**IN THE COURT OF THE XVIII ADDL.CHIEF METROPOLITAN MAGISTRATE, BENGALURU CITY**

**PRESENT: MANJUNATHA M.S. B.A., LL.B.**
**XVIII ADDL.C.M.M., BANGALORE**

**DATED : THIS THE 27th DAY OF OCTOBER 2021**

**Criminal Case No. 28709/2018**

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| **COMPLAINANT:** | **Sri. REDDI BAPI RAJU,**<br>S/o Late.Sri.Reddi Satyam,<br>Aged about 80 years,<br>R/at House No.562, "A" cross,<br>7th 'A' Main Road, Yelahanka New Town<br>Bengaluru-560 064.<br><br>**(By Sri. S.S. Advocate)** |
| | **// Versus //** |
| **ACCUSED:** | **Sri. K. NANJEGOWDA,**<br>Father's name not known,<br>Aged about 50 years,<br>R/at Apartment No.A9,<br>SCC Sippire Apartments,<br>Atturu-Ananthapura Main Road,<br>Yelahanka, Bengaluru-560 064.<br><br>**(By Sri.C.N.M.- Advocate)** |

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| Offence complained | **:** U/Sec.138 of Negotiable Instrument Act. |
| Name of the complaint | : **Sri. REDDI BAPI RAJU,**<br>S/o Late.Sri.Reddi Satyam, |
| Date of commencement of evidence | : 17-12-2018 |

Date of closing evidence : 18-09-2021

Opinion of the Judge : Accused found guilty.

**(MANJUNATHA M.S.)**
XVIII A.C.M.M.,BANGALORE.

## **J U D G M E N T**

The complainant has filed this complaint under section 200 of code of criminal procedure read with section 138 of the Negotiable Instruments Act ( in short referred as "N.I. Act") against the accused alleging that, he has committed the offence punishable under section 138 of NI Act.

2. The sum and substance of the complaint, is as follows; The accused is known to the complainant through his friend Sudharashan. The complainant and said Sri.Sudharashan were working together at Railway wheel Factory at Yelahanka. The said Sudharshan has introduced the accused to complainant and stating that accused is good friend of him and wanted the complainant to financial help for the purpose of celebrating his daughter's marriage. The complainant has agreed to give financial help to the accused and paid Rs.5,00,000/- through crossed cheques bearing No. 510214 for Rs.4,00,000 and bearing No. 510215 for Rs.1,00,000/- both dated

13.5.2015 and after two days the accused has requested the complainant to help another one lakh rupees as Rs.5,00,000/- is not sufficient to celebrating his daughter's marriage. Considering his request the complainant has paid Rs.1,00,000/- by cash on 15.5.2015 and totally the accused has received Rs.6,00,000/- from the complainant as a hand loan for celebrating the marriage of his daughter and promised that he would repay the same within 2-3 months with interest at the rate of Rs.1.5%. But despite demand and request made by the complainant the accused has failed to pay the monthly interest up to 30-03-2017. On 30-03-2017 the accused has paid Rs.2,00,000/- through RTGS and on 26-04-2018 he has paid Rs. 1,00,000/- through cheque to the complainant. The complainant has adjusted the said amount towards interest from 15.05.2015 to 15.04.2018. After deducting the said amount the accused was in due of Rs.6,46,000/- as on 31.07.2018 including principal amount and interest. Towards repayment of the said amount on 03.08.2018 the accused voluntarily issued post dated cheque bearing No.284047 dated 07.08.2018 for Rs.6,46,000/- in favour of the complainant. On presentation, the said cheque was returned unpaid for the reasons funds insufficient in the account maintained by the accused.

Thereafter the complainant got issued demand notice to the accused and despite of service of notice the accused has failed to pay the cheque amount. As such it is contended that the accused has committed an offence punishable under section 138 of NI Act.

03. After filing of complaint, this court has taken cognizance of the offence punishable under section 138 of Negotiable Instrument Act, sworn statement of the complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, accused enlarged on bail and plea was recorded as per section 251 of Cr.P.C. The accused has not pleaded guilty but submitted that he has defense to make.

