

Filed By Arun Kathuria In Civil Suit ... vs . Neeru Seem on 15 December, 2020

IN THE COURT OF MS. NEETIKA KAPOOR, MM-11, SOUTH WEST DISTRICT,
DWARKA COURTS, DELHI.

State v. Neeru Seem & Anr.
FIR No. : 688/2006
P.S. : Janakpuri
U/s : 82/83 of Registration Act

a) ID. No. of the Case : 6973/19

b) Name & address of the Complainant : Seema Kathuria
D/o late Sh. O. P. Khanna
W/o Sh. Arun Kathuria
R/o B-3, Kirti Nagar,
New Delhi-110015.

c) Name & address of accused : 1. Neeru Seem
W/o Sh. Shashi Shekhar
Seem
R/o B-309, Prateek,
The Royal Cliff Crossing
Republik, NH-24, Ghaziabad

2. Shashi Shekhar Seem
S/o Sh. S. L. Seem
R/o B-309, Prateek,
The Royal Cliff Crossing
Republik, NH-24, Ghaziabad

d) Date of Commission of offence : 29.05.2000

e) Offence complained of : U/s 82/83 of Registration Act

f) Plea of the accused : Pleaded not guilty.

g) Final Order : 15.12.2020

Date of registration of FIR : 10.04.2006
Final arguments heard on : 11.12.2020
Judgment Pronounced on : 15.12.2020

JUDGMENT

1. Accused persons namely Neeru Seem (hereinafter referred to as accused no.1) and Shashi Shekhar Seem (hereinafter referred to as accused no.2) are facing trial for commission of offences punishable u/s 82/83 of the Registration Act, 1908 read with section 109 Indian Penal Code (hereinafter referred to as IPC) in connection with FIR No.688/2006 dated 10.04.2006 registered at PS Janakpuri.

2. The factual matrix of the prosecution case in brief is that on 04.04.2000, an agreement to sell was executed between complainant's father Late O.P. Khanna and complainant's husband Arun Kathuria and accused no.2 Shashi Shekhar Seem for sale of property bearing no.10/1, DLF Industrial Area, Moti Nagar, New Delhi measuring 200 sq yards (hereinafter referred to as said property) for a total sale consideration of Rs.5,00,000/- and on the same day, father of complainant Lt. O.P. Khanna and husband of complainant Sh. Arun Kathuria handed over two postdated cheques bearing no.086601 and 360605 dated 20.04.2000 and 24.04.2000 respectively, both drawn on Punjab National Bank, Punjabi Bagh Branch amounting to Rs.2,50,000/-each and accused no.2 Shashi Shekhar Seem handed over vacant peaceful possession of the entire said property with complete ownership rights to the father and husband of the complainant by executing a Possession Letter dated 04.04.2000 while acting on behalf of accused No. 1 Neeru Seem.

3. In pursuant to the agreement to sell dated 04.04.2000, a Sale Deed was executed by accused no.1 Neeru Seem in favour of complainant's father O. P. Khanna in respect of half undivided share of the aforesaid property declaring the same to be free from all sorts of encumbrances, burden, decree, sale, mortgage, gift, lien etc.

4. Subsequently, husband of the complainant Arun Kathuria learned that property in question had been mortgaged with Union Bank of India at the time of execution of Sale Deed dated 29.05.2000 and that accused no.1 Neeru seem and accused no.2 Shashi Shekhar Seem made false statements at the time of execution of Sale Deed before Sub Registrar, Janak Puri, New Delhi. Consequently, in February 2004, father of the complainant Lt. O.P. Khanna, lodged a complaint against accused persons with the Sub Registrar, Janak Puri, New Delhi, however, no action on the said complaint had been taken.

5. Thereafter, complainant Seema Kathuria authorised her husband Arun Kathuria who filed a written complaint before the court and in compliance to order dated 10.06.2006 of Ld. ACMM, West, Delhi, the present FIR was registered against both the accused persons u/s 82/83 of Registration Act at PS Janakpuri and SI Satish Kumar was appointed to investigate the case.

6. During course of investigation, SI Satish Kumar visited the office of Sub Registrar, Janakpuri and Union Bank of India, Patel Nagar branch, New Delhi issued notices under Section 91 Code of Criminal Procedure, 1973 (herein after referred to as Cr.P.C.) and applied for certified copies of the documents pertaining to said property from Manager Sh. V.K. Jairath who sent a reply stating that property in question had been mortgaged with Union bank of India in the year 1997 and the original papers pertaining to the said mortgage had been placed in case file of FIR bearing No.505/2002 dated 30.10.2000 u/s 420/120B IPC registered at PS Kirti Nagar pending trial in the court of Ld. CMM, Tis Hazari Court.

7. On the basis of material collected during investigation, accused persons were prima facie found to be involved in the commission of the offence punishable u/s 82/83 of the Registration Act. After completion of investigation, charge sheet/final report was filed against accused persons by the police in the court.

8. On finding sufficient material on record against accused no.1 Neeru Seem and accused no.2 Shashi Shekhar Seem, for commission of offence u/s82/83 of Registration Act, they were summoned before the court and on their appearance, copies of challan and other documents were supplied to them in compliance of section 207 Cr.P.C.

9. On finding prima facie case against accused persons, charge was framed against accused no.1 Neeru Seem u/s 82 of Registration Act, 1908 r/w section 109 IPC to which she pleaded not guilty and claimed trial and charge u/s 82 of Registration Act, 1908 was put to accused no.2 Shashi Shekhar Seem to which he pleaded not guilty and claimed trial.

10. Thereafter, the prosecution was called upon to adduce its evidence and in order to prove its case, prosecution examined as many as 08 witnesses.

11. PW1 Seema Kathuria is the complainant. PW2 Om Prakash is UDC in the office of Sub Registrar, Janakpuri who is witness to document Ex.PW2/A. PW3 Vinay Kumar Jairath is Chief Manager from Union Bank of India, Patel Nagar Branch, who is witness to document Ex.PW3/A. PW4 O.N. Gupta, is Manager in Union Bank of India, Patel Nagar, Branch who is a witness to documents Ex.PW4/1 to Ex.PW4/9 pertaining to an equitable mortgage in respect of the aforesaid property with Union Bank of India. PW5 WHC Celestina is witness to rukka Ex.PW5/A and present FIR Ex.PW5/B. PW6 SI Satish Kumar and PW-7 Ram Kishore are IOs of the case and PW-8 Suresh Kumar is Ahlmad in the Court of Ld. CMM (West), THC, Delhi.

12. After completion of prosecution evidence, incriminating evidence adduced by prosecution was put to accused persons by recording their statements u/s313 Cr.P.C, whereby both accused persons denied case of prosecution and pleaded innocence. Both the accused persons expressed intention to lead DE and examined as many as 06 witnesses.

