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

Complaint No. of 2019

**IN THE MATTER OF:**

Sangeeta Sharma …Complainant

Versus

Shiv Prasad Yadav …Accused

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Complainant

Mathura

Date: Through

**NEERAJ RATHORE & ASSOCIATES**

**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

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

Complaint No. of 2019

**IN THE MATTER OF:**

Sangeeta Sharma D/O Dharamvir Upadhyaya,

Aged about 33 Years

C/O Mahipal Sharma, Gurukripa Building,

Shankar Vihar, Krishna Nagar

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

**Versus**

Shiv Prasad Yadav S/O Late Sh. Rati Ram,

Aged about 40 Years,

R/O 120A, E – Block, Om Vihar Extension,

Uttam Nagar, New Delhi – 110059. …..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 the business of property broking and construction contracts, and is a person of disorderly nature.
3. That since last 6-7 years family of complainant is know to the Accused and there is existence of friendly relations between them therefore complainant trust upon him very much.
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 **4,50,000/-** (Four Lakh Fifty Thousand) from complainant during his sticky days and poor financial condition, and during several unfortunate occasions he had faced, with a promise to return the complainant her sum of money within 3 months.
6. That accused had taken **Rs. 4,50,000/-** (Four Lakh Fifty Thousand Rupees) from complainant as and when accused are in need during extreme financial crunch, to pay off his debts and responsibility received to him through inheritance, from his late parents, and always assure to return back the amount as soon as possible.
7. That the accused has received **Rs. 3,00,000/-** in two instalments during financial year 2015-16, and rest of **Rs. 1,50,000/-** in year 2017 from the complainant to pay of his debts and liabilities, which is due upon his family since the unfortunate demise of his parents.
8. That it is also too unfortunate that complainant always helps accused in his adverse situation like a true and honest friend and relative but accused always have an intend to exploit her financially and to cheat her. That due to her eminence and blind trust upon accused complainant’s help accused as she ever does and provide accused her hard earned money with the assurance that accused will return her sum of money within three months.
9. That when after three months accused did not returned the money of complainant then she asked accused to return her money, as complainant is urgently required that due to some important work but accused again show his poor financial condition and assure complainant that in another next one month accused will definitely return complainant’s money.
10. That again when one month was elapsed and accused did not return the money of complainant then in July 2018 complainant again ask to accused for return of her money but accused again linger on the issue and demands some more time from complainant. To provide a flimsy assurance to complainant accused had return only **10,000/- Rupees** out of the above said sum of money. Complainant unable to understand his ill-will and malice Hence, provide him some more time but accused again and again linger on the issue on one pretext or another and did not return the money of complainant.
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 when complainant strictly made demand for her money from accused then accused had given a cheque to complainant, dated **07-12-2018** bearing number **000003** amounting to Rupees **4,40,000/-(Four LakhFourty Thousand Rupees)** and directed the complainant to present the same for encashment after two month.
13. That as per his instructions and assurances on date **05-02-2019** when complainant presents the above said cheque before the bank for encashment then same was dishonored with a memo mentioning “**Payment Stopped by Drawer”**.
14. That thereafter complainant informed about the dishonor of the above said cheque to accused in consequence of which accused had asked to complainant that why she present the cheque for encashment without his directions due to which complainant was shocked and surprised.
15. That complainant was unable to understand ill-will and malafide desires of the accused and again as per his instructions and assurances presents the above said cheque for encashment before the bank on date **27-02-2019** but the same was again dishonored with a memo mentioning “**Payment stopped by drawer”**.
16. 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 accused repeatedly tried to resist himself from facing complainant and to meet with her.
17. 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 complainant thereafter directed his bank to stop payment with a motive to cheat complainant. Moreover his malafide intention is also proves when again the cheque was dishonored due to **Payment stopped by drawer** despite his assurance**.**
18. That it seems the aforesaid cheque has been issued with malafide intentions and further simply to defraud the complainant as the accused knowingly and willfully issued the cheque in favour of the complainant and thereafter directed his bank to stop payment of cheque. It is made clear that the accused is intentionally and willfully does not wants to pay off the debts.
19. 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 as the accused has already directed his bank not to clear the cheque with the intention to defraud her.
20. That the accused has deliberately, knowingly, intentionally and malafidely with the motive to cheat the complainant, issued the cheque, and consequently directed his bank to stop payment, as and when, the cheque, will be presented for payment.
21. That the accused was served with a legal notice dated 07-03-2019 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.
22. That inspite of the notice has been issued and served upon the accused on date **12-03-2019**, he has further failed and neglected to pay the cheque amount.
23. 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 **05-02-2019** & **27-02-2019**, further on receiving of the Legal notice by accused on date **12-03-2019**, 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 **27th March 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.
24. That by means of aforesaid acts, the accused is rendered himself liable to be prosecuted under section 138/142 of the Negotiable Instrument Act.
25. That the hon’ble court is competent enough to entertain the present complaint as well as to proceed further and punish the Accused.
26. That the present complaint is filed under the limitation period prescribed under section 138 read with section 142 of the Act.
27. 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

