

Ramakrishna vs Madhan Mohan on 30 July, 2020

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

Dated this the 30th day of July - 2020

PRESENT: SRI. SHRIDHARA.M, B.A., LL.M.,
XXIII Addl.C.M.M., Bengaluru City.

C.C.NO.10540/2017

JUDGMENT UNDER SECTION 355 OF Cr.P.C.

Complainant : Ramakrishna,
S/o.T.V.Chandukutti,
Aged about 50 years,
R/at Salarpuria Melody,
Friend-504, Opp: Harsha Electronics,
Mysore Road, Bengaluru-39.

(Rep. by Sri.N.Mahalinga Bhat, Adv.)

V/S
Accused : Madhan Mohan,
Aged Major,
Southern Glazed Systems,
82, Kariobanahalli,
Thigalara Palya Main Road,
Peenya 2nd Stage,
Bengaluru-58.
(Rep.by Sri.N.Vishwanath, 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 : 30.07.2020.

Judgment (SHRIDHARA.M)
XXIII Addl.CMM., Bengaluru.
2 C.C.No.10540/2017

JUDGMENT

The complainant has presented the instant complaint against the accused on 09.03.2017 under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act,

for dishonour of cheque of Rs.10 lakhs.

2. The brief facts of the complainant case is as follows:

The accused was the managing partner of Kalyani Building Systems, and had issued cheque bearing No.270495 dated:07.11.2016 for sum of Rs.10 lakhs drawn on Corporation Bank, Rajmahal Vilas Extension, Bengaluru-94 for discharge the liability with the complainant. The accused had assured the complainant that, there will be sufficient coverage in the account at the time of presentation of said cheque. Accordingly, the complainant got presented the said cheque for encashment, but on seeing the endorsement dated:02.12.2016, he got surprise, the said cheque came to be dishonoured for the reasons "Funds Insufficient". The complainant intimated the said fact to the accused, but accused had requested the complainant to re-

present the said cheque immediately. At the request of accused, the complainant had re-presented the said cheque for encashment through his banker viz., the then State Bank of Mysore, Prashanthnagar Branch, Bengaluru, the same also came Judgment 3 C.C.No.10540/2017 to be dishonoured as per endorsement dated:20.12.2016 stating "Funds Insufficient". Thereafter, he informed the accused, but he requested the complainant to re-present it on 15.01.2017.

Accordingly, when he re-presented it for encashment, the same also came to be dishonoured for the same reasons as per endorsement dated:23.01.2017.

The complainant has further alleged that, he caused legal notice to the accused on 02.02.2017 by R.P.A.D and same got served on him on 04.02.2017. The accused neither cause reply nor paid the amount covered under the cheque. Thereby, he committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After receipt of the private complaint, my predecessor in office 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.

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 Judgment 4 C.C.No.10540/2017 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, he himself chosen to examined as PW.1 and got marked Exs.P1 to P7. The PW.1 was subjected for cross-examination by the advocate for the accused.

6. Thereafter, incriminating evidence made against the accused was recorded under Section 313 of Cr.P.C, wherein the accused denied the same and the answer given by him was recorded. In support

of the defence, the accused himself was examined as DW.1 and got marked Ex.D1 and also subjected for cross-examination by the advocate for the complainant.

7. Both side counsels have submitted their detailed written arguments, apart from adduced oral arguments.

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 complainant proves beyond the reasonable doubt that, the amount made mentioned in Ex.P1 cheque for sum of Rs.10 lakhs is the legally existing debt payable by the accused to the complainant?

