

Sri. Girish .V vs Sri. Hanumantha on 14 September, 2021

C.C.No.12244/2016

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THE COURT OF THE XVI ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU CITY

Dated:- This the 14th day of September, 2021

Present: SRI.S.B.HANDRAL, B.Sc., L.L.B(SPL).,
XVI Addl.C.M.M., Bengaluru City.

JUDGMENT U/S 355 OF Cr.P.C.,

Case No. : C.C.No.12244/2016
Complainant : Sri. Girish .V.,
S/o. Late Venkatesh,
Aged about 43 years,
R/at No.34, Muneshwara
Nagar, 3rd Phase,
BSK Hosakerihalli.
Bangalore - 560 085.

(Rep. by Sri. Girish .H Adv.)

- Vs -

Accused : Sri. Hanumantha,
Aged about 40 years,
R/at No.149/150, 2nd Floor,
3rd Cross, Hrishikeshnagar,
Hoskerihalli, BSK 3rd Stage,
Bangalore - 560 085.

(Rep. by Sri.N. Ramakrishna Adv)

Case instituted : 19.05.2016
Offence complained : U/s 138 of N.I Act
of
Plea of Accused : Pleaded not guilty
Final Order : Conviction

C.C.No.12244/2016

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Date of order : 14.09.2021

JUDGMENT

The Complainant has filed this complaint against the Accused for the offence punishable u/Sec.138 of the Negotiable Instruments Act.

2. Briefly stated the case of the Complainant is that, he and accused are known to each other since past four years and the accused approached him in the month of 2nd week of February 2015 for a hand loan of Rs.2,00,000/- for his financial necessities, considering his request, he has paid a sum of Rs.2,00,000/- on 12.02.2015 and again in the first week of May 2015 the accused approached him for further hand loan of Rs.3,00,000/- heeding the request of the accused, again he arranged Rs.50,000/- and arranged the remaining amount of Rs.2,50,000/- through his friend Rangaswamy C. H. and paid the hand loan of Rs.3,00,000/- to the accused by way of cash on 18.05.2015. It is further contended by the complainant that, at the time of receiving the said loan amount of Rs.3,00,000/- the accused and his wife Smt. Suma have assured and promised to repay earlier loan amount of C.C.No.12244/2016 Rs2,00,000/- along with Rs.3,00,000/- totally a sum of Rs.5,00,000/- and at the time of receiving the hand loan 2nd time, the accused and his wife have executed a Loan Agreement dated 18.05.2015 on a Stamp Paper and also On Demand Promissory Note in his favour and in favour of Rangaswamy C. H. in the presence witness and promised him to repay both hand loans within six months from the date of borrowal with an interest at the rate of 1% per month. It is further contended by the complainant that, after lapse of six months he approached the accused and requested him to repay the hand loan amount, but instead of repaying the same the accused started to avoid him on one or other pretext, after several request, the accused issued a cheque bearing No.314802 dated 17.03.2016 for Rs.2,50,000/- drawn on State Bank of Mysore, SBM Colony Branch, Bangalore in his favour and thereafter as per the instruction of the accused, he had presented the cheque for encashment through his banker i.e., Syndicate Bank, Kathriguppe Branch, Bangalore, but the said cheque was returned back with an endorsement "Funds Insufficient" dated 19.03.2016, inspite of several requests and demands, the accused gave C.C.No.12244/2016 evasive reply and neglected the same, thereafter he got issued a legal notice dated 05.04.2016 to the accused through RPAD calling upon him to pay the dishonored cheque amount within 15 days from the date of receipt of the notice and the said notice was duly served on the accused on 06.04.2016, but he replied untenably to the said legal notice, therefore even after service of notice, the accused has failed to comply the demands of legal notice and to pay the cheque amount till this day. It is further contended by the complainant that, the accused had issued the said cheque in his favour without having sufficient funds in his bank account only with an intention to cause wrongful loss to the him, thus accused has committed an offence punishable U/S 138 of Negotiable Instrument Act, accordingly the complainant has filed this present complaint against the Accused for the offence punishable U/s.138 of Negotiable Instruments Act.

3. Before issuing process against the accused, the Complainant has filed his affidavit in lieu of his sworn statement, in which, he has reiterated the averments of the complaint. In support of his evidence he has produced documentary evidence as Ex.C.1 to C.8 i.e. the Original Cheque dated: C.C.No.12244/2016 17.03.2016 as per Ex.C.1, the signature on the said cheque identified by P.W.1 as that of the accused as per Ex.C.1(a), the Bank Memo as per Ex.C.2, office copy of the Legal Notice dated 05.04.2016 as per Ex.C.3, the Postal Receipt as per Ex.C.4, Postal Acknowledgment as per Ex.C.5, reply notice dated 18.04.2016 as per Ex.C.6, certified copy of Loan Agreement dated 18.05.2015 as per Ex.C.7, original Promissory Note as per Ex.C.8, the signatures on the said

Promissory Note and Consideration Receipt dated 18.05.2015 identified by P.W.1 as that of the accused as per Ex.C.8(a) and Ex.C.8(b) respectively.

4. Prima facie case has been made out against the accused and summons was issued against him and in turn he appeared before the court and got enlarged on bail and the substance of the accusation has been read over to him, to which he pleaded not guilty and claims to be tried.

5. In view of the principles of law laid down and as per the directions of the Hon'ble Apex Court in the decision of the Indian Bank Association Vs., Union of India, reported in 2014 (5) SCC 590, after recording the plea of the accused, as he intended to set out his defence, and the case was posted for cross examination of complainant and C.C.No.12244/2016 complainant has closed his side.

6. Thereafter, the statement of the accused as required under Sec.313 of the Cr.P.C. has been recorded. he has denied the incriminating evidence appearing against him and has chosen to lead his rebuttal evidence, subsequently the accused himself examined as DW1 and he has relied upon the documentary evidence during the course of cross examination of the complainant i.e., PW1, accused has relied the documents i.e., Ex.D.1 to Ex.D.24 i.e., certified copy of Complaint filed by the wife of accused before the Police Inspector, Hanumantha Nagar P.S., Bangalore as per Ex.D.1, certified copy of F.I.R. as per Ex.D.2, certified copy of order sheet in P.C.R. as per Ex.D.3, certified copy of Charge Sheet as per Ex.D.4. Thereafter during the course of evidence the accused has produced certified copy of the Scanning Report as per Ex.D.5, certified copies of Bank Account pertaining to the SBM as per Ex.D.6 and Ex.D.7, True copy of the Statement of Accounts as per Ex.D.8, certified copy of the Certificate issued by the Good Future Rehabilitation Center dated 20.08.2016 as per Ex.D.9, certified copy of the ID and nomination paper acknowledgment as per Ex.D.10 and Ex.D.11, C.C.No.12244/2016 certified copy of the B report in Cr.No.60/16 (FIR complaint and the final report) as per Ex.D.12, certified copy of the complaint dated 25.02.2016 and acknowledgment as per Ex.D.13 and Ex.D.14, office copy of the reply notice dated 12.04.2016, postal receipt and postal acknowledgment as per Ex.D.15 to Ex.D.17, certified copy of the evidence affidavit of the complainant in CC No.12313/2016 as per Ex.D.18, certified copy of the cross examination of the complainant in CC.12313/2016 as per Ex.D.19, certified copy of the documents exhibited as Ex.P.1 to Ex.P.8 in CC.12313/2016 respectively and collectively marked as Ex.D.20, certified copy of the deposition of the examination in chief and the cross examination of the accused in CC.12313/2016 and collectively marked as per Ex.D.21, certified copy of the deposition of the examination in chief and the cross examination of accused's brother in CC.12313/2016 as per Ex.D.22, certified copy of the judgment passed in CC.12313/2016 as per Ex.D.23, certified copy of the deposition of the examination in chief and the cross examination of the complainant in CC.10746/2016 and collectively marked as Ex.D.24, certified copies of the documents exhibited as Ex.C.1 to Ex.C.7 marked through the C.C.No.12244/2016 complainant in CC.10746/2016 collectively marked as Ex.D.25. The accused has also examined three witnesses by name Sri. Krishna, Smt. Suma and Sri. Hanumantha as DW.2 to DW.4 and closed his side. The accused has produced certified copy of the cheque bearing No.314801 which is marked as Ex.N.1, Original copy of the voucher issued by the Bharath Petroleum Corporation Ltd., marked as Ex.N.2 and certified copy of the complaint and endorsement issued by the Girinagara P.S. marked as Ex.N.3 and Ex.N.4.

7. Heard the arguments by learned counsel for the complainant and perused the written arguments submitted by the learned counsel for the accused and materials on record.

8. On the basis of complaint, evidence of complainant and accused and documents and having heard the arguments of learned counsel for the accused, the following points that arise for my consideration are:□

1. Whether the complainant proves that the accused has issued a cheque bearing No.314802 dated 17.03.2016 for Rs.2,50,000/□drawn on State Bank of Mysore, SBM Colony Branch, Bangalore to discharge legally C.C.No.12244/2016 recoverable debt to the complainant and when the complainant has presented a cheque for encashment through his banker but the said cheque has been dishonoured for the reasons "

Funds Insufficient" on 19.03.2016 and the complainant issued legal notice to the accused on 05.04.2016 and in spite of it the accused has not paid the cheque amount within prescribed period there by the accused has committed an offence U/s.138 of the Negotiable instruments Act?

2. What Order?

9. The above points are answered as under:

Point No.1: In the Affirmative Point No.2: As per final order for the following:

REASONS

10. Point No.1: Before appreciation of the facts and oral and documentary evidence of the present case, it is relevant to mention that under criminal jurisprudence prosecution is required to establish guilt of the Accused beyond all reasonable doubts however, a proceedings U/s.138 of N.I.Act is quasi criminal in nature. In these proceedings proof beyond all reasonable doubt is subject to C.C.No.12244/2016 presumptions as envisaged U/s.118, 139 and 136 of N.I.Act. An essential ingredient of Sec. 138 of N.I.Act is that, whether a person issues cheque to be encashed and the cheque so issued is towards payment of debt or liability and if it is returned as unpaid for want of funds, then the person issuing such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act pre□supposes three conditions for prosecution of an offence which are as under:

1. Cheque shall be presented for payment within specified time i.e., from the date of issue or before expiry of its validity.

