

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**1.Cr.MMO.No. 197 of 2011.**

**2.Cr.MMO.No. 225 of 2011.**

**Date of Decision 30.3.2012.**

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**1. Cr.MMO. No. 197 of 2011.**

1. M/s Neelam India Pvt. Ltd., 119-C, #/107, Line No.3  
Anupam Gardens, Sainik Farms, New Delhi.
2. Sh.Rajesh Sharma S/o Sh. Ramji Dass  
119 -C#/107, Line No.3, Anupam Gardens,  
Sainik Farms, New Delhi.  
Director M/s Neelam India Pvt. Ltd.
3. Smt. Neelam Sharma W/o Sh. Rajesh Sharma  
119-C, #/107, Line No.3, Anupam Gardens, Sainik  
Farms, New Delhi.

....Petitioners.

Versus.

State Bank of India, Boileauganj Branch, Shimla-5  
through its Manager.

....Respondent.

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For the petitioner: Mr.M.S.Chandel, Sr. Advocate with  
Mr.N.S.Chandel, Advocate.

For Respondent: Mr.Vaibhav Tanwar, Advocate.

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**2. Cr.MMO.No. 225 of 2011.**

1. M/s Neelam India Pvt. Ltd., 119-C, Line No.3, 3/07,  
Anupam Gardens, Sainik Farms, New Delhi-62.
2. Sh.Rajesh Sharma S/o Sh. Ramji Dass Sharma  
R/O 119 -C, Line No.3, 3/07, Anupam Gardens,  
Sainik Farms, New Delhi-62
3. Smt. Neelam Sharma W/o Sh. Rajesh Sharma  
son of Sh. Ramji Dass Sharma R/o 119-C, Lane-3,  
3/07, Anupam Gardens, Sainik Farms, New Delhi-62

...Petitioners.

Versus.

State Bank of India, Boileauganj Branch, Shimla-5,  
Through its Manager.

...Respondent.

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For the petitioner: Mr.M.S.Chandel, Sr. Advocate with  
Mr.N.S.Chandel, Advocate.

For Respondent: Mr.Vaibhav Tanwar, Advocate.

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Coram:

**Hon'ble Mr. Justice Dev Darshan Sud, Judge.**

Whether approved for reporting<sup>1</sup>? No.

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**Dev Darshan Sud,J (Oral).**

Both these petitions are being disposed of by a common judgment as the parties involved and the point of law urged is common. In Cr.MMO. No. 197 of 2011, the petitioner prays for quashing of the complaint under Section 138 of the Negotiable Instrument Act,1989 (hereinafter referred to as the 'Act') instituted by the respondents and Cr.MMO. No. 225 of 2011, two orders of the learned trial Court dated 2.9.2012 and 29.9.2012 issuing non-bailable warrants and declaring them proclamation under Section 82 Cr.P.C be quashed and set aside.

2. Adverting to the first petition, the complaint states that the first petitioner is a Company registered under the Companies Act and petitioner No. 2 is one of its Directors. Complaint under Section 138 of the 'Act' (Annexure:P6) has been instituted by the Bank against the three petitioners. Under the C.C. Limit and Term Loan Scheme, a loan amount of Rs. 1,85,00,000/- was advanced to M/s Silverline Motors Private Limited Chambaghat (herein after 'loanee'), on

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Whether reporters of the Local papers are allowed to see the judgment.yes.

31.5.2006 in which second petitioner Sh. Rajesh Sharma, is only a Director along with his son Kartik Sharma. In order to secure the said amount of Rs.1,85,00,000/-, which was advanced by way of C.C. Limit and Term Loan to the loanee, a cheque amounting to Rs. 20,00,000/- of IndusInd Bank, Meharauli-Gurgaon Road, Gurgaon, signed by petitioner No. 2 Rajesh Sharma in his capacity as Director was issued. The complaint then proceeds that when this cheque was presented for collection it was dishonoured and therefore the complaint was instituted praying for action against the petitioners herein in accordance with law.

3. Sh. M.S.Chandel, learned Senior Counsel raises a number of points for consideration to urge that the complaint is nothing but an abuse of the process of law. The first point urged is that it is the case of the complainant that the loan in question was sanctioned in favour of M/s Silver Line Motors and the petitioners herein were guarantors. An agreement of hypothecation was executed between the bank and the loanee including a deed of guarantee executed between the petitioners and the bank. It was agreed to between the guarantors and the bank that in case there is a default, the petitioners would be required to pay the amount forthwith. Submission made by the learned counsel is that unless there is a default proved on the part of the borrower and ensuing demand by the bank, no recovery can be made from the petitioners herein. The cheque in question was presented only as a collateral security on the happening of a particular event and not as consideration for a personal loan to the complainants. There was no debt or

liability outstanding. It is also pleaded that so far as petitioner-Smt. Neelam Sharma is concerned, there is no averment made in the complaint that she was overall In-charge of the Company. A bare reading of the complaint would demonstrate that no offence is disclosed against this respondent.

4. It is well settled that though a question purely of civil nature cannot be made the subject matter of criminal proceedings but at the same time, the Supreme Court in **G. Sagar Suri and another Vs. State of U.P. and others, (2000) 2 SCC 636 and Indian Oil Corporation Vs. NEPC India Ltd. and others, (2006) 6 SCC 736 and Iridium India Telecom Limited Vs. Motorola Incorporated and others, (2011) 1 SCC 74** has held that where disputes are of a civil nature they may also contain ingredients of criminal offences and if so, will have to be tried as such.

5. In **R.P.Kapur Vs. State of Punjab, AIR 1960 S.C. 866, Pepsi Foods Limited Vs. Special Judicial Magistrate, (1998) 5 SCC 749 and B.S.Joshi and others Vs. State of Haryana and another, (2003) 4 SCC 675**, the Court has held that F.I.R. can be quashed if it is an abuse of the process of law and when no case is made out.

6. Considering the totality of the facts and circumstances of the case, at this stage when evidence is yet to be recorded, it would not be appropriate stage to exercise powers under Section 482 Cr.P.C. to quash the complaint. It will be open to the petitioners to urge that the learned trial Court has no jurisdiction to proceed with the matter and if such a plea is raised, it shall be determined by the learned trial

Court at the initial stage. Needless to say if the jurisdiction of the Court to proceed with a case is questioned, it is fundamental to the entire prosecution.

7. On the second submission made by the learned counsel that third petitioner Smt. Neelam Sharma has been unnecessarily dragged into the case, I find force in this submission. I do not find in the complaint any averment having been made against her in order to pass any criminal liability on her. There is no averment or pleading that she was overall In-charge of the Company or in any manner involved in the issuance of the cheque.

8. In these circumstances, I direct that the name of petitioner No.3 Smt. Neelam Sharma be struck off from the array of the respondents. This petition is disposed of accordingly.

**Cr.MMO.No. 225 of 2011.**

9. In view of the orders passed herein-above, both the orders passed by the learned Magistrate are set aside. It is directed that the second petitioner herein shall appear before the learned trial Court as and when directed. Any disobedience of this order shall amount to revival of the orders passed by the learned trial Court. It is further directed that petitioner No.3 will not be summoned as an accused in this case.

10. Let the record of the trial court be sent back forthwith.

**(Dev Darshan Sud),  
Judge.**

March 30,2012(R)

