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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Reserved on: July 26, 2023
Decided on: September 14, 2023**

+ **CRL.M.C. 948/2019 & CRL.M.A. 3781/2019**

SHALINI SECURITIES PRIVATE LIMITED

..... Petitioner

**Through: Mr. Harsha Gollamudi and
Mr. Vishal Kapoor,
Advocates.**

V

LOKESH THAKKAR & ANR

..... Respondents

**Through: Mr. Abhishek Keer
Advocate for R-1.
Ms. Muskaan Dewan, Mr.
Alok Kumar Pandey, Ms.
Garima Khandelwal and Mr.
Kunal Prakash, Advocates
for R-2.**

+ **CRL.M.C. 4126/2019 & CRL.M.A. 34038/2019**

AMANDEEP SINGH

..... Petitioner

**Through: Ms. Muskaan Dewan, Mr.
Alok Kumar Pandey, Ms.
Garima Khandelwal and Mr.
Kunal Prakash, Advocates.**

V

STATE OF NCT OF DELHI & ANR

..... Respondents

**Through: Mr. Utkarsh, APP for the
State/R-1.
Mr. Abhishek Keer,
Advocate for R-2.**



**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

J U D G M E N T

1. Lokesh Thakkar, who is respondent no. 1 in CRL.M.C.948/2019 and respondent no. 2 in CRL.M.C.4126/2019 (hereinafter referred to as “**Lokesh Thakkar**”) filed a complaint titled as **Lokesh Thakkar V M/s Shalini Securities Private Limited & Another** bearing complaint case no.37/1/2018 (new Ct. no.3062/2018) under sections 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘**NI Act**’) against M/s Shalini Securities Private Limited who is the petitioner in CRL.M.C.948/2019 (hereinafter referred to as “**M/s Shalini Securities Private Limited**”) and Amandeep Singh who is respondent no. 2 in CRL.M.C.948/2019 and petitioner in CRL.M.C.4126/2019 (hereinafter referred to as “**Amandeep Singh**”).

2. Lokesh Thakkar pleaded that he and Amandeep Singh were into real estate business and known to each other since 2009. Amandeep Singh along with his brother and other family members prevailed upon Lokesh Thakkar to enter into financial terms with



them and also to become business partner and to invest in M/s Shalini Securities Private Limited as Amandeep Singh had assured Lokesh Thakkar of huge gains by investment in the project of Amandeep Singh. Lokesh Thakkar, on assurance of Amandeep Singh, had decided to invest in the ongoing project of Amandeep Singh. Lokesh Thakkar, during the period with effect from 2009 to 2017, had paid to Amandeep Singh Rs. 10 crores 40 lakhs through cash and bank transfer to invest in the ongoing project of Amandeep Singh. Lokesh Thakkar had arranged the said amounts by selling his own properties and by taking loan from relatives and from the market. Amandeep Singh returned Rs. 1 crore 28 lakhs to Lokesh Thakkar through bank transfer and by cash, however, Rs. 9 crores 12 lakhs were due along with interest and profit towards Lokesh Thakkar. Lokesh Thakkar, in July 2017, found that it was very difficult to make the payment of interest on the amount which he had borrowed from the market as loan and invested in the project of Amandeep Singh and accordingly, Lokesh Thakkar approached Amandeep Singh to get his share out of the profits. Amandeep Singh had started to avoid Lokesh Thakkar and therefore, Lokesh Thakkar started insisting Amandeep Singh to



return his money and share in the profits. Lokesh Thakkar and Amandeep Singh, on 21.08.2017, at the instance of the local police, had decided to settle their pending disputes amicably. Amandeep Singh, out of the settlement, had handed over 11 post-dated cheques each amounting to Rs. 50 lakhs from the account of M/s Shalini Securities Private Limited which were signed by Amandeep Singh. The details of the cheques are as under:-

S. No.	Date	Cheque No.
1.	02.04.2018	58310
2.	03.04.2018	58311
3.	05.04.2018	58312
4.	06.04.2018	58313
5.	06.04.2018	58314
6.	07.04.2018	58315
7.	09.04.2018	58316
8.	10.04.2018	58317
9.	11.04.2018	58318
10.	12.04.2018	58319
11.	13.04.2018	58320

2.1 Lokesh Thakkar and Amandeep Singh also agreed on various



other terms and conditions of the settlement. Lokesh Thakkar had deposited the 11 cheques of Rs. 50 lakhs each drawn on Bank of Maharashtra, Pitampura Branch in his bank account maintained with State Bank of India, G.T. Kamal Road but were dishonored by the bank with the endorsement “Funds Insufficient”.

