

CNR No.MHMM20-010300-2015.

Received on : 16.07.2014.  
 Registered on : 16.07.2014.  
 Decided on : 14.10.2022.  
 Duration : Y : M : D.  
 08 : 02 : 28.

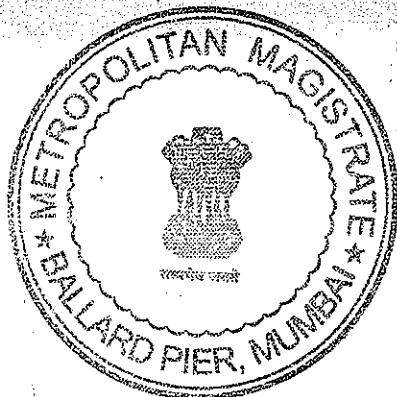
IN THE COURT OF THE METROPOLITAN MAGISTRATE,  
33RD COURT, BALLARD PIER, MUMBAI.

(Judgment under section 355 of Cr. P. C.)  
(PRESIDED OVER BY S. B. Kale)

Exh. 84.

- a) The Serial number of the case C. C. No. 8452/SS/2015  
(Old Case No.2022/SS/2014)
- b) The date of the commission of offence 17.06.2014.
- c) The name of the complainant if any, **National Spot Exchange Limited**  
 Having its Registered office at F. T. Tower, CTS No.256 and 257, 4<sup>th</sup> Floor, Suren Road, Chakala, Andheri (East), Mumbai 400093. Through its authorised representative Mr. Dileep Sodhia, substituted by Santosh Dhuri.
- d) The name of the accused persons, his parentage and residence
- 1) M/s. Shree Radhey Trading Co.  
 Add. 4/264, Jaffer Nawaz Pulsubji Mandi, Saharanpur - 247 001.
- 2) Mr. Ramesh Satyapal Nagpal,  
 Proprietor of M/s. Shree Radhey Trading Co.

Add. New Kiryana Market, Kakkār Ganj, Saharanpur - 247 001.



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**Judgment. C.C.No.8452/SS/2015**  
**(Old Case No.2022/SS/2014)**

- |  |   |
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| e) The offence complained of or proved                 | Under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the N. I. Act').          |
| f) The plea of the accused and his examination, if any | The accused pleaded not guilty and claimed to be tried.   |
| g) Final order   | The accused nos.1 and 2 are convicted for the offence punishable under section 138 of the N. I. Act.          |
| h) The date of such order                              | 14.10.2022  |
| i) Appearance  | PKA Advocates, learned counsel for the complainant.<br><br>Adv. Pradip Yadav learned counsel for the accused. |

**JUDGMENT**

(Delivered on 14th October, 2022)

1. To bring home the guilt of the accused, the complainant company has examined its authorized representative Santosh Dhuri (C. W.1) vide Exh. 9 along with Mr. Rushikesh Sutawane (C. W. 2) vide Exh. 35. In support of its case, the complainant has relied upon the following documentary evidence;

Sr. No.	Description	Exhibit Nos
1	Extract of Board Resolution dtd 05.07.2014	11
2	Pages of minutes of meeting dtd. 05.07.2014	12
3	Extract of Board Resolution dtd. 21.09.2013,	13
4	Copy of Trading-cum-Clearing Membership application dated 01.09.2011,	14



5	Copy of Trading-cum-Clearing Membership undertaking dated 27.09.2011,	15
6	Panchanama dtd. 30.09.2013 issued by EOW, Mumbai,	16
7	Letter dtd. 01.06.2013 sent by accused,	17
8	Agreement dtd. 01.06.2013,	18
9	Letter dtd. 01.08.2013 issued by accused,	19
10	Cheque no.877895 dtd. 09.05.2014,	20
11	Bank Memo dtd. 16.05.2014,	21
12	Office Copy of Demand notice dtd. 28.05.2014,	22
13	Postal receipts	23
14	Reply dtd. 13.06.2014 to demand notice,	24
15	Extract of minutes of meeting dtd.21.09.2013.	30
16	Order of Hon'ble Bombay High Court in Third Party Notice No.16 of 2014 in Suit No.173 of 2014 dated 04.10.2021.	35
17	Extract of board resolution dated 21.01.2021,	37
18	Gazette Notification dated 05.06.2007,	38
19	Certificate u/Sec. 65-B of Indian Evidence Act,	39
20	Bail Application No.9 of 2016 in C. R. No.89 of 2013 filed by accused before the Special MPID Court.	76
21	Report No.14 of 2016 in Suit No.173 of 2014 passed by the three members (HCC) appointed by the Hon'ble Bombay High Court.	77

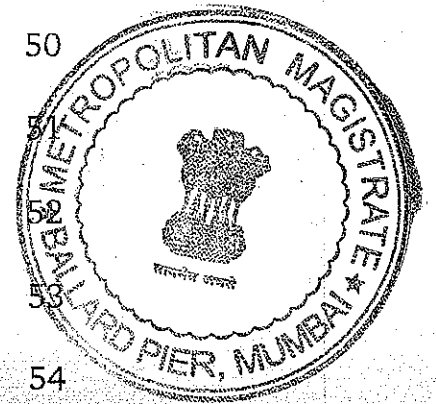


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22 Report No.49 of 2016 in Suit No.173 of 2014 passed by the three members (HCC) appointed by the Hon'ble Bombay High Court. 78

2. In support of his defence, accused no.2 Ramesh Nagpal examined himself as D. W. 2 vide Exh. 67 and one Sunny Ramesh Nagpal as D. W. 1 vide Exh. 42. Accused has relied upon the following documentary evidence;

Sr. No.	Description	Exhibit Nos.
1	Letter dated 01.08.2012 addressed to M/s. Krishna Cold Storage and Food,	44
2	Deed of Lease dtd. 13.10.2011,	45
3	Certificate u/s. 65-B of Indian Evidence Act,	46
4	E-mails of different dates,	47
		Colly.
5	Copy of TIN Suspended by the Commercial Taxes Dept., U.P. of Shree Radey Trading Co.	48
6	Copy of TIN Suspended by the Commercial Taxes Dept., U.P. of IBMA,	49
7	Certified copy of FIR dtd. 19.09.2013,	50
8	Panchanama dated 16.01.2015,	51
9	Letter dated 10.12.2014,	52
10	Copy of Revision Appln. No.492 of 2019,	53
11	Copy of Revision Appln. No.493 of 2019,	54
12	Copy of Suit No.509 of 2017 filed by accused against complainant,	55

