

Sri.Govinda Rao.R vs K.T.Kumar on 1 September, 2021

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

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

Dated this the 1st day of September 2021

C.C.No.13916/2017

Complainant : Sri.Govinda Rao.R,
S/o Ram Rao,
Aged about 49 years,
R/at No.315, Vinayakanagara,
Tumkur Road,
Bengaluru-73.

{ By Sri.Channagowda- Advocate }
Vs.

Accused : K.T.Kumar,
S/o Thimmaiah,
Aged about 46 years,
No.205-B, 14th Main,
Subramanya Nagar,
Rajajinagar II Stage,
Bengaluru-560 010.

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And also at:-
No.438, 14th Main,
Subramanyanagar,
I Block, Rajajinagar,
Bengaluru- 560 010.

{ By Sri.M.T.Rangaswamy- Advocate }

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

Plea of accused : Pleaded not guilty

Final Order : Accused is Acquitted

Date of Order : 01-09-2021

JUDGMENT

This complaint is filed under section 200 of code of criminal procedure by the complainant for the dishonour of cheque punishable under section 138 of the Negotiable 3 C.C.13916 of 2017 Instruments Act (in short referred as "N.I. Act") against the accused.

02. The brief the averments of the complaint are as under;

It is averred in the complaint that, land bearing survey No.23/3, measuring 2 acres 10 guntas situated at Doddabidarakallu village, Yeshavanthpura Hobli, Bengaluru North Taluk, is belongs to one Smt.Jayalakshmi. The said Jayalakshmi offered to sell the said land and in this regard there is an agreement of sale between the said Jayalakshmi and the complainant along with Praveen, Kumar.G, Rudra Gowda, Ganjaraju.N, Bhanuprakash and Sri Dasharath.G on 27.11.2012 and advance amount of Rs.10,00,000/- was paid to Smt. Jayalakshmi.

It is further averred that, subsequent to the agreement of sale, the complainant along with aforesaid 4 C.C.13916 of 2017 persons have converted the land into non agricultural purpose. Later, the husband of Smt. Jayalakshmi had tried to interfere with the peaceful possession and enjoyment of the above said property and as such the complainant along with the aforesaid persons have a suit in O.S.No.213/2014 on the file of the Principal Civil Judge and JMFC Bengaluru. Rural District. During the pendency of the aforesaid suit Smt. Jayalakshmi had executed another sale agreement in favour of the accused in respect of the aforesaid property and later the accused and the complainant had made deep discussions, thereby the accused had agreed to pay the complainant's share amount of Rs.40,00,000/- and in this regard, the complainant and others along with accused had entered into memorandum of understanding on 15.08.2016, under which the accused had issued a cheque bearing No.514852 dated 06.03.2017 for Rs.40,00,000/- drawn on Corporation bank, Rajajinagar Branch, 5 C.C.13916 of 2017 Bengaluru. When the said cheque presented for encashment through his banker by the complainant, it has been returned unpaid with banker's memo endorsing that "Funds Insufficient" on 08.03.2017. On 12.03.2017, the complainant issued demand notice calling upon the accused to pay the cheque amount of Rs.40,00,000/-. Despite of service of notice, the accused neither has paid the cheque amount nor has given reply notice to the said notice. Therefore, it is sought to convict the accused by imposing fine amount and to award the compensation to the complainant as per section 257 of Code of Criminal Procedure.

03. On perusal of the complaint and the annexed documents produced along with the complaint, my predecessor took the cognizance for the offence punishable under section 138 of NI Act. Thereafter, the sworn 6 C.C.13916 of 2017 statement of the complainant has been recorded by way of filing

affidavit and got marked in all 9 documents and closed his side. On perusal of material placed on record, it appears that, my predecessor about establishing prima- facie material accordingly has ordered to register the complaint in register No. III and issued summons against the accused.