2.2 Lokesh Thakkar issued a legal notice dated 19.05.2018 to M/s Shalini Securities Private Limited and Amandeep Singh but they did not pay the cheque amount to Lokesh Thakkar despite notice. Hence, Lokesh Thakkar had filed the complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018) under section 138 of NI Act.

3. The court of Ms. Sadhika Jalan, MM-06, North District, Rohini Courts, Delhi (hereinafter referred to as “**trial court**”) vide order dated 06.10.2018 (hereinafter referred to as “**impugned order**”) had taken cognizance under section 138 of NI Act and accordingly summoned M/s Shalini Securities Private Limited and Amandeep Singh for the offence punishable under section 138 of NI Act. The impugned order is reproduced as under:-

Present complaint case is based upon the allegations that the accused issued the cheques in question in discharge of his liability as mentioned in the complaint. On presentation, the said cheques were dishonoured. Thereafter, legal notice



was sent by the complainant within stipulated period. Despite service, accused failed to make the payment. The complainant has filed this complaint within the period of limitation, praying of initiation of proceedings against the accused Under Section 138 of Negotiable Instrument Act. The complainant has filed cheques in original of the return memo, copy of legal notice and postal receipts in original. Heard, record perused. Cognizance of the offence Us 138 Negotiable Instrument Act is taken.

Pre-summoning evidence by way of an affidavit of complainant is already on record. Same is tendered in evidence. The complainant closes his pre-summoning evidence.

In the present matters, the complainant has summoned Shalini Securities Pvt. Ltd. as accused no. 1 as per the cheques filed on record. They have been signed by the director of accused no. 1. In the light of this, there is enough prima facie evidence on record to summon accused no. 1 Shalini Securities Pvt. Ltd.

In respect to accused no. 2, as per the form 32 filed on record by the complainant, accused no. 2 was not the Director of the company when the cheque in question was signed and was dishonoured. However, it has been alleged by the complainant that it was the accused no. 2, who had signed the cheques on behalf of the company and in light of this averment that the accused no. 2 is the signatory of the cheques, he too be summoned for the next date of hearing.

Accordingly, both this accused be summoned on filing of PF and RC returnable on 22.11.2018. Summons shall be accompanied with a copy of complaint. Steps be taken within seven days.



4. M/s Shalini Securities Private Limited, being aggrieved, filed the petition bearing CRL.M.C. 948/2019 for quashing of the impugned order and complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018).

4.1 M/s Shalini Securities Private Limited pleaded that Amandeep Singh i.e. purported signatory of the cheques in question was neither a Director nor an Authorised Representative of M/s Shalini Securities Private Limited and was also not a person in-charge of and responsible for the day to day functioning of M/s Shalini Securities Private Limited. Amandeep Singh had resigned from the M/s Shalini Securities Private Limited in the year 2012. No debt is due against M/s Shalini Securities Private Limited towards Lokesh Thakkar. The joint trial in respect of the 11 cheques is against the legal provision as contained in section 219 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”). Lokesh Thakkar, in the complaint, alleged that he had paid Rs. 10 crores 40 lakhs in cash and through bank transfer to Amandeep Singh during the period with effect from 2009 till 2017 but Lokesh Thakkar has not placed complete details of the payments to Amandeep Singh but placed



photocopy of self written notes showing payment of certain amounts to one Tarandeep Singh, but the said Tarandeep Singh is not arraigned as accused in the complaint. M/s Shalini Securities Private Limited was not having any dealing with Lokesh Thakkar and Rs. 10 crores 40 lakhs were not paid to M/s Shalini Securities Private Limited. On 21.08.2017, when Lokesh Thakkar is stated to have entered into settlement with Amandeep Singh, Amandeep Singh was neither a Director nor a share-holder nor even an authorised signatory of M/s Shalini Securities Private Limited. Amandeep Singh was not involved in the day to day activities of M/s Shalini Securities Private Limited. Amandeep Singh was not authorised to act on behalf of M/s Shalini Securities Private Limited having resigned from M/s Shalini Securities Private Limited in 2012. It appears from the complaint that Amandeep Singh had issued the cheques in question in his personal capacity and not on behalf of M/s Shalini Securities Private Limited. Amandeep Singh might have retained cheques of M/s Shalini Securities Private Limited deliberately which were lying within him in the year 2012 in his financial capacity being Director of M/s Shalini Securities Private Limited. Amandeep Singh has tendered his



resignation on 05.11.2012 and as such Amandeep Singh ceased to be the Director and the authorised signatory of M/s Shalini Securities Private Limited from 05.11.2012.