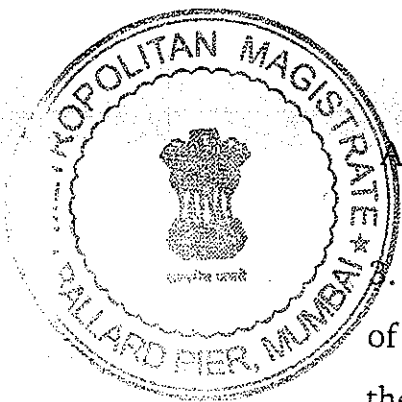


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| 13 | Copy of Suit No.321 of 2014,   | 56 |
| 14 | Copy of Suit No.320 of 2014,   | 57 |
| 15 | Copy of Suit No.322 of 2014,   | 58 |
| 16 | Copy of Suit No.318 of 2014,   | 59 |
| 17 | Copy of Suit No.352 of 2014,   | 60 |
| 18 | Copy of Roznama dtd. 17.02.2016 in suit no. 150 of 2016,                                   | 61 |
| 19 | Copy of Suit No.319 of 2014,   | 62 |
| 20 | Copy of Suit No.561 of 2017,   | 63 |
|    | Copy of Order dtd. 01.09.2015 passed in  | 64 |
| 21 | Motion No.739 of 2015 by the Hon'ble High Court,   |    |
| 22 | Mail dtd.14.05.2012 and Tax Invoices,  | 69 |
| 23 | Mail dtd. 13.12.2012 along with Tax Invoice,   | 70 |
| 24 | Mail dtd. 20.02.2012 along with Tax Invoice,   | 71 |
|    | Voice recording from laptop and PDF file of transcription in pen drive between accused and | 72 |
| 25 | complainant's representative Mr. Manish Kumar Pandey,                                      |    |
| 26 | Copy of order passed in Appeal (L) No. 629 of 2022 by the Hon'ble Bombay High Court,       | 73 |

All said evidence and documents will be discussed at proper place.

The statement of accused under Section 313 of the Code of Criminal Procedure is recorded at Exh. 32 and 41. The defence of the accused is of total denial and is of false implication. It is also the defence of the accused that the cheque (Exh. 20) was given as a

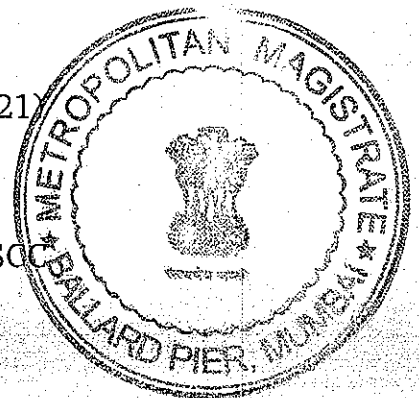


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security. There was no liability of the accused towards the complainant. The complainant failed to establish legally enforceable liability of the accused. No proof of liability is produced on record by the complainant. It is also the defence of the accused that the complainant is not entitled to recover any amount from the accused, but if there is any amount due and outstanding from the accused, it would have been recoverable only by IBMA, Anand Rathi, Sahara Que Shop and Pace Commodity. However, those four entities are not claiming anything from the accused. It is another defence of the accused that his account was freezed by EOW, Mumbai and therefore, he could not make payment to the complainant against the subject cheque (Exh. 20). Non payment of the cheque amount is not arising out of any fault of the accused. Therefore, it cannot be said that the accused dishonoured the cheque (Exh. 20).

4. I have gone through the written notes of argument vide Exh.82 filed by the advocate for the complainant. It is the contentions of the learned counsel of complainant that the complainant company has proved all necessary ingredients of the offence punishable under section 138 of the N. I. Act against accused. In support of his case, the learned counsel for the complainant has relied upon the following authorities;

1. M/s. Kalamani Tex & Anr. Vs. P. Balsubramanian [(2021) 5 SCC 283].
2. Laxmi Dyechem Vs. State of Gujrat & Ors. [(2012) 13 SCC 375].
3. Rangappa Vs. Sri. Mohan [(2010) 11 SCC 443].

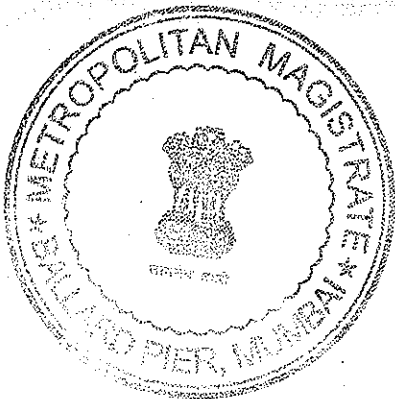


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4. Hiten P. Dalal Vs. Bratindranath Banerjee [2001 (6) SCC 16].
5. Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors. [(2020 7 SCC 1)].
6. M/s. Jaimin Jewellery Export Pvt. Ltd & Others Vs. The State of Maharashtra & Anr. [2017 Cri L. J. 3308].

5. So also, I have gone through the written notes of arguments Exh. 81 filed by the learned counsel for the accused. It is submitted by the accused that the complainant has failed to prove all the technical ingredients of the section 138 of the N. I. Act and more specifically failed to prove the transaction and liability of the accused. In support of his contentions, the learned counsel for the accused has relied upon following authorities;

1. Vijay Vs. Laxman & Another [Criminal Appeal No.261 of 2013, decided on 07.02.2013 (SC)].
2. Kumar Exports Vs. Sharma Carpets [Criminal Appeal No. 2045 of 2008, decided on 15.12.2008 (SC)].
3. Basaingappa Vs. Mudibasappa [Criminal Appeal No. 636 of 2019, decided on 09.04.2019 (SC)].
4. M/s. Gimpex Private Limited Vs. Manoj Goel [Criminal Appeal No. 1068 of 2021, decided on 08.10.2021 (SC)].
5. Shri. Hanumant R. Naik Vs. Shri. Ajit Harmalkar [Cri. Appeal No.52/2006, decided on 29.11.2007 (Bom HC)].
6. Prabhakar Rauji Shet Vs. Shrikant M Arolkar [Cri. Appeal no. 10 of 2007, decided on 26.02.2009 (Bom HC.)]



