SUPREME COURT OF INDIA

SAMPLE GUIDE OF QUESTIONS AND ANSWERS FOR LAW CLERK-CUM-RESEARCH ASSOCIATES EXAMINATION

10 MAY, 2023

INDEX

Disclaimer: The sample guide of questions and answers for the Law Clerk-cum-Research Associate Examination is only indicative and not exhaustive. The object of this sample guide is simply to appraise the candidates to know the nature and kind of questions and answers they are expected to provide.

SAMPLE QUESTIONS AND ANSWERS

Part I- Multiple Choice Based Questions

English Comprehension

"The recommendations of the GST Council are not based on a unanimous decision but on a three-fourth majority of the members present and voting, where the Union's vote counts as one-third, while the States' votes have a weightage of two-thirds of the total votes cast. There are two significant attributions of the voting system in the GST Council. First, the GST Council has an unequal voting structure, where the States collectively have a two-third voting share and the Union has a one-third voting share; and second, since India has a multi-party system, it is possible that the party in power at the Centre may or may not be in power in various States. Therefore, the GST Council is not only an avenue for the exercise of cooperative federalism but also for political contestation across party lines. Thus, the discussions in the GST Council impact both federalism and democracy. The constitutional design of the Constitution Amendment Act 2016 is *sui generis* since it introduces unique features of federalism. Article 246A treats the Centre and States as equal units by conferring a simultaneous power of enacting law on GST. Article 279A in constituting the GST Council envisions that neither the Centre nor the States can act independent of the other.

…. The federal system is a means to accommodate the needs of a pluralistic society to function in a democratic manner. It attempts to reconcile the desire of unity and commonality along with the desire for diversity and autonomy. Democracy and federalism are interdependent on each other for their survival such that federalism would only be stable in well-functioning democracies. Additionally, the constituent units in a federal polity check the exercise of power of one another to prevent one group from exercising dominant power. The Indian Constitution, though necessarily federal does confer the Union with a higher share of power in certain situations to prevent chaos and provide security. However, even if the federal units are not entirely autonomous as in the traditional federal system, the units still wield power. The relationship between two constituent units that are not autonomous but rely on each other for their functioning is not in practice always collaborative or cooperative. If the States have been conferred lesser power they can still resist the mandates of the Union by using different forms of political contestation as permitted by constitutional design. Such contestation furthers both the principle of federalism and democracy. When the federal units are vested with unequal power, the collaboration between them is not necessarily cooperative. Harmonised decision thrives not just on cooperation but also on contestation. Indian federalism is a dialogue in which the States and the Centre constantly engage in conversations. Such dialogues can be placed on two ends of the spectrum - collaborative discussions that cooperative federalism fosters at one end of the spectrum and interstitial contestation at the other end. Jessica Bulman and Heather K, in their essay connote interstitial contestation as 'uncooperative federalism'. They argue that the States which possess lesser power could use licenced dissent, dissent by using regulatory gaps or by civil disobedience such as passing a resolution against the decision of the Central Government as means of contestation."

(Extract from *Union of India v. Mohit Minerals Pvt. Ltd.*, 2022 SCC OnLine SC 657)

(1) In the passage, what does the term "sui generis" mean?

(a) from the same source

(b) on its own motion

(c) of its own kind

(d) none of the above.

Ans: (c)

(2) Which of the following is inconsistent with the argument in the passage?

(a) Contestation and conflict between the Centre and States is consistent with India's democratic order.

(b) Contestation and conflict destroy unity, commonality, and stability which are important goals of the Indian federal system.

(c) Contestation between centre and states may lead to better decisions by each unit.

(d) The design of the GST Council permits political contestation to take place.

Ans: (b)

Questions from Law

Indigas are a religious group comprising of followers of Lord Indigo. The colour blue and its various shades are considered very auspicious in this religion since it is believed that Lord Indigo created the blue sea and the blue sky. Many followers believe that true devotees of Lord Indigo should always wear at least some visible blue item of clothing. Some followers dress entirely in blue and believe that true devotees should wear nothing but blue clothes. This latter set of followers are known as Indiglas.

The Indiglas have a head priest, known as Indigoyo, who is believed to be a direct descendant of Lord Indigo. The head priest is a hereditary position, and devout Indiglas worship current and past Indigoyos along with Lord Indigo. Indiglas have their own rites and rituals. They celebrate the birth of Lord Indigo (the most important festival in the Indiga religion), by painting their bodies blue using a dye made from local plants, following a recipe that is believed to have been passed down from Lord Indigo himself. After painting their bodies, they worship the sea by immersing themselves in the sea during high tides. Other Indigas, who do not identify as Indiglas celebrate birth of Lord Indigo by wearing blue clothes and worshiping any large body of water by making an offering to that body of water.

With this background, provide the most accurate answer to the following questions 3 to 5:

3. Scientific studies show that the dye used by Indiglas to paint their bodies is harmful to sea flora and fauna. The state makes rules under the relevant statute prohibiting the manufacture or use of this dye. This rule is challenged by the current Indigoyo in the Delhi High Court under Article 226 of the Constitution. She argues that the rule violates Indiglas' rights under Article 25 of the Constitution. Which of the following would the Indigoyo have to prove in order to make the case that her claim falls within the scope of Article 25?

(a) That the dye is safe for sea flora and fauna

(b) That using the dye is an essential part of Indiglas' religious practices.

(c) That using the dye is not prohibited by the Indiga religion

(d) That the current Indigoyo sincerely believes that the dye does not harm sea flora and fauna.

Ans: (b). She would have to prove that the practice is an essential religious practice.

4. In her petition in the Delhi High Court, the Indigoyo claims that prohibiting the use of the dye in religious ceremonies violates Indiglas' rights under Article 26 (b) to manage their own affairs in matters of religion. Which of the following will the Indigoyo have to prove to sustain this claim?

(a) That Indiglas are known by a distinctive name within the larger Indiga religion.

(b) That they have a distinct and common set of beliefs such as those relating to wearing only blue clothes and distinct forms of worship.

(c) That they have their own head priest, their own organization, their own temples.

(d) All of the above.

Ans: (d). They would have to prove that they are a religious denomination by applying the test for religious denomination which includes (a), (b), and (c).

5. In her petition, the Indigoyo claims that Indigas in general, and Indiglas in particular, are often discriminated against, both by the state and by society. In the absence of a law that prohibits discrimination on grounds of religion, she prays that the Delhi High Court should frame guidelines to protect Indigas from religious discrimination. Such guidelines should operate till the legislature enacts a law to prohibit discrimination on grounds of religion. Which of the following powers can the Delhi High Court invoke to frame such guidelines?

(a) Power under Article 142 to do "complete justice" in any cause or matter pending before it.

(b) Power to provide appropriate remedy for violation of fundamental rights under Article 32 of the Constitution.

(c) Power of judicial review under Article 13 of the Constitution.

(d) None of the above.

Ans: (d). Powers under Articles 142 and 32 are available only to the Supreme Court. The power of judicial review under Article 13 refers to the power to strike down a law that is inconsistent with fundamental rights. It does not include the power to issue guidelines (which are in the nature of remedies). Hence, none of the above.

6. In *Anoop Baranwal v. Union of India*, the Supreme Court provided directions on the appointment of Election Commissioners. Which of the following did the Court direct?

(a) The Election Commissioners shall be appointed by the President on aid and advice of the Council of Ministers. The President does not have any discretion in accepting or rejecting the advice of the Council of Ministers.

(b) The Election Commissioners shall be appointed, not by the President, but by a three-members Committee comprising of the Prime Minister, Leader of Opposition, and the Chief Justice of India.

(c) The Election Commissioners shall be appointed by the President on the recommendation of a three-member committee comprising of the Prime Minister, Leader of Opposition, and the Chief Justice of India.

(d) That the current practice of appointing Election Commissioners is valid and requires no change.

Ans: (c)

7. Please identify the incorrect statement in the context of the examination of a witness.

A. The order is examination in chief followed by cross examination followed by reexamination.
B. Purpose of examination in chief is to take the testimony for which they are called by the party, cross examination is to test the veracity of the witness and reexamination is to remove inconsistency that may have arisen during examination in chief and cross examination.
C. No leading question can be asked in examination in chief without the permission of the court, leading questions can be asked in a cross examination and re-examination.
D. No new matter should be introduced in reexamination without the permission of the Court.

Ans: (c)

8. Which of the following is murder?

A. Astha and Simone were sitting in a tavern playing cards with a group. Suddenly due to a misunderstanding a fight broke out in the group and in the heat of the moment, Astha hit Simone and Simone collapsed on the spot. Astha immediately got first aid for Simone but it was too late and Simone died.
B. Yasmin and Zaheer are neighbors. One evening, Zaheer makes a derogatory remark about Yasmin's community. Enraged under this provocation, Yasmin kills Zaheer's child.
C. Police Inspector Bholo spots Dabru who he knows is wanted by the police on several counts of dacoity. Bholo tries to apprehend Dabru but Dabru does not heed him and tries to run. Bholo grabs Dabru in the chase and they get into a tussle causing Dabru's death.
D. Both A and B.

Ans: (b)

9. Mr. A wrote to Mr. B, "I am willing to sell you 100 grams of gold after five months at the then prevailing market price, but in no case at less than Rs.600/ gram." Assuming that this statement is the first in the line of correspondence between Mr. A and Mr. B, what is the nature of this statement:

a. Invitation to Offer

b. Offer

c. An agreement void for uncertainty

d. An agreement of sale goods

Ans: (a)

10. Based on the following assertion and reason, choose the correct option

Assertion (A): A plaintiff approaching a court for the remedy of specific performance of contract has to be ready and willing to perform his part of the contract. Therefore, he cannot, during the suit, abandon his claim for specific performance and choose for damages as a primary remedy just because he is no more ready and willing to perform his part.

Reason (R): A plaintiff seeking the remedy of damages for breach of contract considers the contract to be discharged.

a. Both (A) and (R) are true. (R) is the correct reason for (A)

b. Both (A) and (R) are true. (R) is not the correct reason for (A)

c. (A) is true and (R) is false

d. (A) is false and (R) is true

Ans: (a)

11. Based on the following assertion and reason, choose the correct option

Assertion (A): The plea of frustration is not allowed in cases where the performance has become non-profitable. It is only allowed in those situations where the performance is not possible in any fashion what so ever.

Reason (R): The remedy of damages under section 73 is not granted to the either of the parties when the plea of frustration is allowed.

a. Both (A) and (R) are true. (R) is the correct reason for (A)

b. Both (A) and (R) are true. (R) is not the correct reason for (A)

c. (A) is true and (R) is false

d. (A) is false and (R) is true

Ans: (b)

GENERAL INSTRUCTION FOR PREPARING BRIEFS AND RESEARCH MEMO

(A) Question 1 - Brief Preparation (not more than 750 words)

This question requires the candidate to prepare a brief synopsis or precis of a case file. In this question, the candidate would be provided a sample case file with all the relevant annexures and the candidate would be required to prepare a case brief based on the material available in the case file.

Parameters for judging this question include:

(a) ability of the candidate to identify and marshal the relevant facts;

(b) identification of legal issues before the High Court/Appellate Tribunal/lower court;

(c) comprehensive summary of the legal/factual discussion in the impugned decision as done by the court(s) below;

(d) ratio of the impugned decision;

(e) relevant grounds before the Supreme Court;

(f) ability to condense information and structure the document logically; and

(g) brevity.

The basic outline of the Brief may contain the following contents:

i. Case number and Name of the parties
ii. Relevant facts in the case;
iii. Relevant findings of the Judgment/Order under challenge;
iv. Main Grounds of the challenge;
v. Prayer (where necessary);
vi. Interlocutory Applications (where necessary); and
vii. Counter Affidavit/Rejoinder Affidavit/further Affidavits (where they have been filed).

viii. Gist of Previous orders, if any (Record of Proceedings/ Office Reports);

General Instructions:

1. The brief should necessarily be concise that is to say that it must be clear, informative, and in a few words.
2. While indicating the facts or impugned judgment, the reference to relevant annexures or paragraph numbers and pages of the impugned judgment should be incorporated in parenthesis.
3. The note/brief should summarize the case. The length of the note may vary, depending on the subject matter and context of the case. Brevity is of the essence.
4. The brief must be prepared with a neutral outlook and represent only the facts involved free from personal opinions, biases, or prejudices.
5. References to the appeal numbers of a criminal or civil appeal, SLP or other proceeding are generally unnecessary. However, where there are multiple proceedings that need to be differentiated, such reference may be made.
6. If there is a delay in filing the SLP or proceeding, the nature and extent of the delay, along with the explanation of the delay, should be set out next.
7. The briefs shall identify and emphasize the core substance of the case and in case where the judgment of a subordinate court or tribunal is being challenged, it shall include the ratio of such impugned judgment.

(B) Question 2 - Preparation of a draft research memo (750-1000 words)

In this question, the candidate shall be provided with a factual dispute, the relevant statutes and precedents to decide the dispute, and certain irrelevant decisions that modify the precedent line.

The candidate would be required to formulate a draft reasoned memo on the dispute.

Parameters for judging this question include:

(a) ability to use relevant legal sources;

(b) use of legal language;

(c) exposition of the law;

(d) analysis of the facts and applicability of the law to the facts; and

(e) structure of the opinion.

