KACB010015282025

IN THE COURT OF THE III ADDL. DISTRICT & SESSIONS JUDGE, AT CHIKKABALLAPURA.

PRESENT
SRI. SIDDANNA B. HANDRAL, B.Sc.,LL.B(Spl).
III Addl. Dist. & Sessions Judge, Chikkaballapura.

DATED THIS THE 15th DAY OF JUNE, 2026

CRIMINAL APPEAL No.65/2025

APPELLANT	:	Sri. G. Gangadhara, S/o Late Gopalappa, Aged about 45 years, R/at, Hoonegal Village, Gundlagurki Post, Kasaba Hobli, Chikkaballapura Taluk. (By Shri. K.N.M, Advocate,)
		V/s
RESPONDENT	:	Sri. Syed Irfan Alam, S/o Syed Inathulla, Aged about 33 years, R/at, Teachers Colony, H S Garden, Ward No.22, Chikkaballapura Town. (By Shri. P.M, Advocate)

JUDGMENT

The accused in C.C.No. 404/2022 being aggrieved by the conviction judgment and order of sentence dated 19.08.2025 passed by the I Addl. Senior Civil Judge and

J.M.F.C, Chikkaballapura has preferred this appeal U/Sec.415 (3) of Bharathiya Nagarika Suraksha Sanhitha 2023.

2. The appellant was the accused and the respondent was the complainant before the trial court, hereinafter the ranks of parties are referred as they were stood in the trial court.

3. Brief facts of the case of the complainant is that, the complainant and accused are known to each other, based on that, the accused approached the complainant on 01.08.2018 and requested to lend him an amount of Rs. 3,50,000/- for his family and legal necessities, accordingly on 05.08.2018 the complainant has lend a hand loan of Rs. 3,50,000/- to the accused. In consideration thereof towards discharge of the said loan amount the accused had issued cheque bearing No. 011391 dated 05.10.2018 drawn on Faderal Bank Chikkaballapura in the name of complainant assuring and promising that the said cheque would be honored on its presentation. The said cheque was presented by the complainant for encashment on 05.10.2018 through Allahabad Bank Chikkaballapura branch and the said cheque was dishonored with an endorsement of “Insufficient funds” vide memo dated 17.10.2018, immediately it was intimated to the accused and requested to pay the amount covered under the cheque but the accused did not paid the said amount on one pretext or other, finally on 31.10.2018 a legal notice was issued to the accused by RPID and speed post requesting him to pay the amount covered under the dishonored cheque and same was served on the accused on

01.11.2018, inspite of it the accused has not made the payment hence the complainant was forced to file a complaint against the accused before the trial court.

4. The complainant has filed complaint along with affidavit to take cognizance of the offence u/s.138 of NI Act. After filing affidavit by complainant sworn statement was recorded U/Sec.200 of Cr.P.C. Thereafter trial court took cognizance of the offence punishable U/Sec.138 of NI Act only and criminal case was registered and the summons got issued to the accused U/Sec.202 of Cr.P.C. and the accused appeared before the court through his counsel. complaint copies furnished to the accused. Substance of the accusation was read over and explained to the accused but he pleaded not guilty and claims to be tried. It appears that, it is undesirable to try it summarily; hence, court proceeded by way of summons trial.

5. The complainant got examined himself as P.W-1 and got marked the documents as Ex.P.1 to Ex.P.5 and closed his side.

6. After completion of the complainant's side evidence, the statement of the accused U/Sec.313 of Cr.P.C is recorded. Accused denied all incriminating circumstances appearing against him and accused has chosen to lead his evidence and examined himself as DW.1 and has produced one document marked as Ex.D.1. accused also examined Sri. Sujay Kumar A., Manager of Indian Bank Chikkaballapura as DW.2 and one document got marked through the said witness as Ex.D.2 and closed its side.

7. After going through the oral and documents and after hearing the arguments, the learned trial Judge, passed the impugned judgment as follows:

8. Thereafter the trail Court heard the arguments by both sides and passed the following :

ORDER

ದಂ.ಪ್ರ.ಸಂ ಕಲಂ 255(2)ರ ಅಡಿಯಲ್ಲಿ ನೀಡಲಾದ ಅಧಿಕಾರವನ್ನು ಉಪಯೋಗಿಸಿ ವರ್ಗಾವಣೆಯ ಲಿಖಿತಗಳ ಅಧಿನಿಯಮ ಕಲಂ 138 ರಡಿಯಲ್ಲಿನ ಆರೋಪಕ್ಕಾಗಿ ಆರೋಪಿಯನ್ನು ಅಪರಾಧಿಯೆಂದು ತೀರ್ಮಾನಿಸಲಾಗಿದೆ.

ಸದರಿ ಅಪರಾಧಕ್ಕೆ ಶಿಕ್ಷೆಯಾಗಿ ಆರೋಪಿಯು 3,60,000/-ರೂಗಳನ್ನು ದಂಡವಾಗಿ ಪಾವತಿಸತಕ್ಕದ್ದು.

ದಂಡದ ಹಣದಲ್ಲಿ 2000-00 ರೂಗಳನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಜಮಾ ಮಾಡತಕ್ಕದ್ದು.

ದಂಡ ಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆ ಕಲಂ 357(1)ರಡಿಯಲ್ಲಿ ನೀಡಲಾದ ದತ್ತ ಅಧಿಕಾರವನ್ನು ಉಪಯೋಗಿಸಿ ದಂಡದ ಬಾಕಿ ಹಣವಾದ 3,58,000/-ರೂ ಹಣವನ್ನು ಪಿರ್ಯಾದುದಾರರಿಗೆ ಪರಿಹಾರವಾಗಿ ನೀಡಲು ಆದೇಶಿಸಿದೆ, ತಪ್ಪಿದ್ದಲ್ಲಿ 6 ತಿಂಗಳ ಸಾದಾ ಕಾರಾಗೃಹ ಸಜೆಯನ್ನು ಅನುಭವಿಸತಕ್ಕದ್ದು.

ಆರೋಪಿಯ ವೈಯಕ್ತಿಕ ಹಾಗೂ ಅವರ ಪರ ಜಾಮೀನುದಾರರು ಬರೆದುಕೊಟ್ಟಿರುವ ಜಾಮೀನು ಮುಚ್ಚಳಿಕೆ ಪತ್ರಗಳು ಹೊಸದಾಗಿ ತಿದ್ದುಪಡಿಯಾದ ಕಾಯ್ದೆ ಪ್ರಕಾರ ಒಂದು ತಿಂಗಳವರೆಗೂ ಚಾಲ್ತಿಯಲ್ಲಿದ್ದು, ಆ ನಂತರ ರದ್ದುಗೊಳಿಸಲಾಗುವುದು.

