

Precedent No. 75

**EVIDENCE BY WAY OF AFFIDAVIT: DURING TRIAL UNDER SECTIONS 138
AND 141 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881**

IN THE COURT OF METROPOLITAN MAGISTRATE,

In

Criminal Complaint No.....of 20

IN THE MATTER OF

A.B

.....COMPLAINANT

VERSUS

B.C

....ACCUSED

POLICE STATION:

AFFIDAVIT

I, S/o, aged.....years, presently and permanently residing in

The deponent named above hereby solemnly affirms and states as follows:

1. That the deponent is the complainant in this matter and being fully conversant with the facts and circumstances of this case, the deponent is competent to swear to this affidavit. The deponent shall henceforth name himself as the complainant.
2. That the complainant is the proprietor of M/s, having its main office at.....
3. That the respondent accused is the sole proprietor of M/s, having its main office at
4. That during the course of the business, the complainant supplied goods to the respondent as per the requirements of her firm and in the name of the respondent's firm *vide* Bills, dated..... for Rs; No, dated, for Rs, and No, dated, for Rs, totalling Rs.....Copies of the bills are marked as Mark A, B and C, which are again ratified for the purpose. That the copies of the consignment Bills/vouchers for the

consignment of the said goods are also marked as Mark D and E and the same are also ratified again for the present purpose.

5. That by way of advance money, the accused handed over a Banker's Draft No, for Rs, drawn on bank, which was duly honoured on its presentment on
6. That the goods were delivered to the respondent's agent, *i.e.*, the said consignors, only on the assurance and promise of the accused that on the due presentment of the cheques as mentioned below, the same shall be honoured. The accused in total issued 12 post-dated cheques towards the balance payment of the following description:

No.	Cheque No.	Amount	Dated	Favour of
1.	A	Rs...	...,20...	Complainant
2.	B	Rs...	...,20...	-do-
3.	C	Rs...	...,20...	-do-
4.	D	Rs...	...,20...	-do-
5.	E	Rs...	...,20...	-do-
6.	F	Rs...	...,20...	-do-
7.	G	Rs...	...,20...	-do-
8.	H	Rs...	...,20...	-do-
9.	I	Rs...	...,20...	-do-
10.	J	Rs...	...,20...	-do-
11.	K	Rs...	...,20...	-do-
12.	L	Rs...	...,20...	-do-

7. That all the abovestated cheques were drawn on bank.
8. That on their due presentment, cheques of the description as stated in item 9 and 10 in the above list of cheques which are the subject-matter of present complaint were dishonoured for the reason of "stop payment" *vide* banker's memos datedandAs a matter of fact, on the relevant date the balance standing to the credit of the account of the accused was also insufficient for the honouring of the said cheques. The cheques with their respective

memos in their originals are already Ex. CW1/1 to 4 and the same are once again ratified by the deponent herein.

9. It is pertinent to mention here that the respondent has delivered to the complainant CST forms bearing Nosandfor a total sum of, which is nothing short of acknowledgment of liability and truthfulness of the transaction between the parties and copies whereof are already marked as Mark F and G which are also once again ratified herein.
10. That the said respondent accused has taken the goods on the clear representation and promise against the abovementioned cheques that on their due presentment the same shall be honoured. That the complainant had the slightest clue about dishonest, malicious and unlawful design of the respondent accused of cheating the complainant, the complainant would not have delivered goods to the respondent. Moreover, having taken the benefit of the goods, not making the payment particularly by giving directions to the banker for stop payment of the cheques goes a long way to corroborate the accused's unlawful design of deceiving and cheating the complainant.
11. That in view of the above, the complainant issued notice datedto the accused, which was dispatched on the same day and was duly served on the accused by way of registered post with AD and also by way of UPC, some of which have been clearly 'refused' by the accused, whereas others have been practically served. Copy of notice is already Ex. CW1/5 and the complainant stands by it. Postal receipts are Ex. CW1/6 to 9 and returned registered covers are Ex. CW-1/10 to 13.
12. That the accused neither made nor even tendered any amount after the service of notice till this date. Rather the accused has been threatening to the complainant of dire consequences.
13. That the complainant has complied with all the statutory requirements. This court has the jurisdiction and the cause of action arose at Delhi.

Sd./

Deponent.

VERIFICATION

Verified aton this theof 20.....that the contents of the above affidavit are true and correct to the best of knowledge, belief and information of the deponent and nothing material has been concealed therefrom.

Sd./

Deponent.

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the day of.....,20

Sd./

Counsel for the deponent.

Note: Affidavit to be attested by the appropriate authority prescribed under law.