The basic outline of the Brief may contain the following contents:

i. Brief facts
ii. Issues involved
iii. Laws involved
iv. Discussion/ Reasoning
v. Findings/ Conclusion

PART II, QUESTION 1 - BRIEF PREPARATION

(SAMPLE FILE)

IN THE SUPREME COURT OF INDIA
(Order XXI Rule 3(1) (a) SC Rules, 2013)CIVIL APPELLATE JURISDICTION
IN THE SUPREME COURT OF INDIA
(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. 12345 OF 2022(WITH PRAYER FOR INTERIM RELIEF)

(Under Article 136 of the Constitution of India for Special Leave to Appeal, against the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court ofjudicature at Madras in Second Appeal No.747 of 2016)

IN THE MATTER OF:

AJAY ...PETITIONER

VERSUS

SURESH … RESPONDENT

WITH

I.A. No. OF 2022: - AN APPLICATION FOR EXEMPTIONFROM FILING THE OFFICIAL TRANSLATION OF THE ANNEXRUES

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: SATYA SUNDAR

New Delhi
Filed on: 23.07.2022

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4.	Copy of the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of Judicature at Madras in Second Appeal No.747 of 2016.	**7 - 10**		
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022(WITH PRAYER FOR INTERIM RELIEF)

(Under Article 136 of the Constitution of India for Special Leave to Appeal, against the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court ofjudicature at Madras in Second Appeal No.747 of 2016)

IN THE MATTER OF:

AJAY ...Petitioner

Versus

SURESH … Respondent

OFFICE REPORT ON LIMITATION

1. The petition is within time.
2. The petition is barred by time and there is delay of 25 days in filing the same against Decree and Orders dated 08.01.2022 andpetition for condonation of 25 Days delayhas been filed.
3. There is delay of 25 days in refilling the Petitioner and petition for condonation of 25 days in refilling has been filed.

BRANCH OFFICER

New Delhi
Dated: 23.07.2022

LISTING PROFORMA

PROFORMA FOR FIRST LISTING SECTION						**XII**
The case pertains to (Please tick/check the correct box)"						
	Central Act: (Title)	CPC				
	Section:	Section 100				
	Central Rule: (Title):	NA				
	Rule No(s):	NA				
	State Act: (Title)	NA				
	Section:	NA				
	State Rule: (Title)	NA				
	Rule No(s):	NA				
	Impugned Interim Order: (Date)	NA				
	Impugned Final Order/Decree:(Date)	08.01.2022				
	High Court: (Name)	High Court of Judicature at Madras				
	Names of Judges:	MR. JUSTICE N. PADMA				
	Tribunal / Authority: (Name)	NA				
1.	Name of Matter:	√	Civil	☐	Criminal	
2.	(a) Petitioner/Appellant No. 1:	☐	AJAY			
	(b) E-mail ID: NA	☐				
	(c) Mobile PhoneNumber:	NA				
3.	(a) Respondent No. 1:	SURESH				
	(b) E-mail ID:	NA				
	(c) Mobile PhoneNumber:	NA				
4.	(a) Main categoryclassification:	18				
	(b) Sub classification:	1807				
5.	Not to be listed before:	NA				
6.	(a) Similar disposed of matter with citation, if any & casedetail: **No similar case is disposed of.**					
	(b) Similar pending matter with case details**: No similar caseis pending**					

	Criminal Matters									
	(a)	Whether accused / convict has surrendered		☐	Yes	√	No			
	(b)	FIR No.	NA			Date:	NA			
	(c)	Police Station:	NA							
	(d)	Sentence Awarded:	NA							
	(e)	Period of sentence undergone including period ofDetention/Custody Undergone: Nil								
8.	Land Acquisition Matters: NA									
	(a)	Date of Section 4 notification:	NA							
	(b)	Date of Section 6notification:	NA							
	(c)	Date of Section 17notification:	NA							
9.	Tax Matters: State the tax effect:		NA							
10.	Special Category: (First petitioner/appellant only)		NA							
☐	Senior citizen >65 Years	☐	SC/ST	o	Woman/child	☐	Disabled	☐	Legal	
	Aid Case	☐	In custody ☐							
11.	Vehicle number (in case of Motor AccidentClaim matters:		NA							

Date:	23.07.2022	**(SATYA SUNDAR)** Advocate on Record for Petitioner	
Place	New Delhi	Name	
		Registration No.	

SYNOPSIS

The present Special Leave Petition has been filed under Article 136 of the Constitution of India to challenge the legal propriety of the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of judicature at Madras in Second Appeal No.747 of 2016, whereby the Hon'ble High Court was pleased to dismiss the said Second Appeal filed by the Petitioner upholding the judgment of the Courts below in granting the relief of permanent injunction restraining the Petitioner from disturbing the peaceful possession and enjoyment of the Respondent over the suit property.

LIST OF DATES

The Petitioner herein is the Original Defendant in O.S.No.155 of 2003 filed by the Respondent-Original Plaintiff before the Ld.District Munsif, Lalaland seeking the relief of permanent injunction against the Petitioner in respect of the Suit Property aptly described in Annexure P-1 of the Special Leave Petition.

25.11.2003 The case of the Respondent in the Plaint was that the suit property originally belonged to the Petitioner who sold the same to the Respondent for a valuable consideration of Rs.27,000/- and executed the sale by way of registered sale deed dated 16.02.2000. Thereafter the Respondent is in possession and enjoyment of the suit property. The documents have also been mutated in the name of the

Respondent. The Respondent further contended that later on the Petitioner in the guise of claiming of share in the well (as the property has joint patta) has attempted to encroach upon the suit properties. That in these circumstances the Respondent was constrained to file the subject suit before the Ld. Trial Court.

02.03.2004 That suit summons were issued and accordingly the Petitioner filed the Written statement contending that Respondent lands money on interest and that he collects exorbitant interest for the same. That the Petitioner was in financial constrain and therefore, he received the loan amount ofRs.1,00,000/- from the Respondent and executed a deed of sale for that loan, purposefully mentioning the sale amount as Rs.27,000/- per acre when in reality the value of one Acre of land in that vicinity was Rs.2,00,000/-. It was contended on behalf of the Petitioner that he has never executed a deed with the intention of selling the suit property but, the Respondent by deceivinghim got executed the sale deed in his favour which is sham and nominal and as such the Respondent has no title in respect of the Suit Property. It was further contended on behalf of the Petitioner by pointing out Ex.B8 (which is a document executed by the Petitioner admitting the loan liability) that the transaction was a loan transaction and therefore in these circumstances he prayed for the dismissal of the suit filed by the

Respondent.

2005-2009 That on the basis of the rival pleading issues were framed by the Ld. Trial Court and evidences were adduced by the parties in support of their respective claims.

10.08.2009 That vide its judgment and order dated 10.08.2009 the Ld. District Munsif,Lalaland was pleased the decree the Suit filed by the Respondent. **ANNEXURE P- 1:** is the true translated copy of the judgment and order dated 10.08.2009 passed by the Ld. District Munsif, Lalaland in O.S.No.155 of 2003.

2009/2013 Being aggrieved by the abovementioned judgment the Petitioner preferredA.S.86/2009 before the Ld. Subordinate judge's Court at Rohini which was later transferred (as withdrawn) to the Court of Principal District Judge, Rohini and was assigned A.S.49/2013.

11.04.2016 That vide its judgment and order dated 11.04.2016 the Ld. Principal District Judge, Rohini was pleased the dismiss the Appeal filed by the Petitioner. **ANNEXURE P-2:** is the true and correct copy of the judgment andorder dated 11.04.2016 passed by the Ld. Principal District Judge, Rohini in A.S.49/2013.

2016 In these circumstances the Petitioner filed Second Appeal

No.747 of 2016 before the Hon'ble High Court of judicature at Madras.

08.01.2022 That vide its Impugned Judgment and Final order dated 08.01.2022 the Hon'ble High Court was pleased to dismiss the said Second Appeal filed by the Petitioner upholding the judgment of the Courts below in granting the relief of permanent injunction restraining the Petitioner from disturbing the peaceful possession and enjoyment of the Respondent over the suit property.

23.07.2022 Hence, the present Special Leave Petition.

IMPUGNED ORDER

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED: 08.01.2022

CORAM

THE HONOURABLE MR. JUSTICE N. PADMA

Second Appeal No.747 of 2016

AJAY ... Appellant

Vs.

SURESH ... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S. No.49of 2013, on the file of the Principal District Judge, Rohini dated 11.04.2016, in confirming the judgment and decree in O.S.No.155 of 2003, on the file of the District Munsif, Lalaland dated 10.08.2009.

For Appellant :
For Respondent :

JUDGMENT

The defendant is the appellant in the Second Appeal. Therespondent / plaintiff filed a suit for permanent injunction restraining the appellant from disturbing his peacefulpossession and enjoyment of the suit property.

2. The case of the respondent is that the property originally belonged to the appellant and he sold the propertyto the respondent for a valuable consideration by executing a registered Sale Deed dated 16.02.2000. Thereafter, the respondent was in possession and enjoyment of the suit

property and the Revenue Records were also mutated in the name of the respondent. While so, an attempt was made by the appellant to interfere with the possession and enjoymentof the property and hence the respondent filed the suit seekingfor the relief of permanent injunction.

3. The case of the appellant is that he never executed the document with an intention to sell the property and it is stated that he borrowed money and the document was executed only by way of a security for the loan transaction. Accordingly, the appellant had sought for the dismissal of the suit.

4. Both the Courts below on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, decreed the suit as prayed for. Aggrieved by the same, the present Second Appeal has been filed before this Court.

5. This Court heard the learned counsel for the appellant and carefully perused the oral and documentaryevidence and also the findings rendered by both the Courts below.

6. The learned counsel for the appellant submittedthat the Sale Deed marked as Ex.A1 was never intended to convey the property in favour of the respondent and it was more in the nature of a security for the loan transactionbetween the parties. The learned counsel further submitted that a careful reading of Exs.B1 to Ex.B3 along with theevidence of D.W.2 and

D.W.3, would show that loans areobtained regularly from various parties and in the same way, the loan was obtained from the respondent also and the conduct would show that the appellant never intended to convey the property in favour of the respondent. In short, the learned counsel for the appellant wanted to construe Ex.A1 asa loan document.

7. Both the Courts below have categorically found thatthe appellant is a retired Village Administrative Officer, who understands the nature of transaction that took place with the respondent. The various terms of the Sale Deed marked as Ex.A1 clearly shows that the appellant had received a valuable consideration and the Sale Deed has been executed in the presence of the witnesses. D.W.2 who was one of the witness to the document had made a statement as if the consideration never passed on. His evidence was appreciated by both the Courts below and it was found that the statement made by himgoes contrary to the contents of the Sale Deed marked as Ex.A1.

8. Both the Courts below also took into consideration Ex.B7 which is a Police complaint and in that complaint, there is a clear mention about the execution of the Sale Deed in favour of the respondent. The appellant also made an attempt to show as if he continues to be in possession of the property and that the so called Sale Deed was never acted upon. This stand taken by the appellant has also been rejected by both the Courts below.

9. In the considered view of this Court, the Courts below have properly appreciated the oral and documentary evidence and rendered their

findings. This Court is not able tosee any perversity in the findings of the Courts below. This Court cannot re-appreciate the evidence in the Second Appeal.No substantial question of law is available in this SecondAppeal and this Court does not find any ground to entertain the Second Appeal.

10. In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, thereshall be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)
Sd/-
Sub Assistant Registrar

IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3 (1) (a)] CIVIL

APPELLATE JURISDICTION

SPECIAL LEAVE PETITIONWITH
PRAYER FOR INTERIM RELIEF(S)

(Under Article 136 of the Constitution of India)

S.L.P. (CIVIL) NO._____ OF 2022

(Under Article 136 of the Constitution of India for SpecialLeave to Appeal, against the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of judicature at Madras in Second Appeal No.747 of 2016)

STATUS OF PARTIES

BETWEEN	IN THE HON.	IN THIS HIGHCOURT
	HON.	COURT

AJAY,
S/o. Udayar, Kattathur, Udayarpalayam Taluk,
Rohini District.

Appellant Petitioner

AND

SURESH, S/o.Arokiyasamy,
East Street,Kattathur Village,
Udayarpalayam Taluk, Rohini District.

Respondent ContestingRespondent

PETITION UNDER ARTICLE 136(1) OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS

COMPANION JUDGES OF

THE SUPREME COURT OF INDIA

THE HUMBLE SPECIAL LEAVE PETITION OF THE PETITIONER

MOST RESPECTFULLY SHEWETH:

1. The present Special Leave Petition has been filed under Article 136 of the Constitution of India to challenge thelegal propriety of the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court ofjudicature at Madras in Second Appeal No.747 of 2016, whereby the Hon'ble High Court was pleased to dismissthe said Second Appeal filed by the Petitioner upholdingthe judgment of the Courts below in granting the relief of permanent injunction restraining the Petitioner from disturbing the peaceful possession and enjoyment of the Respondent over the suit property.

2. QUESTIONS OF LAW

The following substantial questions of law arise for theconsideration of this Hon'ble Court:

(i) Whether the High Court while passing the Impugned Judgment failed to appreciate thatcourts below were not right in treating a loan transaction as sale deed ignoring the documents produced by the parties under Exhibit A5, Exhibit A6, Exhibit A7, Exhibit B1, Exhibit B2 and Exhibit B3?

(ii) Whether the High Court while passing the Impugned Judgment failed to appreciate thatcourts below were not right in rejecting the evidence of DW2 and DW3 when the evidence on record

suggests that the document under Exhibit A1 is nothing but a loan transaction?