ಈ ತೀರ್ಪಿನ ಪ್ರತಿಯನ್ನು ಆರೋಪಿಗೆ ಉಚಿತವಾಗಿ ನೀಡತಕ್ಕದ್ದು.

9. The accused being aggrieved from the said impugned judgment has challenged the same on the following :

GROUNDS

(1) The impugned Judgment and order is erroneous and against the Principles of law and natural justice, there is no evidence on record and there is no believable case of the complainant since, his pleadings not consonance with the documents and the evidence available on record not enable to order for conviction and the essential ingredients of the offence are not established.

2) the Impugned Judgment and order is passed without affording an opportunity sufficiently to the appellant to defend the alleged offence complained. The trial court has fails to give opportunity to the accused to lead his complete evidence and present his defence as such the impugned Judgment and order is illegal.

3) the trial court has fails to appreciate the oral and documentary evidence in its proper perspective. Though the appellant has denied the receipt of alleged amount and entire transaction and existence of legally enforceable debt, capacity of the complainant and issuance of cheque in question and also elicited the true facts from the mouth of complainant and the accused himself examined as DW.1 and produced Ex.D.1 and D.2 to show that complainant's

case is passed but the trial court has passed impugned order which suffers from serious lacuna.

4) The trial court has not at all looked into the documents and pleadings stated, admissions made in the cross examination by the complainant before passing the order. The complainant has failed to prove the alleged transaction and existence of legally enforceable debt and the admissions of the complainant and documents produced by him reveals the same but the trial court has fails to appreciate the very admissions of the complainant and the defence version of the accused same is resulted in conviction which is against the law, illegal and liable to be set aside by this court.

5) Hence, appellant prayed to set aside the impugned judgment and order of conviction dated 19.08.2025 passed by the learned I Addl. Senior Civil Judge and JMFC Chikkaballapura in C.C. No.404/2022 by allowing this appeal.

10. After registering the appeal, notice has been issued to the respondent who in turn appeared through his counsel.

11. Trial court records has been called and secured and perused.

12. Thereafter heard the arguments by learned counsel for the appellant/accused and respondent/complainant. The learned counsel for the

appellant has relied upon the decisions which are already relied upon by him before the trial court.

13. On the basis of material placed and having heard the arguments by both the learned counsel for the appellant and respondent, the following points that are arise for consideration;

1) Whether the complainant proves that accused has issued cheque bearing No.011319 for sum of Rs.3,50,000/- dated 05.10.2018, drawn on Federal Bank, Chikkaballapura Branch to discharge legally recoverable debt in favour of the complainant and when the complainant has presented the said cheque for encashment through his banker but the said cheque has been dishonored for the reason "*Funds Insufficient*" on 17.10.2018 and thereafter the complainant issued legal notice to the accused on 31.10.2018 and in spite of service of the said notice the accused has not paid the amount covered under the dishonored cheque within prescribed period, thereby the accused has committed an offence u/Sec.138 of Negotiable Instruments Act ?

2) Whether the appellant has made out the grounds that the trial court has erred by convicting him for the offence punishable u/

Sec.138 of N.I.Act, thus, it warrants for an interference at the hands of this court ?

3) What order ?

14. The above points are answered as under ;

Point No.1: In the Affirmative.

Point No.2: In the Negative

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

REASONS

15. **Point No.1** : Before appreciation of the facts and oral and documentary evidence produced by both parties in the present case, it is relevant to mention that under criminal jurisprudence prosecution is required to establish guilt of the accused beyond all reasonable doubts however, a proceedings U/s.138 of N.I. Act is quasi criminal in nature. In these proceedings proof beyond all reasonable doubt is subject to presumptions as envisaged U/s.118 and 139 of N.I.Act. An essential ingredient of Sec. 138 of N.I. Act is that, whether a person issues cheque to be encashed and the cheque so issued is towards payment of debt or liability and if it is returned as unpaid for want of funds or other reasons, then the person issuing such cheque shall be deemed to have been committed an offence. The offence U/s.138 of N.I. Act pre-supposes conditions for prosecution of an offence which are as under:

1. **Existence of legally enforceable debt or liability and issuance of cheque in discharge of said debt or liability;**

2. **Cheque shall be presented for payment within specified time i.e., from the date of issue before expiry of its validity.**

3. **The holder shall issue a notice demanding payment in writing to the drawer within one month from the date of receipt of information of the bounced cheque and**

4. **The drawer inspite of demand notice fails to make payment within 15 days from the date of receipt of such notice.**

16. If the above said conditions are satisfied by holder in due course gets cause action to launch prosecution against the drawer in respect of bounced cheque and as per Sec.142(b) of the N.I. Act, the complaint has to be filed within one month from the date on which cause of action arise to file complaint.

17. It is also one of the essential ingredient of Sec. 138 of N.I. Act that, a cheque in question must have been issued towards legally recoverable debt or liability. Sec. 118 and 139 of N.I.Act envisages certain presumptions i.e., U/s.118 a presumption shall be raised regarding 'consideration' 'date' 'transfer' 'endorsement' and holder in course of Negotiable Instrument. Even Sec.139 of the Act are rebuttable presumptions shall be raised that, the cheque in question was issued regarding discharge of a legally recoverable or enforceable debt and these presumptions are mandatory presumptions that are required to be raised in cases of negotiable instrument, but the said presumptions are not conclusive and or rebuttable one, this proportion of law has been laid down by the Hon'ble Apex Court of India and Hon'ble High Court of Karnataka in catena of decisions.

18. In order to substantiate the allegations made by the complainant, himself examined as P.W.1 before the trail court and reiterated the averments of the complaint in his examination in chief affidavit. In support of his oral evidence has produced Ex.P.1 to P.5. Ex.P.1 is the Original cheque bearing No. 011391 for sum of Rs.3,50,000/- dated 05.10.2018 drawn on Federal Bank, Chikkaballapura Branch. Ex.P.1(a) is the signature of the accused on the cheque. Ex.P.2 is the returned memo issued by the accused banker intimating that, the cheque in question was dishonored for the reason "funds insufficient" dated 17.10.2018. Ex.P.3 is the copy of the legal notice issued by the complainant through his advocate on 31.10.2018 Ex.P.4 is the postal receipt, Ex.P.5 is the Postal acknowledgment.

19. On careful perusal of defence of the accused during the course of cross of PW.1 it appears that, the accused has not disputed that, the cheque in question i.e., Ex.P.1 belongs to his account and his signature found at Ex.P.1(a) is that of his signature. The accused has also not disputed that the said cheque in question was presented by the complainant within its validity period and it was dishonored for the reason of "Funds Insufficient" as per Ex.P.2. It is also not in dispute that the complainant got issued legal notice as per Ex.P.3 on 31.10.2018 through RPAD to the accused within 30 days from the date of dishonor of the cheque in question as per Ex.P.4. It is also not in dispute that the said notice was served upon him as per Ex.P.5 i.e., postal acknowledgment.

