

**HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**Criminal Misc. Application (C-482) No.883 of 2009**

R. D. Sharma	vs.	... Applicant
State of Uttarakhand and another		... Respondents

Mr. Harshit Pant, Advocate holding brief of Mr. Arvind Vashisth, Advocate for applicant.  
Mr. S. S. Adhikari, A.G.A. for the State of Uttarakhand.  
Ms. Sangeeta Bharadwaj, Advocate for the respondent no.2/complainant.

**Hon'ble U. C. Dhyani, J. (Oral)**

1. The applicant, by means of present Application under Section 482 Cr.P.C., seeks to quash the summoning order dated 25.10.2008 passed by the Special Judicial Magistrate 1<sup>st</sup>, Dehradun in Complaint Case No.4037 of 2007 titled as Small Industrial Development Bank of India vs. R. D. Sharma & others under Section 138 of the Negotiable Instruments Act, 1881. The applicant also seeks to quash the proceedings of the aforementioned criminal case pending before the said court.
2. Complainant/respondent no.2 (bank) filed a criminal complaint case against 4 accused persons, including the present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as the Act*) in the court of Chief Judicial Magistrate, Dehradun. After considering the statements under Sections 200 & 202 Cr.P.C., accused-applicant was summoned to face the trial for the offence punishable under Section 138 of the Act, *vide* order dated 25.10.2008. Aggrieved against the same, present application under Section 482 Cr.P.C. was moved on behalf of accused-applicant.
3. According to the complainant/respondent no.2, the applicant placed a purchase-work order to M/s Saksham-e-Communication Pvt. Ltd. on 19.11.2006. The supply was to be financed by the respondent bank. M/s Saksham-e-Communication Pvt. Ltd. was financed by the complainant bank

on the assurance that the payment was to be released in favour of the said bank by the accused-applicant. In pursuance of this understanding, the Finance Officer of Gurukula Kangri Vishwavidyalaya, Haridwar (non-applicant) issued a cheque in favour of the complainant / respondent bank for a sum of Rs.21,94,000/-. When such cheque was presented by the complainant bank through Axis Bank for encashment on 01.09.2007, the same was returned with the endorsement "reported lost". Upon request of the Finance Officer of Gurukula Kangri Vishwavidyalaya, Haridwar, the said cheque was again presented on 06.09.2007, but was again returned with the remarks "reported lost". The cheque was finally presented on 13.09.2007 and the same was again returned with the endorsement of "payment stopped". The complainant bank (respondent no.2 herein) gave a notice to Gurukula Kangri Vishwavidyalaya, Haridwar on 18.09.2007, but despite the expiry of notice period, the Gurukula Kangri Vishwavidyalaya failed to pay the amount to the respondent bank.

4. Thus, the proceedings under Section 138 of the Act were initiated against the accused-applicant on the ground that when the cheque issued by Gurukula Kangri Vishwavidyalaya, Haridwar was presented in the bank, the same was returned with the endorsement "reported lost".

5. The question is –Whether an offence under Section 138 of the Act, in such circumstances, is made out or not?

6. The Hon'ble Supreme Court in **Raj Kumar Khurana vs State of (NCT of Delhi) and another, (2009) 6 SCC 72**, provided the answer. Relevant paragraphs of said judgment are reproduced below for ready reference:

*"Section 138 of the Act moreover provides for a penal provision. A penal provision created by reason of a legal fiction must receive strict construction. (R. Kalyani v.*

*Janak C. Mehta, (2009) 1 SCC 516 and DCM Financial Services Ltd. v. J.N. Sareen, (2008) 8 SCC 1). Such a penal provision, enacted in terms of the legal fiction drawn would be attracted when a cheque is returned by the bank unpaid. Such non-payment may either be:*

*(i) because of the amount of money standing to the credit of that account is insufficient to honour the cheque, or*

*(ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank.*

*Before a proceeding thereunder is initiated, all the legal requirements there for must be complied with. The court must be satisfied that all the ingredients of commission of an offence under the said provision have been complied with.*

*The parameters for invoking the provisions of Section 138 of the Act, thus, being limited, we are of the opinion that refusal on the part of the bank to honour the cheque would not bring the matter within the mischief of the provisions of Section 138 of the Act.*

*Keeping in view the facts and circumstances of the case, we are of the opinion that the complaint petition does not disclose an offence punishable under Section 138 of the Act.*

*For the reasons aforementioned, the impugned judgment being unsustainable is set aside. The appeal is allowed.”*

7. In **Raj Kumar Khurana’s** case (*supra*) appellant who was drawer of cheque in question, reported to police as well as to the bank that two unfilled cheques which had been signed by him, were lost. When the cheque in question was presented for payment, the bank returned it with remarks “said cheque reported lost by the drawer”. The issue was whether dishonour of cheque on this ground constituted an offence under Section 138 of the Act, or not? The Hon’ble Apex Court decided the issue in negative.

8. The controversy in hand is covered by the ruling of **Raj Kumar Khurana’s** case (*supra*). It is, accordingly, held that since the complaint petition does not disclose an offence

punishable under Section 138 of the Act, therefore, the impugned order, being unsustainable, should be set aside.

9. In view of above, application under Section 482 Cr.P.C. is, therefore, allowed and the summoning order dated 25.10.2008 and the proceedings of Criminal Case No.4037 of 2007 titled as Small Industrial Development Bank of India vs. R. D. Sharma and others under Section 138 of the Act pending in the Court of Special Judicial Magistrate 1<sup>st</sup>, Dehradun are hereby quashed.

**(U. C. Dhyani, J.)**

Dated 30<sup>th</sup> September, 2013

Rawat