**NEERAJ RATHORE & ASSOCIATES**

**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

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

Complaint No. of 2019

**IN THE MATTER OF:**

Sangeeta Sharma …Complainant

Versus

Shiv Prasad Yadav …Accused

**AFFIDAVIT**

I Sangeeta Sharma D/O Dharamvir Upadhyaya, C/O Mahipal Sharma, Gurukripa Building, Shankar Vihar, Krishna Nagar, Mathura, aged about 33 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 April 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:**

Sangeeta Sharma …Complainant

Versus

Shiv Prasad Yadav …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

**NEERAJ RATHORE & ASSOCIATES**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

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

Near Mangaleshwar Mahadev Temple,

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Sangeeta Sharma …Complainant

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Shiv Prasad Yadav …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.

Complainant

Mathura

Date: Through

**NEERAJ RATHORE & ASSOCIATES**

**Advocates and Law consultants**

ADVOCATES FOR COMPLAINANT,

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

Near Mangaleshwar Mahadev Temple,

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**IN THE MATTER OF:**

Sangeeta Sharma …Complainant

Versus

Shiv Prasad Yadav …Accused

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

I, Sangeeta Sharma D/O Dharamvir Upadhyaya, C/O Mahipal Sharma, Gurukripa Building, Shankar Vihar, Krishna Nagar, Mathura, aged about 33 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 she is the complainant in the present matter.
2. That the Accused is residing at above mentioned address and deals in the business of property broking and construction contracts, and is a person of disorderly nature.
3. That since last 6-7 years family of complainant is know to the Accused and there is existence of friendly relations between them therefore complainant trust upon him very much.
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 **4,50,000/-** (Four Lakh Fifty Thousand) from complainant during his sticky days and poor financial condition, and during several unfortunate occasions he had faced, with a promise to return the complainant her sum of money within 3 months.
6. That accused had taken **Rs. 4,50,000/-** (Four Lakh Fifty Thousand Rupees) from complainant as and when accused are in need during extreme financial crunch, to pay off his debts and responsibility received to him through inheritance, from his late parents, and always assure to return back the amount as soon as possible.
7. That the accused has received **Rs. 3,00,000/-** in two instalments during financial year 2015-16, and rest of **Rs. 1,50,000/-** in year 2017 from the complainant to pay of his debts and liabilities, which is due upon his family since the unfortunate demise of his parents.
8. That it is also too unfortunate that complainant always helps accused in his adverse situation like a true and honest friend and relative but accused always have an intend to exploit her financially and to cheat her. That due to her eminence and blind trust upon accused complainant’s help accused as she ever does and provide accused her hard earned money with the assurance that accused will return her sum of money within three months.
9. That when after three months accused did not returned the money of complainant then she asked accused to return her money, as complainant is urgently required that due to some important work but accused again show his poor financial condition and assure complainant that in another next one month accused will definitely return complainant’s money.
10. That again when one month was elapsed and accused did not return the money of complainant then in July 2018 complainant again ask to accused for return of her money but accused again linger on the issue and demands some more time from complainant. To provide a flimsy assurance to complainant accused had return only **10,000/- Rupees** out of the above said sum of money. Complainant unable to understand his ill-will and malice Hence, provide him some more time but accused again and again linger on the issue on one pretext or another and did not return the money of complainant.
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 when complainant strictly made demand for her money from accused then accused had given a cheque to complainant, dated **07-12-2018** bearing number **000003** amounting to Rupees **4,40,000/-(Four LakhFourty Thousand Rupees)** and directed the complainant to present the same for encashment after two month.
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15. That complainant was unable to understand ill-will and malafide desires of the accused and again as per his instructions and assurances presents the above said cheque for encashment before the bank on date **27-02-2019** but the same was again dishonored with a memo mentioning “**Payment stopped by drawer”**.
16. 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 accused repeatedly tried to resist himself from facing complainant and to meet with her.
17. 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 complainant thereafter directed his bank to stop payment with a motive to cheat complainant. Moreover his malafide intention is also proves when again the cheque was dishonored due to **Payment stopped by drawer** despite his assurance**.**
18. That it seems the aforesaid cheque has been issued with malafide intentions and further simply to defraud the complainant as the accused knowingly and willfully issued the cheque in favour of the complainant and thereafter directed his bank to stop payment of cheque. It is made clear that the accused is intentionally and willfully does not wants to pay off the debts.
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20. That the accused has deliberately, knowingly, intentionally and malafidely with the motive to cheat the complainant, issued the cheque, and consequently directed his bank to stop payment, as and when, the cheque, will be presented for payment.
21. That the accused was served with a legal notice dated 07-03-2019 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.
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24. That by means of aforesaid acts, the accused is rendered himself liable to be prosecuted under section 138/142 of the Negotiable Instrument Act.
25. That the hon’ble court is competent enough to entertain the present complaint as well as to proceed further and punish the Accused.
26. That the present complaint is filed under the limitation period prescribed under section 138 read with section 142 of the Act.
27. That there has been a willful disobedience of the law by the accused.
28. 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.
29. 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 April 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