20. Therefore, the complainant has complied all the mandatory ingredients of Sec.138 (a) to (c) of N.I Act, hence the initial presumptions u/Sec.118(a) and 139 of N.I. Act are available in favour of the complainant. Consequently, it is for the accused to rebut the presumptions available to the complainant by showing that the cheque in question was not issued either to the complainant or towards discharge of any legally recoverable debt by producing cogent and convincing evidence but not mere suggestions or even by plausible explanation.

21. In this regard there are catena of decisions rendered by the Hon'ble Apex Court and High Court of Karnataka interpreting the scope and ambit of Section. 118 and 139 of the Negotiable Instrument Act, at this juncture it is relevant to here to refer one of the important of decision of **Hon'ble Apex Court of India i.e. Hon'ble Three Judges Bench Decision reported in (2010) 11 SCC 441 in the case of Rangappa Vs. Sri. Mohan.,** wherein held that,

> "A. Negotiable Instruments Act, 1881 – S.139 – Presumption under – scope of – Held, presumption mandated by S.139 includes a presumption that there exists a legally enforceable debt or liability – However such presumption is rebuttable in nature – Criminal Trial – Proof – Presumptions – Generally. Further held that "Signature on the cheque was his, statutory presumption under S.139 comes into play and the same was not rebutted even with regard to the materials submitted by complainant Appellant not able to prove "lost cheque" theory – Apart from not raising a probable defence appellant was also not able to contest the existence of a legally enforceable debt or liability – hence, his conviction by High Court, held, proper".

22. In another decision of Hon'ble High Court of Karnataka reported in **ILR 2023 KAR 1037 (Smt. Jayamma Vs. Smt. Jayamma @ Nagamma)**, wherein it is held that;

> "The penal provision of Section 138 of N.I. Act is intended to be deterrent to callous issuance of negotiable instrument such as cheques without serious intention to honour the promise implicit in the issuance of the same".

It is further held that;

> "Initial burden to prove the offence is on the complainant – once the burden is discharged by the complainant, then the onus lies on the accused to disprove the case of the complainant- in the absence of reubttal evidence produced by the accused, it has to be presumed that the holder of the cheque received the cheque of nature referred to in Section 138 of N.I. Act in discharge of whole or any part of any debt or other liability- Mere denial or rebuttal by the accused is not enough. The accused has to prove by cogent evidence that, there was no debt or liability".

It is further held that,

> "The provisions of Section 139 of N.I. Act mandates that unless the contrary is proved, it is to be presumed that, the holder of cheque received the cheque of the nature referred in Section 138 of N.I. Act in discharge of any whole or any part of debt or other liability".

It is further held that,

> "It is settled that, even blank cheque leaf validly signed and hand over by the accused, which is towards some payment would attracts presumption under Section 139 of the N.I. Act in the absence of any cogent evidence to show that the cheque was not issued in discharge of debt"

23. The above refereed decisions makes it clear that, presumption U/s.118 and 139 of N.I Act indeed extent to the existence of legal recoverable debt and though the said presumption is rebuttable one, but the accused has to rebut the presumption by producing cogent and convincing and probable defence.

24. As can be seen from the defence of the accused during the course of cross-examination of PW.1 and in his evidence, the cheque in question and four cheques of his wife were secured by one Manjunatha towards security in respect of chit transaction and even after paying the amount they have not taken back the said cheques from the Manjunath and there were disputes arose between him and the said Manjunatha in respect of chit transaction, the said Manjunatha by misusing his cheque has filed the false complaint against him through the present complainant. Hence, the defence of the accused discloses that he admitted the issuance of cheque in question voluntarily and it is for the accused to prove that, the cheque in question was misused by the complainant in collusion with the Manjunatha to rebut the presumption available in favour of the complainant under Section 118 and 139 of the N.I. Act.

25. As can be seen from the records that admittedly the accused after receipt of the legal notice issued by the complainant has not given any reply either by denying the issuance of the cheque in question or transaction in question or his acquaintance with the complainant and even he has not disclosed his alleged defence that the cheque in

question was issued to one Manjunatha towards security in respect of chit transaction, therefore the defence taken by the accused appears to be after thought one if really the cheque in question was not issued by the accused as alleged by him, what prevented him to disclose his defence by giving reply to the notice issued by the complainant, in such circumstances an adverse inference can be drawn against the accused that, only to overcome his responsibility to pay cheque amount the accused has set up the defence which was not disclosed at the earliest stage of the proceedings. In this regard, it is beneficial to place reliance the decision of Hon'ble High Court of Karnataka reported in **2018(4) KCCR 3300 (Nithynand Mahadev Bhat V/s. Manoj Vinayak Pandit)** wherein it is held that, **"The said plea appears to have been taken up only during the trial without any supporting evidence. At the earliest instance, when the complainant caused a notice to the accused, informing him that, cheque has been dishonor, the accused did not chose to reply to the said notice. If in fact, the cheque in question was issued by him in respect of the earlier transaction and the same was unlawfully retained by the complainant and has been misused to lay a false claim against accused, nothing prevented the accused to at the earliest instance to bring to the notice of the complainant these facts by issuing reply thereto. That, having not been done, even on this score, I do not fine any justifiable reason to accept the contention urged on behalf of the petition/ accused in this regard".** Hence, by applying the said principles of law to the present facts of the case, in this case also the appellant/ accused has failed to raise the defence at the earliest possible opportunity, but he had taken the said defence during the trail may lead to draw an adverse inference against him that, he is introducing the said defence only after thought and to evade liability to pay the cheque amount to the complainant.

26. In addition to the above during the course of trial the accused has set up defence that the cheque in question was issued in favour of the complainant as he do not know the complainant and never had alleged transaction in question with the complainant, however the cheque in question and four cheques of his wife were handed over to one Manjunatha in respect of chit transaction, inspite of payment made to him but the said Manjunatha in collusion with the complainant foisted the present false complaint against him. Hence, it is for the accused to prove that, he had given the cheque in question to one Manjunatha as security in respect of chit transaction but the said Manjunatha misused the cheque in question through the complainant, in this regard except the oral suggestions made to the complainant in the cross examination, and in his defence evidence nothing has been placed before the court to show that the cheque in question was issued as a security to one Manjunatha in respect of chit transaction and he has paid the chit amount but the said Manjunatha has misused the cheque in question through the complainant. It is true that, accused has produced Ex.D.1 and D.2 statement of the account pertaining to the complainant's bank account, but the said documents does not supports the defence of the accused. Therefore, absolutely there are no documents produced by the accused to prove his defence the cheque in question was issued to

one Manjunatha as security in respect of alleged chit transaction subsequently it was misused by the said Manjunatha in collusion with the complainant.