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2) Whether the 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

10. The fact that, the complainant is the building owner and the accused was tenant under him as per Ex.D1 rental agreement entered into between them dated:01.03.2016 is not in dispute. The fact that, the accused had run the business of Kalyani Building Systems, wherein, kept the machineries is not in dispute. The fact that, the accused is the managing partner of Kalyani Building Systems, is not in dispute. The fact that, the terms and conditions of rental agreement at Ex.D1 is not in dispute. The fact that, as per Ex.D1 rental agreement the duration of the tenancy was 11 months is not in dispute. The fact that, at the time of put the accused as tenant in the property of the complainant as found Judgment 6 C.C.No.10540/2017 in the said agreement, he deposited Rs.2 lakhs is not in dispute. The fact that, the agreed monthly rentals payable by the accused to the complainant was Rs.25,000/- is not in dispute. The fact that, as per the terms and conditions in default of payment of rentals for 2 consecutive months by the accused being a tenant it shall be lawful for the owner to terminate the tenancy by giving two months clear written notice, after completion of the lease period, the accused shall vacate the premises and the complainant has to refund the advance of Rs.2 lakhs as found in Ex.D1 is not in dispute.

The fact that, the questioned cheque and signature found therein is of the accused and his friend is not in dispute. The fact that, legal notice issued by the complainant as per Ex.P5 is 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 P7, they are:

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a) Ex.P1 is the cheque bearing No.270495 issued by the accused for sum of Rs.10 lakhs dated:07.11.2016, drawn on Corporation Bank, Rajmahal Vilas Extn.,, Bengaluru.

b) Ex.P1(a) is the alleged signature of accused.

c) Exs.P2 to P4 are the Bank Memos dated:02.12.2016, 20.12.2016 and 23.01.2017.

d) Ex.P5 is the Legal Notice dated:02.02.2017.

e) Ex.P6 is the Postal receipt and

f) Ex.P7 is the Postal Acknowledgment Card.

The PW.1 was subjected to the cross-examination by the advocate for the accused

12. In order to prove the defence of the accused, he himself choosen examined as DW.1 and got marked one document at Ex.D1. It is:

a) Ex.D1 is the Xerox copy of rental agreement dated:01.03.2016 executed by complainant herein in favour of M/s. Kalyani Building Systems rep. by its partner accused herein.

The DW.1 was subjected to the cross-examination by the advocate for the complainant. Apart from lead defence evidence, the DW.1 through his counsel has produced the citations and relied upon same. They are:

a) (2008) 4 SCC 54

b) (2014) 12 SCC 539

c) (2007) 5 SCC 234 Judgment 8 C.C.No.10540/2017

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

14. After cross-examination of PW.1, the incriminating evidence made against the accused was read over and explained to him as required under Section 313 of Cr.P.C., wherein, he gave his statement that, the questioned cheque and signature therein is of him. He also stated, he run the factory in the building owned by the complainant and the keys pertaining to his factory were in the custody of complainant. The complainant got used the machineries of the accused, did his business. To pay the rentals well in advance, the accused got issued signed blank cheque to the complainant, despite, he paid rentals regularly, he filed the false case. The complainant also thrown out the accused from the factory and got used the machineries, hence, he is not liable to pay any money covered under the cheque.

15. That apart, the accused himself entered into witness box and got filed affidavit evidence on oath and the same was not objected by the complainant side, therefore, the same is accepted. In the affidavit evidence of the accused, in brief he contended that:

Judgment 9 C.C.No.10540/2017 During March, 2016, the complainant got entered into rental agreement with the accused for let out his premises on rent to the accused. Subsequently, the accused shifted his factory to the said premises to the complainant and carryout his business and he paid advance/security deposit amount to the complainant.

The accused has further contended that, based on the complainant is doing the business of aluminum windows, on his assurance the accused to made him get work order approximately of Rs.60 lakhs, though, complainant is not a franchisee for NCL Wintech UPVC windows. The accused told his principal NCL to give materials to the complainant and once the work is executed the profit shall be shared and building rent shall be adjusted. Therefore, the complainant has completely utilized not only staff of the accused who are technical team, but also his own materials and machineries of the accused kept in factory premises. Wherein, he is tenant under the complainant. The key of the said factory was under the control of the complainant and kept with him. The accused availed OD facility from Central Bank of Indian, Millers Road Branch, Bengaluru by pledging his stocks and materials to the said bank. The complainant was not allowing the bankers to inspect the stock and materials in checking/conducting inspection of the same, which shows, the malafide intention of the Judgment 10 C.C.No.10540/2017 complainant. The stock and materials of the accused kept in factory worth about Rs.60 lakhs, which was pledged to the said bank. In that regard, the said bank also issued notice to the complainant during 1st week of December, 2018.