13. DW-1 Surender Kumar, is Ahlmad, posted in the court of Ld. CMM (Central), Tis Hazari Courts, Delhi who is witness to unsigned Sale Deed Ex.DW1/1. DW2 Rajiv Kumar from the court of Ld. Civil Judge, Central, Tis Hazari Court is the witness to plaint filed by Arun Kathuria in Civil Suit No.597951/2016 titled Arun Kathuria vs. Neeru Seem which is Ex.DW2/1 and is also witness to documents Ex.PW1/7 and Ex.PW2/2. DW-3 Rajesh Kumar, is Jr. JA, Record Room, Tis Hazari Court who is the witness to report of Local Commissioner Ex.PW3/A which is part of case record in Civil Suit No.861/2002 titled Arun Kathuria vs. Neeru Seem. DW4 Deepa Verma, is director of FSL who is witness to FSL report no.2009/D/1290 dated 15.07.2009 Ex.DW4/2. DW5 Neelam Pal, is Sr. JA, Record Room (Crl.), Patiala House Court, who is witness to case file bearing no. CC109/1 titled Arun Kathuria vs. Shashi Shekhar Seem Ex.DW5/A. DW6 Sh. Shashi Shekhar Seem is accused no.2 himself.

14. Thereafter, final arguments were advanced and written submissions were filed on behalf of both the parties.

15. I have heard Ms.Rajesh Kumari, Ld. APP for the State, Sh. Kunal Kalra, Ld. Defence counsel and have gone through the case record carefully.

16. On the basis of evidence on record, following points arise for determination:-

(I) Whether prosecution has been able to prove beyond all reasonable doubt that on 29.05.2000 while executing Sale Deed pertaining to property bearing no. 10/1, DLF Industrial Area, Moti Nagar, New Delhi, accused no.1 Neeru Seem and accused no.2 Shashi Shekhar Seem made intentional false statement before Sub Registrar, Janak Puri declaring the said property to be free from all sorts of encumbrances, payment, decree, sale, mortgage, gift, liability, litigation, attachment, stay order, injunction order, acquisition notification, notice, legal clause, surety security or transfer, etc as alleged.

(ii) Final order.

17. For the reasons to be recorded hereinafter while discussing the aforementioned points for determination, my findings on the said points are as under:-

(1) Yes.

(2) Accused no. 1 Neeru Seem is convicted for offence punishable u/s 82/83 of the Registration Act, 1908 but is acquitted for the offence punishable under Section 109 IPC, while proceedings against accused no. 2 Lt. Shashi Shekhar Seem stand abated.

REASONS FOR FINDINGS

18. To prove the allegations against accused no.1 Neeru Seem and accused no.2 Shashi Shekhar Seem, the prosecution examined complainant Seema Kathuria who stepped into the witness box as PW-1 and supported the case of the prosecution and stated that on 04.04.2020, accused no.2 Shashi Shekhar Seem had approached her father late O.P. Khanna and her husband Arun Kathuria in regard to sale of the property bearing no.10/1, Moti Nagar, New Delhi, measuring 200/210 sq yards and the entire deal was settled for a consideration of Rs.5,00,000/-. She further deposed that Agreement to Sell was executed on 04.04.2000 Ex. PW1/A between accused no.2 Shashi Shekhar Seem on behalf of his wife accused no.1 Neeru Seem and her father Lt. O.P.Khanna and her husband Arun Kathuria wherein two cheques of Rs.2,50,000/- each, drawn on Punjab National Bank in favour of accused no.1 Neeru Seem were handed over to Accused no.2 which were later encashed. PW-1 further deposed that the possession of the said property was also handed over to her father and husband in terms of possession letter dated 04.04.2000 Ex. PW1/B.

19. She further deposed the original documents i.e. Agreement to Sell dated 04.04.2000 Ex.PW-1/A, Possession Letter dated 04.04.2000 Ex.PW-1/B and Sale Deed dated 29.05.2000 Ex. PW-1/C to be part of case record in FIR No.505/2020 registered at PS Kirti Nagar, pending trial in the Court of Ld. CMM, Tis Hazari. (Original documents seen and returned).

20. In her cross examination, she deposed that on 29.05.2000, accused no.1 Neeru Seem executed Sale Deed Ex. PW-1/C in favour of her father Lt. O.P. Khanna in respect of said property which bears signatures of her father at point A and signatures of accused no.1 Neeru Seem at point B and signatures of accused no.2 at point C on each page on the said document and the said Sale Deed was duly registered in the office of Sub Registrar, Janakpuri, New Delhi. She further deposed that in the said sale deed Ex.PW1/C, accused no.1 Neeru seem made a false statement that the property in question was free from all encumbrances, burden, decree, sale, mortgage, etc, as written on Para 4 of the said document before the Sub-registrar, Janak Puri.

21. PW1 further deposed that subsequently, her father Lt. O.P. Khanna and her husband Arun Kathuria learned that accused no.2 Shashi Shekhar Seem and his father in law were directors in a company namely M/s Neeru Graphics Pvt Ltd and the said company had taken a loan and mortgaged the said property with Union Bank of India. On 10.10.2000, Arun Kathuria lodged complaint with EOW Crime Branch against accused no.1 & 2 for committing offence of cheating and thereafter, FIR no.505/2002 was registered against both accused persons at PS Kirti Nagar. PW1 further deposed that on 05.06.2003, her husband Arun Kathuria had received notice 'Mark A' from Union Bank of India for vacating the said property and thereafter, Union Bank of India started legal proceedings (Mark B) against the said property under Securitization Act, 2002 in the court of Ld. CMM, Delhi wherein O.P. Khanna, Arun Kathuria, Neeru Seem and Shashi Shekhar Seem were arrayed as respondents. She deposed that both the accused persons were alive to the fact that the said property had already been mortgaged with Union Bank of India but intentionally concealed the said fact at the time of executing Sale Deed Ex. PW- 1/C.

22. PW1 further deposed that in February 2004, her father Lt. O.P. Khanna lodged a complaint before Sub Registrar, Janakpuri u/s 33 of the Registration Act, 1908 but no action had been taken on the said complaint. Consequently, complainant executed a Special Power of Attorney Ex. PW1/E in favour of Arun Kathuria who filed the complaint Ex. PW1/E1 in the court in the month of July 2006 on behalf of the complainant. PW-1 filed the present complaint being the legal heir of her father Lt. O. P. Khanna.