27. The learned counsel for the accused has also specifically argued that, the legal notice issued by the complainant itself is not admissible and there are no specific averments in the plaint relating to acquaintance of the accused with the complainant and on which date and for what purpose the complainant has lent the loan amount to the accused, therefore the legal notice i.e., Ex.P.3 and plaint averments does not discloses the nature of transaction on this count alone the complaint filed by the complainant is liable to dismissed, but the trail court has not considered these aspects and passed impugned judgment which resulting into miscarriage of justice and liable to be set aside.

28. The above argument canvassed by the learned counsel for the appellant cannot be acceptable one, since the complainant has mentioned all the above facts in the complaint and in his evidence. On careful perusal of the Ex.P.3 legal notice issued by the complainant, and complaint averments it appears that, the complainant has clearly stated about his acquaintance with the accused and towards the discharge of legal debt the accused issued the cheque bearing No.011391 dated 05.10.2018 for sum of Rs.3,50,000/- in his favour and he has presented the cheque for encashment through his banker and same was returned unpaid for the reason “Insufficient Funds” and further claimed that, accused is liable to pay the cheque

amount within 15 days from the date of receipt of notice failing which necessary criminal action U/s.138 of NI Act will be taken against the accused. Hence, the contents of the notice and complaint averments are read in its entirety it goes to show that, the complainant has clearly mentioned about the issuance in question by the accused for recovery of legal debt and its dishonor and also has given 15 days time from the date of notice to pay the amount covered under the dishonoured cheque, as required U/s.138(a) to (c) of NI Act. Therefore, the complainant has complied the mandatory requirements as required Section.138 of NI Act prior to filing of the complaint.

29. In addition to that, it is relevant to mention that, the **Hon'ble High Court of Keraka in a decision reported in 2019(2) KLT 895 in the case of B Surendradas V/s. State of Kerala**, wherein it is held that **"there is no statutory mandate that, notice should narrate nature of debt or liability and omission or error in the notice to mention nature of debt or liability does not render it invalid and no requirement that, complainant must specifically allege in complaint that, there was a substituting liability and there is no need to make such averment in the complaint"**.

30. In another decision decided in **Crl.Appeal No.1233-1235/2022 in the case of P.Rasiya Vs. Abdul Nazir & Anr., wherein the Hon'ble Apex Court held that, The High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that in the complaint, the complainant has not specifically stated the nature of transaction and source of**

fund. However, the High Court has failed to note the presumption u/Sec.139 of N.I.Act. As per Sec.139 of N.I.Act it shall be presumed unless the contrary is proved, that the holder of cheque received the cheque of nature referred to in Sec.138 for discharge in whole or in part, of any debt or other liability. Hence by applying the principles of law laid down by the Hon'ble High Court to the present facts of the case in this case also the complainant has not referred the nature of transaction or debt or liability in the notice, but that itself does not invalidate the notice in question at Ex.P.3, and transaction in such circumstances the arguments canvassed by the learned counsel for the appellant are not sustainable in law and cannot be accepted.

31. The learned counsel for the appellant during the course of his arguments, has much argued that, the complainant has not proved his acquaintance with the accused and has not produced any documents to show that he had lend a hand loan amount of Rs. 3,50,000/- to the accused and has not produced document regarding source of income and even he has not pleaded in his complaint for what purpose or necessity the loan amount was lend to the accused, it is also argued that there were no business relationship between the complainant and accused and though it is alleged that huge amount of Rs. 3,50,000/- paid to the accused but no interest was claimed by the complainant that itself goes to show that there was no money transaction between the complainant and accused. It is also argued that the complainant in his complaint claims that he has lend the loan amount to the accused for the purpose of his family and legal necessities but during the

course of his cross-examination he has admitted that the accused requested for advancing the loan amount as his father was suffering from illness, hence it goes to show that the averments of the complaint and admissions of the complainant regarding alleged necessity of advancing the loan amount appears to be contradictory to each other which suffice to say that there was no transaction between the complainant and accused as alleged by the complainant in his complaint. It is also argued that the complainant during the course of his cross-examination has clearly admitted that he has not produced any documents regarding the source of income though he states that he is getting income by doing a aluminium business and earlier he was having a business of mobile selling and also admits that he used to pay the income tax during the year 2021 but has not produced any such income tax records. It is also argued that the complainant has admitted that the father of the accused died about 15 years back, hence it goes to show that the alleged loan amount lend by the complainant as requested by the accused for the purpose of meeting the expenses of his father's illness is false and created one. It is also argued that the complainant though he admits that he had bank statement since the year 2018 but he did not produced the said bank account statements which itself sufficient to hold that the complainant is not having sufficient source of income to lend the alleged loan amount in favour of the accused. The complainant has also admitted that he has not produced documents to show that on 05.08.2018 he have source of income to the alleged loan amount of Rs. 3,50,000/- to the accused, hence the trial court has not at all appreciated the vital part of admission given by the complainant in his cross-examination, on the contrary by ignoring the said admissions only by citing the provisions of law and drawn wrong presumption in favour of the complainant, inspite of the accused rebutted the said presumptions as required under the law.

32. The above line of argument canvassed by the learned counsel for the appellant is not acceptable for the simple reason that during the course of cross-examination of PW.1, the complainant has categorically stated that he is doing business of aluminium shop and earlier to that he was selling the mobile phones and also receiving the rent amount from the shops which were given on rental basis and also stated that, the amount which has lend by him to the accused was kept in his house. PW.1 further stated that he knows the accused since accused used to visit his shop regularly, except the accused he had not given any loan to any other persons. PW.1 also stated that the accused availed the loan from him by expressing that he required money as his father is suffering from illness. It is true that PW.1 admitted that he do not know the exact health condition of the father of the accused but he states that he had given the money to the accused on 05.08.2018. It is also true that PW.1 also admits that he has not produced the documents before the court to show his source of income as on the date of lending the loan amount and he may produce the bank account statement of him pertaining to the year 2018. PW.1 further stated that he had given the said loan amount in his shop to the accused by that time no one was present. PW.1 admits that he has not enquired about the

documents and hypothecation of the TATA AC vehicle maintained by the accused. He also admits that he has not stated in his complaint about the source of income and also source of income of the accused.