2. The holder shall issue a notice demanding payment in writing to the drawer within one month from the date of receipt of information of the bounced cheque and

3. The drawer inspite of demand notice fails to make payment within 15 days from the date of receipt of such notice.

If the above said three conditions are satisfied by holder in due course gets cause action to launch prosecution against the drawer of the bounced cheque and as per Sec.142(b) of the N.I. Act, the C.C.No.12244/2016 complaint has to be filed within one month from the date on which cause of action arise to file complaint.

11. It is also one of the essential ingredients of Sec. 138 of N.I.Act that, a cheque in question must have been issued towards legally recoverable debt or liability. Sec. 118 and 139 of N.I.Act envisages certain presumptions i.e., U/s.118 a presumption shall be raised regarding 'consideration' 'date' 'transfer' 'endorsement' and holder in course of Negotiable Instrument. Even Sec.139 of the Act are rebuttable presumptions shall be raised that, the cheque in question was issued regarding discharge of a legally recoverable or enforceable debt and these presumptions are mandatory presumptions that are required to be raised in cases of negotiable instrument, but the said presumptions are not conclusive and rebuttable one, this proportion of law has been laid down by the Hon'ble Apex Court of India and Hon'ble High Court of Karnataka in catena of decisions.

12. In the present case the complainant got examined as PW.1 by filing his affidavit evidence wherein he has reiterated the entire averments of the complaint and in his evidence testified that, he and accused known to each other since past four years C.C.No.12244/2016 and the accused approached him in the month of 2 nd week of February 2015 for a hand loan of Rs.2,00,000/□for his financial necessities, considering his request, he has paid a sum of Rs.2,00,000/□on 12.02.2015 and again in the first week of May 2015 the accused approached him for further hand loan of Rs.3,00,000/□ heeding the request of the accused, again he arranged Rs.50,000/□and arranged the remaining amount of Rs.2,50,000/□through his friend Rangaswamy C. H. and paid the hand loan of Rs.3,00,000/□to the accused by way of cash on 18.05.2015. The complainant / PW1 further testified that, at the time of receiving the said loan amount of Rs.3,00,000/□the accused and his wife Smt. Suma have assured and promised to repay earlier loan amount of Rs2,00,000/□along with Rs.3,00,000/□ totally a sum of Rs.5,00,000/□and at the time of receiving the hand loan, accused and his wife have executed a Loan Agreement dated 18.05.2015 on a Stamp Paper and also On Demand Promissory Note in his favour and in favour of Rangaswamy C. H. in the presence witness and promised him to repay both hand loans within six months from the date of borrowal with an interest at the rate of 1% per month. The C.C.No.12244/2016 complainant / PW1 further testified that, after lapse of six months he approached the accused and requested him to repay the hand loan amount, but instead of repaying the same the accused was avoided him on one or other pretext, after several request, the accused had issued a cheque bearing No.314802 dated 17.03.2016 for Rs.2,50,000/□drawn on State Bank of Mysore, SBM Colony Branch, Bangalore in his favour and thereafter as per the instruction of the accused, he had presented the cheque for encashment through his banker i.e., Syndicate Bank, Kathriguppe Branch, Bangalore, but the said cheque was returned back with an endorsement "Funds Insufficient" dated 19.03.2016, inspite of several requests and demands, the accused gave evasive reply and neglected the same, thereafter he got issued a legal notice dated 05.04.2016 to the accused through RPAD calling upon him to pay the dishonored cheque amount within 15 days from the date of receipt of the notice and the said notice

was duly served on the accused on 06.04.2016, but he replied untenably to the said legal notice, therefore even after service of notice, the accused has failed to comply the demands of legal notice and to pay the C.C.No.12244/2016 cheque amount till this day. It is further contended by the complainant that, the accused had issued the said cheque in his favour without having sufficient funds in his bank account only with an intention to cause wrongful loss to the him,

13. In support of oral evidence, P.W.1 has relied upon the documentary evidence as per Ex.C.1 to C.8 i.e. the Original Cheque dated: 17.03.2016 as per Ex.C.1, the signature on the said cheque identified by P.W.1 as that of the accused as per Ex.C.1(a), the Bank Memo as per Ex.C.2, office copy of the Legal Notice dated 05.04.2016 as per Ex.C.3, the Postal Receipt as per Ex.C.4, Postal Acknowledgment as per Ex.C.5, reply notice dated 18.04.2016 as per Ex.C.6, certified copy of Loan Agreement dated 18.05.2015 as per Ex.C.7, original Promissory Note as per Ex.C.8, the signatures on the said Promissory Note and Consideration Receipt dated 18.05.2015 identified by P.W.1 as that of the accused as per Ex.C.8(a) and Ex.C.8(b) respectively.

14. In the present case, there is no dispute between the complainant and Accused with regard to their acquaintance. It is also not disputed by the accused that, the cheque in question belongs to his account and signature found at Ex.C.1(a) is also that C.C.No.12244/2016 of his signature. The Accused has also not disputed that the cheque in dispute was presented for encashment and dishonored for the reason of "Funds Insufficient" vide bank endorsement dated:

19.03.2016 therefore as a matter on record and has been proved by producing bank memo i.e., Ex.C.2 issued by the concerned bank dated: 19.03.2016.

Therefore the complainant has proved that, the cheque in question i.e Ex.C.1 was presented within its validity period and dishonored as per bank endorsement issued by the banker of the Accused and the cheque in question belonging to the Accused account and signature of the Accused is at Ex.C.1(a). It is also seen from Ex.C.3 that, the complainant got issued legal notice within 30 days from the date of receipt of bank memo to the accused through RPAD and said notice was sent as per Ex.C.4 and served on the accused as per Ex.C.5. The accused has also gave reply to the legal notice issued by the complainant. Hence the complainant proved that, the legal notice issued by him to the accused through RPAD was duly served on the accused. Therefore the complainant has complied all the mandatory requirements as required under Sec.138

(a) to (c) of N.I. Act and initial presumptions can be C.C.No.12244/2016 drawn in favour of the complainant as per Sec.118

(a) and 139 of N.I. Act.

15. It is the specific defence of the accused that, he has not borrowed a loan of Rs.2 lakhs on 12.02.2015 and an amount of Rs.3 lakhs on 18.05.2015 from the complainant and has not issued the cheque in question to the complainant towards discharge of the loan amount in question and has not executed any documents in favour of the complainant. The complainant in order to substantiate his claim and in support of oral evidence has produced the cheque issued by the accused which is at

Ex.C.1 and signature on the cheque identified by the as per Ex.C.1(a). The complainant has also produced Loan Agreement Deed dated 18.05.2015 which is at Ex.C.7 and On Demand Promissory Note and Consideration Receipt which is at Ex.C.8 and the signatures of the accused and his wife are identified by the complainant as per Ex.C.8(a), Ex.C.8(b) and Ex.C.8(c) and Ex.C.8(d) respectively. On careful perusal of the Ex.C.1 it appears that, the accused has issued the cheque for sum of Rs.2,50,000/□ in favour of the complainant on 17.03.2016 and his signature is found at Ex.C.1(a). It is true that, though the accused has C.C.No.12244/2016 denied the said cheque was issued for Rs.2,50,000/□ but has admitted that, the cheque belongs to his account and signature found at Ex.C.1(a) is that of his signature, hence complainant proved that, the cheque in question i.e., Ex.C.1 was issued by the accused in his favour and signature found at Ex.C.1(a) is that of the of the accused.

16. On perusal of Ex.C.7 it appears that, as per the claim of the complainant the said Loan Agreement is executed by the accused in his favour and also in favour of one Rangaswamy C.H. On the other hand, the accused has denied the execution of Ex.C.7 and his signature on Ex.C.7. It is seen from the Ex.C.7 that, the said agreement was executed on 18.05.2015 by the accused and his wife Smt. Suma in favour of the complainant and one Rangaswamy C.H. by admitting the earlier loan amount of Rs.2 lakhs received by the accused and also receipt of loan amount of Rs.3 lakhs in total loan amount of Rs.5 lakhs from the complainant by way of cash in the presence of witnesses by agreeing to repay the said amount within six months and in case if they failed to repay the said amount have agreed to initiate legal action against them. It is also seen in Ex.C.7 that, the accused and his wife by agreeing to C.C.No.12244/2016 repay the loan amount of Rs.5 lakhs and also stated that, they have executed on demand promissory note to the extent of loan amount of Rs.5 lakhs. The learned counsel for the accused has cross examined the complainant in length on Ex.C.7, but nothing has been elicited to disbelieve the Ex.C.7. The complainant / PW1 has denied the suggestions made to him that, when ever a matter is typed on computer and the print out of it is taken, there will not be any possibility of few words to be on the top and few words below and the pharas "and Rangaswamy C.H....." appears to be on the top when compared to the other words in line two of page No.2 of Ex.C.7 and also denied that, he had originally created Ex.C.7 in the names of accused and himself by not including the name of Rangaswamy C.H. in the said document and in order to create a document in support of cheque he had created Ex.C.7 by inserting the name of Rangaswamy C.H. in the said document and the said Rangaswamy C.H. and himself have colluded and forged the signatures of the accused and his wife and created the document in Ex.C.7. The complainant has also denied the suggestion made to him that, he had created Ex.C.7 on basis of the C.C.No.12244/2016 events took place on 25.08.2012 and Ex.C.7 does not contain the signature either of the accused or his wife and they have been forged by himself and his partner Rangaswamy and Ex.C.7 came to be created for his purpose and subsequently for the purpose of Rangaswamy as the name of Rangaswamy was inserted in the second line in page No.2 of Ex.C.7 and none of the stamp papers used in respect of the documents have been purchased by the accused and same has been purchased by him. Hence, on entire perusal of the cross□examination of complainant by the accused on Ex.C.7 nothing has been elicited from the complainant to discard or disbelieve the Ex.C.7.

