Bhagyamma vs Shantha Kumar on 9 April, 2021

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

Dated this the 9th day of April - 2021

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,
XXIII Addl.C.M.M., Bengaluru City.
C.C.NO.26951/2018

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant	:	Bhagyamma, W/o.B.Thimmegowda, Aged about 52 years, R/at No.36, 1st Main Road, 3rd Cross, Pattegarapalya, Bengaluru-79. Rep. By it's GPA Holder B.Thimmegowda. (Rep. by Sri.Suresh, Adv.)
	V/S	
Accused	:	Shantha Kumar, S/o.S.Nagaraju, Aged about 45 years, R/at Agalakuppe Village, Sompura Hobli, Nelamangala Taluk, Bengaluru Rural District. (Rep.by Sri.N.Udayakumar, Adv.)

OFFENCE COMPLAINED OF	:	U/Sec. 138 of Negotiable Instruments Act.
PLEAD OF THE ACCUSED	:	Not guilty.
FINAL ORDER	:	Accused is Acquitted.
DATE OF ORDER	:	09.04.2021.

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

JUDGMENT

The complainant through her GPA Holder has presented the instant complaint against the accused on 06.09.2018 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, for dishonour of cheque of Rs.2 lakhs.

2. The factual matrix of the complainant case is:

> The General Power of Attorney Holder of complainant, who is none other then her husband, has presented the private complaint by contending that, he has the knowledge about this case, since the complainant being a 52 years old woman suffering from back pain since last 6 years, therefore, she unable to stand and walk independently, to avoid delay the proceedings she got executed the General Power of Attorney, hence, brought the present case on her behalf.
>
> In the complaint it alleged that, the complainant and accused were knew each other from past several years and they are family friends. The accused used to visit the house of complainant frequently taking advantage of the same, during 2nd week of October, 2014, the accused had requested the complainant for hand loan of Rs.2,50,000/-, but the complainant Judgment 3 C.C.No.26951/2018 hardly arranged money of Rs.2,20,000/-. Accordingly, on 27.10.2014 the complainant had paid sum of Rs.1,38,360/- to the accused by way of account transfer to his account from the account of complainant and remaining amount of Rs.81,640/-

were paid by way of cash on the very same day. The accused agreed to repay the said loan amount of Rs.2,20,000/- within 6 months.

The GPA Holder of complainant has further contented that, after lapse of 6 months, when complainant approached the accused and requested for repayment of the said hand loan amount, accused requested the complainant to extend another 2 months time to return. Thereafter, the complainant has made constant request to repay the said loan amount, he failed to keep up his promise, but dragging the complainant one or other pretext. Finally, the complainant had contacted the accused on 20.03.2018 and demanded for repayment of the said hand loan, at that time, the accused had issued a cheque for Rs.20,000/- and he took further 3 months time to repay the remaining amount of Rs.2 lakhs to the complainant. The cheque issued by the accused for Rs.20,000/- got honoured on 23.03.2018. As assured by the accused, the complainant on 26.06.2018 was approached the accused and requesting for repayment of the balance loan Judgment 4 C.C.No.26951/2018 amount of Rs.2 lakhs, considering her request, for discharge of the legal liability, the accused had issued a cheque bearing No.162645 dated:26.06.2018 for sum of Rs.2 lakhs drawn on State Bank of India, Kunigal Branch, in favour of complainant.

The GPA Holder of complainant has further alleged that, when the said cheque was presented for encashment through her banker viz., Indian Bank, Prashanthanagar Branch, Bengaluru on 26.06.2018. But the said cheque as per bank endorsement dated:27.06.2018 came to be dishonoured for the reasons "Payment Stopped by Drawer". Thereafter, she gave legal notice on 17.07.2018 to the accused by R.P.A.D., and the same came to be served on the accused on 25.07.2018 and he gave untenable reply, but he not paid the amount covered under the cheque to the complainant. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, she brought the present complaint through her General Power of Attorney Holder.

3. After receipt of the private complaint, this court took the cognizance and got registered the PCR and recorded the sworn statement. Since made out prima-facie grounds to proceed against the accused for the alleged offence, got issued process.

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4. In response to the summons, the accused appeared through his counsel and obtained bail. As required, complaint copy was supplied to the accused. Thereafter, accusation was read over and explained to him, wherein, he denied the same and claimed to have the defence.

5. To prove the case of the complainant, her GPA Holder himself choosen to examined as PW.1 and got marked Exs.P1 to P8(a). The PW.1 was subjected for cross-examination by the advocate for the accused. In the cross-examination of PW.1, accused counsel got confronted three documents and same are marked as Exs.D1 to D3.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and answer given by him was recorded. In support of the defence, the accused himself was examined as DW.1 and got marked his signatures at Ex.D1(a) and D2(a) and also subjected for cross-examination by the advocate for the complainant.

7. I have heard the arguments of both side counsels. The accused counsel has also submitted his detailed written arguments.

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

> 1) Whether the GPA Holder of complainant proves beyond the reasonable doubt that, the complainant paid sum of Rs.1,38,360/- on 27.10.2014 by way of account transfer and Rs.81,640/- by way of cash as hand loan to the accused, and in turn, for discharge of legal recoverable debt, the accused issued the Ex.P2 cheque bearing No.162645, dated:26.06.2018 for sum of Rs.2,00,000/- drawn on State Bank of India, Kunigal Branch?
>
> 2) Whether the GPA Holder of complainant proves the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act?
>
> 3) What Order?

9. On appreciation of materials available on record, my findings on the above points are as under:

> Point No.1 : In the Negative Point No.2 : In the Negative Point No.3 : As per final order, for the following:

REASONS

-: UNDISPUTED FACTS:- The following undisputed facts do not required proof in view of clear admissions made by both parties.