33. On careful considering the entire cross-examination of the PW.1 nothing has been elicited to discard the evidence of the PW.1 regarding lending of the loan amount by the complainant to the accused. It is true that the complainant has admitted that he has not produced the document to show that as on the lending of the loan amount he had the source of income to lend the loan amount but he has clearly stated about the source of income that he is doing business by keeping the aluminium shop and earlier to it mobile shop by repairing and selling the mobile phones and also getting rental income from the shops. Now the question arise before the court as to whether non production of the documents by the complainant regarding source of income is only the ground for accepting the defence of the accused that the complainant has not lend the loan amount or not is to be taken into consideration. In this regard, it is also relevant here to refer the decisions of **Hon'ble Apex Court of India reported in Criminal Appeal No.08 of 2018 Dt. 15.3.2018 in the case of ROHIT BHAT JIVANLAL PATEL VS. STATE OF GUJARAT AND ANR.,** wherein it is held that,

> "Negotiable Instruments Act - when presumption is drawn, the facts relating to the want of documentary evidence in the form receipts or accounts or want of evidence in regard to source of funds were of not relevant consideration while examining if the accused has been able to rebut the presumption or not".

34. In another decision of the **Hon'ble Apex Court of In Crl.Appeal Nos. 132/2020 in the case of D.K.Chandel Vs. M/s.Wockhardt (L)** wherein also held that

> "Production of the accounts books/cash book may be relevant in the Civil Court may not be so in the criminal case filed u/Sec.138 of N.I.Act while resorting the trial court judgment, the High Court observed that, "the reason given by the lower appellate court that he did not bring the cash book or order book etc., could well be understood, if civil suit is filed" but may not be so, in the criminal case filed u/Sec.138 of N.I.Act. This is because the presumption raised in favour of the holder of the cheque."

35. In another decision of Hon'ble Apex court of India decided in **Crl.Appeal No.1545 of 2019 dt.17/10/2019 by the Hon'ble Apex Court of India in the case of Uttam Ram Vs. Devinder Singh Hudan and Anr.** Wherein the Hon'ble Apex Court held that,

> "The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on the account of discrepancy in the cartons, packing materials or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore it is presumed that, the cheque in question were drawn for consideration and the holder of the cheques received the same in existing debt".

It is also held that,

> "The Trial court and the High Court proceeded as if, the appellant is to prove a debt

> before civil Court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonor of cheque carries statutory presumption of consideration. The holder of cheque in due course is required to prove that, the cheque was issued by the Accused and that when the same presented , it was not honored Since there is a statutory presumption of consideration, the burden is on the Accused to rebut the presumption that, the cheque was issued not for any debt or other liability ".

36. The principle laid down in the above above decision makes it clear that production of supporting documents in respect of loan may not be relevant in criminal case filed under Section 138 of N.I. Act.

37. It is also relevant here to mention that when presumption under Section 139 of Negotiable Instruments Act is raised, non-production of documentary evidence depicting availing of loan by the accused assumes no significance. This factor has been held by the Hon'ble Apex Court of India in the decision reported in **(2019)18 SCC 106 (ROHIT BHAI JIVANLAL PATEL VS STATE OF GUJARAT AND ANOTHER)** wherein it has been held that,

> "The observations of the trial Court there was no documentary evidence to show the source of fund with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complaint and his witness, or that the witness of the complaint was more in know of facts etc., would have been relevant if the matter was to be examined with reference to the onus on the complainant to prove his case beyond

> reasonable doubt. These considerations and observations do not stand inconfirmity with the presumption existing in favour of the complainant by virtue of Section 118 and 139 of the N.I. Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of complainant. When such a presumption is drawn, the factors relating to want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not".

38. Hence, by applying principles of law laid down by the Hon'ble Apex Court in the above referred decisions, the arguments canvassed by the learned counsel for the appellant regarding non-production of documents by the complainant regarding source of income and advancing of the loan amount cannot be acceptable one as production of supporting documents in respect of loan may not be relevant as held by the Hon'ble Apex Court in the above decisions.

39. In addition to the above, heavy burden cannot be placed on complainant to prove the existence of debt. This principle of law is supported by the decision of Hon'ble Supreme Court of India decided in **SLP (CRL)No.3858/2019 dated 12.07.2019 (PAVAN DILIP RAO DIKE VS. VISHWAL NARENDRA BHAI PARMAR)** wherein it is held that,

> "We do not agree with the submission of the learned counsel. We are of the opinion that High Court has rightly reversed the order of acquittal passed by the trial Court wherein the presumption under Section 139 has not been taken into account. The trial Court committed an error in placing heavy burden on the complainant to prove the debt"

40. In another decision ***Hon'ble Apex Court of India reported in ICL 2021 (2) SC 529 in the case of M/s.Kalamani Tex Vs. P.Balasubramanian dated 10.02.2021 wherein it is held that,***

> "Once the accused has admitted his signature on the cheque and deed, the trial court ought to have presumed that the cheque was issued as consideration for legally enforceable debt."

41. In view of the principles of law laid down in the above decisions, the onus shifts on the accused to prove that, the complainant has misused cheque in question which was collected by one Manjunath in respect of chit transaction as alleged by the accused in his defence.

42. In order to substantiate the above defence, though he examined as DW.1 except his oral evidence, has not produced single document to show that, there was a chit transaction between himself and one Manjunatha and in respect of the said chit transaction the said Manjunatha had collected his cheque and four checques of his wife as security for the said chit transaction and subsequently the accused has paid the entire amount and closed his chit transaction but the said Manjunatha has misused the cheque in question in collusion with the complainant by filing the present complaint against him, therefore, except the oral suggestion to the P.W.1 nothing has been produced by the accused to prove his defence . In addition to that, if really the accused has given cheque in question as security

towards chit transaction to the said Manjunatha, if that is so, the accused definitely he would have taken or initiate action against the said Manjunatha or the present complainant either by lodging the complaint before the police or courts of law or at least by issuing the legal notice to the complainant for return of his alleged cheque which was handed over to the Manjunatha as a security during the alleged chit transaction, but no such effort has been made by the accused even after his appearance in this case the accused has not taken any action against the said Manjunatha or complainant for alleged misuse of cheque which was handed over to the Manjunatha by the accused as a security towards the earlier chit transaction. Therefore, the conduct of the accused in non questioning the alleged misuse of his cheque by the Complainant or Manjunatha may leads to draw an adverse inference against him that the accused in order to evade liability to pay the cheque amount has taken such a vague defence. In this regard, it is relevant here to refer the decision of **Hon'ble Apex Court of India reported in AIR 2018 SC 3601 in a case of T.P.Murugan(dead) Through Lrs. V. Bhojan Vs. Posa Nandi, rep. Thr. Lrs. P.A.holder,** wherein the Hon'ble apex Court held that,

> "Negotiable Instruments Act (26 of 1881) Ss.118, 138, 139 – Dishonour of cheque – Presumption as to enforceable debt cheques allegedly issued by accused towards repayment of debt- Defence of accused that 10 cheques issued towards repayment of loan back in 1995 – behavior of accused in allegedly issuing 10 blank cheques back in 1995 and never asking their return for 7 years, unnatural –

> Accused admitting his signature on cheques and pronote, presumption under S.139 would operate against him – Complainant proving existence of legally enforceable debt and issuance of cheques towards discharge of such debt Conviction, Proper."

