

## Mr. Hanumappa vs Mr. R. Gopal on 8 March, 2022

IN THE COURT OF XXXIII ADDL. CHIEF  
METROPOLITAN MAGISTRATE, MAYO HALL UNIT,  
BENGALURU

—: PRESENT :—

M.Vijay, BAL, LLB.

XXXIII ADDL.CHIEF METROPOLITAN MAGISTRATE,  
BENGALURU.

DATED IS THE 8TH DAY OF MARCH, 2022.

C.C.No.51810/2018

COMPLAINANT : Mr. Hanumappa  
Son of Shri.Late Muniswamappa,  
Aged about 72 years,  
R/at No.163,  
Near Gangamma Temple, Kodihalli,  
HAL IIIrd Stage, Bangalore-560008.

.Vs.

ACCUSED : Mr. R. Gopal,  
Aged about 45 years,  
Son of B.Ramaiah, Proprietor,  
Sri. Gopal Water Supply,  
No.127, Muneshwara Swamy Temple  
Street, 13th Main, 3rd Cross, Kodihalli,  
Bengaluru-560008.

### JUDGMENT

The complainant has filed this private complaint U/s.200 of Cr.P.C., against the accused for the offence punishable U/s 138 of Negotiable Instrument Act.

C.C.No.51810/2018 The factual matrix of the case are as follows:□

2. The complainant averred that, he is a retired employee of ITI, the accused used to supply water to his house since six years, on this acquaintance, the accused knew that, he had received retirement benefits from ITI company had approached him for a hand loan of Rs.4,00,000/□on 01.03.2016 to meet the financial difficulties. Accordingly, he alleged to have advanced sum of Rs.4,00,000/□to the accused, subsequently, again the accused approached him on 01.10.2016 for sum of Rs.7,00,000/□to wiggle□out financial needs and to expand the business. Accordingly, additional sum of Rs.7,00,000/□allegedly paid to the accused on 01.10.2016, on it receipt, the accused promised to repay it within four months. However, subsequently he intend to buy a property. Accordingly, he demanded the accused to repay the loan amount, but the accused sought some more time to repay it, however, the accused executed two hand loan agreements in his favour ie., on 27.12.2016 one for Rs.2,00,000/□and another for Rs.5,00,000/□agreed to be repaid sum of Rs.2,00,000/□within two months and Rs.5,00,000/□within four months and Rs.4,00,000/□balance within a week by cash.

C.C.No.51810/2018 Accordingly, the accused acknowledged the receipt of Rs.5,00,000/-out of Rs.7,00,000/-advanced by him to the accused on 01.10.2016 by executing an agreement dtd: 27.12.2016 towards security for repayment of above some of Rs.5,00,000/-the accused allegedly issued cheque bearing No.285516 drawn on Corporation Bank, Jeevanbheemanagar, Kodihalli Branch, Bangalore for sum of Rs.5,00,000/-and also executed an agreement by acknowledging the receipt of Rs.2,00,000/-on 01.10.2016 agreed to repay it within two months and handed over RC book of water tank bearing Registration KO5 AA-2331.

3. As agreed upon, the complainant claims to have demanded the accused for repayment of amounts covered under through hand loan agreements both were dated 27.12.2016 on 01.04.2017, but, the accused instead of paying the amount instructed him to present security cheque bearing No.285516 for sum of Rs.5,00,000/-by filling of dated as 02.08.2016 with an assurance that, the cheque would be honored, believing the words of the accused he claims to have presented it through his banker SBI, Jeevanbheemanagar Branch, but it was dishonored for "Funds Insufficient", however, again the accused C.C.No.51810/2018 requested him to represent it, in the month of October 2017. However, once again it was dishonored for same reason, but, the accused knowing the same had issued another cheque sum of Rs.6,00,000/-cheque bearing No.334284 dated 16.10.2017 drawn on Corporation Bank, Jeevanbheemanagar Branch, Bangalore, towards the partial repayment of the borrowed amount and also agreed to repay the remaining amount of Rs.1,00,000/-as agreed under hand loan agreement as soon as earlier possible. With an assurance that, the cheque would be honored.