17. It is relevant here to mention that, the accused during course of cross□examination of the complainant at page No..16 suggested that, on 25.08.2012 he had collected the cheque in dispute

from the accused as a blank signed cheque alongwith a signed blank stamp paper and a photo copy of his voter ID card with his original signature on it, but the said suggestion was denied by the complainant. It is also suggested at page No.11 of the cross examination that, the signature of the accused which is found in Ex.N.1, is identical with C.C.No.12244/2016 the signature as "Hanumantha" found in Ex.C.7 and the said suggestion is admitted by the complainant. Hence, it goes to show that, according to the accused the complainant had collected his blank signed cheque and his signed blank stamp paper with his original signature and also admitted his signature on the stamp paper, in such circumstance it can be held that, though the accused has denied the execution of Ex.C.7 in favour of the complainant, but during the course of cross examination has admitted his signature found on Ex.C.7 and the same has been given to the complainant. According to the defence of the accused Ex.C.7 is got created by the complainant for the purpose of this case and also for the purpose of another case filed by one Rangaswamy C.H. against him. It is relevant here to mention that, the accused during the course of his cross examination has admitted that, according to him Ex.C.9 document is not the document which he has handed over his signed blank stamp paper to the complainant, hence it goes to show that, the accused at one breath during the course of cross examination of complainant suggested that, he has handed over his blank signed stamp paper to the complainant and same has been created by the C.C.No.12244/2016 complainant in his name and also in the name of his partner i.e., Rangaswamy C.H. and another breath admitted that, Ex.C.7 is not the stamp paper which he has handed over to the complainant as blank signed stamp paper, therefore the two version of the accused makes it clear that, the accused in order to deny or admit the execution of the Ex.C.7 in favour of the complainant and C.H. Rangaswamy has taken defences which are not helpful for him, on this count the defence of the accused that, the complainant got created the Ex.C.7 in his name and also in the name of C.H. Rangaswamy for the purpose of this case and also filing the complaint by C.H. Rangaswamy cannot be acceptable one. The complainant during the course of his cross examination has specifically stated that, at the time of lending of loan amount of Rs.2 lakhs in the month of February 2005 he did not collected the documents from the accused as he had trust in the accused and also stated that, at the time of lending of Rs.3 lakhs to the accused in the month of May 2005 the accused and his wife have executed Ex.C.7 in his name and also in the name of Rangaswamy C.H. The complainant / PW1 has also specifically stated that, the amount of Rs.3 lakhs which he claimed to have lent to the accused in May C.C.No.12244/2016 2015 consisted of Rs.50,000/□ belonging to him and remaining amount of Rs.2.5 lakhs belonging to his partner C.H. Rangaswamy and also stated that, on the date of lending of amount for second time the accused has given one stamp paper in the names of himself and Rangaswamy and also on demand promissory note in his name and the accused had brought the stamp paper and contents of the said stamp paper typed written and accused signed on the stamp paper in his house at that time wife of the accused Suma was also signed on the stamp paper. Hence the entire perusal of the cross examination of PW1 nothing has been elicited to discard the Ex.C.7 and to accept the defence of the accused that, complainant got created the Ex.C.7 for the purpose of this case.

18. The complainant has also produced on demand promissory note which is at Ex.C.8 and the perusal of the contents of the Ex.C.8 it appears that, the accused and his wife by name Suma have executed the said on demand promissory note and consideration receipt in favour of the complainant by admitting the receipt of Rs.2,50,000/□ from the complainant and also agreed to pay interest at 1% p.m. The complainant has also identified the C.C.No.12244/2016 signatures of the

accused which are Ex.C.8(a) and C.8(b) and signatures of the wife of the accused as per Ex.C.8(c) and C.(d). The said Ex.C.8 was written by one Varalakshmi. The accused during the course of cross examination of the complainant has denied the execution of Ex.C.8 and his signature and also signatures of the wife of the accused. The complainant / PW1 during his cross examination has clearly stated that, he had collected on demand promissory note from the accused in the month of May - 2015 and denied the suggestion that, he had forged the signature of the accused as well as that of his wife on the promissory note at Ex.C.8 including the contents in it and the person by name Varalakshmi whose name is found in Ex.C.8 is related to his family. It is relevant here to mention that, the accused has suggested that, the said Varalakshmi has written the contents of the documents and also suggested that, the contents of the cheque in dispute as well as that of the promissory note at Ex.C.8 have been written by Varalakshmi and the handwriting in respect of amount written in the words in Ex.C.1 when compared to that of Ex.C.8 are one and the same, but the said suggestion denied by the complainant, however the said suggestions sufficient to hold that, C.C.No.12244/2016 the accused has admitted that, the contents of the Ex.C.8 are written by one Varalakshmi and which is corroborates the contents of the Ex.C.8 i.e., in Ex.C.8 also the name of the scribe is written as Varalakshmi, therefore the accused has admitted the Ex.C.8 was written by Varalakshmi. The complainant / PW1 has denied the suggestions that, the signature found on Ex.C.1, Ex.C.7 and Ex.C.8 are not identical with each other and he had created Ex.C.7 and C.8 for the purpose of present case, hence nothing has been elicited from the complainant to discard his evidence or disbelieve the claim of the complainant that, the accused and his wife have executed on demand promissory note and consideration receipt in his favour as per Ex.C.8.

19. The learned counsel for the accused has cross examined the complainant in length, but nothing has been elicited to disbelieve or discard the evidence of PW1. The perusal of entire cross examination of the complainant, the accused rather concentrated his cross examination on production of documents by the complainant to prove his source of income and for collection of documents from the accused at the time of lending of loan amount for the first time and date, month and place of lending of C.C.No.12244/2016 loan amount to the accused as claimed by the complainant, but nothing materials have been elicited to discard the evidence of PW1. It is true that, the complainant has admitted in his cross examination that, he has not mentioned date, time and place of approach of the accused for seeking loan and in whose presence the loan amounts were paid to the accused and the complainant has not collected the documents at the time of lending of Rs.2 lakhs to the accused in the month of February 2005, but the said admissions are not helpful for the accused to rebut the presumptions available to the complainant under Sec.118(a) and 139 of N.I. Act. It is specifically stated by the complainant in his complaint and evidence that, on 12.02.2015 he has paid a sum of Rs.2 lakhs to the accused and on 18.05.2015 again he has paid a sum of Rs.3 lakhs to the accused and the accused and his wife have executed the loan agreement dated 18.05.2015 and also on demand promissory note in his favour and also in favour one Rangaswamy C.H. Therefore though the complainant has not stated date, month and year of lending of loan amounts to the accused in the legal notice, but has specifically stated date, month and year of lending of loan amounts to the C.C.No.12244/2016 accused in his complaint and evidence. It is also relevant here to mention that, the complainant / PW1 has specifically denied the suggestions made to him that, accused was sick during the year 2012 at that time due to his illness he had availed loan of Rs.50,000/- from him on 25.08.2012 on interest of 15% p.m. and at that time as a security for the

said loan he had collected the cheque bearing No.314801 from him and on the basis of said cheque his friend C.H. Rangaswamy has filed a cheque bounce case against the accused before the 22 nd ACMM Court and during the pendency of this case he was accompanying C.H. Rangaswamy and got filed the said case against the accused on the basis of cheque given by the accused for security purpose. The complainant / PW1 has also denied the suggestion that, the accused again had availed a loan of Rs.25,000/□from him on 15.09.2012 on the same day he have lent loan amount of Rs.21,250/□to the accused by way of cash by withholding Rs.3,750/□for the purpose of interest and at that time he had collected the cheque in dispute from the accused for the purpose of security towards the loan amount of Rs.25,000/□and thereafter he demanded for payment of interest in respect of loan amount of C.C.No.12244/2016 Rs.50,000/□dated 25.08.2012 from the accused as he was unable to pay the said interest again on 25.09.2012 he had advanced a loan of Rs.25,000/□to the accused by withholding Rs.7,500/□towards interest for earlier loan of Rs.50,000/□and at that time also he had collected the cheque bearing No.314803 from the accused for the purpose of security. The complainant / PW1 has also denied the suggestions that, on 25.08.2012 he had collected the cheque in dispute from the accused as signed blank cheque alongwith signed blank stamp paper and photo copy of his voter ID with his original signature and he has filed this false case against the accused on the basis of said signed blank cheque and also still in possession of cheque bearing No.314803. The complainant / PW1 has also denied the suggestion that, on 30.04.2015 he visited the house of the accused at about 7.00 p.m. when he was sitting drunk he abused him and assaulted him and due to the said incident the accused attempted to commit suicide and thereafter on 04.05.2015 he visited the house of accused and raised dispute with wife of the accused and demanded for repayment of the loan amount availed by her husband, at that time the brother of the accused Krishna met him and C.C.No.12244/2016 enquired about the said incident at that time he informed him that, the accused owed Rs.1 lakh to him together with interest for three months at that time the said Krishna paid Rs.10,000/□and assured him to pay the remaining balance amount after discharge of the accused from Good Future Institution. The complainant / PW1 has also denied the suggestion that, on 18.05.2015 he alongwith his wife, child and four persons went to the village of accused and on the said day he collected the signatures of the brother of the accused Krishna and his wife Renuka, the wife of accused Suma and her brother Hanumantha on prepared loan agreement and on blank on demand promissory note and collected a signed blank cheque from brother of the accused for the purpose of security of the loan of the accused. Hence the complainant has denied all the suggestions made to him and nothing has been elicited from the complainant to disbelieve the evidence of complainant.

20. Therefore from careful perusal of the oral and documentary evidence produced by the complainant i.e., Ex.C.1, Ex.C.7 and Ex.C.8 makes it clear that, the complainant has proved that, he has paid an amount of Rs.2 lakhs to the accused by C.C.No.12244/2016 way of cash at the first instance and thereafter the accused again approached him and received an amount of Rs.3 lakhs from the complainant and out of the said amount of Rs.3 lakhs the complainant arranged Rs.50,000/□and remaining amount arranged from his friend Rangaswamy C.H. and at the time of receiving loan amount for the second time by the accused, the accused and his wife have executed on demand promissory note and consideration receipt as per Ex.C.8 by acknowledging the loan amount of Rs.2,50,000/□received from the complainant.