The accused has further alleged that, he had no business transaction with the complainant nor borrowed any amount much less Rs.10 lakhs as alleged by the complainant. On the contrary, the complainant has taken advantage of him being in his premises on rent, used his stocks and materials, which are laid in his premises. The complainant fraudulently misused and kept his blank signed cheques which were given as security purpose at the time of signing the rental agreement and subsequently failed to return the same.

The accused has further alleged that, he made up his mind to lodge a police complaint regarding the fraud played by the complainant, but fortunately he came into contact with the complainant over telephone and he intimated him that, he destroyed the cheques given by the accused to him.

Believing the words of complainant, he did not lodge any complaint. Subsequently, the accused came to know that, complainant filed a case against him based on the cheque.

Judgment 11 C.C.No.10540/2017 The accused has further alleged that, he not received any notice either from the complainant or from his counsel regarding dishonor of cheque either by R.P.A.D or by certificate of posting, as claimed by the complainant. The complainant is not aware the actual amount alleged to have given to the accused and the date and time is not mentioned.

The accused has further alleged that, complainant is also not aware about when the cheque was alleged to be issued in his favour by the accused. The cheque was given as security for the rental agreement. Such being the case complainant unnecessarily made the accused as party to this case and filed frivolous case, accused had no necessity raise loan with the complainant. The complainant took the advantage of the blank signed cheque and filed the case as per his whims and wishes. The complainant has not produced any document, as to service of legal notice. The amount covered under the cheque is not a legally recoverable debt, but it was given as security at the time of entered into rental agreement and denied all over allegations and averments made in the complaint and prayed for acquittal. The DW.1 was subjected for cross-examination by the advocate for complainant.

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16. On going through the rival contentions of the parties, The fact that, the complainant brought the present case based on the questioned cheque at Ex.P1, therefore, since to maintain the present case statutory compliance has been made by him, therefore, it is require to draw the statutory presumption as per Sections 118 and 139 of Negotiable Instruments Act, for discharge of existence of legally recoverable debt, the accused got issued the said Negotiable Instrument unless and until contrary prove.

17. No doubt, as per Section 139 of Negotiable Instruments Act, it is initial burden on the accused to rebut the statutory presumption and facts and circumstances raised by the complainant. No doubt, in this case, the accused has not admitted the claim put forth by the complainant, but put forth his specific defence by way of cross-examining the PW.1 as well as entered into witness box and examined as DW.1. Apart from he gave his statement under Section 313 of Cr.P.C., some and substance of the defence taken by the accused that, the questioned cheque signed in blank was given by the accused as security purpose for payment of rentals at the time of entered into rent agreement at Ex.D1. The accused has regularly paid rentals to the complainant and the accused keep contact with his principal Judgment 13 C.C.No.10540/2017 NCL Wintech to give materials to the complainant. Accordingly, he gave work worth approximately at Rs.60 lakhs to the complainant, as he did aluminum windows business and whatever the profit gained, so shall be shared and building rent shall be adjusted. The complainant by made use of the technical team of the accused and his materials and machineries kept in the factory premises, which obtained rent from the complainant, he attended work as key of the said factory was kept with him. To establish the said business, accused borrowed OD facility from the Central Bank of India and he kept stock worth of Rs.60 lakhs and the complainant not let the bank officials to prepare stock and materials in the said factory. He

denied all other allegations as to the alleged liability of payment of Rs.10 lakhs mentioned in the complaint covered under the cheque. Hence, prayed for his acquittal.