4. Based on the assurance of the accused, the complainant claims to have presented the cheque bearing No.334284 for sum of Rs.6,00,000/-drawn on Corporation Bank, Jeevanbheemanagar, Bangalore, through his banker SBI Jeevanbheemanagar, Bangalore for realization on 18.11.2017, but same was dishonored for "Funds Insufficient" vide memo dated 20.11.2017 based on that without any alternative claims to have caused legal notice on 18.12.2017 calling upon the accused to make the cheque amount, same was served, but the accused issued untenable reply by denying the liability. Accordingly, he alleges that, the accused having C.C.No.51810/2018 the acknowledge of receipt of loan amount of Rs.7,00,000/-and executed of two hand loan agreements, had issued cheque for sum of Rs.6,00,000/-with deceitful intention to cheating to him without maintaining sufficient balance in his account, thereby alleges that, the accused has committed an o/p/u/s.138 of NI.Act and prays to punish the accused by imposing 18% rate of interest on the cheque amount.

5. This court took cognizance for the o/p/u/s.138 of N.I.Act., based on the complaint sworn statement and complaint affidavit, original documents filed along with the complaint by following the guidelines of Hon'ble Apex Court in 2014 AIR SCW 3462 and order to be registered criminal case against the accused for the o/p/u/s.138 of NI.Act.

6. In pursuance of summons, the accused appeared through his counsel and he was enlarged on court bail. Substance of plea has been recorded, accused pleaded not guilty and claimed to be tried.

7. To prove the case, the complainant got examined himself as PW.1 witness by name Sreenivas that apart, he also placed reliance on Ex.P1 to P12, on closure of C.C.No.51810/2018 complaint evidence

the accused was examined U/s 313 Cr.P.C denied incriminating materials on record, though got examined himself as D.W.1 and placed reliance on Ex.D.1.

8. Heard both the sides. The learned counsel for the accused also filed decision on behalf of the accused and relied upon (2007)5 SCC 264, AIR 2008 (NOC) 2277 (BOM), 2012 (3) KCCR 2057, ILR 2008 KAR 4629, (2009)2 SCC 513, 2014 (3) Crimes 291, 2010 SCC Online Kar 2464, (9) 2012 (2) AIR KAR R 285, 2010 (3) AIR Kar 207, 2006 Cr.L.J.2543 (AP), 2011 (3) KCCR 1825, 2008 (4) SCC 54 2008 AIR SCW 738, 2010 (2) Kar.L.J.284, Cr.L.Apl.No.2852/2018, ILR 2007 KAR 2709, AIR 2009 (NOC) 1233 (KAR) 2009 Cr.L.J (NOC) 429 (KAR), 2015(5) KLJ 457, (Manu/Gj/0362/2012/2012 Cri Lj 2897 GUJ).

9. Perused the materials on record, the following points arise for my determination.

1. Whether the complaint proves beyond all reasonable doubt that, accused has committed an o/p/u/s 138 of Negotiable Instruments Act?"

2. What Order?

10. My findings to the above points are follows;

C.C.No.51810/2018 Point No1: In the Affirmative.

Point No.2: As per final order for forgoing;

## REASONS

11. Point No.1: The accused denied the borrowal of hand loan Rs.4,00,000/□ on 01.03.2016 and Rs.7,00,000/□ on 01.10.2016 as well as execution of hand loan agreements dated 27.12.2016 and contended that he borrowed Rs.80,000/□ from the complainant in the year 2014, as he had some financial constrain, at that time, he claims to have issued four signed blank cheques, two signed blank stamp papers and signature on four white blank papers as a security and the said loan amount of Rs.80,000/□ claims to have repaid with interest, even then the complainant filed this false case by misusing his cheques, accordingly, claims to be an innocent.

12. So, the accused specifically denied the existence of legally enforceable debt ie., borrowal of Rs.11,00,000/□ in the year 2016, as well as issuance of the cheque in question towards discharge of part of loan liability for sum of Rs.6,00,000/□ Therefore, it is burden on the complainant to prove the same. The complainant in order to prove his case, got examined himself as P.W.1 and C.C.No.51810/2018 placed reliance on cheque Ex.P.1 hand loan agreements, reply notice of the accused and reiterated the complaint averments in his evidence affidavit that, on 01.03.2016, he advanced Rs.4,00,000/□ likewise on 01.10.2016, further, he advanced Rs.7,00,000/□ in all Rs.11,00,000/□ paid to the accused, subsequently, the accused acknowledged the borrowal of loans through two different hand loan agreements both dated 27.12.2016 respectively, by agreeing to repay the total amount and issued a cheque Ex.P.1 towards discharge of part of loan amount of

Rs.6,00,000/□that has been dishonored for "Funds Insufficient". The accused subjected the P.W.1 for cross examination wherein he posed several question with regard to financial capacity, claims the complainant as money lender, manipulation of Ex.P.8 and P.9, whether the amount paid by cash after demonetization whether the accused was issued blank or completed drawn. However, suggested the complainant has misused his signed blank cheque issued in the year 2014 ie., Ex.P.1.

