

Suneel Menon @ Mookul Maruthur Suneel vs P. K. Bajaj Son Of Late Sh. A. P. Bajaj on 4 October, 2013

IN THE COURT OF SH. R.K. GAUBA: DISTRICT & SESSIONS
JUDGE (SOUTH) : SAKET NEW DELHI

- (1) Criminal Appeal No.73/2013
ID No.: 02406R0092702013
- (2) Criminal Appeal No.74/2013
ID No.: 02406R0092672013
- (3) Criminal Appeal No.75/2013
ID No.: 02406R0096302013

Suneel Menon @ Mookul Maruthur Suneel
s/o Sh. Sethu Madhavan Menon,
R/o 4, Nazir Wadi, Juhu Tara Road,
Mumbai.

... Appellant

Versus

P. K. Bajaj son of late Sh. A. P. Bajaj
Proprietor M/s Bajaj Studios,
A-5, Mayapuri, Phase-I,
New Delhi.

... Respondent

- (4) Criminal Appeal No.90/2013
ID No.: 02406R0129752013
- (5) Criminal Appeal No.91/2013
ID No.: 02406R0129762013
- (6) Criminal Appeal No.92/2013
ID No.: 02406R0129772013

P. K. Bajaj
Proprietor M/s Bajaj Studios,
A-5, Mayapuri, Phase-I,
New Delhi.

... Appellant

Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 1 of 55

Versus

Suneel Menon @ Mookul Maruthur Suneel
s/o Sh. Sethu Madhavan Menon
R/o 4, Nazir Wali, Juhu Tara Road,
Mumbai.

... Respondent

Instituted on: 11.04.2013 (73/13 to 75/13) & 21.05.13 (90/13 to 92/13)

Judgment reserved on: 20.09.2013

Judgment pronounced on : 04.10.2013

J U D G M E N T

1. These six appeals involve same set of parties and give rise to common questions of facts and law. With the consent of both sides, they have been taken up together for hearing and adjudication and are accordingly being decided through this common judgment.

2. Three criminal cases were brought by P.K. Bajaj (appellant in criminal appeal Nos. 90□92/2013) seeking prosecution of Suneel Menon @ Mookul Maruthur Suneel (appellant in criminal appeal Nos. 73□75/2013) in 2007, each alleging offence under Section 138 Negotiable Instruments Act having been committed respecting a cheque for Rs. 30,00,000/□ issued by the latter in favour of former drawn on Punjab & Sind Bank, Khar, Mumbai.

3. The criminal case no.1624/2010 (2007) was presented by P.K. Bajaj on 16.06.2007 and related to cheque no. 823768 dated 01.05.2007 (Ex. CW 1/A□), which on presentation was returned unpaid vide Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 2 of 55 cheque returning memo dated 08.05.2007 (Ex. CW 1/A□).

4. The criminal case no.1606/2010 (2007) was presented by P.K. Bajaj on 21.06.2007 and related to cheque no. 823769 dated 10.05.2007 (Ex. CW 1/B□), which on presentation was returned unpaid vide cheque returning memo dated 17.05.2007 (Ex. CW 1/B□).

5. The criminal case no.1629/2010 (2007) was presented by P.K. Bajaj on 26.06.2007 and related to cheque no. 823770 dated 20.05.2007 (Ex. CW 1/C□), which on presentation was returned unpaid vide cheque returning memo dated 26.05.2007 (Ex. CW 1/C□).

6. For sake of convenience P.K. Bajaj (appellant in criminal appeal Nos.90□92/2013), shall hereinafter be referred to as "the complainant".

7. Each of these cases resulted in cognizance being taken and Suneel Menon @ Mookul Maruthur Suneel (appellant in criminal appeal Nos. 72□75/2013) being summoned as an accused. He was eventually put to trial through notices separately drawn on the files of each case on 31.07.2010 to which he pleaded not guilty.

8. For the sake of convenience, Suneel Menon @ Mookul Maruthur Suneel (appellant in criminal appeal Nos. 72□75/2013), shall hereinafter be referred to as "the accused".

9. The trial of the three cases was held simultaneously by the Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 3 of 55 Metropolitan Magistrate. Each case resulted in judgment being passed on 08.02.2013 by Sh. Vikrant Vaid, Metropolitan Magistrate (N.I.Act) □02 (South) holding the accused guilty for offence under Section 138 Negotiable Instruments Act respecting each of the said three cheques. Separate orders on sentence were passed by the Metropolitan Magistrate in each case on 14.03.2013, whereby the accused (the convicted person) was sentenced to simple imprisonment for a period of 18 (eighteen months) with directions to pay compensation of the cheque amount along with interest at the rate of 9% from the date of filing of each complaint till the date of the order. The trial court computed the amount payable as compensation in criminal case no. 1624/2010 at Rs. 45,51,000/□ in criminal case no. 1606/2010 at Rs.45,47,250/□ and in criminal case no. 1629/2010 at Rs.45,43,500/□ respectively. The order passed in each case also directed the accused (the convicted person) to undergo, in case of default in the payment of compensation, sentence of simple imprisonment for further period of three months each.

10. The criminal appeal no. 74/2013 was brought by the accused (the convicted person) to challenge the judgment and order on sentence in criminal case no. 1624/2010. The criminal appeal no. 75/2013 CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 4 of 55 was brought by the accused (the convicted person) to challenge the judgment and order on sentence in criminal case no. 1606/2010 and similarly the criminal appeal no. 73/2013 was brought by the accused (the convicted person) to challenge the judgment and order on sentence in criminal case no. 1694/2010.

11. The criminal appeal Nos. 91/2013, 92/2013 and 90/2013 have been, on the other hand, brought by the complainant expressing grievance respecting the adequacy of the sentence awarded in each case. The complainant prays in the said set of appeals for enhancement of the punishment.

12. The three appeals brought by the complainant were presented beyond the period of limitation and, therefore, with prayer for condonation of delay under Section 5 of Limitation Act. Having regard to the short delay and the explanation given in the said applications, as also the fact that the appeals of the convicted person are still pending consideration, the delay has been condoned.

13. When the three appeals presented by the accused came up before this court on 11.04.2013, applications were made seeking the order on sentence to be suspended and the appellant/convict to be released on bail pending hearing on the appeal. Vide separate CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 5 of 55 orders passed in each appeal on 11.04.2013, this court directed the release of the appellant/convict on bail, subject to certain conditions including depositing of Rs. 30,00,000/- in each case which was equivalent to the value of the cheque, that was subject matter of the trial of the respective cases. The appellant/convict moved petition under Section 482 Cr.P.C. before the Hon'ble High Court vide Criminal Misc. Case No. 1559-561/2013, seeking modification of the said order. The Hon'ble High Court vide a common order dated 08.03.2013 concerning the said three matters directed the appellant/convict to deposit an amount of Rs. 10,00,000/- in each appeal within a period of one month from the date of the said order with directions, inter alia, that this court shall make every possible endeavor to decide these appeals expeditiously preferably within a period of six months. Vide subsequent common order dated 07.06.2013, the Hon'ble High Court clarified that the appellant/convict shall have liberty to deposit the said amount of money by way of FDRs drawn in his own name. The trial court record would show that the said directions were complied with by the appellant/convict on 11.06.2013.

14. These six appeals were listed for hearing of arguments on CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 6 of 55 12.08.2013, vide separate orders passed on 31.05.2013. Despite opportunity, each side has chosen not to file any formal reply to the memorandum of appeal of the opposite party.