18. The DW.1 was subjected for cross-examination. Wherein, in his cross-examination, the DW.1 has clearly deposed that:

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19. As per say of DW.1, by virtue of rental agreement at Ex.D1, he became tenant under the complainant. As per the terms and conditions the complainant took money from him and separately he not paid rentals to the complainant, but the accused volunteers that, since he gave one work to the complainant and he attended the said work by made use of machineries of the accused kept in the factory, he not paid rentals to the complainant. He also stated Judgment 15 C.C.No.10540/2017 that, regarding the same not recited in the agreement. Since, it was the subsequent development made after the accused kept on least, therefore, the accepting the insertion of those recitals does not arise. It also made clear that, both the parties have admitted except Ex.D1, no other agreement was entered into between complainant and accused. The accused volunteers that, apart from Ex.D1 the complainant pertaining to the said transaction, from the accused took singed stamp paper and singed blank 4 cheques. But the said testimony of DW.1 is not denied by the complainant by way of any suggestion. The DW.1 also deposed that, by collecting those documents from the accused, no document has been executed between them. More categorically DW.1 has admitted that, cheque and signature of him, but more categorically deposed, the hand writing with regard to fillings made in the cheque is not of him and the amount in numeral and words were got filled by accused at the instance of complainant.

20. The evidence of DW.1 made it clear that, whatever the transaction held between complainant and accused is purely in accordance with Ex.D1. As per the said document, it was the rental agreement, whatever the difference between complainant and accused, if at all, arose, it should be cleared or resolved by invoking the terms and conditions. In the private case there is no Judgment 16 C.C.No.10540/2017 allegations from the complainant as to, the accused for the payment of arrears of rent got issued the questioned cheque or violation of any terms and conditions made mentioned in the Ex.D1 agreement. Therefore, the validity of the said document or any violation if any is not subject matter of the present case, which appraisal for discussion herein.

21. The DW.1 in his further cross-examination has reasserted that, since he gave work to the complainant, he not paid rentals to the complainant. Though, the complainant had extracted the words as to non-payment of rentals, he not denied the work given by the accused to the complainant and attended the same by use the machineries and materials of the accused. Therefore, the accused is exempted paying any rentals or arrears of rent in terms of Ex.D1. The saying of accused as to on account of he provide work to the complainant and he got profit, he not paid rentals to the complainant, the same was not been denied by the complainant side. The case of complainant was suggested to the DW.1 in the following words that:

"r-1 gÀ YÀæPÁgÀ AiÀiÁ^aÀÅzÉÃ "ÁrUÉAiÀÄ£ÄÄß |AiÀiÁðçUÉ PÉÆnÖ®è JAzÀgÉ ,Àj. £Á£ÄÄ |AiÀiÁðçUÉ æÃqÀ"ÉÄPÁzÀ °ÀtPÀÈÌ ,ÀA\$AzÀsYÀlÖAvÉ Judgment 17 C.C.No.10540/2017 æ|-1 gÀ ZÉPÀÌ£ÄÄß æÃrzÀÝgÀÆ PÀÆqÀ, £À£Äß d^aÁ"ÁÝj-ÄAzÀ £ÄÄtÄaPÉÆ¼Äî®Ä ,ÄÄ¼ÄÄî ,ÁQë £ÄÄrAiÀÄÄwÛzÉÝÄ£É JAzÀgÉ ,ÀjAiÀÄ®è."