10. The fact that, the GPA Holder of complainant is the husband of complainant is not in dispute. The fact that, the addresses of Judgment 7 C.C.No.26951/2018 the complainant and accused made mentioned in the complaint cause title is not in dispute. The fact that, from the bank account of the complainant herein got transferred for sum of Rs.1,38,360/- to the account of accused on 27.10.2017 is not in dispute. The fact that, by virtue of cheque, the accused got repaid sum of Rs.20,000/- by way of NEFT to the account of complainant on 23.03.2018 is not in dispute.

The fact that, the questioned cheque at Ex.P2 and signature found therein is of the accused is not in dispute. The fact that, the Ex.P2-cheque by virtue of banker slip produced at Ex.P3, the said cheque came to be dishonoured for the reasons 'payment stopped by drawer' is not in dispute. The exchange of legal notices as per Ex.P4 and P7 between complainant and accused are not in dispute.

The fact that, the loan agreement entered into between complainant and accused as found in Ex.D1 dated:25.10.2014 which bares the signatures of complainant and accused are not in dispute. The fact that, the recitals of Ex.D1 is not in dispute. The fact that, signed blank xerox cheques at Exs.D2 and D3 were handed over to the complainant as per Ex.D1 agreement is not in dispute. The fact that, as admitted by the accused in his reply Judgment 8 C.C.No.26951/2018 notice at Ex.P7, the complainant and accused are family friends are not in dispute.

11. POINT NOs.1 and 2: Since both the points are connected with each other, they have taken together for common discussion in order to avoid repetition of facts.

The PW.1 to prove his case choosen to examined himself and filed affidavit by reiterating the complaint averments in toto, and produced the documents at Exs.P1 to P8(a), they are:

a) Ex.P1 is the General Power of Attorney dated:06.09.2018 executed by complainant herein in favour Mr.B.Thimmegowda, who is the husband of complainant herein.

b) Ex.P2 is the cheque bearing No.162645 issued by the accused for sum of Rs.2 lakhs dated:26.06.2018, drawn on State Bank of India, Kunigal Branch.

c) Ex.P2(a) is the alleged signature of accused.

d) Ex.P3 is the Bank Memo dated:27.06.2018.

e) Ex.P4 is the Legal Notice dated:17.07.2018.

f) Ex.P5 is the Postal receipt.

g) Ex.P6 is the postal acknowledgment card.

h) Ex.P7 is the reply notice dated:31.07.2018 issued by accused through his counsel to the complainant counsel by denying the entire contents of legal notice at Ex.P4.

i) Ex.P8 is the private complaint.

j) Ex.P8(a) is the signature of complainant.

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12. The PW.1 was subjected to the cross-examination by the advocate for the accused. In support of his case, the PW.1 through his counsel has produced the citations and relied upon same, they are;

a) AIR 2012 SC 771

b) (2010) 11 SCC 441

c) (2015) 8 SCC 378

d) (2018) 8 SCC 165

e) (2016) 10 SCC 458

f) AIR 2018 SC 3601

g) ILR 2019 KAR 493

h) Crl.A.No.1545/2019

i) Crl.A.No.508/2019

j) Crl.A.No.2109/2017

k) Crl.A.No.271/2020

13. After detailed cross-examination done by the advocate for accused to the PW.1, got closed his side. Thereafter, whatever the incriminating evidence made against the accused were read over and explained to him as required under Section 313 of Cr.P.C., wherein, he denied the same and gave his statement that:

" . ."

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14. In order to prove the defence of the accused, the accused himself choosen to entered into witness box and examined as DW.1 on oath and filed affidavit evidence.

15. No doubt, in this case, the accused was entered into witness box and filed affidavit evidence. The filing of affidavit by the accused in lieu of his probable defence is not opposed by the complainant/PW-1. Mere because of he not sought permission under Sections 315 and 316 of Cr.P.C., it does not a ground to out-rate reject the probable defence set out by the accused. Mere because Section 145(1) of Negotiable Instruments Act does not expressly permit the accused to filed affidavit evidence, it does not mean that, the court cannot allow the accused to give his evidence on affidavit. By applying the same analogy, unless there is just and reasonable ground to refuse such permission. There is no express bar on accused to give evidence on affidavit either in the accused or in the court.

That apart, in a judgment passed by the Hon'ble High Court of Karnataka dated:13th Day of February 2020 in a case between Jagadeesh Hiremath and R. Venkatesh in Criminal Appeal No.907 of 2017 A/W Criminal Appeal No.908 of 2017 is pleased to observed that, in view of the orders of this court in Criminal Judgment 11 C.C.No.26951/2018 Petition No.9331/2017 C/w Criminal Petition No.9332/2017 dated:

02.07.2019, wherein following the law laid down by the Hon'ble Supreme Court in Indo International Ltd., & Another V/s. State Of Maharasthtra & Another, 2005 Crl.L.J.208, it is held that, " The court dealing with a complaint under Section 138 of the said Act of 1881 had an option to take evidence of the witnesses on the side of the prosecution as well as evidence of the accused and the defence witnesses, if any on affidavit"

16. In the affidavit evidence, the accused has wrongly mentioned the case number 11840/2018, although it refers to present case. Since, already accepted the same, based on the said affidavit evidence, the advocate for complainant proceed with cross-examination. In the said affidavit mentioned the wrong case number, but referring the same parties and same defence which raised in the reply notice at Ex.P7, hence, the same is considered as affidavit evidence of the accused.

In the affidavit evidence of the accused, he in brief has contended that, the complainant has filed the false case by alleging the lent of loan of Rs.2 lakhs and he not borrowed the alleged loan. The accused has contended that, complainant is the wife of her GPA Holder by name B.Thimmegowda and the accused was borrowed the loan of Rs.1,50,000/- only on Judgment 12 C.C.No.26951/2018 25.10.2015 from the complainant on interest at 10% p.m. on the security of 2 signed blank cheques bearing Nos.162645 and 162646 and also on the security of Ex.D1. The accused had transferred Rs.20,000/- by way of NEFT to the bank account of complainant on 23.03.2018 and he got repaid the entire loan amount to the complainant 4 years back itself, though the complainant without returning his documents, by misusing the security documents filed false case. Hence, he prayed for his acquittal.