15. On 07.08.2013, identical applications were submitted by the accused in criminal appeal Nos. 73-75/2013 invoking Section 391 Cr.P.C., inter alia, praying for additional evidence on his behalf to be taken. It may be mentioned here that each of these applications is accompanied by identical copies of 109 leaves of 22 documents, particulars whereof have been set out in para 4. These applications were followed by additional identical applications under Section 391 Cr.P.C. submitted "in continuation and furtherance of the earlier applications" by the accused on 18.09.2013, whereby

permission is sought to place on record, and rely upon, seven additional documents, copies whereof running into 67 leaves have been submitted. When these matters came up for hearing on 12.08.2013 and 20.09.2013, the counsel for the complainant submitted that he opposes these applications as well on the basis of trial court record and there was no need to file any formal reply.

16. On 18.09.2013, identical applications invoking Section 340 Cr.P.C. have been submitted in criminal appeals Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 7 of 55 complainant and his son (Aman Bajaj) on the allegations they have committed offences punishable under Section 177, 182, 193, 199 and 209 read with Section 120B IPC. The complainant on being served with copies submitted on 20.09.2013 that no formal reply is to be filed and he contested the same on the basis of oral arguments.

17. I have heard Shri Vikram Chaudhari, advocate for the accused (convict) and Shri Vikas Arora, advocate for the complainant on the above mentioned applications under Section 391 Cr.P.C. and under Section 340 Cr.P.C. as also on the appeals. I have gone through the trial court records.

18. It needs to be mentioned at this stage that the judgment dated 08.02.2013 passed by Sh. Vikrant Vaid, Metropolitan Magistrate 102 NI Act (South) giving rise to these appeals seem to be verbatim copies of one another, the only difference being concerning the particulars of the cheque involved in each case. Since the background facts, the questions arising for determination, the defence pleas and the arguments raised as indeed the law relied upon has been common in these three cases, the discussion and the conclusions reached by the trial court also appear to be identically worded. It is in this context that the learned Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 8 of 55 Magistrate seems to have committed a faux pas in the judgment on the file of criminal case no. 1629/2010. As mentioned earlier, the cheque involved in the said case was no. 823770 (Ex. CW 1/C), whereas the cheque involved in criminal case no. 1606/2010 was no. 823769 (Ex. CW 1/B). The cheque has been correctly mentioned in para 5 of the judgment in criminal case no. 1606/2010, but while preparing the judgment in criminal case no. 1629/2010, almost by way of copy and paste, particulars of the cheque of the said other case have been mentioned in para 5 thereof.

19. The above mentioned discrepancy came to notice during the hearing on these appeals. It has not been made a bone of contention by the appellant/convict in any of these appeals. Undoubtedly, such error should not have occurred. Without doubt, the criminal court cannot adopt cut, copy and paste procedure while preparing the judgment. But then, having regard to the fact that the appellant/convict does not dispute that the evidence led on the file of criminal case no. 1629/2010 correctly referred to the proper documents relatable to the said case and they were accordingly put to him at the stage of his statement under Section 313 Cr.P.C. so much so that he even candidly admits the signatures Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 9 of 55 on the cheque in question, no prejudice has been claimed, or can be claimed, on account of this error which must be treated, at the most, a clerical error. Thus, the judgment in criminal case no. 1629/2010 has been read at the hearing on these appeals as corrected and in accord with the correct documents already on record.

20. At this stage, it will be appropriate to take note briefly of the background facts leading to these judgments of the trial court, to the extent they can be culled out from the three complaints and the evidence adduced on behalf of both sides.

21. The complainant alleged in each of these three complaints that he is the proprietor of business run in the name and style of M/s Bajaj Studios with office at A-5, Mayapuri Phase-II, New Delhi 110064. He alleged that he has had business relations with the company named Reminiscent (India) Television Ltd. (hereinafter referred to as "RITVL") in which the accused Sunil Menon @ Mookul Marathur Suneel was the main active director. The complainant claimed that on account of the said transactions with RITVL, the latter had made a default in timely clearing his outstanding dues to the tune of Rs. 71,88,544/- and that he had been constrained to file a civil suit bearing no. CS(OS) 575/2005 titled P.K.Bajaj Vs. Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 10 of 55 Reminiscent (India) Television Ltd. (hereinafter referred to as the "civil suit") in High Court of Delhi for recovery of Rs. 89,13,794/- (which would include the aforementioned principal amount along with interest calculated at Rs. 17,25,250/-).

22. It further appears from the material on record that Hon'ble High Court of Delhi in the course of hearing on the said civil suit was informed that the RITVL had entered into some transaction regarding sale of its property described as A-4, Guru Kripa Building, Andheri (West), Mumbai 400053 with M/s H.K. Pujara Builders, 301, Krishna Kumar, 30, V. L. Mehta Marg, Vile Parle (West) Mumbai 400056 for consideration of Rs. 2,45,00,000/- in terms of conveyance deed dated 27.04.2005. On the application of the complainant as plaintiff in the civil suit, Hon'ble High Court vide order dated 01.08.2005 had directed the said purchaser of the property (M/s H. K. Pujara Builders to withhold) a sum of Rs. 90 lacs out of the said total consideration payable by them to RITVL apparently to secure the interest of the complainant herein.

23. As per the documents submitted by the accused himself, vide a subsequent order dated 03.01.2006, passed on certain interim applications filed in the course of the said civil suit, Hon'ble High Court noted that it was the case of the defendant (RITVL) that Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 11 of 55 there was no privity of contract between him and the plaintiff of the case (complainant herein) as the entire dealings had been with Mr. Aman Bajaj son of the latter. Certain documents were referred in that context and also in support of the contention that the agreement which was subject matter of the said civil suit contained arbitration clause. It is now conceded on both sides, inter alia, in light of the documents submitted by the accused with his applications under Section 391 Cr.P.C. before this court, that vide a subsequent order dated 11.11.2009, the dispute which was the subject matter of the civil suit was referred to Arbitration with the consent of both sides. The learned Arbitrator to whom the matter was referred is yet to give his award in that case.

24. As revealed by the complaints and the documents on record of each matter, it has further been the case of the complainant that M/s Bajaj Studio had been constrained to institute prosecution through criminal complaints alleging offence under Section 138 Negotiable Instruments Act (N.I.Act) vide criminal case Nos. 2806/1 of 2004 and 2807/1 of 2004 in which M/s Silk Route Network Pvt. Ltd. (hereinafter referred to as "the SRNPL") was the prime accused in addition to

Sunil Menon @ Mookul Marathur Suneel (the accused herein), he being an authorised signatory of the cheques in Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 12 of 55 question stated to have been issued for and on behalf of SRNPL.

25. From the documents submitted by the accused with applications under Section 391 Cr.P.C., it is clear and now an admitted position that the said criminal complaint cases had been instituted for and on behalf of M/s Bajaj Studios by Mr. Aman Bajaj (son of the complainant herein), describing himself as the authorised signatory. The said two criminal cases bearing nos. 2806/1 and 2807/1 of 2004 were pending at the relevant point of time in the court of Mr. Guatam Manan, Metropolitan Magistrate, New Delhi.

26. It was the case of the complainant before the Magistrate in these three cases that on 09.11.2006, the accused had come to Delhi to attend the criminal cases involving SRNPL in the court of Sh. Gautam Manan, Metropolitan Magistrate, New Delhi and at that time he approached the complainant for settlement of the dispute involved in the civil suit pending before the Hon'ble High Court.