13. That apart, during the course of cross examination, the accused admitted that, Ex.P.1 cheque pertains to his account and Ex.P.1(a) is also his signature, besides that another cheque relied by the complainant Ex.P.2 also C.C.No.51810/2018 belongs to him. So, on this unequivocal admission of the accused it is clear that, the accused does not dispute Ex.P.1 cheque, signature found on the cheque belongs to him. Therefore, as rightly argued by the counsel for the complainant initial presumption as per section of 139 R/w 118□A of NI.Act has to be drawn, as the presumption envisaged u/s 139 is a mandatory presumption. At this stage, it is worth to note decision of Hon'ble Apex Court i.e., Rangappa V/s Mohan held that;

"Once the cheque relates to the account of the accused and he accept and admit the signature on the said cheque, then initial presumption as contemplated under Sec.139 of N.I. Act has to be raised by the court in favour of the complainant. The presumption referred to in Sec.139 of N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption."

C.C.No.51810/2018

14. Accordingly, the initial presumption has been drawn in favour of the complainant that, accused has issued Ex.P.1 in favour of the complainant towards discharge of part of loan liability of Rs.6,00,000/□ However, the said presumption is rebutable in nature. Therefore, the onus is on the accused, the counsel for the accused as rightly relied upon ie., decision (2007) 5 SCC 264, AIR 2008 NOC Bombay 2007, with regard to standard of proof for rebutting the presumption is preponderance of probabilities, but strict proof not necessary.

15. Therefore, the onus is on the accused to rebut the presumption. The accused to rebut the presumption mainly relied upon certain admissions made by the complainant during the course of cross examination ie., with regard to financial capacity, the complainant is not a income tax assessee, not disclosed the alleged advancement of loan in ITR, the complainant claims to have withdrawn the amount from his account. But, Ex.P.11 does not disclose any withdrawal, his signature not found in page No.2 Ex.P.8. Further, the contents of the Ex.P.8 and P.9 admitted by the P.W.1, accordingly, the agreements are against to public policies as such, the accused has rebutted the presumption, besides that, the C.C.No.51810/2018 accused relied upon the Ex.D.1 statement of account to prove the repayment loan of Rs.80,000/□borrowed from the complainant on these grounds, the accused urged that, he has rebutted the presumption, accordingly claims to be innocent.

16. Before appreciating the evidence on record, it is worth to note the arguments of both the sides, the learned counsel for the accused vehemently argued that, Ex.P.1 cheque pertains to a business firm, but firm has not been arrayed in as the accused. Therefore, the complainant is not

maintainable without arraying the business firm as an accused, further, the relationship between the complainant and accused was not that good to advance the alleged Rs.11,00,000/□ That apart, the financial capacity of the complainant has been challenged as complainant claims to have withdrawn the amount from bank account, but Ex.P.12 does not disclose the claimed withdrawal of amount. Besides that, the signatures found on the cheques as well as the agreements varies to each other, further, the accused has repaid the amount part by part through account, Ex.D.1 proves the same. Therefore, the complainant case is doubtful in nature. Accordingly, C.C.No.51810/2018 the accused has rebutted the presumption and prayed for acquittal.

17. Per contra, the counsel for the accused argued that, the accused admits the cheque and signature found cheques as well as the hand loan agreements, issuance of cheque in favour of the complainant. Therefore, the complainant has proved beyond all reasonable doubt that, the cheque has been issued in favour of the complainant for discharge of legally enforceable debt, as such prayed for conviction.

18. having considering the arguments of both the sides with materials on records. Firstly, the accused counsel argued that the complainant is not maintainable as the cheque Ex.P.1 is belongs to business firm, but not an individual cheque of the accused, therefore, the complainant is not maintainable, but, the accused nowhere in the cross examination of P.W.1 has claimed that, he is not the proprietor of business firm ie., Sri.Gopal Water Supply or not denied that, it is not his firm. That apart, he does not dispute that, he is sole proprietor of Sri.Gopal Water Supply. Therefore, question of arraying the Sri.Gopal Water Supply as separate C.C.No.51810/2018 accused is not necessary. Hence, I do not found any force in the argument of accused.