21. It is also relevant here to mention that, the accused in his defence has specifically contended that, complainant has not produced the document to prove his source of income and has not produced the document to show that, he has lent the loan amount to the accused, but as it is already stated in the above that, the complainant has proved his source of income as the accused himself admitted that, according to him he has borrowed the amount of Rs.1 lakh on different dates on monthly interest basis from the complainant that itself sufficient to hold that, complainant having sufficient source of income. In addition to that, the accused has also C.C.No.12244/2016 admitted that, the cheque in question i.e., Ex.C.1 belongs to his account and signature found at Ex.C.1(a) is that of his signature. It is also proved by the complainant that, the cheque in question was presented within its validity period and it was dishonored for the reason of "Funds Insufficient"

as per Ex.C.2 and thereafter the legal notice caused by him through RPAD as per Ex.C.3 was duly served on the accused as per Ex.C.5, in such circumstances, it can be held that, the complainant has discharged his initial burden by complying the mandatory requirements as required U/s.138 of N.I. Act and initial presumptions are available in favour of the complainant U/s.118a and 139 of the N.I.Act. Consequently it is for the Accused to rebut the said presumptions available in favour of the complainant to show that, the cheque in question was not issued either to the complainant or towards discharge of any legally recoverable debt by producing cogent and convincing evidence but not mere suggestions or even by plausible explanation. In such circumstances, when the presumptions U/s.118 and 139 of N.I.Act are available to the complainant, even a presumption can be drawn to the extent of existence of legally recoverable debt or liability C.C.No.12244/2016 against the Accused unless and until the said presumptions are rebutted by the Accused, even in the absence of documents produced by the complainant with regard to loan transaction in question. In this regard it is relevant here to refer the decisions reported in 2001 AIR Karnataka HCR 2154 between 'M/s.Devi Tyres V/s.Navab Jan' and in 2011 ACD 1521 (KAR) between 'Smt. Usha Suresh V/s. Shashidharn', in 2010 SC 1898 between 'Rangappa Vs. Mohan' and 2011 ACD 1412 (KAR) between 'N.Hasainar Vs. M.Hasainar, S/o. Ibrahim'. The Hon'ble High Court of Karnataka in the above decision i.e., 2001 AIR Karnataka HCR 2154 at para No.6 was pleased to hold that issuance of cheque itself was adequate proof of existence of debt or liability. In another decision of Hon'ble Apex Court of India i.e. Hon'ble Three Judges Bench Decision reported in (2010) 11 SCC 441 in the case of Rangappa Vs. Sri. Mohan ., wherein the Hon'ble Apex Court held that "

A. Negotiable Instruments Act, 1881 - S.139 -

Presumption	under	-	scope	of	-	Held,
presumption	mandated by S. 139					includes a
presumption	that	there	exists	a	legally	
						C.C.No.12244/2016

enforceable debt or liability - However such presumption is rebuttable in nature - Criminal Trial - Proof - Presumptions - Generally. Further held that "Signature on the cheque was his, statutory presumption under S.139 comes into play and the same was not rebutted even with regard to the materials submitted by complainant Appellant not able to prove "lost cheque" theory - Apart from not raising a probable defence appellant was also not able to contest the existence of a legally enforceable debt or liability - hence, his conviction by High Court, held, proper. In another decision of Hon'ble Apex Court of India, reported in CRIMINAL APPEAL NO. 508 OF 2018 DT 15th 03rd 2018 between ROHITBHAI JIVANLAL PATEL Vs STATE OF GUJARAT AND ANR held that "Negotiable Instruments Act facts like source of funds are not relevant if the Accused has not been able to rebut the presumption. It is further held that " When such a presumption is drawn, the facts relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source C.C.No.12244/2016 of funds were not of relevant consideration while examining if the Accused has been able to rebut the presumption or not". In another decision of Hon'ble Apex court of India decided in Crl.Appeal No.1545 of 2019 dt.17/10/2019 by the Hon'ble Apex Court of India in the case of Uttam Ram Vs. Devinder Singh Hudan and Anr. Wherein the Hon'ble Apex Court held that, "

Dishonor of cheque - Statutory presumption under - burden to prove - the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability - it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer - even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act - the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act. It is also held that, " the accused has failed to lead any evidence to rebut the statutory presumption, a finding C.C.No.12244/2016 returned by both the Trial Court and High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on the account of discrepancy in the cartons, packing materials or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore it is presumed that, the cheque in question were drawn for consideration and the holder of the cheques received the same in existing debt". It is also held that, " the Trial court and the High Court proceeded as if, the appellant is to prove a debt before civil Court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries statutory presumption of consideration. The holder of cheque in due course is required to prove that, the cheque was issued by the Accused and that when the same presented , it was not honoured Since there is a statutory presumption of consideration, the burden is on C.C.No.12244/2016 the Accused to rebut the presumption that, the cheque was issued not for any debt or other liability ". It is also relevant here to refer the decision of Hon'ble High Court of Karnataka reported in ILR 2019 KAR 493 in the case of Sri.Yogesh Poojary Vs. Sri.K.Shankara Bhat, wherein the Hon'ble High Court held that, the presumption mandated by Sec.139 of N.I Act includes the presumption that, there existed a legally enforceable debt or liability, however such presumption is

rebuttable in nature". In another decision of Hon'ble High Court of Karnataka in the case of Shri.V.R.Shresthi Vs. Shri. Bhaskara.P. in Crl. Appeal No. 2109/2017 dated: 15.10.2019 wherein the Hon'ble High Court of Karnataka held that "the Accused has not given any reply to the notice and also in the cross-examination, he categorically admits that, the cheque has bounced on account of no sufficient fund in the bank account of the Accused. Mere non producing of the document before the court with regard to the source of income to advance a loan is not a ground to dismiss the complaint.

C.C.No.12244/2016 The Accused ought to have rebutted the contention of the complainant by producing cogent evidence before the court and mere denial is not enough". In another decision of Hon'ble Apex Court of India reported in ICL 2021(2) SC 529 in the case of M/s Kalamani Tex Vs. P. Balasubramanian, dt: 10.02.2021, wherein the Hon'ble Apex Court held that, "once the accused had admitted his signatures on the cheque and deed, the trial court ought to have presumed that, the cheque was issued as consideration for legally enforceable debt." Therefore on careful reading of the principles of law laid down by the Hon'ble Apex Court of India and High Court of Karnataka in the above referred decisions makes it very clear that, once the holder in due course i.e. the complainant proved that, the cheque in question belongs to the drawer and signature appearing on the cheque is that of the drawer i.e., Accused and complied the mandatory requirements as required U/s.138 of N.I.Act, presumptions U/s.118a and 139 of N.I.Act indeed does extend to the existence of legally recoverable debt and when such presumption is drawn the facts relating to the want of C.C.No.12244/2016 documentary evidence in the form of receipts or accounts or want of evidence regarding source of funds were not of relevant unless the Accused rebutted the presumption available to the complainant as held by the Hon'ble Apex Court and High Court of Karnataka in the above decisions. In the present case also the complainant has complied mandatory requirements and has proved that, the Accused has issued the cheque in question in his favour and the Accused has admitted the cheque belongs to him and signature appearing on the cheque is that of his signature and even after service of the notice, the Accused has not given any reply or complied the terms of the notice, in such circumstances, presumptions have to be drawn towards existence of legally enforceable debt as per Sec.139 of N.I.Act.

22. Therefore, for the above said reasons the defence taken by the Accused that, the complainant has failed to prove that, he has lent an amount of Rs.5 lakhs to the accused and the accused the accused has issued the cheque in question towards discharge of the said loan amount cannot be acceptable one. The defence taken by the Accused appears to be the complainant has to prove his claim C.C.No.12244/2016 by producing evidence as if it is required for proving of his debt before the Civil Court, but same cannot be permissible in a proceedings initiated U/s.138 of N.I. Act, as held by the Hon'ble Apex court of India in the above referred decision, therefore in view of the principles of law laid down in the above referred decisions it is presumed that, cheque in question was drawn for consideration as the Accused has admitted the cheque in question belongs to him and signature

found on the cheque in question is also that of his signature. Therefore for the above said reasons the arguments canvassed by the learned counsel for the accused at para No.5 to 53 in the written arguments cannot be acceptable and instead of reproducing the arguments canvassed at para No.5 to 53, the said arguments are carefully considered by the court and same are not accepted in view of the discussions made by this court in the above at the time of appreciation of the oral and documentary evidence.

23. In order to rebut the presumptions available to the complainant and to substantiate the defence of the accused, the accused himself examined as DW.1 the accused has filed his affidavit in lieu of oral evidence and the accused has denied C.C.No.12244/2016 the claim of the complainant at para No.1 to 6 of his affidavit. The evidence of the accused starts from para No.7 of the affidavit and its runs upto para No.27 of the affidavit and the sum and substance of the evidence of the accused is that, he was suffering from stomach hack as such he was unable to do coolie work and undergone ultrasound scan and came to know that, there were stones in their kidneys and that on 25.08.2012 he obtained hand loan of Rs.50,000/□from the complainant on an interest 15% p.m. and while lending the said amount the complainant had collected his blank signed cheque bearing No.314801 of State Bank of Mysore and also obtained his signature on stamp paper and xerox voter ID card as security and again on 15.09.2012 he requested to grant further hand loan of Rs.25,000/□and the complainant paid Rs.21,250/□after deducting Rs.3,750/□towards interest and at that time he obtained another blank cheque bearing No.341802 of State Bank of Mysore as security i.e., the cheque in question Ex.C.1 and again on 25.09.2012 he requested the complainant to grant further hand loan of Rs.25,000/□and the complainant paid Rs.13,750/□after deducting interest of Rs.7,500/□on earlier hand loan of C.C.No.12244/2016 Rs.50,000/□and Rs.3,750/□interest on present hand loan totally deducting Rs.11,250/□and at that time the complainant obtained another blank signed cheque bearing No.314803 as security and in all he had borrowed an amount of Rs.1 lakh from the complainant as he was suffering sever stomach pain.

24. In support of the above evidence of the accused he has not produced any documents to show that, he has borrowed a total loan amount of Rs.1,00,000/□on three occasions as stated above and at the time of lending the loan amount the complainant had collected three cheques and stamp paper and voter ID as security towards the said loan amounts, except self serving statement the accused has not produced any documents to show that, the complainant had collected blank signed cheques including the cheque in question, stamp paper as stated by him, therefore without there being documentary evidence the self serving and interested oral evidence of the accused cannot be acceptable one. The complainant during the course of cross□examination has categorically denied the alleged lending of loan amounts and collecting of blank signed cheques, bond paper, voter ID as stated by the accused in his evidence, in such circumstance C.C.No.12244/2016 the heavy burden lies upon the accused to prove that, he has borrowed the loan amounts from the complainant and complainant had collected his blank signed cheques including the cheque in question ie., Ex.C.1 at the time of lending of loan amount of Rs.25,000/□on 15.09.2012, but the accused has miserably failed to prove that, on particular date the cheque in question was entered into the hands of complainant. In addition to that, the accused in his cross□examination has admitted that, he has produced his scanning report to show that, he was having stomach pain as on the date of borrowing of alleged loan amount from the complainant, but has produced the scanning report which is at

Ex.D.5, but only on the basis of Ex.D.5 it cannot be held that, the accused has borrowed a loan of Rs.50,000/□on 25.08.2012 from the complainant and at that time the complainant had collected his blank signed cheque. It is also admitted that, he has produced his two bank pass books i.e., Ex.D.6 and Ex.D.7 to show that, the complainant had collected his blank signed cheques as stated by him, but the careful perusal of the Ex.D.6 and Ex.D.7, but it is nowhere mentioned the issuance of blank signed cheques including the cheque in C.C.No.12244/2016 question in favour of the complainant as stated by the accused in his defence, therefore the accused has miserably failed to prove that, he had borrowed a loan of Rs.1 lakh from the complainant on three different dates and the complainant at the time of lending of the said loan amount had collected his blank signed cheque including the cheque in question and stamp paper towards security of the said loan amount.