17. The DW.1 was subjected for cross-examination by the advocate for complainant. Apart from conduct cross-examination of PW.1, accused counsel got confronted three documents and same are marked as Exs.D1 to D3. They are:

a) Ex.D1 is the xerox copy of hand loan agreement dated:25.10.2014 entered into between complainant and accused.

b) Exs.D2 and D3 are the xerox copies of signed blank cheques bearing Nos.162645 and 162646 pertaining to the accused herein and

c) Exs.D2(a) and D3(a) are the signatures of accused.

18. While appreciate the materials on records and evidence, this court has gone through the decisions stated supra apart from the other decisions.

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19. On going through the rival contentions of the parties, it made clear that, the accused in this case has seriously attack on the claim put forth by the complainant. On going through the materials it discloses, the complainant has brought the present case against the accused based on the questioned cheque at Ex.P2. Therefore, it is needs to draw the presumption as per Sections 118 and 139 of Negotiable Instruments Act. As per Section 118(g), it shall be presume that, unless the contrary is prove, the holder of the cheque, the complainant received the cheque for discharge of legal liability. This presumption is rebuttable. Accordingly, Sections 139 and 138 of Negotiable Instruments Act, it also requires to presume that, cheque was drawn for discharge of liability of drawer, it is presumption under law. Therefore, it made clear that, by virtue of the above said sections stated, it made clear that, it requires to draw statutory presumption in favour of complainant that, in respect of discharge of existence of legally recoverable debt, the accused got issued the Ex.P2-cheque unless and until contrary prove. Therefore, as per those sections, it made clear that, it is the initial onus on the accused to prove his case based on the principles of 'Preponderance of Probabilities'.

Judgment 14 C.C.No.26951/2018 It is require to cite the decision reported in AIR 2010 SCC 1898, in a case between Rangappa V/s Mohan. Wherein, the Hon'ble Apex Court pleased to observe that, the obligation on the prosecution may be discharged with the help of presumption of law or facts unless the accused adduce evidence showing the reasonable probability of non-existence or presumed fact. Wherein also it was pleased to observed that, the accused can prove the non-existence of consideration by raising probable defence. If accused is able to discharge the initial onus of proof of showing that, the existing of consideration was improbably or adverse or the same was illegal, the onus would shift to the complainant, who will be obliged to prove it as a matter of fact, and upon its failure to prove would dis-entitle her to grant the relief on the basis of Negotiable Instruments Act. The burden on the accused of proving the non-existence of consideration can either direct or by bringing on record the preponderance of probabilities by referring to the circumstances upon which, he relies could bare denial of passing consideration apparently does not appears to be any defence. Something which is probable has to be brought on record for getting benefit of shifting the onus of

proving to the complainant. To disprove the presumption, the accused has to bring on record such facts and circumstances upon the Judgment 15 C.C.No.26951/2018 consideration of which the court may either believe that, consideration did not exist or its non-existence was so probable that, a prudent man would, under the circumstances of the case, act upon that, it did not exist. Therefore, it made clear that, the accused need to take the probable defence mere denial is not enough.

That apart, in a decision reported in ILR 2006 KAR 4672, in a case between J.Ramaraj V/s Hiyaz Khan. Wherein, it was pleased to observed that, mere denial of issuing cheque, whether is sufficient to discharge the initial burden is to be looked into. In that dictum, it was pleased to held that, mere denial of issuing cheques would not be sufficient as it is time and again noted that, once the cheque issued duly signed by the accused, the presumption goes against him as per Section 139 of Negotiable Instruments Act.

20. On going through the provisions referred supra, it made clear that, whereas the presumption must prove that, guilt of accused beyond the reasonable doubt. The standard or proof so as to prove a defence on the part of the accused is 'Preponderance of Probabilities'. Inference of 'Preponderance of Probabilities' can be drawn, not only from the materials brought Judgment 16 C.C.No.26951/2018 on record by parties, but also by reference to the circumstances upon which he relies.

21. On going through the above authorities as well as dictums, it made clear that, it is the initial burden on the accused to prove his probable defence in order to rebut the statutory presumption as well as the case put forth by the complainant. Mere taking plausible defence is not enough, but the accused needs to attack on the complainant with specific defence. Accordingly, in the case on hand, it made clear that, by way of issue reply notice as per Ex.P7, the accused attack on the case of complainant. At that juncture itself he took the defence that, he not borrowed the alleged loan of Rs.2,20,000/- and got issued questioned cheque for repayment of balance loan of Rs.2 lakhs, but specifically urged that, he only borrowed Rs.1,50,000/- on 25.10.2014 on the security of loan agreement at Ex.D1 as well as 2 signed blank cheques bearing Nos.162645 and 162646 on monthly interest at 10%. The accused also contended that, the complainant even not paid the loan of Rs.1,50,000/-, but only transferred Rs.1,38,360/- and remaining Rs.81,640/- was not paid by her and he got regularly repaid the interest and got cleared the loan. The complainant by demanding more money, therefore, on 23.03.2018 by way of NEFT he paid Rs.20,000/- to the complainant. Despite Judgment 17 C.C.No.26951/2018 that, she not returned his security documents including cheques and filed false case and not borrowed the said loan. By taking such defence it made clear that, the accused at the inception was counter attack on the claim of complainant and narrated under which compelling circumstances the complainant came to be possessed his questioned cheque at Ex.P2 and thereby, he made use of the initial opportunity available him to suspect the very claim put forth by the complainant.

