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

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CRL.L.P. 220/2010

KULDEEP BATTA

..... Appellant

Through Mr. Shailendra Babbar, Advocate

versus

TRILOK KAPOOR

..... Respondent

Through Mr. Tanmay Mahta, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

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**09.01.2012**

1. By the present leave to appeal petition, the Petitioner seeks to set aside the judgment dated 8<sup>th</sup> April, 2010 passed by the learned Metropolitan Magistrate acquitting the Respondents/Accused of the charges under Section 138 of Negotiable Instruments Act(in short the 'NI Act').

2. Learned counsel for the Petitioner contends that the Petitioner had extended a friendly loan of Rs.45,000/- to the Respondent on 11<sup>th</sup> March, 2008 to meet his urgent requirement for a period of four months. The Respondent was to pay an interest @ 24 per cent per annum on the said amount against the execution of promissory note and a receipt. It is stated that the accused in order to discharge this liability issued a postdated cheque of Rs.48,600/- drawn at Vaish Cooperative Aadarsh Bank Ltd. Gandhi Nagar, Delhi. On presentation of the same, the cheque

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was returned by the Bank vide memo dated 16<sup>th</sup> July, 2008 for the reasons of 'insufficiency of funds'. Thereafter, the Petitioner filed a complaint against the Respondent before the learned Metropolitan Magistrate. It is contended that the impugned order is perverse and illegal as the learned Judge failed to appreciate the facts of the case and has passed the decision in utmost haste and in a mechanical manner. Learned trial court has failed to appreciate that the accused had not led any positive evidence to rebut the presumptions available to the Complainant under Section 139 of N.I. Act. It has been admitted by the accused/Respondent that the cheque was issued to the Complainant duly signed along with one other cheque whose number he could not tell. Leaned Judge failed to appreciate that apart from his sole testimony the accused has not examined any independent person to fortify his stand. It is further contended that learned Trial court without any evidence held that in order to lend money to Respondent the Complainant was required to have a license as per Section 3 of Punjab Registration of Money Lenders Act, 1938. Learned Trial Court proceeded to hold that the transaction between the Petitioner and the Respondent was illegal per se for want to license. Further, as per the definition of loan under Section 2 of the said Act, this transaction was not a loan. Hence the same is not covered under the Act. It is, therefore, contended that the impugned judgment is based upon conjectures and surmises and is liable to be set aside.

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3. Per contra, learned counsel for the Respondent contends that there is no illegality in the impugned order as alleged by the Petitioner. Learned Trial Judge applied his judicious mind as well appreciated all the facts of the case and after due consideration to all the applicable provisions acquitted the Respondent. The Petitioner is a habitual money lender who without holding any license for the same carries on this business and as he was charging a heavy interest the Respondent never took any loan from him. Further, the Petitioner has not been able to prove that how the Respondent was known to him and on what basis he had extended the loan to him. It is stated that the Respondent had given two blank signed cheques to the Petitioner for helping him to get a loan from any bank and he also signed two blank papers. These cheques were later filled by the Petitioner and the present case has been frivolously filed on the basis of the same. Learned counsel has placed reliance on *Rangappa vs. Sri Mohan, (2010) 11 SCC 441* to contend that where an accused has to rebut the presumption under Section 139 of NI Act, the standard of proof for the same is preponderance of probabilities and he is not expected to discharge the burden by proof beyond reasonable doubt. As regards the promissory note, which is allegedly executed in favour of Petitioner, has not been executed by the Respondent.

4. I have heard learned counsels for the parties and perused the record.

5. Briefly the case of the Petitioner is that the Respondent had taken a friendly

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loan of Rs. 45,000/- from the Petitioner on 11<sup>th</sup> March, 2008 for a period of four months carrying an interest @ 24 % per annum against the execution of demand promissory note and a receipt. The accused/ Respondent herein issued a post dated cheque bearing No. 925371 dated 12<sup>th</sup> July, 2008 for a sum of Rs.48,600/- drawn on Vaish Cooperative Adarsh Bank Ltd., Gandhi Nagar, New Delhi. On its presentation, the aforesaid cheque was returned by the Respondent's Bank vide memo dated 16<sup>th</sup> July, 2008 due to 'insufficiency of funds'. It is alleged that despite several notices the Respondent did not fulfill his liability and therefore the Petitioner filed a complaint case under Section 138 NI Act before the learned Metropolitan Magistrate. Learned Metropolitan Magistrate after appreciating the evidence placed before him vide judgment dated 8<sup>th</sup> April, 2010 acquitted the Respondent. This order of acquittal is impugned in the present petition.

6. It may be noted that the Respondent in his examination has stated that he had met the Petitioner through one Sanjeev Kapoor one of his friends and the cheque in question along with other cheque was handed over to the Petitioner on the assurance given by him to help the Respondent to get a loan from any bank. He has further stated that the Complainant/Petitioner took signatures on two blank papers. Also he had given Rs.1500/- to the Petitioner and he did not issue any receipt for the said amount. This witness has stated that he had lodged a complaint to SHO, PS Vivek Vihar regarding forgery and keeping unauthorisedly the cheques

and the documents against the Petitioner. It is relevant to note that this witness has not denied the fact that he had handed over two blank cheques which were duly signed by him. He has even admitted his signatures on the cheque in question but has denied the fact that the said cheque was issued in discharge of any liability towards the Petitioner. The reason given to hand over the cheque is for getting a loan granted from some bank and not from the Petitioner himself.

7. It would be relevant to note that the Petitioner in his testimony in reply to the Court question has answered he cannot say as to who filled the entries in the cheque in question. He has also stated that the Respondent had given blank promissory notes and the receipt. However he had put his signatures on the said documents in his presence.

8. A combined reading of the statements of the Petitioner and the Respondent clearly shows that the alleged loan extended to the Respondent cannot be a friendly loan and the Petitioner is a habitual money lender who holds no license for the same. The Petitioner has accepted that he has also given loan to other people and has also filed cases against them. The income tax return of Petitioner shows his annual taxable income to be around one lakh rupees and includes nothing in regard to the loans granted to the people or interest received thereon. Nothing material has been placed on record to prove that there was any liability of the Respondent against which the cheques were issued. In case under the N.I. Act the standard of

proof to rebut the presumption is only by preponderance of probability. In the present case, the defence of the Respondent is probable and the onus to rebut the presumption under Section 139 of NI Act has been discharged by the accused/Respondent.

9. In view of the facts and circumstances of the present case, I find that the view taken by the learned Trial Judge is plausible view which requires no interference by this Court. The petition is dismissed.

  
MUKTA GUPTA,J

JANUARY 09, 2012  
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