43. In another decision of Hon'ble Supreme Court of India reported in **(2023) 10 SCC 148 (RAJESH JAIN VS AJAYSINGH)** wherein it is held as under;

> "We find it highly unnatural to presume that accused would leave his signed cheque leaves and passbook in his sister-in-law's house. Even if he did, there is no reason(s) or motive attributed on the part of his sister-in-law for her to collude along with the complainant. The accused has also not explained as to why he has not set up his defence at the earliest point that is, at the state of receiving the demand notice, even though he admits having received the demand notice in his 313 statement, at he makes suggestion to the complainant in his cross examination that, no legal notice had been issued. The theory of 'blank cheque' being misused has been suggested, only to be denied by both, the complainant and Geeta Sonar- C.W.3. No action has been taken by way of registering the police complaint in order to prosecute the alleged illegal conduct of his blank cheque having been misused by C.W.3".

44. Hence by applying the above principles of law to the present facts of the case, in the present case the Accused has not produced any documents to prove his defence that, he has handed over cheque in question to the Manjunatha as a security in respect of chit transaction and in turn Manjunatha in collusion with complainant has misused the cheque in question by filing

this complaint against him, under such circumstances, it can be held that, the accused has not made any efforts to get return of the cheque in question alleged to have been given to the Manjunatha as a security, the said unnatural conduct of the accused in non taking of action, an adverse inference can be drawn against him that, the cheque in question issued by the accused towards discharge of the liability and presumption U/s.139 of N.I. Act would operate against him, as he has admitted that the cheque in question belongs to his account and the signature found on the cheque is that of the accused.

45. The learned counsel for the appellant has also argued that, the trial Court has not considered the defence raised by the accused/ appellant that, the accused gave cheque to the Manjunath as a security in connection with chit transaction and the same was closed and despite of it the said Manjunatha in collusion with complainant misused the cheque. Even for a moment assuming that, the accused gave cheque to the Manjunath as a security in respect of alleged chit transaction as true, in that circumstances also until and unless the accused rebutted the presumption available under Section 118 and 139 of N.I. Act, still then it attracts the panel provision of Section 138 N.I. Act. In this context it is beneficial refer the decision of Hon'ble Supreme Court of India decided in **Crl.Appeal No.271/2020 in the case of APS Forex Services Pvt. Ltd., Vs. Shakthi International Fashion Linkers and others.,** wherein the Hon'ble Apex Court held that

> "The defence of the Accused that, cheques were given by way of security is not believable

in the absence of further evidence to rebut the presumption. It is also held that, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the Accused to rebut such presumption by leading evidence".

46. In another decision of Hon'ble Apex court held in **(2016) 10 SCC 458 in the case of Sampelly Sathyanarayana Rao Vs. Indian Renewable Energy Development Ltd, wherein the Hon'ble Apex Court held that**

"Even cheque issued as security for payment of loan installments also covered under the purview of sec. 138 of Negotiable Instruments Act"

47. In another decision of **Hon'ble High Court of Karnataka reported in 2015 (1) KCCR 235 in the case of Lale Patel Vs. Sharanabasappa., wherein the Hon'ble High Court held that**

"NEGOTIABLE ISNTRUCEMTNS ACT, 1881- section 138 – Dishonour of cheque for insufficiency of funds - Plea of accused that he had given a blank cheque signed as security for a transaction and complainant filled up the contents and denied existence of any debt or loan – Conviction by Trial court - Affirmed by Appellate Court – Revision against.

48. In another decision reported in **2015 (4) KCCR 2881 (SC) in the case of T. Vasanthakumar Vs. Vijayakumari wherein the Hon'ble Apex court held that,**

" NEGOTIABLE INSTRUMENTS Act, 1881- Section s138 and 139 – acquittal – If

> justified Accused not disputing issuance of cheque and his signature on it- Plea that it was issued long back as security and that loan amount was repaid- Not supported by any evidence – Fact that date was printed, would not lend any evidence to case of accused- Acquittal not proper.

49. Hence, in the light of principles emerging from the above said decisions, contentions regarding alleged misuse of cheque which was issued for security in connection with the chit business transaction by the accused and complainant has misused the said cheque by filing the false complaint cannot be acceptable one and not sustainable in law.

50. It is another contention of the learned counsel for the appellant/accused that, the complainant has not produced income tax returns documents to show that, the complainant has advanced the loan amount in question to the accused and the accused was due of the claim made by the complainant.

51. The above defence of the appellant is not sustainable in law and cannot be acceptable one, even for the sake of discussion if it is assumed that, the complainant has not declared the transaction in question in his income tax returns, that itself does not invalidates the transaction in question. In this regard it is relevant here to refer the decision of our Hon'ble High court of Karnataka reported in **2019(1) Kar. L.R.185 in the case of Sri. Yogesh Poojary Vs.Sri.K.Shankara Bhat**, in the said case the Hon'ble High Court of Karnataka held that,

> "Negotiable Instruments Act, 1881 - Sections 138 and 139 Endorsement 'payment stopped by drawer'- The trial court in the instant case, merely considered a suggestion made from the Accused side in the cross-examination of PW-1 that the complainant was an income tax assessee and that he has not declared the alleged loan transaction in his returns and disbelieved the case of the complainant that too, ignoring that legal presumption under section 139 of the N.I. Act, was operating in favor of the complainant - For these reasons, it has to be held that the complainant has beyond reasonable doubt proved the guilt of the Accused punishable under Section 138 of the N.I. Act. As such, the impugned judgment of acquittal passed by the trial court deserves to be set aside and respondent/Accused is liable to be convicted for the offense punishable under Section 138 of the N.I. Act.

52. In another decision of **Hon'ble Madhya Pradesh High Court decided in C.R.R No.5263/2018 dated: 7.3.2019** in the case of **Smt.Ragini Gupta Vs. Piyush Dutt Sharma Gwalior.,** wherein the Hon'ble High Court held that,

> "Mere non filing of income tax return would not automatically dislodge the source of income of the complainant and non payment of income tax is a matter between the revenue and assessee and if the assessee has not disclosed his income in the income tax return, then the income tax department is well within its right to reopen the assessment of income of the assessee and to take action as per provisions of Income Tax Act, however non filing of income tax return by itself would not mean that, the complainant had no source of income and thus no adverse inference can be drawn in this regard only because of absence of income tax return".