(iii) Whether the High Court while passing the Impugned Judgment failed to appreciate that the burden of proof lie on the Respondent to establish the genuinity of Exhibit A1, when the value of the property indicated in the document and the surrounding circumstances belie it as a deed ofsale?

(iv) Whether the Hon'ble High Court while passing the impugned judgment failed to appreciate that the Respondent is attempting to take advantage of the fraudulent deed under Exhibit A1. That deed cannotbe contented as the deed of sale as it should be obvious from the fact that the Petitioner continued to be in possession even after the document was executed?

3. **DECLARATION IN TERMS OF RULE 3(2) :**

The Petitioner state that no other petition seeking leave to appeal has been filed by them against the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of judicature at Madras in Second Appeal No.747 of 2016.

4. DECLARATION IN TERMS OF RULE 5:

That Annexures P-1 to P-6 produced along with the Special Leave Petition is true copies of the pleadings/ documents which formed part of the records of the case in the Court/Tribunal below against whose order the leave toappeal is sought for in this petition.

5. GROUNDS:

Leave to Appeal is sought for on the following grounds: -

(A) For that the Hon'ble High Court while passing the Impugned Judgment failed to appreciate that courts below were not right in treating a loan transaction assale deed ignoring the documents produced by the parties under Exhibit A5, Exhibit A6, Exhibit A7, Exhibit B1, Exhibit B2 and Exhibit B3.

(B) For that the Hon'ble High Court while passing the Impugned Judgment failed to appreciate that courts below were not right in rejecting the evidence of DW2 and DW3 when the evidence on record suggests that the document under Exhibit A1 is nothing but a loan transaction.

(C) For that the Hon'ble High Court the High Court while passing the Impugned Judgment failed to appreciatethat the burden of proof lie on the Respondent to establish the genuinity of Exhibit A1, when the value of the property indicated in the document and the surrounding circumstances belie it as a deed of sale.

(D) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that theRespondent is attempting to take advantage of the fraudulent deed under Exhibit A1. That deed cannot be contented as the deed of sale as it should be obvious from the fact that the Petitioner continued to be inpossession even after the document was executed.

(E) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that theemployment of the Petitioner has no bearing

in his dealings with the Respondent. The loan was established through various means including the value of the property, the non mutation of the names and the possession continuing with the Petitioner.

(F) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that thedocuments produced by the Respondent would itself prove Exhibit A1 was not intended as a sale. The Respondent admits execution of B1, B2, and B3. The execution of document under A5, A6, and A7 has been produced by him. The total extent of the property is around 3.76 acres, computing the extent in all the documents far exceeds the actual holding. This by itself would prove that no purchaser would advance or pay money without the land being available even on papers for purchase.

(G) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that the in matters of fraud, inference could be drawn only from surrounding circumstances and there will not be explicit direct evidence. As civil court, it was the obligation ofthe Courts below to analyse the evidence and not merely accept it as produced. Failure on part of the court to incisively deal with the subject matter had resulted in miscarriage of justice.

(H) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that theevidence of DW2 and DW3 to Exhibit A1 establishesthat the said document is not one of sale. Arriving at a different conclusion on mere suspicion is wholly without justification.

(I) For that the Hon'ble High Court while passing the impugned judgment

failed to appreciate that the Courts below had completely ignored the oral evidence as well as the document produced under Exhibit B9. Wherein it clearly reveals that the sale deed under Exhibit B1 is unreliable as a deed of sale.

(J) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that theRespondent is a habitual money lender and usually engages in securing documents for the purpose of security.

(K) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that thedescription of property in the plaint does not clearlyindicate the boundaries and it is incapable of identification and thereby that itself should have ended in dismissal of the suit for injunction.

(L) For that the Hon'ble High Court while passing the impugned judgment failed to appreciate that in a suit for injunction the Respondent has to establish possession and on the facts and circumstances of the case, there is a clear admission that the lands are vacant as per the Respondent, but the evidence produced by the Petitioner proves agricultural activityon it. This proves that the Respondent had not come to the court with clean hands and is disentitled for any equitable relief.

(M) Even otherwise the Impugned judgment is bad in law and liable to be set aside.

6. <u>GROUNDS FOR THE INTERIM RELIEF</u>

The Petitioner has set out all the relevant facts in details in the accompanying List of Dates and the Petitioner shall crave leaveto refer to and rely upon the

same as if incorporated herein verbatim for the sake of brevity. The Petitioner submits that the Petitioner has good case on merits and is likely to succeed before this Hon'ble Court. The Petitioner states that Petitioner has made out prima facie case on merits and that the balance of convenience is also in favour of the Petitioner, therefore, it is desirable in the interest of justice that during the pendency of proceedings in this Hon'ble Court the interim relief as prayed for herein be granted or else the Petitioner shall suffer irreparableloss.

7. MAIN PRAYER:

This Hon'ble Court may graciously be pleased to:

A. Grant Special Leave to Appeal against the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of judicature at Madras in Second Appeal No.747 of 2016;

B. Pass such further and/or other order or orders as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

8. PRAYER FOR INTERIM RELIEF:

A. Grant ad-interim ex-parte Stay of the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court of judicature at Madras in Second Appeal No.747 of 2016;

B. Grant ad-interim ex-parte Stay of the judgment and order dated 11.04.2016 passed by the Ld. Principal District Judge, Rohini in A.S.49/2013;

C. Grant ad-interim ex-parte Stay of the judgment and order dated 10.08.2009 passed by the Ld. District Munsif, Lalaland in O.S.No.155 of 2003;

D. Pending hearing and final disposal of the Special Leave Petition the Respondent be restrained from creating third party right in respect of the Suit Property as described inthe Plaint (Annexure P1 of the SLP Paper book);

E. Pass such further and/or other order or orders as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS INDUTY BOUND SHALL EVER PRAY

DRAWN BY FILED BY

(SATYA SUNDAR)
ADVOCATE FOR THE PETITIONER

ANNEXURE P-1

IN THE COURT OF THE DISTRICT MUNSIF, LALALAND.

PRESENT:, B.Sc., M.L.,District Munsif, LALALAND.

Monday, the 10th day of August, 2009.

ORIGINAL SUIT No.155/2003

SURESH .... Plaintiff

-versus-

AJAY .... Defendant

This suit came up before me for final hearing on 04.08.2009 in the presence of Kumar, Advocate on the side of the plaintiff and of Mohan, Advocate, on the side of the defendant, upon hearing the arguments on both sides and upon examining all the oral and documentary evidence, this court delivers the following

J U D G M E N T

This suit has been filed by the plaintiff praying for the relief of the order of Permanent Injunction against the defendant, restraining the defendant or his men or agents from in any manner interfering with the plaintiff's peaceful enjoyment in the suit-property.

Summary of the Plaint filed by the Plaintiff :

This suit has been filed by the plaintiff stating that,originally the suit-property belonged to the defendant, thatthe plaintiff purchased the suit-property from the defendantfor the proper sale-consideration of Rs.27,000/- through the Deed of Sale, registered on 16.02.2000, that from the date of sale,

the plaintiff has attained the possession of the suit-property, obtained the Joint-patta and has been in enjoyment, that he has also been remitting the tax for the suit-property, that, since, the defendant has some different and on the western side of the suit-property, the joint-patta was given to the plaintiff and the defendant, with regard to the survey number of the suit-property, that after selling the suit property to the plaintiff and in the circumstance that the defendant does not have any right or enjoyment in the suit property and that he sold the suit-property, including theWell, the defendant states presently, that he has the right in the Well and disputed with the plaintiff, on 15.11.2003, that the plaintiff told the people of his place, showed the deed of sale to them and prevented the action of the defendant, with difficulty, therefore, enmity arose between the plaintiff andthe defendant, that even before that, the plaintiff gave the advance amount for purchasing the property, on the western side of the suit-property, which belongs to the defendant,that he also entered into sale-agreement with the defendant, that in this circumstance, the defendant harboured the enmity, which arose before, has been trying to encroach the property of the plaintiff, besides, trying to interfere with the enjoyment of the plaintiff in the suit-property, on 22.11.2003, that the act of the defendant is unlawful, that, the act of the defendant can only be prevented by the orderof the court, this suit has been filed, praying for the order of Permanent Injunction against the defendant.

Summary of the Written Statement :

It is stated that the plaintiff lands money on interest, that he collects exorbitant interest, that the defendant was in financial constrains, that,

therefore, he received the loan from the plaintiff, that the defendant received the loan amount Rs.1,00,000/- from the plaintiff and executed a deed of sale for that loan, mentioning the sale amount as Rs.27,000/- per acre, that, really, that, one Acre has thevalue of Rs.2,00,000/-, that, again, the defendant received Rs.25,000/- from the plaintiff on 30.08.2000 and entered into the sale agreement for one acre of the land, in the same survey number, that with regard to that land, the defendant agreed to pay 45/- interest per annum, for the amount Rs.1,20,000/- and executed a Deed of Agreement to thateffect, that he retained the copy of that agreement and handed over the original to the plaintiff, that he had been paying 48/- Annual Interest, properly to the plaintiff, that, since, the sale agreement would expire, the plaintiff made another agreement, for Rs.33,000/- in the same survey number, that as per the Sale Agreement made on 30.08.2000, the plaintiff executed a Deed of Sale on 08.08.2002, as per the Sale Agreement, made on 30.08.2000, for the sale amount Rs.30,000/- that, at that time, the defendant did not receive any money, that the agreement of sale is bogus, that, it was executed for the loan, by compulsion, that it is only the defendant, who paysthe kist for the suit-rpoperty and has been in enjoyment, that the defendant had paid Rs.1,80,000/- the plaintiff towards interest only, for the amount received by him, as loan, that, in this circumstance, the plaintiff brought 2 unknown persons, on 11.08.2003, took the defendant to the house of the plaintiff and obtained the signatures of the plaintiff in thestamp papers for the value of Rs.3.50, each and one Promissory Note, that the plaintiff has been telling that he takes the land of an extent of 1.82.5 hectare in the Survey No.67/1, which belonged to the defendant, for the

loan amount, Rs.1,25,000/- given by him to the defendant, thatthe defendant gave 1 acre of land, which is located in the North Western Corner of the same survey number, that, but, the enjoyment is only with the defendant, that the total survey number 67/- will be sold for the amount Rs.10 Lakh, that the Well in that Survey Number will be sold for Rs.1 Lakh, that the defendant paid the interest Rs.1,80,000/- forthe loan amount Rs.1,25,000/-, he had received, that as per the sale document, the plaintiff did not obtain the right of enjoyment, that the plaintiff acted with malafide intentionand transferred the patta and paid the kist, without the knowledge of the defendant, that as per the bogus sale document, the plaintiff cannot have any right, legally andthat, therefore, the suit shall be dismissed.

In this case, upon examining the Plaint and Written Statement, carefully, this court has framed the following issues on 29.09.2004.

Issues :

1. Whether the suit-property is in enjoyment of the suit-property?
2. Whether the statement of the defendant that the sale document dated 16.02.2000, is not sustainable, iscorrect?
3. Whether the plaintiff is entitled to the relief of the order of injunction, as prayed for by him?
4. What is the other relief to which the plaintiff is entitled?

On the side of the plaintiff, the plaintiff was examined as P.W.-1, Tr.Sirakori was examined as P.W.-2, Thiru.Dhanapal was examined as P.W.-3 and Tr.Arunachalam have been examined as P.W.-4. The documents on the side of the plaintiff were marked as Exs.A.-1 to A.-7. On the side of the defendant, the

defendant was examined as D.W.-1, Tr.Palanivel was examined as D.W.-2, Tmt.Anjalai have been examined as D.W.-3 and Tr.Chinnapillai was examined as D.W.-4. The documents on the side of the defendant have been marked as Exs.B.-1 to B.-11. The document of the witness has been marked as X-1.

Issues :

Decision for the Issue Nos.1 to 3 :

1. Whether the suit-property is in the enjoyment of theplaintiff?
2. Whether the statement of the defendant that the saledocument dated 16.02.2000 is not sustainable is true?
3. Whether the plaintiff is entitled to the relief of the orderof Permanent Injunction, as prayed for by him?