22. That apart, when the accused got appeared through his counsel, he also made use of cross-examining the PW.1 and able to confront Exs.D1 to D3, since the PW.1 got admitted, the same were marked as the defence documentary evidence of accused. Apart from extract certain admits, the said documentary evidence goes to root of the case of complainant and which collapse. That

apart, the accused also choosen to entered into witness box and led his evidence as DW.1 and withstood for his cross-examination. Though accused has examined as DW.1, against his own documents and chief-examination has deposed that, he does not know the complainant and her husband, but knew only after filing of present case. Even he gone to an extent that, he does not know, as to the complainant had transferred Rs.1,38,360/- to his account, but he on the one hand denied and another hand Judgment 18 C.C.No.26951/2018 deposed, does not encashed. But his say was against his own defence taken earlier. However, the said inconsistence of the evidence of PW.1, it does not affect his defence as he got produced documentary evidence at Exs.D1 to D3, apart from clear cut admissions on the same from the mouth of PW.1. The PW.1 in his cross-examination has denied the suggestions made by complainant and whatever the documentary evidence placed by the accused at Exs.D1 to 3 were admitted by the PW.1 during the course of cross of DW.1 in the following deposition.

" .1 . 25.10.2014
.
. .1
. .1
. 27.10.2017 .1,50,000/-
. .
. .1
. .1 Judgment 19
C.C.No.26951/2018 □ .
."

23. On going through the said testimony of DW.1, the complainant had admitted that, the accused has produced the Ex.D1-Loan Agreement dated:25.10.2014, wherein, the signatures of the complainant and accused are seen. The said suggestion made to DW.1 is been admitted, but no cross suggestion is made as to denial or refusal of execution of Ex.D1 in between complainant and accused. Even DW.1 explained in the Ex.D1 in para No.2 his name wrongly mentioned as as against . The same is also not denied. The DW.1 has admitted that, Ex.D1 is prepared by him, thereby, it is not suggested, the complainant was not part with the said document, though her name and participation was recited. Even it was also suggested that, on 27.10.2017 Rs.1,50,000/- got received by the accused was also recited in Ex.D1 for the period of one year only. The DW.1 has categorically admitted the same.

24. The DW.1 has deposed that, he not borrowed Rs.1 lakh from the complainant and also deposed that, he not initiated any action against the complainant. He also deposed that, in Ex.D1 it was recited that, cheques were given to the complainant which includes the reference of Ex.D2 also. Even he deposed, in the Judgment 20 C.C.No.26951/2018 said agreement the name of Mrs.Chandrakala and Mrs.Latha were cited as witnesses.

25. No doubt, on going through the said testimony of DW.1, the complainant by relied upon the said Ex.D1 has suggested to him, but DW.1 withstood the recitals at Ex.D1(a). Even no suggestion is made to the DW.1, as to denial of alleged borrowing of loan of Rs.1,50,000/- on 27.10.2015 as found

in the Ex.D1 agreement dated:25.10.2014. The said recitals is been admitted by th complainant by way of suggesting made to DW.1. Even DW.1 also categorically admitted the same. It is pertinent to note that, there is lack of dates mentioning therein. No doubt, the agreement recited the date:25.10.2014, the stamp paper stood in the name of complainant and accused.

26. That apart, in para No.2 of Ex.D1 it was recited that, in the presence of witness borrowed the loan of Rs.1,50,000/- on 27.10.2014. The said document discloses, though agreement cited the date:25.10.2014 it recited loan taken on 27.10.2014 in the presence of witnesses for the tune of Rs.1,50,000/- on interest and undertakes to repay the same within one year. No doubt, in the Ex.D1 alleged date of borrowal is mentioned subsequent to the agreement date. The accused has contended as per Ex.D1 Judgment 21 C.C.No.26951/2018 he borrowed loan on the security of signed 2 blank cheques and loan agreement. The same also recited in his reply notice. But the said recitals discloses, the loan lent on 27.10.2014. Therefore, the said lent of loan is important to make clarify through the evidence of PW.1, whether the said agreement was entered into between complainant and accused or not? Is to be seen. In that regard, during the course of cross of PW.1, the admissions and explanation submitted by the PW.1 on Ex.D1 needs to be seen.

27. In the cross-examination of PW.1, he deposed that:

> "¢£ÁAPÀ:25.10.2016 gÀAzÀÄ ¦AiÀiÁð¢ ªÀÄvÀÄÛ DgÉÆÃ¦AiÀÄ £ÀqÀÄªÉ £ÀqÉzÀ PÀgÁgÀÄ ¥ÀvÀæzÀ bÁAiÀiÁ ¥ÀæwAiÀÄ£ÀÄß ¸ÁQëUÉ vÉÆÃj¸À¯ÁV DgÉÆÃ¦ ªÀQÃ®gÀÄ CzÀgÀ ªÀÄÆ® ¥Àæw DgÉÆÃ¦AiÀÄ ªÀ±ÀzÀ°èzÉ JA§ÄzÁV £ÀÄrzÀ ªÉÄÃgÉUÉ bÁAiÀiÁ ¥ÀæwAiÀÄ£ÀÄß ¢éwÃAiÀÄ zÀeÉðAiÀÄ ¸ÁPÀë å JA§ÄzÁV UÀÄgÀÄw¹ ¤r.1 JAzÀÄ UÀÄgÀÄw¸À¯Á¬ÄvÀÄ. ¤r.1 gÀ ¥ÀæPÁgÀ ZÉPï¸ÀASÉåB162645 ªÀÄvÀÄÛ 162646 £ÀÄß, ¸Á® wÃgÀÄªÀ½AiÀÄ ¨ÀszÀævÉUÁV ¤ÃrzÀ ZÉPï JAzÀÄ N¢ M¦àPÉÆ¼ÀÄîvÁÛgÉ."

28. On going through the said testimony of PW.1, it revealed that, on tendering the Ex.D1 loan agreement dated:25.10.2016 during his cross-examination on seeing the same and stated that, Judgment 22 C.C.No.26951/2018 the original of his document was in the custody of the complainant, the xerox copy of the loan agreement got marked at Ex.D1. The PW.1 categorically admitted the presence of Ex.D1 as on 25.10.2016. Even PW.1 has admitted that, as per Ex.D1, cheque numbers 164645 and 162646 were given by the accused for repayment of loan, on reading the same, he got admitted. Thereby, it made clear that, the PW.1 categorically admitted the presence of Ex.D1 as on 25.10.2016 and not denied the genuineness of Ex.D1 or the allegation that, the original of the same was in the custody of the complainant. The PW.1 categorically admitted the loan transaction as made mentioned in Ex.D1 dated:25.10.2014. Thereby, the accused got proved the existence of Ex.D1 through the mouth of PW.1. Though PW.1 being a General Power of Attorney, he pleaded that, he knew the transaction held between complainant and accused. Therefore, whatever the evidence led by him, it is the say of complainant, as he steps into the shoes of the complainant.

