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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 27.04.2015

% Judgment delivered on: /4 .05.2015

+ CRL.L.P. 708/2014

RAJESH BANSAL Petitioner

Through: Mr. Kshitij Sharda, Advocate.

versus

AMIT SINGHAL Respondent

Through: Mr. Aman Bhalla, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. After hearing learned counsel, leave granted.
2. Let the appeal be registered and numbered.

Crl.A. No. 601 /2015 (to be registered and numbered)

3. I heard learned counsel finally at the admission stage with their consent and reserved judgment. Accordingly, I now proceed to dispose of the appeal.

4. The present appeal is directed against the judgment dated 15.09.2014 passed in complaint No. 95/2012, whereby the learned Metropolitan

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Magistrate, Karkardooma Courts, Delhi, has acquitted the respondent-accused of the offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

5. The case of the appellant/complainant, as emerging from the complaint and the evidence led by the complainant, is that the complainant had invested Rs.1 Lakh in the business of one Sh. Suresh Chandra Goyal and the accused. The accused, in order to repay the amount of Rs. 1 Lakh, issued the two cheques in question, i.e. Ex. CW-1/1 and CW-1/2 of Rs.50,000/- each dated 15.04.2012 and 15.05.2012 respectively, while executing a Memorandum of Understanding (MOU) dated 26.06.2011 (Ex.CW-1/3). The MOU was a tripartite document executed by the appellant/claimant, the accused and Sh. Suresh Chandra Goyal. The relevant extract of the MOU (Ex.CW-1/3), *inter alia*, reads as follows:

“.....
and whereas the Third Party Sh. Suresh Chandra Goyal has invested a sum of Rs. 1,00,000.00 (Rs. One Lakhs only) on 9th Sept, 2011 via bank transfer from the account of Second party Sh. Rajesh Bansal by way of partnership on 50-50% basis. The Partnership was broken by way of mutual consent in first week of Dec 2010.

and whereas both the parties agreed that First party will return full amount of Rs. 1,00,000/- (Rs. One Lakhs only) to Second Party Sh. Rajesh Bansal in Two installment of Rs. 50,000.00 (Rs. Fifty thousand only) by way of two monthly cheque for October 2011 and November 2011 Second party Suresh Chandra Goyal will return all security cheque drawn in favour of second party, if any. It is also agreed upon by all the parties that interest @ 1.5% per month will be charged if there is any delay in getting the cheques cleared by the first party.”

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6. The complainant claimed that the aforesaid cheques (Ex.CW1/1 and CW1/2) were presented for payment since the accused failed to make payment of the two installments of Rs.50,000/- each in terms of the MOU (Ex.CW-1/3), and these cheques were dishonoured upon presentation on account of insufficient funds in the account of the accused. Consequently, the complainant issued a legal notice dated 04.08.2012 (Ex.CW-1/6) under Section 138 of the NI Act. Since the accused failed to make payment, the complaint was preferred. The accused admitted issuing the cheques in question (Ex.CW-1/1 & CW-1/2) to the complainant. However, he claimed that the same had been issued as security at the instance of Sh. Suresh Chandra Goyal. He denied owing any liability towards the complainant.

7. The submission of learned counsel for the appellant is that the learned Magistrate, while acquitting the accused, has given two reasons in the impugned judgment. The first is that it was not clear whether the complainant himself had given the sum of Rs.1 Lakh to the accused, or had given the said amount through Sh. Suresh Chandra Goyal. The complainant had admitted in his cross-examination that it was Sh. Suresh Chandra Goyal, who was liable to pay the money to him (the complainant). The learned Magistrate held that *"therefore, he has admitted that the accused did not have any liability or debt towards him"*. Secondly, the learned Magistrate has held that the cheques in question were given as security cheques. Thus, a complaint under Section 138 of the NI Act is not maintainable in respect of these cheques.

8. In respect of the first reason, the submission of learned counsel for the appellant is that MOU (Ex.CW-1/3) itself reflects the debt owed by the

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accused, and the undertaking given by him that the same shall be returned in two monthly installments (in October 2011 and November 2011) of Rs.50,000/- each. Learned counsel submits that in the face of the acknowledgement of debt contained in the MOU (Ex.CW-1/3), the exercise undertaken by the learned Magistrate to ascertain whether, or not, the accused was indebted to the appellant, and to doubt the existence of the debt itself, is misdirected. It is submitted that it was not open to Magistrate to go behind the MOU (Ex.CW-1/3) and to make an inquiry as to whether, or not, the accused was indebted to the appellant/ complainant to the tune of Rs. 1 Lakh.