19. Further, the accused disputed the financial capacity of the complainant to advance sum of Rs.11,00,000/□ In this regard, the counsel for the accused argued that, the relationship between the complainant and accused was not that cordial or good to advance huge sum of Rs.11,00,000/□ and Ex.P.12 passbook discloses that the complainant never withdrawn any amount though he stated, the amount advanced by withdrawing from his account. On this aspect, I have carefully perused, which clearly discloses that, the accused is one breath claims that, the complainant is a money lender advancing loan to others for an interest, but at the same time, in contrary to his suggestion made during the course of cross examination of P.W.1 challenges the financial capacity of the complainant. The complainant in order to prove his financial capability produced Ex.P.12, it is true that, the complainant claims that he has withdrawn some money and paid to the accused. But, he further stated, he had withdrawn the money, it was kept in his house and paid to the same. But the accused vehemently argued that, in Ex.P.12 there is no reference about withdrawal of amount C.C.No.51810/2018 as such the advancement is doubtful in nature, but the said contention not acceptable. What is to be looked into that, whether the complainant had requisite amount in his account to pay such huge amount or his capability to pay huge amount required to be consider, as per Ex.P.12 the complainant had enough amount to advance the amount, it is not the specific case of the complainant that he had withdrawn the amount from his account and paid to the accused. The specific case is that, he had withdrawn the amount and kept in his house for some time and then he paid to the accused, it doesn't mean that, the complainant had no capability and the said transaction was not taken place. Besides that, the accused has not disputed the complainant is a retired employee of ITI company and complainant has produced Ex.P.11 the retirement letter issued by his

company which clearly discloses that, the complainant had enough amount to pay the amount of Rs.11,00,000/□ Further, it is not the case of the accused that, the complainant himself in debt to others or financially was not in position to advance the amount. Therefore, merely on the ground that the complainant has not withdrawn any amount in Ex.P.12 ie., from bank it does not ipso facto ground to disbelieve that, the C.C.No.51810/2018 transaction is doubtful in nature and financial capability has not been proved by the complainant. As it is evident that, Ex.P.12 clearly discloses that, the complainant had enough money with him. That apart, the accused only suggested that, the complainant is a money lender used to advance loans for an interest to others, but to substantiate it nothing has produced. Accordingly, the very suggestion of the accused clearly establishes that, the financial capacity of the complainant, couple with Ex.P.12 and retirement benefit received by the complainant clearly establishes the complainant had requisite amount to advance the alleged amount.

20. Further, the counsel for the accused vehemently argued by relying upon Ex.P.8 and P.9 that, subsequent to demonetization ie., in the year 2016, the complainant has created the documents which were allegedly issued by him in the year 2014□5 and recital therein or against to public policy. Accordingly, Ex.P.8 and P.9 cannot be considered as in page No.2 of Ex.P.8 signature of the accused not found accordingly section 20 of NI.Act., is not attractable to the case in hand. On this aspect, I have carefully perused the materials on record, apparently, the Ex.P.8 and P.9 clearly discloses that, the stamp papers of C.C.No.51810/2018 Ex.P.8 and P.9 were purchased by the complainant in the year 2016 i.e., on 27.12.2016. where in the complainant claims that, he allegedly advanced loans ie., on 01.03.2016 sum of Rs.4,00,000/□and on 01.10.2016 sum of Rs.7,00,000/□ In contrary the accused claimed that, he borrowed only Rs.80,000/□in the year 2014□5, at that time the complainant had obtained his four signed blank cheques, two signed blank stamp papers and also obtained his signatures on four white blank papers in the year 2014□5 ie., much prior to alleged date of advancement, those stamp papers have been manipulated by the complainant, but said contention of the accused cannot be acceptable. Because according to him, the complainant had obtained his signed stamp papers in the year 2014□5, but, where as the stamp papers clearly discloses that, which were purchased on 27.12.2016. It is the specific case of the complainant that on 27.12.2016, the accused has executed the hand loan agreements by acknowledging the receipt of loan Rs.2,00,000/□on 01.10.2016, as the accused admits the signature found on first page as well as third page of the document by acknowledging the receipt of Rs.2,00,000/□on 01.10.2016, likewise as per Ex.P.9 also acknowledged the C.C.No.51810/2018 receipt of Rs.5,00,000/□on 1.10.2016 and issued the cheque in question which is also made reference in Ex.P.9 as a security for the hand loans. So, both these documents transcribed on stamp paper which apparently purchased by the complainant on 27.12.2016, which is much after the loan borrowed by the accused from the complainant, by acknowledging the receipt of loan of Rs.7,00,000/□through these document. The complainant to prove the execution of Ex.P.8 and P.9 also examined witness by name Srinivas, P.W.2 deposed financial transaction held in between the complainant and accused in his presence the accused have executed Ex.P.8 and P.9. the accused have not disputed the signature found on Ex.P.8 and P.9, but it is the case of accused that, both these stamp papers along with his signature obtained by the complainant in the year 2014□5. but, said contention clearly falsifies the date of purchase of stamp paper ie., apparently stamp papers Ex.P.8 and P.9 were purchased on 27.12.2016. much after the sale transaction allegedly held in between the complainant and accused only for

