$~16, 17 & 18

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

\+ (i) **CRL.L.P. 38/2013**

HITESH BHASIN ..... Petitioner
Through: Mr. Rajeev Kapoor, Advocate

versus

AMARJEET SINGH SURI ..... Respondent
Through: Nemo.

\+ (ii) **CRL.L.P. 39/2013**

HITESH BHASIN ..... Petitioner
Through: Mr. Rajeev Kapoor, Advocate

versus

AMARJEET SINGH SURI ..... Respondent
Through: Nemo.

\+ (iii) **CRL.L.P. 40/2013**

HITESH BHASIN ..... Petitioner
Through: Mr. Rajeev Kapoor, Advocate

versus

AMARJEET SINGH SURI ..... Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% **01.02.2013**

Crl.M.A. No.1252/2013 in Crl. L.P. No.38/2013 (u/S 482 Cr.P.C.)
Crl.M.A. No.1260/2013 in Crl. L.P. No.39/2013 (u/S 482 Cr.P.C.)

Crl.M.A. No.1261/2013 in Crl. L.P. No.40 /2013 (u/S 482 Cr.P.C.)

Dismissal of three complaints under Section 138 of the *Negotiable Instruments Act, 1881* vide order of 13th December, 2012 by the trial court is impugned in the above captioned three petitions. Not only the parties are same in the above captioned three petitions but even the subject matter is the same, except that in Crl. L.P. No.38/2013 the cheque amount is of ₹4lacs, whereas in the Crl. L.P. No. 39/2013 & Crl. L.P. No. 40/2013, the cheque amount is of ₹50,000/- each. The basis of acquittal and the grounds of challenge is identical in the above captioned three petitions, therefore, they were heard together and are being disposed of by this common order.

The issuance of cheques in question and their execution is not in dispute. The trial court has noted in the impugned judgment that the presumption against respondent/accused stands rebutted while holding as under:-

> *'It is important to note here that the claim of the complainant is based upon the agreement to sell which he entered with the accused and in lieu of which the cheque in question has been issued. No proof has been produced on record by the complainant showing the sale of property by the complaint to the accused except the photocopy of the undertaking given by the accused in the Police Station Inderpuri which the accused has been challenging since the very first date of his appearance, at the time of framing of notice and in his statement u/s 313 Cr.PC. r/w 281 Cr.PC. that the cheques have been got issued by the complainant claimed to have been got issued by the complainant under the pressure/ coercion.* ***Secondly****, the complainant claimed o have been in possession of the property since the year 1996 has also failed to*

show his title/ ownership upon the property except collaboration agreement relied upon by him. I would like to highlight the relevant paragraph i.e. Para No.8 of said agreement which shows that the complainant was not having the authority to deliver the possession of the floors to its prospective buyers before handing over the possession of ground floor and every payment mentioned there upon complete in all respect to the first party i.e Swarna Anand. Admittedly, the General Power of Attorney has been executed by Smt. Swarna Anand in favour of the complainant on 08.05.2003. Therefore, in view of the clause mentioned therein the collaboration agreement, the accused was not having authority to deliver the possession to any of its buyers prior to the execution of the General Power of Attorney. Execution of which implies fulfillment of terms and conditions of the collaboration agreement.'

On the aforesaid reasoning, trial court has concluded as under:-

'Now once the presumption of law has been rebutted by the accused the onus again shifted back upon the complainant. Now the presumption does not again come in favour of the complainant for his rescue and he has to stand on his own legs by conclusively establishing his case. In the instant case complainant failed to discharge his burden of proof by bringing any independent evidence on record to show the liability of accused with respect to cheque issued.'

To assail the impugned order, learned counsel for petitioner drew attention of this Court to letter of 23rd July, 2003 wherein respondent/accused had admitted the liability to pay the balance amount. Learned counsel for petitioner also relies upon *Statement of Accused* under Section 313 of the Cr.P.C. in paragraph No. 5 of the impugned

judgment, which reads as under:-

> *'5. In his statement u/s 313 Cr.P.C. r/w 281 Cr.P.C., accused denied having purchased any property from the complainant and stated that the same was purchased from one Sh. Anupam Narula whom he has paid Rs.6 to 7 Lacs. Accused further stated that he had no relation with the complainant. Accused further stated that complainant along with 10-11 person came to his house and beaten him following which everyone went to Police Station where accused was forced to issue 03 cheques, 2 cheques of Rs.50,000/- and one cheque of Rs.4 Lacs. Accused further stated that cheque of Rs.4 Lacs was taken as security and the same was recorded in the handwriting of complainant. Accused further stated that he has no knowledge as to how the complainant is connected with aforesaid property. Accused stated that the cheques were taken from him under coercion, pressure and the complainant has falsely implicated him. Accused further denied receiving of any legal demand notice from the complainant.'*

According to learned counsel for petitioner, since the liability stands admitted, therefore, the basis of the impugned judgment is rendered perverse, as Section 58 of *The Indian Evidence Act, 1872* specifically mandates that facts admitted need not be proved. Thus, setting aside of the impugned judgment is prayed for.

Upon hearing, learned counsel for petitioner and on perusal of impugned judgment and the material on record, I find that in the so-called respondent's *letter of admission of 23rd July, 2003*, though it is noted that balance payment of ₹8,13,000/- is to be made to petitioner herein within two months by part payment through post dated three cheques and, out of which two cheques were of ₹50,000/- each and the third cheque was of

₹40,000/-, but there is no reference of the cheques in question in the aforesaid *letter of admission.* Moreover, it cannot be lost sight of that this letter is written to the local SHO and in what context it was written, has been expressed by respondent/accused in his statement under Section 313 of the Cr.P.C., as referred to above. When respondent/accused asserts that the so-called *letter of admission* was obtained from him under coercion and pressure, then there is no reason to disbelieve him.

It is a settled legal position that even admissions can be explained or shown to be wrong. In this regard Apex Court's decision in *S.R.Srinivasa & Ors. v. S.Padmavathamma* JT 2010(4) SC 296 can be referred with advantage. Petitioner at his own risk has implicitly relied upon *letter of admission of 23rd July, 2003* and has chosen not to prove the *Agreement to Sell of 7th November, 2002 (Annexure A-3),* which purportedly contains an admission of 1st December, 2002 of respondent/ accused of having adjusted payment of ₹1,20,000/- in respect of property referred to therein, whose possession has been handed over by petitioner to respondent/accused and it was disclosed at the hearing that petitioner has already filed a suit for possession in respect of premises, as mentioned in the aforesaid Agreement to Sell of 7th November, 2002 *(Annexure A-3).*

In view of the aforesaid, I find no perversity or illegality in the impugned judgment and leave to appeal is hereby refused. Needless to say, that any observation made in these matters or in the impugned order regarding *Agreement to Sell of 7th November, 2002 (Annexure A-3)* or the property dispute, would not be construed as an expression on merits regarding the title of petitioner to the suit property in the pending suit for

possession.

With aforesaid observations, afore-captioned three petitions and the applications are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 01, 2013
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