04. As per the direction of Hon'ble supreme court in **“Indian Bank Association V/s Union of India and others reported in (2014) 5 SCC 590**, this court treated the sworn statement of the complainant as complainant evidence. The accused has filed application under section 145(2) of NI Act for recall of PW1 for the purpose of cross-examination. The said application came to be allowed. The defence counsel has fully cross-examined PW1. After completion of

complainant’s evidence, the statement of accused as contemplated under section 313 of code of criminal procedure was recorded. The accused has denied all the incriminating material appears against him in the complainant’s evidence. The accused examined himself as DW1 and got marked Ex.D.1 to 5.

05. Heard the arguments of learned counsels for complainant and the accused. I have perused the materials available on record.

06. The learned counsel for the complainant has relied on decision of Hon’ble Supreme Court in Criminal Appeal No. 471/2015 in HMT Watches Ltd. Vs M A Abida and ors. On the other hand the defence counsel has relied on decisions 1) 2009 (1) DCR 422 Binod Kumar Lal Vs State of Jharkhand and anr., 2) (2008) 2 SCC Crl.166 Krishna Janardhana Bhat Vs Dattatraya.G.Hegde, 3) 2009 SCC online Kar 190 Smt. H.R.Nagarathna Vs Smt.Jayashree Prasad , 4) LAWS (KAR) 2014 6 370 K.Yashoda Vs K.Venkatesh , 5) 2014(3) DCR 488 Surjit Sing Vs Amarpal Singh , 6) (2017) 1 Crimes 349 (crl.A.No.888 of 2005) Meera S.Chiplunkar Vs Ashalata Rawji Kondkar & anr. 7) 2016(1) DCR 629 Mini Mohanan Vs K.S.Kochumon and 8) 2014 (3) DCR 488 Surjit Sing Vs Amarpal

Singh Tiwana. I have gone through the same and principle laid down in the said judgments.

07. The points that arise for my consideration are as follows;

1. Whether the complainant proves that, accused issued cheque bearing No. 284047 dated 07.08.2018 for Rs.6,46,000/- towards discharge of his liability, which was returned unpaid on presentation for the reason " Funds Insufficient ", and despite of service of notice he has not paid the cheque amount and thereby committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

08. My answer to the above points is as follows;

Point No.1: In the Affirmative.

Point No.2: As per final order for the following;

**REASONS**

**09. POINT No.1**: The Complainant has filed this complaint alleging that the accused has committed offence punishable under section 138 of N.I. Act. He pleads and asserts that, the accused in discharge of his liability has issued cheque No.284047 dated 07.08.2018 for Rs.6,46,000/- drawn on Axis Bank, Yelahanka Branch, Bengaluru.

The Complainant has presented the said cheque for encashment through his banker i.e.,State Bank of India, Yelahanka, Benglauru Branch. The said cheque was returned unpaid with an endorsement "Funds Insufficient" on 17.08.2018. Thereafter, the complainant has got issued demand notice on 29.08.2018 to the accused by demanding the payment of cheque amount. The said notice was duly served on the accused and he has not paid the amount within 15 days, which gave raise cause of action to file this complaint. To substantiate his case, the complainant himself stepped into witness box and examined as PW.1 and got marked Ex.P-1 to Ex.P-5. The complainant has reiterated the contents of the complaint in his affidavit evidence about issuance of cheque by the accused towards discharge of his liability and its dishonour for "Funds Insufficient " in the account maintained by the accused, issuance of legal notice to the accused calling upon him to pay the amount covered under cheque and his failure to comply the same.

10. In this scenario, let me scrutinize the documents relied by the complainant in order to examine the compliance of statutory requirements envisaged under section 138 of N.I. Act. Ex.P.1 is cheque dated 7.8.2018, the said cheque was returned with an

endorsement "Funds insufficient" as per Ex.P.2 bank endorsement dated 17.08.2018, Ex.P.3 is legal notice dated 29.08.2018, Ex.P.4 is postal receipt, Ex.P.5 is postal Tracking consignment details. This complaint came to be filed on 27-09-2018. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of section 138 of N.I. Act is complied with and this complaint is filed within time. The complainant has discharged his initial burden by relying oral and documentary evidence. Thus, complainant is entitle to relied on the statutory presumptions enshrined under section 118 read with section 139 of N.I. Act. Section 118 reads as here: - "That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration". Further Section 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as here: - "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, or any debt or other liability." A combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability.