04. In response to the summons, the accused has appeared before the court through his counsel and filed bail application under section 436 of Code of Criminal Procedure. Since, the alleged offence is bailable, the accused has been enlarged on bail. Accusation has been recorded and explained to the accused, he pleaded not guilty and stated that, he has defence. Later, on the basis of the application under section 145(1) of NI Act, he is permitted to cross examine PW.1. Thereafter, the statement 7 C.C.13916 of 2017 under section 313 of Code of Criminal Procedure has been recorded and explained to him about the incriminating evidence, but he denied the same. Subsequently, on the basis of application filed under section 311 of Code of Criminal Procedure, the complainant has been permitted to lead further evidence and got marked Ex.P.10 to 16. The complainant also adduced the oral evidence of one witness as PW.2 and closed his side. Thereafter, the accused led his oral evidence as DW.1 and got marked documents Ex.D.2 to 4 (Ex.D.1 got marked confronting with PW.1, subject to objection). The accused also adduced the oral evidence of one witness as DW.2 and closed his side.

05. The Learned counsel for the complainant has filed written arguments and also advanced oral arguments. The defence counsel advanced oral arguments and also filed written arguments.

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06. The following points would arise for my consideration are as under;

POINTS

1. Whether the complainant proves beyond reasonable doubts about the existence of legally enforceable debt in respect of the cheque at Ex.P.1?

2. Whether the complainant proves beyond reasonable doubts that, the accused has issued a cheque at Ex.P.1 bearing No.514852 dated 05.03.2017, drawn on Corporation Bank, Rajajinagara Branch, Bengaluru for Rs.40,00,000/-, towards the discharge of the above said lawful debt and with the said cheque was presented for encashment, it has dishonored for the reason "Funds Insufficient" in the account of the drawer and despite of service of demand notice, the accused has failed to pay the cheque amount, thereby has committed the offence punishable under section 138 of NI Act?

3. What Order or sentence ?

07. My findings to the above points are as under;

1. Point No.1: In the Negative 9 C.C.13916 of 2017

2. Point No.2: In the Negative

3. Point No.3: As per final order for the following;

REASONS

08. POINT No.1 & 2: To bring home, the guilt of the accused for the alleged dishonor of cheque, the complainant adduced his evidence before the court by way of filing his examination in chief as PW.1 and got marked the documents at Ex.P.1 to 10 and also got marked Ex.P.11 to 16 through confronting DW.1. In his affidavit evidence, PW.1 has replicated the averments of the complaint stating that, he along with his associates had an agreement of sale dated 27.11.2012 with one Smt. Jayalakshmi for the purchase of land measuring 2 acres 10 guntas in land survey No. 23/3 of Doddabidarakallu Village, Yashanthpura Hobli, Bengaluru North by making payment of advance amount of Rs.10,00,000/-. Later, he along with his associates have converted the said land into the non 10 C.C.13916 of 2017 agricultural purpose. This being the fact on 15.08.2016, the accused has entered into the memorandum of understanding with complainant and his other associates for the sale of the above said land survey No.23/3 measuring 2 acres 10 guntas and the accused had issued a cheque bearing No. 514852 dated 06.04.2017 for Rs.40,00,000/- drawn on corporation Bank, Rajajinagar Branch, Bengaluru, towards the share amount of the complainant. He further spoken that, when he had presented the said cheque to his banker for encashment, the same was returned unpaid due to "Funds Insufficient"

in the account of the drawer as per the bankers memo dated 08.03.2017. Thereafter, on 12.03.2017, he had issued notice to the accused demanding for the payment of the cheque amount. But, the accused has failed to pay the cheque amount nor has given any reply inspite of in respect of the said notice.

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09. In support of the evidence of the complainant, he adduced the evidence one one witness by name Gangaraju, S/o Late Narasaiah as PW.2. PW.2 has testified in affidavit evidence that, he knows the complainant and the accused. The accused had entered into the memorandum of understanding in respect of land survey No.23/3 measuring 2 acres 10 guntas of Doddabidarakallu village with the complainant and his partners on 15.08.2016 and wherein the accused has issued a cheque bearing No.514852 dated 06.03.2017 for Rs.40,00,000/-, drawn on corporation bank towards the discharge of agreement amount. But, the said cheque has dishonored on 08.03.2017. He further deposed that, himself and other partners had given the complaint to sue matter against the accused. The said transaction took place in his presence and he is one of the party to the memorandum of understanding. The Learned counsel for the accused has 12 C.C.13916 of 2017 cross examined at marathon to both PW. 1 & 2. The complainant has produced in all 16 documents. Ex.P.1 is the cheque bearing No.514852 dated 06.03.2017 drawn on corporation bank in the name of R.Govindarao and it bears the signature of the accused. The Ex.P.2 is the bankers memo dated 08.03.2017 and reveals that, cheque bearing No.514852 returned unpaid due to "Funds Insufficient" in the account of the drawer. Ex.P.3 is the demand notice dated 18.03.2017 issued against the accused, under which the averments of the complaint has been replicated, Ex.P.4 & 5 are the postal receipts pertaining to Ex.P.3. Ex.P.6 & 7 are the postal acknowledgements, under which the notices

