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

Delivered on: 03rd November, 2015

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CRL.A. 411/2014

MANOJ KUMAR

..... Appellant

Represented by: Mr. Vijay K. Gupta and
Mr. Mehul Gupta, Advs.

versus

O.P.JOSHI

..... Respondent

Represented by: Mr. Girish C. Sharma and
Mr. S. Mukherjee, Advs.

AND

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CRL.A. 412/2014

MANOJ KUMAR

..... Appellant

Represented by: Mr. Vijay K. Gupta and
Mr. Mehul Gupta, Advs.

Versus

O.P.JOSHI

..... Respondent

Represented by: Mr. Girish C. Sharma and
Mr. S. Mukherjee, Advs.

AND

+

CRL.A. 413/2014

MANOJ KUMAR

..... Appellant

Represented by: Mr. Vijay K. Gupta and
Mr. Mehul Gupta, Advs.

versus

O.P.JOSHI

..... Respondent

Represented by: Mr. Girish C. Sharma and
Mr. S. Mukherjee, Advs.

AND

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CRL.A. 414/2014

MANOJ KUMAR

..... Appellant

**Represented by: Mr. Vijay K. Gupta and
Mr. Mehul Gupta, Advs.**

Versus

O.P.JOSHI

..... Respondent

**Represented by: Mr. Girish C. Sharma and
Mr. S. Mukherjee, Advs.**

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of the present four appeals filed under section 378 (4) & (5) of Cr.P.C. appellant assailed the common judgment dated 20.04.2012 passed by Id. Trial Court four similar complaints filed under Section 138 Negotiable Instruments Act, 1881 being CC No. 1979 to 1982/10/05 thereby acquitted the respondent in all the cases.

2. The aforementioned complaints had arisen out of the transactions which took place between the parties during relevant period. Therefore, in the interest of justice and to avoid judicial conflict on decision, all appeals are being decided by way of a common judgment.

3. As per the case of the appellant/complainant, respondent/accused took a friendly loan of Rs.8.25 Lac from the complainant for a short term and agreed to repay the said amount with interest @ 18% per annum and in order to secure repayment of said

loan, respondent delivered 10 post-dated cheques for a sum of Rs.50,000/- each drawn on Corporation Bank, CGO Complex, Lodhi Road, New Delhi to the appellant. Out of the aforesaid 10 cheques, four cheques, being no. 965683, 965681, 965684 and 965682 dated 01.07.2005, 10.07.2005, 01.08.2005 and 14.07.2005 respectively for a sum of Rs.50,000/- each were dishonoured on their presentation on account of insufficient funds. The factum of dishonoured cheques were brought to the notice of the respondent by way of legal notice dated 06.09.2005, which was duly acknowledged by him vide acknowledgment card. Despite, the respondent had not complied with the demand as made in the said legal notice. Consequently, complaint cases under Section 138 of N.I. Act were filed.

4. On appearance of accused, notice under Section 251 Cr.P.C. for the offence punishable under Section 138 N.I. Act was served upon him on 14.02.2007, to which he pleaded not guilty.

5. The complainant was the sole witness and has examined himself as CW1. He deposed as per the contents of the complaint and tendered the documents Ex.CW1/1 to CW1/18. After conclusion of the complainant's evidence, statement of respondent under Section 313 Cr.P.C. was recorded and all incriminating evidence was put to him, to which he explained that cheques were taken by the complainant from him so that on the basis of those cheques he may take loan from some other persons in connection with his garment business.

6. In defence, respondent examined Smt. Shalini Goel as DW1 and

himself appeared in the witness box as DW2.

7. In order to attract liability of respondent under Section 138 N.I. Act, 1881, the appellant was required to prove the following:

- (a) that the accused issued the cheques bearing No. 965683 dated 01.07.2005, No. 965681 dated 10.07.2005, No. 965684 dated 01.08.2005 and No. 965682 dated 14.07.2005, each for a sum of Rs.50,000/- to the complainant for the discharge of legal debt / liability;
- (b) that the complainant presented the said cheques to the bank within a period of six months from the date on which the same were drawn or within the period of their validity, whichever was earlier;
- (c) that the said cheques were dishonoured by the banker of the accused due to insufficiency of funds in the account of the accused;
- (d) that the complainant made the demand for the payment of the said amount of cheques by giving a notice in writing to the accused within 30 days from the receipt of information regarding dishonour of the cheques;
- (e) that the accused failed to make the payment of the amount of the cheques within 15 days of the valid legal notice of the demand; and
- (f) that the complainant made a complaint against the accused within one month from the date on which the cause of action under clause (c) of the Proviso to Section 138 of the N.I. Act accrued to him.

8. Ld. Counsel appearing on behalf of the petitioner submitted that the appellant admitted the ingredients of (b), (c), (d) and (f) and

submitted that the cheques were issued by the respondent for discharge of the liability arising out of a friendly loan given by the appellant to the respondent, whereas the case of the respondent is that the cheques were given to the appellant on his request so that he can raise funds from other persons on the strength of such cheques.

