 - Conviction of accused proper."

Further, the decision reported in, 2006 CRI.L.J.1, in a case of Gorantala Venkateswara Rao. V/s. Kolla Veera Raghava Rao and another, it is held that;

"(B) Negotiable Instrument Act ( 26 of 1881), S.138 - Dishonour of cheque- Legally enforceable debt-

Failure of accused in giving reply to legal notice issued by complainant-

Is one of the strong circumstances to draw an inference that accused borrowed amount from complainant and cheque was issued towards part payment of legally enforceable debt."

From the ratio laid down in the aforesaid decisions it is clear that, non issuance of reply by the accused is fatal to his defence. As such, the defence taken by the accused is not acceptable.

20. Accused has disputed the financial capacity of the complainant. To counter the same, complainant pleads and asserts that, she lent savings out of employment of her husband to the accused. Complainant also relied on the decision reported in, Hon'ble High Court of Delhi in LAWS(DLH) 2017(5) 272 (Sanjay Arora Vs. Monika Singh), it is held that;

"Negotiable Instruments Act, (26 of 1881- S.138 and 139 - Criminal Procedure Code, 1973- section 378(4)- acquittal-validity- held mere small earning of complainant or failure to file I.T. return or omission to file pass book or non examination of witnessed in his support are inconsequential where sign on cheque is admitted by accused and no plausible explanation has been given by accused- Acquittal is unsustainable and is liable to be quashed- Matter is listed to pass sentence-appeal is allowed.

21. That apart, as far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of larger bench of the Hon'ble Apex Court reported in, Rangappa Vs. Mohan reported in AIR 2010 SC 1898 = 2010 AIR (SCW) 2946, Wherein their lordships pleased to observe that;

"In the light of these extracts, we are in agreement with the respondent-

claimant that the presumption mandated by section 139 of the Act does indeed include the existence of the legally enforceable debt or liability".

In view of the law laid by three judges bench of Hon'ble Apex Court, the presumption enshrined under section 139 of the N.I. Act is extendable to the existence of legally enforceable debt. Accused has not placed cogent material to rebut the said presumption. As such, this contention of the accused holds no water.

22. From the overall consideration of the evidence on record it is forthcoming that, accused has not taken probable defence to rebut the statutory presumption. Mere denial is not sufficient to discharge the onus shifted on accused. To fortify this opinion, it is proper to refer the decision relied by the complainant reported in, 2015(8) SCC 378, T.Vasanthakumar Vs. Vijayakumari in Criminal Appeal No.728/2015, it is held that;

" Negotiable Instruments Act, (26 of 1991- S.138 and 139- Dishonour of Cheque- Appeal against acquittal- Cheque as well as signature on it not disputed by the accused, respondent- presumption under section 139 would be attracted- story brought out by accused that cheque was given to complainant long back to 1999 as a

security to a loan : the loan was repaid but complainant did not return security cheque- Is unworthy of credit, apart from being unsupported by way evidence - mere printed date on cheque by itself cannot be conclusive of fact that cheque was issued in 1999- order of high court in acquitting accused is erroneous and set aside civil rev. petition No.263 of 2011, dated 22.07.2011 (kar)."

23. The decision reported by Hon'ble High Court of Delhi in LAWS (DLH) 2017 (5) 275 (Ramesh Goyal Vs. State and others), has held that;

"Negotiable Instruments Act, 1881 - S.138- blank cheque theory- scope-held- If theory of blank cheque has placed then burden is on accused to justify it by cogent reasons- In absence thereof liability cannot be evaded on specious contents."

24. Further, the decision reported by Hon'ble High Court of Madras in LAWS (MAD) 2017 (6) 19 (P.Itiraj Vs. M.Nowsath Seth), it is held that;

" Negotiable Instruments Act,1881- Section 20- Instruments- scope- held whenever a person signs or delivers instruments either wholly blank or filled up, he gives prima facie authority to holder to recover the said amount."