sent to the accused at different places. Ex.P.8 is the core and material document stated to be the memorandum of understanding and it reveals that, on 15.08.2016, there was a memorandum of understanding between complainant Govinda Rao and his associates by name 13 C.C.13916 of 2017 Praveen Kumar, G.Rudre Gowda, Gangaraju.N and the accused by name K.T.Kumar. This memorandum of understanding further reveals that, the first party being an agreement holder dated 27.11.2012 with Smt. Jayalakshmi to purchase the land bearing No.23/3 measuring 2 acres 10 guntas for a total consideration amount of Rs.3,60,000/- have entered into an agreement of sale of the above said land with the K.T.Kumar, who is the second party for a consideration amount of Rs.40,00,000/-. As such, the first party is have come to know that, after their agreement of sale dated 27.11.2012 Smt.Jayalakshmi during the pendency of the suit OS.No.213/2014 has executed another sale agreement in favour of the present accused K.T.Kumar and others and to settle the matter amicably they have entered in to this memorandum of understanding. Towards the said memorandum of understanding , the accused has issued a cheque bearing No. 514852 dated 15.08.2016 for 14 C.C.13916 of 2017 Rs.40,00,000/- in the name of complainant for himself and other his two associates. This memorandum of understanding further reveals that, the above said cheque would be honored within 15 days and after encashment of the said amount from the said cheque, the complainant being a first party as a share of Rs.10,00,000/-. Ex.P.9 is the banker's slip about presenting the cheque at Ex.P.1 to the banker for encashment. Ex.P.10 is the advertisement voucher and it discloses that, the residential sites are created in land survey No.23/3 and 23/18 at Gruhalakshmi Layout in ward No.40, BBMP for sale to the general public. Ex.P.11 ROR of land bearing No.23/3 of the year 2015- 2016, wherein the column No.9 & 12 in the name of Smt. Jayalakshmi W/o Mutthappa, is shown as owner of the the possession of the said land measuring 2 acres 10 guntas, Ex.P.12 is the order sheet of the court in OS.No.213/2014 and it reveals that, the present complainant Govinda Rao 15 C.C.13916 of 2017 and his other five associates have filed a suit for injunction against the Smt. Jayalakshmi in respect of land survey No.23/3 and the said suit was got dismissed as suit with drawn by filing a memo. Ex.P.13 is the copy of the plaint affidavit in OS. No.213/2014, Ex.P.14 is the copy of memo submitted in the said suit. All the six plaintiffs stating that, the suit to be dismissed as not pressed. Ex.P.15 is the copy of the order and sketch map pertaining to land survey No.23/3 measuring 2 acres 10 guntas issued by the Learned deputy commissioner dated 02.07.2013. Ex.P.16 is the CD and Ex.P.16(a) is contents of the voice records of the CD at Ex.P.16.

10. To disproving the case of the complainant and also to establish his defence before the court on his side, the accused by name K.T.Kumar himself entered into the witness box and adduced his oral evidence as DW.1. He 16 C.C.13916 of 2017 spoken in his evidence that, through one mediator by name Umesh, he had a talk of land survey No.23/3 with the complainant and his other partners. At that time, he was known by the complainant that, the complainant and partners had an agreement of sale of the said land for Rs.3,00,00,000/-. But, they could not supply the said agreement at that time. He further spoken that, towards the sale talk, he paid Rs.10,00,000/- cash to the complainant and his partners in presence of mediator Umesh and at that time, the complainant and his partners had agreed to execute the agreement of sale, but they failed to do so and instead the said broker and complainant have obtained his signature on one memorandum of understanding and took one cheque from him and promised him that, they got canceled their agreement of sale with Jayalakshmi and obtained cheque from him just to show the same to Jayalakshmi. He further