4.2 After M/s Shalini Securities Private Limited came to know that the cheques in question were deposited in its account, a written complaint was made to the SHO, P.S. Subhash Place, Delhi on 24.04.2018 vide DD no.32B regarding the alleged fraud committed upon M/s Shalini Securities Private Limited. A letter was also written to the Branch Manager, Bank of Maharashtra, Kohat Enclave Branch, New Delhi on 01.05.2018 requesting the Manager to stop payment against the cheques in question. Praveen Babbar was appointed as Additional Director of M/s Shalini Securities Private Limited on 31.12.2016 and was subsequently appointed as Director of M/s Shalini Securities Private Limited on 30.09.2017 and he was authorised to act on behalf of M/s Shalini Securities Private Limited.

4.3 Amandeep Singh was the authorised signatory being the Director of the M/s Shalini Securities Private Limited only for the period with effect from 01.07.2010 to 28.05.2012. The cheques in question were issued by the bank during the period when Amandeep



Singh was the Director of M/s Shalini Securities Private Limited which reflects that Amandeep Singh had deliberately and with malafide intention, issued the cheques in question.

4.4 There was no legally enforceable debt due towards M/s Shalini Securities Private Limited qua Lokesh Thakkar. The impugned order and the complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018) are liable to be set aside.

5. Amandeep Singh also filed the CRL.M.C. 4126/2019 under section 482 Cr.P.C. for quashing of entire proceedings and the impugned order dated 06.10.2018. Amandeep Singh narrated the facts as stated by Lokesh Thakkar in the complaint under section 138 of NI Act as mentioned hereinabove. Amandeep Singh challenged the impugned order on the grounds that the impugned order was passed by ignoring and overlooking the fact that Amandeep Singh was not the Director of M/s Shalini Securities Private Limited at the relevant time when the alleged offence is stated to have been committed. Amandeep Singh was neither the Director nor having any relations with M/s Shalini Securities Private Limited when the cheques in question were issued in April 2018. Amandeep Singh had



resigned as Director of M/s Shalini Securities Private Limited in the year 2012 as such, he cannot be held responsible for the dishonour of the cheques in question. Praveen Babbar and Priyanka Babbar are the only two directors of M/s Shalini Securities Private Limited with effect from 31.12.2016 and 12.06.2017 respectively. There are no specific allegations against Amandeep Singh. Amandeep Singh cannot be said to be in-charge and responsible for the conduct of business of M/s Shalini Securities Private Limited as per section 141 of NI Act. Even otherwise, the cheques in question were not issued in the discharge of legally enforceable debt. The dispute between Amandeep Singh and Lokesh Thakkar is of a civil nature. The present complaint is gross abuse of the process of law. The cheques in question, being signed by only one Director of M/s Shalini Securities Private Limited, are not enforceable in the eyes of law. The complaint does not fulfill the necessary ingredients of section 138 of NI Act. It is prayed that the impugned order whereby Amandeep Singh was summoned for the offence punishable under section 138 of NI Act be set aside.

6. The counsel for M/s Shalini Securities Private Limited argued



that Lokesh Thakkar, as admitted by him in the complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018), has entered into monetary transaction with Amandeep Singh in his personal capacity who has also returned Rs.1 crores 28 lakhs to Lokesh Thakkar through his own bank account and in cash. Lokesh Thakkar has never paid or credited any amount to M/s Shalini Securities Private Limited. In these circumstances, there is no legally enforceable debt against M/s Shalini Securities Private Limited. Amandeep Singh has already resigned from M/s Shalini Securities Private Limited on 05.11.2012 i.e. long before the date of the cheques in question which were fraudulently signed by Amandeep Singh without any authority. The cheques in question are invalid instruments being signed by Amandeep Singh who was not authorised to sign it. The trial court vide the impugned order has taken cognizance for the offence punishable under section 138 of NI Act which is not in accordance with law. No triable issue is raised qua M/s Shalini Securities Private Limited in the present complaint and any offence which could be made out is against Amandeep Singh only. The cheques in question were signed, issued and dishonoured during the period with effect



from 21.08.2017 to 13.04.2018 when Amandeep Singh was not associated with M/s Shalini Securities Private Limited. There is no sufficient ground to proceed against M/s Shalini Securities Private Limited. The counsel for M/s Shalini Securities Private Limited cited the judgment dated 04.11.1997 passed by the Supreme Court in **Pepsi Foods Ltd. And Another V Special Judicial Magistrate and Others**, (1998) 5 SCC 749 wherein it was observed as under:-