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7. Ghanshyam Kisan Ukirade Vs. Sou Suman Krishna Pawar & Anr. [Cri. Appln. no.4188 of 2009 decided on 29.07.2010, Bom. HC].

8. Pushkarraj Enterprises Vs. Kundan Mehta Associates & Anr. [ Cri. Writ Petition no.2099 of 2009, decided on 15.09.2009 Bom. HC],

9. Mr. Evan Norohna Vs. Mr. Lloyed Joseph Siqueria and State of Goa [ Cri. Appeal no.40 of 2008, decided on 15.09.2008 Bom. HC],

6. In the light of above arguments, I have gone through the complaint and the evidence produced on record. I have also been guided by authorities cited from both sides.

7. Following points arise for my determination. I record my findings for the reasons given thereunder;

**Sr.**  
**No.**

**POINTS**

**FINDINGS**

1. Is the complainant duly represented?

Affirmative.

2. Does the complainant prove that accused has issued cheque no.877895 dtd. 09.05.2014 of Rs.31,06,90,279/- drawn on Punjab National Bank, Spl. SSI Branch Saharanpur (UP) in discharge of legally enforceable liability?

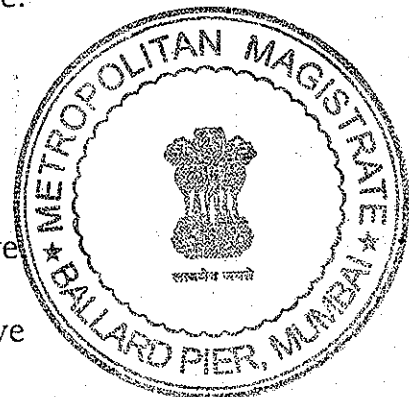
Affirmative

3. Does the complainant prove that accused dishonoured the said cheque?

Affirmative

4. What order ?

Accused nos.1  
and 2 are  
convicted.



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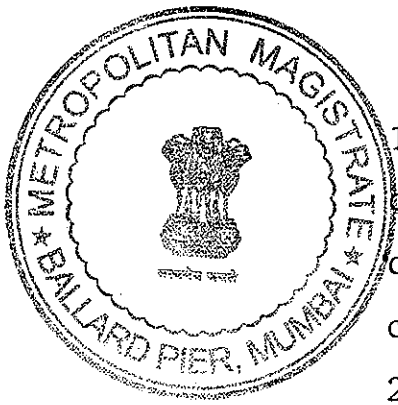
REASONS

As to Point No.1 :-

8. Santosh Dhuri (C. W.1) has deposed that he is working in the complainant company. The Board of Directors of the complainant company has authorised him to represent this case on its behalf as per board resolution dated 05.07.2014. The complainant has filed extract of the minutes of board resolution dated 05.07.2014 at Exh. 11. On perusal of the extract of resolution (Exh. 11) it appears that Santosh Dhuri (C. W.1) was authorised to sign the vakalatnama, complaint, plaints, suits, affidavits, forms, applications, additional affidavit, undertaking or any such documents as may be required in connection with legal proceedings on behalf of the complainant company and to do all such acts, deeds and other things that may be required to give effect to the foregoing resolution.

9. Along with extract of board resolution (Exh. 11), the complainant has filed on record the verified copies of the relevant pages of minutes of meeting of Board of Directors of complainant company dated 05.07.2014 at Exh. 12. On perusal of the minutes book (Exh. 12) it appears, as per clause no. 9, Santosh Dhuri (C. W.1) was authorised to represent the complainant company in connection with legal matters.

10. Santosh Dhuri (C. W.1) further deposed that the present complaint was filed by Mr. Dileep Sodhia, who was authorised by the complainant company as per board resolution dated 21.09.2013. The complainant has filed on record the extract of board resolution dated 21.09.2013 at Exh. 14. By filing additional evidence affidavit,

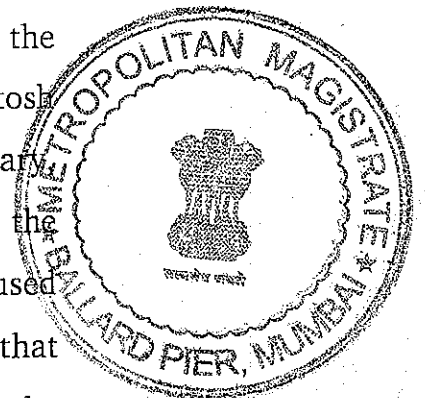


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Santosh Dhuri (C. W.1) has produced on record the minutes of meeting of Board of Directors dated 21.09.2013 at Exh. 30, whereby Mr. Dileep Sodhia was authorised to file the present complaint (Exh. 1).

11. During the cross-examination of Santosh Dhuri (C. W.1), the accused has not much disputed the authority of Mr. Dileep Shodia to file the complaint (Exh. 1) and authority of Santosh Dhuri (C. W.1) to depose on behalf of the complainant company. On perusal of testimony of Santosh Dhuri (C. W.1) and the documentary evidence i.e. extract of board resolution (Exh. 11) and minutes book (Exh. 12), it reveals that the complainant has duly proved the authority of Santosh Dhuri (C. W.1) to depose and to represent on behalf of the complainant company. So also, on perusal of the extract of board resolution (Exh. 13) and minutes book (Exh. 30) it reveals that, the complainant has duly proved the authority of Mr. Dileep Sodhia to file the complaint (Exh. 1) in compliance of section 142 of the N. I. Act.