25. The accused has also stated that, he had borrowed a loan of Rs.50,000/□on 25.08.2012 from the complainant as hand loan an interest at 15% p.m. and he obtained Rs.25,000/□on 15.09.2012 and Rs.25,000/□on 25.09.2012 and he used to pay interest of Rs.15,000/□p.m. on the entire loan amount till January - 2015 and thereafter he was unable to pay interest for the months of February, March, April - 2015 and thereafter the complainant started harassing him and gave life threats and during that period he started drinking heavily and on 30.04.2015 when he was sitting drunk in his house at that time the complainant came to his house and abused him in filthy language at that time his wife and his wife's sister and his wife's sister husbands and his son pacified the C.C.No.12244/2016 complainant and thereafter he had hang himself in his bed room and after seeing him his wife and others saved him from hanging. But the accused has not produced any documents to show that, he has borrowed the loan amount of Rs.1 lakh on different dates interest at the rate of 15% p.m., and though he has stated that, he used to pay Rs.15,000/□p.m. as interest, but in his cross□examination stated that, he used to pay Rs.7,500/□interest p.m. and has not produced the documents to show that, he has paid the interest to the complainant as stated by him in his evidence and has not produced the any documents to show that, he was harassed by the complainant and due to the said harassment he started to drink alcohol and he had hang himself, therefore in the absence of documentary evidence the oral evidence of the accused cannot be acceptable one. It is true that, the brother of the accused i.e., DW2, his wife i.e., DW3 and his sister's husband i.e., DW4 in their evidences also stated the same fact, but in support of their evidence they have not produced any documentary proof if really the complainant has harassed to the accused with regard to non□payment of interest amount and accused hanged himself, definitely the accused or C.C.No.12244/2016 his family members could have file complaint against the complainant before the concerned police, but no such complaint has been filed by them and this fact has been admitted by the accused in his cross□examination, in such circumstance the evidence of accused and DW2 to DW4 cannot be acceptable one.

26. The accused at para No.15 of his affidavit evidence stated that, on 01.05.2015 when he was at SBM Colony Bus Stop for going to his daily coolie work at that time his brother Krishna alongwith three other persons came their in a car and took him and got him admitted to Good Future Re□habitation Center at Mysore for getting from rid of his drinking habit and he was discharged from the said center on 17.07.2015. The accused at para No.17 of his affidavit evidence further stated that, the signatures on Ex.P.7 and Ex.P.8 are not of his and his wife's signatures as on 18.05.2015 he was admitted in Good Future Re□Habitation Center at Mysore as inpatient and the said signatures

where forged signatures. The witnesses i.e., DW2 to DW4 in their evidence also they have stated that, the accused has been taken to Good Future Re□habitation Center and got admitted him in the said center for treatment of three months. In support of the said evidence C.C.No.12244/2016 accused has produced certified copy of the certificate dated 20.08.2016 issued by M/s Good Future Re□habitation Center, Mysore which is at Ex.D.10. It is relevant here to mention that, as it is already stated and held that, the accused and his wife have executed a Ex.C.7 and Ex.C.8 in favour of the complainant by admitting the receipt of Rs.2,50,000/□loan amount from the complainant and the signature found on the Ex.C.7 and Ex..C.8are those of the signatures of the accused and his wife, therefore the evidence of the accused that, he and his wife have not executed the Ex.C.7 and C.8 and their signatures have been forged cannot be acceptable one. In addition to that, the accused has only orally denied that, the signature found on Ex.C.7 and C.8 are not of his and his wife's signatures and they were forged, but has not stated how and when and who have been forged their signatures and even not made any efforts to get the expert opinion with regard to alleged forgery of signatures, on this count also the evidence of the accused cannot be acceptable one. It is also the defence of the accused that as on 18.05.2015 i.e., date mentioned on Ex.C.7 and Ex.C.8 he was admitted as inpatient in M/s Good Future Re□C.C.No.12244/2016 habitation Center, Mysore, therefore he has not signed to Ex.C.7 and Ex.C.8, but in order to prove the said defence except Ex.D.9 the accused has not examined any of the person who have issued the Ex.D.9 certificate or any other person who is competent to give evidence on Ex.D.9. The accused has also not produced discharge summary to show that, he was an inpatient from 01.05.2015 to 17.07.2015 as admittedly the discharge certificate is available in the center, therefore only on the basis of Ex.D.9 it cannot be held that, the accused was admitted as inpatient in M/s Good Future Re□habitation Center, Mysore from 01.05.2015 to 17.07.2015. It is also relevant here to mention that, as per the say of the accused that, on 01.05.2015 when he was in SBM Colony Bust Stop at that time his brother Krishna and other three persons came their in a car and took him and got him admitted at M/s Good Future Re□habitation Center, Mysore , if such being the fact the accused has not stated the names of other three persons who have accompanying with his brother and has not examined any one of the said persons, but instead of that, he examined his brother who is interested person, on this count also the accused has C.C.No.12244/2016 intentionally withhold the discharge certificate from its production before the court and has not examined the independent witnesses to prove the alleged fact that, he got admitted as inpatient in M/s Good Future Re□habitation Center, Mysore from 01.01.2015 to 17.07.2015, therefore the accused has miserably failed to prove that, he got admitted as inpatient in M/s Good Future Re□habitation Center, Mysore from 01.01.2015 to 17.07.2015, therefore he has not signed to Ex.C.7 and C.8. It is also relevant here to mention that, the wife of the accused i.e., DW3 in her affidavit evidence she has not denied her signatures on Ex.C.7 and C.8, in such circumstance also it cannot be held that, the Ex.C.7 and C.8 does not bares the signatures of the wife of the accused, on this count also the evidence of the accused cannot be acceptable one.

27. The accused / DW1 at para No.16 and the DW2 at para No.7 and DW3 at para No.5 and the DW4 at para No.2 of their affidavit evidence have stated that, the complainant alongwith his wife, child and 4 - 5 rowdies on 18.05.2015 at about 6.00 p.m. came to the native place of accused i.e., his house and demanded the brother of the accused i.e., C.C.No.12244/2016 Krishna to give an undertaking to repay the loan amount of Rs.1 lakh and Rs.50,000/□towards interest and who had prepared the loan agreement on stamp paper and obtained the signature of brother of the accused

i.e., Krishna and the signatures of wife of the accused i.e., Suma and his brother's wife i.e., Renuka and accused brother's wife brother i.e., Hanumanthu as witnesses and apart from the loan agreement the complainant has also collected a blank signed cheque bearing No.654728 drawn on Karnataka Bank, Ramanagara Branch from his brother and also obtained their signatures on a blank demand promissory note. The accused and DW2 to DW4 have also stated that, at that time in order to avoid argument with the complainant which may creates bad impression upon the candidature of wife of the DW2, the DW2 and others i.e., DW3 and DW4 have subscribed their signatures as demanded by the complainant. In support of their evidence they have produced certified copy of the ID card of DW3, nomination paper acknowledgment which are at Ex.D.10 and Ex.D.11.

28. It is relevant here to mention that, according to the accused he was admitted as C.C.No.12244/2016 inpatient in M/s Good Future Rehabilitation Center at Mysore from 01.05.2015 to 17.07.2015, but the alleged incident stated by the accused at para No.16 of his affidavit alleged to have been occurred on 18.05.2015, hence his evidence his evidence cannot be acceptable one as admittedly according to him he was not at his native place and in his house on the date of alleged incident, on this count the evidence of the accused cannot acceptable one. Though the DW2 to DW4 stated in their evidence that, the complainant and his wife, child alongwith four rowdy elements came to their house and taken the signature of the DW2 on prepared loan agreement on stamp paper and the signatures of the DW3 and DW4 as witnesses to the said document and also obtained their signatures on on demand promissory note and also obtained blank cheque from DW2 in respect of the loan amount of Rs.1 lakh and interest of Rs.50,000/□obtained by the accused, but the DW2 to 4 have not taken any action against the complainant or his wife or rowdy elements either by issuing legal notice to them or by filing complaint before the concerned police station against them regarding the alleged incident. It is true that, the DW2 to DW4 have stated that, at that time the local C.C.No.12244/2016 Gram Panchayath Election was scheduled for scrutiny of nomination paper on 23.05.2015 and the wife of DW2 i.e., Renuka was contested for the said election and in order to avoid bad impression on candidature all of them subscribed their signatures as demanded by the complainant and have produced Ex.D.10 and Ex.D.11, but even after completion of election process, definitely they would have take action against the complainant regarding the alleged incident, but they have not made any efforts to take or initiate action against the complainant or his wife, in such circumstance a serious doubt arises that, the complainant, his wife and 4 to 5 rowdy elements came to the native place of the accused on 18.05.2015 and have forcibly obtained signature of the brother of the accused i.e., Krishna on loan agreement and signatures of DW3 and DW4 as witnesses and also obtained blank signed cheque of DW2 i.e., Krishna and obtained their signatures on on demand promissory note cannot be acceptable one. In addition to that, the DW2 to DW4 in their cross examination admitted that, they have not lodged any complaint in respect of the alleged incident dated 18.05.2015 and have no impediment to lodge a complaint after the elections. It is also C.C.No.12244/2016 admitted by DW3 that, there are residents residing surrounding their house, but on that day none of the persons were present and also admitted that, generally they will not give any blank signed cheque or they will not singed to the blank stamp paper. Hence it goes to show that, if really the complainant and his wife alognwith rowdy elements came and forcibly obtained the signature of the brother of the accused on prepared loan agreement and signatures of the DW3 and DW4 as witnesses and also collected blank signed cheque from brother of the accused and obtained their signatures on a blank on demand promissory note, certainly after the completion of

elections, the DW2 to DW4 would have made and efforts to file complaint against the complainant and his wife and if really the alleged incident was occurred on that day definitely the residents surrounding the house of the DW2 to DW4 would gather to pacifies the alleged incident. Therefore the defence set up by the accused through the DW2 to DW4 cannot be acceptable one. In addition to that, if really the incident was happened on 18.05.2015 and the complainant and his wife collected the documents as stated by the DW2 to DW4, definitely the accused would have mentioned that, C.C.No.12244/2016 complainant. Complainant's wife, 4 to 5 rowdy elements were came to their native place and obtained loan agreement, on demand promissory note and cheque from DW2 to 4 and at that time there were elections of Panchayath and one Renuka was contested the said election at that time due to that, they did not lodged the complaint against the complainant and wife, but simply stated that, the same and loan agreement on demand promissory note were obtained, hence it goes to show that, the accused for the first time he has set up the defnece which cannot be acceptable one. In addition to that, whatever the evidence given by the accused and DW2 to DW4 in respect of alleged incident dated 18.05.2015 in their affidavit evidence nowhere connected to the present case and the said evidence cannot be taken into consideration to decide the issue in this case and totally the alleged incident is unconcerned to this case.