27. The complainant alleged that upon the accused approaching him, it was mutually agreed between the two of them that the accused would pay Rs. 90 lacs as full and final payment against the said civil suit for which purpose, the accused handed over on 09.11.2006 to the complainant the three cheques bearing nos. 823768 dated 01.05.2007; 823769 dated 10.05.2007 and 823770 Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 13 of 55 dated 20.05.2007, each for Rs. 30 lacs drawn on bank account of the accused held in Punjab & Sind Bank, Mumbai. The complainant also claimed that it was agreed between him and the accused at the time of said settlement on 09.11.2006 that he would be obliged to withdraw the civil suits pending before the Hon'ble High Court after encashment of all the three cheques. He claimed that he had accepted the said three postdated cheques on the assurance given by the accused and in the hope that they would be encashed on the dues dates.

28. The three aforementioned cheques came to be proved during the course of trial of these cases as documents Ex. CW 1/A□, CW1/B□ and CW1/C□ respectively.

29. The complainant alleged in the three complaint cases that he had presented the first cheque Ex. CW 1/A□ in his bank account but the same was dishonoured and was returned vide memo dated 08.05.2007 (Ex. CW 1/A□2). In due course, he also presented the second cheque Ex. CW 1/B□ in his bank account but the same was dishonoured and was returned vide memo dated 17.05.2007 (Ex. CW 1/B□2). Similarly, he had presented the third cheque Ex. CW 1/C□ in his bank account but the same was dishonoured and was returned vide memo dated 26.05.2007 (Ex. CW 1/C□2). Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 14 of 55

30. The complainant claimed that pursuant to return of the first cheque, he had sent a legal notice dated 22.05.2007 (Ex. CW 1/A□4) sent against postal receipt (Ex. CW 1/A□5), under postal certificate (Ex. CW 1/A□6) and through courier vide receipt (Ex. CW 1/A□7). Further, pursuant to return of the second cheque, he had sent a legal notice dated 28.05.2007 (Ex. CW 1/B□4) sent

against postal receipt (Ex. CW 1/B⁵), under postal certificate (Ex. CW 1/B⁶) and through courier vide receipt (Ex. CW 1/B⁷). Similarly, pursuant to return of the third cheque, he had sent a legal notice dated 06.06.2007 (Ex. CW 1/C⁴) sent against postal receipt (Ex. CW 1/C⁵), under postal certificate (Ex. CW 1/C⁶) and through courier vide receipt (Ex. CW 1/C⁷).

31. Identically worded replies to each of the aforesaid three notices were sent by the accused on 12.06.2007, with reference to the said notices vide Ex. CW 1/A⁸, CW 1/B⁸ and CW 1/C⁸ respectively.

32. It be noted here itself that according to the said replies the accused took the position that he had never handed over the three cheques to the complainant as was being claimed. He conceded in the said replies that he had come to Delhi "to attend a criminal case"

involving SRNPL under Section 138 N.I. Act but denied having approached the complainant for settlement of the dispute involved Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 15 of 55 in the civil suit or having agreed to pay Rs. 90 lacs as full and final payment there against. He claimed that he had nothing to do with the said civil suit since it had not been filed against him in his individual capacity. He also pointed out that the defendant in the said civil suit had denied the liability to pay the money claimed as no amount was due and, thus, disputed that the three post⁴dated cheques had been given. He stated that question of issuance of such cheques would not arise that too without filing necessary "consent terms" where the civil suit was pending. He also stated that the three cheques which were being referred, along with some other cheques, had been stolen by Sh. Narendra Chaukhani, ex⁴employee of RITVL in the year 2003⁴2004 when he had been asked to leave the job. He claimed that Sh. Narendra Chaukhani while in service had been a trusted employee and hence all important documents including blank cheques duly signed by the accused concerning his own saving bank account and that of the company account used to remain in his custody. He alleged that the complainant, in connivance with said Narendra Chaukhani, had used the three said cheques signed by him in the year 2003 by filling in the remaining particulars (name of the payee and the amount of the cheque) by way of forgery and had deposited the Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 16 of 55 same in the bank which, according to him, constituted criminal breach of trust. He further stated that he was in the process of initiating appropriate proceedings in this regard before the concerned authorities.

33. It may be mentioned here that while the complainant presented the three complaint cases before the Addl. Chief Metropolitan Magistrate, New Delhi seeking action under Section 138 N.I. Act, the accused lodged a complaint with the police station Sahu Nagar Mumbai which resulted in FIR No. 103 of 2007 being registered on 12.06.2007 for investigation into offences under Sections 408/419/467/385/34/120⁸B IPC. It may further be mentioned that from the material on record and submissions of both sides, it is clear that the said FIR eventually resulted in a charge sheet being presented in the court of Metropolitan Magistrate in Mumbai seeking prosecution, inter⁴alia, of the

complainant and his son, besides Sh. Narendra Chaukhani, the person described by the accused as ex-employee of RITVL for the aforementioned offences.

34. Since no payments were made pursuant to the demand notices sent in the wake of dishonour of the three cheques by the accused within the statutory period, the complaints were preferred on CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 17 of 55 which the Magistrate took cognizance and issued processes.

35. After compliance had been made with provision of Section 207 Cr.P.C., the accused was put to trial in each case through separate notices under Section 251 Cr.P.C. issued and served claiming trial. The complainant led evidence by examining himself through affidavits proving all the above mentioned documents in each case.

36. It is clear from the trial court records that the accused does not dispute that the three cheques bear his signatures. He also does not dispute that each of these cheques purport to be drawn in favour of the complainant and having been issued for 01.05.2007, 10.05.2007 and 20.05.2007 each for Rs. 30 lacs. He also does not dispute that the cheques pertain to his saving bank account no. 008809 with Punjab & Sind Bank, Khar, Bombay. He also does not dispute the evidence that the cheques when presented were returned unpaid vide returning memos Ex. CW 1/A□, CW 1/B□ and CW 1/C□. He further did not dispute the evidence to the effect that the said bank account did not have sufficient credit balance available for the said cheques to be honoured on the dates for which they purported to have been issued, as is evident through the statement of account Ex. CW 1/A□, CW 1/B□ and Ex. CW 1/C□. He also did not dispute that the demand notices Ex. CW 1/A□, CW 1/B□ and CW CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 18 of 55 1/C□ issued on 22.05.2007, 28.05.2007 and 06.06.2007 were duly received by him and that he did not make any payment pursuant thereto. He contested the three cases reiterating his position taken by him in the replies Ex. CW 1/A□, CW 1/B□ and CW 1/C□, the contents of which have been noted earlier.

37. During cross-examination of the complainant (CW□), the defence raised through the replies to the demand notices was reiterated and put to the complainant who would refute the same as incorrect. What is sought to be highlighted during the course of arguments here is that CW□ conceded that he had not informed the High Court of Delhi regarding the settlement, his explanation being that the cheques were post-dated and the compromise was subject to realisation of the same.

38. In his statement under Section 313 Cr.P.C., the accused reiterated his defence to the above effect denying the factum of he having issued or handed over the three cheques. He explained that the cheques in question had been kept by him with Sh. Narendra Chaukhani for the specific purpose of payment of EMI (equated monthly instalment) of a loan which he had availed. He stated that these cheques pertain to his personal account which had not been operated by him for three years preceding the dates borne on them CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 19 of 55 and that he had given signed blank cheque book to the said accountant and learnt about the theft and misuse after receipt of the demand notices.

39. The accused examined himself as DW□ reiterating the above mentioned defence. During his deposition, he placed on record copy of the charge sheet Ex. DW 1/A which has been submitted in court pursuant to investigation into the FIR lodged by him in Mumbai. He also relied on copy of plaint (Ex. DW 1/B) and order sheet dated 11.11.2009 (Ex. DW 1/C) pertaining to the civil suit.

40. During cross□ examination of the accused, it was brought out that during his stay in Delhi on 09.11.2006, in the context of other case under Section 138 N. I. Act, involving SRPNL, a compromise in that regard had been reached wherein he had got issued a bank draft of Rs. 3.30 lacs payable to the complainant for which compromise was recorded in the court of Metropolitan Magistrate on 15.11.2006.