12. No material is produced on record by the accused to create doubt about the authority of Mr. Dileep Shodia to file the complaint and the authority of Santosh Dhuri (C. W.1) to adduce the evidence. Moreover, the accused failed to demonstrate that Santosh Dhuri (C. W.1) is not aware of all facts of the case. On the contrary, testimony of Santosh Dhuri (C. W.1) reflects that he knows all the facts relating to the subject transaction. Mere denial from the accused is not sufficient to deny the authority of Santosh Dhuri (C. W.1), that too when he has answered all the relevant questions related to the subject transaction. I do not find substance in the objections raised by



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the accused in respect of authority of Mr. Dileep Shodia to file the complaint and authority of Santosh Dhuri (C. W.1) to depose on behalf of the complainant. Ultimately, I hold that the complainant is duly represented by Mr. Dileep Shodia and Santosh Dhuri (C. W.1). Hence, I answer Point No.1 in the affirmative.

As to Point No.2 :-

13. Santosh Dhuri (C. W.1) has categorically deposed that the complainant company is registered under the companies Act and carrying on business as a Spot Exchange providing for an electronic trading platform for spot contracts in commodities on compulsory delivery basis since 2008. Accused no.2 is the proprietor of accused no.1 i.e. M/s. Shree Radhe Trading Company and incharge and responsible for day to day affairs of the said firm and also signatory of the subject cheque.

14. Santosh Dhuri (C. W.1) further deposed that pursuant to Trading-cum-Clearing Membership Application dated 01.09.2011 (Exh. 14) and Trading-cum-Clearing Membership undertaking dated 27.09.2011 (Exh. 15), the proprietary firm of accused became a Trading-cum-Clearing Member of the complainant company. It was allocated the CM-ID : 13780, whereby accused was conferred with rights to trade and clear through clearing house and was allowed to make deals for itself as well as on his behalf and settle and clear such deals. Accused has not denied to have traded on the platform provided by the complainant company.

15. Santosh Dhuri (C. W.1) further deposed that there were



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certain defaults in pay-ins on the exchange by the accused, an amount of Rs.35,34,00,000/- was due and payable by the accused to the complainant. Out of said outstanding, the accused has paid an amount of Rs.75,00,000/- to the complainant as a part payment. To solve the financial issue, accused was entered into a Settlement Agreement dated 01.06.2013 (Exh. 18) with complainant. As per letter dated 01.08.2013 (Exh. 19) addressed to complainant, accused has admitted that an amount of Rs.37,95,48,567.33 was due and payable by him to the complainant.

16. Santosh Dhuri (C. W.1) further deposed that towards the party repayment and first installment and in discharge of partial liability, accused has issued cheque no. 877895 dtd. 21.12.2011 of Rs.31,06,90,279/- drawn on Punjab National Bank, Spl. SSI Branch Saharanpur (UP), in favour of the complainant. The cheque is at Exh. 20.

17. In support of its case, the complainant examined its Vice President, Legal Mr. Rushikesh Sutawane as C. W. 2 at Exh. 35A. He deposed that he is having access to most of the relevant records of the complainant company including the records pertaining to the present matter. He is well conversant with the facts of the present case and able to depose the same. The complainant company has authorised him to represent, file lead and depose evidence on its behalf as per resolution passed in the meeting of its Board of Directors held on 21.01.2021 (Exh. 37).

18. Rushikesh Sutawane (C.W. 2) further deposed that

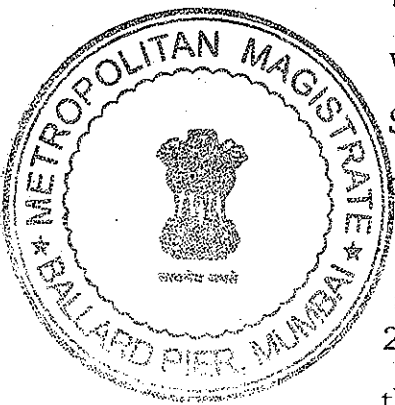


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complainant company is a national level, institutionalized, electronic transparent spot market and commenced its operation as per Gazette Notification dated 05.06.2007 issued by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, whereby allowing the complainant company to conduct trading in one day during forwards contracts in commodities. Rushikesh Sutawane (C.W. 2) produced the said notification on record at Exh. 38 along with certificate under section 65-B of the Indian Evidence Act (Exh. 39).

19. It is worth to note here that the accused did not deny that cheque (Exh. 20) was signed by him. Also, it is not denied by the accused that cheque (Exh. 20) is drawn on the account of SRTC. During the cross-examination of Santosh Dhuri (C. W.1) and in his statement under section 313 of Cr. P. C. (Exh. 32 and 41), accused raised the defence that the cheque (Exh. 20) was given as a security. There was no liability of the accused towards the complainant. The complainant failed to establish legally enforceable liability of the accused. No proof of liability is produced on record by the complainant. It is also the defence of the accused that the complainant is not entitled to recover any amount from the accused, but if there is any amount due and outstanding from the accused, it would have been recoverable only by IBMA, Anand Rathi, Sahara Que Shop and Pace Commodity. However, those four entities are not claiming anything from the accused.

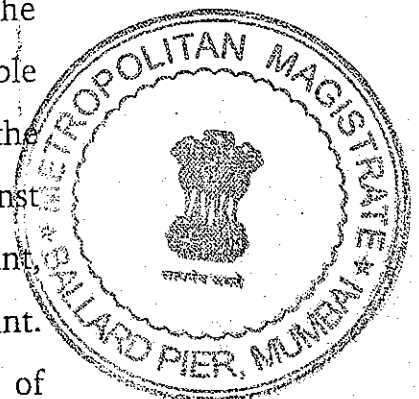
20. Once it is established that subject cheque was drawn on the account of accused and that he had signed it, the presumptions



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under section 118 (g) and 139 of the N. I. Act arises in favour of the complainant. The said presumption is rebuttable. The standard of proof required for rebuttal of said presumption is preponderance of probability and the accused is not required to prove his case beyond reasonable doubt. The accused can discharge this onus from the material available on record and/or by producing evidence on record. Then the burden shifts on the shoulders of the complainant to prove its case by removing doubts raised by the accused.