23. PW1 admitted that she was deposing on the documents as was told to her by her father Lt. O.P. Khanna. She denied the signatures of her father Lt. O.P. Khanna on a Bayana receipt dated 20.04.2000. She admitted knowing Shoti P. Gera s/o Sh. J.D. Gera who was property dealer. She admitted that a legal notice dated 24.09.2000 was sent by her father Lt. Sh. O.P. Khanna to accused no.1 and the contents of the same were true and correct and the same was drawn on the instructions of her father. She admitted that her father and her husband were introduced to accused no.2 Shashi Shekhar Seem for the first time in the month of April 2000 by Sh. S.P. Gera but failed to recall the exact date of their first meeting. She further deposed that the said property was duly inspected by her father and husband prior to 04.04.2000 but she had not accompanied them for the same. She

further deposed that at the time of inspection of the property, some business was being carried out in the said property by some persons, however, nature of work was not disclosed to her by her father or her husband. She failed to recall whether accused no.1 was present at the time of first meeting of her father and husband with the accused no.2 Shashi Shekhar Seem. She admitted that accused no.1 & 2 were strangers to her father and husband prior to April 2000. She voluntarily stated that Shoti P Gera had informed them that the said property belonged to accused no.1 Neeru Seem. She stated that neither her father nor her husband made any effort to contact accused no.1 after 04.04.2000.

24. PW1 further stated it to be correct that prior to 04.04.2000, accused no.2 Shashi Shekhar Seem was running his business of printing in the name and style of M/s Neeru Graphics Pvt Ltd and M/s Neeru Art Printings, but failed to apprise whether accused no.1 Neeru Seem had also been involved in the said business. She admitted that the said facts were told to her by her father but failed to recall the time as to when had she seen the copies of the title documents pertaining to said property.

25. PW-1 voluntarily stated that accused no.2 Shashi Shekhar Seem had made representation to her father about acting and executing documents on behalf of his wife accused no. 1 Neeru Seem. She denied the suggestion that neither Shashi Shekhar Seem had executed any Agreement to sell Ex.PW1/A nor vacant possession of the property was handed over by accused no.2 Shashi Shekhar Seem to her father and husband.

26. PW1 further denied suggestion that accused no.2 Shashi Shekhar Seem had no authority to enter into deal with respect to property in question. She failed to recall as to who had purchased the stamp papers, on which Agreement to Sell Ex.PW1/A was executed. She denied Agreement to sell dated 04.04.2000 Ex.PW1/A to be forged, fabricated and manipulated document. PW1 further deposed her mother, her brother and herself to be the only legal heirs after demise of her father.

27. PW1 expressed her inability to recall the time when her husband had served legal notice upon accused persons and denied suggestion that legal notice was served upon accused persons by her husband or her father on or before 31.07.2000. She failed to recall whether she had visited the said property on or before execution of agreement to sell Ex.PW1/A. She admitted that Ex.PW1/A was prepared on stamp paper bought on 19.02.2000 and same was drafted by accused no. 2 Shashi Shekhar Seem. She denied the suggestion that Ex. PW1/A was prepared in the office of S.P. Gera. She denied the said document Ex.PW1/A to be forged by S.P. Gera, O.P. Khanna and Arun Kathuria. She further denied the suggestion that document Ex.PW1/A was prepared on stamp paper purchased on 19.02.2000 by S.P. Gera. She expressed her inability to apprise whether prior to 04.04.2000 accused no.2 Shashi Shekhar Seem had taken loan from S.P. Gera and had signed blank white paper and blank stamp paper purchased on 19.02.2000 which were kept as security by S.P. Gera. She denied the suggestion that S.P. Gera along with Arun Kathuria & O.P. Khanna forged and fabricated blank signed stamp paper into agreement to sell Ex.PW1/A and blank paper into possession letter Ex.PW1/B dated 04.04.2000. She denied the suggestion that O.P. Khanna and Arun Kathuria had given a sum of Rs.5,00,000/- (Rupees five lakhs) each to accused persons but voluntarily stated that two cheques of Rs.2,50,000/- (Rupees two lakhs fifty thousand) each were given by them. She denied suggestion that apart from said cheques of Rs.2,50,000/- (Rupees two lakhs fifty thousand) each, an amount of Rs.5,00,000/- (Rupees five lakhs) in cash was given to

accused persons by her father and her husband.

28. PW-1 denied that document Mark AA had been executed by Arun Kathuria or Sh. O.P. Khanna or Sh. S.P. Gera. She expressed her ignorance as to the fact that valuation of the property was assessed to be Rs.86 Lakh by Union Bank of India in the year 1982. She denied the suggestion that Sh. Arun Kathuria and Sh. O.P. Khanna were to pay balance amount of Rs.41 Lakh to accused persons by 20.07.2000 towards Sale consideration.

29. PW1 expressed her ignorance that on the basis of said agreement a loan of Rs.48 Lakh was given to company of accused persons and stated that best to her memory, notice was received by her husband and father from Union Bank of India. She deposed that her father Lt. O.P. Khanna or her husband Arun Kathuria were having knowledge pertaining to any litigation before any judicial forum in respect of property in question. She expressed ignorance as to any litigation pertaining to said property between her father and bank.

30. PW1 further stated that an amount of Rs.30 Lakh was deposited by her husband with Union Bank of India but voluntarily pointed out that the said amount was deposited by him on the instructions of accused no.2 Shashi Shekhar Seem, who in lieu had issued a cheque amounting to Rs.30,00,000/- (Rupees thirty lakhs), which got dishonoured and consequently Shashi Shekhar Seem was convicted for the offence u/s138 NI Act and was sentenced to one year imprisonment.

31. PW1 denied the suggestion that her husband deposited an amount of Rs.30,00,000/- (Rupees thirty lakhs) on the direction of Hon'ble High Court. She denied the suggestion that while executing Sale Deed dated 29.05.2000 Ex.PW1/C, her husband and father had assured the accused persons of clearing loan of Rs.38,00,000/- (Rupees thirty eight lakhs) of Union Bank of India and had sought some time for starting their business of injection molding machine. She denied the suggestion that the possession of the basement and ground floor of property in question was handed over to her father on 29.05.2000 itself in good faith on the assurance made by her father and husband of clearing the bank loan dues by 20.07.2000. She denied being present at the time of execution of registered sale deed Ex.PW1/C, but deposed that it was executed on stamp paper purchased by her father but was drafted by accused no.2 Shashi Shekhar Seem. She denied the suggestion that said document Ex.PW1/C was drafted by S.P.Gera and Arun Kathuria. She denied the suggestion that at the time of execution of sale deed Ex.PW1/C, her father and her husband were aware of mortgage loan against said property. She denied the suggestion that a false legal notice dated 24.09.2002 was sent by her father Lt O.P. Khanna. She denied the suggestion that her father and her husband had confirmed factum of loan against said property prior to alleged execution of agreement mark AA or prior to the execution of sale deed Ex.PW-1/C. She expressed her lack of knowledge whether prior to 24.09.2000 her father had taken any steps for acquiring title documents of said property from accused persons. She denied the suggestion that she was deposing falsely.