spoken that, 17 C.C.13916 of 2017 one day in the night when he was in the office of MLA, Mahalakshmi layout, he was called and took his sit on the memorandum of understanding and cheque. But, he was not provided the copy of the memorandum of understanding. Later, the agreement of sale was not provided to him along with original owner and went on postponing the same for one or the other pretext by the complainant. He stated that, later he visited the land survey No.23/3. Subsequently, had he approached the complainant and narrated the fact and demanded for repayment of his amount and return the cheque and kept silent on the hope of that his amount and cheque would be returned. Later, after filing the present case, he came to know that, his cheque was misutilized and filed present complaint. He stated that, he also came to know one of the partner of complainant Jayalakshmi has filed civil case against one of the partner of the complainant by name 18 C.C.13916 of 2017 Dasarath. He said that, neither the complainant or his partners have delivered the possession of the said land to him and also the title and interest of the complainant in transferred in his possession. He has produced the documents pertaining to Criminal No.50/2018, which are marked at Ex.D.2 to 4. He said that, he is not liable to pay the cheque amount to the complainant. He came to know later that, one Venugopal Reddy had also a transaction with the disputed land. The complainant never had introduced him to Smt. Jayalakshmi. The demand notice was not at all served upon him.

11. The accused has also adduced the oral evidence of his partners by name B.Umesh as DW.2, who spoken before the court that, he knows the complainant and accused. He said that, there was an agreement of sale between complainant and accused in respect of land survey 19 C.C.13916 of 2017 No.23/3, measuring 2 acres 10 guntas for Rs.40,00,000/- and at that time, the complainant has agreed that, subsequently if any dispute arise in respect of the said land, he would settle the same. Accordingly, the accused had issued a cheque in the name of the complainant for Rs.40,00,000/-. He said that, in the month of November 2016, the accused has paid Rs.10,00,000/- in cash to the complainant and to one Praveen. He testified that, later told him that, on he visit to the spot, he came to know about got execute many agreements and many suits in respect of the said land and in this regard, he approached the complainant and requested to the settle all the disputes and thereafter, he was present the cheque for encashment. He deposed that, he put his signature on Ex.P.8(b), as such, he was present at that time. He said that, accused not led any layout for the above said land. As such, the owners are in possession of the said land and till today, the 20 C.C.13916 of 2017 suits pending to the said land are not disposed off. The Learned counsel for the complainant has held marathon cross examination DW.1 & 2. Ex.D.1 is the alleged xerox copy of the agreement of sale, which was got marked by confronting to PW.1 subject to objection. It is trite law that, mere marking of document, which shall not be receivable in evidence. Though, this document has been marked subject to objection, but since it is a xerox document, the same cannot be liable in his evidence. However, when neither the complainant nor the accused has disputed this agreement, under such circumstances, I am of the opinion that, this document at Ex.D.1 can be looked into. This document at Ex.D.1 titled as " " discloses that, on 27.11.2012 there was an agreement between present complainant and his partners have entering to purchases with one Smt. Jayalakshmi, W/o P.Muthappa as intending vendor for the sale of land survey NO.23/3 21 C.C.13916 of 2017 measuring 2 acres 10 guntas of Doddabidarakallu Village, Yashavanthpura Hobli, Bengaluru North Taluk for a consideration amount of Rs.3,60,00,000/-. This document further reveals that, the amount of Rs.10,00,000/- was paid as a advance money and within 18 months of

the execution of this agreement, the said Jayalakshmi shall execute the absolute sale deed in favour of the first party. This document further reveals putting many conditions and the possession of the said land was delivered to the first parties and they are formed the right to converted the said land into the non agricultural purpose and develop plots therein. Ex.D.2 is the copy of the order sheet of IV ADDL.CMM, pertaining to Cr.No.50/2018. Ex.D.3 is the copy of the FIR of peenya police in respect of Cr.No.50/2018. Ex.D.4 is the complaint copy of Cr.No.50/2018. On having bird view on these documents at Ex.D.2 to 4, they reveals that, one Dasarath.G has lodged complaint against Jayalakshmi, 22 C.C.13916 of 2017 her husband and others stating that, the said Jayalakshmi and her husband have agreed to sold out land survey No.23/3 to the complainant of crime No.50/2018 for an amount of Rs.3,64,000/-. But, subsequently, the said Jayalakshmi and others have sold out the said land to one Sri.Venugopala Reddy. Similarly, the husband of Jayalakshmi, her daughter and son have executed an agreement of sale to one Narasimha Murthy in respect of the same land only. While at the time of advancing arguments, the learned defence counsel has produced one photograph and CD in respect of land survey No.23/3.