22. As per the said suggestion, only the admission is taken from the mouth of DW.1 that, in terms of rent agreement, accused not paid the rentals to the complainant. But simply suggestion was made to him that, since accused in respect of the amount payable by him to the complainant got issued the questioned cheque to him and to avoid the responsibility, he deposed falsely. Throughout the case, it is not the contention of the case or theory of the complainant that, in respect of payment of arrears of rent, the accused got issued the questioned cheque. If taken in to consideration that, the accused is liable to pay the rentals as per Ex.D1. On meticulous perusal of the said document, it made clear that, the duration of the said agreement for the period of 11 months commencing from 01.03.2016 will be ended on 31.01.2017, for the 11 months rent, if at all, accused not paid rentals it would amount to Rs.2,75,000/-. It is not his contention that, accused was arrears of rentals, therefore, he got issued the cheque. If at all, he was in due of rent, how the said amount become Rs.10 lakhs as mentioned in the cheque is not been satisfactorily explained by the complainant. Even, during the course of cross of PW.1, he projected his case that:

Judgment

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C.C.No.1054

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23. On going through the above testimony of PW.1, in the absence of narrating better particulars as to the actual transaction held between complainant and accused, though he projected the case as accused got issued questioned cheque for discharge of legal liability of Rs.10 lakhs, in the 1st time during the cross- examination he deposed that, accused is his friend and with whom he did not had any monetary transaction business. More particularly the PW.1 has deposed that, accused by saying that, in his business he sustained loss, therefore, he took hand loan of Rs.10 lakhs. There is serious lack on the part of the complainant in the legal notice, complaint, sworn affidavit as well as during the Judgment 19 C.C.No.10540/2017 cross of DW.1, there is no suggestion made as to the hand loan lent by the complainant to the accused for the tune of Rs.10 lakhs. Even, the PW.1 has not discloses, when, where, under which compelling circumstances he paid the said huge amount to the accused is also not been narrated. Even, how he mobilized the huge amount of Rs.10 lakhs and on whose presence, on which security he had pas on the said consideration to the accused is also not been reveled in his evidence as well as suggested to DW.1. Contrary to his own case and theory, in the cross- examination of PW.1, he stated the alleged lent of loan, the accused on the assurance of repayment of money within one month, by saying that, some of the amount has to come to him, on that assurance, the complainant did not got obtained any document from accused.

24. It is significant fact to note that, the complainant has projected his case by stating, accused is liable to pay Rs.10 lakhs, how he paid the said money to the accused not been pleaded or not contended in his evidence. But the above testimony of PW.1 has categorically deposed that, Rs.10 lakhs paid to the accused by way of RTGS. If at all, he paid money to the accused by way of RTGS, it is the best piece of evidence which establish the passing of consideration from the hands of complainant to the Judgment 20 C.C.No.10540/2017 accused, but no such effort has been made by him to prove the same for the reasons best known to him. From the evidence of PW.1, it made clear that, he withheld the very good piece of evidence, as to payment of money through RTGS. Despite, accused attack on the very claim of complainant, the complainant for the reasons better known to him withheld the same, the same has to be one of the strong circumstances to disbelieve the very contention of the complainant.

25. More particularly, the PW.1 deposed on the movement of transfer of amount to the account of account, the accused got issued the questioned cheque for Rs.10 lakhs in the presence of Vijaykumar, who is friend of both the complainant and accused. Therefore, it made clear that, Vijaykumar was the eye witness to the RTGS bank payment is the documentary evidence, those particulars are not furnished by the complainant in the pleading nor produce document or examined the said eye witness, which is material to the case of the complainant, thereby, he himself disproved

his own case. If at all, accused gave the questioned cheque to the complainant, the date made mentioned in the RTGS. If at all, he handed over the cheque to the complainant, it was the complainant has to demonstrate the same by furnishing better particulars, but the same is lacks. The non-production Judgment 21 C.C.No.10540/2017 document, non-examination of witness nor furnish the better particulars as to the alleged loan transaction of passing of consideration and issuance and execution of questioned cheque by the accused to the complainant is the strong circumstances to disbelieve the case of complainant.

