

\$~3

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. 41/2013

MITHUN SECURITIES PVT. LTD.

..... Petitioner

Through Mr. Shambhu Nath Singh, Adv.

versus

STATE GOVT. OF NCT OF DELHI & ORS.

..... Respondent

Through Mr. Navin Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

%

28.02.2013

By this order I shall dispose of the present appeal filed by the petitioner/ Complainant seeking grant of leave to appeal and setting aside of impugned judgment/ order of acquittal dated 23.11.2012 passed by Shri Satvir Singh Lamba, MM- 01 (NI ACT), Tis Hazari Courts, Delhi, in the complaint case no. 2681/ 1 titled as M/s Mithun Securities Pvt. Ltd. Vs. Aro Bro Enterprises Pvt ltd and others.

Arguing the present petition, counsel for the petitioner submits that once there is an admission on the part of the accused respondent no.3 that he had issued the dishonoured cheque, then in

terms of Section 118 of the Negotiable Instruments Act, the presumption arises in favour of the petitioner/complainant that the said cheque was issued for consideration. Counsel further submits that the respondent had failed to lead any cogent evidence to rebut the said presumption which arises in favour of the petitioner on account of said admission by the respondent having issued the cheque in question in favour of the petitioner. Counsel also submits that the petitioner has proved on record a certificate dated 5.8.98 as Ex. CW1/C, wherein the accused respondent had admitted that he had issued a cheque for a sum of Rs. 4.50 lacs in favour of the petitioner/complainant on account of Mr. V.B. Sharma. Counsel thus states that the said certificate issued by the respondent further amplifies that the said cheque was issued by the respondent in respect of *inter se* transaction between the said broker V.B. Sharma on the one hand and the respondent on the other. Counsel further submits that the learned trial court has not also appreciated that the respondent no.3 had admitted his liability towards Mr. V.B. Sharma and therefore also the presumption even for other liability arises in favour of the petitioner in terms of Section 139 of the Negotiable Instrument Act.

I have heard learned counsel for the petitioner and given my anxious consideration to the arguments advance by him.

It is a settled legal position that under the scheme of Negotiable Instruments Act, 1881 the statutory presumption has been created in favour of the holder of the Negotiable Instrument. Section 139 requires that the court shall presume liability of the drawer of the cheque for the amount for which the cheque is drawn and similarly, under Section 118, unless contrary is proved, it is to be presumed that the negotiable instrument including a cheque has been drawn for consideration. Therefore, the presumptions which can be drawn under Section 118 and Section 139 of the Negotiable Instruments Act are rebuttable presumptions and if the accused succeeds in rebutting such presumptions then the onus would again shift on the complainant to dispel the doubts and prove beyond equitable doubt that the cheques in question were received by the complainant against a legally enforceable debt or liability. Learned Magistrate on appreciation of the evidence has referred to the deposition of CW-1 who admitted in his cross-examination that the complainant company had no business transaction with accused company and no document was executed by

the accused with his signatures to the complainant company regarding the business transactions. In paragraph 25 of the impugned judgment the learned Trial Court also observed that from the material on record it is established that the alleged transaction of the complainant company was in the name of V.B. Sharma only but the complainant failed to file any separate statement of account of the accused company which may show transactions entered into between the petitioner through Mr. V.B. Sharma, the alleged sub-broker and the respondent accused. Learned Trial Court further observed that all the alleged transactions were only in the account of Shri V.B. Sharma and the cheques were issued by the accused No. 2 from the account of accused No.1 company for the liability of Mr. V.B. Sharma but that was not the case set up by the petitioner complainant in their complaint case. Relevant paras 25 to 27 of the impugned judgment are reproduced as under:-

“25. From the material on record it is established that the alleged transaction of the complainant company was in the name of Mr. V.B. Sharma CC No.2681/1 Page No.11/14only. The complainant lays the foundation of his case on the ground that the accused approached him with desire of investing and trading in securities and the cheque in question was issued by the accused towards the aforesaid part liability. The complainant failed to file any separate statement of account of the accused company or the accused no.2 company which may show the transactions qua the

accused as alleged by the complainant. However, AR of the complainant admitted that the complainant company is maintaining all the accounts of its customers. By the cross examination of the CW1, it is brought on record that the accused has not given any letter or written authority to the complainant for the alleged business transactions at any point of time. All the alleged transactions were only in the account of Shri V.B. Sharma. The complainant also failed to prove on record that the accused and Shri V.B. Sharma were jointly doing the business of sale and purchase of shares. The issuance of the Ex.CW1/C is not disputed but the facts and circumstances regarding the issuance of the cheque are differently elaborated by the complainant and the accused. CW1 had also admitted in his cross examination that there is no noting in the ledger of the complainant regarding the receiving of the cheque from the accused company. AR of the complainant also admitted that no receipt were used to be issued by the complainant company in respect of the amount received from the customers.

26. From the entire testimonies on record, it is apparent that the cheque in question was issued by the accused no.2 from the account of accused no.1 company for the liability of Mr. V.B. Sharma but that is not the case of the complainant. The complainant cannot be permitted to improve his case after the CC No.2681/1 Page No.12/14 depositions of witnesses. Neither of the parties have examined Mr. V.B. Sharma as witness for the reasons best known to them. Hence, in the present case, the complainant failed to prove on record that the cheque in question was issued to him by the accused in order to discharge his liability as alleged in the present case.

27. It is well settled law that in a criminal case, prosecution has to stand upon its own legs and it cannot take the advantage of the fact that accused has not led cogent defence evidence or accused is having a weak defence. The defence raised by the accused along with the evidence

(2)

placed on record are cogent proof in support of the defence version which established that the cheque in question was not issued by the accused towards the discharge of liability as alleged by the complainant and at the same time it weakens the foundation fabrics of the present complaint case. The suspicious circumstances rising in the present case will certainly give advantage to the accused. Hence, in the present case, the accused raises a cogent suspicious circumstances in the version of the complainant which belies the foundation of the present complaint case and same is sufficient to rebutt the presumption that the cheque in question was not for discharging the legal liability.”

After having gone through the impugned order passed by the learned Magistrate this Court finds that the same does not suffer from any kind of illegality or perversity and in fact the Court has passed an eloquent order after dealing satisfactorily with the contentions raised by the petitioner complainant. This Court do not find any merit in the contention raised by the counsel for the petitioner that it was for the respondent to have examined Mr. V.B. Sharma to rebut the presumptions arising in favour of the petitioner under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881, as to the exact nature of transaction and to prove the existence of any debt or other liability. If the presumptions in favour of the complainant under Sections 118 and Section 139 of the Negotiable Instrument Act are successfully rebutted

by the accused then the onus would shift on the complainant to dispel the doubts raised by the accused so as to prove that the cheques were received by the complainant against a legally enforceable debt or liability.

There is no merit in the present petition. Hence the petitioner is not entitled to grant of leave to appeal to challenge the order dated 23.11.2012. The same is accordingly dismissed.



KAILASH GAMBHIR, J

FEBRUARY 28, 2013

mg/rkr