In this case, the suit Deed of Sale made between the defendant and the plaintiff, has been marked as Ex.A.-1. In so far as that Deed of Sale is concerned, the defendant has acknowledged his signature in that. The defendant has adduced in his evidence that his family was in poor condition, that he had many loans, that when he approached the plaintiff and asked for money, the plaintiff gave him rupeesone lakh as loan and that for that loan, the plaintiff received1 acre of land for that loan by executing a deed of sale in his name, on 16.02.2000 on the side of the plaintiff, the person, who wrote that deed of sale, was examined as P.W.-2. P.W.-2 has stated in his evidence that he knew the defendant, that he did not know the plaintiff, that the plaintiff bought and brought the Stamp Papers for Ex.A.-1, that as dictated by the defendant he wrote Ex.A.-1, that, then, Palanivel andDhanapal, the witnesses were there, that the plaintiff gave Rs.27,000/- to the defendant as the sale consideration for Ex.A.-1

and that when Ex.A.-1 was written the market value of that land is Rs.27,000/- per acre. The witness of Ex.A.-1 was examined as P.W.-3. P.W.-3 has deposed that he knows the suit-property, that he does not know its survey number, that its extent is 4 ½ acre, that he signed as a witness in the deed of sale, executed on 16.02.2000, that as per that deedof sale, the defendant negotiated with the plaintiff that he would sell the land of an extent of 1 acre of land and the Well in that land, belonging to him, to the plaintiff, that both of them agreed for the sale amount of Rs.27,000/- that thedefendant received the sale amount and signed in the deed of sale and that, later on, Palanivel, the witness and himself signed in that Deed. P.W.-3 has stated further, in his evidence that when Ex.A.-1 was written, the plaintiff, thedefendant, himself, Palanivel and the Document Writer were present. On the side of the plaintiff, one Arunachalam was examined as P.W.-4. P.W.-4 has stated in his evidence thathe knows the suit-property, that there is a well on the south eastern side of the suit-property, that it is only the plaintiff, who has been in enjoyment of the suit-property. It has been stated on the side of the defendant that the value of the suit- property is rupees two lakh and that in lieu of the loan obtained by him from the plaintiff, Ex.A.-1 was executed for the value of Rs.27,000/-. It has been stated on the side ofthe defendant that the plaintiff received Ex.B.-1, the SaleAgreement, having been executed in his favour, with regard to the land of an extent of 1 acre, on the North Eastern side,in the survey no.67/1, comprising of the suit-property, for the loan, obtained by the defendant from the plaintiff, on 30.08.2000, that the period of agreement for that sale agreement is one year, that within that period of one year,the plaintiff did not obtain the deed of sale, being executed,

but, made the defendant executed Ex.B.-2, a new Sale Agreement, with regard to the 1 acre of land, which is on the south-western side in the survey no.67/1 which comprises the suit-property, that the plaintiff received the property, found in Ex.B.-2, by executing, Ex.B.-3, a Deed of Sale in his favour, for the amount Rs.30,000/-, on 08.08.2002, that the plaintiff is not in any enjoyment as per all the deeds of sale, that he does not pay the kist also and that all the deeds have been made, in lieu of the loan. On the side of the plaintiff, the tax-receipts for the payment of tax for the suit-property, have been marked as Ex.A.-2 the joint-patta issued in the name of the plaintiff has been marked as Ex.A.-3 and the Tax-Receipt for the payment made by the plaintiff on 02.01.2002, has been marked as Ex.A.-4. While examiningthe documents Exs.A.-2 to A.-4, filed on the side of the plaintiff, it becomes evident that the suit-property is in the enjoyment of the plaintiff. It is stated on the side of the defendant that a Deed of Consent, Ex.B.-8 was made between both the plaintiff and the defendant, on 30.08.2000. But, only the Xerox Copy of that deed of consent has been marked as Ex.B.-3. Further, the signature of the plaintiff isnot in that deed of consent. Further, the witnesses of the deed of consent were not examined, on the side of the defendant. Therefore, this court opines that Ex.B.-8, theDeed of Consent cannot be taken into account. On the side of the defendant, one Palanivel, the witness of Ex.A.-1, wasexamined as D.W.-2. He has adduced in his evidence that the signature in Ex.A.-1 is his signature, that he is not in the habit of signing in false documents, that the defendant is his cousin and that the defendant executed and gave the suit- deed of sale only for the loan. D.W.-2, has stated further, inhis cross-examination that he does

not know the detail that the defendant had borrowed the loan from other persons,except the plaintiff and that he does not know the length and width of the suit-property. D.W.-2 received the loan from the plaintiff. The plaintiff instituted a case for that loan. In that case, the Decree was passed in favour of the plaintiff and in the Execution Petition, D.W.-2, had agreed to settle the loan. Therefore, the statement on the side of that plaintiff thatD.W.-2 who is the witness in Ex.A.-1, Sale Deed, deposes against the document in which he has signed as a witness,has the enmity towards the plaintiff and deposes against Ex.A.-1 is reliable.

While examining Ex.A.-1 carefully, it is evident that the aforesaid document was executed for absolute sale, that asper that sale, the Well is also included. P.Ws.3 and 4 have stated in their evidences that the Well is situated in the suit- property. There is no oral and documentary evidence on the side of the defendant, that there is not a Well, as per Ex.A.-1, Deed of Sale. D.W.-3 has stated in her evidence that she did not see the deed of sale, which was executed by the defendant, in favour of the plaintiff, that this suit property isof an extent of 4 ½ acres, totally, that she does not know the details written in the deed of sale, that she does not know from whom the defendant had borrowed the loans that she knows what documents had been executed by the defendant, that she did not sign in the documents, executed by thedefendant and that she did not see the defendant borrowing the loans, in his presence. In this circumstance, thestatement on the side of the defendant that the suit-deed of sale was executed for the loan, is not believable. Further, in the circumstance that, it is admitted that P.W.-3 is the cousin of the defendant, her

evidence cannot be accepted. The statement of D.W.-4 also is not in corroboration with thestatement of the defendant. In the circumstance that, the defendant has acknowledged the signatures in the deed of sale, with regard to the sale of the suit-property, it is only the defendant, who has to prove against that document that itwas executed for the loan. In this circumstance, the oral and documentary evidences on the side of the defendant, stating that, Ex.A.-1 was executed for the loan, cannot be admittedby this Court.

Further, while examining Ex.A.-1 carefully, it becomes evident that, it was not executed, for the sake of confidence,it was executed as an absolute deed of sale.

1) 2005(4) CCC 104 (SC) SUPREME COURT OF INDIA

(From Madhya Pradesh High Court)

Ramlal & Anr. -- Appellants
/vs/
Phagua & Ors. -- Respondents

"Transfer of Property Act – Plaintiff respondent executed sale deed in favour of Respondent Nos. after obtaining a loan of Rs.400/-. An agreement was also executed between parties that if lean amount was repaid within three years, property shall be reconveyed-Respondent failed to repay loan within three years and respondent Nos. got her named corde inRevenue and sold the property to appellants by registereddeed – Respondent filed suit for declaration sale deed executed by him was only nominal and he continued to be own of suit land – Trial Court and the appellate court dismissed the suit High Court in second Appeal decreed the holding that plaintiff-respondent had over suit land and on

his paying Rs.400/- to respondent Nos. he shall have right to get possession of suit land-Appeal High Court rightly concluded that sale deed in question was not infact a sale deed but was by way of surely and did not pass title on interest – Evidence on record justified conclusion that sale deed in question was executed only an security for loan – Agreement to reconveythe property will not ipso facte lead to conclusion that salewas not nominal – Findings arrived by High Court called forno interference.

(2) 2002 (3) CCC 323 (M.P)

MADHYA PRADESH HIGH COURT

Sathish Kumar Mathura Prasad Shtivastave & Anr.

….. Appellants

-vs.-

Jagdamba Prasad, S/o.Nadmada Prasad & Ors.

….. Respondents

(i) Evidence Act – Section 92 Despite bar of section 92 of the Act. Oral evidence is admissible to prove that document though executed was nominal or sham – Execution of a registered document might be a solemn affair, party whoalleges that he did not do what otherwise appeared to have been done by him has to prove such allegations.

(ii) Civil Procedure Code, 1908-Section 100 – Suit for specific performance and for declaration – Plaintiff appellant claimed that he executed sale deed in favour of respondent No.1 as a security for repayment of loan and R-1 had executed Deed for reconveyance – Trial court held sale deed dt. 9.1.1963 had not conveyed any title was executed as security for loan but suit for specific performance filed in 1989 was barred by limitation and dismissed suit – 1st appellate court held

sale deed dt. 9.1.1963 was an out and out sale but confirmed decree of trial court Appeal – Court below were misled in negativing claim of appellant as they had prayed specific performance of agreement – Appellant ought to have sued for declaration of title and plaint showed that relief prayed was declaration of title – decree for declaration could have been given."

(3) 2000 (3) CCC 427 (AIL) ALLAHABAD HIGH COURT

Khalil Ahmed, S/o.Sri Mohd. Hawan
… Plaintiff/Appellant
-vs.-
Smt.Naurozy, widow of late Baitur Hasan & Ors.
… Respondents

"Specific Relief Act, 1963 – Section 16 – Indian RegistrationAct – Section 60 – Specific Performance Suit – Agreement to sell suit plots was registered document – Appeal against dismissal of suit by courts below – Rebuttable presumption of due execution of document – Concurrent findings of courts below that defendant of document – concurrent findings of courts never intended to well his land – Plaintiff used toobtain documents in form of agreement to sell to secure his money advanced as loan to various debtors o presumption of due execution of documents stood rebutted – Decree called for no interference."

(4) 2000 (3) CCC 491 (ker)KERALA HIGH COURT

Bhargavi Amma … Appellant
/vs/
Parukutty Amma … Respondent "Evidence Act, 1972 – Section 92 – Suit for possession ofplaint schedule property

based on registered sale deed executed by defendant No.1 real sister of plaintiff – Defenceplea that document executed was never intended to be actedupon and was executed only to enable plaintiff to obtain non-refundable advance from provident fund – Suit dismissed by both courts below upholding the defence plea – Secondappeal raising question of law that no evidence regarding oralagreement could be adduced with reference to document –possession of suit property remained with defendant – Lowerappellate court found that plaintiff had inconsistent version at different stages with regard to payment of consideration – Defendant was entitled to adduce all such evidence to show that document was a sham with no intention to act upon – Defendant had discharged burden to prove that documentwas never intended to be acted upon."

In the aforesaid Judgments, the Deed of Sale is executed as security for the loan. Further, one deed of agreement was executed that the property shall be reconveyed after receiving back the loan, on the date of the sale document, itself. But, in this case, the Certified Copy of Ex.B.-8 has been filed on the side of the defendant statingthat a Deed of Consent was executed. But, the signature ofthe plaintiff is not in that deed. The witnesses, mentioned in that deed, were not examined. In this circumstance, this court cannot admit that Deed of Consent.

It was argued on the side of the defendant that the plaintiff, makes the borrowers execute the sale deeds, for the loans, that he collects exorbitant interest and that only forthat the suit-sale deed was executed. When the defendantwas examined, he deposed that sold the properties to one

Rajangam, on 09.06.1997, to one Ramachandran on 30.03.2000 and one Tamilarasan on 31.10.2002, that the aforesaid Rajangam and Tamilarasan had been in theenjoyment of the properties, sold to them. Later on, he has deposed that he himself has been in enjoyment of the properties, sold by him to Tamilarasan and Rajangam. These deeds of sale have been marked as Exs.B.-5, Ex.B.-6 and Ex.B.-7. In order to substantiate the fact that the plaintiff isin habit of lending loans on interest, one Chinnapillai was examined as D.W.-4. But, D.W.-4 has stated in his evidence that he borrowed the loan from the plaintiff, on three or four occasions, that, if it is stated that, he executed bonds, he cannot remember, that he used to borrow the subsequent loan only after discharging the previous loan, that after settling the loan, he did not get back the bond, immediately and get it back later on and that the plaintiff is not in thehabit of asking for money again, for the loan, which is settled, with regard to the bond. The defendant has admittedin his Written Statement and evidence that he usually borrows the loan for the education of his children and for his family expenses. Further, while examining Exs.P.-5, P.-6 and P.-7, it becomes evident that the plaintiff sold his properties for his family expenses and for the education of his children.It becomes evident that after selling the properties, he claims the right over those properties. It becomes evident from the document, Ex.A.-2, A.-3 and A.-4 and the evidences of P.W.-3 and P.W.-4 that the plaintiff has been in enjoyment of the property. Therefore, this court opines that the aforesaid Judgments of the Hon'ble Supreme Court and the Hon'bleHigh Courts, are not applicable to this case.

Further, the defendant has adduced in his evidence and written-statement

that the plaintiff executed and gave thedeed of sale-agreement on 30.08.2000, that, later on, since,it was not sufficient for the loan, he executed and gave another deed of sale agreement on 16.08.2001, with regardto another property and that, he executed the deed of sale on 08.08.2002, with regard to the property, for which the deedof sale agreement, executed on 30.08.2000 registered thesale deed and gave. When the defendant executed the deedof sale agreement or executed the deeds of sale, in favour of the plaintiff he did not express his objection to the Sub-Registrar or the plaintiff. If the plaintiff threatened and made the defendant to execute and give the defendant, who had been the Village Administrative Officer should have definitely lodged the Complaint with the Police. But, the defendant did not complain, when the Agreement was made. Therefore, this statement of the defendant is not admissible. But, the defendant gave the complaint to the Superintendent of Police, after the interim order of Injunction had been issued in this case. Therefore, the statement on the side of the defendant that the plaintiff threatened the defendant and obtained the signatures of the defendant in the Sale Agreement, blankstamp papers and the blank Pro-Note, cannot be admitted by this Court.

The defendant executed a Deed of Sale Agreement on 16.08.2001 and executed another Deed of Sale Agreement on 12.08.2003 for renewing the former Deed of Sale Agreement, when the period of that former Deed of Agreement would expire shortly. Since, the defendant did not execute the Deed of Sale, the plaintiff instituted the case in O.S.No.445/2004 and obtained the Decree in his favour. It has not been proved on the side of the defendant that

Ex.A.-1 was executed for the loan, that the plaintiff gives the loan on exorbitant interest and that the plaintiff is in the habit of getting the Deed of Sale, executed in his favour, while giving the loan.

Finally, it has been proved on the side of the plaintiff, through oral and documentary evidences, that the plaintiff purchased the suit-property, for proper sale consideration.Therefore, this court decides that the plaintiff is entitled to receive the relief of the order of Permanent Injunction, sought for by him. The Issues 1 to 3 are answered, accordingly.

Issue No.4 :

What is the other relief to which the plaintiff is entitled?