41. The learned Magistrate rejected the defence pleas and accepted the case of the complainant in each of these cases, for reasons which can be summarized as under:□

(a) the accused had attempted to introduce a false plea of alibi by suggesting to CW□ during his cross□ examination that he had not been present in Patiala Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 20 of 55 House Courts on 09.11.2006, demolishing it by his own admission while appearing as DW□;

(b) the amicable settlement of the criminal complaint cases under Section 138 N. I. Act then pending in another court of Metropolitan Magistrate at Patiala House Court for which purpose the accused admittedly had come to Delhi rendered the case of the complainant convincing and believable regarding his knowledge about the presence of the accused in Patiala House Courts on 09.11.2006 leading to the talks for settlement of the dispute involved in the civil suit;

(c) the explanation of the complainant as to why the High Court of Delhi was not informed about the settlement reached by handing over the three cheques was reasonable as the cheques were post□ dated and compromise was subject to realisation of their value;

(d) the defence plea regarding theft and misuse of the cheques was not credible as it did not inspire confidence for blank signed cheques are not ordinarily kept with accountant and such cheques would not be signed without filling any value since the EMI was predetermined and also known and such conduct would be contrary to one expected of a prudent person;

(e) no legal action has been initiated against Sh. Narendra Chaukhani which would have been the natural course of conduct if the cheque had indeed Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 21 of 55 been misappropriated in the year 2003□2004;

(f) no reliable independent evidence (oral or documentary) had been advanced in support of the claim that the cheques had been given to Sh.

Narendra Chaukhani for purposes of EMI, particularly as even the details of the loan, its duration, amount of EMI etc. (for which purposes they were meant to be used) were not divulged;

(g) bank record had not been shown to prove that the cheques were meant to be utilized for payment of EMIs;

(h) mere registration of FIR or filing of the charge sheet in the case lodged in Mumbai would not rebut the presumption raised under N. I. Act; and

(i) the complainant had led credible evidence bringing home all necessary ingredients of the offence involving respecting each cheque.

42.The learned Magistrate concluded that the presumption arising out of the evidence led by the complainant in these cases had not been rebutted, and thus returned finding of guilty in each case.

43.The applications under Section 391 Cr.P.C. moved on 07.08.2013 by the accused seek to rely on the additional evidence in the form of documents described as under :□(i) Standard Chartered Bank Loan document;

(ii) Copy of the order dated 01.08.2005 passed by the Hon'ble High Court of Delhi in I.A. No. 5779/2005, inter alia, directing M/s. H.K. Pujara Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 22 of 55 Builders to withhold and not to pay a sum of Rs.

90 lacs out of the balance consideration of Rs.

2,45,00,000/□payable by them to the defendant RITV;

(iii)Letter dated 10.08.2005 by Om Prakash Agrawal Advocate of the complainant P.K. Bajaj to H.K. Pujara Builders re. withholding of Rs. 90 lacs viz. the balance consideration of Rs.

2,45,00,000/□payable to M/s. Reminiscent India Television Ltd. (RITV);

(iv) letter dated 17.07.2007 by H.K. Pujara Builders confirming the fact that pursuant to the order of the High Court dated 01.08.2005 they had withheld and not paid the sum of Rs. 90,00,000/□ (Rupees Ninety Lacs only) due and payable by it RITV;

(v) Copy of the Bank Statements of Punjab and Sind Bank and Standard Chartered Bank;

(vi) Copy of the Civil Suit C.S. (O.S.) No. 575/2005 filed by Respondent before the Hon'ble High Court;

(vii) Copies of the various orders passed this Hon'ble High Court in C.S. (O.S.) No. 575/2005;

(viii) Copy of the order dated 11.11.2009 passed by the Hon'ble High Court in C.S. (O.S.) No. 575/2005;

(ix) Copy of the Counter Claim filed in the Arbitration proceedings;

- (x) Copy of the reply dated 12.06.2007 to the Legal Notice;
- (xi) Copy of the said FIR No. 103/2007 dated Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 23 of 55 12.06.2007 filed by the petitioner inter alia against the Respondent;
- (xii) Copy of the order dated 31.10.2006 passed by Shri Gautam Manan, Chief Metropolitan Magistrate, New Delhi, in Criminal Complaint case number 2806/1/04 and 2807/1/04 of 15/07/2004 and affidavit dated 9.11.2006 executed by the applicant;
- (xiii) Copy of the order dated 15.11.2006 passed by Shri Gautum Manan, Chief Metropolitan Magistrate, New Delhi, in Criminal Complaint case number 2806/1/04 and 2807/1/04 of 15/07/2004;
- (xiv) Copy of the order dated 11.1.2007 passed by HMJ Gita Mittal in CS (OS) No 575/2005;
- (xv) Copy of the order dated 3.5.2007 passed by HMJ Gita Mittal in Crl. M. No 11845/2006 in CS (OS) No 575/2005;
- (xvi) Agreement between RITV and Aman Bajaj of Bajaj Studios dated 27.9.2000;
- (xvii) Letter from Punjab and Sind Bank dated 19.6.2007;
- (xviii) Statement/half yearly leader of Punjab & Sind Bank SB A/c No. 8809;
- (xix) Agreement between RITV and Aman Bajaj of Apsons dated 27.8.2000;
- (xx) Application by Shahunagar Police Station in the Court of Ms. Ravindra Bedi, MM, Patilala Court, New Delhi along with order;
- (xxi) Three orders passed by Sh. Gautam Manan, MM, Patilala House Court, New Delhi; and Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 24 of 55 (xxii) Order of Sh. Parveen Singh, MM, Patilala House Court, New Delhi.

44. The applications under Section 397(1) Cr.P.C. moved on 18.09.2013 in continuation of the earlier applications of the accused seek to rely on additionally the documents described as under: □ (i) Copy of the Written Statement filed by M/s RITVL (Defendant in the Civil Suit No. 575/05) pending before the Arbitrator as per the orders of the Hon'ble Delhi High Court;

- (ii) Copy of the Replication filed by the complainant P.K. Bajaj in the said Civil Suit;
- (iii) Copy of the statement dated 23.7.2009 made on solemn affirmation by Aman Bajaj son of the complainant in the aforesaid civil suit;

(iv) Copy of the statement of the complainant P. K. Bajaj dated 7.7.2013 before the police of Police Shahunagar, Mumbai in FIR no. 103 of 2007 during the course of further investigations;

(v) Copy of the statement of Aman Bajaj son of the complainant recorded on 7.7.2013 by the Police of Police Station Shahunagar, Mumbai in the aforesaid FIR during the course of further investigations;

(vi) Copy of the statement of Narinder Chaukhani recorded on 13.6.2013 in the aforesaid FIR during the course of further investigations;

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(vii) Copy of the order dated August 2, 2007 passed by the learned Additional Sessions Judge, Greater Mumbai in ABA No. 695/2007, whereby, the Anticipatory Bail application filed by the complainant P. K. Bajaj and his son Aman Bajaj was rejected by the court of Sessions in case FIR no. 107/03 supra."

45. The explanation of the accused in coming up with this prayer at this stage of the proceedings is that while substantive documents and facts forming part of the police investigation are already on the record, these documents had always been "available with him" and had been duly placed "for perusal of his counsel" during the trial. It is clear that the objective sought to be achieved is to fill in the deficiency in the defence evidence noting which the learned Magistrate has rejected the plea raised by the accused. The accused while seeking permission to rely on this additional material avers that these documents are part of official record, the authenticity of which is beyond question and thus prayed for the same to be taken on record as additional evidence, per se. In the alternative, he has also sought permission to summon and examine the corresponding witnesses so as to formally introduce this material in evidence.

