**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar …Complainant

Versus

Deepak Tripathi …Accused

**INDEX**

|  |  |  |
| --- | --- | --- |
| **S.No**. | **PARTICULARS** | **PAGE NO.** |
| 1. | Complaint u/s 138/142 of the Negotiable Instruments Act, 1881 along with affidavit. |  |
| 2. | List of Witnesses. |  |
| 3. | List of Documents. |  |
| 4 | Affidavit under section 145 of the Negotiable  Instruments Act, 1881. |  |
|  |  |  |

Complainant

Mathura

Date: Through

**RADHEY KRISHNA CHAMBERS OF LAW**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

Chamber No.70, Office of Sh. Fateh Chand Sharma, Advocate,

Near Mangaleshwar Mahadev Temple,

Collectorate compound, District Courts Mathura.

Mobile No. 9319363656, 9193088485, 7017548123

**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar S/O Shriram,

Aged about Years

R/O Bhains Bahora, Near K.R. Girls College,

P.S. – Kotwali, District – Mathura …Complainant

**Versus**

Deepak Tripathi S/O Shri Premchand Tripathi,

Aged about Years,

R/O 170/55, Kailash Nagar,

P.S. – , District – Mathura. …..Accused

**COMPLAINT UNDER SECTION 138/142 OF THE NEGOTIABLE INSTRUMNETS ACT, 1881 (AS AMENDED).**

**THE COMPLAINANT ABOVE NAMED MOST RESPECTFULLY SHOWETH:**

1. That the complainant above named is a law abiding citizen residing at the above mentioned address.
2. That the Accused is residing at above mentioned address and deals in Selling of Books and Study Materials, his shop with the name “Deepak Book Depot” is situated near K.R. Girls College, Junction Road, Mathura.
3. That complainant and accused are having very old relationship as a friend with each other.
4. That complainant was also severally helps accused and accused also helps complainant severally during the periods of requirement due to which bond of relationship between them was became too strong.
5. That by taking undue benefit of this strong trust accused had taken totally a sum of Rupees **2,60,000/-** (Two Lakh Sixty Thousand) from complainant to expand his business. That in relation to this transaction a notarized deed was also executed between the complainant and the accused according to which accused have to repay the loan amount to the complainant.
6. That according to the aforesaid deed it is agreed between complainant and accused that accused will pay 10,000/- Rupees on every 4th day of each month till the next consecutive 6 months onwards December 2016 to the complainant, and in the last sixth month accused will pay whole of the remaining amount to the complainant for discharging his legal liability completely.
7. That accused had never pay any installment of Rupees 10,000/- to the complainant after taking the loan from him nor he had paid any single penny from the total amount of loan he has taken from complainant.
8. That whenever complainant asked accused to return his money as per the terms agreed between them, then accused had linger on the issue on one pretext or another by showing his poor financial condition. That accused had taken unusual benefit of complainant’s eminence.
9. That when complainant repeatedly ask accused to return his money as per the terms and condition entered between both of them, then accused was agreed to discharge his liability in part and handover the cheque no. **048993** which is given by him as security at the time of taking loan, after filing date **17-09-2019** in it amounting Rupees **2,00,000/- (Two lakh).** That accused was also agreed to pay rest of 60,000/- Rupees to the complainant with in next two month.
10. That as per the instructions and assurances of accused on date 19-09-2019 when complainant presents the above said cheque before the bank for encashment then same was dishonoured with remark **“Funds Insufficient”** as reason stated by bank.
11. That thereafter complainant severally made demands for his money but accused again and again try to escape himself from facing complainant due to accused ill-will and malafide intention and never shows his willingness to return money of complainant.
12. That thereafter complainant made several efforts to meet with accused and to tell accused about the dishonor of above said cheque and whenever she reaches to his Residence or shop accused repeatedly tried to resist himself from facing complainant and to meet with her.
13. That as per the above said acts it seems that aforesaid cheque has been issued by accused to complainant with malafide intentions and further simply to defraud her as accused have knowingly and willfully issued cheque to the complainant, knowing that he does not have sufficient amount in his Bank account to meet the encashment of cheque which is going to be produced by the complainant**.**
14. That inspite of the assurances given by the accused to the complainant that he will make sufficient arrangements of the funds for the clearance of the cheque, the cheque has been returned unpaid.
15. That the accused has deliberately, knowingly, intentionally and malafidely with the motive to cheat the complainant, issued the cheque despite knowing that he does not have sufficient amount in his bank account for the encashment of cheque.
16. That the accused was served with a legal notice dated 27-09-2019 through the complainant’s advocate by speed post, by means of that notice, complainant had called upon the accused to make the payment of the cheque. The accused was further in the event of failure, the complainant would take necessary legal action at the risk, responsibility and costs of the accused.
17. That inspite of the notice has been issued and served upon the accused on date **28-09-2019**, he has further failed and neglected to pay the cheque amount.
18. That the cause of action arose in favour of the complainant and against the accused under section **138/142** of the Negotiable Instrument Act, 1881 immediately on the dishonor of the cheque on dates **19-09-2019**, further on receiving of the Legal notice by accused on date **28-09-2019**, and more strongly the cause of action further arose as per the clause (c) of proviso to section 138 of the Negotiable Instruments Act, 1881 read with Clause (c) of Sub-section 1 of the section 142, of the same act against the accused persons, on completion of 15 days on **12th October 2019,** after they received the above said Legal Notice and deliberately shows his un-willingness to pay the amount due upon him. The accused person has failed to pay the amount, as claimed in the legal notice even after service of the same within the statutory period. Hence the complainant has filed the present complaint.
19. That by means of aforesaid acts, the accused is rendered himself liable to be prosecuted under section 138/142 of the Negotiable Instrument Act.
20. That the hon’ble court is competent enough to entertain the present complaint as well as to proceed further and punish the Accused.
21. That the present complaint is filed under the limitation period prescribed under section 138 read with section 142 of the Act.
22. That there has been a willful disobedience of the law by the accused.