32. PW2 Om Prakash being UDC in the office of Sub Registrar, Janakpuri brought summoned record Book no.1 Volume no.9580 containing document registered as 5172 in Book from page 35 to 39 dated 29.05.2000. Certified copy of which is placed on record as Ex.PW2/A.

33. PW3 Vinay Kumarr Jairath working as Chief Manager in Union Bank of India, Patel Nagar Branch stepped into witness box and corroborated the reply sent by him to the notice received from IO Satish Kumar, Ex.PW3/A and deposed that M/s Neeru Graphics Pvt Ltd had availed CC Hypothecation Limit of Rs.38 Lakh and term loan of Rs.10 Lakh for their business activities from Union Bank of India, for which equitable mortgage of guarantor's property bearing no.10/1, DLF Industrial Area, Najafgarh Road, Moti Nagar, New Delhi was created as security on 04.12.1997. He further deposed that original documents pertaining to the said mortgage were part of case record in case titled as Union Bank of India vs. Neeru Graphics Pvt Ltd & Ors pending in the court of Ld. CMM, Delhi.

34. PW4 O.N. Gupta, working as Manager in Union Bank of India, Patel Nagar Branch stepped into witness box and brought documents pertaining to the equitable mortgage of the said property with Union bank of India as Ex.PW4/1 to Ex.PW4/9, along with copy of valuation report prepared by Sh. V.P. Aneja as Mark A. He further deposed that on the basis of said documents, loan of Rs.48 Lakh was sanctioned and disbursed to M/s Neeru Graphics Pvt Ltd in the year 1997 and the said property was still under mortgage in the year 2013. In his cross examined, he expressed his inability to apprise as to whether loan amount along with interest had been repaid to the bank.

35. PW5 WHC Celestina stepped into witness box and stated to have prepared Rukka Ex.PW5/A on 10.11.2006 at about 1.55 PM and registered present FIR No.688/2006 u/s 82/83 of Registration Act, 1908 as Ex. PW5/B.

36. PW6 SI Satish Kumar, IO in the case supported case of prosecution and deposed that on 10.11.2006, in compliance to order of Ld. ACMM (West), Tis Hazari Courts, Delhi, present FIR was registered against accused persons. He deposed that during course of investigation, notices u/s 91 CrP.C. were served upon Sub Registrar, Janakpuri Ex.PW6/B and requisite documents Ex. PW2/A were seized vide seizure memo Ex.PW6/C. Thereafter, notice Ex.PW6/D was served upon Manager, Union Bank of India, Patel Nagar Branch and reply to said notice Ex.PW3/A was received from Chief Manager of the bank along with relevant documents which are Ex.PW6/E (Colly). Thereafter, investigation of the present case was handed over to PW7 Insp. Ram Kishore. In his cross examined, PW-6 stated that he had recorded statement of officials from office of Sub Registrar and Union Bank of India and denied the suggestion that he was deposing falsely.

37. PW7 Insp. Ram Kishore stated that on 23.01.2007 investigation of present case was handed over to him and from the perusal of record it was revealed that both the accused persons were on anticipatory bail. On 05.02.2007, accused no.1 Neeru Seem came to police station, was formally arrested vide arrest memo Ex.PW7/A and was released on bail in view of order of Ld. Sessions Court and on 17.02.2007, accused no.2 Shashi Shekhar Seem came to police station along with surety and was formally arrested vide arrest memo Ex.PW7/B and was released on bail. Thereafter on 26.02.2007, case file was handed over to MHCR.

38. PW8 Suresh Kumar, Ahlmad in the court of Ld. CMM (West) stepped into witness box and deposed that case FIR No.505/2002 PS Kirti Nagar (Crime) u/s420/120B IPC was pending trial in the court of Ld. CMM (West), wherein Shashi Shekhar Seem and Neeru Seem were accused persons.

39. Thereafter, prosecution evidence was closed and in their defence, accused persons examined as many as 6 witnesses.

40. DW1 Surender Kr, Ahlmad in the court of Ld. CMM, Tis Hazari Court brought the case record pertaining to FIR No.505/2002, PS Kirti Nagar wherein original unsigned sale deed on stamp paper of Rs.20,000/- bearing no.OJCC586756 was part of the record and copy the same is Ex.DW1/1. However, in his cross examination he stated having no personal knowledge of the present case.

41. DW2 Rajiv Kumar, from the court of Ld. CJ, Central, THC brought the original case record of suit no.597951/2016 titled as Arun Kathuria v. Neeru Seem & Others and placed on record copy of plaint Ex.DW2/1 and an unsigned undated certified copy of proposed Sale Deed Ex.DW2/2. He further placed on record affidavit of Arun Kathuria in the aforesaid suit Ex.DW2/3, (same was objected to by Ld. APP for the State as to mode of proof and relevancy of documents). In his cross examination, he stated document Ex.DW2/2 to be certified copy of proposed sale deed and denied deposing falsely.

42. DW3 Sh. Rajesh Kr, Jr. Judicial Assistant in Record Room (Civil), Tis Hazari Courts, Delhi brought case record of suit no.861/2002 titled as Arun Kathuria v. Neeru Seem decided on 11.10.2004 by Ld. Civil Judge, Tis Hazari Court and placed on record copy of original Local Commissioner report as Ex.DW3/A.

43. DW4 Deepa Verma, Director, FSL, Delhi stepped into witness box and stated report bearing no.FSL-2019/D-1290 dated 15.07.2009 to be certified copy bearing her signatures at point A. She stated the original to be not in her possession as the same had been handed over to IO. In her cross examination, she stated that the original documents as well as care record pertaining to said report had been collected by IO and the same were not available with her. However, she failed to recall the name of the person who had collected the document from Lab, to which Ld. Defence counsel produced a copy to copy of FSL report, which was objected to by Ld. APP as being not admissible and same was marked as Mark DW4/2. On query, DW4 deposed that she had given her opinion pertaining to question 13 & 14 in receipt. However, no opinion could be given regarding question 15 & 16. In her cross examination, she stated that she was unable to opine that whether question 13, 14, 15 & 16 were put on forged receipt.

44. DW5 Neelam Pal, Sr. JA, Record Room (Crl.), Patiala House Court brought case record of CC No. 109/1 titled as Arun Kathuria v. Shashi Shekhar Seem containing receipt dated 20.07.2000 and the copy of the same has been marked as Ex.DW5/A.