12. The Learned counsel for the complainant argued that, as per the memorandum of understanding at Ex.P.8, accused has issued the cheque at Ex.P.1 for the discharge of his lawful debt. No reply was given to the demand notice issued by the complainant. It is further argued that, DW.1 23 C.C.13916 of 2017 has admitted in his cross examination about his signature on the cheque at Ex.P.1. Therefore, the presumptions under section 139 of NI Act shall be drawn in favour of the complainant that, the complainant is the due holder of the cheque issued by the accused In order to discharge of his lawful debt. The accused has not rebutted the statutory presumptions, therefore it is sought to convict the accused under section 138 of NI Act and award the compensation as sought for. Per contra, the defence counsel has filed written arguments. In para No.6 of the written arguments it is contended that, the present complaint is not maintainable as there is a clause in argument that, if any dispute arise between parties, the parties have got the liberty to approach the arbitration or civil court. The accused has issued the cheque in favour of the complainant as a security and not to discharge of his legally enforceable debt. In para No.7 of the argument, further argued that, 'it 24 C.C.13916 of 2017 is a bounden duty of the complainant to probabalise that the accused to discharge his legally enforceable debt had issued issued the cheque'. On perusal of the memorandum of understanding at Ex.P.8 there was talk about to clear all disputes, which has been admitted by DW.1 in his cross examination when such disputes are not resolved by the complainant as agreed, it shall held that, the accused has not issued cheque at Ex.P.1 to discharge his lawful debt. Therefore, it is sought to acquit the accused . In support of this written arguments , the learned defence counsel has produced certified copies of plaint in O.S.370/2004, 701/2003 and order sheet in O.S.No.702/2003. The Learned defence counsel has relied the following decisions;

1. CC.No.10203/2016
2. CC.No.1116/2016
3. ILR 2014 KAR 6572
4. Crl.A.No.2792/2013 25 C.C.13916 of 2017

5. ILR 2009 KAR 2331
6. 2008 AIR SCW 738
7. 2006 CrL.L.J.4537
8. (2006)6 Supreme Court 39
9. AIR 2001 Supreme Court 3897
10. 2000 CrL.L.J.257
11. Criminal Appeal 827/1995
12. Commentary on Indian Contract Act 1872 section 23.

Before to appreciate the contention of the respective counsels and also scrutinize the oral and documentary evidence placed on record, it is necessary to know whether the present complaint has complied the provisions (a) to (c) of section 138 of NI Act. As per the version of the complainant, cheque was issued on 06.03.2017 and it was presented for encashment within its validity period. On 08.03.2017, the bankers have issued memo along with the 26 C.C.13916 of 2017 reason for the return of the cheque as "Funds Insufficient". On 12.03.2017, complainant has got issued legal notice to the accused as per Ex.P.6 & 7. The said notice was received by the accused on 23.03.2017 and on 08.04.2017. The cause of action for the complaint arose within one month of the accrual of the case on accused on 13.04.2017, this complaint has been filed. Thus, this complaint has complied the provisions of section 138 (a) to (c) of NI Act.

13. The larger bench of the Hon'ble Apex court in the case of Rangappa Vs. Mohana, reported in 2010(11) SCC 441, it is held that;

" Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then the initial presumption under Section 139 of the Negotiable Instruments Act has to be raised by the court in favour of the complainant and the accused is entitled to rebut the same and preponderance of probabilities."

27 C.C.13916 of 2017 Subsequently, in catena of decisions the Hon'ble Apex court as well as the Hon'ble High Court of Karnataka pleased to held the same principle as held by the Hon'ble Apex court. In the recent judgment verdict reported in AIR 2019 SC 1983, in the case of Basalingappa Vs. Mudibasappa, the Hon'ble Apex court of the contrary while interpreting section 138 and 142 of NI Act, held that;

" In order to draw the statutory presumptions, the complainant is required to discharge the initial burden proving the availability of the funds".

On careful reading of the section 138 of NI Act, it has three ingredients;

1. That the cheque has been issued to discharge the lawful debt or liability.
2. The cheque was drawn on the account of the drawer.
3. The cheque was dishonored due to "Funds Insufficient" in the account of the drawer etc and not repaid 28 C.C.13916 of 2017 the cheque amount, despite issuance of the demand notice. The explanation to the section 138 of NI Act defined in the words that or other liability as legally enforceable debt or liability.