25. In the decision reported in, 2001 CRI.L.J. 4647, in a case of Hiten P.Dalal V/s. Bratindranath Banerjee, it is held that;

"(B) Negotiable Instrument Act ( 26 of 1881), Ss.139, 138- Dishonour of cheque- Presumption that cheque was drawn for discharge of liability of drawer- Is presumption of law- Ought to be raised by Court in every case-

Rebuttal evidence- Nature- Mere plausible explanation is not sufficient-

Proof of explanation is necessary.

Evidence Act (1 of 1872), Ss .114, 101- 104."

Further in another decision reported in, 2017(2) A.K.R. 527, Arjun Vs.E.Shekar, it is held that, S. 138, 139- Presentation of lawful consideration- Rebuttal of - Burden of proving that cheque has not been issued for any debt or liability - is on accused - mere plausible explanation not sufficient to disprove complainant' s case.

From the gist of the ratio laid down in the above decisions, it is clear that, burden shift on the accused to rebut the statutory presumption through cogent evidence, which is not discharged by the accused in the present case.

26. Under the facts and circumstances of this case, it is profitable to refer the decisions of the Hon'ble Supreme Court of India reported in, AIR 2018 SUPREME COURT 3601, in a case of,



T.P.Murugan (Dead) Thr.Lrs. V. Bojan, wherein it is held that;

" Negotiable Instruments Act (26 of 1881), Ss.118,138,139- Dishonour of cheque- Presumption as to enforceable debt- cheques allegedly issued by accused towards repayment of debt- Defence of accused that 10 cheques issued towards repayment of loan back in 1995-

Behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural- Accused admitting his signature on cheques and pronote, presumption under S.139 would operate against him- Complainant proving existence of legally enforceable debt and issuance of cheques towards discharge of such debt- Conviction, proper".

27. In another decision reported in, AIR 2018 Supreme Court 3604, in a case of Krishna Rao Vs. Shankargouda, wherein it is held that;

"Negotiable Instruments Act (26 of 1881), Ss.138, 139-Dishonour of cheque- Presumption as to - Accused issuing cheque of Rs. 2 lacs towards repayment of loan to complainant - Said cheque dishonored on account of insufficiency funds- Complainant proving issuance of cheque having signatures of accused- Accused failing to rebut presumption raised against him and no evidence led by him in his support - Acquittal of accused by High Court in revisional jurisdiction on ground of doubt in mind of court with regard to existence of loan, improper- Accused, liable to be convicted".

28. Moreover, in the latest judgment decided on 15th March 2019, the Hon'ble Supreme Court of India, AIR 2019 Supreme Court 1876; Rohitbhai Jivanlal Patel V/s State of Gujarat & Another, it is observed in para 12 that;

" 12. For determination of the point as to whether the High Court was justified in reversing the judgment and order of the Trial Court and convicting the appellant for the offence under section 138 of the NI Act, the basic questions to be addressed to are two - fold: as to whether the complainant - respondent No.2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the accused -appellant had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?....."

It is further observed in 18.6 that;

" 18.6. The fact of the matter remains that the appellant could not deny his signatures on the said writing but attempted to suggest that his signatures were available on the blank stamp paper with Shri Jagdishbhai. This suggestion is too remote and too uncertain to be accepted. No cogent reason is available for the appellant signing a blank stamp paper. It is also indisputable that the cheques as mentioned therein with

all the relevant particulars like cheque numbers, name of bank and account number are of the same cheques which form the subject matter of these complaint cases. The said document bears the date 21.03.2007 and the cheques were postdated, starting from 01.04.2008 and ending 01.12.2008. There appears absolutely no reason to discard this writing from consideration...."

It is further observed in para No.19 that;

" 19. Hereinabove, we have examined in detail the findings of the Trial Court and those of High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the Trial Court. The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been or irrelevant factors of consideration of a probable defence of the appellant....."

The ratio laid down in the cited decisions are aptly applicable to the case on hand.