45. Thereafter, accused no.2 Shashi Shekhar Seem stepped into witness box as DW-6 and deposed that in the first week of April 2000, father of the complainant O.P. Khanna along with husband of the complainant Arun Kathuria and property dealer Purshotam P Gera visited his factory bearing no.10/1, DFL Industrial Area, Moti Nagar, New Delhi with intention to purchase the same. He further deposed that the copy of the documents of said property was shown to them and they were apprised that the original documents were pledged with Union Bank of India, Patel Nagar from where company M/s Neeru Graphics Pvt Ltd enjoyed credit facility of Rs.38 Lakh and CC Limit of

Rs.10 lakh of hypothecation limit of machinery. He further deposed that at that very moment, it was mentioned that an amount of about Rs.30 Lakh was to be paid to Union Bank of India to receive original title documents and to this O.P. Khanna and Arun Kathuria asked the reason from the accused persons for selling the said property, to which DW-6 replied that they want to clear the loan of bank due to business loss and slump in the market. He further deposed that O.P. Khanna, Arun Kathuria and Purshotam P Gera met Manager of Union Bank of India when they were informed that an amount of Rs.38 lakh was outstanding on account of accused no.2 Shashi Shekhar Seem. He deposed that manager of bank expressed his no objection orally to the said property being sold as the bank was only concerned with its dues.

46. He further deposed that on 20.04.2000, he along with O.P. Khanna, Arun Kathuria and accused no.1 Neeru Seem visited the office of Sh. Purshotam P Gera, who took out a printed proforma of Bayana receipt Ex. DW5/A and filled in its particulars and on the same day two cheques dated 20.04.2000 and 24.04.2000 drawn on Punjab National Bank given by Sh. O.P. Khanna and Arun Kathuria. He deposed that an amount of Rs.5 Lakh in cash was also given by them and the same had been incorporated in the receipt/Bayana paper. He stated that although in that proforma receipt it is mentioned that the property is free from all encumbrances, lease, mortgage, etc. but he had insisted that the property was mortgaged with the Bank. However, the property dealer Purshotam P Gera stated it to be standard language mentioned in all the property deals and consequently said receipt was duly signed by O.P. Khanna, Arun Kathuria and accused no. 1 Neeru Seem while accused no. 2 Shashi Shekhar Seem and Purshotam P. Gera stood as witnesses to the same. Copy of the same was handed over to accused persons and the same was duly signed by Arun Kathuria and O.P. Khanna. The other copy was taken by O.P. Khanna and the copy with original signatures of O.P. Khanna and Arun Kathuria was handed over to accused no. 1 Neeru Seem. He further deposed that after few days, O.P. Khanna called and informed them about not paying the outstanding amount of Rs.38,00,000/- (Rupees thirty eight lakhs) to Union Bank of India and expressed his concern of being at a loss in case bank failed to deliver title documents. O.P. Khanna insisted to make half undivided registration of the said property in his favour, as they wanted to place injection molding machines on the premises. He further deposed that having no doubt on integrity of O.P. Khanna, accused no.2 Shashi Shekhar Seem requested them to buy papers for registration, which were purchased and typed by them and accused persons were called at Sub Registrar Office, Janakpuri for registration of the half undivided property.

47. He further deposed that at that time, objection was raised by accused persons to the clause stating said property to be free from all encumbrances, lien, etc to be incorrect, as the property had already been mortgaged with the Bank and refused to sign the sale deed, but O.P. Khanna stated that in case the same was not signed and language was changed, stamp papers purchased by them would become useless and consequently, stamp papers were signed by accused no. 1 Neeru seem as a Seller and accused no. 2 Shashi Shekhar Seem as a witness in good faith. He further deposed that thereafter, they insisted the father and husband of complainant to deposit money with the bank but they took plea of arranging funds for the same.

48. He further deposed that in the middle of the year 2002, proceedings under SARFEASI Act were enforced against him. He further deposed that on 24.09.2002 father of the complainant namely Lt.

O.P. Khanna sent a notice stating that around April 2000, said property was purchased from them and half registration was made but failed to mention consideration amount in the said notice. On 05.10.2002, accused no.2 replied to said notice and made it clear that the property was sold for a total sale consideration of Rs.51 Lakh, out of which Rs.10 lakh had already been paid by father and husband of complainant and Rs.45 Lakh was still remaining to be paid.

49. Thereafter, on 16.04.2002, another legal notice was sent by O.P. Khanna, wherein entire story was cooked up stating the said property to have been sold for Rs.5 Lakh only. He further deposed that Sh Purshotam P.Gera, proprietor of M/s Simple Properties also runs a business of chit funds and illegal money and admitted himself to be a member in the same. He further deposed that he took a loan of Rs.2.0 Lakhs from Purshotam P Gera who made him sign a Rs.2 stamp paper purchased from Bharat Photostat along with one white blank paper and a blank cheque as security. He further deposed that Purshotam G Gera .O.P. Khanna and Arun Kathuria misused said blank papers and the blank cheque and thereafter forged the documents- agreement to sale dated 04.04.200 which is Ex.PW1/A and executed possession letter which is Ex.PW1/B.

50. He categorically denied that any agreement was ever made on 04.04.2000 and stated that deal was only made on 20.04.2000 and only two cheques were handed over to them. He further deposed that O.P. Khanna and Arun Kathuria went up to Hon'ble Supreme Court to sell the said property but the said matter was dismissed and in the year 2004 on the instructions of Hon'ble High Court they made payment of Rs.30 Lakh to Union Bank of India without informing accused persons.

51. He further deposed that cheque handed over by him to Purshotam P Gera had been misused by them and consequently they had lodged a false case against him u/s 138 Negotiable Instruments Act, wherein he was convicted and sentenced to one year imprisonment. In the year 2002, Arun Kathuria lodged a complaint with Joint Commissioner of Police that they had purchased property for Rs.5.0 Lakh and on that false complaint Joint Commissioner of Police ordered to EOW to register FIR against accused persons.

52. He further deposed the present case to be lodged on a false complaint as none of the stamp papers had been purchased and drafted by the accused persons.

53. In his cross examination, he admitted to be able to read and write English at the time of incident and admitted to be one of the Directors of M/s Neeru Graphics Pvt Ltd. On query whether he was director of M/s Neeru Arts Pvt Ltd, he stated himself to be proprietor in the same. On being confronted with Civil Writ Petition no.3688-91/04 titled as M/s Neeru Art Pvt Ltd & Ors vs. Union of India, he admitted to be director of M/s Neeru Art Pvt Ltd as well. (Ex.DW6/PA and Ex.DW6/PB). He expressed his inability to recall whether loan was sanctioned by Bank of Maharashtra on 24.02.1998 in favour of Neeru Art Pvt Ltd.