26. On appraisal of the evidence of complainant, it does not repose confidence and not trustworthy to rely upon the same. There was suggestion made to PW.1, as to misuse of questioned cheque along with other 2 - 3 cheques were taken by the complainant pertaining to the other transaction and misused the same has been denied by the complainant. It is not the case of complainant that, for payment of arrears of rent, accused got issued the questioned cheque. Therefore, there is the admission as to the non-payment of arrears of rent by the accused is not a ground to accept the contention of complainant. The accused has contended that, because he gave business of Rs.60 lakhs to the complainant and he made use of his machineries and materials to attend that work and got the property he is not liable to pay the arrears of rent. The said allegation is also not denied by the PW.1. Though complainant has contended that, Rs.10 lakhs paid by him to the accused was his own money earned through his business and he got the monthly income of Rs.3 lakhs, nothing Judgment 22 C.C.No.10540/2017 has been placed by him. Though he deposed, he is doing manufacture and fabric business, not furnished its particulars, under which name he proceed with the said business and to establish his financial capacity to pay that huge amount to the accused definitely, he require to produce necessary document before this court, but at least the bank passbook or income tax returns could have been place in order to strengthen his contention, as to his financial capacity, but the same also not done by him.

27. The complainant evidence is utterly failed to manifest the financial capacity of the complainant and alleged payment of Rs.10 lakhs as loan to the accused is not been pleaded and proved. When he has utterly failed to prove his financial capacity to had Rs.10 lakhs, passing of the said money to the accused cannot be accepted. Mere because of he possessed the questioned cheque through unexplained source, because of the difference held between them, the complainant has prosecuted against the accused, the probable defence set out by the accused got reverse the case of complainant and the complainant failed to discharge his reverse burden to prove the very financial transaction held between him and accused.

Judgment 23 C.C.No.10540/2017 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 discharge of any debt or liability. Which is required to be proved by the complainant. However, it is essentially a question of fact".

In the decision reported in ILR 2009 KAR 1633 (Kumar Exports V/s. Sharma Carpets). Wherein, it was pleased to held by the Hon'ble Apex court that:

(D) Negotiable Instruments Act, 1881, Sections 118, 139 and 138 - Presumption under Sections 118 and 139 - How to be rebutted - Standard of proof required rebuttal - HELD, Rebuttal does not require proof beyond reasonable doubt -

Something probable has to be brought record - Burden of proof can be shifted back to complainant by producing convincing circumstantial evidence - Thereafter the said presumption arising under Section 118 and 139 case to operate - To rebut said presumption accused can also rely upon presumptions under Evidence Act, 1872 Section 114 (common course of natural even human Judgment 24 C.C.No.10540/2017 conduct and public and private business) -

Evidence Act, 1872 - Section 114 - Presumptions of fact under".

In the 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".

28. 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.

29. On going through the Ex.P1-cheque coupled with evidence of DW.1, though he clearly admitted that, questioned cheque and signature and amount made mentioned in the same belongs to him. Therefore, it is the complainant has to narrate, who enter the cheque to entered the name of Spartan Fabs Pvt. Ltd., in the cheque. On prima facie perusal of writings made in the cheque, it discloses that, the said concern name is not in the hand writing of Judgment 25 C.C.No.10540/2017 the accused. When cheque was issued in the name of Spartan Fabs Pvt. Ltd., how the complainant is connected to the said company is also not been explained. The complainant got misused the cheque, if at all, issued in the name of Spartan Fabs Pvt. Ltd., how the accused is liable to pay money to the complainant is not been explained properly. The role of complainant with the said concern Spartan Fabs Pvt. Ltd., is also not satisfactorily demonstrated by the complainant. If at all, the complainant paid money of Spartan Fabs Pvt. Ltd., to the accused then only the issuance of questioned cheque by the accused to the said concern would arise. It is not the case of complainant that, the said concern was paid money to the accused on his behalf. Therefore, it made clear that, the questioned cheque not issued by the accused to the complainant, the complainant utterly failed to demonstrate the triangular relationship between him, accused and Spartan Fabs Pvt. Ltd. Therefore, on appraisal material evidence on record, it is consider opinion of this court, the complainant has utterly failed to prove his case by provide clear, convincing and acceptable evidence. The non-reply of legal notice is

not a ground to accept the contention of the complainant. The accused has successfully proved his probable defence and rebutted the statutory presumption as well as the alleged loan Judgment 26 C.C.No.10540/2017 transaction set out by the accused. Hence, the accused is entitled for benefit of doubt for acquittal.