14. In the case on hand, as per the averments of the complaint on 27.11.2012, the complainant and his partners have entered into an agreement of sale with one Smt. Jayalakshmi in the land survey No.23/3 measuring 2 acres 10 guntas as per Ex.D.1. In the complaint, it is specifically averred that, as per the agreement at Ex.D.1, the said Smt. Jayalakshmi has delivered the possession of the land to the complainant. Even, the complainant has produced the said agreement before the court. It is the contention of the complainant that, based on this agreement at Ex.D.1, he and his partners got offered the said land into non agricultural purpose as per the 29 C.C.13916 of 2017 document at Ex.P.15. But, the said document reveals that, it was got converted into non agricultural purpose by said Smt.Jayalakshmi herself. The complainant relying the memorandum of understanding, which is produced at Ex.P.8 and the same is not disputed by the accused. The only contention of the accused is , he put his signature on Ex.P.8 and without going through the said document. On careful reading of this document, it reveals that, there was an understanding between the complainant and his other partners with the accused that they have sold out their right in the land survey no.23/3 for Rs. 40,00,000/- in favour of the accused and towards the payment of the said Rs.40,00,000/, the accused has issued the cheque at Ex.P.1. It is not mentioned in this document at Ex.P.8 at the delivery of the possession of the said land to the accused. Ex.P.10 is the broacher in the name of Sri Vinayaka Nagar for a sale of residential sites in survey 30 C.C.13916 of 2017 No.23/3 and 23/8. This broacher do not discloses as to whether it is published by the accused or Smt. Jayalakshmi. Therefore, by this document at Ex.P.10 cannot be held that, the accused has led sites and converted for the sale of some sites. While at the time of advancing the arguments, the accused has produced the CD and Photograph, which clearly reflected about the vacant land surrounded by many flats and they supports the case of the accused. On the other hand, during his cross examination in para No.1 of page No.10 PW.1 clearly admitted that, on 05.08.2013 another agreement of sale was executed in favour of the of one Murali Kumar and Venugopal Reddy. PW.2 in his cross examination clearly admitted that, the accused did not get the possession of the alleged land. PW.2 also admitted about the fact that, on 05.08.2013, another agreement of sale was executed in the name of Venugopala Reddy and Murali Kumar, which 31 C.C.13916 of 2017 means, the said agreements of sale executed in favour of those two persons was prior to the memorandum of understanding at Ex.P.8. The complainant not produced a single document before the court to show that, the accused has formed layout in survey No.23/3. PW.2 admitted in his cross examination that, while executing the memorandum of understanding, the land was vacant and still the said land is vacant. One Smt. Jayalakshmi is the owner of the said land. The relevant portion is just produced as under;

" 6 . "

That apart, PW.2 further admitted in his cross examination in para No.2 of page No.5 stating that, either himself or his partners have handed over the original agreement to the accused .

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15. On further scrutinizing of the memorandum of understanding at Ex.P.8, it clearly reveals that, the cheque at Ex.P.1 was issued towards payment of the four first parties and no where it is mentioned that, on behalf of the party No.2 to 4. Party No.1 i.e., the present complainant was authorized to claim the cheque amount. Even PW.1 has admitted this fact during his cross examination in the last two lines of para No.3 of page No.10 and the same is reproduced for the benefit of discussion as under;

" 3 . "