29. From the point of Ex.D1 with regard to the date made mentioned therein, as to entered into on 25.10.2014 and alleged borrowal of Rs.1,50,000/- on 27.10.2014 needs to focus on the evidence of complainant, as to when, as per the say of complainant, the accused was approached the

complainant and Judgment 23 C.C.No.26951/2018 requesting for the loan. From the pleading and affidavit evidence of PW.1, it made clear that, during the 2 nd week of October, 2014, the accused had requested for the loan. Therefore, it made clear that, the accused prior to either dtd25.10.2014 or 27.10.2014 approached the complainant sought for loan. The complainant has not specified exactly on which date the accused was approached. It is not the contention of the complainant that, the accused approached on or after 25.10.2014. Therefore, the dates made mentioned in the Ex.D1 would not vitiate the loan transaction made mentioned in the Ex.D1. When during the 2 nd week of October, 2014 the accused was requested for the loan, the accused has proved by production of Ex.D1 that, he borrowed loan on 27.10.2014. As per Ex.D1 it discloses, the accused borrowed the loan of Rs.1,50,000/-, not for Rs.2,20,000/- as alleged by the complainant.

30. It is also significant fact to note that, Ex.D1 discloses the signature of complainant. The complainant has not denied the same. Even it was not the contention of complainant that, prior to 27.10.2014 he made payment of any portion of money to the accused, but his pleading as well as admission made by the complainant as to got payment of Rs.1,38,360/- transferred by the complainant in the account of the accused on the date:27.10.2014 Judgment 24 C.C.No.26951/2018 as found in Ex.D1 in para No.2 of the said recitals has to be accepted. Therefore, it made clear that, the accused has borrowed the loan of Rs.1,38,360/- by way of account transfer. The accused in his reply notice at appropriate stage has contended, he approached the complainant sought for loan of Rs.1,50,000/-, accordingly, she gave it by way of transferred of Rs.1,38,360/- to his account and balance of Rs.11,640/- was not remitted. Even he stated, for interest at 10% p.m. the complainant lent the loan. Perhaps, it appears the remaining amount of Rs.11,640/- the complainant could have been deducted towards the interest for next limited period. Therefore, the accused has took the contention of payment of interest at 10% p.m. on the loan lent by the complainant. Taken in to consideration of the same, 120% p.a. interest the complainant alleged to be lent the loan, but the same is not admitted by the PW.1. However the deduction of amount of Rs.11,640/- can be sen as the complainant without any reason sent the amount of Rs.1,38,360/-. She could have round up the amount and transferred to the account of accused. But deduction of the said amount can be gathered, for the purpose of payment of interest she got deducted Rs.11,640/- against the loan amount of Rs.1,50,000/- and transferred the balance amount of Judgment 25 C.C.No.26951/2018 Rs.1,38,360/-. The PW.1 in his cross-examination has not explained anything on the Ex.D1.

31. That apart, it also needs to focus on the further cross- examination of PW.1 that:

> "¤r.1 PÀgÁj£ÀAvÉ ¤ÃrzÀ ZÉPÀÌ£ÀÄß £Á£ÀÄ F ¥ÀæPÀgÀtzÀºè ¤¦.2 gÀ ¥ÀæPÁgÀ ºÁdgÀÄ ¥Àr¹zÉÝÃ£ÉAzÀgÉ ¸ÁQëAiÀÄÄ 6 wAUÀ¼À M¼ÀUÀqÉ DgÉÆÃ¦ ºÀt PÉÆqÀÄvÉÛÃ£ÉAzÀÄ ºÉÃ½zÀÄÝ, 4 ªÀµÀðUÀ¼À PÁ® ºÀtªÀ£ÀÄß PÉÆqÀzÀ PÁgÀt, ¤¦.2 £ÀÄß CzÀsj¹ F ¥ÀæPÀgÀt zÁR°¹zÉÝÃ£É."

32. On close perusal of the evidence of PW.1, it discloses, against the suggestion made to PW.1 that, Ex.P2 cheque was given by the accused to the complainant as per recitals made mentioned in Ex.D1-loan agreement has been produced by the complainant. But, without denying the same, the complainant has explained that, since accused not repaid loan within 6 months as agreed, but even after 4 years also not repaid his loan, therefore, by using Ex.P2-cheque he filed the present case.

From the said testimony of PW.1 it made clear that, the loan borrowed by the accused as per Ex.D1, but as per his explanation it was not repaid within the period of 4 years. Therefore, complainant ventured to Judgment 26 C.C.No.26951/2018 initiate the present proceedings based on Ex.P2-cheque cited in the loan agreement. The said evidence of PW.1 also demonstrated, the accused as agreed, not returned the amount within 4 years. By deposing so, the complainant has admitted that, within a period of limitation as specified under the relevant provisions of Limitation Act, the accused has not repaid the loan within the period of 3 years. Thereby, it also revealed, after lapse of limitation period, for recover the said loan amount, the complainant got used the cheque, which handed over by the accused as mentioned in Ex.D1. Therefore, it also revealed the claim put forth by the complainant is time barred debt. From the said contention of the complainant, it also made clear that, the alleged lent of loan is time barred by virtue of the relevant provisions of Limitation Act. The time barred debt cannot be recovered, therefore, question of that subsequent dates, after the lapse of said period for discharge of legal liability the accused got issued the questioned cheque is also not been proved.