Rs.80,000/- in the year 2014.

21. Even, the defense of the accused apparently cannot be believable as no prudent man would issue four signed C.C.No.51810/2018 blank cheques, two stamp papers and four signed blank white paper for only Rs.80,000/- which cannot be acceptable. Therefore, the alleged manipulation of Ex.P.8 and P.9 which are produced as a corroborative documents to prove the transaction held in between the parties and the accused had acknowledged the receipt of Rs.7,00,000/- in total through Ex.P.8 and P.9 on 27.12.2016, but he had borrowed Rs.7,00,000/- from the complainant on 01.10.2016 much earlier to the document.

22. Further, the learned counsel for the accused argued that section 20 of NI.Act., not attract to this case. However, the said arguments cannot be acceptable. Because the Hon'ble Apex Court in Bir Singh V/s Mukesh Kumar has held that ;

" a meaningful reading of the provisions of the N.I.Act including, in particular, section 20, 87 and 139, makes it amply clear that a person who has signs a Cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that, the Cheque had been C.C.No.51810/2018 issued for payment of a debt or in discharge of 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. If the Cheque is otherwise valid, the penal provision of section 138 would be attracted.

If signed black cheque is voluntary presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque,. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence"

23. On this above decision, it clearly discloses that, even once the accused admits that, he voluntary issued signed stamp paper with his signature and cheques, the complainant got every right to fill up as per section 20 of NI.Act., Hence, the alleged manipulation of Ex.P.8 and P.9 cannot sustainable under law.

C.C.No.51810/2018

24. Further, the accused by relying upon Ex.D.1 contended that, he has repaid an amount of Rs.84,000/- towards loan borrowed from the complainant is concern. The complainant has not cross examined the accused on Ex.D.1. So, repayment of Rs.84,000/- has to be accepted. However, even if, the document is taken into consideration that, the alleged repayment of Rs.84,000/- But, as per Ex.P.8 and P.9, the total amount acknowledged by the accused was Rs.7,00,000/- Therefore, the issuance of cheque for Rs.6,00,000/- cannot be doubted. Merely because of the repayment of Rs.84,000/- as mentioned in Ex.D.1 ie., Rs.30,000/- on 01.01.2017, sum of Rs.12,000/- on 23.01.2017, sum of Rs.30,000/- on 07.02.2017, sum of Rs.12,000/- on 21.02.2017, if this repayments deducts in total acknowledgment amount of Rs.7,00,000/- the due was Rs.6,16,000/- as on the date of presentation of cheque ie., on 16.10.2017. So, even if, the amount deducts in the

amount agreed as per Ex.P.8 and P.9, the total outstanding due of the accused was Rs.6,16,000/□ as on the date of presentation of cheque. Therefore, the claim of Rs.6,00,000/□ as per Ex.P.1 as on the date of cheque ie., on 16.10.2017, the accused had due of Rs.6,16,000/□ C.C.No.51810/2018 and the complainant has specifically stated towards part repayment of Rs.7,00,000/□ the accused allegedly issued Ex.P.1 cheque for sum of Rs.6,00,000/□ to even after deduction of Rs.84,000/□ as mentioned in Ex.D.1 the accused was due of Rs.6,16,000/□ the cheque claim is for Rs.6,00,000/□ which is legally enforceable debt as per Ex.P.8 and P.9. Therefore, the Ex.D.1 is not helpful to the case of the accused that, he had borrowed Rs.80,000/□ in the year 2014□5, and he has repaid it in the year 2017, subsequent to execution of Ex.P.8 and P.9. Therefore, the alleged discharge of loan borrowed in the year 2014 is not acceptable, in absence of proof about custody of his cheques much prior to Ex.P.8 and P.9.