11. No doubt, the said presumptions of law are rebuttable in nature. The accused can take probable defence in the scale of preponderance of probability to rebut the presumption available to the complainant. Let me examine whether the accused has successfully rebutted the said presumptions of law. On perusal of the tenor of cross-examination made by the defence counsel, it appears that the accused has taken defence that in the month of May 2015 he was in dire need of a sum of Rs.5,00,000/- in order to meet some urgent commitments and as such he has contacted his friend Sri.D.Munikrishna and expressed his financial crises with him, for which he took him to his friend Srinivasa Reddy and his father i.e, the complainant herein and requested them to finance a sum of Rs.5,00,000/- to him. After discussion, the complainant and his son have financed a sum of Rs.5,00,000/- to him by way of cheques and he has agreed to pay a nominal interest on the said amount. At the time of financing the said amount the complainant and his son have insisted him to handed over the original title deed of his property and also further insisted him to issue two blank signed cheques towards

security, by heeding to their demands he has handed over the original title deed of his property and also handed over two blank signed cheques bearing No. 284047 and 284048 as security to the aforesaid loan. After obtaining said sum he has paid nominal interest to the complainant on monthly basis regularly. On 15.8.2016 he has paid Rs.50,000/- by way of cheques bearing No. 059308 and as sum of Rs.50,000/- by way of cash towards principal amount. Again on 30-03-2017 he has paid Rs.2,00,000/- to the complainant by way of RTGS. On 20-07-2017 he has paid Rs.1,00,000/- by way of cash through his friend D. Munikrishna and Rs.50,000/- by way of cash to the complainant and on 26.4.2018 he has paid Rs.1 lakh by way of cash. As on 26.4.2018 he has repaid the entire principal amount of Rs.5,00,000/- to the complainant and he was only in due a sum of Rs.40,000/- towards interest. On 3.8.2018 the accused and his son met the complainant and informed him that he is ready to pay remaining amount of Rs.40,000/-and requested to return the original documents and cheques, but the complainant has refused to receive Rs.40,000/- and demanded more money. Thereafter, the complainant has misutilized the security cheque and filed this false complainant. As such, Ex.P.1 cheque is not supported by any consideration, therefore section 138 of NI Act is not applicable. On these grounds he prays to acquit him from the offence alleged against him and consequential dismissed of the complaint.

12. As observed above, it is the specific case of the complainant that the accused has approached him through complainant's friend one Sudharshan and requested for financial help for his daughter's marriage. Considering the request of the accused, the complainant has paid Rs.5,00,000/- on 13-05-2015 by way of two cheques and paid Rs.1,00,000/- on 15-05-2015 by way of cash to the accused. At that time the accused has handed over the title deeds of his property and also agreed to repay the same within of 2-3 months with interest at the rate of 1.5% per month. But despite demand and request made by the complainant the accused failed to pay the monthly interest up to 30.03.2017. On 30.03.2017 the accused has paid Rs.2,00,000/- through RTGS to him. The complainant has adjusted the said amount towards interest from 15.05.2015 to 30.03.2017. Again on 26.04.2018 the accused has paid a sum of Rs.1,00,000/- by way of cheque. The complainant has adjusted the said amount towards interest for the period from 01.04.2017 to 15.04.2018. After deducting the said amount the accused was in due of Rs.6,46,000/- as

on 31.07.2018 including principal amount and interest. Towards repayment of the said amount on 03.08.2018 the accused voluntarily issued post dated cheque in favour of the complainant bearing No.284047 dated 07.08.2018 for Rs.6,46,000/-. On presentation, the said cheque was returned unpaid for the reasons funds insufficient in the account maintained by the accused. Thereafter the complainant got issued demand notice to the accused and despite of service of notice the accused has failed to pay the cheque amount. As such it is contended that the accused has committed an offence punishable under section 138 of NI Act.

