

M/S Hindustan Auto Finance Ltd vs M/S Nishant Cinema on 22 July, 2013

IN THE COURT OF SH. LALIT KUMAR: ADDL. SENIOR CIVIL
JUDGE - CUM - JUDGE SMALL CAUSE COURT - CUM
GUARDIAN JUDGE - CUM - METROPOLITAN MAGISTRATE
(NEW DELHI DISTRICT) PATIALA HOUSE COURTS:
NEW DELHI

CC No: 718C/09
U/s 138 Negotiable Instruments Act
PS Parliament Street

IN THE MATTER OF:-

M/s Hindustan Auto Finance Ltd.
(Through its authorised representative)
516, West Towers Le Meridian Hotel
New Delhi.

..... Complainant

VERSUS

1. M/s Nishant Cinema
A partnership concern
Through its partner
Sh. Krishan Deepak Seth
Abu Lane, Meerut (UP)
 2. Sh. Krishan Deepak Seth
 3. Smt. Shiela Seth W/o Lt. Sh. Krishan Kant Seth
 4. Sh. Krishan Pran Seth
 5. Sh. Krishan Tilak Seth
- Accused no. 2 to 5 are the partners of
M/s Nishant Cinema, Abu Lane, Meerut
R/o Prahalad Vatika, Budhana Gate,
Meerut City (UP).

..... Accused

CC No. 718C/09
COMPLAINT U/s 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881

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| Date of institution of the case | : | 30.03.2006 |
| Date of Judgment | : | 22.07.2013 |
| Final Order | : | Convicted |

JUDGMENT :

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Complainant had filed the present complaint case u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "N. I. Act") against the accused persons.

2. Brief facts necessary for just adjudication of the present case as stated in the present complaint are that the complainant M/s Hindustan Auto Finance Limited is a Limited Company incorporated under the Companies Act having its registered office at 516 West Towers, Le-Meridian Hotel, New Delhi. Sh. Suresh Chand Sharma has been duly authorized to file this complaint on behalf of the Company vide Board Resolution dated 21.07.2003. Accused no. 2 to 5 were partners of accused no.1 firm and also handle the day to day functioning of the firm at that time. All the accused were operating the bank accounts and also took vital decisions to run their business, therefore, all were actively incharge and responsible for the conduct of the firm. All of them approached the complainant on 12.08.2004 and took a loan of Rs. 9,00,000/- which was repayable on 11.08.2005 with an interest @ 2% per month and to repay the above said loan, the accused had issued cheque no. 141998 dated 24.12.2005 for Rs. 5,00,000/- drawn on State Bank of India, Meerut Cantt. in favour of complainant but the said cheque was dishonoured on 09.01.2006 with the remarks "Account Closed". Intimation to this effect was received by the complainant on 30.01.2006. Then complainant sent legal notices dated 22.02.2006 through its counsel dispatched on 23.02.2006 through Registered ADs and UPC. However, all accused persons deliberately refused to accept the said notices sent through registered ADs and couriers on one pretext or other. However, accused had received the notices sent under postal certificate (UPC). After receiving these legal notices, the accused have neither made any payment to the complainant nor did reply to the legal notices of the complainant till filing of complaint. Hence, the present complaint.

3. The complainant had led its pre-summoning evidence and examined Sh. Suresh Chand Sharma, Authorised Representative as CW-1. Evidence by way of affidavit of AR for the complainant had been filed wherein he reiterated and reaffirmed the contents of the present complaint.

4. CW-1 in his testimony had relied upon documents i.e. affidavit Ex.CW1/A, board resolution dated 21.07.2003 Ex. CW1/1, original memorandum of UCO Bank, Shahpur Jat, New Delhi dated 27.12.05 informing the complainant about the dishonour of the cheque is Ex.CW1/2, dishonoured cheque bearing serial no. 141998 dated 24.12.05 is Ex.CW1/3, original memorandum dated 25.12.05 issued by the state bank of India, Meerut Cantt Ex. CW1/4, copy of legal notice Ex. CW1/5, receipt of registered AD and UPC Ex. CW1/6, Ex. CW1/7, Ex.CW1/8, Ex.CW1/9 and Ex.CW1/10 and the UPC Ex.CW1/11, Ex.CW1/12. Sealed envelopes sent through registered AD which were received back as not accepted by the accused are Ex. CW1/13, Ex. CW1/14, Ex.CW1/15, Ex. CW1/16 and Ex.CW1/17 respectively.

