

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. L.P. No.187/2007

Date of Decision : 20.03.2012

KUMAR SHARE BROKERS LTD. Petitioner
Through: Mr.P.C. Shukla, Adv.

Versus

SANJIV DIWAN Respondent
Through: Mr. Rajat Joseph, Adv.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (Oral)

1. This is a leave to appeal filed by M/s.Kumar Share Brokers Ltd., against the judgment of acquittal dated 14.07.2007, by virtue of which the respondent was acquitted in respect of complaint filed by it under section 138 of Negotiable Instruments Act.
2. The petitioner feeling aggrieved has filed the present petition, seeking leave to appeal. Notice of this leave to

appeal was issued on 12.09.2007 but till date no leave to appeal has been granted.

3. I have heard the learned counsel for the petitioner on the question of leave to appeal and also gone through the record.
4. Briefly, stated the facts of the present case are that the petitioner is a private limited company incorporated under Indian Companies Act and doing the business of sale and purchase of shares. Sh.Pankaj Chauhan is an employee of the petitioner-company, who had filed a complaint against the respondent, alleging that he had issued a cheque bearing No.860908, dated 02.03.2001 for a sum of Rs.75,000/- drawn on Corporation Bank, Laxmi Nagar Branch, which on presentation was dishonored with the remarks "*payment stopped by the drawer*".
5. The petitioner is alleged to have received the cheque from its banker on 30.08.2001. A legal notice dated

12.09.2001 is purported to have been issued under a registered AD and UPC, which is stated to have been received by the respondent. Since the respondent is alleged to have not made the payment, a complaint against the respondent was filed under Section 138 of the N.I. Act. Notice under Section 251 Cr.P.C. was served on the respondent to which he claimed trial. Thereafter, the petitioner examined five witnesses CW-1 to CW-5. Sh.Pankaj Chauhan/CW-1 was the witness, who proved Resolution of Board of Directors as Ex.CW-1/1. The documents, i.e., the cheque, bank memo, legal notice, postal receipt and UPC receipt, returned registered envelop and AD card were exhibited as CW-1/2 to CW-1/6. Sh.Ramesh Arora/CW-2 is the Managing Director of the petitioner-company. Sh.Chander Pal/CW-3 is the Assistant Postal Officer. Sh.Mandeep Singh/CW-4 is the Officer of the Corporation Bank, who proved the statement of account of complainant bank as Ex.CW-4/A

and computerized cheque returned memo as Ex.CW-4/2. Sh.Abhijeet Mehrotra is the Assistant Manager of HDFC Bank, who proved memo dated 29.08.2001 as Ex.CW-5/1, purported to have been issued by their Bank to the petitioner.

6. After recording of the statement of the accused in defence evidence, the accused/respondent examined himself as DW-1 and proved that the petitioner had earlier taken a loan of Rs.7,20,000/- from the respondent and balance sheet Ex.DW-1/3 in which the said amount has been reflected as a loan amount by the respondent to the petitioner-company was also proved.
7. The learned trial Court after hearing the arguments acquitted the respondent mainly on two grounds. The first ground was that the petitioner is alleged to have made interpolation on the cheque in question. It was noted that the word "*stop payment*" was erased and cheque was presented for the second time. This gave

rise to a doubt with regard to the genuineness of the presentation of the cheque and the plea of the respondent was believed that the cheque was issued as a security for the purchase of shares in which the petitioner-company was dealing.

8. The second ground on which the respondent was acquitted was that the defence of the respondent was found to be plausible. The defence, which was taken by the respondent, was that although the cheque, in question, was issued to the petitioner but this was by way of loan to the petitioner and after issuance of the cheque, the respondent had a second thought of advancing the money to the petitioner by way of loan as the earlier loan amounting to Rs.7,20,000/- was still due and outstanding from the petitioner. No evidence on record was brought by the petitioner to rebut this.
9. The petitioner feeling aggrieved by this reasoning of acquittal of the respondent for an offence under Section

138 of N.I. Act has chosen to file the present leave to appeal.

10. I have heard the learned counsel for the parties and gone through the record.
11. I feel that there is absolutely no ground on the basis of which the leave to appeal can be granted to the petitioner. The reasons, given by the learned trial Court for acquittal, are very cogent and genuine. The first reasoning is that the cheque, on presentation by the petitioner, was received back initially with the word "*stop payment*". The cheque itself has been exhibited and a physical and visual inspection of cheque would clearly show that the petitioner either itself or through its employees has erased the word "*stop payment*" and tried to present the cheque again. In case, the petitioner has gone to the extent of interpolating the cheque, the conduct of the petitioner-company becomes doubtful and so does its credibility. Once the cheque is

presented to the bank and is received back with an endorsement 'stop payment', there is absolutely no occasion for the drawer for whose benefit the cheque was issued to present the cheque again.

12. In the instant case, there is no doubt that the cheque was presented twice and the demand notice for payment of the outstanding amount of cheque has been issued on the basis of the second presentation. Therefore, this raises a doubt in the genuineness of the transaction itself and cheque cannot be said to be issued by the respondent for consideration of the purchase of shares. Moreover, the petitioner has not adduced any evidence to show as to what number of shares and of which company, were purchased by the respondent for which the consideration was paid.
13. The second ground is that the cheque is purported to have been issued by the respondent by way of advancing a loan but it has been stated by him by

entering into the witness box that although in the first instance he had issued the cheque to the petitioner by way of loan but he had a second thought with regard to permitting the petitioner to encash the cheque. This was on account of the fact that there was already an outstanding amount of Rs.7,20,000/- due and payable by the petitioner to the respondent. In this regard, the balance sheet as well as statement of the bank has been proved by the respondent. There is absolutely no reason to doubt the testimony of the respondent nor has the petitioner been able to demolish the testimony of the respondent. On the contrary, the conduct of the petitioner-company in scratching and manipulating or interpolating the cheque creates doubt in its story. In criminal matters, the accused cannot be convicted until and unless the guilt of the accused is proved beyond reasonable doubt. Same is the case here. The petitioner has not been able to establish the guilt of the

respondent beyond any reasonable doubt and that has been the basis for acquittal of the respondent.

14. I find no good ground for grant of leave to appeal to the petitioner, in the light of the reasoning and the facts of the case. Accordingly, leave to appeal is dismissed.

V.K. SHALI, J.

March 20, 2012
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