In the circumstance that, it is decided that, the plaintiffis entitled to receive the relief of the order of Permanent Injunction as per the elaborate explanations in answering the Issues 1 to 3, this court decides that there is not any other relief, which can be given to the plaintiff. The Issue No.4 is answered, accordingly.

Finally, the Judgment is delivered that the plaintiff is entitled to receive the relief of the order of Permanent Injunction, with costs.

This Judgment was dictated by me to the steno-typist, typed by him, corrected and pronounced by me in the Open Court on the 10th date of August, 2009.

sd./- xxx J.Christal Pabitha,District
Munsif, LALALAND.
Date : 10.08.2009

Witnesses on the side of the Plaintiff :

1) P.W.-1 : Thiru.SURESH

2) P.W.-2 : Thiru.Siragori

3) P.W.-3 : Thiru.Dhanapal

4) P.W.-4 : Thiru.Annamalai.

Exhibits on the side of the Plaintiff :

Ex.A.-1 : 16.02.2000 : Original Deed of Sale received by the plaintiff from the defendant.

Ex.A.-2 : -- : Tax receipts for the payment of tax made by the plaintiff, 5 Nos.

Ex.A.-3 : 03.10.2000 : Joint-Patta in the name of the plaintiff.

Ex.A.-4 : 02.01.2002 : Tax Receipt for the payment of taxby the plaintiff.

Ex.A.-5 : 09.06.1997 : Copy of the Deed of Sale executed by the defendant in favour of oneRajangam.

Ex.A.-6 : 30.03.2000 : Copy of the Deed of Sale executed by the defendant in favour of oneRamachandran.

Ex.A.-7 : 31.10.2002 : Copy of the Deed of Sale executed by the defendant in favour of oneTamilarasan.

Witnesses on the side of the Defendant :

D.W.-1 : Thiru.AJAYD.W.-2 : Thiru.Palanivel

D.W.-3 : Tmt.Anjalai

D.W.-4 : Thiru.Chinnapillai

Exhibits on the side of the defendants :

Ex.B.-1 : 30.08.2000 : Copy of the Sale Agreement. Ex.B.-2 :

16.08.2001 : Copy of the Sale Agreement.

Ex.B.-3 : 08.08.2002 : Copy of the Deed of Absolute Sale.Ex.B.-4 : -- :

Rough Sketch

Ex.B.-5 : 16.02.2000 : Copy of the Deed of Sale.

Ex.B.-6 : -- : Tax Receipts (3) for the payment made by thedefendant.

Ex.B.-7 : -- : Petition written and given by the defendant tothe D.S.P., Perambalur, on 02.12.2003.

Ex.B.-8 : 30.08.2000 : Copy of the Deed of Consent.

Ex.B.-9 : -- : Signature in Page No.5 and on the back sideof Page No.1 in Ex.A.-1.

Ex.B.-10 : -- : Copy of the Written Statement filed by thedefendant.

Ex.B.-11 : -- : Copy of the Judgment filed by the Defendant.

Exhibit of the witness :

Ex.W.-1 : D.W.-4 has filed the expired Pro-Note.

District Munsif, LALALAND. Date: 10.08.2003

//True Translated Copy//

ANNEXURE P-2

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, ROHINIPRESENT:

THIRU. A.K. A. RAHMAAN, B.A.,LL.M.,

Principal District Judge, Rohini Monday, this

the 11th day of April 2016

(Rohini, Subordinate Judge's Court A.S.86/2009 was

Withdrawn by this Court and assigned A.S.49/2013) Appeal

Suit No.49/2013

AJAY,

S/o.Sengamalai Udayar …Appellant/Defendant

/Vs/

SURESH,

S/o. Arokiyasamy …Respondent/Plaintiff On Appeal against the decree and judgment of the DistrictMunsif, Lalaland in O.S.No.155/2003, dated 10.08.2009.Between

SURESH,

S/o. Arokiyasamy …Plaintiff

And:

AJAY, S/o. Sengamalai Udayar …Defendant

This Appeal Suit coming on 29.03.2016 for final hearing before me in the presence of Thiru. N.Mani, Advocate appearing for the Appellant/Defendant and of Thiruvalagal R. Subramani and S. Shankar, Advocates appearing for the respondent/Plaintiff and upon

hearing the arguments of both sides and upon perusing the records, having stood over till this day for consideration, this court delivered the following:

JUDGMENT

This appeal suit preferred by the Appellant/Defendant challenging the decree and judgment of the learned District Munsiff, Lalaland in O.S.155/2003, dated 10.08.2009.

2. Facts before the trial:

The appellant herein is the defendant and the respondent herein is plaintiff before the trial court. The respondent has filed a suit for permanent injunction so as to restrain the appellant in not disturbing the peaceful possession and enjoyment of the respondent over the suit property. The suit property originally belonged to theappellant. He sold the suit property to the respondent for a valuable consideration of Rs.27,000/=and executed the sale by way of registered sale deed dated 16.02.2000. Thereafter the respondent is in possession and enjoyment of the suit property. The documents have also been mutated in the name of the respondent. The appellant in the guise of claiming of share in the well has attempted to encroach upon the suit properties. Hence the respondent filed the above suit before the trial Court. On the other hand the appellant contested the suit on the grounds that he never executed a deed with the intention of selling the suit property. He states that he borrowed money on loan basis repayable along with interest. But the respondent got executed

a sale deed in his favour which is sham and nominal. The appellant has denied the title of the respondent.

3. After Perusal of plaint pleadings and averments in the written statement the learned District Munsif Lalaland has framed the following issues.

1. Whether the plaintiff (Respondent) is in possession of the suit property?
2. Whether the sale deed dated 16.02.2000 in favour of the defendant (Appellant) is sham and nominal?
3. Whether the plaintiff (Respondent) is entitled to the relief of permanent injunction or not?
4. To what other relief does not plaintiff (Respondent) is entitled to get?

4. The trial Court examined PW1 to PW4 and marked Exhibits A1 to A7. On the side of the defendant/appellant DW1 to DW4 were examined and Ex.B1 to B11 were marked andExhibits X1 was marked though DW4. After hearing both sides the learned District Munsif, Lalaland has decreed the suit as prayed for challenging the decree and judgment rendered by the learned District Munsif, Lalaland the appellant/defendant has preferred the present appeal.

5. Grounds of Appeal:

The trial Court has failed to appreciate the oral anddocumentary evidence. The trial Court has not considered the fact that the respondent has failed to prove his possession. PW1 has admitted that he has no four boundaries with the properties. The appellant has

denied the title of the respondent. When it is so the respondent ought to have proved his title. The property is worth Rs.10 Lakhs. The Well is worth Rs.1 Lakh. The Well is not situate in the suit property. The trial Court has not considered the fact that the respondent is a money lender who lends money on higher interest. The deed was executed only for loan which has also not been considered at all. The document in Ex.B8 supportsthe case of the appellant which has also not been considered. The trial Court has failed to appreciate the evidence of DW1 Palanivel who is the attestor in Ex.A1. Hence the presentappeal is filed against the judgment and decree of the learned District Munsif, Lalaland in O.S.155/2003, dated 10.08.2009.

6. Arguments before this Court:

The learned Counsel for the appellant reiterated the same aspects as put forth in his grounds of appeal. He mainly focused on Ex.B8 and the evidence of DW2. The evidence of DW2 clearly proves that the document in Ex.A1 was not intended for sale, when one of the attest or to Ex.A1 has denied the execution of sale then the document in Ex.Allooses its sanctity. The suit property is in possession and enjoyment of the appellant only. Tax receipts in Ex.B6 prove the possession of the appellant. Further the appellant has also initiated Criminal action against the respondent for havingCheated him. All the contents put forth by the appellant has been simply ignored and the trial court has mechanically decreed the suit in favour of the respondent. At any event the respondent has no title lawfully. The

appellant has raised serious doubts on Ex.A1. Even then the respondent has failed to seek the relief of declaration. When there is cloud over the title then it is the duty of the respondent to prove the title. Hence the learned Counsel for the appellant contended that the suit in O.S.155/2003 should have been dismissed by the trial court. He also pointed out Ex.B8 which is a document executed by the appellant admitting the loan liability. When the documents and evidence are very well clear and in favour of the appellant then the respondent has no case at all. Therefore the learned counsel for the appellant prayed that the appeal Suit has to be allowed and the suit has to be dismissed.

7. On the other hand learned counsel for the respondent/plaintiff contended that the respondent has proved his title very well before the trial Court. The appellant and his witness have admitted the execution of Ex.A1. Having admitted the execution of Ex.A1 then the geniuses of Ex.A1 should have been challenged by the appellant at the earlier point of time. The appellant is not a layman. He was a village Administrative Officer. Only after issuance of injunction order the appellant has rushed to the police station and filed acomplaint. The police having noted that the case is pending before the Civil Court did not entertain the complaint of the appellant. The document in Ex.B8 is unilateral. The respondent has never signed in Ex.B8. Further the original of Ex.B8 has also not been brought before the Court. Underthese circumstance the trial Court has rightly come to a

conclusion that the appellant has no case at all. Further the respondent has proved his possession by way of appropriate documents. The evidence of DW2 is nothing but tainted evidence which was spoken by him out of anguish. At any event DW2 has also the admitted the execution of Ex.A1. Further PW2 is the brother of the appellant. Hence on all scores the respondent has proved his case properly beforethe trial Court and that is why the trial Court was pleased to pass a decree in favour of the respondent. Once the title ofthe appellant is denied, the cause of action for permanent injunction in favour of the respondent arises automatically. Hence the appeal suit has to be dismissed and the judgment and Decree of the trial Court has to be upheld.

8. Now the point for consideration is that whether this Appeal Suit can be allowed and whether the judgment and decree of the learned District Munsif, Lalaland in O.S.155/2003has to be set aside or not?

9. Answer for point:

The entire suit revolves around Ex.A1 which the sale deed executed by appellant in favour of the respondent. The document in Ex.A1 is carefully perused. The sale deed has been executed on 16.02.2000 by the appellant in favour ofthe respondent. The recital of Ex.A1 reveals that the property was sold by the appellant for valuable consideration of Rs.27,000/=. The appellant has also admitted the receipt of consideration of Rs.27,000/=in the sale deed. The witnessPalanivel and Dhanabal Have attested in Ex.A1 who were

examined as DW2 and PW3 respectively. Each one witness who have attested Ex.A1 are taking a rival stand with each other. Both the witnesses have admitted the execution. However DW2 has denied the passing of consideration. But PW3 Dhanabal has stated that consideration was passed onthe same day.

10. Now the evidence of DW2 is carefully perused. DW2 has stated in his evidence that he was compelled by the respondents for letting in false evidence. Since the witness denied, the respondent has filed a false case against thewitness in O.S.223/2005. Due to the outcome of the suitagainst DW2, he is paying a sum ofRs.1,000/=per month in the execution petition. For a moment if it is considered thatthe respondent has filed a false claim against DW2 in O.S.223/2005, then DW2 could have very well challenged the decree before the appellant forum. He need not pay the sumof Rs.1,000/=every month towards execution. Further it hasto be seen that DW2 has signed Ex.A1 during the year 2000. After five years the suit has been filed against him in O.S.223/2005. Thereafter a sum of Rs.1,000/=is also being recovered from him. Hence a presumption arises against this witness namely DW2 such that owing to anguish, over the recovery process, he might have deposed before the trialCourt against the respondent. This is because DW has admitted in Ex.A1 that the consideration has been passed to the appellant. Having admitted the execution of Ex.A1, DW2 cannot go back from his stand by stating that no consideration was passed in favour of the appellant.

11. The other defence which was put forth by the appellant was that the respondent is a money lender. By virtue of by money lending only Ex.A1 has it's origin. But it is admitted that the appellant is a retired village Administrative Officer.He has approached the police as per Ex.B7. The Ex.B7 is a copy of complaint lodged before the Superintendent of Police. As per Ex.A1 the sale deed was executed on 16.02.2000. The prime stand of the appellant and DW2 is that no sale consideration was passed on that day. But as per Ex.B7 which is the copy of the complaint in para No.4 the appellant has admitted the execution of sale deed on 16.02.2000 and has admitted that he has received Rs.1 lakh. Hence it is clear that the appellant has not come forward to the Court with clean hands. It seems that as per Ex.A1 sale has been fixed at Rs.27,000/=and money has been transferred more that. Hence this Court finds no force in the contention of the appellant.

12. Even otherwise the complaint in Ex.B7 has been lodged after the commencement of the suit proceeding. As regard to the kist receipts filed by the appellant this Court is not able to agree with those receipts as they have been issued during the year 2004, 2005, and 2007. The appellant has focused on those receipts alone to show his possession in the property. But as per Ex.B7 which is the complaint lodged by the appellant he has stated that the respondent is not allowinghim to come inside the land. These words uttered by the appellant in his complaint goes without saying that the appellant is out of possession.

13. As regard to Ex. B8 it is an unilateral document executed by

appellant on his own. The respondent has not countersigned the document. Ex.B8 is a self serving statement of the appellant ho claims the transaction to be a loan transaction only. Hence this Court is unable to accept Ex.B8. Further as per Ex.B8 the appellant has admitted that he suffers from heavy debts and that's why he borrowed the amount from the respondent. It is highly unbelievable that the appellant being Village Administrative Officer claims that he was threatened by the respondent and out of such threat and coercion he signed the empty bond and sale agreements.