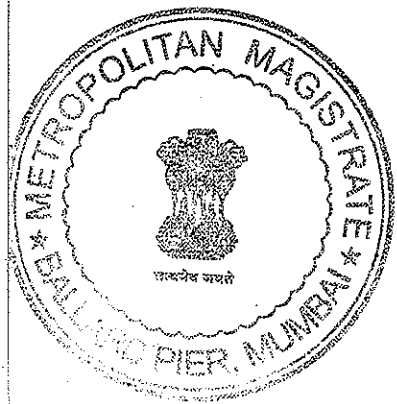
21. It is the defence of the accused that he had paid Rs.30,00,000/- on 14.08.2013 Rs.40,00,000/- on 19.08.2013 and Rs.5,00,000/- on 28.08.2013 to the complainant. It is also admitted by Santosh Dhuri (C.W.1) during his cross-examination that the complainant received the said amount from the accused. But he has further clarified that it was received against liability of the accused. It is the case of the accused that by virtue of payment of said amount, his liability had been neutralized. However, no such suggestion was put to Santosh Dhuri (C.W.1) that by making the said payment, the accused has discharged his whole liability towards the complainant. It is the claim of the complainant that the accused is liable to pay Rs.37,95,48,567/-. As against the said claim, it is the case of the accused that he had paid Rs.75,00,000/-. No justification or plausible explanation about the remaining amount is brought on record by the accused. Assuming that the amount paid by the accused was against the part payment to discharge his liability towards the complainant, still the remaining amount is more than the cheque amount. Therefore, the accused is not entitled to get the benefit out of payment of said amount of Rs.75,00,000/-.



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22. It is another defence of the accused that the complainant has not produced any proof of transaction carried out by the accused on the platform provided by the complainant company. While considering the said defence, it is required to be considered that the accused no.2 Ramesh Nagpal has not denied that he is the proprietor of M/s. Shree Radhey Trading Company (SRTC). It is not in dispute that SRTC happened to be trading member of the complainant company. It is also not in dispute that the accused carried out several trades on the electronic platform of the complainant company. Therefore, the defence raised by the accused becomes redundant.

23. On the one hand, it is the case of the complainant that by virtue of letter (Exh. 19), the accused admitted his primary liability to pay Rs.37,95,48,567/- to the complainant. On the other hand, it is the case of the accused that the said letter (Exh. 19) was obtained by the complainant by applying fraud and coercion. It is also the case of the accused that the amount mentioned in the letter (Exh. 19) was not final and it was subject to reconciliation. In order to adjudicate upon rival contentions of both sides, it is necessary to go through contents of the letter (Exh. 19) as it is. Hence, I reproduce it as under;



*"1. We are, the bonafide Members of the Exchange. We are aware that the Exchange had to resort to suspension of trading due to pay-in delays committed by some of the members.*

*2. The total amount payable by us to the Exchange against our settlement obligation is Rs.37,95,48,567/- (subject to the final amount)*

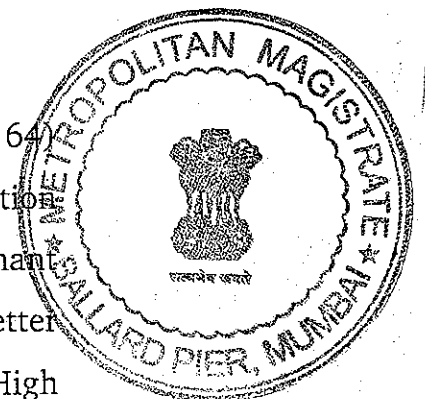
*3. We hereby agree to pay a minimum amount of 5% of our*

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*dues every week on Friday commencing from next week and settle all our outstanding dues within a period of 20 weeks. We will, however, take all possible steps to repay all our outstanding much before the said 20 weeks time."*

24. While considering the defence of the accused that the letter (Exh. 19) was obtained by the complainant by applying fraud and coercion, it is to be considered that the accused has admitted issuance of the said letter (Exh. 19). The burden of proof is upon the accused to show that the said letter was obtained by the complainant by fraud or coercion. However, except his allegations, no substantial proof is adduced by the accused. The accused did not lodge any complaint with the police about alleged fraud and coercion applied by the complainant while obtaining the letter (Exh. 19). It is also to be noted here that those allegations were levelled by the accused for the first time during the cross-examination of Santosh Dhuri (C.W.1). Those allegations were not mentioned by the accused in the notice reply (Exh. 24), when he had reasonable opportunity to put his case. No justification is given by the accused for not raising such objection at the earliest possible opportunity. Therefore, the said defence raised by the accused appears to be after thought. Hence, it need not be given serious consideration.

25. The accused strongly relied upon the order (Exh. 64) passed by the Hon'ble Bombay High Court upon the Notice of Motion no.739 of 2015 in Suit no.173 of 2014, whereby the complainant sought decree on admission against the accused on the basis of letter (Exh. 19). It is pointed out to me that the Hon'ble Bombay High Court has refused the claim of the complainant for grant of decree on

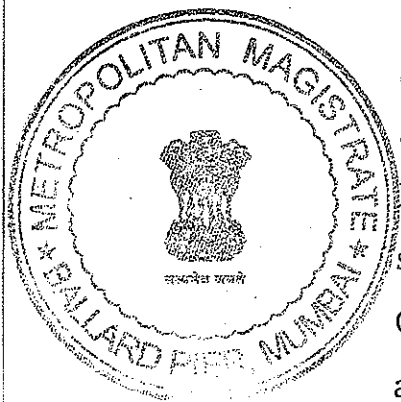


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admission. It was observed by the Hon'ble Bombay High Court that admission of liability given by the accused in the letter (Exh. 19) is not unequivocal and unconditional. On the basis of said observation, it is argued on behalf of the accused that the letter (Exh. 19) cannot be taken as a proof of liability of accused. It is to be considered here that the Hon'ble Bombay High Court has also observed that the admission of liability given by the accused vide letter (Exh. 19) was subject to reconciliation of books of account by the parties. It goes to show that the Hon'ble Bombay High Court has not discarded the liability of the accused arising out of letter (Exh. 19), but it was ordered to pass through the process of reconciliation.