29. The accused and DW2 tp DW4 in their affidavit evidence they have stated that, after discharging from Good Future Re□habitation Center, the accused on 17.07.2015 was waiting for coolie work at SBM Colony Bust Stop at that time the complainant came their and threatened their liefs C.C.No.12244/2016 when such being the fact the Girinagara Police have summoned him in the month of January 2016 on the basis of complaint lodged by the complainant and enquired him by informing that, he has to pay Rs.5,50,000/□to the complainant, but he in turn informed to the police that, he had to pay only Rs.1 lakh and three months interest and not ready to pay Rs.5,50,000/□ but inspite of the advise of the police the complainant did not agreed to receive the said amount and went away from the police station with life threat and thereafter on 24.02.2016 at about 11.00 the wife of the complainant alongwith 4 to 5 rowdies came to SBM Colony Bust Stop and the wife of the complainant hold his shirt color and assaulted him and instigated the public to assault him by stating that, he had offered her Rs.1 lakh and wanted her to come and live with him for obliging sexual acts in order to escape further assault he ran away from the stop and there after Giringara police called him to police station and enquired him thereafter the case lies with Hanumantha Nagara Police and asked him to Hanumantha Nagara Police Station and when he reached the Hanumantha Nagara Police station the wife of the complaint lodged the complaint against the accused and the C.C.No.12244/2016 police took him to the sopt of incident to conduct mahazar and after enquring with the local people with the incident the concerned police have directed him to come on next day and thereafter he had been to police station on 25.02.2016 the police inspector after hearing him convinced of his version and suggested to the complainant to take Rs.1 lakh and on the same day he had withdrawn the said amount from his bank and ready to pay the amount to the complainant, but the complainant did not accepted and demanded to police to arrest the accused and thereafter the police have registered case against the accused and after making investigation filed 'B' report in respect of the complaint lodged by the complainant. The accused and DW2 to DW4 in their affidavit evidence further stated that, on 25.02.2016 at about 7.00 p.m. when the accused was standing in the SBM Colony Bust Stand at that time the complainant came their and threatened to his life and by apprehending danger to the life of the

accused, the accused lodged a complaint before the Girinagara Police against the complainant and the Girinagara Police have suggested him to pay Rs.1 lakh to the complainant as the accused apprehended danger to his life accordingly at about 8.30 p.m. they went to C.C.No.12244/2016 the house of the complainant and paid Rs.1 lakh by cash and requested the complainant to return their four blank cheques, blank stamp paper loan agreement, on demand promissory note for which the complainant demanded balance interest of Rs.50,000/□ and agreed to return all the documents .

30. The accused / DW1 further stated that, the complainant got filed a complaint through one i.e., C.H. Rangaswamy on the basis of the blank cheque bearing No.314801 obtained by him towards security of loan amount of Rs.50,000/□ availed on 25.02.2012 against him in CC No.12313/2016 before the 22nd ACMM Court, Bangalore and has filed this complaint against him on the basis of blank cheque obtained as a security at the time of lending of Rs.25,000/□ on 15.09.2012 against him though he has paid Rs.1 lakh amount to the complainant. In support of the oral evidence the accused has produced certified copy of the B report in Cr.No.60/16 (FIR complaint and the final report) as per Ex.D.12, certified copy of the complaint dated 25.02.2016 and acknowledgment as per Ex.D.13 and Ex.D.14, office copy of the reply notice dated 12.04.2016, postal receipt and postal C.C.No.12244/2016 acknowledgment as per Ex.D.15 to Ex.D.17, certified copy of the evidence affidavit of the complainant in CC No.12313/2016 as per Ex.D.18, certified copy of the cross examination of the complainant in CC.12313/2016 as per Ex.D.19, certified copy of the documents exhibited as Ex.P.1 to Ex.P.8 in CC.12313/2016 respectively and collectively marked as Ex.D.20, certified copy of the deposition of the examination in chief and the cross examination of the accused in CC.12313/2016 and collectively marked as per Ex.D.21, certified copy of the deposition of the examination in chief and the cross examination of accused's brother in CC.12313/2016 as per Ex.D.22, certified copy of the judgment passed in CC.12313/2016 as per Ex.D.23, certified copy of the deposition of the examination in chief and the cross examination of the complainant in CC.10746/2016 and collectively marked as Ex.D.24, certified copies of the documents exhibited as Ex.C.1 to Ex.C.7 marked through the complainant in CC.10746/2016 collectively marked as Ex.D.25.

31. On careful perusal of the oral and documentary evidence i.e., evidence of DW1 to DW4 and Ex.D.12 to Ex.D.25 it appears that, the said oral C.C.No.12244/2016 and documentary evidence is in anywhere come to the help of accused to prove his defence. Admittedly though there are cases registered by the complainant and accused in the Hanumantha Nagara Police Station and also in the Girinagara P.S. on the basis of alleged incident i.e., 17.07.2015 and 24.02.2016 and 25.02.2016 the complaints were filed by the complainant and accused against themselves, but on the basis of FIR, complaint and other documents are not helpful for the accused to prove his defence. If really the concerned police have informed the accused to give Rs.1 lakh to the complainant and the complainant has agreed to receive the said amount instead of Rs.5,50,000/□ owed to him then only the documents produced by the accused would have been come to rescue to defence of the accused, but according to the accused himself, the complainant did not agreed to receive the amount of Rs.1 lakh then certainly it can be held that, the complainant was not agreed for settlement on the basis of complaint lodged by the accused or by himself, therefore Ex.D.12 to Ex.D.14 are not helpful for the accused to prove his defence. Apart from that, the documents which are at Ex.D.18 to Ex.D.25 are not helpful for the accused to prove his defence in this C.C.No.12244/2016 case and the said documents are not relevant for this case to decide the issue in question.

32. It is also relevant here to mention that, though the accused and DW2 to DW4 stated that, they had been to the house of the complainant and the accused has paid Rs.1 lakh which was withdrawn by him from the bank on 25.02.2016 and same has been given to the complainant and in order to prove the said defence the accused has produced certified copy of pass book and statement of his bank account which are at Ex.D6 and Ex.D.7, but except the said documents nothing has been produced before the court to show that, the amount which was withdrawn by the accused i.e., Rs.1 lakh on 25.02.2016 was given to the complainant, therefore mere production of the statement and pass book to show that, on 25.02.2016 an amount of Rs.1 was withdrawn does not sufficient to hold that, the said amount has been received by the complainant on that day, admittedly according to the accused in the police station, the complainant did not agreed to receive an amount of Rs.1 lakh and demanded Rs.5,50,000/□ and went away from the police station by giving life threat to the accused, thereafter he cannot be receive an amount of Rs.1 lakh from the C.C.No.12244/2016 accused at his residence, on this count also a serious doubt arises with regard to alleged repayment of Rs.1 lakh to the complainant. The accused and DW2 to DW4 in their cross□ examination have admitted that, they have not obtained any receipt from the complainant for having paid Rs.1 lakh to him, in such circumstance the defence of the accused cannot be acceptable one as there are no satisfactory or documentary evidence to show that, the complainant was agreed and received Rs.1 lakh towards the alleged loan amount borrowed by the accused and further demanded interest of Rs.50,000/□ from the accused and agreed to return the blank cheques, on demand promissory note and loan agreement after paying the interest. Therefore the accused has miserably failed to prove that, he has borrowed a total loan amount of Rs.1 lakh from the complainant on three different occasions and the accused has paid interest amount Rs.15,000/□ p.m. till January - 2015 and also repaid the amount of Rs.1 lakh to the complainant and even after receipt of the said amount complainant did not returned his signed blank cheques as contended by him in his defence evidence.

33. It is the specific defence of the accused C.C.No.12244/2016 that, he had borrowed a loan of Rs.50,000/□ on 25.08.2012 from the complainant at that time complainant had collected his cheque bearing No.314801 and again he borrowed on 15.09.2012 an amount of Rs.25,000/□ at that time the complainant had collected his another cheque bearing No.314802 i.e., the cheque in question Ex.C.1 and again on 25.09.2012 he borrowed a loan of Rs.25,000/□ at that time also complainant had collected his another cheque bearing No.314803 and the complainant had collected the above said three cheques for security towards the total loan amount of Rs.1 lakh and he has paid the interest till January - 2015 and thereafter he did not paid the interest amount, but after police complaint on 25.02.2016 he had paid Rs.1 lakh to the complainant by withdrawing from his bank on the same day and even though the complainant received the said amount of Rs.1 lakh and interest amount of Rs.50,000/□ in spite of that, the complainant misused his cheques obtained from him for security purpose while advancing the hand loan. But as it is already stated in the above that, the accused has miserably failed to prove that, he had borrowed an amount of Rs.1 lakh on three occasions and at that time the complainant had C.C.No.12244/2016 collected three cheques towards security of the said loan amount and has repaid the said loan amount as stated by him in his defence. It is also held in the above that, the brother of the accused or wife of the accused or DW4 have not made any efforts to file the complaint against the complainant or issued any notice to get return of their alleged signed blank cheque or on demand promissory note or loan agreement even after completion of the election as alleged by them, in such circumstance also the DW2 to DW4