46. Section 391 Cr.P.C. permits the appellate court to allow Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 26 of 55 further/additional evidence to be taken on record, if it thinks it "to be necessary" for "dealing with" the appeal. The counsel for the appellant has urged that the power vested in this court under Section 391 Cr.P.C. be exercised in the case at hand "to prevent miscarriage and failure of justice". He argued that the direction for allowing additional evidence to be adduced at the stage of appeal is not circumscribed by any limitation except to promote the cause of justice. In his submissions, in the facts and circumstances emanating from the instant case where the Magistrate has found the defence evidence to be deficient, interference is called for by grant of such permission as has been requested.

47. Per contra, the counsel for the complainant relied on *Rambhau Vs. State of Maharashtra* [2001(4) SCC759], *Ashok Tshering Bhutia Vs. State of Sikkim* [2011(2) JCC 1153], and *Pradeep @ Sonu Vs. State (Govt. of NCT of Delhi)* [2011(3) AD(Del) 735] to argue that Section 391 Cr.P.C. cannot be invoked to fill in lacune. Specific reference was made to para 18 of the judgment in the case of *Ashok Tshering Bhutia* (supra) which reads as under: "18. In view of the above, the law on the point can be summarised to the effect that additional evidence can be taken at the appellate

stage in exceptional circumstances, to remove an Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 27 of 55 irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents etc. just to meet the ends of justice. However, the provisions of Section 391 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution's case."

(Emphasis supplied.)

48. To the same effect are observations in para 21 in the judgment in the case of Pradeep @ Sonu (supra) which reads as under: □"21. This Court has heard the learned counsel for the parties in detail and have also perused the entire trial court record including the evidence n record. On account of an application of the appellant for additional defence evidence, this Court has to first decide whether the appellant is entitled and can be allowed to lead additional defence evidence of priest Koml Pandit and his friends, namely Raj Kamal Gautam and Sanjay Giri. Under Section 391 of the Criminal Procedure Code discretion is vested with the appellant court to take further evidence in an appeal is an exception to the general rule that an appeal must be decided on the evidence which was before the trial court. Therefore, the discretion conferred must always be exercised with circumspection and for meeting the ends of justice. Additional evidence should be permitted only when it is the requirement of the Court to Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 28 of 55 elucidate truth or when interest of justice demands such a course. The discretion vested in shape of exception, therefore, has to be exercised in the rarest of rare cases and such exercise must avoid arbitrariness and must be according to recognized cannons of criminal justice system. The additional evidence can be permitted at the instance of the prosecution as well as the defence. It is a known celebrated principle of law that discretion under this section should not be exercised for the purpose of filling a gap in the prosecution case when the necessary evidence was available to the prosecution at the hearing and ought to have been produced then.

Likewise, defence should not also be permitted to tender such evidence when the evidence in defence was available to the defence at the hearing of trial and ought to have been produced then."

(Emphasis supplied.)

49. I have given my considered thoughts to the submissions of both sides in the light of the grounds on which the applications under Section 391 Cr.P.C. have been moved and the material submitted therewith. I agree with the objections of the complainant that the material submitted now at the stage of appeal (of course excluding the statements/orders pertaining to the case in Mumbai recorded in June/July, 2013) had admittedly always been available and Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 29 of 55 accessible to the accused and could/should have been produced at the stage of defence evidence at the trial. This is virtually admitted by the accused himself when he states in his application under Section 391 Cr.P.C. moved on 07.08.2013 (in para 4) that the material was even "duly placed for perusal of his counsel" in the trial court.

50. For reasons best known to the accused, this material was withheld from the defence evidence at that stage. The material is now sought to be submitted additionally through witnesses as large in

number as 24 (put together for both the applications). Seemingly, the objective is to prolong the proceedings and delay the adjudication to the extent possible. This is neither just nor fair nor permissible. It would result in virtual relegation of the cases to trial stage. More importantly, it is nothing but an effort to fill lacunae. The applications under Section 391 Cr.P.C., therefore, do not deserve to be allowed so as to result in another round of evidence taking exercise.

51. At the same time, it cannot be ignored that most of the material submitted with the above applications appears to be duly authenticated and authenticity thereof seems to be not in dispute. So much so that during the course of the arguments on the appeals, Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 30 of 55 reference was made to some parts of this additional material not only by the accused but also on behalf of the complainant. In these circumstances, this additional material is being taken into consideration whatever its worth to the extent there are no doubts as to the authenticity, so as to examine and appreciate the arguments on either side and for adjudication on the appeals. The applications stand disposed of with these observations.

52. It is necessary at this stage to consider the applications moved by the accused under Section 340 Cr.P.C.

53. The counsel for the accused has submitted that a bare glance at the agreements executed between the complainant company RITVL and M/s Bajaj Studios or M/s Apsons would make it luminous that the same were signed by Aman Bajaj, who has fraudulently and dishonestly claimed himself to be the proprietor of the said firms. The counsel further submitted that in a complete contradiction and contrast thereto, the pleadings in the aforesaid civil suit including inter alia, the replication and evidence, particularly the statement of Aman Bajaj (of which copies have been placed on record now) as well as the complaints under Section 138 of Negotiable Instruments Act would show that in fact the proprietor of the firms M/s Bajaj Studios and M/s Apsons is P. K. Bajaj and Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 31 of 55 not Aman Bajaj.

54. The counsel further sought to point out that in the statement dated 07.07.2013 before the Mumbai police (copy of which is part of additional material under Section 391 Cr.P.C.), the complainant had conceded that "his son Aman Bajaj was signing for M/s Bajaj Studio though not authorised in writing".

55. On the above mentioned submissions, it has been argued that Aman Bajaj had impersonated as the proprietor of firms M/s Bajaj Studio and M/s Apsons and consequently caused wrongful loss to M/s RITVL company and wrongful gain to himself as well as his father.

56. The counsel then referred to the statement of the complainant in cross examination on 28.01.2011 to the effect that he would not know the person named Mr. Narender Chaukhani. Referring to the additional material indicating statement to have been purportedly made by the complainant on 07.07.2013 before the investigating police in the Mumbai FIR, it has been submitted that the complainant has not only accepted that Narender Chaukhani was dealing with them but has also conceded that he used to make the payments by way of cheques on behalf of M/s RITVL. The counsel argued that the complainant has even conceded before Crl. Appeal Nos. 73/13, 74/13, 75/13,

90/13, 91/13 & 92/13 Page No. 32 of 55 Mumbai Police that Narender Chaukhani was even signing the cheques on behalf of the company.

57. The counsel further referred to the statement of Aman Bajaj also recorded on 07.07.2013 before Mumbai Police (copy of which is part of additional material submitted by accused) during further investigation to submit that Aman Bajaj is indulging in blatant falsehood since he admits to have close proximity and association with Sh. Narender Chaukhani much after the business dealings between the firms of the complainant and M/s RITVL had stopped and further having continued interaction with Narender Chaukhani, who had been shunted out from service by the appellant and his company M/s RITVL way back in 2003. According to him, the said statement before police also shows that Aman Bajaj had continued to meet and engage with Narender Chaukhani about his business with M/s RITVL despite the fact that a dispute had ensued between the firms of the complainant and M/s RITVL culminating into filing of civil suit at Delhi.

58. Continuing with the same lines of submissions, the counsel stated that in his statement recorded on 13.06.2013 by Mumbai Police, Narender Chaukhani had also admitted facts indicating be being in conspiracy with the complainant and his son.