13. In this back drop of the rival contention, this court has given anxious consideration to the materials available on record. At the outset, it is pertinent to state here that, the accused has not disputed the cheque in question. The accused has clearly admitted in his evidence that the cheque in question belongs to him and it bears his signature. The only contention of the accused is that the said cheque was issued for security of the loan and subsequently he repaid entire principal amount. From the said admissions, it goes without saying that the accused has not disputed the cheque in question. When the drawer has admitted the issuance of cheque as well as the signature

present therein, the presumptions envisage under section 118 read with section 139 of NI Act would operate in favour of the complainant. The said provision lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder the court shall presume that the instrument was endorsed for consideration. So also, in the absence of contrary evidence on behalf of the accused, the presumption under section 118 and 139 of the NI Act, goes in favour of the complainant. No doubt, said statutory presumptions are rebuttable in nature. It is for the accused to place cogent and probable defence to rebut the presumption raised in favour of the complainant. When the complainant has relied upon the statutory presumption enshrined under section 118 read with section 139 of NI Act, it is for the accused to rebut the said presumption with cogent and convincing evidence. To put it other way, the burden lies upon the accused to prove that Ex.P.1 cheque was not issued for discharge of any debt, but it was issued for security of the loan borrowed by him. It is worth to note that section 106 of Indian Evidence Act postulates that the burden is on the accused to establish the fact which is especially within his special knowledge. This provision is exception to the general rule that, the burden of proof is always on the prosecution to establish their case beyond reasonable doubt. In that view of the matter, the burden is on the accused to prove that Ex.P.1 cheque was issued for security.

14. As far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of full bench of the Hon'ble Apex Court reported in Rangappa Vs. Mohan reported in AIR 2010 SC 1898, Wherein their lordships pleased to observe that, "In the light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by section 139 of the Act does indeed include the existence of the legally enforceable debt or liability". In another decision reported in, **(2015) 8 SCC 378** in the case of **Vasanthakumar Vs. Vijayakumari**, it is held that once the accused has admitted the issuance of Cheque as well as signature on it, the presumption under section 139 would be attracted. In **K.N. Beena Vs Muniyappan and another reported in (2001) 8 SCC 458**, the Hon'ble Apex Court, refers to Hiten P. Dalal Vs. Bratindranath Banerjee and holds, on the factual matrix, that bare denial of the liability in reply notice is not sufficient to shift the burden of proof on the complainant to prove that the cheque was

issued for a debt or liability. In view of the law laid by the Hon'ble Apex Court, the presumption enshrined under section 139 of the N.I. Act is extendable to the existence of legally enforceable debt. The story brought by the accused is unworthy of credit and not supported by any acceptable evidence. In other words, accused has not placed cogent material to rebut the said presumption. As such, the contention of the accused holds no water. The Hon'ble Supreme Court of India pleased to discuss aforesaid aspect in detail in the decision reported in, Rangappa Vs. Mohan reported in AIR 2010 SC 1898 = 2010 AIR (SCW) 2946, It is relevant to reproduce said observations; "Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the court in favour of the complainant. The presumption referred to in Section 139 of the NI Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court. The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered…. "

15. It is further observed in para 18 of the decision that, Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumptions contemplated by Section 139 of the Act. " Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. These provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. In view of

Section 139, it has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. A contrary view would render Section 138 of NI Act a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong…" The Hon'ble Apex court clearly laid down the ratio that, when the ingredients of section 138 of NI Act are complied with, presumption shall be drawn in favour of the complainant. The burden is upon the accused to rebut the statutory presumptions.