54. He failed to recall whether accused no.1 was also one of the director in Neeru Art Pvt Ltd. and in M/s Neeru Graphics Pvt Ltd. On court observation, he denied voluntarily not giving proper answers in order to hide his falseness. He admitted that accused no.1 Neeru Seem had purchased said property on 26.04.1995 for a total consideration of Rs.21 Lakh. On being confronted with Sale Deed

dated 26.04.1995 Ex. PW-4/3, he stated that though the document mentions the sale consideration as Rs.1,90,000/- but accused no.1 Neeru Seem had paid Rs.21 Lakh for plot measuring 200 sq yards. On further query, he failed to recall source of payment made by accused no.1. He admitted that accused no.1 Neeru Seem had sold half undivided portion to O.P. Khanna vide sale deed dated 29.05.2000 but denied suggestion that he had received entire sale consideration of Rs.2.5 lakh from O.P. Khanna vide cheque no.086608 dated 20.04.2006 drawn on Punjab National Bank, Punjabi Bagh branch, New Delhi and that no dues were pending but voluntarily stated that he had received a sum of Rs.10 lakh.

55. He further denied the suggestion that accused no.1 had assured the said property to be free from all sorts of encumbrances, mortgage, etc. On Being confronted with page 4 of document Ex. PW-1/C, he admitted the same to bear his signatures at point C.

56. He denied the suggestion that he had taken NOC letter from Union Bank of India before selling the said property and expressed his inability to produce any document in support of his claim. He denied that accused no.1 Neeru Seem had sold property bearing no.10/2 to Mr & Mrs. Chadha for total consideration of Rs.8 lakh. However, he voluntarily stated the same to be sold for Rs.58 Lakh. On being confronted with sale deed executed by accused no.1 Neeru Seem in favour of Asha Chadha for a consideration of Rs.4 lakhs Ex.DW6/P2 and another sale deed in favour of Anil Chadha for a consideration of Rs.4 Lakh Ex.DW6/P3 and on being asked whether he had witnessed the said sale deeds, he replied to be visually blind to read sale deeds but court observed the witness to be in fit condition and to be not blind as he was able to read his evidence recorded in court. He admitted that he had entered into settlement with the bank for Rs.40 Lakhs but he failed to apprise whether he had apprised bank vide two letters dated 23.1.2004 Ex.DW6/PC and 27.01.2004 Ex. DW6/PD that husband of complainant Arun Kathuria would be making payment of Rs.30 lakh to bank.

57. He further admitted that he had not lodged any complaint with the Registrar for cancellation of sale deed dated 29.05.2000 Ex. PW-1/C. He admitted that M/s Neeru Graphics had taken loan from Union Bank of India in the year 1997 for a sum of Rs.48 Lakh and said property to be mortgaged with Bank. He denied suggestion that said property had been sold to father and husband of complainant while it was already mortgaged with Union Bank of India. He failed to recall whether Arun Kathuria had deposited Rs.5.50 Lakh as delay period interest in Bank account of M/s Neeru Graphics Pvt Ltd. He denied suggestion that Arun Kathuria had deposited Rs.30 Lakh out of sum of Rs.44 Lakh in lieu of settlement entered between accused no.2 and bank. He failed to recall whether a case u/s 138 NI Act had been filed against him for the said amount but admitted to have been convicted in the said matter. He denied making false statement before Sub Registrar while executing Sale Deed dated 29.05.2000 Ex.PW1/C declaring said property to be free from all sorts of encumbrances, mortgage, etc. He denied deliberately not giving proper answers so as to hide his falseness. This is the entire evidence on record.

58. The case of the prosecution squarely rests upon the premise that on 04.04.2000 an agreement to sell Ex. PW-1/A was executed between Accused no. 2 Shashi Shekhar Seem and the father of the complainant O.P. Khanna and husband of complainant Arun Kathuria in respect of property bearing no. 10/1, DLF Industrial Area, Moti Nagar, New Delhi, wherein it was stated that accused no. 1

Neeru Seem, (who had authorised her husband Accused no. 2 Shashi Shekhar Seem to act on her behalf), being the owner of the entire property measuring 200 sq. yards had agreed to sell the same for a total consideration of Rs. 5,00,000/- (Rupees five lakhs) assuring the husband and father of the complainant that the said property was free from all sorts of encumbrances such as sale, mortgage, pledge, lien, charge or court decree. It is further the case of the prosecution that on the same day, two post-dated cheques bearing no. 086601 dated 20.04.2020 and no. 360605 dated 24.04.2000 both amounting to Rs. 2,50,000/- each, drawn on Punjab National Bank, Punjabi Bagh branch, New Delhi were handed over to the accused no. 2 and in consequence, accused no. 2 had delivered the vacant physical possession of the entire property with complete ownership rights to the husband and the father of the complainant and accordingly a possession letter of even date Ex. PW-1/B had been executed by Accused no. 2 while acting on behalf of his wife accused no. 1 Neeru Seem.

59. Thereafter, on 29.05.2000, a sale deed Ex.PW-1/C was executed between accused no. 1 Neeru Seem in favour of father of the complainant O.P.Khanna in respect of the half undivided share of the built up portion of said property for a total consideration of Rs. 2,50,000/- clearly declaring accused no.1 Neeru Seem to have full rights, clear titles and absolute authority to sell and transfer half undivided share of the built up portion of said property and declaring the said property to be free from all encumbrances such as sale, mortgage, charges, lien, litigation attachment, stay orders etc. However, after sometime O.P. Khanna and Arun Kathuria learned that the property sold to them had already been mortgaged with Union Bank of India in the year 1997 by the accused persons and the said fact had been concealed and false statements were made by accused no. 1 and 2 before the Sub-Registrar, Janak Puri on 29.05.2000 at the time of execution of sale deed Ex.PW-1/C which bears the signatures of accused no. 1 Neeru Seem as a seller and signature of accused no. 2 Shashi shekhar Seem as a witness and thereby an offence punishable under Section 82/83 of the Registration Act, 1908 was committed by both the accused persons.

60. At this stage, it is pertinent to read Section 82 of the Registration Act, 1908, and same is reproduced as below:

Section 82: Penalty for making false statements, delivering false copies or translations, false personation, and abetment. Whoever--

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding un-

der section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act

in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

61. Careful perusal of section reveals that any person making any false statement intentionally, whether on oath or not, before any officer acting in the execution of the Act, is said to commit an offence u/s 82 of the Registration Act, 1908. The scope of this section is limited to the intentional making of a false statement before any Registrar, sub- Registrar or any other officer and in order to make out an offence under this section not only it is imperative that a false statement has been made before the Registrar or Sub- registrar but the said false statement should have been made intentionally.

62. For the purpose of the present case it is imperative that the discussion is centered around the question as to whether Accused no.1 Neeru Seem and Accused no. 2 Shashi Shekhar Seem intentionally made false statements before the Sub-Registrar, Janak puri on 29.05.2000 at the time of executing sale deed Ex.PW-1/C declaring the said property to be free from all encumbrances, charges, mortgages, liens etc being alive to the fact that the said property had already been mortgaged with Union Bank of India in the year 1997.