It is also appropriate to cite the decision rendered by the Hon'ble High Court of Karnataka dated:17.12.2020 in a Criminal Appeal No.200057/2016 in a case between The Bidar Urban Co-operative Bank Ltd., V/s Girish. Wherein, the Hon'ble High of Karnataka by citing all the relevant provisions of the various Judgment 27 C.C.No.26951/2018 Hon'ble High Courts and Hon'ble Apex Court, has pleased to observed that:

> "A cheque given in discharge of a time barred debt will not constitute a promise in writing not even an implied promise so as to attract a criminal liability under Section 138 of Negotiable Instruments Act."

33. As per the said judgment, it also made clear that, time barred debt cannot be recovered. From that point also, the present case of the complainant is also appears to be time barred debt, hence, by way of issue cheque, it cannot be bring within the purview of limitation.

34. That apart, on going through the cross-examination of PW.1, he deposed that:

> "¢£ÁAPÀ:25.10.2014 gÀAzÀÄ DgÉÆÃ¦ £À£ÀUÉ ¤¦.1 ªÀÄvÀÄÛ ZÉPï ¸ÀASÉå 162646 gÀ ¸À» ªÀiÁrzÀ 2 SÁ° ZÉPÀÌ£ÀÄß ¤ÃrzÀÝgÀÄ JAzÀÄ, ¸ÁQëUÉ CzÀgÀ bÁAiÀiÁ ¥ÀæwAiÀÄ£ÀÄß vÉÆÃj¸À¯ÁV, ¸ÁQëAiÀÄÄ £ÉÆÃr M¦àPÉÆAqÀ ªÉÄÃgÉUÉ D JgÀqÀÆ zÁR¯ÉAiÀÄ£ÀÄß ¢éwÃAiÀÄ zÀeÉðAiÀÄ ¸ÁPÀë å JAzÀÄ ¥ÀjUÀtô¹ ¤r.2 ªÀÄvÀÄÛ 3 JA§ÄzÁV UÀÄgÀÄw¸À¯Á¬ÄvÀÄ. DgÉÆÃ¦, ¦AiÀiÁð¢¬ÄAzÀ ¥ÀqÉzÀAvÀºÀ gÀÆ.1,50,000/- ¸Á®ªÀ£ÀÄß K¦æ¯ï 2015 gÀ°è ªÀÄgÀÄ¥Áªàw ªÀiÁrzÀÝgÀÄ JAzÀgÉ ¸ÀjAiÀÄ®è. ¸ÁQëAiÀÄÄ ¸ÀévÀB ªÀÄÄAzÀÄªÀgÉzÀÄ DvÀ PÉÃªÀ® gÀÆ.20,000/- ªÀ£ÀÄß ªÀiÁvÀæ ¢£ÁAPÀ 23.03.2018 gÀAzÀÄ, Judgment 28 C.C.No.26951/2018 £É¥sïÖ ªÀÄÄSÁAvÀgÀ ªÀUÁð¬Ä¹zÀÝgÀÄ JAzÀÄ £ÀÄrAiÀÄÄvÁÛgÉ. DgÉÆÃ¦, ¦AiÀiÁð¢UÉ ¸ÀA¥ÀÇtð ¸Á® wÃgÀÄªÀ½ ªÀiÁr DvÀ¤AzÀ ¨ÀszÀævÉUÁV ¥ÀqÉ¢gÀÄªÀAvÀºÀ ¤r.1 gÀ PÀgÁgÀÄ °ÁUÀÆ ¤r.2 ªÀÄvÀÄÛ 3 gÀ ZÉPÀÄÌUÀ¼À£ÀÄß ªÀÄgÀ½¸ÀÄªÀAvÉ PÉÃ½zÀÝgÀÄ JAzÀgÉ ¸ÁQëAiÀÄÄ, DgÉÆÃ¦ ¸Á®ªÀ£ÀÄß ªÀÄgÀ½¸ÀzÀ PÁgÀt

ªÁ¥À¸ï ¤Ãr®è JAzÀÄ £ÀÄrAiÀÄÄvÁÛgÉ."

35. On going through the say of PW.1, he categorically admitted, on seeing the cheque bearing No.162646 at Ex.P1 and other 2 signed blank cheques as per Ex.D1 loan agreement dated:25.10.2014 were given by the accused to the complainant, tendering the xerox copy of the same, the PW.1 without denial of the same, got admitted the receipt of same, therefore, the signed blank cheques got marked at Exs.P2 and D3. The said admission made by the PW.1, it also clear that, the Exs.D2 and D3 xerox copies of signed blank cheques were taken by the complainant, while entered into loan agreement on 25.10.2014 and projected the present case. The PW.1 not denied the existence of Exs.D1 to D3, while he borrowed loan as per Ex.D1. Therefore, the Ex.D1 needs to be accepted, it was came in to effect on 27.10.2014. Thereby, the accused has strongly proved his probable defence by oral as well as documentary evidence, even necessary admission was extracted from the mouth of PW.1.

Judgment 29 C.C.No.26951/2018 Regarding the genuineness of Exs.D1 to D3, there is no suggestion is made to the DW.1 in his cross-examination. Thereby, the accused has proved that, he only borrowed the loan of Rs.1,50,000/- as per Ex.D1 from the complainant, out of which the complainant by deducting Rs.11,640/- only transferred Rs.1,38,360/- on 27.10.2014 on the security of 2 signed blank cheques as produced as per Exs.D2 and D3, which is replica of the Ex.P2 cheque and loan agreement and stamp paper as per Ex.D1. Thereby, the accused has successfully proved that, he not borrowed the loan of Rs.2,20,000/- as projected by the complainant and issued questioned cheque for repayment of portion of amount of Rs.2 lakhs. Thereby, the accused has successfully rebutted the statutory presumption and the facts and circumstances raised by the complainant, therefore, it was reverse burden on the complainant to prove her case beyond the reasonable doubt.

It is well worthy to cite the decision reported in 2008 AIR SCC 7702 (P. Venugopal V/s.Madan P. Sarathi). Wherein, it was pleased to held by the Hon'ble Division Bench of the Hon'ble Apex Court that:

> "The presumption raised does not extent to the expenditure that cheque was issued for the Judgment 30 C.C.No.26951/2018 discharge of any debt or liability. Which is required to be proved by the complainant. However, it is essentially a question of fact".