9. The appellant has also drawn the attention of the Court to the settlement reached between the parties in the course of the proceedings, which was recorded by the Court on 23.01.2013. On the said date the complainant appeared with his counsel and the accused also appeared with his counsel. The Court recorded that the matter had been settled between the parties, and proceeded to record the statements of the parties. The respondent accused in his statement (made without oath) stated that he is ready to settle the present matter with the complainant for a total sum of Rs. 1 Lakh in full & final settlement of the present case. He stated that he would pay the settlement amount in three installments, i.e. firstly, a sum of Rs.10,000/- on 23.03.2013; Rs.45,000/- on 23.03.2013, and; Rs.45,000/- on 23.04.2013. He states that he would abide by his promise and this statement was signed by the accused. The statement of the complainant was also recorded to the effect that he is ready to settle the present matter with the accused for a total sum of Rs.1 Lakh to be paid to him, as stated above. He

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stated that he did not have any other cheque of the accused with him. He further stated that on receiving the settlement amount, he would compound the present matter with the accused. This statement of the complainant/ appellant was also signed by him. The learned Magistrate adjourned the matter to 23.02.2013, which was the date fixed for payment of the first installment.

10. Learned counsel for the appellant submits that no payment was made by the accused, as promised, on 23.02.2013, and consequently, the matter was put up for defence evidence on 05.03.2013. However, on 05.03.2013, the accused made payment of a sum of Rs.10,000/- in cash to the complainant and the said payment was recorded in the order sheet. The matter was adjourned to 23.03.2013 for making further payment. However, on 23.03.2013 the accused stated that he is not in a position to make payment to the complainant. The matter was adjourned to 10.04.2013 to enable the accused to make payment. Once again, the accused did not make payment on the next date, i.e. 10.04.2013, and consequently, the matter was put up for defence on 12.04.2013.

11. Learned counsel for the appellant submits that in view of the said settlement arrived before the Court, wherein the accused had undertaken to make payment of Rs.1 Lakh to the complainant/ appellant, there was no occasion for the learned Magistrate to go behind the MOU (Ex.CW-1/3) and the said settlement recorded before the Court.

12. The further submission of learned counsel for the appellant is that the mere fact that the cheques in question (Ex. CW-1/1 & Ex.CW-1/2) were

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issued as security cheques in favour of the appellant/ complainant, in the facts & circumstances of the case, could not lead to the conclusion that the complaint under Section 138 of the NI Act was not maintainable. Learned counsel submits that the presumption under Sections 118 and 139 of the NI Act – that the cheques in question had been issued in discharge of a legally recoverable debt or other liability, was not dislodged by the accused in the present case.

13. On the other hand, learned counsel for the respondent has supported the impugned judgment. Learned counsel submits that the appellant could not establish that the accused was indebted to the appellant since, it was claimed by him, that primarily it was the responsibility of Sh. Suresh Chandra Goyal to make payment to him.

14. Learned counsel further submits that, admittedly, the cheques in question were given as security and therefore, dishonour of such security cheques could not be the subject matter for complaint under Section 138 of the NI Act. In this regard, he has placed reliance on the judgments taken note of in the impugned judgment, as well as on the decision of Supreme Court in *Vijay Vs. Laxman & Anr.*, (2013) 3 SCC 86.

15. The present appeal was heard along with another appeal preferred by Sh. Suresh Chandra Goyal against the same accused (arising out of Crl.L.P. No.706/2014), in more or less identical circumstances. The issues raised and arising in the present appeal, are identical with the issues raised and considered in the appeal of *Sh. Suresh Chandra Goyal* (arising out of Crl. L.P. No.706/2014 – against the judgment dated 15.09.2014 in complaint

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No.96/2012). In fact, the same learned Magistrate disposed of both the complaints on the same day.

16. In the judgment pronounced today in the appeal arising out of Crl.L.P. No.706/2014, this Court has disproved of the approach of the learned Magistrate in seeking to go behind the MOU (which was similarly executed between the appellant and the accused in the other case as well) to ascertain whether, or not, the debt was owed by the accused in favour of the complainant/ appellant. On the parity of reasoning, the approach of the learned Magistrate in dealing with the issues whether the accused was indebted to the appellant/ complainant in the sum of Rs.1 Lakh, in the present case, is rejected. The MOU (Ex.CW-1/3) clearly stated that the amount of Rs.1 Lakh had been transferred from the account of the complainant/appellant as an investment into the partnership business of the accused and Sh. Suresh Chandra Goyal. Upon the said partnership being broken, the liability to return the amount of Rs.1 Lakh to the complainant fell on, and was accepted and acknowledged by the accused. The accused undertook to pay the amount of Rs.1 Lakh in two installments of Rs.50,000/- each in October 2011 and November 2011. In the light of the Sections 91 & 92 of the Indian Evidence Act, it was not open to the learned Magistrate to go behind the MOU (Ex.CW-1/3) and to entertain, or examine the plea of the accused that he was not indebted to the complainant in the sum of Rs.1 Lakh, since that plea is contrary to the express terms of the MOU (Ex.CW-1/3). Such a plea was barred from being raised, or considered in the light of Sections 91 & 92 of the Indian Evidence Act.