25. Further, the learned counsel for the accused by referring the recital in Ex.P.8 and P.9 ie., repayment shall be made only by paying new currency notes released by the RBI on 08.11.2016. Based on this, the learned counsel argued that, which is against to public policy, therefore, these agreements are void cannot be considered. It is true to suggested that, any agreement against the public policies are void, but, the recital referred above in Ex.P.8 and P.9 are only an agreement between the parties that, the accused has to repay the C.C.No.51810/2018 acknowledged amount only by new currency which has been in force, which does mean that, it is an illegal or against to the public policy. Moreover, Ex.P.8 and P.9 are only corroborative documents for the liability. As such, merely because of an agreement for repayment of amount only through new currency, which does not mean that, it is illegal. Whatever, the currency is in force, that has been agreed to be paid by the accused. Therefore, the recital is not against to the public policy. Accordingly, I do not found valid force in the arguments of learned counsel for the accused on these aspect.

26. Further, the counsel for the accused is his written argument claims that, the complainant is a money lender, therefore, the alleged transaction is illegal as per section 5 of Karnataka Amendment Act 1985. But, the complainant clearly denied the suggestion of the accused that, he is doing money lending business. Moreover the except the suggestion, the accused has failed to brought out materials that to whom the complainant has advanced loans, has he doing money lending as a business, but, nothing has brought out from the P.W.1 to prove his contention. Accordingly, same is not tenable.

C.C.No.51810/2018

27. Further the decision relied by the accused ie., 2010 AIR Karnataka 207 is not applicable to the case in hand as in that case the complainant had failed to depose the date of advancement of loan, but, here in this case the complainant specifically stated he advanced Rs.4,00,000/□ on 01.03.2016 on Rs.7,00,000/□ on 01.10.2016. Hence the facts and circumstances of the present case is different than the above referred case, further other decision ie., Crl.1371/2007, Krishna Janardhan Bhat and Dattatreya Hegde are much earlier to the judgment of Rangappa v/s Mohan as referred supra, therefore, they are not applicable to the case in hand.



28. Considering the entire materials on record, the accused though admits the issuance of cheque as well as issuance of stamp papers in favour of the complainant, but specifically contended by denying the borrowal of Rs.11,00,000/□ contends that, he borrowed only Rs.80,000/□ from the complainant in the year 2014. But, to substantiate his defense that, he borrowed only Rs.80,000/□ in the year 2014 and issuance of cheques as well as signed blank stamp papers, white blank papers towards security in the year 2014. But, the Ex.P.8 and P.9 stamp papers clearly discloses that, the stamp paper C.C.No.51810/2018 were purchased on 27.12.2016. Therefore, the very defense of the accused, about issuance of stamp papers in the year 2014 much earlier to this date of execution of Ex.P.8 and P.9 falsifies. Further, the accused produced Ex.P.1 for repayment of Rs.80,000/□ but as per Ex.D1, he started to repay the loan amount in the year 2017, subsequent to documents Ex.P.8 and P.9, but prior to execution of Ex.P.8 and P.9, admittedly, he has not paid any single pie to the complainant towards repayment of Rs.80,000/□ borrowed in the year 2014. Therefore, Ex.D.1 also does not prove the contention of the accused that, that was paid towards Rs.80,000/□ borrowed in the year 2014. Therefore, as held supra what ever the repayment made from 01.01.2017 ie., subsequent to Ex.P.8, P9 and Ex.P.1. Further, the accused even after deduction of the payments mentioned in Ex.D.1 ie., total Rs.84,000/□ if deducted, the accused was due of rupees more than Rs.6,00,000/□ ie., more than the claimed amount under Ex.D.1. Therefore, to rebut the presumption, the accused required to prove that, the debt was not in existence in between the complainant and him as on the date of cheque. At this stage, it is worth to note C.C.No.51810/2018 the decision of Hon'ble Apex Court Sumethi Viz Vs. M/s. Paramount Tech. Fab. Industries, held that, " To disprove the presumption, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt didn't exist or their non□existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they didn't exist".

