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

\+ CRL.L.P. 655/2016 & Crl.M.A. No. 19419-20/2016

VIKAS GUPTA

..... Petitioner

Through: Mr. Vikram S Panwar and M. Vikas Walia, Adv.

versus

AJAY GOEL

..... Respondent

Through: Mr. Asim Naeem for R-1

\+ CRL.L.P. 656/2016

A-ONE INTERNATIONAL

..... Petitioner

Through: Mr. Vikram S Panwar and M. Vikas Walia, Adv.

versus

AJAY GOEL

..... Respondent

Through: Mr. Asim Naeem for R-1

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **23.02.2017**

Signature Not Verified
Digitally Signed
By:AMULYA

1. The aforesaid two leave petitions have been preferred by Vikas Gupta- i.e. Crl LP 655/2016 in his personal name and Crl LP 656/2016 in the name of his proprietary concern, A-One International against the same respondent/ accused Ajay Goel.

2. The leave petitions have been preferred against the same accused Ajay Goel. The judgment against which leave is sought in Crl LP 655/2016 was rendered on 10.08.2016 in CC No.3755/2016 preferred by Vikas Gupta, and the judgment against which leave is sought in Crl LP 656/2016 was rendered on 26.09.2016 in CC No.3754/2016 preferred by A-One International. Both the complaints were u/s 138 of Negotiable Instrument Act.

3. The defence set up by the accused in both the cases is the same and on this account both the leave petitions are being dealt with by this common order. I may also observe that there is a delay of 35 days in filing Crl LP 655/2016 and consequently the petitioner has preferred Crl. M.A. No. 19420/2016 to seek condonation of delay. However, since I have heard learned counsel and I am not inclined to grant leave, no useful purpose would be served in separately dealing with the said application.

4. The defence taken by the accused u/s 313 Cr PC was that he was not liable to pay the cheque amount in either of the two cases. He stated that he and his family started business with the complainant and his father in the year 2000. In 2006, the accused separated from the father of the complainant. Few blank cheques remained with the father of the complainant, which the accused demanded. The accused claimed that the father of the accused replied that the cheques had been misplaced and the

accused should take proper steps. Here itself I may observe that the accused confronted the complainant, who examined himself as CW-1, with the letter dated 16.09.2006 claimed to have been issued by the father of the petitioner/ complainant during his cross examination and the same was marked as Ex CW-1/D9. This letter insofar it is relevant read as follows:

> *"To*
>
> *M/s Brother Impex*
> *18A/12, IIIrd Floor, Doriwalan*
> *New Rohtak Road, Karol Bagh*
> *New Delhi-110 005*
>
> *Confirmation of balance in the books of Shree Amba International*
>
> *With reference to your letter dt. 11.09.2006, for confirmation of balance, this is to confirm that in our books of account there is a credit balance of Rs.4,87,549.18 as on 15.09.2006. Also the cheque no.(s) 335481 to 335486 of State Bank of India, SSI Branch, Delhi and cheque no.(s) 246917 to 246920 of Corporation Bank, Vivek Vihar, Delhi, was lying with me, which was misplaced somewhere by me. You are requested to take necessary action against misplaced cheques".*

5. I may also observe that the father of the petitioner appeared as a witness (CW-2) and denied having issued the letter Ex CW-1/D9. The accused also claimed that upon receipt of the communication Ex CW-1/D9, he issued instructions to his banker to stop payment of all the cheques mentioned in the said letter, which was done in September 2006 itself. Here itself I may observe that the cheques in question are purportedly dated 15.03.2013 and 30.03.2013 in the aforesaid two cases, and they are two of the cheques which are mentioned in the communication Ex CW-1/D9, and

their payment was also stopped by the accused in 2006 itself.

6. The accused further claimed that in the year 2006, he and his family had a dispute with the complainant and FIR 474/2006 was registered at PS Vivek Vihar against the complainant. Since then, they are not on talking terms with the complainant. I may observe that the factum of the registration of the said case against the petitioner/ complainant is not in dispute. The cheques, according to the complainant, were issued in respect of a cash loan transaction allegedly advanced to the accused and against supply of goods in the year 2013.

7. The accused claimed that the cheques had been misused by the complainant in connivance with his father and that he had neither borrowed any money from the complainant nor he had taken any goods from the complainant. The accused also claimed that the complainant had not only misused the said cheques, but also gave the blank signed cheques to his other associates. At this stage, I may observe that counsel for the accused has tendered in court the order dated 03.10.2016 passed in Crl LP 239/2016 (*B.N. Mehra v. Ajay Goel*), whereby the leave petition preferred by the complainant B.N. Mehra in respect of a cheque claimed to have been issued by the same accused, had been dismissed. In that case, the complainant had claimed that the accused had taken a friendly loan of Rs.13 lakhs from the accused in January 2012 and out of that amount Rs.11.90 lakhs was outstanding in respect whereof the cheque dated 10.02.2013 had been issued. It is pointed out that the said cheque is also one of the cheques which finds mention in the letter Ex CW-1/D9 issued by the father of the complainant in the present case, whose payment had been got stopped by the

accused in 2006 itself. While dismissing the leave petition in that case, this court had, inter alia, observed:

> *"11. The accused was able to probablise the defence that the cheque in question was not issued in respect of an outstanding debt or other liability on cumulative analysis of the evidence brought on record. Firstly, the petitioner/ complainant could not establish the advancement of the alleged loan of Rs.13 lacs as the complainant did not establish the availability of funds to that extent with him. The complainant also did not establish the return of the loan to the extent of Rs.1.10 lacs by the accused. He also did not establish that contemporaneously the loan had been reflected in his income tax returns. It is extremely pertinent to note that the complainant could not even recognise the accused to whom he claimed to have advanced a large amount of Rs.13 lacs in the year 2012, and in respect of whom claimed that he knew the accused and his father for the last 12 years, and with whom he claimed family relationship. This conduct of the petitioner is in accord with the defence of the accused that he did not know the complainant at all and saw him for the first time in the court. Pertinently, the stop payment instructions were issued by the accused way back in 2006, whereas the cheque in question had allegedly been issued in 2012".*

8. The accused examined himself in his defence. He supported his defence completely. In this background, the Trial Court held that the defence of the accused was probabalised and, consequently, acquitted the accused.

9. I may also observe that the accused also relied upon Ex DW-1/D11 which was the kalandara prepared in respect of an altercation which took place between the petitioner and the accused on 11.11.2006, wherein the petitioner/ complainant stated that he had gone to the house of the accused to receive Rs.5 lakhs towards refund of loan and at that stage, the accused had

demanded, inter alia, return of the cheque and receipt. The same led to a dispute, and number 100 was called which led to recording of the kalandara. The said kalandara which records the statement of the petitioner, therefore, tantamounts to admission of the petitioner with regard to his being in possession of the cheques issued by the accused.

10. Counsel for the petitioner has argued that the same also contains the statement of the petitioner that he had to receive Rs.5 lakhs towards refund of the loan and the said statement should also be treated as an admission by the accused, since the accused had produced the said kalandara during the cross examination of the complainant.

11. I do not find any merit in this submission of the petitioner/ complainant. The accused never admitted to have received any loan. This was the version of the petitioner only. In any event, even if there was a loan taken in the year 2006, that was not the premise on which the cheques were used and presented by the petitioner/ complainant.

12. In the aforesaid circumstances, the defence of the accused was clearly probabalised and there is absolutely no error in the impugned judgment which calls for interference. Dismissed.

VIPIN SANGHI, J

FEBRUARY 23, 2017
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