17. Pertinently, the accused did not set up a defence falling within the two exceptions and three explanations to Section 91, or under Provisos 1 to 6 to Section 92 of the Evidence Act.

18. It is also pertinent to note that the accused entered into the settlement before the Court itself, agreeing to pay Rs.1 Lakh to the complainant. This was also the cheque amount. He not only agreed to the said liability, but discharged the said liability partly by making payment of Rs.10,000/- before the Court, to the appellant. This conduct of the accused is also a pointer to the fact that the accused admitted his liability owed towards the complainant/ appellant when he issued the cheques Ex.CW-1/1 and Ex.CW-1/2.

19. The aspect of the cheques in question being security cheques and whether, in this background, a complaint under Section 138 of the NI Act was maintainable upon dishonour of such security cheques has been considered in extenso in the appeal of **Suresh Chandra Goyal** (supra), and the submission of the accused that a complaint under Section 138 of the NI Act would not lie, has been rejected upon consideration of the facts and circumstances of the case. The same reasoning applies to the present case as well and, therefore, I do not consider it necessary to set out the same reasoning in the present judgment. The reasoning given in **Suresh Chandra Goyal** (supra) is adopted in the present case as well.

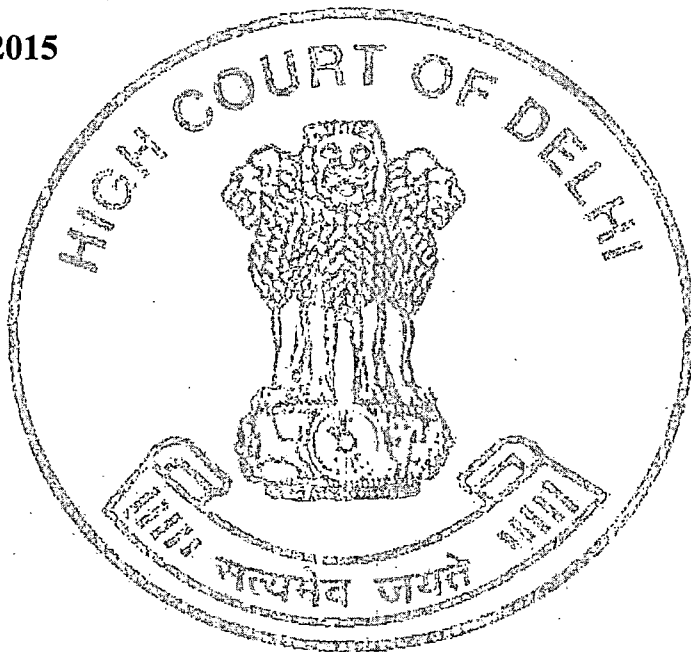
20. For the aforesaid reasons, it is clear that the learned Magistrate has returned findings of fact which are palpably wrong; its approach in dealing with the evidence is patently illegal; its decision is based on an erroneous

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view of the law, and; the impugned judgment, if sustained, would lead to grave miscarriage of justice. The impugned judgment is, consequently, set aside. The accused is convicted of the offence under Section 138 of the NI Act.


(VIPIN SANGHI)
JUDGE

MAY 14, 2015
B.S. Rohella



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

+ CRL.A. 601/2015

RAJESH BANSAL

..... Appellant

Through: Mr. Kshitij Sharda, Advocate

versus

AMIT SINGHAL

..... Respondent

Through: Ms. Aastha Dhawan, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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24.09.2015

CRL.M.A.14143/2015

Counsel appearing on behalf of Amit Singhal, the respondent herein, has handed over in Court today to counsel appearing on behalf of the appellant the following demand drafts:-

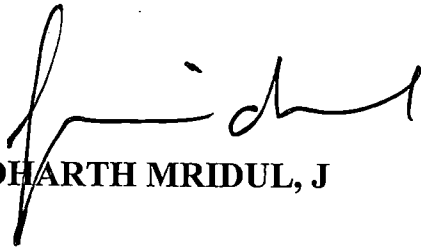
- (i) Demand draft bearing No.485518 dated 22.09.2015, drawn on Andhra Bank, Preet Vihar Branch, New Delhi in the sum of Rs.1,50,000/-.
- (ii) Demand draft bearing No.485523 dated 24.09.2015, drawn on Andhra Bank, Preet Vihar Branch, New Delhi in the sum of Rs.25,000/-.

Counsel appearing on behalf of the appellant states that the claim of the appellant, which was agitated in the present appeal, has been satisfied.

In view of the above, the present application is allowed. The non-bailable warrants issued against the respondent by the court of Metropolitan Magistrate, Karkardooma Courts, Delhi are cancelled.

The application is disposed of accordingly.

A copy of this order be given *dasti* under the signatures of Court Master.



SIDDHARTH MRIDUL, J

SEPTEMBER 24, 2015
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