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59. To say the least, the applications under Section 340 Cr.P.C. are wholly frivolous and misconceived. Aman Bajaj, son of the complainant, is not a party to the proceedings at hand. He did not even appear as a witness here. The allegation of fraudulent or dishonest conduct on his part, thus, is an issue which does not even arise for consideration in these proceedings. If he impersonated at any stage (as is alleged in the applications under Section 340 Cr.P.C.), the accused will have to pursue proper remedies in such regard independently.

60. The statements under Section 161 Cr.P.C. recorded by the Mumbai Police during investigation of the FIR registered are material which is yet to be judicially tested. It has to be borne in mind that the complainant herein, and his son, and for that matter the person named Narender Chaukhani, are described as "accused" in the Mumbai case. The statements made by such persons to the investigating police officer of Mumbai are inadmissible as being hit by the provisions of Section 25 & 26 of the Evidence Act. The veracity of the evidence adduced on oath cannot be tested on the basis of such material. It may be added that nothing stopped the accused from getting summoned the person named Narender Chaukhani to whom acts of commission/omission (having a Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 34 of 55 bearing on the cases at hand have been attributed) to get his defence theory proved.

61. For the foregoing reasons, the applications under Section 340 Cr.P.C. are found devoid of substance. They are, thus, dismissed.

62. It was initially submitted by the counsel for the accused that there has been no compliance with the provisions contained in Section 202 Cr.P.C. prior to issuance of process under Section 204 Cr.P.C. which, according to him, vitiates the entire subsequent proceedings. It was submitted that as

a result of the amendment of the Criminal Procedure Code in 2005, which came into effect from 23.06.2006, the Magistrate making an inquiry for purposes of deciding as to whether grounds exist for process to be issued under Section 204 Cr.P.C., after examining the complainant and his witnesses under Section 200 Cr.P.C. is bound to postpone the issuance of process and hold further inquiry in a case where accused is residing at the place beyond the area in which he exercises his jurisdiction, in terms of Section 202(1) Cr.P.C. The counsel submitted that since the appellant is based in Mumbai, apparently beyond the jurisdiction of the Magistrate at Saket, New Delhi the latter could not have issued the process only on the basis of examination of the complainant under Section 200 Cr.P.C. H CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 35 of 55 submitted that the object behind the amendment of Section 202 Cr.P.C. to the above effect was to ensure that innocent persons residing at far away places are not harassed by unscrupulous persons. In his submissions, this requirement of Section 202 Cr.P.C is obligatory and mandatory and the same has not been followed in letter or spirit and, therefore, the summoning order was illegal and, consequently, the entire subsequent proceedings bad in law.

63.Though arguments to this effect were sought to be agitated for some time in the appeals with reference to Udai Shankar Awasthi Vs. State of Uttar Pradesh & anr. [(2013) 2 SCC 435] and National Bank of Oman Vs. Barakara Abdul Aziz and anr. [(2013) 2 SCC 488], the counsel for the accused then fairly conceded that the cases having travelled up to the stage of appeals against conviction and no exception having being taken on these lines against the summoning orders, this ground does not survive. The counsel, while withdrawing this argument, himself very fairly referred to Section 460 Cr.P.C. to concede that non-compliance of the amended Section 202 Cr.P.C. in the cases at hand would at the most amount to an irregularity which would not vitiate the proceedings.

64.Coming to the merits of the appeals, it has been argued on behalf CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 36 of 55 of the accused that the trial court has fallen into gross error by accepting the untenable, unbelievable and unsustainable version of the complainant. It has been submitted that the story of settlement by way of three cheques involved in these cases has been falsely cooked up on the basis of negotiable instruments which have been fabricated. The appellant argues that there was no occasion for the appellant to settle a pending litigation without reducing the same into writing as a formal compromise deed and/or memorandum of understanding, particularly by way of cheques drawn on personal account, even while the claim in the civil suit was against the company.

65.In above context, it has also been submitted that though the claim of the plaintiff was in the region of Rs. 90 lacs, the defendant (RITVL) of the said suit had made a counter claim to the tune of Rs. 12.5 crores. The argument is that the civil suit was contested and eventually referred to the arbitrator (where it continues to be pending till date), no liability has crystalized or finalized and so there was no occasion for the accused to pay any amount to the complainant, in anticipation of the result of the civil suit. In this very context, the counsel also sought to repeatedly highlight that no intimation was given to the Hon'ble High Court about such CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 37 of 55 settlement on any of the dates of hearing in the civil suit including 11.01.2007 and 03.05.2007.

66. In above context, the counsel referred extensively to the pleadings of the civil suit and orders passed therein including the one whereby the matter has been referred to the arbitration (copies of which have been submitted as additional material under Section 391 Cr.P.C.)

67. I have considered the submissions in light of the material which has been referred but find no substance in the defence arguments. Even with the additional material having been taken on board, the conclusions reached by the trial court deserve to be reiterated. The over all facts and circumstances prevailing around 09.11.2006 need to be borne in mind. The claim of the complainant in the two complaint cases under Section 138 Negotiable Instruments Act pending in the court of Metropolitan Magistrate at Patiala House courts was also larger than the amount for which it was eventually settled. This is demonstrated by the additional material submitted by the accused himself under Section 391 Cr.P.C. including the final order passed on 15.11.2006, whereby the settlement was recorded. Apparently, the spirit of give and take and amicable settlement was obtaining between the parties at that time. It may Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 38 of 55 be that in the civil suit, the defendant has raised a counter claim much more than the amount claimed by the plaintiff but mere claim does not mean it is a claim wholly justified or permissible in the context in which it was staked.

68. There is a valid explanation given by the complainant in the course of evidence as to why the settlement through the three cheques received on 09.11.2006 was not brought to the notice of the High Court. Undoubtedly, the material submitted under Section 391 Cr.P.C. does show that the case came up for hearing before the High Court on several intervening dates. This by itself does not mean that such settlement as stated by the complainant could not at all have taken place. The very fact that the payment had been tendered by way of cheques drawn against personal account of the accused, indicates the settlement would not fructify until and unless the said instruments were encashed.

69. Though the cheques came in the hand of the complainant on 09.11.2006, they being postdated (bearing dates of 01.05.2007, 10.05.2007 and 20.05.2007), they only represented a possible satisfaction of the claim of the complainant in the civil suit on a future date. The explanation given by the complainant that the occasion for informing the court, where civil suit was pending, Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 39 of 55 thus, had not arisen is valid and needs to be accepted as sufficient.

70. It has been further argued by the appellant that though he had explained and amply justified his presence in Patiala House Court on 09.11.2006, in as much as he had come there to swear an affidavit regarding his medical treatment for submission before the court of Metropolitan Magistrate where the two other cases under Section 138 N. I. Act were then pending, there was no occasion for the complainant to come to the said place. It is argued that for this reason, the story of settlement by way of handing over these three cheques to him by the accused at that place on the said date is a fiction created. The counsel also submitted that the evidence of the complainant to the effect that the accused had come to attend a hearing in the said case of Patiala House Court on 09.11.2006 is false and, therefore, liable to be thrown out for the reason the cases in question were not fixed for "hearing" on the said date.