14. The appellant has periodically sold his portion ofproperties to settle the loan of other persons also which has been agreed by him during cross examination. Accordingly, Ex.A5 which is the sale deed in favour of Rasangam andEx.A6 which is the sale deed in favour of Ramachandran and Ex.A7 which is the sale deed in favour of Tamilarasan were executed with regard the document in Ex.B5 to Ex.B7 the appellant was crossed examined. During cross examination appellant who was examined as DW1, has stated that the properties in Ex.A5 to Ex.A7 which were sold by him is still under his possession only. But he states that those properties were also sold by him for meeting his family needs. Hence a conjoint reading of the evidence of DW1, DW2 and the careful perusal of exhibits on either side, it is clearly inferred that the appellant has executed a sale deed in favour of the respondent on 16.02.2000 for valuable consideration of Rs.27,000/=and has handed over the possession to the respondent.

Subsequently the respondent has disturbed the possession of the appellant by denying his title.

15. At this stage this Court perused the judgment rendered bythe learned trial Judge. The learned Trial Judge has appreciated each and every aspect as discussed above by this Court and has found that Ex.A1 is true and genuine and has decreed the suit in favour of the respondent/plaintiff as prayed. Hence this Court considered that there is nothing to intervence with the judgment and decree of the learned District Munsif Lalaland in O.S.155/2003, dated10.08.2009 and this Court comes to an irresistible conclusion that the Appeal Suit deserves to be dismissed and that the Decree and Judgment in O.S.155/2003, on the file of District Munsif, Lalaland is liable to confirmed and this point is answered accordingly. In the result, this Appeal Suit is dismissed with cost and the judgment and Decree of District Munsif, Lalaland in O.S.155/2003 is confirmed.

(Signed)

PRINCIPAL DISTRICT JUDGE,

ROHINI.

Date: 11.04.2016

IN THE SUPREME COURT OF INDIACIVIL

APPELLATE JURISDICTION I.A.NO. OF

2022

IN

S.L.P. (CIVIL) NO. OF 2022IN THE

MATTER OF:-

AJAY ...Petitioner

Versus

SURESH … Respondent

AN APPLICATION FOR CONTONATION OF DELAY INFILING THE SPECIAL LEAVE PETITION

To,

THE HON'BLE THE CHIEF JUSTICE OF INDIAAND
THE COMPANION JUDGES OF THE SUPREME COURT
OF INDIA AT NEW DELHI.

THE HUMBLE PETITION OF THE ABOVE MENTIONED PETITIONER

MOST RESPECTFULLY SOWETH:-

1. The present Special Leave Petition has been filed under Article 136 of the Constitution of India to challenge thelegal propriety of the Impugned Judgment and Final order dated 08.01.2022 passed by the Hon'ble High Court ofjudicature at Madras in Second Appeal No.747 of 2016, whereby the Hon'ble High Court was pleased to dismissthe said Second Appeal filed by the Petitioner upholdingthe judgment of the Courts below in granting the relief of permanent injunction restraining the Petitioner from disturbing

the peaceful possession and enjoyment of the Respondent over the suit property.

2. The contents and averments made in the accompanying SLP are relevant and proper for adjudication of the present application, but the same may kindly be read as part of this application for the sake of brevity.

3. That after passing the impugned order, the certified copy of the same had been obtained by the Counsel for the Petitioner at Trichy and thereafter the same has been sent to the Petitioner. Thereafter the Petitioner has contactedhis local counsel for getting necessary opinion to proceed further and upon his opinion the again contacted his Counsel at Trichy for proceeding further. Thereafter the Petitioner has contacted the present Counsel at Delhi for filing the present matter and upon perusing the matter; the present counsel has insisted the Petitioner to send all the materials regarding the present case for drafting the matter. Thereafter the matter has been drafted and sent for the vetting by Petitioner and upon completion of the same the present Application is being filed before this Hon'ble Court with the delay of days in filing.

4. That unless the delay in filing the present Special Leave Petition is allowed, the Petitioner will be put into irreparable loss and injury and in the event of allowing the present Application, no hardships will be caused to Respondents in the present.

5. The balance of convenience is also in favour of the Petitioner and in the interest of justice the present Application may kindly be allowed by this Hon'ble Court.

PRAYER

Therefore it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

a). Condone the 25 days delay in filing the present SpecialLeave Petition against the Final order dated 08.01.2022 passed by the Hon’ble High Court of judicature at Madrasin Second Appeal No.747 of 2016; and

(b) pass such other and further orders as this Hon’ble Courtmay deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTYBOUND SHALL EVER PRAY.

FILED BY

(SATYA SUNDAR**)**

ADVOCATE FOR THE PETITIONER

NEW DELHI

FILED ON: 23.07.2022

PART II QUESTION 1- ANSWER

SAMPLE BRIEF

SLP (C) No. 12345/ 2022, Ajay v. Suresh

Madras HC- 8.1.2022- second appeal dismissed upholding the concurrent findings of the courts below where permanent injunction was granted restraining the petitioner from disturbing the peaceful possession of the respondent over the suit property.

Brief Facts:

- The respondent- plaintiff ("R") filed a suit seeking permanent injunction against the petitioner in respect of the suit property in Lalaland, TN. The case of R is that the suit property originally belonged to the petitioner- defendant ("P") who sold it to R for the consideration of Rs 27,000 by a sale deed registered on 16.2.2000. The property has been mutated in name of R as well. R contended that P in the guise of claiming a share of the well attempted to encroach upon the suit property.
- The contention of P was that R is a money lender and that P received a loan of Rs 1 Lakh from R. A sale deed was executed for security for the loan mentioning the sale amount as Rs 27,000/acre when the value was Rs 2,00,000/acre. It was contended that the sale deed is a sham. **(Pg. 37)**
- **T**he Court of District Munsif, Lalaland granted permanent injunction restraining P from disturbing the possession of the respondent on the following the grounds: **(Annexure P-1)**
- Payment of tax for the suit property, joint patta issued in the name of R have been submitted by R. Evident that suit property is in the possession of R. **(Pg. 25)**
- DW2 (P's cousin) deposed that P executed the sale deed for loan.. DW2 had received loan from R and decree was passed in favour of R. **(Pg. 39)**
- P did not express objection to sub-registrar while executing the sale agreement. Also, P is a Village Administrative Officer (VAO)- if he was forced to execute a sale agreement, he must have complained to the police. Complaint was made only after the order of injunction in the case was issued. **(Pg. 9)**
- Appeal against the judgment of the Munsif Court was dismissed by the District Judge on the grounds that (i) DW2 deposed against R out of anguish; (ii) Stand of P and DW2 is that sale consideration was not paid on the day of sale execution but in the police complaint filed by P, he has admitted that he received 1 lakh; (iii) complaint lodged after commencement of the suit proceedings; (iv) P has periodically sold his portion of his properties to settle loans with other persons. **(Annexure P-2)**

Impugned Judgment:

- Both the courts below have found that P is a retired VAO who would understand the nature of transaction. DW2 Both the courts below have found that DW2's statement is contrary to the contents of the sale deed. **(para 6,7)**
- In the police complaint filed by P it is mentioned that a sale deed was executed in favour of the respondent. **(Para 8)**
- The contention that P is still in possession of the suit property and that the sale deed was never acted upon has been rejected by both the courts below **(Para 8)**
- Concurrent findings by the courts below- cannot be reappreciated on second appeal.

Grounds:

- Courts below ought not to have rejected the evidence of DW2 and DW3 when the evidence on record suggests that it is a loan document. **(Ground B)**
- P is still in possession of the suit property. **(Ground D)**

QUESTION 2- PREPARATION OF A DRAFT RESEARCH MEMO (SAMPLE PROBLEM)

> *(B)* *Question 2 - Preparation of a draft research memo:* In this question, the candidate shall be provided with a brief factual dispute, the relevant statutes and precedents to decide the dispute, along with certain irrelevant decisions which modify the line of precedent. The candidate would be required to formulate a draft reasoned memo not longer than 2 pages/ 750-1000 words on the dispute.
>
> Parameters for judging this question include: (a) ability to use relevant legal sources; (b) use of legal language; (c) exposition of the law; (d) analysis of the facts and applicability of the law to the facts; and (e) structure of the opinion.

QUESTION 1:

'Florence Bath-wares' (henceforth 'the firm') is a Delhi based registered partnership firm engaged in the manufacture and sale of high end bath-fittings. The firm was set up, vide a partnership deed dated 1st September 2011.

Mr. Pushp Hingorani is the Managing partner of the firm, and has been in that position since the very inception. Mr Amit Hingorani, Mr Rahul Singh and Ms Chandana Singh were the remaining Partners of the firm, since its inception. Mrs Namita Hingorani took up a job with the firm and was given the title 'Director of Sales' in the firm on 1st of August 2015. She also happens to be the wife of Mr Amit Hingorani.

In December 2018 the firm took a decision to rent a showroom in Green-park, New Delhi. For this purpose the firm entered into a lease deed, dated 1.1.2019, with one Ms Tripti Thakur, to lease a property bearing Shop No. 30-A, DDA Market, Green Park. This was for a period of 2 years at a monthly rent of INR 1 lakh. Mrs Namita Hingorani was instrumental in introducing the firm to Ms Thakur, and strongly advocated for leasing a showroom in order to help the sales. A security deposit of INR

2 lakhs was also paid by the firm to Ms Thakur at the time of entering into the lease deed. On 1.1.2019, 2 post-dated cheques were handed over by the firm to Ms Thakur, of INR 6 lakhs each, bearing the dates of 1.5.2019 and 1.12.2019 respectively. On 1.1.2020 two more cheques of INR 6,00,000-/- each were handed over by the firm to Ms Thakur, bearing the dates of 1.5.2020; and 1.12.2020 respectively. Both these cheques were signed by Mr Pushp Hingorani and were drawn on IBITI Bank, Hauz Khas Branch, New Delhi. There was an oral agreement between the parties that these cheques were a security against the regular payment of rent, and could be encashed in the event of any default in payment of rent. The rent was to be paid by the 5th of every month through NET Banking/ NEFT/ RTGS.

In September 2019, Mr Amit Hingorani, decided to retire as a partner of the firm as he was diagnosed with a degenerative illness that would make his continuance as partner difficult. Accordingly, on 5.10.2019, a retirement deed was entered into by the partners, and thereafter Mr Amit Hingorani ceased to be a partner in the firm. On 2nd of November 2019, Mr Amit Hingorani also gave a public notice of his retirement, in terms of the requirements of the Partnership Act, 1932. By December 2019, Mr Amit Hingorani was bed-ridden. However, out of respect for his contributions to the firm, the other partners would, from time to time, telephone him and update him about the affairs of the firm. Mrs Namita Hingorani continued in her role as Director of sales.

In August, 2020 certain disputes arose between the firm and Ms Thakur on parking and maintenance of the building. Things came to such a pass that the firm defaulted on rent from September 2020 onwards. Aggrieved by this Ms. Thakur, presented the cheque dated 1.12.2020 for encashment at the Green Park Branch of the IBITI Bank on 5.12.2020.

The cheque was dishonoured and returned with a noting of 'insufficient funds' on 8.12.2020. On learning of the dishonouring of the cheque, Ms Thakur, on 12.12.2020 sent a legal notice to the firm, informing them about the dishonouring of the cheque and demanding payment of the cheque amount. Ms Thakur did not receive any response to this notice. On 31st of December 2020, Ms Thakur filed a complaint wherein she impleaded the following persons as the accused:

a. *The firm*
b. *Mr. Pushp Hingorani.*
c. *Mr Amit Hingorani,*

d. *Mr Rahul Singh*
e. *Ms Chandana Singh, and*
f. *Mrs Namita Hingorani*

The complaint broadly outlined the amount of the cheque, the relevant dates of encashment, dishonouring, and sending of notice, and thereafter it observed "all the accused persons were and are in charge of and responsible for the conduct of business of the Firm."

The Judicial Magistrate First Class, XYZ Court took cognizance of the complaint and process was issued to the accused persons.

Mr Amit Hingorani and Mrs Namita Hingorani, on receiving the summons from the Judicial Magistrate, approach you for a legal opinion on the maintainability of the complaint. They request you to prepare a research memo summing up the position on the maintainability of the complaint with respect to them, and whether they should pursue the remedy of filing a Petition under Section 482 CrPC for quashing the complaint with respect to them.

Please prepare the research memo, answering the queries of Amit and Namita Hingorani, using the following resources:

a. *The Negotiable Instruments Act, 1881(CHAPTER XVII OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS)*
b. *The Indian Partnership Act, 1932 (Section 31 to Section 55)*
c. *Section 482 of the Code of Criminal Procedure, 1973.*
d. *State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 (Para 102 and 103)*
e. *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 (Para 1-4, 8,9, 18,19, and 20)*
f. *K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48) (Paras 16,17,18, 20, 21, 22,23,24, 25, 27, 28, 31).*
g. *Pooja Ravinder Devidasani v. State of Maharashtra & Anr., (2014) 16 SCC 1) (Paragraph 2, 3, 23,24, 28,28, 30,31)*
h. *Kamlesh Kumar v. State of Bihar and Another (2014) 2 SCC 424 (11,12,13,14,15)*
i. *Gunamala Sales Private Limited v. Anu Mehta and Ors (2015) 1 SCC 103 (Paragraphs 34,35,36)*

[3][CHAPTER XVII

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

137. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [4][a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [5][within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

138. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.