16. To discharge this burden the accused has led defence evidence by examining himself as DW1 and reiterated his defence in the chief examination and also produced five documents which were marked as Ex.D.1 to 5. Ex.D.1 is acknowledgment issued by Yelahanka New Town Police station dated 06.09.2018. Ex.D.2 is endorsement issued by Yelahanka New Town Police station, Ex.D-3 is the statement of complaint given before Yelahanka New Town police. Ex.D.4 is the copy of the complaint lodged by accused

against the complainant herein before Yelahanka New Town Police station. Ex.D5 is the marriage invitation of accused's daughter. On perusal of Ex.D.4 complaint, it appears that after receipt of Ex.P.3 legal notice on 01-09-2018, the accused has lodged Ex.D4 police complaint before the Yelahanka Police on 06-09-2018 alleging that he has borrowed only Rs.5 lakhs from the complainant and he repaid said principal amount of Rs.5 lakhs by way of cheque, cash and RTGS and he is in due of Rs.40,000/- only. He also contended that he has issued two cheques and given property documents as a security to the said loan. Despite of repayment of loan amount, the complainant is demanding exorbitant interest, which is not permissible under law, hence he requested the police to take necessary action against the complainant and direct him to return the security cheque and property document. The police after recording the statement of complainant herein have issued endorsement as per Ex.D.2 directed the accused herein to resolve the dispute before competent court. Thereafter the accused has not filed any private complainant against the complainant herein before the competent court.

17. The accused has contended that he has repaid Rs.5,00,000/- to the complainant, but he has not produced any documents before the court to prove that he has repaid Rs.5 lakhs to the complainant. The accused specifically contended that in the month of May 2015 he has availed financial assistance of Rs.5 lakhs from the complainant by issuing cheque in question as security and repaid the said principal amount of Rs.5 lakhs by way of cheque, cash and RTGS. Now is in due of Rs.40,000/- only towards interest. The complainant admitted that the accused has paid Rs.3,00,000/-, but he has adjusted the said amount towards interest. During the cross-examination he has specifically denied that the accused has borrowed only Rs.5 lakhs and he has repaid entire principle amount by way of cheque, cash and RTGS. Now the burden is on the accused to prove that he has repaid Rs.5 lakhs to the complainant on various dates as stated in his evidence. The accused has not produced any documents except his self serving statement regarding repayment of remaining Rs.2 lakhs rupees and also payment of monthly interest. Even he has not taken any pain to examine his friend Munikrishna to prove that he has borrowed only Rs.5 lakhs rupees and repaid the same to the complainant. Therefore the accused has failed to prove that he has

availed only Rs.5 lakhs from the complainant and repaid the same by way of cheque, cash and RTGS.

18. The learned counsel for the accused much argued that, according to the complainant, the accused availed hand loan of Rs.6 lakhs for his daughter's marriage, but the fact is that the marriage of the accused's daughter was performed in the year 2012 itself. Hence question of borrowing loan for daughter's marriage does not arise at all. In support of the said contention the accused produced Ex.D5 marriage invitation card. No doubt on perusal of Ex.D5 Marriage invitation Card, it appears the marriage of the accused's daughter was performed on 30-11-2012. But the accused himself has admitted that he has borrowed loan of Rs.5 lakhs from the complainant. Hence purpose of borrowing loan is immaterial. Whether the accused borrowed loan or not is the important aspect for consideration of the present case. As observed above the accused admitted that he has borrowed loan of Rs.5 lakhs and he contended that he has repaid the said entire principal amount, but he has failed to prove the repayment of Rs.5 lakhs.

19. The learned counsel for the accused contended the complainant unilaterally calculated interest at the Rate of Rs.1.5% per month

though the accused has not agreed to pay such higher rate of interest, as such the accused is not liable to pay interest at the rate of 1.5% per month. In the defence evidence itself the accused has admitted that he has agreed to pay nominal interest to the complainant. But he has not stated what is the rate of interest agreed between them. Since the accused has availed financial assistance on interest, he is bound to pay the interest on the said amount. No doubt the complainant or the accused has not produced any document to prove the agreed rate of interest. The accused has received amount in the month of May 2015 and he paid amount of Rs.2 lakhs on 30-03-2017 and Rs.1 lakh on 26-04-2018 to the complainant. That means nearly two year after the date of loan he started repayment. If the complainant has invested the said amount in the property or deposited in the bank, certainly he would earn good income from the said amount. Hence it is quite common to calculate interest on the date of availing loan. It is not unusual to demand interest at the rate of 1.5% per month for an unsecured hand loan.

