

**IN THE COURT OF SH. SANJEEV KUMAR METROPOLITAN
MAGISTRATE-1 (EAST) KARKARDOOMA COURTS, DELHI**

In the matter of:

Chander Prakash Maheshwari
Vs.
Kamal Kishore Shrama

C.C. No.7410/07
Police Station: Bhajan Pura

JUDGMENT

1. The serial number of the case : 16993/06
2. The date of institution : 25.03.2006
3. Name of the complainant : Sh. Chander Prakash Maheshwari
R/o. House no. D-50/1,
Gali No.5, Mandir Marg,
North Ghonda,
Delhi-110053.
4. The name, parentage and residence of accused : Sh. Kamal Kishore Sharma
S/o Sh. Chander Pal
R/o. House no. H-41, Gali No.3,
Shastri Park, Delhi.
5. Offence complained of : Under section 138 N.I. Act
6. Plea of the accused : Pleaded not guilty

7. Final Order : Acquitted
8. Final argument heard/
Case reserved for Judgment : 29.03.2012 & 18.04.2012
9. Date of such Judgment : 25.04.2012

REASONS FOR THE DECISION OF THE CASE :

1. In the present complaint, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act"), it has been alleged that accused was given a friendly loan of Rs. 2,50,000/- on his demand and at the same time accused had issued a cheque bearing number 406091, dated 15/12/2005 for Rs. 2,50,000/-, drawn on Central Bank of India, Village Ghonda, Post Office Maypur, New Delhi and accused also assured the complainant that cheque will be honoured by all means on its due date on presentation. On assurance of accused, the complainant deposited the said cheque with his banker bank of ING Vysas Bank, RCC, New Delhi which was returned unpaid with remarks "Insufficient Fund" vide memo dated 30.12.2005. Thereafter, complainant again deposited the said cheque in the same bank and also returned unpaid with the remarks of "insufficient fund" vide memo dated 30.01.2006. Thereafter demand/legal notice dated 22/02/06 was sent to accused by registered post/AD as well as by UPC but registered AD returned

same bank and also returned unpaid with the remarks of “insufficient fund” vide memo dated 30.01.2006 Ex. CW-1/B. Thereafter demand/legal notice dated 22/02/06 Ex.CW-1/C was sent to accused by registered post/AD Ex.CW-1/D as well as by UPC Ex.CW-1/D but registered AD returned back with the remarks “not met” but the service is complete because the same notice was also sent by UPC. The accused did not make the payment of dishonoured cheque to the complainant.

4. The accused was questioned generally about the case put forward by the complainant against him and his statement was recorded under section 313 Cr. P. C., wherein he has stated that he got sanctioned a loan of Rs.50,000/- from HDFC Bank and complainant was guarantor in that transaction. The bank demanded some cheques for security and therefore, he left signed cheque book with the complainant for further handing it over to the bank. He did not issue the cheque in question to complainant for discharging any liability as he never took loan from him. The cheque does not bear his signatures and other particulars are also not in his handwriting.

5. Accused opted to lead evidence in his defence. He has examined Ghanshyam as DW1 and Syed Faisal Huda as DW2 (wrongly written as DW1).

6. I have heard the contentions of Sh. Pradeep Tewatia, Counsel for complainant and Sh. A.K. Tiwari, Defence Counsel. The record has been perused. Learned counsel for the complainant has submitted that complainant has proved his case against the accused beyond reasonable doubt; that cheque No. on complaint and evidence by way of affidavit have been wrongly mentioned; that complainant has examined expert as DW2 but same is private expert and signature of the accused has not been examined by CFSL which is the government agency and therefore, accused may be convicted. On the other hand, Learned counsel for the accused has submitted that he has examined Forensic Expert and he has given his opinion that cheque in question does not bear the signature of the accused; that complainant in his cross-examination has admitted that the cheque No. is 406091 and in the present case the cheque, which has been filed, is having No. 456091 and therefore, accused may be acquitted.

7. In the present case one cheque has been filed on record, number of which is 456091. Two returning memos filed are of the same cheque. Cheque Number mentioned in the legal notice Ex.CW-1/C is also 456091. But cheque Number mentioned in the complaint is 406091 not 456091. Similarly, cheque Number

discharge of his debt or liability, is 406091, but same has not been proved on record. Return memo of the cheque bearing number 406091 is also not on record. Further, no legal notice in respect of cheque number 406091 is on record. The cheque which has been filed on record, is not in respect of discharge of the said alleged debt or liability of the accused.

8. The next defence of accused is that the cheque which has been filed on record, does not bear his signature. To prove this defence, accused had examined Ghanshyam from Central Bank of India, Ghonda, Maujpur, Delhi and Syed Faisal Huda. Ghanshyam has proved account opening form of the accused in the said bank as Ex.DW-1/A. Syed Faisal Hudda is a Forensic expert. He has compared disputed signature of accused mentioned on the cheque which has been filed by the complainant in the present case with admitted signatures of the accused mentioned on application dated 13.07.2011 and notice dated 23.01.2008. After comparing/examination of disputed signature with the admitted signature of the accused, Sh. Syed Faisal Huda came to the conclusion that the disputed signature marked as D-1 has not been written by same person who has written the admitted signatures marked as A-1, A-2 & A-3. Complainant has not examined any expert witness to show that accused has signed the cheque which has been filed on record. On the other hand, accused has proved

that cheque which has been filed on record does not bear his signature.

9. In view of above discussion, I am of the view that the complainant has failed to prove his case against the accused and therefore, the accused is acquitted.

*Announced in the open court
On 25th Day of April, 2012
(total Nine pages)*

*(Sanjeev Kumar)
Metropolitan Magistrate (East)
Karkardooma Courts, Delhi*