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

+ **Date of Decision: 02.02.2015**

% **CRL.L.P. 50/2015**

BHAJAN PURA CO-OPERATIVE URBAN
THRIFT & CREDIT SOCIETY LTD. Petitioner

Through: Mr. Vipin Dilawari, Advocate.

versus

STATE GOVT OF NCT DELHI & ANR Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

Crl. M.A. No.1544/2015

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

CRL.L.P. 50/2015 and Crl. M.A. No. 1543/2015

3. I have heard learned counsel for the petitioner. Even if one were to condone the delay of 92 days for the reasons stated in the application, there is no merit in this petition.

4. The case of the complainant is that the accused/ respondent No.2 is a member of the complainant society. The accused stood surety for one

Sh.Inderjeet Singh, who had taken a loan from the petitioner in August 2007. He also stood surety for one Sh. Raj Kumar, who too, had taken a loan from the petitioner in August 2007. Since the complainant invoked arbitration under the Delhi Cooperative Societies Act, 2003, one Arbitrator each was appointed in the said cases. The Arbitrators allowed the claims of the petitioner and passed awards in September 2010 (in respect of the borrower Sh. Inderjeet Singh) and in June 2010 (in respect of the borrower Sh. Raj Kumar).

5. The case of the complainant was that on 13.03.2011, the accused enquired about the balance loan amount of Sh.Inderjeet Singh and Sh. Raj Kumar. He was informed that Rs.57,727/- was due to be paid on the loan account of Sh.Inderjeet Singh, and Rs.39,358/- was due to be paid in the loan account of Sh.Raj Kumar, both totaling to Rs.97,085/-. The petitioner claimed that the respondent thus issued a cheque dated 13.03.2011 for Rs.97,085/- to settle both the accounts towards full and final settlement of the two accounts aforesaid of Sh.Inderjeet Singh and Sh.Raj Kumar. The said cheque having been dishonoured upon presentation; the amount not having being paid despite issuance of statutory notice within the requisite period; the aforesaid complaint was preferred. The accused was summoned and notice under Section 251 Cr.P.C. was served on him on 21.01.2013, to which he pleaded 'not guilty' and claimed trial.

6. On his application under Section 145(2) of the Negotiable Instruments Act, 1881 (NI Act), he was permitted to cross-examine the complainant's witness, namely CW-1 Sh. Shyam Sunder Bhadoria. The accused was examined under Section 313 Cr.P.C. The accused expressed desire to lead

defence evidence and examined four defence witnesses. The defence of the respondent accused was that he was falsely implicated in the said case. Though, he admitted that he stood as a guarantor to secure the loan taken by Sh.Inderjeet Singh and Sh. Raj Kumar, the cheque in question was not issued by him towards repayment of the said loan accounts. The accused claimed that the cheque had been issued to the complainant in the year 2005 as security.

7. The major thrust of the defence of the accused was that the entire loan account of Sh.Inderjeet Singh had already been cleared by one another guarantor Sh. Manoj Kumar against whom the complainant had filed another complaint under Section 138 of the NI Act. Thus, the complainant could not have raised the demand in respect of the said account of Sh. Inderjeet Singh. In this respect, the record of the case titled ***Bhajanpura Cooperative Vs. Manoj Kumar*** bearing CC No.14709/2009 was led in evidence as Exhibit DW-1/A.

8. In this complaint (Exhibit DW-1/A), the complainant had stated that as on 24.05.2009, there was a balance of Rs.44,617/- in the account of Sh.Inderjeet Singh and, towards full and final settlement of the said account of Sh.Inderjeet Singh, during the course of trial, the matter was settled between the parties before the Special Lok Adalat on 30.01.2011. Since that settlement broke down, the same was revised on 15.12.2011 and, ultimately, the matter was disposed of vide order dated 05.03.2012.