5. Thereafter accused were summoned vide order dated 27.04.2006 and on being served, notice u/s 251 Cr.P.C. for the offence u/s 138 N.I. Act was given to accused persons on 19.01.2007 to which they pleaded not guilty and claimed trial.

6. In post summoning evidence, AR for the complainant tendered his examination in chief by way of affidavit which was already exhibited as Ex.CW1/A and reply on the documents already exhibited as Ex.CW1/1 to Ex.CW1/17 respectively and was cross examined by counsel for the accused persons.

7. In his cross examination, CW1 stated that the complainant company was still in business however, at present the company has closed the financing business. Apart from auto financing the complainant used to advance other kinds of loans also. The company had a license for advancing loans which was cancelled in December, 2003. There was no requirement for the license for advancing loans. The license which they had for accepting deposit from general public. After the revocation of the license they continued disbursing the loans.

He denied that after December, 2003 the company did not advance any loan, however, voluntarily stated that it advanced only one loan that was to the accused person and they have the records pertaining to the alleged loan granted to the accused. He denied that the registered office of the complainant was at Meerut, however, voluntarily stated that only head office was in Meerut. He admitted that the complainant had its bank account at Meerut also and he could produce the documents showing that the registered office was in Delhi. He was working as the Manager in the complainant's company since the year 2003 and prior to that he was working as an accountant and he could produce the account books if required. He admitted that Sh. Subhash Sapra was the Managing Director of the company and Karta of Subhash Sapra & Sons HUF. The complainant and the accused have almost 12 litigations pending between them. He admitted that in all the cases he was the attorney of the complainant, Hindustan Finance Co. and the HUF. He further admitted that in another matter pending before this court he was examined on 03.03.2008. Prior to filing of the present case, 10 cases were pending between the parties. Prior to the transaction subject matter of the cheque in question the accused had filed four cases against Hindustan Finance Co. He further admitted that Hindustan Finance Co. has four deposits of Rs. 2.5 lacks each of the accused and out of the same he had only repaid two FD's and they had not paid any interest on the same. He further admitted that a Civil suit is pending at Meerut where the accused have claimed the amount of two pending FD's and interest of all the four deposits. He further admitted that they have another company by the name of Hindustan Lease and Constructions. He further admitted that their litigations pending between the accused and Hindustan Lease and constructions Co. He further admitted that the subject matter of dispute of these cases arose prior to the transaction with regard to the cheque in question. All the accounts of the complainant and its sister concerns except Hindustan Finance Co. were maintained by him. He had been involved in the transactions of the complainant and the accused except the transactions with Hindustan Finance Co.

8. It is further deposed that the amount of loan of Rs. 9 lacs was given to the accused in cash which was available and reflected in their cash book as a balance on the said date. They had taken the signatures of the accused on the cheque voucher and the accused had also signed the agreement and he could produce the voucher and agreement if required. The loan that given to the accused has been reflected in the income tax return.

9. During further cross examination CW1 deposed that apart from the payment made in cash to the accused, another payment of Rs. 6 lacs was given in cash to another party by the company and the

same was reflected on page no. 73 of the cash book. The same is Ex. CW1/D1. The page of the cash book pertaining to the accused is Ex. CW1/D2. The entries in the cash book are in the handwriting of Sh. Inderjeet, who was a clerk of the complainant. No daily petty cash book except the cash book produced by him that day, was being maintained. The entry of the payment was made on the same day on which the payment was made. The cash voucher brought by him that day was Ex. CW1/D3 and was prepared in his hand. Besides him, his Managing Director was also present when the money was paid vide voucher Ex. CW1/D3. The same did not bear the signature of MD because it was he who always used to sign the same. The vouchers were not required to be passed by the Managing Director. As regards the voucher, nobody else or anybody senior to him, was required to verify the same. The accounts of the company were audited. The account for this period was also audited. He had brought the report of the auditor and exhibited the same as Ex. CW1/D4. The relevant entry was at point A on Ex. CW1/D4. The same did not separately reflect Rs. 9 lacs as advance to the accused as it was entry pertaining to the loans and advances made by the complainant. He denied that the audit report, the loans advanced were to be reflected separately in respect of the each of the party and not in consolidated figure. The interest as received by the company from the party was reflected as gross interest and was reflected at point B. The entries at point A did not reflect the loan advanced to Col. N.K. Dewan on 20.08.2004. The said loan was reflected under the head of 'Advance against property' and was reflected at point C. No interest was being charged on this loan because in case the property was purchased by the company, the appreciation in value would be the profit of the company. He further stated that at the time when Rs. 9 lacs were given to Smt. Sheela, as per the accounts of the company, the total loan advanced by the company till then were Rs. 7,41,264/-.