failed to prove that, the complainant had obtained their signature on loan agreement and obtained signed blank cheque, on demand promissory note from them. If really the accused has repaid the loan amount alongwith interest to the complainant definitely he would have asked for return of his blank signed cheques from the complainant either by issuing legal notice to him or by issuing stop payment instructions to the bank or by filing complaint before the concerned police station or by initiating legal action against the complainant before the courts of law for alleged misuse of the cheque in question or non-return of his cheques despite of his alleged return of loan amount to the complainant, but no such efforts have C.C.No.12244/2016 been made by the accused or his brother or DW3 and DW4, in such circumstance the defence of the accused cannot be acceptable one. The conduct of the accused in non-taking of action for return of his alleged signed blank cheque and signed blank stamp papers or misuse of the blank signed cheque and blank signed stamp papers by the complainant may leads to draw an adverse inference against the accused that, in order to evade the liability of the accused to pay the cheque amount has taken such defence and the said defence cannot be acceptable one, on the contrary it can be held that, the cheque in question was issued by the accused towards repayment of the amount received by the accused from the complainant under Ex.C.7 and Ex.C.8 not for any other reasons much more contended by the accused in his defence. In this regard, it is relevant here to refer the decision of Hon'ble Apex Court of India reported in AIR 2018 SC 3601 in a case of T.P.Murugan(dead) Thr. Lrs.V. Bhojan Vs. Posa Nandi, rep. Thr. Lrs. PA holder, T.P. Murugan V. Bhojan, wherein the Hon'ble apex Court held that "Negotiable Instruments Act (26 of 1881) Ss.118, 138, 139 - Dishonour of cheque - Presumption as to enforceable debt - cheques allegedly issued C.C.No.12244/2016 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." Hence by applying the above principles of law to the present facts of the case in the present case though the Accused had taken defence that, he had given his blank signed cheques to the complainant towards security of the loan amount of Rs.1 lakh borrowed on three different occasions towards security of the said loan, but the said defence has not been proved by the accused, therefore, it can be held that, the accused has not made any efforts to get return of the cheque in question and other documents alleged to have been given to the complainant for security of the alleged loan transaction, therefore, the said unnatural C.C.No.12244/2016 conduct of the accused in non taking of action may leads to draw an adverse inference against the accused that, the cheque in question issued by the accused towards discharge of the liability and presumption U/s.139 of N.I. Act would operate against him , as he has admitted signature and cheque in question is belongs to him.

34. It is relevant here to mention that, it is the specific defence of the accused that, he had given the subject cheque and two other cheques as blank signed cheque to the complainant towards security of alleged loan transaction borrowed by him to the complainant and he has repaid the said loan amount and interest to the complainant, but the complainant had misused the said blank signed cheque and has filed this complaint against him, but the accused has not produced any documents to prove his defence on the contrary it is already held in the above that, the accused has borrowed a loan amount of Rs.5,00,000/- from the complainant and executed Ex.C.7 and also executed Ex.C.8

for sum of Rs.2,50,000/- in favour of the accused and issued the cheque in question in favour of the complainant, therefore in such circumstances also it can be construed as cheque in question was issued by the C.C.No.12244/2016 accused only towards discharge of the liability in question. In this regard it is relevant here to refer the decision of Hon'ble High Court of Karnataka reported in 2015 (1) KCCR 235 in the case of Lale Patel Vs. Sharanabasappa., wherein the Hon'ble High Court held that : NEGOTIABLE INSTRUMENTS ACT, 1881 Section 138 - Dishonour of cheque for insufficiency of funds - Plea of accused that he had given a blank cheque signed as security for a transaction and complainant filled up the contents and denied existence of any debt or loan - Conviction by Trial court - Affirmed by Appellate Court - Revision against. In another decision reported in 2015 (4) KCCR 2881 (SC) in the case of T. Vasanthakumar Vs. Vijayakumari wherein the Hon'ble Apex court held that " NEGOTIABLE INSTRUMENTS Act, 1881 Section 138 and 139 - acquittal - If justified - Accused not disputing issuance of cheque and his signature on it - Plea that it was issued long back as security and that loan amount was repaid - Not supported by any evidence - Fact that date was C.C.No.12244/2016 printed, would not lend any evidence to case of accused - Acquittal not proper. Hence the Hon'ble High Court of Karnataka in the above decisions clearly held that, if the Accused has taken defence that, a blank signed cheque has been issued as a security for transaction and the complainant filled up the contents in the cheque and the accused denied the existence of debt or liability in such circumstances it is for the accused to prove his/her defence by producing cogent and convincing evidence, if the Accused has failed to prove the same in such circumstances, it cannot be held that, the cheque in question was issued for the purpose of security in connection with the transaction. In the present case also the Accused has failed to establish his defence that, the cheque in question was issued towards security of the alleged loan transaction borrowed by the accused, under such circumstances the cheque so issued cannot be considered as the one issued as a security and the defence taken by the Accused is untenable one, in such circumstances by applying the principles of law laid down in the above decision the defence of the Accused cannot be acceptable one.

35. It is relevant here to mention that, C.C.No.12244/2016 according to the defence of the Accused that, the complainant had collected his blank signed cheques at the time of lending of alleged loan amount of Rs.1 lakh on three different occasions and thereafter by misusing the said cheque has filed this complainant against him, but the complainant in his cross-examination has denied the said suggestions made to him. As it is already held in the above that, the Accused has failed to prove his defence that, the complainant had collected the alleged blank signed cheques including the cheque in question from him, in such circumstances the defence of the Accused cannot be acceptable one. However, even for sake of discussion if it is assumed that, the contents of the subject cheque are not filled in by the Accused even under such circumstances also, unless and until the Accused has proved his defence by producing cogent and convincing evidence, it cannot be held that, the contents of the cheque have been filled in by the complainant. In this regard, it is relevant here to refer the decision of Hon'ble Apex Court of India reported in AIR 2019 SC 2446 in the case of Birsingh Vs. Mukesh Kumar., wherein the Hon'ble apex Court held that, "presumption U/s.139 is presumption of law, distinguished from C.C.No.12244/2016 presumption of facts and also held that, presumptions are rules of evidence and do not conflict with presumption of innocence which requires prosecution to prove case against the Accused and also held that obligation on the prosecution may be discharged with the help of presumptions of law and presumption of fact unless the

accused adduces evidence showing reasonable plausibility of non existence of presumed fact." In the present case though the Accused has denied the contents of the cheque in question except his signature, but he has failed to prove his defence or produced any documents or satisfactory evidence to rebut the presumptions as available U/s.139 of the N.I. Act, under such circumstances in view of the above principles of law, it can be presumed even on fact also that the complainant has proved his case by discharging his burden by complying the mandatory provisions. In the said decision the Hon'ble Apex court has also held that, "presumption as to legally enforceable debt is rebuttable, the signed blank cheque if voluntarily presented to payee towards payment payee may fill up amount and other particulars C.C.No.12244/2016 and it in itself would not invalidate cheque and onus would still be on the accused to prove that, cheque was not issued or discharge of debt or liability by adducing evidence." In another decision of Hon'ble Apex court of India decided in Crl.Appeal No.1545 of 2019 dt.17/10/2019 by the Hon'ble Apex Court of India in the case of Uttam Ram Vs. Devinder Singh Hudan and Anr. Wherein the Hon'ble Apex Court held that, "

Dishonor of cheque - Statutory presumption under - burden to prove - the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability - it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer - even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act - the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act. In such circumstances even if it is assumed that, the complainant admitted that, C.C.No.12244/2016 the contents of cheque in question were filled in by him also in view of the principles of law laid down in the above decision that itself would not invalidates the cheque in question and it can be presumed that, the cheque was filled in by the complainant in presence of the Accused at his consent and the said cheque has been issued towards discharge of legally recoverable debt.

36. It is also the defence of the accused that, the complainant had collected his blank signed cheque towards security of loan transaction borrowed by him and thereafter the said blank signed cheque is misused by the complainant by filing this false complaint, but the Accused himself has admitted that, the cheque in question belongs to his account and signature found at Ex.C.1 (a) is that of his signature. Once signature on the negotiable instrument act is admitted, in that circumstances sec. 20 of N.I. Act comes into play i.e. as per Sec. 20 of N.I.Act if the blank or incomplete Negotiable Instrument is given to the holder in due course, it is to be presumed that, he had given authority to the holder in due course to fill up the remaining portion. In this regard, it is relevant here to refer the decision of Hon'ble High Court of Karnataka reported in ILR C.C.No.12244/2016 2006 KAR 2054 in the case of H.S.Srinivasa Vs. Girijamma and another wherein the Hon'ble High Court held that " a reading of sec.20 of the act which is extracted above reveals that, the words used are ' either wholly blank or having written therein an incomplete negotiable instrument' . The instrument may be wholly blank or incomplete in a particular in either case, the holder has authority to make or complete the instrument as a negotiable one. The authority implied by a signature to a blank instrument is so vide that, the party so signing is bound to be a holder in due course. Promissory notes are often executed in the name of the payer and left unfilled to be afterwards filled by the

actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an endorser. Thus, it is seen that, person in possession of an incomplete instrument in material particulars has the authority prima facie to fill it and thus the executants becomes liable to pay the amount due'. In another decision of Hon'ble High Court of C.C.No.12244/2016 Madras reported in 2005 (1) DCR 85 in the case of P.A. Thamatharan Vs. Dalmia cements (B) Ltd., wherein it is held that " Negotiable Instrument Act 1991 - Sec. 138 - dishonour of cheque - plea