20. The accused has contended that Ex.P.1 cheque was issued at the time of borrowing loan i.e., in the month May 2015. But he has not produced any cheque leaf or bank statement to show that

subsequent cheques of same series have been used prior to 2018 itself. That apart, if at all the complainant has not returned the cheque allegedly took him as security to the loan, what prevented the accused to take suitable steps to secure the said cheque or to give intimation to the bank to stop the payment, is not satisfactorily explained by the accused. This aspect shows that, the accused has not taken any proper steps either by lodging the complainant or issuing of legal notice calling upon the complainant to return back the so called security cheque. The accused has lodged Ex.D4 complainant only after receipt of Ex.P3. He has not taken immediate steps to take back his security cheque. A prudent man under the normal circumstances will not sit quite without taking any efforts to take back his blank signed cheque which creates doubt in the mind of the court regarding the genuineness of the defence taken by the accused.

21. The accused also taken contention that except signature in the Ex.P.1 cheque all other writings are not in his hand writing, the complainant has filled the Ex.P.1 cheque for his convenient. As stated above the accused has admitted that cheque in question belongs to him and it bears his signature. He also stated that it was issued for security. Under such circumstances section 20 of the NI

Act has given prima facie authority to the holder of the cheque to make or complete it as negotiable instruments, for any specified therein. The person so signing shall be liable upon such instrument. In this point it is appropriate to refer judgment reported in **(2019) AIR 16 in Bir Singh Vs Mukesh Kumar ,** Hon'ble Apex court has held that " A meaningful reading of the provisions of the Negotiable Instruments Act including in particular, section 20, 87 and 139 of makes it amply clear that a person who signs a cheque and makes it once to the payee remain liable unless he adduces evidence to rebut the presumption that the cheque had been 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 dully signed by the drawer. If the cheque is otherwise valid, the penal provision of section 138 would be attracted". Hence in view of the above proposition of law the contention of the accused that except the signature in the Ex.P.1 cheque all other writings are not in his hand writing, the complainant has filled the Ex.P.1 cheque for his convenient has no value at all.

22. Further, the accused has admitted the service of legal notice. It could be seen that, in spite of service of legal notice, the accused has

not taken steps to issue reply taking all these contentions. The act of the accused in not issuing reply at the earliest point of time immediately after service of the legal notice is one of the strong circumstances in favour of the complainant. In the decision reported in 2006 CRI.L.J.1; in the case of Gorantala Venkateswara Rao. V/s. Kolla Veera Raghava Rao and another, it is held that failure of accused in giving reply to legal notice issued by complainant is one of the strong circumstances to draw an inference that accused borrowed amount from complainant and cheque was issued towards part payment of legally enforceable debt. From the ratio laid down in the aforesaid decisions it is clear that, non issuance of reply by the accused is fatal to his defence. As such, the defence taken by the accused is not acceptable.

23. Nevertheless, the Hon'ble Supreme court and high courts laid down of plethora of decisions that, the cheque in question was issued as security, then also his liability is not absolved. To fortify this opinion, I would rely on the decision reported in, **2006 Cri.L.J. 3760, Umaswamy Vs. K.N.Ramanath**, their lordships pleased to observe that, even if cheque was issued as a security for payment, it is negotiable instrument and encashable security at the hands of

payee -Merely because it is issued as security is no ground to exonerate the penal liability u/s.138." The Hon'ble Court interpreted that, aforesaid words provided under section 138 of N.I. Act includes the liability of the drawer of a cheque issued towards security. In other words, the contention of the accused that cheque was issued for security purpose does not absolve liability.

24. In another decision reported in, **IV (2013) BC 284 (P & H), Shalini Enterprises& AnrVs.Indiabulls Financial Service Ltd.,** wherein their lordships pleased to observe that security cheque is integral part of commercial process entered into between petitioner and respondent/complainant. Security cheque can fasten liability on drawer under N.I. Act. Argument that security cheque is not handed over or issued in pursuance of any un-discharged liability -To hold so would defeat whole purpose of security cheque- Security cheque is an acknowledgement of liability on part of drawer that cheque holder may use security cheque as an alternate mode of discharging his/its liability." The ratio laid down in the decision aptly applicable to the facts and circumstances of the case. As such, it can be conveniently opined that, security cheque is an acknowledgement of liability on the part of the drawer.