30. On overall appreciation of the material facts available on record, it discloses that, despite the accused harping on the very claim of the complainant, he fails to demonstrate his 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.

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 it from the former".

31. 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.

Judgment 27 C.C.No.10540/2017 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 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".

32. 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.10 lakhs 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.

Judgment 28 C.C.No.10540/2017 In a decision reported in AIR 2006 Supreme Court 3366 (M.S.Narayana Menon Alian Mani V/s. State of Kerala and another). The Hon'ble Apex court held that:

"Once the accused discharges the initial burden placed on him the burden of proof would revert back to the prosecution".

33. 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.10 lakhs 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 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.10 lakhs. Hence, complainant has failed to prove Judgment 29 C.C.No.10540/2017 the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

Apart from that, in a decision reported in, KCCR 12 (3) page 2057, the Hon'ble Apex Court held that:

"Mere issuance of cheque is not sufficient unless it is shown that, the said cheque was issued towards discharge of legally recoverable debt. When the financial capacity of complainant is questioned, the complainant has to establish his financial capacity".

34. In the case on hand, accused has questioned the financial capacity of complainant. Complainant has not produced any document to show his financial capacity to lend an amount of Rs.10 lakhs to accused. When complainant has failed to prove the transaction alleged in the complaint, then the question of issuing the cheque for discharge of Rs.10 lakhs does not arise. The evidence placed on record clearly probablize that, complainant has failed to prove that, accused issued the cheque for discharge of liability of Rs.10 lakhs. Hence, complainant has failed to prove the guilt of accused for the offence punishable under Section 138 of Negotiable Instruments Act.

Judgment 30 C.C.No.10540/2017

35. 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 in 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.

36. 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 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.

37. Thus, on appreciation of evidence on record, I hold that, the complainant has failed to prove the case by rebutting the Judgment 31 C.C.No.10540/2017 presumption envisaged under Sections 118 and 139 of Negotiable Instruments Act. The complainant has failed to discharge the initial burden to prove his contention as alleged in the complaint. Hence, the complainant has not produced needed evidence to prove that, amount of Rs.10 lakhs legally recoverable debt. Therefore, since the 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 complainant in its entirety without the support of the substantial documentary evidence pertaining to the said transaction. The complainant fails to prove his case beyond all reasonable doubt. As discussed above, the 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.

38. 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.

Judgment 32 C.C.No.10540/2017 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 30th day of July - 2020)
(SHRIDHARA.M) XXIII Addl. Chief Metropolitan Magistrate, Bengaluru.

ANNEXURE List of Witnesses examined on behalf of Complainant:

PW-1 : Ramakrishna List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of accused
Exs.P2 to P4	:	Bank endorsements
Ex.P5	:	Office copy of legal notice
Ex.P6	:	Postal receipt
Ex.P7	:	Postal Acknowledgment card

List of Witnesses examined on behalf of the defence:

DW.1 : Madan Mohan List of Exhibits marked on behalf of defence:

Ex.D1	:	Xerox copy of rental agreement
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Judgment 33 XXIII Addl. Chief Metropolitan
Magistrate, Bengaluru.
C.C.No.10540/2017

30.07.2020.

Comp -

Accd -

For Judgment

Case called out.

Complainant and accused are
absent. No representation from both side
advocates, despite, web-host the case
proceedings and intimate the date of
pronouncement of judgment. Hence, as per
Section 353(6) of Cr.P.C. the following
judgment is pronounced in the open court
vide separate order.

Judgment 34 C.C.No.10540/2017

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.