63. In order to prove its case, prosecution examined PW-2, Om Prakash, who worked as UDC, in the office of Sub-registrar and brought the summoned record i.e. book no. 1 Vol. no. 9580 pertaining to the sale deed dated 29.05.2000 Ex.PW-1/C in question and placed on record the certified copy of the same Ex. PW-2/A thereby proving the said sale deed to be duly executed and registered in the office of the Sub-Registrar on 29.05.2000. Taking a note of procedure prescribed for proof of execution of document in Section 68 of the Indian Evidence Act, 1872 which is reproduced hereunder:

"68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

64. It is clear that a document registered in accordance with the provisions of the Registration Act, 1908 shall be deemed to be duly proved and it shall not be necessary to call any attesting witness in proof of execution of such a document and, therefore, as the sale deed dated 29.05.2000 had been duly registered in accordance with the provision of Registration Act, 1908 and a certified copy of the

same Ex. PW2/A has been placed on record from the office of the Sub-registrar, the execution of the sale deed is duly proved. Referring to the observations made by Hon'ble Apex court in Prem Singh and Ors. v. Birbal and Ors.8,(2006) 5 SCC 353, and Rattan Singh & Ors. v. Nirmal Gill & Ors. (CIVIL APPEAL NOS. 36833684 OF 2020) the relevant portion of the same reads as below:

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption."

65. Thus, a presumption in favour of valid execution of sale deed dated 29.05.2000 Ex. PW-2/A is raised and the onus to rebut the said presumption lies on the person who challenges its execution, which in the present case lies on the accused persons.

66. To prove its case further, prosecution examined PW-3 Vinay Kumar Jairath, Chief Manager, Union Bank of India, Patel Nagar branch, New Delhi, who stepped into the witness box and corroborated the reply sent by him to the notice under Section 91 Cr.P.C. sent by IO as Ex.PW-3/A stating therein that M/S Neeru Graphics Pvt. Ltd. had availed a C.C. Hypothecation Limit of Rs. 38.0 Lakhs and a term loan of Rs.10,00,000/- (ten lakhs) for business purposes and for which an equitable mortgage of guarantor's property bearing no. 10/1 DLF Industrial Area, Najafgarh Road, Moti Nagar, New Delhi was created as a security on 04.12.1997 with Union Bank of India and the original documents pertaining to the said mortgage were lying in the case file of a matter titled "Union Bank of India v. M/s Neeru Graphics Pvt.Ltd." in the court of Ld. CMM, Delhi.

67. PW-4, O.N. Gupta, Manager, Union Bank of India placed on record Sanction Advice for borrowers M/s Neeru Graphics Pvt. Ltd. as Ex. PW-4/1, Memorandum of Equitable Mortgage dated 05.12.1997 as Ex. PW-4/2 and Form no.8 and 13 as Ex. PW- 4/7, along with other documents Ex. PW-4/1 to PW-4/9 and Mark-A, inferring that in the year 1997, a hypothecation agreement was executed between Union Bank of India and M/s Neeru Graphics Pvt. Ltd. wherein an equitable mortgage over the said property was created for a sum of Rs. 38.0 lakhs.

68. Thus, prosecution succeeded in proving that prior to the execution of the Sale deed dated 29.05.2000 Ex.PW-1/C, an equitable mortgage of the property in question was created with Union Bank of India in the year 1997 thereby, raising a presumption against the accused persons that the accused persons being the directors of the M/s Neeru Graphics Pvt. Ltd. intentionally made false statements before the sub-Registrar at the time of executing the sale deed on 29.05.2000 declaring the said property to be free from all encumbrances, mortgages, liens, charges etc and the onus to rebut the said presumption lied upon the accused persons.

69. In order to rebut the presumption raised against the accused persons, the story of the prosecution has been denied by the accused persons in toto and the entire defence relies upon the testimony of accused no. 2 Shashi Shekhar Seem who stepped into the witness box as DW-6 and denied that an agreement to sell dated 04.04.2000 Ex. PW-1/A was executed between the father and husband of the complainant and accused no. 2 for a total consideration of Rs. 5.0 lakhs wherein two post-dated cheques of Rs. 2.5 lakhs each dated 20.04.2000 and 24.04.2000 were handed over to the

accused no. 2 and in consequence vacant possession of the entire property had been handed over to the husband and father of the complainant stating it to be beyond imagination that entire property comprising of 200 sq. Yards could be sold for a mere amount of Rs. 5.0 lakhs and vacant possession was handed over to the father and husband of the complainant without receiving a single penny.

70. This plea of the accused persons is nullified by the observations made by the Hon'ble High Court of Delhi in case titled Arun Kathuria vs. State and Ors. (Cr.273/2009, decided on 21.12.2009), wherein it was observed:-

"If a misrepresentation was made to the vendee while executing the sale deed and the factum of the property being mortgaged with Union Bank of India was not in his knowledge as is claimed by the complainant, the amount of consideration would be immaterial. The offence of cheating would in that case be made out irrespective of whether the property was agreed to be sold for Rs.5 lakhs as claimed by the complainant or for Rs.51 lakhs as claimed by the private respondents. Therefore, it is not necessary to go into the amount of consideration, agreed to be paid to the respondents. It can, however, not be disputed that if the complainant knew, at the time of transacting with the respondents, that property in question was already mortgaged with the bank, cheating may not be made out against the respondents, since in that case, correct factual position being in their knowledge, it cannot be said that they were induced to part with money to the respondents. But, for deciding as to whether mortgage was in the knowledge of the complainant or not, one need not necessarily go into the amount, of agreed sale consideration."

71. Another plea raised by the accused persons is that the entire story of execution of documents, Agreement to Sell Ex. PW1/A and the possession letter Ex. PW1/B has been concocted by the complainant as Purshottam P.Gera, being a property dealer was also running a chit fund business of which DW-6 was also a member and DW-6 had taken a loan of Rs.2.0 lakhs from Purshottam P. Gera and had handed over signed blank white paper and stamp papers to Purshottam P. Gera as a security and the said blank documents have been misused and fabricated by Purshottam P. Gera, O.P. Khanna and Arun Kathuria into Agreement to sell dated 04.04.2000 Ex.PW-1/A and Possession letter Ex.PW-1/B, as in reality a Bayana receipt dated 20.04.2000 Ex. DW-5/A was executed between the parties wherein the property in question was sold to the father and husband of the complainant for a total consideration of Rs. 51.0 lakhs out of which Rs. 10.0 Lakhs was paid by father and husband of the complainant on the same day by handing over two cheques dated 20.04.2000 and 24.04.2000, both drawn on PNB, Punjabi Bagh branch amounting to Rs. 2,50,000/- each and remaining Rs.5.0 lakhs were given in the form of cash to the accused persons. The sale consideration of Rs.51.0. lakhs was fixed as the father and husband of the complainant had agreed to repay the loan to the bank on behalf of the accused persons. In order to prove bayana receipt, defence examined DW-5 who brought the receipt dated 20.04.2000 as part of record in another pending suit between Arun Kathuria and Shashi Shekhar.