-body of cheque was not written by Accused - held it is not mandatory and no law prescribes that, the body of cheque should also be written by the signatory to the cheque, a cheque could be filled up anybody and if it is signed by the account holder of the cheque'. In another decision of Hon'ble Apex court to India reported in (2002) 7 SCC in the case of P.K. Manmadhan Karthra Vs.Sanjeeva Raj., wherein it is held that " As long as signature on the cheque is admitted, whether the ink with which the other particulars are filled up is different or that the hand writing is not that of drawer does not matter. Until rebutted, the presumption that, cheque was issued for consideration exists". In another decision of Hon'ble High Court of Karnataka at Bengaluru in a case of Crl. Appeal No. 1664/2003 C/w. Crl.Appeal No.1663/2003 dated: 18.6.2008 in the case of R.Mallikarjuna Vs. C.C.No.12244/2016 H.R.Sadashivaiah wherein the Hon'ble High Court at para No.19 held that " But, the question is, whether that renders instrument unenforceable. In this regard, it must be observed that, this court similar circumstances in the case of S.R. Muralidar Vs. Ashok G.Y. reported in 3001 (4) KAR. LJ K. 122 referring to the provisions of Sections 20, 138, 139, and 140 of the Act and after interpreting alteration and filling up of the cheque observed thus " The trial court has made much about the difference in ink. Admittedly, Accused cheque is issued bearing signature of the Accused. It is the contention of the defence that, blank cheques issued for the business transactions have been illegally converted as a subject matter to this case fastening false liability..... It is not objectionable or illegal in law to receive a inchoate negotiable instrument duly signed by the maker despite the material particulars are kept blank if done with an understanding and giving full authority to the payee to fill up the material contents as agreed upon. Such a C.C.No.12244/2016 course of action in law cannot vitiate the transaction nor can invalidate the negotiable instrument issued and such transaction fully begins the maker of the negotiable instrument to the extent it purports to declare..... The fact that, a document executed is inchoate with regard to some of the material particulars would not render such contract invalid nor make the instrument illegal or inadmissible. Voluntarily, if a person were to deliver an inchoate instrument authorizing the receiver to fill up the material contents as agreed upon, the cheque does not get tainted as in admissible nor it amounts to tampering with the material particulars..... In the present case there is no categorical defence version, it is only by conjunctures and surmises, a case is made out from the difference in ink between the signature of the cheque and the other handwritten contents. Therefore in view of the principles of law of Hon'ble Apex court of India and also Hon'ble High Court of Karnataka and Madras referred above, In the present case the Accused has admitted the C.C.No.12244/2016 signature on Negotiable Instrument i.e. cheque and he also admitted issuance of the cheque to the complainant, it is prima facie proof of authorizing the holder in due course i.e. the complainant to fill up the remaining contents of the Negotiable Instrument, therefore it cannot lie in the mouth of the Accused that, the complainant had misused or fabricated the cheque in question given by him and the defence of the Accused cannot be acceptable one as the instrument i.e., cheque in question cannot be rendered unenforceable merely because the contents have been

filled by different ink, as it would not render such instrument illegal or inadmissible, the complainant certainly can base action on it.

37. It is also important to note here that, the Accused has not denied or disputed that the cheque in question as well as the signature therein do belong to him and he has failed to prove his defence i.e., the cheque in question came to the possession of the Complainant as contended by him in his defence, this would also give rise to an adverse inference against him. This preposition of law finds support from the decisions of Hon'ble High Court of Karnataka reported in 2010(1) KCCR 176 in the case of "Siddappa Vs. Manjappa". In another C.C.No.12244/2016 decision of Hon'ble Apex court of India decided in Crl.A.No.664 of 2012 dated: 19.9.2019 in the case of "M.Abbas Haji Vs. T.M.Chennakeshava"

held that, " the Accused has to explain how the cheque entered into the hands of complainant".

Therefore for the above said reasons the defense taken by the accused cannot be acceptable one and accused has miserably failed to rebut the presumption available in favour of the complainant by adducing cogent and convincing evidence.

38. Therefore considering all these aspects of the case and totality of the circumstances and on careful and meticulous appreciation of evidence adduced on behalf of the complainant and accused the complainant has successfully established beyond all reasonable doubt that, he has paid an amount of Rs.2 lakhs during the year February - 2015 i.e., on 12.02.2015 to the accused for financial problems and again the accused approached him and sought further hand loan of Rs.3 lakhs, considering his request the complainant arranged Rs.50,000/□by him and arranged remaining Rs.2,50,000/□from his friend by name Rangaswamy C.H. and has paid Rs.3 lakhs to the accused at that time the accused and his wife have acknowledged the receipt of C.C.No.12244/2016 Rs.2,50,000/□from the accused as hand loan and agreed to repay the said loan amount to the accused and have executed on demand promissory note as per Ex.C.8 and also executed Ex.C.7 loan agreement by acknowledging the receipt of total loan amount of Rs.5 lakhs from the complainant in the name of complainant and Rangaswamy C.H. and agreed to repay the said amount to them. The complainant has also proved that, the accused has received the cheque in question i.e., Ex.C.1 towards repayment of the loan amount of Rs.2,50,000/□i.e., towards discharge of liability or debt and as per the instructions of the accused has presented the said cheque through his banker and same was returned dishonored with an endorsement of "Funds Insufficient" and thereafter he got issued legal notice to the accused and the said notice was duly served on the Accused, inspite of it, the Accused did not repaid cheque amount, hence the complainant filed the present complaint against the accused. On the other hand, the accused has failed to rebut the presumption available in favour of the complainant with regard to the existence of legally recoverable debt under Ex.C.1 Cheque. Therefore accused has committed an offence punishable U/s.138 of N.I. C.C.No.12244/2016 Act, accordingly for the above said reasons this point is answered in the Affirmative.

39. Point No.2: Negotiable Instrument Act was enacted to bring credibility to the cheque and the very purpose of enactment is to promote the use of negotiable instrument, while to discourage the issuance of cheque without having sufficient funds in their accounts. Such being the case the intention of the legislature is that, complainant be suitable compensated while accused be punished for his act. Hence while awarding the compensation the said fact is to be kept in mind and suitable compensation is awarded to the complainant certainly it will not cause injustice to the accused, accordingly the complainant is entitled for the compensation as ordered by the court and for the said reasons, it is just and proper to pass the following :□ORDER Acting U/sec.255(2) of Cr.P.C.

the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.2,65,000/= (Rupees Two Lakhs and Sixty Five Thousand only) within one month from the date of order, in C.C.No.12244/2016 default he shall under go simple imprisonment for a period of (2) two months for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.2,60,000/= (Rupees Two Lakhs and Sixty Thousand only) shall be paid as compensation to the complainant.

Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= (Rupees Five Thousand only) shall be defrayed as prosecution expenses to the state.

The Bail bond of the Accused stands cancelled.

Cash security deposited by the accused is hereby ordered to be returned to the accused (if not lapsed) after appeal period is over.

Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

(Directly dictated to the stenographer online, printout taken by her, verified, corrected and then pronounced by me in the open Court on this the 14th September 2021).

(SRI.S.B. HANDRAL), XVI ACMM, Bengaluru City.

C.C.No.12244/2016 ANNEXURE

1. List of witness/s examined on behalf of the Complainant:□P.W.1 : Sri. Girish .V

2. List of documents exhibited on behalf of the Complainant:□Ex.C.1 : Original Cheque, Ex.C.1(a) : Signature of the accused, Ex.C.2 : Bank Memo, Ex.C.3 : Office copy of the Legal Notice, Ex.C.4 : Postal Receipt, Ex.C.5 : Postal Acknowledgment, Ex.C.6 : Reply notice, Ex.C.7 : Certified copy of Loan Agreement, Ex.C.8 : Original Promissory Note & Consideration Receipt, Ex.C.8(a) & (b) : Signatures of the accused.

3. List of witness/s examined on behalf of the Accused: □DW.1 : Sri. Hanumantha .S DW.2 : Sri. Krishna DW.3 : Smt. Suma DW.4 : Sri. Hanumantha

4. List of documents exhibited on behalf of the Accused: □Ex.D.1 : Certified copy of Complaint, Ex.D.2 : Certified copy of F.I.R., Ex.D.3 : Certified copy of order sheet in P.C.R., Ex.D.4 : Certified copy of Charge Sheet, Ex.D.5 : Certified copy of the Scanning C.C.No.12244/2016 Report, Ex.D.6 & 7 : Certified copies of Bank Account, Ex.D.8 : True copy of the Statement of Account, Ex.D.9 : Certified copy of the Certificate issued by the Good Future Re□habilitation Center, Ex.D.10 & 11 : Certified copy of the ID and nomination paper acknowledgment, Ex.D.12 : Certified copy of the B report in Cr.No.60/16, Ex.D.13 & 14 : Certified copy of the complaint & acknowledgment, Ex.D.15 to 17 : Office copy of the reply notice postal receipt and postal acknowledgment, Ex.D.18 : Certified copy of the evidence affidavit of the complainant in CC No.12313/2016, Ex.D.19 : Certified copy of the cross examination of the complainant in CC.12313/2016, Ex.D.20 : Certified copy of the documents exhibited as Ex.P.1 to Ex.P.8 in CC.12313/2016, Ex.D.21 : Certified copy of the deposition of the examination in chief and the cross examination of the accused in CC.12313/2016, Ex.D.22 : Certified copy of the deposition of the examination in chief and the cross examination of accused's brother in CC.12313/2016, Ex.D.23 : Certified copy of the judgment passed in CC.12313/2016, Ex.D.24 : Certified copy of the deposition C.C.No.12244/2016 of the examination in chief and the cross examination of the complainant in CC.10746/2016, Ex.D.25 : Certified copies of the documents exhibited as Ex.C.1 to Ex.C.7 marked through the complainant in CC.10746/2016, Ex.N.1 : Certified copy of the cheque bearing No.314801, Ex.N.2 : Original copy of the voucher, Ex.N.3 & 4 : Certified copy of the complaint and endorsement.

(SRI.S.B.HANDRAL), XVI ACMM, Bengaluru City.

C.C.No.12244/2016 14.09.2021 Case called out, Counsel for the complainant and complainant absent.

Accused and Counsel for the accused absent, Judgment pronounced since the fine amount and default sentence is only imposed against the Accused, no separate sentence is imposed against the Accused vide separate judgment, ORDER Acting U/sec.255(2) of Cr.P.C.

the accused is convicted for the offence punishable U/sec.138 of N.I.Act.

The accused is sentenced to pay a fine of Rs.2,65,000/= (Rupees Two Lakhs and Sixty Five Thousand only) within one month from the date of order, in default he shall under go simple imprisonment for a period of (2) two months for the offence punishable U/sec.138 of N.I.Act.

Further acting U/sec.357(1) of Cr.P.C. out of the fine amount on recovery, a sum of Rs.2,60,000/= (Rupees Two Lakhs and Sixty Thousand only) shall be paid as compensation to the complainant.

Further acting U/sec.357(1)(a) of Cr.P.C. out of fine amount on recovery a sum of Rs.5,000/= (Rupees Five Thousand only) shall be defrayed as prosecution C.C.No.12244/2016 84 expenses to the state.

The Bail bond of the Accused stands cancelled.

Cash security deposited by the accused is hereby ordered to be returned to the accused (if not lapsed) after appeal period is over.

Office is directed to furnish free certified copy of this judgment to the Accused in compliance of Sec.363(1) of Cr.P.C.

XVI ACMM, B'luru.