10. He further deposed that prior to that transaction, the accused or their concerns had taken loans from the complainant on three four occasions but he did not remember the exact amount. He did not remember whether the accused had been advanced a loan on 23.01.1998 and therefore, he could not admit or deny this fact. He denied that when the loan was advanced to the accused, cheques as security of the same were taken. They had not taken any advance cheques or security cheques. No security was taken against the advance of Rs. 9 lacs. When Rs. 9 lacs was advanced to Smt. Sheela, she was accompanied by Sh. Krishan Pran Seth, Krishan Tilak Seth and Krishan Deepak Seth. He denied that Sheela Devi, being a widow, had never come to the office of the complainant. The accused had come to their Meerut office to collect the money. The agreement of loan was signed on the same day. No one, apart from Sheela Devi, had signed the loan agreement. He had brought the loan agreed Ex. CW1/D5. In reply to a question put to him by Learned defence counsel that seal of the accused appearing on Ex. PW1/3 was different from the seal appearing on Ex. CW1/D3, CW1 stated that he has nothing to say about it but it is the seal of the accused as appended by them.

11. He further stated that the loan was advanced at the instructions of the MD, who was present there. They did not get the loan agreement signed by the other accused either as witness or as party because the complainant had a very old relation with the accused and further at that time, the accused had shown their intentions to solve the other dispute and therefore, they did not insist on getting the signatures of other persons. The cheque in question was handed over to them in the first week of August, 2005 by Deepak Seth. The cheque had the date mentioned on it. No notice was issued by the complainant to the accused to repay the loan and the cheque was not issued in

response of any notice. He denied that the relations of the complainant and the accused were not cordial. He admitted that since 1998 till recording of cross examination, both the parties were litigating, however, voluntarily stated that the litigations were only from the year 2002. He admitted that a dispute was referred to the Arbitrator in the year 2000, however, voluntarily stated that it could not be said to a litigation.

12. He further denied that the cheque in question was taken as a security at the time of advancement of earlier loans and the said loan had already been repaid by the accused. The loan was for Rs. 9 lacs, they only received cheques for Rs. 7 lacs because at the time of repayment, this was what the accused gave them. They did not demand any other cheque for repayment because there was no use as these cheques had already been dishonoured.

From the Auditor's report in para V(b) when it was stated that there no transaction exceeding Rs. 6 lacs and thus, the provisions of para V(b) of the order was not applicable, it states so because the same was only related to banking transactions. He had no explanation that whey on auditors report in para III(a) the statement of fact as stated has been mentioned. The company sent its accounts book and response to the queries of the auditor. But it has no say in the making of the report of the auditor. He denied that the complainant had not handed over to the auditor any document or account book showing that the company had any cash in hand or had advanced any loan of Rs. 9 lacs. He denied that the loan transaction was not reflected in the audit report. He denied that the signatures of Sheela Devi has been forged on voucher Ex. CW1/D3, loan agreement Ex. CW1/D4 or that the stamp of the accused was also forged on the cheque Ex. PW1/3 and voucher Ex. CW1/D3. He denied that the cheque in question was given in the year 1998 as a collateral security against the earlier loan or that the cheque when handed over did not have a date upon the same. He denied that as the parties are litigating, the complaint deliberately misused the cheque in question. He denied that he was deposing falsely at the instance of the complainant and its MD. He denied that the date of the cheque has been filled by the complainant. Thereafter, complainant evidence was closed.