72. The said document was sent to FSL for expert opinion wherein it was opined by DW-4 Deepa Verma, Director FSL, that said document bears the correct signatures of Arun Kathuria, however, no

opinion pertaining to the signatures of the accused no. 1 and 2 could be formed. Even if for the sake of arguments, it is believed that a Bayana receipt Ex. DW-5/A was executed and the same bears the correct signatures of husband of the complainant Arun Kathuria, the said document in no way helps the defence of the accused persons as careful perusal of the receipt shows that it contains the same declaration that "the seller affirms and assures the purchase, that the above mentioned property under sale is free from all sorts of encumbrances, burden, sale, mortgage, gift....etc." thereby inferring that even on 20.04.2000, accused no. 1 and 2 made false declarations on the said receipt Ex. DW5/A. Moreover, receipt DW-5/A neither being the original document nor the certified copy but merely a copy to copy is not admissible in evidence thus, cannot be relied upon.

73. It is pertinent to point out that nowhere in his testimony has DW-6 denied the execution of the sale deed dated 29.05.2000 Ex. PW-1/C but has only taken the plea that father and husband of the complainant were cognizant of the mortgage and regardless were interested in purchasing the said property and had even met the manager of Union Bank of India before the execution of the sale deed and were alive to the fact that the property in question had been mortgaged with Union Bank of India. He further deposed that stamp papers on which the sale deed Ex. PW1/C had been executed were purchased by the father of the complainant and the same were put together by O.P. Khanna and Arun Kathuria and pointed out that at the time of execution of the sale deed both accused persons had resisted signing the sale deed Ex. PW-1/C stating that the declaration on page 4 of the document to be incorrect as the said property was not free from encumbrances and had already been mortgaged with Union Bank of India, but father and husband of the complainant made the accused persons believe that in case said deed is not signed, the stamp papers purchased by them will be rendered useless and hearing this accused no. 1 Neeru Seem signed the said sale deed Ex. PW-1/C in good faith.

74. This plea of the accused persons does not help their case either, as it is hit by Section 91 and 92 of the Indian Evidence Act, 1872 which deals with the exclusiveness of the Documentary Evidence, that is, if the transaction has been reduced to writing then the existence of the document excludes all other evidence of the transaction while Section 92 deals with exclusiveness of the documentary evidence, that is when the parties have deliberately put their agreement into writing, it is conclusively presumed that they intended the writing to include and to form a full and final statement of their intentions and the parties or their privies are thus forbidden by the terms of Section 92 from giving any extrinsic evidence, to contradict, vary or explain written instruments, unless the case falls within any of the provisos to the section. Thus, all bald pleas of the accused persons fall to the ground as the said sale deed dated 29.05.2000 Ex. PW-1/C being duly registered in office of the Sub-Registrar carries with it a presumption of correctness and genuineness that it contains the true intentions of the parties and the plea that accused persons resisted signing the said sale deed Ex. PW1/C and were induced by husband and father of the complainant and thereby signed the same in good faith is not tenable.

75. In order to weaken the prosecution case, accused persons also relied upon Section 83 of the Registration Act claiming the present complaint to be not maintainable as the same had neither been lodged by or with the permission of Inspector General, Registrar or Sub-registrar or any other officer acting in the execution of the Act. Section 83 of Registration Act, 1908 is reproduced herein

below:-

Section 83:- Registering officers may commence prosecutions--

(1) A prosecution for any offence under this Act coming to the knowl-

edge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, 67 [***] the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

76. It is pertinent to point out that even this plea of the accused persons is not tenable as per the observations made by the Hon'ble Apex Court in case titled Dharmadeo Rai vs Ramnagina Rai (972 AIR 928, 1972 SCR (3) 111), wherein it has been held that Section 83 is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of offence comes to the knowledge of the Registering Officer in his official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in language and intent.

77. During the course of trial, accused no.2 Shashi Shekhar Seem passed away on account of medical illness on 19.03.2020 and his Death verification Report along with Duplicate Death Certificate was placed on record and consequently, trial proceedings against accused no. 2 Shashi Shekhar Seem stand abated. As regards Accused no. 1 Neeru seem, the case of the prosecution is that accused no.1 Neeru Seem abetted accused no. 2 Shashi Shekhar Seem to make intentional false statements before the Sub- Registrar, Janakpuri declaring the property bearing no. 10/1, DLF Industrial Area, Moti Nagar, New Delhi to be free from all encumbrances, charges, lien, mortgages etc. being alive to the fact that the said property had already been mortgaged with Union Bank of India since 1997 and thereby committed an offence punishable under Section 82 Registration Act, 1908 read with Section 109 IPC. As the Sale Deed dated 29.05.2000 Ex.PW-2/A bears the signatures of accused no. 1 Neeru Seem as the seller and contains the declaration of the said property being free from all sorts of encumbrances, mortgages, lien, charges, etc., a presumption against accused no.1 Neeru seem was raised and the onus to rebut the said presumption lied on her, but from the above discussion it is quite clear, that no plausible defence has been taken by accused no.1 and all her attempts to render the prosecution case a nullity have fallen to the ground and thus, prosecution story stands unrebutted that on 29.05.2000, accused no. 1 Neeru Seem not only made false statement before the office of Sub-Registrar, Janakpuri declaring the property bearing no. 10/1, DLF Industrial Area, Najafgarh Road, Moti Nagar, New Delhi to be free from all sorts of encumbrances, charges, mortgages, lien etc but made the false statement intentionally concealing the fact of the said property being already under mortgage with Union Bank of India since 1997 and hence, this point answered in favour of the prosecution.

78. However, no cogent evidence has been led by the prosecution to prove that it was Accused no. 1 Neeru Seem who abetted, instigated, encouraged or promoted accused no.2 Shashi Shekhar Seem to make false statements before the Sub-Registrar and, therefore, this point is decided against the prosecution.

Final Order:

79. In view of the facts and circumstances, accused no.1 Neeru Seem is hereby Convicted for committing offence punishable u/s 82/83 of the Registration Act, 1908 and Acquitted for the offence punishable under Section 109 IPC, while proceedings against accused no. 2 Lt. Shashi Shekhar Seem stand abated.

80. Announced in the open court on 15.12.2020. Judgment shall continue.

81. To be heard on arguments on sentence on 15.12.2020 at 4.00 PM.

(Neetika Kapoor) MM-11, Dwarka Courts, New Delhi/15.12.2020