139. Defence which may not be allowed in any prosecution under section 138.—Itshall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

140. Offences by companies.—(*1*) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligenceto prevent the commission of such offence:

[6][Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial

1. The words "or the State of Jammu and Kashmir" omitted by Act 62 of 1956, s. 2 and the Schedule.
2. Subs. by the A.O. 1948, A.O. 1950 and the Act 3 of 1951, s. 3 and the Schedule for "British India".
3. Ins. by Act 66 of 1988, s, 4 (w.e.f. 1-4-1989).
4. Subs. by Act 55 of 2002, s. 7, for certain words (w.e.f. 6-2-2003).
5. Subs. by s. 7, *ibid.*, for "within fifteen days" (w.e.f. 6-2-2003).
6. Ins. by s. 8, *ibid*. (w.e.f. 6-2-2003).

corporation owned or controlled by the Central Government or the State Government, as the case may be,he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (*1*), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm**.**

142. Cognizance of offences.—[1][(*1*)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (*c*) of the proviso to section 138:

[2][Provided that the cognizance of a complaint may be taken by the Court after the prescribed period,if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[3][(*2*) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (*a*), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

[4][**142A. Validation for transfer of pending cases.—**(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court,all cases transferred to the court having jurisdiction under sub-section (*2*) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (*2*) of section 142 or sub-section (*1*), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (*2*) of section 142 or the case has been transferred to that court under sub-section (*1*) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of

1. Section 142 numbered as sub-section (*1*) thereof by Act 26 of 2015, s. 3 (w.e.f. 15-6-2015).
2. Ins. by Act 55 of 2002, s. 9 (w.e.f. 6-2-2003).
3. Ins. Act 26 of 2015, s. 3 (w.e.f. 15-6-2015).
4. Ins. by, s. 4, *ibid*. (w.e.f.15-6-2015).

whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015 (26 of 2015), more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (*2*) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), before which the first case was filed and is pending, as if that sub-section had been in force at all material times.]

[1]**[143. Power of Court to try cases summarily.—(*1*)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount offine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

[2][**143A. Power to direct interim compensation.—**(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (*1*) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

1. Ins. by Act 55 of 2002, s. 10 (w.e.f. 6-2-2003).
2. Ins. by Act 20 of 2018, s. 2 (w.e.f. 1-9-2018).

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.]

144. Mode of service of summons.—(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(*2*) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit.—(*1*)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(*2*) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip prima facie evidence of certain facts.—The Court shall, in respect of every proceeding under this Chapter, on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),every offence punishable under this Act shall be compoundable].

[1] [148. Power of Appellate Court to order payment pending appeal against conviction.—(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal bythe drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (*1*) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India,prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.]

1. Ins. by Act 20 of 2018, s. 3 (w.e.f. 1-9-2018).

CHAPTER V

INCOMING AND OUTGOING PARTNERS

31. **Introduction of a partner.**—(*1*) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(*2*)Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

32. **Retirement of a partner.**—(*1*) A partner may retire—

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (*3*) may be given by the retired partner or by any partner of the reconstituted firm.

33. **Expulsion of a partner.—**(*1*) Apartner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(*2*)The provisions of sub-sections (*2*), (*3*)and (*4*)of section 32 shall apply to an expelled partner as if he were a retired partner.

34. **Insolvency of a partner.—**(*1*) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(*2*)Where under a contract between the partners the firm is not dissolved by the adjudication ofa partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

35. **Liability of estate of deceased partner.** — Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

36. **Rights of outgoing partner to carry on competing business. Agreements in restraint of trade.**—(*1*) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(*2*) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

37. **Right of outgoing partner in certain cases to share subsequent profits.**—Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry onthe business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does notin all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

38. **Revocation of continuing guarantee by change in firm.** —A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI DISSOLUTION OF A FIRM

39. **Dissolution of a firm.—**The dissolution of partnership between all the partners of a firm is called the “dissolution of the firm”.

40. **Dissolution by agreement.**—A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

41. **Compulsory dissolution.**—A firm is dissolved—

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. **Dissolution on the happening of certain contingencies.**—Subject to contract between the partners a firm is dissolved—

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

43. **Dissolution by notice of partnership at will.**—(*1*) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(*2*) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

44. **Dissolution by the Court.**—At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with hint;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land- revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any ground which renders it just and equitable that the firm should be dissolved.

45. **Liability for acts of partners done after dissolution.**—(*1*) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(*2*) Notices under sub-section (*1*) may be given by any partner.

46. **Right of partners to have business wound up after dissolution.**—On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

47. **Continuing authority of partners for purposes of winding up.**—After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent;but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

48. **Mode of settlement of accounts between partners.** —In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: —

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

49. **Payment of firm debts and of separate debts.**—Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first, in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

50. **Personal profits earned after dissolution.**—Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

51. **Return of premium on premature dissolution.** —Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

52. **Rights where partnership contract is rescinded for fraud or misrepresentation.**—Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentationofany of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

53. **Right to restrain from use of firm name or firm property.**—After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

54. **Agreements in restraint of trade.**—Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

55. **Sale of goodwill after dissolution. Rights of buyer and seller of goodwill. Agreements in restraint of trade.**—(*1*) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(a) use the firm name,

(*c*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

Section 482 in The Code Of Criminal Procedure, 1973

482. Saving of inherent powers of High Court.
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

LIST OF CASES

1. State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335

"…

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

2. S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89

"ARUN KUMAR, J.— This matter arises from a reference made by a two-Judge Bench of this Court for determination of the following questions by a larger Bench:

"(*a*) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(*b*) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(*c*) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

2. The controversy has arisen in the context of prosecutions launched against officers of companies under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). The relevant part of the provisions are quoted as under:

"138. *Dishonour of cheque for insufficiency, etc., of funds in the account*.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(*a*) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(*b*) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(*c*) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.

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141. *Offences by companies*.—(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided….

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the bank on presentation. Section 141 extends such criminal liability in case of a company to every person who at the time of the offence, was in charge of, and was responsible for the conduct of the business of the company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly. Section 138 is the charging section creating criminal liability in case of dishonour of a cheque and its main ingredients are:

(*i*) issuance of a cheque,

(*ii*) presentation of the cheque,

(*iii*) dishonour of the cheque,

(*iv*) service of statutory notice on the person sought to be made liable, and

(*v*) non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.

3. Sections 138 and 141 of the Act form part of Chapter XVII introduced in the Act by way of an amendment carried out by virtue of Act 66 of 1988 effective from 1-4-1989. These provisions were introduced with a view to encourage the culture of use of cheques and enhancing the credibility of the instruments. The legislature has sought to inculcate faith in the efficacy of banking operations and use of negotiable instruments in business transactions. The penal provision is meant to discourage people from not honouring their commitments by way of payment through cheques. Section 139, occurring in the same chapter of the Act creates a presumption that the holder of a cheque receives the cheque in discharge, in whole or in part, of any debt or other liability.

4. In the present case, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer company and is extended to officers of the company. The normal rule in

the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in the statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a company, extends criminal liability for dishonour of a cheque to officers of the company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence…

8. The officers responsible for conducting the affairs of companies are generally referred to as directors, managers, secretaries, managing directors, etc. What is required to be considered is: Is it sufficient to simply state in a complaint that a particular person was a director of the company at the time the offence was committed and nothing more is required to be said. For this, it may be worthwhile to notice the role of a director in a company. The word "director" is defined in Section 2(13) of the Companies Act, 1956 as under:

> "2. (13) 'director' includes any person occupying the position of director, by whatever name called;"

There is a whole chapter in the Companies Act on directors, which is Chapter II. Sections 291 to 293 refer to the powers of the Board of Directors. A perusal of these provisions shows that what a Board of Directors is empowered to do in relation to a particular company depends upon the roles and functions assigned to directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in

order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A company may have managers or secretaries for different departments, which means, it may have more than one manager or secretary. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a secretary of Department B regarding a cheque issued by the secretary of Department A which is dishonoured? The secretary of Department B may not be knowing anything about issuance of the cheque in question. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements. Not every person connected with a company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a company would naturally know why the cheque in question was issued and why it got dishonoured.

9. The position of a managing director or a joint managing director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence…

18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(*a*) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a

complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(*b*) The answer to the question posed in sub-para (*b*) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(*c*) The answer to Question (*c*) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

20. The reference having been answered, individual cases may be listed before an appropriate Bench for disposal in accordance with law."

3. K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48

"…

16. Having regard to Section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

(*i*) every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company;

(*ii*) any Director, manager, secretary or other officer of the company with whose consent and connivance, the offence under Section 138 has been committed; and

(*iii*) any Director, manager, secretary or other officer of the company whose negligence resulted in the offence under Section 138 of the Act, being committed by the company.

While liability of persons in the first category arises under sub-section (1) of Section 141, the liability of persons mentioned in Categories (*ii*) and (*iii*) arises under sub-section (2). The scheme of the Act, therefore is, that a person who is responsible to the company for the conduct of the business of the company and who is in charge of business of the company is vicariously liable by reason only of his fulfilling the requirements of sub-section (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.

17. The criminal liability for the offence by a company under Section 138, is fastened vicariously on the persons referred to in sub-section (1) of Section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, the courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of Section 141 is imperative. As pointed out in *K. Srikanth Singh* v. *North East Securities Ltd.* [(2007) 12 SCC 788 : (2008) 3 SCC (Cri) 391] the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under Section 141 of the Act.

18. Sub-section (2) of Section 141 provides that a Director, manager, secretary or other officer, though not in charge of the conduct of the business of the company will be liable if the offence had been committed with his consent or connivance or if the offence was a result of any negligence on his part. The liability of persons mentioned in sub-section (2) is not on account of any legal fiction but on account of the specific part played — consent and connivance or negligence. If a person is to be made liable under sub-section (2) of Section 141, then it is necessary to aver consent and connivance, or negligence on his part.

…

20. Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company though a legal entity can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business.

21. A combined reading of Sections 5 and 291 of the Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

(*a*) the Managing Director(s);

(*b*) the whole-time Director(s);

(*c*) the manager;

(*d*) the secretary;

(*e*) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(*f*) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and

(*g*) where any company does not have any of the officers specified in clauses (*a*) to (*c*), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.

It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company.

22. Section 141 uses the words "was in charge of, *and* was responsible to the company for the conduct of the business of the company". (emphasis supplied) It is evident that a person who can be made vicariously liable under sub-section (1) of Section 141 is a person who is responsible to the company for the conduct of the business of the company and *in addition* is also in charge of the business of the company. There may be many Directors and secretaries who are not in charge of the business of the company at all. The meaning of the words "person in charge of the business of the company" was considered by this Court in *Girdhari Lal Gupta* v. *D.H. Mehta* [(1971) 3 SCC 189 : 1971 SCC (Cri) 279] followed in *State of Karnataka* v. *Pratap Chand* [(1981) 2 SCC 335 : 1981 SCC (Cri) 453] and *Katta Sujatha* v. *Fertilizers & Chemicals Travancore Ltd.* [(2002) 7 SCC 655 : 2003 SCC (Cri) 151] This Court held that the words refer to a person who is in overall control of the day-to-day business of the company. This Court pointed out that a person may be a Director and thus belongs to the group of persons making the policy followed by the company, but yet may not be in charge of the business of the company; that a person may be a manager who is in charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in charge of only some part of the business.

23 [Ed.: Para 23 corrected vide Official Letter dated 18-11-2009.] . Therefore, if a person does not meet the first requirement, that is, being a person who is responsible to the company for the conduct of the business of the company, neither the question of his meeting the second requirement (being a person in charge of the business of the company), nor the question of such person being liable under sub-section (1) of Section 141 arises. To put it differently, to be vicariously liable under sub-section (1) of Section 141, a person should fulfil the "legal requirement" of being a person in law (under the statute governing companies) responsible to the company for the conduct of the business of the company and also fulfil the "factual requirement" of being a person in charge of the business of the company.

24. Therefore, the averment in a complaint that an accused is a Director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" (listed in para 21 above), then merely by stating that "he was in charge of the business of the company" or by stating that "he was in charge of the day-to-day management of the company" or by stating that "he was in charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act.

25. It should, however, be kept in view that even an officer who was not in charge of and was responsible to the company for the conduct of the business of the company can be made liable under sub-section (2) of Section 141. For making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments

in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.

…

27. The position under Section 141 of the Act can be summarised thus:

(*i*) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(*ii*) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(*iii*) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (*e*) and (*f*) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(*iv*) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

…

30. A Deputy General Manager is not a person who is responsible to the company for the conduct of the business of the company. He does not fall under any of the Categories (*a*) to (*g*) listed in Section 5 of the Companies Act (extracted in para 21 above). Therefore the question whether he was in charge of the business of the company or not, is irrelevant. He cannot be made vicariously liable under Section 141(1) of the Act. If he has to be made liable under Section 141(2), the necessary averments relating to consent/connivance/negligence should have been made. In this case, no such averment is made. Hence the first respondent, who was the Deputy General Manager, could not be prosecuted either under sub-section (1) or under sub-section (2) of Section 141 of the Act.

31. Thus, we find no error/infirmity in the order quashing the summons as against the first respondent who was the Deputy General Manager of the Company which issued the dishonoured cheque. The appeals are therefore dismissed."

4. Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1

"…

2. The brief facts of these appeals are that Respondent 2, a finance Company, filed seven complaints under the NI Act against the appellant and others viz. (*1*) Complaint No. 3370/SS/2008 claiming Rs 1,64,69,801.14, (*2*) Complaint No. 3641/SS/2008 claiming Rs 1,06,55,289.91, (*3*) Complaint No. 3368/SS/2008 claiming Rs 1,41,95,806.40, (*4*) Complaint No. 3640/SS/2008 claiming Rs 85,21,294, (*5*) Complaint No. 3369/SS/2008 claiming Rs 1,88,12,292, (*6*) Complaint No. 3642/SS/2008 claiming Rs 1,69,95,353.50; and (*7*) Complaint No. 4086/SS/2009 for a claim of Rs 8,08,973.25. In all the complaints the allegation was that Respondent 2 Company had extended trade finance facility to M/s Elite International (P) Ltd. of which the appellant was a Director at the relevant time and several cheques (119 in number) issued by M/s Elite International (P) Ltd. aggregating to Rs 8,64,58,810.16, in discharge of its liability towards part-payment, stood dishonoured with the banker's remarks "insufficient funds". According to the complainant, at the material time, the appellant-accused was in-charge and at the helm of affairs of M/s Elite International (P) Ltd. and therefore she is vicariously liable for the default of the Company as she is responsible for the conduct of its business. Metropolitan Magistrate, 12th Court, Bandra, Mumbai took cognizance of the complaints and issued process against the appellant-accused for the offence punishable under Section 138 of the NI Act.

3. The aggrieved appellant filed criminal writ petitions before the High Court under Section 482 CrPC seeking quashing of the criminal proceedings pending before the Metropolitan Magistrate. The High Court initially by an interim order dated 28-7-2010 granted stay of the criminal proceedings qua the appellant and directed the trial to be proceeded against the other accused. Finally, by the impugned order [*Pooja Ravinder Devidasani* v. *State of Maharashtra*, WP (Cri) No. 614 of 2010, decided on 6-10-2010 (Bom)] , the High Court dismissed the writ petitions filed by the appellant. Challenging the said order of dismissal, the appellant has preferred these appeals before this Court.

…

23. In *Gunmala Sales (P) Ltd.* [*Gunmala Sales (P) Ltd.* v. *Anu Mehta*, (2015) 1 SCC 103 : (2015) 1 SCC (Cri) 580 : (2015) 1 SCC (Civ) 433] on which the learned counsel for the respondents has heavily relied, this Court at para 34.3 held: (SCC p. 127)

"*34.3*. In the facts of a given case, on an overall reading of the complaint, *the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactic, the High Court may quash the proceedings*. It bears repetition to state that to establish such case unimpeachable,

incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out."

(emphasis supplied)

24. In the light of the law laid down by this Court, the present case be examined. It is not in dispute that two persons, namely, Parag Tejani and Hitesh Haria, were inducted as Director-Operations of the Company w.e.f. 17-12-2005 by virtue of a resolution passed by the Company on the same date. It is on the same date the appellant had ceased to be a Director as per the Annual Report which is not disputed by Respondent 2. A perusal of the complaint shows that Respondent 2 has made the newly appointed Directors-Operations Parag Tejani and Hitesh Haria also as the accused stating that all the accused approached him with a request for trade finance facility and accordingly the said facility was granted as per their request. It thus gives an impression that Respondent 2 is well aware of the change of Directors in the accused Company. In spite of knowing the developments taken place in the Company that the appellant was no longer a Director of the Company and two new Directors were inducted, Respondent 2 has chosen to array all of them as accused in the complaints. Moreover, Respondent 2 had not disputed this fact emphatically in the proceedings before the High Court. We have gone through the reply-affidavit filed by Respondent 2 before the High Court of Bombay.

…

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by Respondent 2 to the default Company during the period from 13-4-2008 to 14-10-2008, against which the cheques were issued by the Company which stood dishonoured. Much before that on 17-12-2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the NI Act is a pure abuse of process of law and it has to be interdicted at the threshold.

29. So far as the letter of guarantee is concerned, it gives way for a civil liability which Respondent 2 complainant can always pursue the remedy before the appropriate court. So, the contention that the cheques in question were issued by virtue of such letter of guarantee and hence the appellant is liable under Section 138 read with Section 141 of the NI Act, cannot also be accepted in these proceedings.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Sections 138/141 of the NI Act, making a person vicariously liable has to ensure strict compliance with the statutory requirements. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of the court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.

31. For all the foregoing reasons, we are of the view that this is a fit case for quashing the complaint, and accordingly allow these appeals by setting aside the impugned judgment [*Pooja Ravinder*

Devidasani v. *State of Maharashtra*, WP (Cri) No. 614 of 2010, decided on 6-10-2010 (Bom)] passed by the High Court and quash the criminal proceedings pending against the appellant before the trial court."

5. Kamlesh Kumar v. State of Bihar, (2014) 2 SCC 424

"…

11. It is thus clear that period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25-10-2008 or the legal notice was issued on 27-10-2008, inasmuch as the cheque was presented again on 10-11-2008. For the purposes of limitation, insofar as the legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days' time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If the noticee fails to make the payment, the offence can be said to have been committed and in that event the cause of action for filing the complaint would accrue to the complainant and he is given one month's time from the date of cause of action to file the complaint.

12. Applying the aforesaid principles, in the present case, we find that the cheque was presented, the second time, on 10-11-2008. The complainant, however, sent the legal notice on 17-12-2008 i.e. much after the expiry of the 30 days. It is clear from the complaint filed by the complainant himself that he had gone to the Bank for encashment of the cheque on 10-11-2008 but the cheque was not honoured due to the unavailability of the balance in the account.

13. The crucial question is as to on which date the complainant received the information about the dishonour of the cheque? As per the appellant, the respondent complainant received the information about the dishonour of the cheque on 10-11-2008. However, the respondent complainant has disputed the same. However, we would like to add that at the time of arguments the aforesaid submission of the appellant was not refuted. After the judgment was reserved, the complainant has filed an affidavit alleging therein that he received the bank memo of the bouncing of the cheque on 17-11-2008 and therefore, the legal notice sent on 17-12-2008 is within the period of 30 days from the date of information.

14. Normally, we would have called upon the parties to prove their respective versions before the trial court by leading their evidence. However, in the present case, as rightly pointed out by the learned Senior Counsel for the appellant, the complainant has accepted in the complaint itself that he had gone to the Bank for encashment of cheque on 10-11-2008 and the cheque was not honoured due to insufficiency of funds, thereby admitting that he came to know about the dishonour of the cheque on 10-11-2008 itself. It is for this reason that the appellant has filed a reply-affidavit stating that this is an afterthought plea as no material has been filed before the court below to show that the Bank had issued a memo about the return of the cheque which was received by the complainant on 17-11-2008. The specific averment made in the complaint in this behalf is as under:

"Subsequently the complainant again went to encash the cheque given by the accused on 10-11-2008 which again bounced due to unavailability of balance in the accused's account."

It is, thus, clear from the aforesaid averment made by the complainant himself that he had gone to the Bank for encashing the cheque on 10-11-2008 and found that because of unavailability of sufficient balance in the account, the cheque was bounced. Therefore, it becomes obvious that he had come to know about the same on 10-11-2008 itself. In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on 10-11-2008 itself, no further enquiry is needed on this aspect.

15. It is, thus, apparent that the complainant received the information about the dishonour of the cheque on 10-11-2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the NI Act as explained in para 12 of the judgment in *MSR Leathers* [*MSR Leathers* v. *S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] , extracted above."

6. Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103

"…

34. We may summarise our conclusions as follows:

34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the

High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

35. We will examine the facts of the present case in the light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents. The High Court held that "*in the complaint except the averments that the Directors were in charge of and responsible to the Company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the Company, issuance of cheque and control over the funds of the Company*". After so observing, the High Court quashed the proceedings as against the respondents. In view of this conclusion, the High Court did not go into the second question raised before it as to whether the Director, who has resigned can be prosecuted after his resignation has been accepted by the Board of Directors of the Company. Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in *Anita Malhotra* [*Anita Malhotra* v. *Apparel Export Promotion Council*, (2012) 1 SCC 520 : (2012) 1 SCC (Civ) 329 : (2012) 1 SCC (Cri) 496] to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment.

36. In the circumstances, we confirm the impugned order [*Anu Mehta, In re*, Criminal Revision No. 4099 of 2011, order dated 25-6-2012 (Cal)] to the extent it quashes the process issued against Shobha Mehta, an accused in CC No. 24035 of 2011. We set aside the impugned order [*Anu Mehta, In re*, Criminal Revision No. 4099 of 2011, order dated 25-6-2012 (Cal)] to the extent it quashes the process issued against other Directors viz. Kanhaiya Lal Mehta, Anu Mehta and Siddharth Mehta. We remit the matter to the High Court. We request the High Court to hear the parties and consider the matter afresh. We are making

it clear that we have not expressed any opinion on the merits of the case and nothing said by us in this order should be interpreted as our expression of opinion on the merits of the case. The High Court is requested to consider the matter independently. Considering the fact that the complaints are of 2011, we request the High Court to dispose of the matter as expeditiously as possible and preferably within six months."

PART II-QUESTION 2

(SAMPLE ANSWER)

RESEARCH MEMORANDUM

This memorandum addresses the following questions that arise in the present case:

a. Whether the complaint filed by Ms Tripti Thakur, on 31.12.2020, is maintainable against Mr Amit Hingorani and Mrs Namita Hingorani?

b. Whether pursuing the remedy of filing a Petition under Section 482 of the Criminal Procedure Code, 1973, is appropriate in the present case?

a. On Maintainability

In this instance, there are two counts on which the maintainability of a complaint under Section 138 of the Negotiable Instruments Act, 1881 (Henceforth, the 'NI Act') may be examined:

I. The first, whether the statutory timelines prescribed under Section 138 of the NI Act are met in the present instance?

Section 138 of the NI Act prescribes that:

- the cheque should be presented within time (six months or within the period of its validity, whichever is earlier)
- the payee makes a demand for payment by giving a notice in writing to the drawer within thirty days of receiving information from the bank regarding return of the cheque.
- the drawer of the cheque fails to make the payment within 15 days of the receipt of the notice

In the present instance these conditions are met, and the complaint is maintainable on this count.

The second aspect is whether the complaint meets the requirements of Section 141 of the NI Act. In the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* reported in *(2005) 8 SCC 89,* the Hon'ble Supreme Court held that the requirement under Section 141 is that *at the time of the commission of the offence,* the person sought to be made liable must be in charge of and responsible to the company for the conduct of its business. The complaint is also required to contain a *specific averment to this effect*. (The explanation to Section 141 provides that 'director', in relation to a firm, means a partner in the firm). *SMS Pharmaceuticals (Supra)* also held while the Managing Director and the Signatory to the cheque may generally be covered under Section 141 of the NI Act, there is no such presumption with respect to other Directors/ officials of the company. In *K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48* the Hon'ble Supreme Court, in the context of a company, reiterated that mere reproduction of the wording under Section 141 of the

NI Act was not adequate to attract liability, if the person did not meet the legal requirement of being a person responsible to the company for the conduct of its business. In *Pooja Ravinder Devidasani v. State of Maharashtra & Anr., (2014) 16 SCC 1),* the Hon'ble Supreme Court reiterated the law laid down in SMS Pharmaceuticals (Supra), and held that the High Court erred in not quashing a complaint where a person had resigned as director of a company, and was not even a director at the relevant time, and there were no particulars whatsoever, in the complaint that would justify fastening of vicarious liability. Applying these decisions to the present case, Mr Amit, having retired, was not a partner of the firm on the date of the commission of the alleged offence. He gave notice of his retirement to the public in terms of Section 32 of the *Indian Partnership Act, 1932.* Though Ms. Namita holds the job title of *Director Sales,* she was merely an employee at the time of the commission of the alleged offence, and was not a Managing Partner or even a partner of the firm. Neither Mr. Amit nor Ms Namita are signatories to the cheque. The averment in the complaint, that *"all the accused persons were and are in charge of and responsible for the conduct of business of the Firm",* being vague*,* may not meet the rigors of Section 141 of the NI Act.

b. On whether the remedy of filing a Petition under Section 482 CrPC, 1973 may be pursued.

In the case of *Gunamala Sales Private Limited v. Anu Mehta and Ors. reported in (2015)1SCC 103* the Hon'ble Supreme Court held that even when the complaint contains the basic averment in terms of Section 141 of the NI Act, the High Court may quash the complaint, if- in the totality of the facts -the complaint amounts to an abuse of process. An illustration of abuse of process given in *Gunamala Sales* was that of a terminally ill bed-ridden director or a director who had resigned being roped in as an accused. In the case of *Pooja Ravinder Devidasani (supra),* the Hon'ble Supreme Court observed that setting criminal law in motion was not a matter of course, and the rigors of Section 141 were to be strictly complied with.

While it is well settled that the Hon'ble High Courts exercise their powers under Section 482 CrPC sparingly, given the totality of the circumstances, namely:

- Mr Amit retired from the firm before the issuance of the cheque in question, gave a public notice of the retirement, and was subsequently bed-ridden.
- Ms. Namita is an employee holding the job title of Director of sales, and is not a Managing Partner or even a partner of the firm.
- Neither persons were signatories to the cheque.
- The complaint contains no details or particulars of the manner in which Mr. Amit and Ms. Namita were in charge of and responsible for conduct of the affairs of the firm at the time of the commission of the offence.

- The phrase in the complaint *"all the accused persons were and are in charge of and responsible for the conduct of business of the Firm",* being vague may not even meet the requirements of Section 141 of the NI Act, which requires an averment that the persons were in charge of and responsible for the conduct of the business of the Firm, *at the time of the commission of the offence.*

The present case is an appropriate case to seek quashing of the complaint.

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