13. Separate statement of accused persons were recorded u/s 313 Cr.P.C. wherein they denied the allegations against them and rebutted the complainant evidence against them. It was also stated by the accused persons that they are the partners of accused no.1 however, accused Krishan Tilak Seth and Krishan Deepak Seth were looking after the functioning of accused no.1. They had not received any legal notice. The complainant has filed a false case in order to pressurise them to pay the money. The cheques in question were given as collateral security for earlier loans. Accused Krishan Tilak Seth stated that the complainant has filed the present case in order to pressurise them with regard to the cases which they had filed against the complainant for recovery of their amount deposited as FDRs with the complainant. These cheques were given as security for earlier loans. These were undated cheques and have been misused by the complainant. They have been in litigations with the complainant since the year 2000. Accused Krishan Deepak Seth stated that they had taken a total loan of Rs. 13 lacs from the complainant which had been repaid by them. When the cheques which were given as a collateral security of this loan was demanded by them, the complainant told them that the cheques including their loan file, had been destroyed by the complainant. However, later on they came to know that those cheques had been misused by the complainant and it was on the basis of those cheques that the present complaint had been filed. On the contrary, they had to take Rs. 9

lacs from the complainant. It was also stated by the accused persons that they want to lead defence evidence.

14. Accused persons in their defence had examined DW1 Sh. C.M.L. Das, Chief Manager, UCO Bank, Shahpur Jat, New Delhi and Krishan Deepak Setyh (accused) as DW2.

15. DW1 Sh. C.M.L. Das, Chief Manager, UCO Bank, Shahpur Jat, New Delhi stated that he has brought whatever could be available with the bank. The remaking record could not be traced by the bank. His letter in this regard is Ex. DW1/1. The cheque in question was returned by his bank to the complainant and was dispatched through registered post. Photocopy of the receipt of the same is Ex. DW1/2. The copies of the entries made in the dispatch register, the entry highlighted in pink on Ex. DW1/3 shows the returning of cheques by his bank to the complainant and the entry reflected in pink on Ex. DW1/4 shows that the cheque was sent by his branch to Meerut for collection. He could not say whether the stamp at point A on Ex. CW1/2 was affixed by his bank. Generally, there was no practice of affixing such stamps as when they received a dishonoured cheque along with its memo, they wait for 2-3 days for the party to personally come and collect the cheque and memo but, if the party does not turn up, the same is then dispatched through post.

16. During cross examination, DW1 stated that the cheque in question was an outstation cheque and was sent for encashment to their branch in Meerut, which in turn presented it to SBI Meerut. Upon being dishonoured, SBI Meerut returned the cheque to their branch in Meerut. The procedure might have taken a day or two thereupon, after a day or two, the Meerut branch dispatched the cheques through post to their branch. After the dispatch, it might have taken 3-4 days to reach their branch whereupon, the branch might have waited for 2-3 days as the practice was, so that the party could come and collect the cheque personally. Thereafter, the cheque was dispatched to the party through post. At the relevant time, he was not posted in that branch. The norms or the practice as detailed by him above was commonly followed by all the branches. It was not possible that a branch could have a different procedure or practice for cheque encashment. He could not tell about the stamp at point A because there was no logic that this that stamp would be affixed by his branch because his branch had already dispatched the cheque to the party on 27.01.2006.

17. DW2 Krishan Deepak Seth deposed that in the year 1992 he came in contact with the complainant when he, on behalf of Nishant Cinema, had taken two loans from the complainant. In the year 1998, he asked for loan of Rs. 13 lacs from the complainant, which was advanced in three installments from January to February, 1998 of Rs. 2, lacs, Rs. 5 lacs and Rs. 6 lacs respectively and against that loan, he gave undated cheques of Rs. 2 lacs , Rs. 5 lacs and two cheques of Rs. 3 lacs each, in the name of the complainant. The carbon copies of these cheques had been kept by him which are Ex. DW2/1 to Ex. DW2/4. The two cheques of Rs. 3 lacs each were returned by the complainant and in their stead, it took four undated cheques of Rs. 1.5 lacs each in the name of its sister concern Hindustan Finance Company. The carbon copies of these cheques had been kept by them. The copies of the same are Ex. DW2/5 to Ex. DW2/8. The loan was repaid by them in October, 1998. It was repaid by payments made through cheques. In October 1998, Nishant Cinema entered into a builder owner agreement with Hindustan Lease & Construction company, which was a sister concern of the complainant and pursuant to this agreement, Hindustan Lease &

construction co. was required to erect / build a commercial complex. However, certain disputes arose between them. In the meantime, in October 1998, four members of his family namely Sh. Krishan Pran Seth (HUF), Sheela Seth, Kumud Seth and Vasudha Seth deposited Rs. 2.5 lacs each with Hindustan Finance Co., sister concern of the complainant. This money was deposited as FDRs for a period of three years and amount was deposited by cheque. The dispute was referred to an Arbitrator who gave his decision in May, 1999. However, about one and a half years hence, Hindustan Lease & Construction again approached the Arbitrator. However, the Arbitrator after a few proceedings adjourned the matter sine-die. They challenged the said order of Arbitrator under Section 34 of Arbitration & conciliation Act 1996.