71. The arguments do not impress me. While it is correct that the cases under Section 138 Negotiable Instruments Act at Patiala House Courts were not listed for hearing on 09.11.2006, the material on record itself shows that the parties were in touch with each other for amicable settlement. It does appear from the material submitted under Section 391 Cr.P.C. that the cases in Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 40 of 55 question had last come up before the Metropolitan Magistrate on 31.10.2006 when the accused was absent and had sought exemption from personal appearance on medical grounds. The cases had been adjourned for 17.11.2006, with the request for exemption having been allowed subject to the condition that the accused would produce medical certificate on the next date of hearing. The material submitted under Section 391 Cr.P.C. further shows that, against the said backdrop, an application had been prepared supported by affidavit of the accused seeking to place on record the necessary documents about the illness. The said affidavit was sworn before the Oath Commissioner at New Delhi on 09.11.2006. It also needs to be highlighted that the cases in question, though adjourned for 17.11.2006, were actually taken up and disposed of on 15.11.2006, in the presence of the counsel on both sides, with the complainant of the cases also present, on 15.11.2006, two days ahead of the date fixed for hearing.

72. The material submitted by the accused himself under Section 391 Cr.P.C. shows that the cases were taken up by Sh. Gautam Manan, Metropolitan Magistrate on 15.11.2006 on the application for withdrawal moved by the complainant P. K. Bajaj who also made a statement to such effect, formally recorded seeking to withdraw the Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 41 of 55 said cases from prosecution on account of he having received Rs. 3.30 lacs as consolidated sum against both the cases.

73. Seen against the above backdrop, the move for withdrawal of the two cases on 15.11.2006 (for which the cases were not listed) would not have come about, unless and until the parties had been in touch with each other after the last date of hearing (31.10.2006). The accused has not indicated any meeting between him (or his counsel) on one hand and the complainant on the other on any specific date during the intervening period. In these circumstances, the version of the complainant about the meeting on 09.11.2006 deserves to be believed.

74. As pointed out by the counsel for the complainant, the accused has given contradictory version with reference to events of 09.11.2006 at several stages. As already noted, in his reply dated 12.06.2007 to the demand notice, he has admitted that he had come to Delhi "to attend" the criminal cases under Section 138 Negotiable Instruments Act. When the complainant (PW□) was under cross□examination, he suggested to him that he (accused) was not present in Patiala House Courts on 09.11.2006. He contradicted himself by again admitting his presence in Patiala House Courts on 09.11.2006 when he deposed as defence witness. His version before the Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 42 of 55 Mumbai police in the context of FIR lodged by him (as per statement under Section 161 Cr.P.C. recorded on 07.07.2007 on which he seeks to rely) is again not truthful since he denied having gone to Patiala House Courts on the said date (a fact he would later admit on oath).

75. It is then argued by the appellant that the two other cases under Section 138 N.I. Act pending before Sh. Gautam Manan, Metropolitan Magistrate (which eventually resulted in compounding of

the said offences on 15.11.2006 and in context of which the accused had come to Patiala House Court on 09.11.2006) did not involve the complainant of the cases at hand. The counsel pointed out that the said cases had been preferred on behalf of M/s Bajaj Studios by Aman Bajaj, (the son of the complainant herein) against another company SRNPL and the appellant herein was arrayed as accused no.3. The counsel submitted that for this reason as well the presence of the complainant in Patiala House Court on 09.11.2006 cannot be believed as there could not possibly be any transaction involving him undertaken against such backdrop.

76. Nothing turns on the submissions that the cases under Section 138 Negotiable Instruments Act pending in the court of Sh. Gautam Manan, Metropolitan Magistrate Patiala House Courts had been Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 43 of 55 presented by M/s Bajaj Studio through Sh. Aman Bajaj (son of the complainant) described as authorised signatory. The material submitted under Section 391 Cr.P.C. includes copy of statement dated 15.11.2006 made by the complainant describing himself as the proprietor of M/s Bajaj Studio, a statement of which the accused derived advantage by having the prosecution dropped on account he having paid the amount settled between the parties.

77. For the foregoing reasons, I do not find any ground to disbelieve the complainant with regard to his presence in the Patiala House Courts on 09.11.2006.

78. The appellant further argued that the trial court misdirected itself by ignoring the substantial material on record evidencing the accused having taken appropriate legal action respecting the acts of commission/omission involving ex-employee Sh. Narendra Chaukhani. The counsel argued that the material already submitted on record as defence evidence clearly showed that immediately after receipt of the demand notice the accused had become alive to the theft and misuse of the cheques which had been entrusted to the said employee and, thus, had promptly lodged a report with the local police in Mumbai which investigated into the matter and had initiated prosecution for criminal breach of trust and allied Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 44 of 55 offences, in which proceedings the complainant of the present case and his son have also been made an accused. The counsel submitted that if any doubts were to persist about his version regarding the private loan (against which EMIs were to be paid and for which purpose the cheque books in question had been got issued from the concerned bank), the additional material submitted with the applications under Section 391 Cr.P.C. should provide the necessary clarity. For such purposes, he referred extensively to the defence evidence led and the documents submitted with the applications under Section 391 Cr.P.C.

79. In the applications under Section 391 Cr.P.C. it has been averred that the appellant had taken a personal loan in or around April, 2002 from Standard Chartered Bank which was to be repaid in 36 instalments, each of Rs. 3691/- per month. The documents issued by the Standard Chartered Bank confirm the loan to have been taken on 01.04.2002 against loan account no. 40130525 repayable in 36 instalments of Rs. 3691/- on or before 01.04.2005. The appellant has also placed on record the statements of account of Savings bank account no. 8809 held in Punjab & Sindh Bank Khar, (Mumbai) for the period 23.04.2003 to 28.09.2007, which corroborates the claim of payment of two instalments on Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 45 of 55

06.05.2003 and 08.08.2003 vide cheque nos. 823741 and 823744 respectively. The appellant also claims in the applications under Sections 391 Cr.P.C. that similar instalments of Rs. 3691/- had been paid on 05.05.2003 vide cheque no. 823765.

80. It is claimed by the appellant that for purposes of EMIs, he had taken from his banker three booklets each containing 20 cheques (total 60 cheques) bearing cheque nos. 823741 to 823800. He has claimed that he had signed all the 60 blank cheques on 22.03.2003 and had handed over the same to Sh. Narendra Chaukhani to be kept in custody and use for payment of EMIs. He has further claimed that the entire loan stood repaid around 02.08.2003 and, therefore, the loan account was closed, but the remaining blank signed cheques had remained with Sh. Narendra Chaukhani. It is his case that the services of Narendra Chaukhani came to be terminated in 2003 on account of his various acts of omission/commission reflecting gross dereliction of duties, inefficiency and doubtful integrity. But, in spite of demand of return of all the documents in his possession, he had not handed over the blank signed cheques regarding which the appellant did not have complete and full knowledge or details available with him at that time.

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81. The argument of the appellant is that his defence plea regarding misuse of cheques has been wrongly rejected on the erroneous observations that there was nothing on record to substantiate the same. He submits that if indeed there had been a settlement with the complainant, he would have given fresh cheque from the running account and not stale cheques from an account which had been long dormant. His argument is that the trial court has been "oblivious" to the anxiety as to how and why the cheques which had their "origin and genesis in the year 2002 would be handed over to the complainant in the year 2006".

82. The defence story about Naresh Chaukhani being the custodian of the cheques and he having misused the same does not deserve to be believed. The material on record relied upon by the accused himself (including the one submitted under Section 391 Cr.P.C.) itself punctures it beyond repair. The document dated 06.04.2002 issued by the Standard Chartered Bank in respect of loan account no. 40130525 does show a personal loan having been taken by the accused on 01.04.2002 which was repayable in 36 equated monthly instalments (EMIs) each of Rs. 3691/- starting with 01.06.2002 and ending with 01.05.2003. The material under Section 391 Cr.P.C. further shows that the accused was maintaining personal savings Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 47 of 55 bank account no. 8809 with Punjab & Sindh Bank, Khar, Mumbai. It does further substantiate the fact that at least three cheque books each containing 20 leaves were got issued against the said bank account. Admittedly, the three cheques involved in the cases at hand form part of the said 60 cheques. The impression sought to be created by the accused is that all the cheque leaves in the said cheque books were signed by him and handed over to Narendra Chaukhani (an employee of RITVL) for purposes of using for repayment of the said personal loan through EMIs. If that were the purpose of the said cheques to be issued, there is no explanation why 60 cheques were got issued as against only 36 which would actually be required.