26. Perusal of the letter (Exh. 19) and more particularly, Clause No.2 would disclose that the accused had admitted his primary liability of Rs.37,95,48,567/- towards the complainant. But it was not finally admitted by the accused. The final amount was to be reached by the complainant and the accused through reconciliation. Admittedly, such reconciliation did not happen between the complainant and the accused. The process of reconciliation is always bilateral. Both parties must have their willingness to undergo the process of reconciliation and to arrive at a final settlement. But the accused has not shown such willingness during the entire trial. No such attempt of reconciliation was shown to have been made by the accused at any point of time. Ultimately, the complainant filed Suit No.173 of 2014, before the Hon'ble Bombay High Court. In the said suit, the Hon'ble Bombay High Court was pleased to appoint a Committee to resolve the issue between the complainant and the accused. The said Committee has filed its detailed report (Exh. 73)



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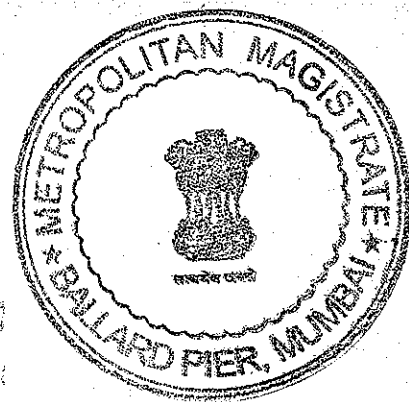
before the Hon'ble High Court.

27. Perusal of the report (Exh. 78) transpires that in order to determine the amounts payable by the defaulters/third parties to the complainant National Spot Exchange Limited (NSEL) and to ascertain the assets of defaulters/third parties and amount received directly or indirectly from NSEL in respect of various trades as well as to explore and negotiate mutual settlements between NSEL and the alleged defaulters and to seek appropriate directions from the Court for sell/monitization of assets of defaulters, the committee came to be appointed as per the orders of the Hon'ble Bombay High Court.

28. The report (Exh. 78) also discloses that ample opportunity was extended to all parties to put their case and submit their accounts before the Hon'ble Committee. The accused was also given said opportunity. However, in Para No.42.2 and 42.3, the Hon'ble Committee has observed as follows;

*" 42.2 SRTC have not produced before the Committee any evidence or documents to disapprove the correctness of any of the entries in the accounts of SRTC maintained by NSEL. SRTC have not produced before the Committee any material to indicate that at any time prior to August 2013, SRTC had raised any objection to the entries made in the accounts relating to SRTC maintained by NSEL.*

*42.3. SRTC and its clients have failed to produce before the Committee complete records of sales and purchases and transactions on NSEL platform including all Sales and Purchases Invoices and complete sales and purchases and stock registers and stock statements submitted to the concerned Brokers. The incomplete record produced by SRTC/clients of*



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*SRTC before the Committee is not adequate for considering the veracity of claims of SRTC."*

29. It is apparent from the above observations of the Hon'ble Committee that the complainant produced before it books of account in respect of transactions carried out by the accused on the platform provided by the complainant. On that basis the Hon'ble Committee prepared its report (Exh. 78).

30. By virtue of its order (Exh. 35), passed in Suit No.173 of 2014, the Hon'ble Bombay High Court was pleased to accept the report (Exh. 78). But before that the Hon'ble High Court recorded its observations about whole process undertaken by the committee while preparing the report (Exh. 78). Some observations are relevant to the present case. I reproduce the same as under;

*"27. The Committee closed the proceedings relating to SRTC on 15th March 2019. It is this finding of the Committee regarding the irrelevance of the accounts between NSEL and IBMA, ARCL, PACE Commodities and Sahara Q Shop that is assailed once again before me today. The grounds are precisely those that were taken before the Committee. It is argued yet again before me as it was at least half a dozen times, if not more, before the Committee that these accounts are relevant. Indeed, that is all that SRTC has to say. It keeps repeating this like some mantra, possibly in the hope that if repeated often enough, it will be accepted. It will not. There is simply no answer from SRTC to what NSEL contended or to the findings that the Committee ultimately rendered."*



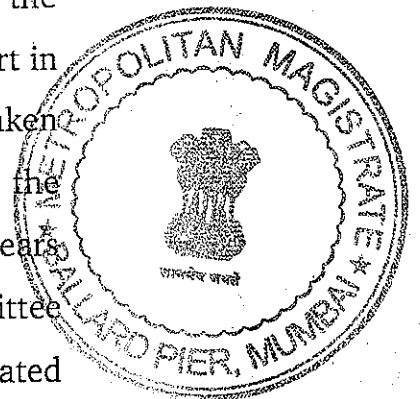
*"35. I can see no reason not to accept this report and make it an order of the Court. As I have noted earlier, the same excuse that has been paraded before the committee for the last five or six years since 2014-2015 or 2015-2016 continues even today,*

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*namely that the accounts of IBMA, ARCL, PACE Commodities and Sahara Q Shop will show something or the other; hopefully, according to SRTC, that it has to pay nothing to NSEL but has to instead recover from NSEL. This does not in any way account for SRTC's incessant failures to complete its filings and make its submission before the Committee despite repeated opportunities".*

31. It is evident from the above observations of the Hon'ble Bombay High Court that the accused failed to produce on record his books of account. The Hon'ble Bombay High Court confirmed the liability of the accused to the tune of Rs.32,77,01,499/-. The Hon'ble Bombay High Court also ordered the accused to pay interest @ 12% p.a. from 30.09.2013 till actual realization of the amount. The Hon'ble Committee as well as the Hon'ble Bombay High Court has crystallized the liability of the accused. It goes to show that accused was and is liable to pay the said amount to the complainant. Ultimately, the liability of the accused stands quantified more than the amount of the subject cheque.