29. So, in view of the same, the accused has to prove that, the debt for Rs.6,00,000/□ was not exist in between the complainant and accused as on the date of cheque ie., on 02.08.2017. But, the except repayment of Rs.84,000/□ as per Ex.D.1, the accused failed to prove the issuance of cheque Ex.P.1 towards security for a hand loan of Rs.80,000/□ that to in the year 2014. As such on failure to prove the transaction held in between the complainant and accused in the year 2014 only for Rs.80,000/□ the C.C.No.51810/2018 defense of the accused is not probable. Even the defense of the accused apparently is not believable as no prudent man would issue two signed blank cheque, four signed blank stamp papers, four signed white blank papers as a security for only Rs.80,000/□ and not made any efforts to take back his cheques since 2014, but only he started to repay the amount of Rs.80,000/□ in part by part from 01.01.2017 ie., subsequent to execution of Ex.P.8 and P.9 which is contrary to the recitals of Ex.P.8 and P.9 which is not permissible u/s 92 of Evidence Act, as the accused admits the signatures on each page of Ex.P.8 and P.9 except page No.2. therefore, the accused failed to rebut the presumption drawn in favour of the complainant, accordingly, the accused found guilty of an o/p/u/s 138 of NI.Act.

30. It is well settled law that, Sec.138 of N.I Act is primarily compensatory in nature, punitive is secondary, on considering the settled principle of law with facts and circumstances of the case, the complainant has categorically stated he has not paid amount for an interest. Therefore, it is nothing but an interest free loan, accordingly, considering the nature of transaction and duration of

pendency, advocate fee, litigation expenses, I C.C.No.51810/2018 am of the opinion that, if the accused is sentenced to pay fine of Rs.7,05,000/□that would meets the ends of justice, accordingly, the accused is here by sentenced to pay a fine of Rs.7,05,000/□ out of which the complainant is entitled to a compensation of Rs.7,00,000/□as per Sec.357(1) of Cr.P.C. remaining amount is to be appropriated to the state, in case of default the accused shall under go simple imprisonment for a period of three months. Accordingly, I answered the above point in "Affirmative".

31. Point No.2: In view of above finding to Point No.1, I proceed to pass following;

ORDER Acting under section 255(2) of Criminal Procedure Code, the accused is convicted of the offence punishable U/s 138 of Negotiable Instrument Act, The accused is sentenced to pay a fine of Rs.7,05,000/□(Rupees Seven Lakh Five thousand only) in default, the accused shall undergo simple imprisonment for a period of six months. Out of the fine amount received, C.C.No.51810/2018 Rs.5,000/□is to be appropriated to the State and by way of compensation as per the provision U/S 357(1) of Cr.P.C. the complainant is entitled for Rs.7,00,000/□

The bail bonds and surety bond of the accused shall stand cancelled.

Office is directed to furnish a free copy of the judgment to the accused.

(Dictated to the Stenographer directly on computer, typed by her, corrected, signed and then pronounced by me in the open court, on this the 8th day of March, 2022) (M.Vijay), XXXIII ACMM, BENGALURU.

## ANNEXURE

### 1. Witnesses examined on behalf of Complainant:

P.W.1	:	Mr. Sreenivas
P.W.2	:	Mr. Hanumappa

### 2. Documents marked on behalf of complainant:

Ex.P.1 & 2	:	Original Cheques
Ex.P. 1(a) & 2(a)	:	Signature of the accused
Ex.P.3 & 4	:	Bank return memos
Ex.P.5	:	Office copy of the legal notice
Ex.P.6	:	Postal receipt

C.C.No.51810/2018

Ex.P.7	:	Postal acknowledge
Ex.P.8 & 9	:	Hand loan agreements
Ex.P.8(a) & 9(a)	:	Signature of the accused found in first

	page
Ex.P.10	: Reply notice
Ex.P.11	: Letter dated 31.05.2009 issued by ITI ltd
Ex.P.12	: Bank pass book

3. Witnesses examined on behalf of Accused:

D.W.1 : R. Gopal

4. Documents marked on behalf of Accused:

Ex.D.1 : Statement of account

(M.Vijay),  
XXXIII ACMM, BENGALURU.