9. Ld. Counsel further submitted that it is unbelievable that the appellant would ask the respondent to give cheques on the basis of which he can raise loan from other friends because the appellant himself could have issued cheques for borrowing money from others and there was no occasion to ask the respondent to issue cheques for the aforesaid purpose.

10. Ld. Counsel further submitted that the Id. Trial Court has wrongly acquitted the respondent vide impugned order dated 20.04.2012 on the assumption, presumption and conjecture without any reason or rhyme. Thus, the said judgment deserves to be set aside.

11. In order to prove his case, appellant examined himself as CW1 and testified the contents of the complaint and relied upon the documents, i.e., cheques Ex.CW1/1 to CW1/14, cheques return memos Ex. CW1/5 to CW1/8, cheques deposit slips Ex.CW1/9 & CW/10, debit advice / intimation Ex.CW1/11 & CW1/12, legal notice Ex.CW1/13, postal receipts Ex.CW1/14 to CW1/16, acknowledgment card Ex.CW1/17 and reply to legal notice Ex.CW1/18. No other witness has been examined on behalf of the appellant .

12. Respondent has strongly contended that neither the cheques were issued by him for discharge of his liability nor any valid demand notice was served upon him by the appellant. However, the said cheques were issued to the appellant on his request so that he can raise funds from other persons on the strength of such cheques.

13. If the evidence led by the appellant is seen, it becomes clear that the appellant was never in a position to give a huge friendly loan of Rs.8.25 Lac to the respondent as no such source was available with him that he could have arranged such a huge amount for giving the same in the form of friendly loan to the respondent.

14. It is admitted that the appellant had been earning very low income and that he never gave friendly loan for more than Rs.10,000 to Rs.15,000/- to other persons at any point of time.

15. The appellant had failed to show as to how, he arranged Lacs of rupees to be given as friendly loan to the respondent. The case of the appellant was that he arranged loan amount for giving the same to the respondent after collecting the same from his mother, wife and friend, but none has been produced in the witness box to corroborate his version for the reason best known to him. On the other hand, wife of the appellant Smt. Shalini Goel, who has been produced in the witness box by the respondent as DW1, has testified that it was not in her knowledge that any person had approached the appellant for taking money at their home and when her husband took Rs.50,000/- from her in the year 2004 and he did not tell her what was the purpose of taking

the money. Thus, the version of DW1 contradicts the case of the appellant on material aspects. Furthermore, DW1 has clearly stated that she does not have knowledge about the dealing of money of her husband with his friends and that she does not know as to what her husband earns in a month. She inter-alia testified that she used to give tuitions to 8 to 10 students up to 8th standard and was earning monthly income of Rs.8,000 to Rs.10,000 therefrom.

16. Accordingly, Id. Trial court opined that it is highly improbable that a spouse living under one roof had no knowledge about the dealings of each other especially when the appellant claims that, he arranged the alleged huge money of Rs.8.25 Lac from his wife, mother and friends for advancing the same as friendly loan to the respondent. This shows that there is something behind the curtain which vitiates the case of the appellant.

17. In the case of ***K. Prakashan v. P.K. Surenderan, (2008) 1 SCC 258***, the Hon'ble Supreme Court held that burden of proof lying on accused qua rebuttal of presumption under Section 139 and 118 of N.I. Act is required to be discharged by preponderance of probabilities. Similarly in ***M/s. Kumar Export v. M/s. Sharma Carpets, AIR 2009 SC 1518***, the Hon'ble Supreme Court observed that for rebutting the presumption that cheque was for discharge of debt / liability, the proof of defence need not be beyond reasonable doubt. Accordingly, Id. Trial Court observed that one important objection raised on behalf of the respondent is regarding correctness and validity of demand notice

issued by the complainant. Although, notice has been issued in respect of only four cheques of Rs.50,000/- each for a total of Rs.2,00,000/-, but a demand has been raised for a sum of Rs.8.25 Lac with interest @ 18% *per annum*. The appellant has mentioned about some other cheques also in demand notice and stated the same are also likely to be dishonoured.

18. It is clear from the language of demand notice that same has not been drafted as per the requirement of Section 138 of N.I. Act. In the absence of specific, clear and valid demand, it cannot be said that the respondent has committed an offence under Section 138 N.I. Act. Moreover, the appellant failed to prove on record the case for the offence punishable under Section 138 N.I. Act beyond reasonable doubt. Accordingly, respondent was acquitted for the said offence.

19. In view of above discussion and legal position, I am of the considered opinion that there is no merit in the present petitions.

20. Accordingly, the present appeals are dismissed with no order as to costs.

SURESH KAIT, J

NOVEMBER 03, 2015

jg