By this clear admission of PW.1 it can be seen that, as per the own version of the complainant, the cheque at Ex.P.1 was not issued for the discharge of only the amount of the complainant. Under such circumstances, the present complaint by the complainant appears to be untenable. It is 33 C.C.13916 of 2017 alleged in the complaint that, the owner of the above said land by name Smt. Jayalakshmi had executed another agreement of sale in favour of the accused. But, in support of the said assertion, the complainant not produced the said agreement and on the other hand, the accused has denied the said contention of the complainant. Under such circumstances, it appears that, the contention of the complainant with respect of alleged execution of agreement of sale in the name of accused by Smt. Jayalakshmi appears to be not true. In para No.4 on page No.11, PW.1 very clearly stated that, after getting the conversion order, the complainant and his partners have executed consent deed in favour of the Venugopala Reddy and Murali kumar only after obtaining the consent from Smt. Jayalakshmi. By this evidence of PW.1, it goes to show that, prior to the execution of memorandum of understanding at Ex.P.8, the complainant and his other partners have executed consent 34 C.C.13916 of 2017 deed with Venugoapala Reddy and Murali Kumar. Then, their intention appears to to very clear to defray the accused through Ex.P.8. Much has been cross examined the DW.1 and DW.2 and during the cross examination of DW.1, it is elicited from his mouth that, he put his signature on Ex.P.1(a), it is the signature on the cheque. Except this, nothing has been culled out form the mouth of DW.1 to show that, after conversion of the above said land to non agricultural purpose. The possession of the said land has been delivered to the accused in pursuance of the memorandum of understanding at Ex.P.8. That apart, nothing has been culled out from the mouth of DW.1 and 2 to show that, in the above said land survey No.23/3, the accused has formed layout and started selling sites therein. DW.1 has clearly denied the broacher at Ex.P.10.

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16. By considering the oral testimony of PW.1, PW.2 and also DW.1 & DW.2 it can be safely held that, under Ex.D.1 the agreement of sale neither the complainant nor his partners have got absolute title, interest and possession over the land survey No.23/3 measuring 2 acres 10 guntas. The complainant not produced sale deed in respect of Ex.D.1. Under such circumstances, the agreement of sale at Ex.D.1 do not appears to be a concluded contract and it was not acted upon by executing absolute sale deed by Smt. Jayalakshmi in favour of the complainant and his partners. When such being the fact, it is trite law that, an agreement of sale do not confers any title or interest. It is only an agreement for the disposal of the property in future. Under Ex.D.1, when the complainant and his partners do not get any title or interest over the above said land. I am of the considered opinion that, neither the complainant nor his 36 C.C.13916 of 2017 partners gets any right under Ex.P.8 to prosecute the accused.

17. Section 23 of Indian Contract Act, provides- When considerations and objects are lawful and what not? The consideration or the object of agreement is lawful unless it is a forbid by law or is of the such an another that, if permitted it would defeat the provisions of any law or is fraudulent or involves or implies.' The void contract is a contract that, is not enforceable. The definition of contract is that, a contract is an agreement enforceable by law. All contracts are agreements, but all agreements are not contract. In the case on hand, when the complainant and his partners do not get any right, title or interest over the above said land under Ex.D.1, then the very memorandum of understanding at Ex.P.8 is a void contract and that cannot be enforceable in the eye of law.

37 C.C.13916 of 2017 The complainant not produced any documents to show that, as per Ex.D.1 Smt. Jayalakshmi remain the absolute owner in possession of the said land. A serious reasonable doubt would arise even if the complainant files civil suit, he may not succeed. Of course, this court cannot decide the rights of the parties in a criminal proceedings, but for the disposal of this complaint, it is necessary for this court to decide whether the accused has issued the cheque at Ex.P.1 towards the discharge of his lawful liability or debt in pursuance of Ex.P.8. When the accused did not get any right, title or interest for the land survey No.23/3, then how the liability shall be created on the accused under Ex.P.8. Apart from that it is admittedly, many litigations are pending in the courts in respect of land survey No.23/3 and when the said land remain vested with the Smt. Jayalakshmi, and when she had executed many agreement of sale in respect of the said land. Under such 38 C.C.13916 of 2017 circumstances, the complaint and his partners do not get any right or title over the said land and similarly, the accused also do not succeed to claim his rights over the said land as per Ex.P.8 memorandum of understanding. In the judgment reported in, ILR 2008 KAR 4629, In a case of Shivamurthy Vs. Amruthraj, the Hon'ble High Court of Karnataka, pleased to held as under;

" The existence of debt is not to subject matter of presumptions under section 139 of NI Act and the drawer of the cheque has to prove the existence of debt or liability and it is only upon such proves of existence of debt the presumption under section 139 of the NI Act can be drawn."

The said ratio has been approved by the Hon'ble High Court of Karnataka, in its judgment reported in 2010 Crl.LJ 3386 in the case of S.Thimmappa Vs. L.S.Prakash.