9. The complainant did not deny the said settlement. The response of the complainant to the aforesaid defence was that the settlement arrived at in

the aforesaid complaint case “***Bhajanpura Cooperative Vs. Manoj Kumar***” was with regard to the 1/3rd liability of Sh. Inderjeet Singh and the liability of Sh. Manoj Kumar. However, the remaining 2/3rd liability was outstanding. The learned Magistrate dismissed the complaint by observing as follows:

“8. I have perused the entire record. In the complaint Ex. DW1/A, as pointed out by Ld. Counsel for accused, it has been clearly mentioned by the complainant in para 9 that a sum of Rs. 44,617/- was due in the account of Sh. Inderjeet. It is not mentioned that the same was a part of loan liability. Then as pointed out by Ld. Counsel for accused, the settlement which was arrived between the parties in that matter was towards full and final payment. The details have already been mentioned above. Certified copies of all the orders are placed on record and the original case file was produced by DW3 Sh. Sunil Kumar, Mauja Clerk, Record room, Dwarka Courts. As in that matter, it has been clearly mentioned in the order sheets and the statement of the AR that a full and final settlement has been arrived at, the argument that the settlement was towards 1/3rd liability of Sh. Inderjeet is misleading and ill-conceived. No document has been placed on record by the complainant to prove this fact. The position which emerges is that the loan account of Sh. Inderjeet and Sh. Manoj Kumar was fully and finally settled in the court of Sh. Pawan Kumar, Ld. MM and the payment were also made there resulting in the withdrawal of that case.

9. Now, the present cheque Ex. CW1/9 is dated 13.03.2011. The accused has already proved that the settlement was arrived at between the parties on 30.01.2011. The accused therein had made payment of one installment also and then the matter was adjourned for 18.05.2011. Hence, as per the record, as on date of issuance of cheque Ex. CW1/9, the loan account of Inderjeet

which is subject matter of the present case and the complaint case Ex. DW1/A, had already been settled. Hence, the complainant could not have raised the demand of loan amount of Sh. Inderjeet from the present accused. Hence, assuming that the accused issued the cheque in favour of the complainant on 13.03.2011, it is clear that the same has been obtained by the complainant from the accused concealing the fact of settlement with the other guarantor Sh. Manoj Kumar. Hence, even if it is assumed that cheque in question was issued by the accused consciously and with the consent, still the same is not lawful in as much as the legal liability as alleged was not there. Hence, there are no merits in the present case. Accordingly, accused stands acquitted for the offence u/s 138 NI Act.”

10. It is well settled that this Court would normally not interfere with the judgment acquitting the accused and granting him the benefit of doubt, which stands reaffirmed by the judgment under appeal, unless a clear case of perversity or misappropriation of evidence is made out. Reference may be made to the judgment in **Guru Nanak Tractors vs. Swarn Singh**, 2014 (3) RLR (CRI) 601.

11. The submission of learned counsel for the petitioner is that the learned Magistrate while dismissing the complaint has failed to appreciate that the settlement had been broken by Sh. Manoj Kumar and that the said settlement pertained only to partial satisfaction of the claim against Sh. Inderjeet Singh. Moreover, the claim against Sh. Raj Kumar had not been settled at all.

12. Having perused the impugned order and heard learned counsel for the petitioner, I am of the view that there is absolutely no merit in this petition since the petitioner has not been able to point out any perversity, or lack of

appreciation of the evidence led before the learned Magistrate. Admittedly, the loan account of Sh.Inderjeet Singh was eventually fully and finally settled by Sh.Manoj Kumar. The said settlement does not state that the account of Sh.Inderjeet Singh has been settled only to the extent of 1/3rd of the liability. It is, therefore, clear that the accused was not liable to pay any amount whatsoever to the complainant in the account of Sh.Inderjeet Singh. The amount of the cheque, undisputedly, is far in excess of the amount due in the account of Sh.Raj Kumar. In fact, it is towards the entire liability allegedly owed by Sh. Inderjeet Singh (though the same had been finally settled) and the full liability of Sh. Raj Kumar. Thus, it cannot be said that the cheque in question had been issued for payment of a legally recoverable debt. Reference may be made to *Alliance Infrastructure Product Pvt. Ltd. Vs. Vinay Mittal*, ILR 2010 III Delhi 459.

13. Accordingly, I find no merit in the present petition and dismiss the petition as well as the application seeking condonation of delay.

VIPIN SANGHI, J

FEBRUARY 02, 2015

B.S. Rohella