29. The accused has taken a vague defence and not placed cogent evidence to prove the same. This aspect is discussed in detail in a decision reported in, 2014(4) AKR 98 between Sripad Vs.Ramadas M.Shet, Criminal Appeal No.2689 of 2009, wherein it is held that;

"Negotiable Instrument Act (26 of 1881), Ss.138,139, 118- Dishonour of cheque-Acquitted-Validity-Cheque issued by repay loan amount to complainant, was dishonoured-Specific defence -However, accused failed to rebut initial presumption under sections 118 and 119- Mere distorted version or mere taking up defence by It means that he is not liable to pay any amount- Are not sufficient to put back the burden on to the complainant-

Acquittal of accused- Not proper."

The ratio laid down in the cited decision is squarely applicable to the facts on hand.

30. In this case plea of the accused was recorded as per section 251 of Cr.P.C. Accused pleaded not guilty. As per section 251 of Cr.P.C. accused has to state about his defence. Here, except pleading not guilty accused has not stated his defence at the time of recording plea. As per the decision reported in AIR 2014 SC 2528 (Indian Bank Association V/s Union of India), Crl. Petition No.8943/2010 M/s.Mess Transgare Pvt V/s Dr .R. Parvathareddy and in Rajesh Agarwals case, Wherein, it is held that; " Accused cannot simply say " I am innocent " or " I pleaded not guilty ". The proposition of law laid down in the aforesaid decision is squarely applicable to the facts and circumstances of this case. As such, it cannot be taken that accused has rebutted the presumption of law enshrined under section 139 and 118 of N.I. Act, by mere pleading not guilty.

31. From the discussion made supra, it is clear that, accused has neither taken probable defence nor taken steps to prove the same. To put it other way, accused has not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged under section 118 read with section 139 of N.I. Act. Accordingly, the case of the complainant is believable. Complainant has proved that, accused has intentionally not maintained sufficient amount in his account to honour the disputed cheque. Hence, this point No.1 under consideration is answered in the affirmative.

32. POINT NO.2: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable under section 138 of N.I. Act It is worth to note that, the offence is of the nature of civil wrong. Hence, it is proper to award sentence of fine, instead of awarding sentence of imprisonment. Hon'ble Supreme Court of India in a decision reported in, (2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal, observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with cost of litigation. Considering all these aspects, this court proceed to pass the following;

ORDER Acting under section 255 (2) of Criminal Procedure Code, accused is hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act and sentenced to pay fine of Rs.20,80,000/- ( Twenty Lakhs Eighty Thousand Rupees only).

In default thereof accused shall undergo simple imprisonment for 9 (Nine) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.20,70,000/- (Twenty Lakhs Seventy Thousand Rupees only), there from shall be paid to the complainant as a compensation, remaining fine amount of Rs.10,000/-

(Ten Thousand Rupees only) is defrayed to the state for the expenses incurred in the prosecution.

The bail bond and surety bond of the accused stands cancelled.

Office to supply the copy of this Judgment to the accused immediately on free of cost.

{Dictated to the stenographer directly on computer, corrected and then signed by me and then pronounced in the open court on this 6th day of November 2019}.

(KALPANA M.S.), XX ACMM, Bengaluru.

ANNEXURE List of witnesses examined on behalf of Complainant:

P.W.1 Smt.A.Sulochanamma List of documents produced on behalf of complainant:

Ex.P.1 to 3	Cheques
Ex.P. 1(a) to 3(a)	Signatures of the accused
Ex.P. 4 to 6	Bank endorsement

Ex.P. 7	Copy of the legal notice
Ex.P. 8 & 9	Postal receipts
Ex.P. 10	Postal acknowledgement
Ex.P.11	Returned postal cover
Ex.P.12	Loan agreement
Ex.P.13	Bank account statement

List of witnesses examined on behalf of accused:

DW.1 Srikanth.M.U. List of documents produced on behalf of accused:

Ex.D.1	Police complaint
Ex.D.2	Copy of the FIR

List of document marked through confrontation:

Ex.C.1	Postal acknowledgement
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XX A.C.M.M.,  
Bengaluru.