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

7. The counsel for Amandeep Singh also advanced oral arguments and submitted written submissions. It is argued that



Amandeep Singh, at the time of alleged dishonour of the cheques, was neither the Director nor authorized signatory or holding any position in M/s Shalini Securities Private Limited. Amandeep Singh was not having any concern with M/s Shalini Securities Private Limited in any manner. The essential ingredients of section 138 of NI Act are not satisfied as the cheques in question were issued from the bank account which was not operational in the name of Amandeep Singh. Amandeep Singh is not the drawer of the cheques in question and the cheques in question are not valid in the eyes of law. Amandeep Singh has already resigned from M/s Shalini Securities Private Limited in the year 2012 and the alleged cheques were dishonored in the year 2018 vide return memo dated 24.04.2018. As per Form-32, Amandeep Singh is not associated with M/s Shalini Securities Private Limited since 05.11.2012 as such, he cannot be said to be in-charge of and responsible for the affairs of the M/s Shalini Securities Private Limited. There is no specific allegation against Amandeep Singh and the complaint is liable to be dismissed. The counsel for Amandeep Singh cited the judgments passed by the Supreme Court in **Jugesh Sehgal V Shamsher Singh Gogi**, (2009)



14 SCC 683; **DCM Financial Services Ltd. V J.N.Sareen and Another**, (2008) 8 SCC 1; **Anil Kumar Sahni V Gulshan Rai**, (1993) 4 SCC 424 and **NSIC Ltd. V Harmeet Singh Paintal and Another**, (2010) 3 SCC 330.

8. The counsel for Lokesh Thakkar advanced oral arguments and also submitted written submissions. He argued that the impugned order is a speaking and reasoned order and should not be interfered with. M/s Shalini Securities Private Limited and Amandeep Singh were summoned by the trial court after due application of mind under the given facts and circumstances of the case. Amandeep Singh issued 11 cheques each amounting to Rs.50,00,000/- (Rupees Fifty Lakhs only) being purported authorised signatory of M/s Shalini Securities Private Limited and those cheques were presented within 06 months from the date of issuance which were got dishonored on the ground “Funds Insufficient”. It is for M/s Shalini Securities Private Limited to prove that why Amandeep Singh was allowed to retain possession of its cheque-book after he allegedly resigned as Director in the year 2012. The present petitions is filed by M/s Shalini Securities Private Limited and Amandeep Singh only to



escape from the trial which is against the settled principles of law and the present petitions are liable to be dismissed with heavy cost. The counsel for Lokesh Thakkar cited the judgments passed by the Supreme Court in **Medchl Chemicals & Pharma (P) Ltd. V Biological E. Ltd. & Others**, (2000) 3 SCC 269; **N. Rangachari V Bharat Sanchar Nigam Ltd.**, (2007) 5 SCC 108; **Nipam Kotwal & Ors v. M/s Dominos Printech India Pvt. Ltd.**, (2007) SCC OnLine Del 156 and **NSIC Ltd. V Harmeet Singh Paintal and Another**, (2010) 3 SCC 330.

9. Section 138 of the NI Act reads 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 provisions of this Act, be punished with imprisonment for [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,²⁰ [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.

10. The Supreme Court in *Kusum Ingots & Alloys Ltd. V Pennar Peterson Securities Ltd. & Others*, (2000) 2 SCC 745 laid down the following ingredients for taking cognizance under section 138 of the NI Act:-

(i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability

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



(iii) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank

(iv) The payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(v) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course within 15 days of the receipt of the said notice

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice.

11. It is reflecting from the complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018) that Lokesh Thakkar and Amandeep Singh were known to each other since 2009 and Lokesh Thakkar had decided to invest in the project of Amandeep Singh. Amandeep Singh also assured Lokesh Thakkar of windfall gains on investment. Lokesh Thakkar, during the period with effect from 2009 to 2017, had paid Rs. 10 crores 40 lakhs through cash and bank transfer to Amandeep Singh. Amandeep Singh has returned back Rs.1 crore 28 lakhs to Lokesh Thakkar through bank transfer and by cash.