53. Hence in view of the principles of law laid down by the Hon'ble High court of Karnataka and Hon'ble High Court of Madhya Pradesh in the above referred decisions it is for the accused to rebut the presumption existing in favour of the complainant U/s.139 of Negotiable Instruments Act and in view of non production of income tax returns document could not by itself draw an adverse inference and to hold that, there was no existence of legally enforceable debt or the Presumption as envisaged U/s.139 of N.I.Act is successfully rebutted by the accused. Therefore, the arguments canvassed by the learned counsel for the appellant in respect of non-disclosure of the transaction in question in income tax returns invalidates the transaction in question cannot be an acceptable one.

54. The learned counsel for the appellant has also argued that, the complainant PW.1 during the course of cross-examination has categorically admitted that the ink used for writing amount and date ink used for putting signature are altogether different only and complainant ignored the suggestion that the accused do not know to write English and he admits that accused had given cheque which was already filled by him, hence it goes to show that the particulars mentioned in the cheque in question were not returned by the accused i.e., the particulars of the cheque are not in the hand writings of the accused, therefore the complainant has filled up the particulars in the cheque and filed false complaint and despite of the admissions given by the complainant the trial court has fails to consider the said admissions and passed the impugned judgment

which is against the Principles of law and natural justice and same is liable to be se aside by this court.

55. So for concerned to the above line of arguments canvassed by the learned counsel for the appellant/ accused, it is important here to mention that the accused has not disputed his signature on the cheque in question and also cheque belongs to his account. But only his defence is that, except his signature on Ex.P.1 cheque remaining particulars mentioned in the cheque were got filled by complainant by misusing the cheque given as a security. Even for sake of discussions, if it is assumed that, the said facts are true, still then it attracts the penal provision of Section.138 of N.I. Act as admittedly the accused had voluntarily handed over the cheque in question. In that circumstances Sec.20 of N.I. Act comes into play i.e. as per Sec.20 of N.I.Act if the blank or incomplete Negotiable Instrument is given to the holder in due course, it is to be presumed that, he had given authority to the holder in due course to fill up the remaining portion. In this regard, it is relevant here to refer the decision of **Hon'ble High Court of Karnataka reported in ILR 2006 KAR 2054 in the case of H.S.Srinivasa Vs. Girijamma and another** wherein the Hon'ble High Court held that,

> "A reading of sec.20 of the act which is extracted above reveals that, the words used are 'either wholly blank or having written therein an incomplete negotiable instrument'. The instrument may be wholly blank or incomplete in a particular in either case, the holder has authority to make or complete the instrument as a negotiable one. The authority implied by a signature to a blank instrument is

> so vide that, the party so signing is bound to be a holder in due course. Promissory notes are often executed in the name of the payer and left unfilled to be afterwards filled by the actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an endorser. Thus, it is seen that, person in possession of an incomplete instrument in material particulars has the authority prima facie to fill it and thus the executants becomes liable to pay the amount due'.

56. In another decision of **Hon'ble High Court of Madras reported in 2005 (1) DCR 85 in the case of P.A. Thamatharan Vs. Dalmia cements (B) Ltd.,** wherein it is held that,

> "Negotiable Instrument Act 1991 – Sec. 138 – dishonour of cheque – plea –body of cheque was not written by Accused – held it is not mandatory and no law prescribes that, the body of cheque should also be written by the signatory to the cheque, a cheque could be filled up anybody and if it is signed by the account holder of the cheque'.

57. In another decision of **Hon'ble Apex court to India reported in (2002) 7 SCC in the case of P.K. Manmadhan Karthra Vs.Sanjeeva Raj.,** wherein it is held that

> "As long as signature on the cheque is admitted, whether the ink with which the other particulars are filled up is different or that the hand writing is not that of drawer does not matter. Until rebutted, the presumption that, cheque was issued for consideration exists".

58. In another decision of **Hon'ble High Court of Karnataka at Bengaluru in a case of Crl. Appeal No.1664/2003 C/w. Crl.Appeal No.1663/2003 dated: 18.6.2008 in the case of R.Mallikarjuna Vs. H.R.Sadashivaiah wherein the Hon'ble High Court at para No.19 held that,**

> "But, the question is, whether that renders instrument unenforceable. In this regard, it must be observed that, this court similar circumstances in the case of S.R. Muralidar Vs. Ashok G.Y. reported in 3001 (4) KAR. 122 referring to the provisions of Sections 20, 138, 139, and 140 of the Act and after interpreting alteration and filling up of the cheque observed thus "The trial court has made much about the difference in ink. Admittedly, Accused cheque is issued bearing signature of the Accused. It is the contention of the defense that, blank cheques issued for the business transactions have been illegally converted as a subject matter to this case fastening false liability........ It is not objectionable or illegal in law to receive an inchoate negotiable instrument duly signed by the maker despite the material particulars are kept blank if done with an understanding and giving full authority to the payee to fill up the material contents as agreed upon. Such a course of action in law cannot vitiate the transaction nor can invalidate the negotiable instrument issued and such transaction fully begins the maker of the negotiable instrument to the extent it purports to declare........ The fact that, a document executed is inchoate with regard to some of the material particulars would not render such contract invalid nor make the instrument illegal or inadmissible. Voluntarily, if a person were to deliver an inchoate instrument authorizing the receiver to fill up the material contents as agreed upon, the cheque does not get tainted as in admissible nor it amounts to tampering with the material particulars...... In the present case

> there is no categorical defense version, it is only by conjunctures and surmises, a case is made out of the difference in ink between the signature of the cheque and the other handwritten contents.

59. Therefore, in view of the principles of law laid down by Hon'ble Apex court of India and also Hon'ble High Court of Karnataka referred above the arguments canvassed by the learned counsel for the appellant are taken into consideration in this case appellant/ accused has admitted that, signature found on the cheque is that of his signature and also admitted issuance of the cheque therefore, it is prima-facie proof of authorizing the holder in due course ie., the complainant to fill up the remaining contents of the Negotiable Instrument, therefore it cannot lie in the mouth of the Accused that, the complainant had misused or fabricated the cheque in question given by him and the defense of the accused cannot be acceptable one as the instrument i.e., cheque in question cannot be rendered unenforceable merely because the contents have been filled by different ink, as it would not render such instrument illegal or inadmissible, the complainant certainly can base action on it.

