

**IN THE COURT OF SHRI RAKESH KUMAR RAMPURI,
METROPOLITAN MAGISTRATE (NI ACT) KARKARDOOMA COURTS:
SHAHDARA, DELHI.**

JUDGMENT U/S 355 Cr.PC

- a. Serial No. of the case : VK-1857/04
- b. Date of the commission of the offence : 14/05/2004
- c. Name of the complainant : Kuldeep Sharma
- d. Name of accused person and his parentage: Tripti Shrivastava,
and residence W/o Amrish Shrivastava, R/o
1274, Sector-A, Pocket-B,
Vasant Kunj, New Delhi.
- e. Offence complained of : Dishonored of
cheque for
Insufficient Funds.
- f. Plea of the accused and his examination (if any): Not guilty
Because Cheque in
question was not
issued by me to the
complainant.
- g. Final Order : Held not guilty.
Acquitted.
- h. Date of such order : 05.07.2011.
- i. Brief reasons for decision:-

husband of accused no. 1 Tripti Shrivastava.

15. Complainant in para 3 of complaint stated that personal agreement and promissory note had been submitted by the accused. However, in his cross examination complainant stated that it is correct that he had not filed the alleged agreement and promissory note which were undated before the court. Here counsel for accused suggested that complainant deliberately did not file because same were never executed in his favour. However, complainant replied to such suggestion in negative. Ld. Counsel for accused submits that it shows that complainant has something to hide and complainant did not come with clean hand.

16. It is one of the main plea of the accused that signature appearing on cheque in question had been forged. Complainant during cross examination stated that he could not say as to who had written and fill up the cheque in question Ex. CW1/A. Complainant further stated during his cross examination that he could not say as to whether the cheque in question Ex. CW1/A did not bear the original signature of Tripti Shrivastava nor he could say as to whether the signature of Tripti Shrivastava was forged as the cheque in question was filled and signed in front of him. Opinion of hand writing expert u/s 45 of Indian Evidence Act Ex. DW1/P1 reveals that disputed signature marked as D1 (appearing on cheque in question) has not been written by the same person who had written the admitted signatures marked A1 (signature of accused appearing on the notice), A2 (signature of accused appearing on her statement u/s 313)

and A3 (signature of accused appearing on vakalatnama). Forensic Expert Sh. Sayed Fasal Huda (DW1) was cross examined where Ld. Counsel for complainant had suggested that variation in the signature might took place on the account of health of person concerned and in course of time. However, court is of considered opinion that in view of report of handwriting expert and vague answers of complainant regarding the same during his cross examination reasonable doubts are created over the veracity of the signature of accused over the cheque in question.

17. It is also settled position of law that in order to rebut the legal presumption arising out of section 118 and 139 of NI Act, it is not mandatory on the part of accused to jump into witness box. Same can be rebutted by exposing contradiction in the cross examination of complainant or by showing doubtful and improbable story of the complainant by the accused.

18. Court is also mindful of the fact that accused has to just probablise his defence with standard of balance of probabilities and not beyond reasonable doubt as in case of complainant. Court is also aware of jurisprudencial tenant as to benefit of any reasonable doubt must go in favour of accused and in case there are two probable interpretation, interpretation which favour accused need to be opted by the criminal court.

19. In view of above discussion of the facts and circumstances of the case and applicable legal provisions and principles this court is of considered opinion that accused has probabilies his defence with standard of balance of

probability by creating probable doubt over existence of legally enforceable liability towards complainant in discharge of which the cheque in question was issued. Accordingly accused stands acquitted.

**ANNOUNCED IN THE OPEN COURT
ON 05th Day of July, 2011**

**(Rakesh Kumar Rampuri)
MM, NI Act, (East)
KKD Courts, Delhi.**