Amandeep Singh did not return Rs. 9 crores 12 lakhs along with interest and share of Lokesh Thakkar in the profits. Subsequently, financial dispute is stated to have arisen between Lokesh Thakkar and Amandeep Singh. Amandeep Singh, as Director of M/s Shalini Securities Private Limited, issued 11 cheques, each amounting to Rs.50 lakhs, in the month of April 2018 which were got dishonored on the ground of “Funds Insufficient” vide cheque return memos dated 24.04.2018. Lokesh Thakkar has made necessary allegations and averments against M/s Shalini Securities Private Limited and Amandeep Singh in the complaint. It is also apparent from the record that Amandeep Singh had resigned as Director from M/s Shalini Securities Private Limited in the year 2012 with effect from 05.11.2012 i.e. long before the issuance of cheques in question and the Amandeep Singh after tendering his resignation to M/s Shalini Securities Private Limited ceased to be a person who was responsible for the affairs of M/s Shalini Securities Private Limited. However, it is also pleaded and alleged by Lokesh Thakkar that the cheques in question were delivered/handed over to him by Amandeep Singh. It is for the Amandeep Singh to explain how he came into the



possession of the cheques of the account of M/s Shalini Securities Private Limited even after he resigned as Director with effect from 05.11.2012. It is also apparent from the perusal cheques in question that these cheques were issued from the account maintained on behalf of M/s Shalini Securities Private Limited and were signed by Amandeep Singh. It is for M/s Shalini Securities Private Limited and Amandeep Singh to prove during the evidence how the cheques in question came into possession of Amandeep Singh and under what circumstances these cheques were issued in favour of Lokesh Thakkar and these issues cannot be decided without evidence. At this stage, it cannot be said that Amandeep Singh is not liable to pay the cheque amounts and accordingly the impugned order is bad in respect of Amandeep Singh as well as M/s Shalini Securities Private Limited. It also cannot be said that the cheques in question were not issued towards any legally enforceable debt and were without any liability. At this stage, it also cannot be said that the Amandeep Singh had signed the cheques in question without any authority although he had resigned as Director from M/s Shalini Securities Private Limited in the year 2012. The important issue which is to be decided by the trial



court is that under what circumstances Amandeep Singh had issued the cheques in question in favour of Lokesh Thakkar particularly when he had resigned as Director from the M/s Shalini Securities Private Limited in the year 2012. M/s Shalini Securities Private Limited and Amandeep Singh at this stage cannot be allowed to take advantage of their acts committed by issuance of the cheques in question in favour of Lokesh Thakkar. Lokesh Thakkar is appearing to be the holder of cheques in question and is entitled for presumption under section 139 of NI Act. It is for M/s Shalini Securities Private Limited to establish on record by leading probable defence that the cheques in question were not issued towards discharge of legally enforceable debt and are not valid instruments in the eyes of law as Amandeep Singh was not having any authority to sign and issue the cheques in question. The issues raised in the present complaint bearing CC no.37/1/2018 (new Ct. no.3062/2018) require evidence and cannot be decided in the present petitions.

12. The arguments advanced on behalf of M/s Shalini Securities Private Limited and Amandeep Singh and case laws referred in their written submissions are perused and considered in the right



perspective, but do not provide any help to the pleas and contentions of M/s Shalini Securities Private Limited and Amandeep Singh.

13. The counsel for M/s Shalini Securities Private Limited referred the judgment passed by the Supreme Court in **Anita Malhotra V Apparel Export Promotion Council and Another** (2012) 1 SCC 520 wherein it was observed that the criminal proceedings for the dishonour of the cheques in question against the non-executive ex-Director who has resigned from the company six years back are liable to be quashed. However, in the present case, the cheques in question were issued by Amandeep Singh from the account of M/s Shalini Securities Private Limited. The issue whether there is any liability against M/s Shalini Securities Private Limited and Amandeep Singh qua the cheques in question can only be decided by evidence during the trial.

14. Accordingly, the present petitions are dismissed with the cost of Rs.25,000/- (Rupees Twenty Five Thousand only) each on M/s Shalini Securities Private Limited and Amandeep Singh which is to be paid to Lokesh Thakkar before the trial court on the next date of hearing.



15. The present petitions along with pending applications are accordingly disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 14, 2023

j/am