60. Even for sake of discussion if it is assumed that, Accused has given cheque in question without mentioning the date, amount i.e. blank signed cheque in such circumstances also it attracts the penal liability as contemplated U/s.138 of N.I. Act. In this regard, it is relevant here to refer decision of **Hon'ble Apex Court of India**

reported in AIR 2019 SC 2446 in the case of Birsingh Vs. Mukesh Kumar., wherein the Hon'ble apex Court held that,

> "Presumption U/s.139 is presumption of law, distinguished from presumption of facts and also held that, presumptions are rules of evidence and do not conflict with presumption of innocence which requires prosecution to prove case against the Accused and also held that obligation on the prosecution may discharged with the help of presumptions of law and presumption of fact unless the accused adduces evidence showing reasonable plausibility of non existence of presumed fact."

61. In the present case though the Accused has denied the contents of the cheque in question, but he did not proved his defence or produced any documents or satisfactory evidence to rebut the presumptions as available U/s.139 of the N.I.Act, under such circumstances in view of the above principles of law, it can be presumed even on fact also that the complainant has proved his case by discharging burden and complying the mandatory provisions. In the said decision the Hon'ble Apex court has also held that,

> "Presumption as to legally enforceable debt is rebuttable, the signed blank cheque if voluntarily presented to payee towards payment payee may fill up amount and other particulars and it is itself would not invalidate cheque and onus would still be on the accused to prove that, cheque was not issued or discharge of debt or liability by adducing evidence."

62. In another decision of Hon'ble Apex court of India decided in **Crl.Appeal No.1545 of 2019 dt.17/10/2019 by the Hon'ble Apex Court of India in the case of Uttam Ram**

Vs. Devinder Singh Hudan and Anr. Wherein the Hon'ble Apex Court held that,

> "Dishonor of cheque – Statutory presumption under – burden to prove – the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other 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 – even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption U/s. 139 of NI Act – the accused is held guilty of dishonour of cheque for an offence U/s.s.138 of NI Act.

63. In such circumstances even, if it is assumed that, the accused has not written the contents of the cheque in question in such circumstances also in view of the principles of law laid down in the above decision that itself would not invalidates the cheque in question and it can be presumed that, the said cheque has been issued towards discharge of legally recoverable debt. Therefore, the defence of the accused cannot be acceptable one.

64. It is settled law that, the accused need not conclusively establish his defence, it is sufficient for him to prove his defence with preponderance of probabilities. In the case on hand, accused has not at all able to establish the fact that, he gave the cheque to one Manjunaatha as a security in connection with Chit transaction as suggested during the course of cross examination of P.W.1 or in his evidence, even with preponderance of probabilities. Except his oral evidence and suggestions made to the P.W.1 during

the course of cross examination by the accused, no documentary evidence is produced by him to rebut the presumption available to the complainant, therefore, the said defence of the accused appears to be remained as allegation against the complainant, but not proved by producing cogent and convincing evidence. In this regard it is relevant here to refer the decision of **Hon'ble Apex court of India decided in Crl.Appeal No.271/2020 in the case of APS Forex Services Pvt. Ltd., Vs. Shakthi International Fashion Linkers and others.,** wherein the Hon'ble Apex Court held that,

> "The defence of the Accused that, cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption. It is also held that, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the Accused to rebut such presumption by leading evidence".

65. Hence, by applying the above principles of law to the present facts of the case in this case also the accused has taken defence that he had not issued the cheque in question for discharge of loan borrowed by him, but in order to prove the said defence the accused has not produced cogent and convincing evidence therefore, the arguments canvassed by the learned counsel for the appellant cannot be acceptable one.

66. On careful reading of the principles of law laid down by the Hon'ble High Court of Karnataka in the

decisions relied upon by the learned counsel for the appellant i.e., 1) 2024 (4) KCCR 3283 Gopinath T v/s Rajgopala, (2) 2024(1) KLR 168 S P Rajakumar V/s M.J.Prabhakar (3) 2011(5) KCCR 4223 M.B.Rajashekara V/w Savithramma (4) 2016(4)KCCR 2891 Prabhakara Murthy V/s S.G.Shankaraiah and (5) 2014 AIR SCW 2158, with due respect to the principles of law laid down in the decisions same are not helpful for the appellant/ accused in this case, since in the present case the appellant has unequivocally admitted the issuance of cheque and his signature on the cheque but has contended that, the said cheque was issued towards security of the chit transaction to one Manjuantha and subsequently he has paid the chit amount despite of it the said Manjunatha has not returned the cheque to him and filed this false complaint through the complainant by misusing the cheque handed over to him as a security, the said defence has not been proved by the accused either from the materials produced by the complainant by way of preponderance of probabilities or by his evidence or producing the documents, therefore, the facts and circumstances of the present case and facts and circumstances of the decided cases which are relied upon by the learned counsel for the appellant are not similar one and are not applicable to the defence taken by the accused in the present case.

67. Hence, considering all these aspects in careful and meticulous manner and on appreciation of evidence the accused has miserable to failed to rebut the presumption available in favour of the complainant U/s. 118 and 139 of N. I. Act. It is evident that, the complainant has successfully

established and proved his case beyond reasonable doubt that, accused has committed the offence U/s.138 of N.I. Act. According this point answered in the **Affirmative**.

68. **Point No.2**:- In the light of findings given by this court while answering the above point this court has re-appreciated the entire evidence placed on record by both the parties and scrutiny of the judgment passed by the trial court which is under questioned, it appears that, the trial court by considering all the above facts discussed and held that the accused has committed the offence punishable u/Sec.138 of N.I.Act and has also imposed sentence against the accused is in accordance with law and which doesn't call for interference at the hand of this court. Therefore, for the above said reasons and in view of findings given by this court on re-appreciating the oral and documentary evidence produced before the trial court by the complainant, this court is of the considered view that the accused has committed an offence punishable u/Sec.138 of N.I.Act and the sentence and imposition of fine by the trial court is required to be confirmed by this court and accused is liable to pay the fine amount and in default to serve the sentence as awarded by the trial court, accordingly, this point is answered in the **Negative**.

69. **Point No.3:** In the light of discussion made in the above points and answers it is just and necessary to proceed to pass the following:

ORDER

The appeal filed by the appellant u/Sec.415(3) of BNSS, 2023 is hereby **DISMISSED**.

The conviction judgment and order of sentence of fine passed in C.C. No. 404/2022 dated 19.08.2025 by the learned I Addl. Senior Civil Judge and J.M.F.C, Chikkaballapura, is hereby **CONFIRMED**.

Bail bond executed by the appellant/accused if any stands canceled after appeal period is over.

Office to send the TCR to the trial court along with the copy of this judgment.

(Dictated to the stenographer directly on the computer, printout corrected, signed and then pronounced by me in open court on this **15th day of June, 2026**)

SIDDANNA HANDRAL

Digitally signed by SIDDANNA HANDRAL
Date: 2026.06.16 15:47:46 +0530

(Siddanna B. Handral)
III-Addl.District and Sessions Judge,
Chikkaballapura.