25. From the discussion made supra, it is clear that, accused has neither taken probable defence nor taken steps to prove the same. The contention of the accused that, disputed cheques were not issued towards discharge of his liability is also not proved through cogent and acceptable evidence. To put it other way, accused has not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged under section 118 read with section 139 of N.I. Act. Accordingly, the case of the complainant is acceptable. Complainant has proved that, for discharge of liability accused has issued Ex.P1 cheque and he has intentionally not maintained sufficient amount in his account to honour the said cheque. Hence, this point No.1 under consideration is answered in the **Affirmative.**

**26. <u>POINT NO.2</u>**: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable under section 138 of N.I. Act. Hon'ble Supreme Court of India in a decision reported in, (2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal, observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with cost of litigation. Further the Hon'ble Apex Court in its recent decision in M/s. Meters & instrument Pvt Ltd. Vs. Kanchana Mehta reported in (2018)1 SCC-560 held at para 18 that “The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.” Therefore, keeping in mind the time when the transaction has taken place and primary object of the provision, this court is of the opinion that, rather than imposing punitive sentence, if sentence of fine is imposed with a direction to compensate the complainant for its monitory loss, by awarding compensation U/Sec.357 of Cr.P.C, would meet the ends of justice. The amount covered under the disputed cheques is Rs.6,46,000/-/-. The date of cheque is 07-08-2018 and loan transaction was taken place in the year 2015. Further the accused has paid Rs.3,00,000/- to the complainant and the complainant has adjusted the said amount towards interested calculated by him. By considering all these aspects, this court is of the opinion that, it is just and proper to imposed fine amount of Rs.6,56,000/-, which includes interest and cost of litigation, out of which compensation of Rs.6,46,000/- has to be awarded to the complainant U/s 357 Cr.P.C. Accordingly, this court proceeds to pass the following;

**ORDER**

Acting under section 255 (2) of Criminal Procedure Code, accused is here by convicted for the offence punishable under section 138 of Negotiable Instrument Act and accused is sentenced to pay fine of Rs.6,56,000/- (Rupees Six Lakhs and Fifty Six Thousand only). In default thereof accused shall undergo simple imprisonment for the term of 6(Six) months.

Acting under section 357(1) (b) of code of criminal procedure, it is ordered that, Rs.6,46,000/- ( Rupees Six Lakhs and Forty Six Thousand only), therefrom shall be paid to the complainant as a compensation, remaining fine amount of Rs.10,000/-(Rupees Ten Thousand only) is defrayed to the state for the expenses incurred in the prosecution.

Office is directed to supply free copy of the judgment to the accused.

(Directly dictated to the Stenographer on computer, typed by her, corrected by me and then judgment pronounced in the open court on this the $27^{th}$ day of October 2021).

**(MANJUNATHA M.S.)**
**XVIII A.C.M.M.,BANGALORE**

**ANNEXURE**

**I. List of witnesses on behalf of complainant:**

P.W.1: Reddi Bapi Raju

**II. List of documents on behalf of complainant:**

| | |
|---|---|
| Ex.P-1 | : Original Cheque. |
| Ex.P-2 | : Bank memos. |
| Ex.P-3 | : Legal notice. |
| Ex.P-4 | : Postal receipt. |
| Ex.P-5 | : Postal Track consignment details |

**III. List of witnesses for the accused**:

D.W.1: K.Nanjegowda

**IV. List of documents for accused:**

| | |
|---|---|
| Ex.D-1 | : Police acknowledgment . |
| Ex.D-2 | : Police issued endorsement |
| Ex.D-3 | : Statement |
| Ex.D-4 | : complaint . |
| Ex.D-5 | : Wedding card |

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XVIII A.C.M.M.,BANGALORE