18. Thereafter, w.e.f. 2002, they demanded the returns against their FDRs. The principal amount as deposited by Vasudha Seth and Sheela Seth was returned vide cheques. When they demanded the interest upon this principal as well as the repayment of remaining FDRs with interest, Hindustan Finance Co. refused to pay and they were constrained to file a civil suit against it which is still pending. All the transactions, proceedings and litigations had happened / taken place in Meerut. Thereafter, he or any of his family member neither visited the office of the complainant nor any money had been taken by them from the complainant in cash. The signatures of Mrs. Sheela Seth as shown on Ex. CW1/DF3 and Ex. CW1/D5 at point A are forged. They never had any transactions with Suresh Sharma. All transactions were through and with Sh. Subhash Sapra. The cheque in question (Ex. DW2/2) is the same cheque. The account from which the cheque in question had been issued, had already been closed in the year 2001 after the death of his elder brother Sh. Krishan Kant Seth on 12.08.2001. They had no liability against the cheque in question. Even the stamp on Ex. CW1/D3, which is affixed above the alleged signatures of Smt. Sheela Seth is a forged stamp and is not a stamp of Nishant Cinema. The present complaint has been filed in Delhi only in order to harass them, although no part of transaction was ever done in Delhi. The certified copies of the various litigations between the complainant, its sister concern and them are Ex.DW2/9.

19. During cross examination, DW2 stated that prior to 1992 or thereafter, there were no family relations between the Directors of complainant, its sister concern and his family, however, voluntarily stated that his entire family was acquainted with Sh. Subhash Sapra, Director of the complainant as his office was adjacent to his Cinema. The acquaintance goes back to about 7-8 years prior to the year 1992. He admitted that they had been friends and it was more than acquaintance. He further admitted that their families used to interact and mix-up socially and had some holidays and outings together. In February 1998, he had taken back two cheques, copies of which Ex. DW2/3 and Ex. DW2/4 and given the cheques, copies of which are Ex. DW2/5 to Ex. DW2/8. He admitted that on the cheques, after Ex. DW2/8 and before Ex. DW2/5, the dates are of January 1999. Handing over undated cheques was not their common practice, however, voluntarily stated that these were given when the same were asked for by the complainant. The cheques, of which the copies are Ex. DW2/5 to Ex. DW2/8 were neither encashed nor presented. He admitted that apart from two cheques, the remaining six cheques, given by them, were neither presented nor encashed. The repayment of the loan of Rs. 13 lacs was made by October 1998. He had demanded the cheques in possession of the complainant. However, he never demanded the same in writing. The dispute started in the year 1999. Even after the dispute had arisen, they did not demand the cheques in writing. The fact that these cheques were in possession of the complainant despite the entire

payment being made, was not mentioned in any of the pleading of the litigations, copies of which are Ex. DW2/9 or in any other proceedings. No police complaint with regard to non-return of the cheques was made, however, voluntarily stated that when he demanded the cheques, he was told by Sh. Subhash Sapra that the cheques had been destroyed by him. This fact that Sh. Subhash Sapra had stated that he had destroyed the cheques, was also not mentioned in any pleadings, litigations including Ex. DW2/9. The first time, when he gained the knowledge of the cheque in question being presented by the complainant was, when he received the summons from this court. He received the summons in the year 2006 for a date which was scheduled in October 2006. Since that time till the date of cross examination, he had not filed any complaint to police or court with regard to the misuse of the cheques in question. He found that the signatures of Smt. Sheela Seth and the stamp of Nishant Cinema had been forged when he saw the court file around a year back. Even thereafter, he had not filed any police complaint or court case with regard to this forgery. He admitted that even after, Smt. Sheela Seth denied her signatures in her statement under section 313 Cr.P.C. No complaint with regard to this forgery was filed. They have completely disconnected from the complainant. He denied that they were still having relations. The witness was not confronted with an SMS of Navratra Greetings sent by the wife of the witness to Sh. Subhash Sapra who was present in the court. He admitted that the message had been sent from the number of his wife but explains that, the same may have been sent in a routine manner by adding all the numbers in the phone. He admitted that his explanation was a probable explanation and he was not sure of this.