**PRAYER**

1. It is therefore most respectfully prayed that the accused person may kindly be summoned and punished in accordance with the law for the offences committed by him.
2. Any other order which this court deems fit in the interest of justice may also be passed in favour of complainant and against the Accused.

Mathura Complainant

Date: Through

**RADHEY KRISHNA CHAMBERS OF LAW**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

Chamber No.70, Office of Sh. Fateh Chand Sharma, Advocate,

Near Mangaleshwar Mahadev Temple,

Collectorate compound, District Courts Mathura.

Mobile No. 9319363656, 9193088485, 7017548123

**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar …Complainant

Versus

Deepak Tripathi …Accused

**AFFIDAVIT**

I Naresh Kumar S/O Shri Ram, R/O Bhains Bahora, Near K.R. Girls College, Mathura, aged about years, do hereby solemnly affirm and declare as under:

1. That I am the Complainant in the present complaint u/s 138 N.I. Act filed by me and being conversant with the facts and circumstances of the case, I am competent to swear this affidavit.
2. That the contents of the accompanying complaint shall be read as part and parcel of this affidavit which are not repeated herein for the sake of brevity.
3. That the contents of the present affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

**VERIFICATION**

Verified at Mathura on this day of October 2019, that the contents of the above affidavit are correct to the best of my knowledge and belief. Nothing material has been concealed therefrom.

DEPONENT

**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar …Complainant

Versus

Deepak Tripathi …Accused

**LIST OF WITNESSES**

1. Complainant Herself.
2. Official/Account officer of the accused banker’s.
3. Postmen/Record Clerk or any official of Post Office.
4. Any other witness with the permission of this Hon’ble Court.

Complainant

Mathura

Date: Through

**RADHEY KRISHNA CHAMBERS OF LAW**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

Chamber No.70, Office of Sh. Fateh Chand Sharma, Advocate,

Near Mangaleshwar Mahadev Temple,

Collectorate compound, District Courts Mathura.

Mobile No. 9319363656, 9193088485, 7017548123

**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar …Complainant

Versus

Deepak Tripathi …Accused

**LIST OF DOCUMENTS**

* + 1. Original Cheque with Original Bank Memos.
    2. Copy of Legal Notice along with Original Receipt of Speed Post.
    3. Track Report showing delivery of Legal Notice to the accused.
    4. Original Deed entered between complainant and accused.

Complainant

Mathura

Date: Through

**RADHEY KRISHNA CHAMBERS OF LAW**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

Chamber No.70, Office of Sh. Fateh Chand Sharma, Advocate,

Near Mangaleshwar Mahadev Temple,

Collectorate compound, District Courts Mathura.

Mobile No. 9319363656, 9193088485, 7017548123

**BEFORE THE COURT OF HON’BLE SPECIAL JUDGE (N.I. ACT) MATHURA**

Complaint No. of 2019

**IN THE MATTER OF:**

Naresh Kumar …Complainant

Versus

Deepak Tripathi …Accused

**EVIDENCE OF COMPLAINANT BY WAY OF AFFIDAVIT UNDER SECTION 145 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.**

I, Naresh Kumar D/O Shri Ram, R/O Bhains Bahora, Near K.R. Girls College, Mathura, aged about years, do hereby solemnly affirm and declare as under:

1. That the deponent above named is a law abiding citizen residing at the above mentioned address and he is the complainant in the present matter.
2. That the Accused is residing at above mentioned address and deals in Selling of Books and Study Materials, his shop with the name “Deepak Book Depot” is situated near K.R. Girls College, Junction Road, Mathura.
3. That complainant and accused are having very old relationship as a friend with each other.
4. That complainant was also severally helps accused and accused also helps complainant severally during the periods of requirement due to which bond of relationship between them was became too strong.
5. That by taking undue benefit of this strong trust accused had taken totally a sum of Rupees **2,60,000/-** (Two Lakh Sixty Thousand) from complainant to expand his business. That in relation to this transaction a notarized deed was also executed between the complainant and the accused according to which accused have to repay the loan amount to the complainant.
6. That according to the aforesaid deed it is agreed between complainant and accused that accused will pay 10,000/- Rupees on every 4th day of each month till the next consecutive 6 months onwards December 2016 to the complainant, and in the last sixth month accused will pay whole of the remaining amount to the complainant for discharging his legal liability completely.
7. That accused had never pay any installment of Rupees 10,000/- to the complainant after taking the loan from him nor he had paid any single penny from the total amount of loan he has taken from complainant.
8. That whenever complainant asked accused to return his money as per the terms agreed between them, then accused had linger on the issue on one pretext or another by showing his poor financial condition. That accused had taken unusual benefit of complainant’s eminence.
9. That when complainant repeatedly ask accused to return his money as per the terms and condition entered between both of them, then accused was agreed to discharge his liability in part and handover the cheque no. **048993** which is given by him as security at the time of taking loan, after filing date **17-09-2019** in it amounting Rupees **2,00,000/- (Two lakh).** That accused was also agreed to pay rest of 60,000/- Rupees to the complainant with in next two month.
10. That as per the instructions and assurances of accused on date 19-09-2019 when complainant presents the above said cheque before the bank for encashment then same was dishonoured with remark **“Funds Insufficient”** as reason stated by bank.
11. That thereafter complainant severally made demands for his money but accused again and again try to escape himself from facing complainant due to accused ill-will and malafide intention and never shows his willingness to return money of complainant.
12. That thereafter complainant made several efforts to meet with accused and to tell accused about the dishonor of above said cheque and whenever she reaches to his Residence or shop accused repeatedly tried to resist himself from facing complainant and to meet with her.
13. That as per the above said acts it seems that aforesaid cheque has been issued by accused to complainant with malafide intentions and further simply to defraud her as accused have knowingly and willfully issued cheque to the complainant, knowing that he does not have sufficient amount in his Bank account to meet the encashment of cheque which is going to be produced by the complainant**.**
14. That inspite of the assurances given by the accused to the complainant that he will make sufficient arrangements of the funds for the clearance of the cheque, the cheque has been returned unpaid.
15. That the accused has deliberately, knowingly, intentionally and malafidely with the motive to cheat the complainant, issued the cheque despite knowing that he does not have sufficient amount in his bank account for the encashment of cheque.
16. That the accused was served with a legal notice dated 27-09-2019 through the complainant’s advocate by speed post, by means of that notice, complainant had called upon the accused to make the payment of the cheque. The accused was further in the event of failure, the complainant would take necessary legal action at the risk, responsibility and costs of the accused.
17. That inspite of the notice has been issued and served upon the accused on date **28-09-2019**, he has further failed and neglected to pay the cheque amount.
18. That the cause of action arose in favour of the complainant and against the accused under section **138/142** of the Negotiable Instrument Act, 1881 immediately on the dishonor of the cheque on dates **19-09-2019**, further on receiving of the Legal notice by accused on date **28-09-2019**, and more strongly the cause of action further arose as per the clause (c) of proviso to section 138 of the Negotiable Instruments Act, 1881 read with Clause (c) of Sub-section 1 of the section 142, of the same act against the accused persons, on completion of 15 days on **12th October 2019,** after they received the above said Legal Notice and deliberately shows his un-willingness to pay the amount due upon him. The accused person has failed to pay the amount, as claimed in the legal notice even after service of the same within the statutory period. Hence the complainant has filed the present complaint.
19. That by means of aforesaid acts, the accused is rendered himself liable to be prosecuted under section 138/142 of the Negotiable Instrument Act.
20. That the hon’ble court is competent enough to entertain the present complaint as well as to proceed further and punish the Accused.
21. That the present complaint is filed under the limitation period prescribed under section 138 read with section 142 of the Act.
22. That there has been a willful disobedience of the law by the accused.
23. It is therefore most respectfully prayed that the accused person may kindly be summoned and punished in accordance with the law for the offences committed by him.
24. That the facts contained in the present affidavit are correct to the best of my knowledge and belief and as per the legal knowledge provided to me, nothing material has been concealed there from.

DEPONENT

**VERIFICATION**

Verified at Mathura on this day of October 2019, that the contents of the above affidavit are correct to the best of my knowledge and belief and as per the legal advice provided to me. Nothing material has been concealed therefrom.

DEPONENT