83.The statements of account for the period 23.04.2003 to 28.09.2007, which have been submitted as part of the material under Section 391 Cr.P.C. show that only two out of the said 60 cheques were actually used for payment of EMIs. The payment of third instalment against cheque no. 823765 dated 05.05.2003 is not reflected in this material. The claim of the accused in that regard is thus not truthful.

84.If only 36 instalments were to be paid, there is no explanation why the accused would sign all the 60 cheques and hand the same over Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 48 of 55 to his employee. The accused has relied on his own supplementary statement under Section 161 Cr.P.C. dated 07.07.2007 as complainant in the FIR before Mumbai police. The copy of the English translation of the said supplementary statement is at Page 87 of the charge sheet which was submitted by the accused as Ex. DW 1/C. This material seriously contradicts his claim about 60 cheques having been signed and handd over to Narender Chaukhani. At that stage, the accused had made a claim to such effect only about 7 (seven) cheques. Noticeably, the description of the 7 (seven) cheques was also not given and kept vague.

85.The defence theory is that the loan stood repaid on 02.08.2003. Since the statements of account referred to above show payment of only two EMIs against the cheques drawn on that account, it has to be assumed that EMIs were paid not necessarily by way of cheques drawn on such account but through other modes as well. If it were so, the story about the role and responsibility of Narender Chaukhani is rendered highly doubtful.

86.The accused vaguely states that Narender Chaukhani had been found guilty of dereliction of duties, inefficiency and being of doubtful integrity and thus his services were terminated in 2003. Narender Chaukhani was not a personal employee of the accused. Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 49 of 55 It is his own case that the said individual was an employee of RITVL. If it were so, the termination of services of the company employee would not have occurred without formal documentation/communication. No such material has been submitted even under Section 391 Cr.P.C. The specific date of termination has also been kept vague. In arguments, it has been claimed that this happened in September, 2003. The statements of account of saving account maintained with Punjab & Sindh Bank show that it is not only the aforementioned series of cheques which were got issued but there were several cheque books of different series in use simultaneously. In fact, the material would show that the cheque books which were got issued went beyond the cheque leaves bearing no. 823800. Thus, while cheque no. 823803 was used on 07.10.2003, i.e. within 2003, cheque no. 823822 came to be used on 09.05.2005. This material falsifies the story of the cheque books having remained unauthorisedly in the custody or control of Narender Chaukhani after September, 2003, so as to be misused in concert with complainant of the cases at hand. There are series of entries in these statements of account indicating instructions to the banker for stopping of payment against a number of cheques. This shows active involvement of the account holder Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 50 of 55 (accused) in operation of the account much after exit of Narender Chaukhani and, thus, negates the defence story. If Narender Chaukhani had kept with him blank signed cheques, they would also have been "stopped" by the account holder.

87. The account continued to be operative even long after Narender Chaukhani had admittedly left the employee of the company/accused. In these circumstances, it is not believable that the accused would have allowed Narender Chaukhani to carry away with him such valuable instruments as blank signed cheques. It is his own case that Narender Chaukhani was a man he suspected to be of doubtful integrity. If it were so, he would have immediately demanded the return of the blank signed cheques at the time of termination of the services. It is inconceivable that he would not remember such important documents till 2006 when he lodged the FIR. The very fact that he lodged FIR to such effect after receipt of the demand notice (concerning the cheques involved here) shows that the entire story is as an afterthought.

88. An outsider would not know that the cheques (which were used), were got issued in 2002. So long as the account continues to be operative, the cheques even if drawn from a cheque book issued four years earlier do not become "stale". At least, the recipient of Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 51 of 55 the cheque would not know that it is "stale" because it was issued four years earlier. At any rate, the payee would not raise objections to this effect. The defence argument is frivolous.

89. For the foregoing reasons, I endorse the findings recorded by the trial court rejecting the story of theft/misuse of the cheques by Narender Chaukhani in connivance with, or at the instance of, the complainant.

90. The appellant has also argued that the trial court improperly raised the presumption under Section 139 Negotiable Instruments Act by misplaced reliance on Rangappa Vs. Sri Mohan AIR 2010 SC 1898. In his submissions, sufficient material has not been adduced to show existence of any "legally enforceable debt or liability" The counsel relied upon Reverend Mother Marykutty Vs. Reni C. Kottaram and anr. [(2013) 1 SCC 327] and Vijay Vs. Laxman & anr. [(2013) 3 SCC 86].

91. I find no merit in the arguments to above effect. The complainant has discharged his burden of proof in respect of the necessary ingredients on the basis of which presumptions arise under Sections 118(a) and 139 Negotiable Instruments Act to the effect that the cheques in question had been issued for consideration and Crl. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 52 of 55 for discharge, in whole or in part, of debt or other liability owed by drawer in favour of the holder/payee. The defence evidence led by the accused does not inspire confidence, not even when tested on the standard of "preponderance of probabilities". Thus, the presumptions have not been rebutted.

92. In the result, the appeals of the accused against findings recorded leading to conviction in the three cases at hand are found devoid of substance. They are, thus, liable to be dismissed. Ordered accordingly.

93. The complainant through his appeals (Criminal Appeal Nos. 90-92/2013) has sought enhancement of the punishment. In this context, he refers, inter alia, to the false defence plea taken up to resist the cases, as also the conduct of the accused post conviction wherein he seems to have avoided/evaded appearance thereby negating possibility of expeditious consideration of the

question of sentence, while at the same time moving petitions before superior courts. The accused, on the other hand, through his appeals (Criminal Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13) questions the orders on sentence on the ground that they are harsh and have been passed without due application of mind.

94. Having heard both sides at length on subject matter of sentence, I CrI. Appeal Nos. 73/13, 74/13, 75/13, 90/13, 91/13 & 92/13 Page No. 53 of 55 agree with the submissions of the accused/convict that conduct post conviction will have to be kept out of consideration in view of the observations recorded in the order dated 08.03.2013 passed by Hon'ble High Court in the Transfer Petition (Criminal) no. 02/2013.

95. The complaint cases were preferred by the complainant in 2007. They pertain to cheques which were issued for being encashed in May, 2007. The cheques had been handed over for discharge of liability in November, 2006. On account of contest founded on false theories, the cases have seen protracted proceedings. The complainant has, thus, been deprived of what has been his lawful dues all along. In these circumstances, I do not find the orders on sentence to be harsh or unjust in any manner. The learned trial court has rather taken a very balanced view. The sentence awarded in each case is commensurate with the facts and circumstances at hand.

96. In the result, all the six appeals are dismissed.

97. This judgment has been passed on the file of Criminal Appeal No. 73/2013. The reader is directed to place an attested copy of the judgment on the files of connected Criminal Appeal Nos. 74/13, 75/13, 90/13, 91/13 and 92/13.

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98. The bail bonds of the appellant stand discharged. The appellant Suneel Menon @ Mookul Maruthur Suneel is taken into custody and sent to jail under appropriate warrants to undergo the sentence as awarded by the trial court in each case.

99. A copy of the judgment be given free of costs to the appellant.

100. Copies of the judgment be sent to the trial court with the records of each case.

101. Files of the appeals be consigned to record room.

Announced in open Court today
on this 04th day of October, 2013

(R.K. GAUBA)
District & Sessions Judge (South)
Saket/New Delhi