18. The Learned counsel for the complainant relied on the following decisions;

39 C.C.13916 of 2017

1. ILR 2019 KAR 493

2. (2019) 18 SCC 106

3. Crl.Appeal.123/2021

4. (2006)6 SCC 39

5. (2001)6 SCC 16

6. 2015(4) KCCR 2881(SC) The judgments relied by the Learned counsel for the complainant reported in (2019) 18 SCC 106, wherein; 'the transaction between the complainant and accused with regard to lending of hand loan.' In the judgment reported in, ILR 2019 KAR 493 also pertains, 'the availment of hand loan from the complainant. In the judgment of the Hon'ble Apex Court in Crl.Appeal No.123/2021, " There was a joint export garments and there is a delay in shipment there was a close of making payment to the buyer. Accordingly, the 40 C.C.13916 of 2017 cheque for Rs.11.20 lakhs was issued in respect of making a delay in shipment. The judgment reported in, "

2006 (6) SCC 39 wherein, 'There was stock exchange transaction and towards the payment of commission amount, the cheque was issued'. In the judgment reported in, (2001) 6 SCC 16, ' There was a transaction with regard to purchase, security cheque was issued'.

In the judgment reported in, 2015 (4) KCCR 2881 (SC), 'There was a transaction of advancement of Rs.5,00,000/- loan.' Considering these facts of respective cases, the Hon'ble Apex court as well as the Hon'ble High Court of Karnataka, pleased to have laid down the ratio in the above relied judgments.

19. In the instant case on hand, the facts of the case is not similar to the facts of the cases relied above. Therefore, the above relied judgments by the Learned counsel of the

41 C.C.13916 of 2017 complainant do not come to the aid of complainant and they cannot be relied upon to the facts of the case on hand. As per my findings above, though there was a memorandum of understanding at Ex.P.8 as admitted by the accused , but since the accused did not get their title over the land survey No.23/3 or its possession for the formation of layout and putting sites. Under such circumstances, it cannot be held that, the accused has issued the cheque at Ex.P.1 towards the discharge of his lawful debt under Ex.P.8. Though, the accused has admitted during his cross examination that, the cheque at Ex.P.1 belongs to him and his signature is at Ex.P.1(a). The presumption under section 139 of NI Act shall be drawn in favour of the complainant, unless the

complainant establishes before the court, the completion of contract entered as a memorandum of understanding at Ex.P.8. Therefore, I answered point No.1 & 2 in the negative.

42 C.C.13916 of 2017

20. POINT NO.3: In view of the above findings, this court proceed to pass the following;

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

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

The bail bonds of accused and surety stands canceled subject to appeal period. {Dictated to the stenographer, transcribed and computerized by her, revised corrected and then pronounced in the open court on this 1 st day of September 2021}.

(BHOLA PANDIT) XX ACMM, Bengaluru.

ANNEXURE List of witnesses examined on behalf of complainant:

P.W.1	Govinda Rao.R	
	43	C.C.13916 of 2017
PW.2	Gangaraju.N	

List of documents produced on behalf of complainant:

Ex.P.1	Cheque
Ex.P. 1(a)	Signature of the accused
Ex.P. 2	Bank endorsement
Ex.P. 3	Copy of the legal notice
Ex.P. 4 & 5	Postal receipts
Ex.P. 6 & 7	Postal acknowledgements
Ex.P.8	Memorandum of understanding

Ex.P.9	Banker's slip
Ex.P.10	Advertisement broacher
Ex.P.11	ROR of land bearing No.23/3 of the year 2015- 2016. 44 C.C.13916 of 2017
Ex.P.12	Order sheet of the court in OS.No.213/2014
Ex.P.13	Copy of the plait affidavit in OS. No.213/2014
Ex.P.14	Copy of memo submitted in the said suit
Ex.P.15	Copy of the order and sketch map
Ex.P.16	CD
Ex.P.16(a)	Voice records of the CD

List of witnesses examined on behalf of accused:

D.W.1	K.T.Kumar
DW.2	B.Umesh 45 C.C.13916 of 2017

List of documents produced on behalf of accused:

- Ex.D.1 Xerox copy of agreement of sale
- Ex.D.2 Copy of the order sheet of IV
ADDL.CMM, pertaining to
Cr.No.50/2018.
- Ex.D.3 Copy of the FIR of peenya police in
respect of Cr.No.50/2018.
- Ex.D.4 Complaint copy of Cr.No.50/2018.

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