

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

+ CRL.L.P. No.283/2011

Date of Decision : 12.12.2011

BRM LEASE & CREDIT LIMITED Petitioner

Through: Mr.Ruchir Batra,
Advocate

Versus

JOGINDER SINGH

..... Respondent

Through: Nemo

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J. (oral)

1. This is a leave to appeal filed by the petitioner against the judgment and order dated 21.04.2011 passed by Ms.Bhavna Kalia, learned M.M., Patiala House Courts, Delhi, whereby she had acquitted the respondent in a complaint case titled M/s BRM Lease & Credit Vs.

Joginder Singh for an offence u/s 138 of the Negotiable Instruments Act.

2. Briefly stated, the facts of the case are that in October, 2003, the respondent entered into a lease-cum-hypothecation agreement with the petitioner and took an amount of ₹83,000/- repayable in 24 installments of ₹4535/- each. The amount was taken for the purpose of purchase of a vehicle Tata Sumo. The vehicle was hypothecated with the petitioner.
3. On 11.10.2004 the Tata Sumo is alleged to have met with an accident and the repair cost of the vehicle itself was assessed by the surveyor to be an amount of ₹94,590/-. The respondent/accused never got it repaired and after making payment of 11 installments, he stopped paying the installments to the petitioners.
4. On 13.06.2006 after repeated demands the respondent issued a cheque for a sum of ₹87,000/- which was allegedly dishonored on 14.06.2006 on account of 'insufficient funds'. The petitioner issued a legal notice on 19.06.2006 and on 27.07.2006

petitioner filed the complaint against the respondent u/s 138 of the Negotiable Instruments Act.

5. The petitioner produced the evidence in support of his case and proved the documents. A notice u/s 138 of the Negotiable Instruments Act was given to the respondent/accused on 28.08.2008 and the petitioner in support of its case examined CW-1 Brij Mohan Wadhwa and he proved the documents cash receipts Ex.CW-1/D1, (also numbered Ex.P1), CW-1/D2 photocopy of the statement of account etc. After examining himself as a sole witness in support of the complaint, the petitioner closed his evidence in affirmative.
6. Statement of the accused was recorded who denied that any amount was due and payable. On the contrary, he took the plea that prior to the accident he made a payment of ₹45,000/- on 01.02.2006 after selling his house apart from 11 installments. This amount of ₹45,000/- was treated as a full and final settlement on behalf of the balance amount payable to

the petitioner and, therefore, there was no liability to be discharged by him. The respondent/accused also examined Chandra Prakash as DW-1 in support of his defence who was also cross-examined.

7. The learned Magistrate after hearing arguments arrived at a conclusion that the respondent/accused has been able to dislodge the presumption of the petitioner that the cheque for a sum of ₹87,202/- was issued for the payment of any debt or liability.
8. It was also disbelieved by the learned Magistrate that cheque of ₹45,000/- was issued on account of the payment. On the contrary, learned Magistrate came to the conclusion that the petitioner had accepted the payment of cheque amount of ₹45,000/- towards the full and final settlement and issued 'No Objection Certificate', inasmuch as hypothecation of the vehicle was discharged.
9. It was also observed that in a regular course of business it is very unlikely that a financier would terminate the hypothecation agreement without

recovering the entire loan amount. Thus, on the basis of preponderance of probabilities the learned Magistrate observed that since the presumption u/s 139 is rebutted by the respondent, therefore, the respondent/accused was acquitted.

10. The learned counsel for the petitioner has sought leave to contend that the learned trial Court has committed a gross error in not appreciating the evidence in correct perspective inasmuch as firstly the cheque for a sum of ₹45,000/- was issued on account and the receipt in this regard was issued by him; secondly, the hypothecation of the vehicle was terminated only with a view to permit the respondent/accused to sell the vehicle, so that he is able to retrieve some money by selling the vehicle, which was in a damaged condition and he could make the payment to the petitioner, as he had decided not to get it repaired. It was contended that in cases where hypothecation stands terminated, NOC is also required to be issued and in the instant case this was

not done, therefore, in the absence of such a certificate in possession of the respondent it was not open to the learned Court to have acquitted the respondent.

11. I have heard the learned counsel for the petitioner and carefully considered the statements made by him. I do not agree with the contentions of the learned counsel for the petitioner on the ground that the learned Magistrate was absolutely right in observing that as the amount of ₹45,000/- was paid to the petitioner notwithstanding the fact that the receipt may show that it was on account but as the petitioner had terminated the hypothecation agreement, this clearly showed that this amount of ₹45,000/- was accepted by the petitioner towards the full and final settlement of his entire claim.
12. The plea of the petitioner that NOC was not issued is inconsequential. Even if the NOC is issued normally by virtue of a common course of business dealings only when the complete liability is cleared it is unheard that

a financier would terminate the hypothecation without retrieving the entire loan amount along with interest payable by the borrower. Moreover, a case u/s 138 being a criminal case the quantum of proof which is required to be proved by a party in order to procure the conviction should be beyond 'reasonable doubt'. No doubt, in a case u/s 138 by virtue of Section 139 there is a presumption of the cheque having been issued for a legally payable debt or liability but this is rebuttable presumption and has been rebutted by the respondent/accused in a sufficient measure, not only by way of his own statement, but also by producing one defence witness who has proved the case of the respondent. By this evidence once the presumption gets dislodged it is, therefore, incumbent on the petitioner to have rebutted this presumption either by entering into witness box afresh or by producing any other evidence which he has not chosen to do, despite that he had closed his evidence in affirmative only.

13. I feel that the judgment and the order passed by the learned Magistrate is perfectly legal and on account of preponderance of probabilities when there are two views possible of the benefit, same has to be necessarily given to the accused which the learned Magistrate has done in the instant case. I, therefore, find absolutely no ground to grant the leave to the petitioner to assail the order of acquittal passed by the learned Magistrate.
14. For the reasons mentioned above, the leave to appeal filed by the petitioner is accordingly dismissed.
15. File be consigned to Record Room.

V.K. SHALI, J.

DECEMBER 12, 2011
mr