32. Relying upon the order (Exh. 67-A) passed by the Hon'ble Bombay High Court upon the Interim Application no.633 of 2022 in Appeal no.629 of 2022, it is submitted on behalf of the accused that the order (Exh. 35) of the Hon'ble Bombay High Court in Suit No.173 of 2014 has been stayed and therefore, it cannot be taken into account for calculating liability of the accused towards the complainant. It is worth to note here that the subject cheque appears to have been issued by the accused on 09.05.2014, the Committee came to be appointed in Suit No.173 of 2014 vide the order dated 02.09.2014 passed by the Hon'ble Bombay High Court. It goes to

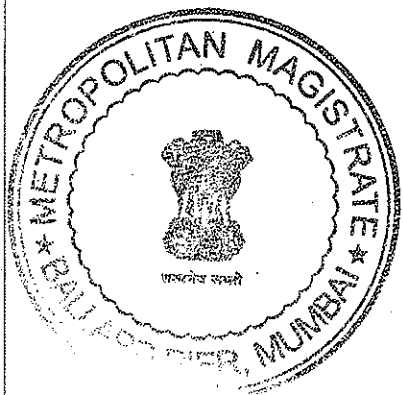


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show that on the date of issuance of cheque (Exh. 20) neither the report of the Hon'ble Committee nor the order of the Hon'ble Bombay High Court crystallizing liability of the accused was in existence. Therefore, neither the report of the Hon'ble Committee nor the order (Exh. 35) passed by the Hon'ble Bombay High Court can be considered as an evidence of actual liability of the accused towards the complainant. It is required to be clarified here that it was considered only for the purpose of recording the demeanor of the accused. Therefore, the stay of the order (Exh. 35) passed by the Hon'ble Bombay High Court in Suit No.173 of 2014 will not come to rescue the accused.

33. In order to establish his defence, accused no.2 Ramesh Nagpal examined himself as D. W. below Exh. 67 along with his son Sunny Ramesh Nagpal as D. W. 1 below Exh. 42. Both of them have recorded voluminous examination-in-chief running into more than three and thirteen pages respectively. They have also produced on record several documents vide Exh. 69 to 73 and Exh. 44 to 64 respectively. The accused also recorded voluminous cross-examination of Santosh Dhuri (C. W.1) running into more than 14 pages. However, the accused has failed to demonstrate that the primary liability of Rs.37,95,48,567/- admitted by him vide letter (Exh. 19) had been discharged. The accused also failed to demonstrate that the said primary liability was either wrong and incorrect or it was less than the cheque amount.

34. On the basis of above discussion, I find that inspite of having sufficient opportunity before this Court, before the Hon'ble

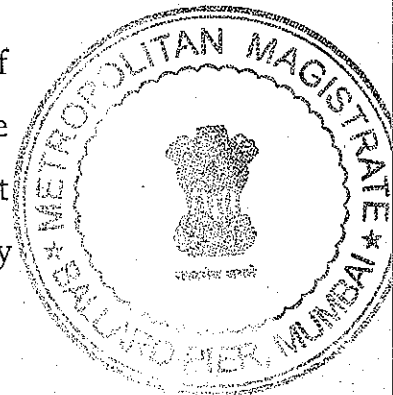


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Committee appointed in Suit No.173 of 2014 as well as before the Hon'ble Bombay High Court, to produce his account details and other relevant documents for reconciliation of the amount of Rs.37,95,48,567/-, which was primarily admitted by the accused while issuing the letter (Exh. 19). The accused failed to produce any such account details. In absence of any convincing evidence by the side of the accused, it cannot be said that the accused has rebutted presumption under section 118 and 139 of the N. I. Act.

35. It is another defence of the accused that the subject cheque (Exh. 20) has been issued as security. The complainant has misused the same and filed false case against him. It is now a settled principle of law that the cheque issued for the security purpose also falls within the ambit of section 138 of the Negotiable Instruments Act. It is for the accused to show that on the date mentioned upon the cheque (Exh. 20), either there was no legally enforceable liability or such liability was less than the cheque amount. However, the accused did not produce on record any material. Mere denial is not sufficient to rebut the presumption under section 139 and 118 of the N. I. Act.

36. On the basis of above discussion and in the light of presumption under section 118 and 139 of the N. I. Act and on the basis of evidence brought on record by the complainant, I hold that the cheque (Exh. 20) was issued by accused in discharge of legally enforceable liability. Hence, I answer Point No.2 in the affirmative.



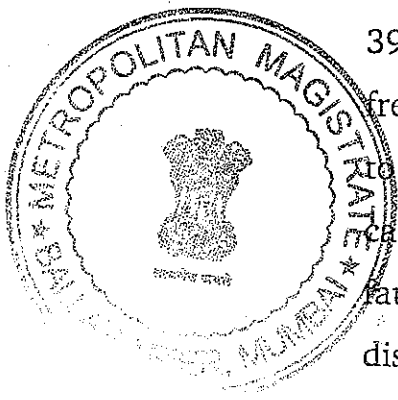
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As to Point No.3 :-

37. As discussed above, while answering Point no.2, it is held that the accused issued the cheque (Exh. 20) in discharge of legally enforceable liability. Therefore, the accused was under obligation to honour the said cheque. Santosh Dhuri (C. W.1) deposed that when the complainant company deposited the cheque (Exh. 20) in its bank i.e. Axis Bank Limited, MIDC Branch, Mumbai, the same was dishonoured and returned unpaid with remark "Payment stopped by the Drawer" as per bank memo dated 16.05.2014 (Exh. 21).

38. Santosh Dhuri (C. W.1) further deposed that after dishonour of the cheque (Exh. 20), the complainant company through its advocate issued statutory demand notice dated 28.05.2014 (Exh. 22) by Speed Post AD as per postal receipts (Exh. 23). The said notice (Exh. 22) was duly served upon the accused. The accused through his advocate replied the said notice (Exh. 22) as per notice reply dated 13.06.2014 (Exh. 24) and denied his liability. Santosh Dhuri (C. W.1) deposed that despite of receipt of notice and its reply, the accused has failed to pay the cheque amount to the complainant within stipulated period.

39. It is the defence of the accused that his account was freezed by EOW, Mumbai and therefore, he could not make payment to the complainant against the subject cheque (Exh. 20). It is also his case that non-payment of the cheque amount is not arising out of any fault on his part. Therefore, it cannot be said that the accused dishonoured the cheque.