20. He denied with regard to the builder owner agreements of the year 1998 and stated that they were required to get the property free hold and obtain the sanction, which they failed to do or that because of the same, the project could not be completed or that for the project, there were transactions in cash in the complainant between them on one side and the complainant and its sister concern on the other side, which were running into crores of rupees or that the disputes with regard to these cash transactions are apart from the litigations reflected in Ex. DW2/9 and other litigations. He denied that after the death of Sh. Krishan Kant Seth, disputes arose between his widow and the remaining family or that it was for this reason, she being in financial need, she approached to the complainant for a loan of Rs. 9 lacs in her personal capacity and said that she would have the same endorsed from other family members. He denied that the complainant, who treated Mrs. Sheela Seth as his sister in law considered her need and thus, gave a loan of Rs. 9 lacs to Smt. Sheela Seth and the partnership concern and other family members jointly. He denied that the loan was advanced on the personal initiative of Subhash Sapra despite the fact that the remaining stake holders of the complainant company were against the same, however, voluntarily stated that no such loan was taken. He denied that the alleged loan was advanced for a period of 15-20 days only, however, as a precaution documentarily the loan was shown to have been advanced for a period of one year.

21. He admitted that one bank locker was being jointly operated by Subahsh Sapra and his wife. He could not tell when this locker was lastly operated by his wife and therefore, he could not admit or deny, whether it was lastly operated on 17.04.1997. He denied that he was deposing falsely or deposed falsely or that they had taken a loan of Rs. 9 lacs, misusing the trust and relationship which they had Sh. Subhash Sapra in his personal capacity or that they had deliberately with some ill motives given cheques towards the repayment of the said loan, which they were extracted from some

old cheque books. He denied that the story about two cheques of Rs. 3 lacs being returned and four cheques of Rs. 1.5 lacs being in possession of the complainant is a concocted story. Thereafter, accused have closed their defence evidence.

22. This court heard the final arguments advanced on behalf of the parties and carefully perused the entire record including the testimonies on record as well as also gone through the case law cited by both the sides.

23. Section 138 of the N.I. Act has prescribed the punishment for the offence of Dishonour of Cheque. Following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:-

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt / liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period;

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

(e) that the complaint case should have been filed within one month from the date of receipt of legal notice.

24. It was held by Hon'ble Supreme Court of India in case titled as M/s Dalmia Cement (Bharat) Ltd. V. M/s. Galaxy Traders and Agencies Ltd., (2001(1) R.C.R. (Criminal) 646) that:-

"The Act was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present-day world, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another. To achieve the objectives of the Act, the legislature has, in its wisdom, thought it proper to make such provisions in the Act, for conferring such privileges to the mercantile instruments contemplated under it and provide special

penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country".

25. Section 6 of the N.I. Act has prescribed the definition of cheque and cheque is Negotiable Instrument within the meaning of section 13 of the Act. Section 30 of the N.I. Act talks about the liability of the drawer.

26. Section 118 of the N.I. Act talks about presumptions as to consideration, date, time of acceptance, time of transfer, order of endorsement, stamps and holder in due course. Section 139 of the N.I. Act talks about presumption in favour of holder.

27. Section 139 of the N.I. Act deals with presumption of law in favour of the holder of the cheque. It provides that unless the contrary is proved, it shall be presumed that the holder of a cheque received the cheque for the discharge, in whole or in part, or any debt or other liability. It is a rebuttable presumption of law and the burden of proving that a cheque has not been issued for a debt or liability is on the accused.

28. The presumptions u/s 118 and 139 of the N.I. Act are rebuttable and burden is on the accused to rebut the presumption which can be discharged by the accused by preponderance of probabilities. It is well settled law that presumptions u/s 118 and 139 of the N.I. Act have to be rebutted by cogent evidence and mere plausible explanation is not enough.

29. In order to bring home conviction the complainant has to show on record an unbroken chain of events leading to commission of actual offence. Further, it is the duty of the complainant to prove its case subject to provisions of N.I. Act and in such a manner so as to bring it outside the pale of any reasonable doubt.