Added to that, in a decision of AIR 2008 SC 278 between John K John V/s. Tom Verghees, the Hon'ble Apex court it is held that:

> "The presumption under Section 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque. Whenever there is huge amount shown in the cheque, though the initial burden is on the accused, it is equally necessary to know how the complainant advanced such a huge amount".

36. From the point of above dictums also, it was the reverse burden casted upon the complainant to establish the very case beyond the reasonable doubt in order to convict the accused. As discussed earlier, the accused has rebutted the statutory presumption as well as facts and circumstances set out by the complainant by attacking oral as well as with the support of documentary evidence at Exs.D1 to D3 successfully.

37. On meticulous perusal of the complaint averments, the PW.1 has deposed, he knew the transaction held between complainant and accused, therefore, he should be stepped into Judgment 31 C.C.No.26951/2018 the shoes of complainant. The PW.1 has admitted, Exs.D1 to D3 and said transaction. Therefore, in order to prove the case of complainant, as to accused approached the complainant during 2nd week of October, 2014, seeking for loan of Rs.2,20,000/-, he not specified and under what compelling circumstances the accused was in need of said money and complainant being a ill- health woman, how she secured the said amount and lent to the accused on 27.10.2014 is not been satisfactorily explained. No doubt, on 27.10.2014 the transaction of amount of Rs.1,38,360/- were transferred from the account of complainant to the account of accused is been admitted. But to show that, the remaining amount of Rs.81,640/- were gave to the accused by way of cash, in all paid Rs.2,20,000/- is not been admitted by the accused. If the complainant was able to transfer the amount of Rs.1,38,360/- by way of account transfer, what was the impediment to her to hand over the cash of Rs.81,640/- is not been satisfactorily explained. Since, she had no such amount in her account unable her to transfer, therefore, whatever the amount she had not her account unable transferred for the tune of Rs.1,38,360/-. In order to show that, she had Rs.81,640/- by way of cash, she not produced any oral or documentary evidence. By splitting of amount, itself discloses that, since complainant had no such huge Judgment 32 C.C.No.26951/2018 amount, therefore, she not choosen to pay the said amount, she only transferred the said sum through her account and she establish, she had cash as such not produced any oral or documentary evidence.

38. As per her pleading, she admitted the lent of Rs.1,38,360/- on 27.10.2014 and it was not repaid by the accused till the payment of Rs.20,000/- on 23.03.2018. Thereby, it also made clear that, from the point of her own pleading it made clear that, the alleged payment made to the accused was time barred debt, it cannot be recovered. The accused took upon the defence that, though he was received the loan amount of Rs.1,38,360/- and he got repaid the said money and complainant insisting for more money, he gave Rs.20,000/- by way of cheque on 23.03.2018. The payment of Rs.20,000/- made on 23.03.2018 does not mean that, it is renewal of debt. The said time barred debt cannot be recover. Moreover, the accused has contended, the said loan was repaid to the complainant, despite that, without returning the Exs.D1 to D3 she ventured for filing false case.

39. The very admitted documents at Exs.D1 to D3 from the side of complainant it also destroyed the very case of the complainant and goes to the root of the case that, the accused Judgment 33 C.C.No.26951/2018 only borrowed loan of Rs.1,38,360/- as per his say, it was repaid. Even additional amount of Rs.20,000/- by way of NEFT made to the complainant on 23.03.2018. Even then, complainant not returned his security documents at Exs.D1 to D3. Thereby, he destroyed the very case of complainant and though initial burden placed on the complainant, she failed to demonstrate her case with oral as well as documentary evidence. The accused has projected that, he got repaid loan of Rs.1,38,360/- with interest. Though, he not produced any document, but he

repeatedly asserted that, it was repaid. If it was not repaid, definitely, the complainant cannot insist to pay the said amount as the said amount is time barred debt cannot be recovered legally. Therefore, from that point also it made clear that, the complainant has utterly failed to demonstrate the alleged loan transaction of Rs.2,20,000/- in between complainant and accused on 27.10.2014. Time barred debt cannot be recovered, therefore, question of issue questioned cheque by the accused does not arise. From the said contention of the complainant, it also made clear that, the alleged lent of loan is time barred by virtue of the relevant provisions of Limitation Act. The time barred debt cannot be recovered, therefore, question of that subsequent dates, after Judgment 34 C.C.No.26951/2018 the lapse of said period for discharge of legal liability the accused got issued the questioned cheque is also not been proved.

It is also appropriate to cite the decision rendered by the Hon'ble High Court of Karnataka dated:17.12.2020 in a Criminal Appeal No.200057/2016 in a case between The Bidar Urban Co-operative Bank Ltd., V/s Girish. Wherein, the Hon'ble High of Karnataka by citing all the relevant provisions of the various Hon'ble High Courts and Hon'ble Apex Court, has pleased to observed that:

> "A cheque given in discharge of a time barred debt will not constitute a promise in writing not even an implied promise so as to attract a criminal liability under Section 138 of Negotiable Instruments Act."

40. As per the said judgment, it also made clear that, time barred debt cannot be recovered. From that point also, the present case of the complainant is also appears to be time barred debt, hence, by way of issue cheque, it cannot be bring with in the purview of limitation.

41. Though, there was serious allegation made against the complainant for doing money lending business with higher rate of interest and alleged retention of original loan agreement at Ex.D1, Judgment 35 C.C.No.26951/2018 she not denied nor produced its original. Therefore, it made clear that, Ex.D1 loan agreement dated:25.10.204 was entered into between complainant and accused in respect of loan of Rs.1,50,000/-, but complainant got misused the security documents obtained from the accused as per Exs.D1 to D3 and by misusing the Ex.P2 cheque filed the present case has to be accepted. The accused has successfully proved that, he not borrowed the loan of Rs.2,20,000/- as projected by the complainant, but he made clear by provide preponderance of probabilities theory by relying upon the Exs.D1 to D3 subject to obtain certain admissions coupled with accused in witness box withstood his contention and stands proved his probable defence, which destroyed the very case of complainant. Hence, the accused is entitled for benefit of doubt for acquittal.

42. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, she fails to demonstrate her very case. While appreciate the materials available on record, this court has humbly gone through the decision relied by both parties apart from the following decisions.

Judgment 36 C.C.No.26951/2018 In the decision reported in ILR 2009 KAR 2331 (B.Indramma V/s. Sri.Eshwar). Wherein, the Hon'ble Court held that:

> "Held, when the very factum of delivery of the cheque in question by the accused to the complainant and its receipt by complainant from the accused itself is seriously disputed by the accused, his admission in his evidence that, the cheque in question bares his signature would not be sufficient proof of the fact that, he delivered the said cheque to the complainant and the latter received if from the former".

43. The principle of law laid down in the above decision is applicable to the facts of this case. Merely because, the accused admits that, cheque bares his signature, that, does not mean that, the accused issued cheque in discharge of a legally payable debt.

At this stage, this court also relies upon another decision reported in AIR 2007 NOC 2612 A.P. (G.Veeresham V/s. Shivashankar and another). Wherein, the Hon'ble Court has held as under:

> "Negotiable Instruments Act (26 of 1881). S. 138 Dishonour of cheque - Presumptions available to complainant under S. 118 and S. 139 of Act - Rebuttal of cheque in question was allegedly issued by accused to discharge hand loan taken from Judgment 37 C.C.No.26951/2018 complainant. However, no material placed on record by complainant to prove alleged lending of hand loan said fact is sufficient to infer that, accused is liable to rebut presumptions available in favour of complainant under Sections 118 and 139 of Act, Order acquitting accused for offence under S. 138 proper".

44. The principle of law laid down in the above decisions is applicable to the facts of this case. In the case on hand also, as discussed above, the complainant has failed to prove with cogent evidence as to the lending of loan of Rs.2,20,000/- to the accused. Thus, that fact itself is sufficient to infer that, accused is able to rebut presumptions available in favour of complainant under Sections 118 and 139 of the Negotiable Instruments Act.

45. In this case on hand also, on the lack of the complaint failed to prove the alleged loan transaction, it can gather the probability that, he is not liable to pay Ex.P1 cheque amount of Rs.2,00,000/- and it is not legally recoverable debt. So, the burden is on the complainant to prove strictly with cogent and believable evidence that, the accused has borrowed the cheque amount and he is legally liable to pay the same. Just because, there is a presumption under Section 139 of Negotiable Instruments Act, that, will not create any special right to the complainant so as to Judgment 38 C.C.No.26951/2018 initiate a proceeding against the drawer of the cheque, who is not at all liable to pay the cheque amount. The accused has taken his defence at the earliest point of time, while record accusation and statement under Section 313 of Cr.P.C. by way of denial. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheque for discharge of liability of Rs.2 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

46. From the above elaborate discussions, it very much clear that, the complainant has failed to adduce cogent and corroborative evidence to show that, accused has issued cheque Ex.P1 for discharge of his legally payable debt, for valid consideration. Hence, rebutted the legal presumptions

under Section 139 and 118 of Negotiable Instruments Act in favour of the accused.

47. The sum and substances of principles laid down in the rulings referred above are that, once it is proved that, cheque pertaining to the account of the accused is dishonoured and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied, then it has to be Judgment 39 C.C.No.26951/2018 presumed that, cheque in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases. Now, it is settled principles that, to rebut the presumption, accused has to set up a probable defence and he need not prove the defence beyond reasonable doubt.

48. Thus, on appreciation of evidence on record, I hold that, the General Power of Attorney Holder of complainant has failed to prove the case by rebutting the presumption envisaged under Sections 118 and 139 of Negotiable Instruments Act. The General Power of Attorney Holder of complainant has failed to discharge the reverse burden to prove his contention as alleged in the complaint. Hence, the General Power of Attorney Holder of complainant has not produced needed evidence to prove that, amount of Rs.2 lakhs legally recoverable debt. Therefore, since the General Power of Attorney Holder of complainant has failed to discharge the reverse burden, question of appreciating other things and weakness of the accused is not a ground to accept the claim of the General Power of Attorney Holder of complainant in its entirety, without the support of the substantial documentary evidence pertaining to the said transaction. The General Power of Judgment 40 C.C.No.26951/2018 Attorney Holder of complainant utterly fails to prove his case beyond all reasonable doubt. As discussed above, the General Power of Attorney Holder of complainant has utterly failed to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, I answered the Point Nos.1 and 2 are Negative.

49. Point No.3: In view of my findings on point Nos.1 and 2, I proceed to pass the following:

> ORDER Acting under Section 255(1) of Cr.P.C. the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.
>
> The bail bond and cash security/surety bond of the accused stands cancelled.
>
> (Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 9 th day of April - 2021) (SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : B.Thimmegowda

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	General Power of Attorney
Ex.P2	:	Original Cheque
Ex.P2(a)	:	Signature of accused
Ex.P3	:	Bank endorsement
Ex.P4	:	Office copy of legal notice
Ex.P5	:	Postal receipt
Ex.P6	:	Postal Acknowledgment card
Ex.P7	:	Reply notice
Ex.P8	:	Private complaint
Ex.P8(a)	:	Signature of complainant

List of Witnesses examined on behalf of the defence:

DW.1 : Shanthakumar List of Exhibits marked on behalf of defence:

Ex.D1	:	Xerox copy of hand loan agreement
Ex.D1(a)	:	Signature of accused
Exs.D2 and D3	:	Xerox copies of signed blank cheques
Exs.D2(a) & P3(a)	:	Signatures of accused

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

Judgment 42 C.C.No.26951/2018

Judgment pronounced in the open court vide separate order.

***** ORDER Acting under Section 255(1) of Cr.P.C.

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

The bail bond and cash security/surety bond of the accused stands cancelled.

XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.