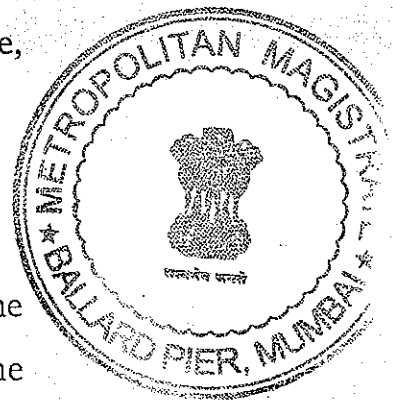
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40. While considering defence raised by the accused, the cheque return memo (Exh. 21) needs to be considered. The cheque return memo (Exh. 21) bears seal and signature of the bank. It discloses that the cheque (Exh. 20) was dishonoured for the reason 'Payment stopped by the drawer'. When the accused himself had stopped payment of the subject cheque, the fact that his account of freezed by EOW, Mumbai becomes redundant. Moreover, it is nowhere the case of the accused that on the date of presentation of cheque (Exh. 20), there was sufficient amount in his account for encashment of the said cheque. Thus, it can be inferred that cheque (Exh. 20) returned dishonored due to the insufficiency of funds in the account of accused.

41. It is not disputed by the accused that he replied the demand notice (Exh. 22) by sending his notice reply (Exh. 24). It goes to show that the accused received the demand notice (Exh. 22). It is the case of the complainant that inspite of service of demand notice (Exh. 22), the accused did not make payment of the subject cheque within stipulated period. It is nowhere the case of the accused that he has made such payment to the complainant. Ultimately, I hold that the accused has dishonoured the cheque (Exh. 20). Hence, I answer Point No.3 in the affirmative.

**As to the Point No.4 :-**

42. In view of my affirmative finding to Point Nos.1 to 3, the complainant has proved the authority of Dileep Sodhia to file the complaint and the authority of Santosh Dhuri (C. W.1) to depose on behalf of the complainant company. The complainant also proved the



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legal transaction and legally enforceable liability of the accused and complied with all the technical ingredients under section 138 of N. I. Act. Hence the accused is liable to be convicted. Here I take pause to hear the accused on the point of sentence.

*S. B. Kale*  
14-10-22

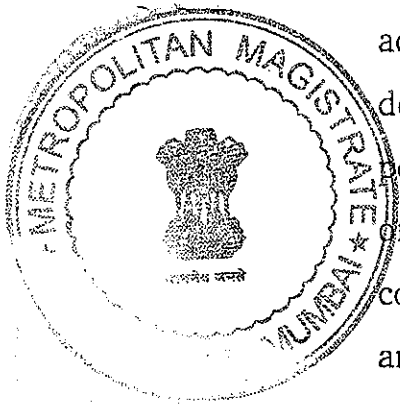
(S. B. Kale)

Metropolitan Magistrate,  
33<sup>rd</sup> Court, Ballard Pier, Mumbai.

Date :- 14.10.2022.

43. Heard the accused on the point of sentence. The accused prayed for leniency to be shown to him as he is senior citizen and there is no criminal antecedence. Advocate for the complainant prayed that the case is Eight years old. The money involved in this case is of investors, who have invested their money in the company. Therefore, maximum sentence be given to the accused and double the cheque amount be given to the complainant as a compensation.

44. It is pertinent to note that the case is more than Eight years old. As per the Judgment of Honorable Supreme Court in *R. Vijayan vs. Baby & Anr.*, reported in 2012 ALL MR (Cri.) 1325 (Supreme Court), wherein it has been directed to the trial Court to adopt uniform policy for passing sentence and to pass the sentence of double the cheque amount along with simple interest thereon at 9% per annum as the reasonable quantum of loss and direct the payment of such amount as compensation to the complainant. Hence, considering all the facts and circumstances of the case, I find it just and appropriate to sentence the accused to suffer Simple Imprisonment for 01 (One) Year and to pay fine of Rs.62,13,80,558/-

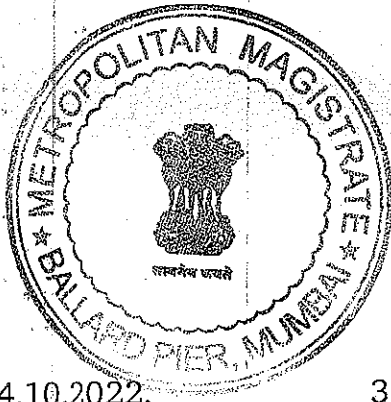


*S. B. Kale*  
14-10-22

After recovery of the said fine amount, the same will have to be paid as compensation to the complainant. Hence, in answer to point no.4, I pass the following order :-

**ORDER**

- 1) Accused no.1 M/s. Shree Radhey Trading Co. and accused no.2. Mr. Ramesh Satyapal Nagpal are convicted for the offence punishable under Section 138 r/w.141 of Negotiable Instruments Act vide Section 255(2) of the Code of Criminal Procedure.
- 2) Accused no.2 is sentenced to suffer Simple Imprisonment for (01) One Year, while accused nos.1 and 2 jointly and severally are sentenced to pay fine of Rs.62,13,80,558/- (Rupees Sixty Two Crores Thirteen Lakhs Eighty Thousand Five Hundred Fifty Eight Only) within 1 (One) Month from the date of this Order, in default, accused no.2 to suffer further simple imprisonment for (06) Six months.
- 3) The fine amount, if recovered from the accused, same be given to the complainant as compensation vide Section 357(3) of the Code of Criminal Procedure.
- 4) Bail Bonds of accused no. 2 stand forfeited.



*Sale*  
14-10-22

(S. B. Kale)

Metropolitan Magistrate,  
33<sup>rd</sup> Court, Ballard Pier, Mumbai.

Date :- 14.10.2022.

Mbc/-

Application No 911/2022  
 Applicant Adv. Nimeet Sharma  
 Applied On 15/10/2022  
 Granted On 15/10/2022  
 Ready On. 24/10/2022  
 Delivered On 24/10/2022

**TRUE COPY**

*me*  
21/10/22  
Judicial Clerk

Metropolitan Magistrate  
33<sup>rd</sup> Court, Ballard Pier,  
Mumbai