30. In the present case, it is the stand of the accused persons that they are the partners of accused no.1 however, accused Krishan Tilak Seth and Krishan Deepak Seth were looking after the functioning of accused no.1 and they had not received any legal notice. The complainant has filed a false case in order to pressurise them to pay the money. The cheques in question were given as collateral security for earlier loans and complainant has filed the present case in order to pressurise them with regard to the cases which they had filed against the complainant for recovery of their amount deposited as FDRs with the complainant. These cheques were given as security for earlier loans. These were undated cheques and have been misused by the complainant. They have been in litigations with the complainant since the year 2000. They had taken a total loan of Rs. 13 lacs from the complainant which had been repaid by them. When the cheques which were given as collateral security of this loan were demanded by them, the complainant told that the cheques including their

loan file, had been destroyed by the complainant. However, later on they came to know that those cheques had been misused by the complainant and it was on the basis of those cheques that the present complaint had been filed whereas they had to take Rs. 9 lacs from the complainant.

31. It may be seen that during cross examination CW1 produced requisite records i.e. accounts, records, balance sheets and Income Tax Returns which established that the loan amount of Rs. 9 lacs was available with the complainant company in cash and the same was reflected in the cash book and general ledger on the said date. The cash book Ex.CW1/D2 reflects the cash amount advanced to the accused persons by the complainant company and accused Sheela Seth had signed the cash voucher Ex.CW1/D3 which was prepared by CW1 in his own hand and Loan agreement Ex. CW1/D5 was also signed by accused Smt. Sheela Seth. The document Ex. CW1/D4 reflects the total amount of loan and advances of Rs. 65,65,601/- which is a clubbed figure of all the loans advanced by the complainant company including the loan advanced to the accused M/s Nishant Cinema. The amount of Rs. 17,78,557/- reflected in the balance sheet is the total clubbed amount of unsecured loan advanced by the complainant company. Out of this total amount of Rs. 17,78,557/- of unsecured loan, the working schedule / trial balance reflects an amount of Rs. 10,37,293/- against M/s Nishant Cinema (Rs. 9 lacs stands as the loan amount and Rs. 1,37,293/- as interest accrued on the loan till that period). The amount of Rs. 10,37,293/- is also reflected in the General Ledger which is substantiated by the evidence of CW1 by deposing that at the time when Rs. 9 lacs were given to Smt. Sheela Devi, the total amount of loan advanced by the complainant company to the other parties was Rs. 7,41,264/-.

32. It may further be seen that defence raised by the accused persons that the complaint so filed is beyond the territorial jurisdiction of this court, however, the complainant company has its registered office in New Delhi and the cheque in question was presented for realisation with the complainant's bank at new Delhi. Moreover, the legal notices were issued to the accused from New Delhi as reflected from registered AD receipt. Therefore, this court has the jurisdiction to try the present complaint case.

33. It may be further seen that another defence raised by the accused persons that cheques in question were issued as a collateral security for a loan taken in the year 1998 and repaid back in the year 1999 which were misused by the complainant is not substantiated as the accused has failed to prove that the complainant has followed the system of taking blank cheques as collateral security as it has been brought on record in the evidence of CW1 wherein it has been denied that when the loan was advanced to the accused, cheques as security of the same were taken. They have not taken any advance cheques or security cheques. No security was taken against the advance of Rs.9 lacs.

34. It is evident from the record that cheques were never demanded by the accused from the MD of the complainant in writing even though there was purported dispute between the MD of complainant and the family of accused. It may be seen that DW1 stated that cheques were in possession of the complainant despite the entire payment being made, however, this fact was not mentioned in any of the pleadings of the litigations. Moreover no police complaint with regard to the non-return of the cheques was ever made. Even after being summoned by the court, in the year 2006, no complaint to police or court with regard to the misuse of the cheques in question was ever

made by the witness which clearly reflects that defence pleas raised by the accused are false and imaginary.

35. The other defence taken by the accused that the complainant had no license to grant loan on interest from RBI and that the said debt was illegal whereas complainant submitted that license which was revoked was for accepting deposit from general public. Even after the revocation of the license in 2003, the complainant company continued disbursing the loans which is evident from the evidence of CW1.

36. It is the defence of accused that the cheques issued in 1998 is misused by the complainant in 2005 as it is stated that the said cheques dated 24.12.2005 have been received by the complainant from the accused persons and the complainant presented the same to the concerned bank on 27.12.2005. It may be seen that the accused has raised defence that the complainant and the accused persons are entangled in multifarious litigation since 1999 and there were as many as 10 cases, as per the AR pending prior to the grant of alleged loan and that is improbable that the complainant advanced the loan despite the pending litigations between the M.D. of complainant company and the family of the accused persons. As per the list of documents provided by the accused, that includes list of all the cases pending between the complainant and the accused persons, only four cases of year 2002 that were pending at the time of advancement of loan, i.e. case no. 1308/02, 1309/02, 1310/02 and 1311/02. This has also been brought on record by the evidence of CW1 that prior to the transaction of the said cheques in question, the accused had filed four cases against Hindustan Finance Co. which are civil in nature and filed on behalf of accused no.1. The two matters out of the said four pending cases were for recovering an amount of Rs. 2.5 lacs each from 2 FDRs, the other two cases arise out of the interest on the said two FDRs. The pendency of the said four litigations was not an important factor for the complainant company at that time, to refuse loan to the accused persons. It is established that the accused persons had a claim of Rs. 5 lacs towards the amount of FDRs and the accrued interest thereon. This factor of an alleged existing liability could very well be the reason and justification for advancing loan of Rs. 9 lacs to the accused.

37. It is deposed on behalf of complainant that complainant company does not follow the practice of taking collateral security against the loan. Smt. Sheela Seth is the eldest member of the family and in order to honour her words the agreement was signed only between the complainant company and her. There is no evidence on record to prove that the signatures of Smt. Sheela Seth in the agreement and vouchers are false signatures. Further no opinion of any handwriting expert has been sought by the accused persons to prove their defence. Admittedly no complaint has ever been filed in respect of the allegation of forgery etc., therefore allegation pertaining to the forgery of the signatures is not substantial and untenable without the evidence of any handwriting expert on the matter. Mere alleging that the signatures are forged without any proof by way of evidence on record does not discharge the burden of proof on the accused persons. Further defence taken by the accused that accused that the voucher is signed by the clerk is also immaterial as the cheques have been signed by the manager and not the clerk. The manager is the authorised officer to sign all cash vouchers / receipts etc. as it is submitted that the MD of the company does not directly involve in signing of documents pertaining to loan agreements. Another defence taken by the accused that they had given four cheques way back in 1998 or 1999 and that two cheques were replaced by them with

four cheques of Rs. 1.5 lacs each and the complainant had not returned the cheques to them. It seems that plea taken by the accused is self destructive and is not tenable in as much as if the complainant had been given so many cheques, nothing prevented the complainant from banking the said cheques. Apart from it, the legal notice sent on behalf of the complainant was duly served upon the accused and yet no reply whatsoever was given to the same raising the said pleas, if any.

38. Moreover, in their statement recorded u/s 313 Cr.P.C., accused admitted that cheques in question belongs to them. The cheques in question were given as collateral security for earlier loans and the complainant has filed the present case in order to pressurise them with regard to the cases which they had filed against the complainant for recovery of their amount deposited as FDRs with the complainant.

39. Further accused has taken the stand that the complainant has misused cheques in question. This stand of the accused persons cannot be accepted as they have failed to prove their contention as they have not even approached any police station, official or the court of justice for any complaint against the alleged act. The accused have also not intimated the said fact with his banker and the payment of the cheques in question was not stopped with the said alleged reason. Therefore, said stand taken by accused is an after thought and not helping to the accused.

40. Since, CW-1 in his evidence by way of affidavit categorically and elaborately described as to how offence u/s 138 of the N.I. Act had been committed by the accused persons. The complainant has duly proved on record the cheques, returning memos and legal notice. In the cross-examination of CW-1, no material inconsistency has been surfaced except some minor ones which are but natural. The present complaint of the complainant is well within the period of limitation as prescribed in the N.I. Act.

41. In view of the aforesaid discussion, this court is of considered opinion that the complainant has successful in establishing its case against the accused persons beyond reasonable doubt.

42. Hence, in view of the aforesaid back ground, this court is held that accused persons have committed the offence punishable under Section 138 of the Negotiable Instruments Act. Accordingly, I hold guilty of accused No.1 M/s Nishat Cinema, No.2 Kirshan Deepak, No.3 Shiela Seth, No.4 Krishan Pran Seth and No.5 Krishan Tilak Seth for offence punishable u/s 138 Negotiable Instruments Act. Let they be heard on point of sentence.

Announced in the open court
on 22.07.2013
(This judgment contains twenty nine pages
and each page bears my signatures)

(LALIT KUMAR)
ASCJ/JSCC/GJ/ MM
New Delhi District,PHC,
New Delhi