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

\+ **Date of Decision: 17.03.2015**

% **CRL.L.P. 151/2015 & CRL MA 3973/2015**

HARI KISHAN

..... Petitioner

Through: Mr. Jai Prakash, Advocate

versus

RANJEET

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present leave petition has been preferred under Section 378(4) Cr PC to seek leave to appeal against the judgment dated 13.01.2015 passed by Sh. Jagmohan Singh, MM (NI Act)-03 Dwarka Courts, New Delhi in CC No.6485/2014, whereby the respondent/accused has been acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (the Act).

2. The case of the petitioner/complainant in his complainant was that he had advanced a friendly loan of Rs.23,70,000/- to the accused in the month of June-July 2008. The accused had undertaken to repay the same before January 2009. In discharge of his liability towards the complainant, the

accused issued two post dated cheques, one dated 21.08.2008 for Rs.11,60,000/- and the other dated 10.01.2009 for Rs.12 lacs drawn on his bank.

3. The accused then requested the complainant not to present the cheque on the due dates. When the first cheque was presented for payment, it was received unpaid on account of "insufficient funds" vide memo dated 03.01.2009. Thereafter, the second cheque was presented for encashment, which too was returned on 10.01.2009 with the remark "payment stopped by drawer". Consequently, the petitioner issued the legal notice dated 23.01.2009, and the payment not having made within the statutory period, the compliant was preferred.

4. Notice under Section 251 Cr.P.C. was framed against the accused on 30.09.2009. The accused pleaded not guilty and claimed trial. The accused moved an application to cross-examine the complainant CW-1. The complainant was cross-examined and the complainants evidence closed on 14.10.2011. The statement of accused under Section 313 Cr PC was recorded on 11.11.2011. The accused led the evidence of one DW-Prateek Sharma. The learned Magistrate acquitted the respondent/ accused on scrutiny and appreciation of several documents/exhibits led in evidence by the accused.

5. The case of the accused was that he had taken loans from the complainant in March-April 2008; which were repaid in August 2008; he again took loans in two installments after 2-3 months of settlement of the previous loan; he paid back the said amount after 1 ½ months of taking the

same; the transaction took place as per the documents filed by him (Mark XX, YY, ZZ and DW1/A); the complainant took the cheques in question, in advance, before advancing the above said loans; the cheques were signed and filled up in the handwriting of the accused, including the name of the payee, date and amount in words and figures and were signed by him. The accused denied having requested the complainant for a loan of Rs.23,70,000/- in the month of June-July 2008, or that he undertook to pay the same before January 2009.

6. The learned Magistrate held that the accused had been able to rebut the statutory presumption by raising a probable defence. The discussion found in the impugned judgment reads as follows:

> "*9. The documents mark XX, YY, ZZ and Ex.DW1/A referred to by the accused in his above statement were produced during cross examination of the complainant/CW1 and he was confronted with them. The above documents are very crucial to understand the nature of transactions between the accused and the complainant. During his cross examination on 31.03.2011, complainant stated that he had not executed anything in writing towards the amount advanced and its payment. However, the accused obtained his signatures on blank paper on the ground that he was going to make (re)payment but despite obtaining his signatures on that paper he did not make (re)payment of the loan amount. The complainant admitted his signature on document Ex.DW1/A but stated that it was blank at the time of obtaining his signature. The filing of above document was also objected to by Ld counsel for the complainant on the ground that the same was a colour photocopy. However, when cross examination of the complainant resumed on 14.10.2011, the original agreement was also filed on record and was also*

Ex.DW1/A. On the same date, the complainant was confronted with hand written agreement mark XX and YY. The complainant denied the suggestion that transactions were entered on the above documents mark XX and YY (written on stamp paper of Rs. 10 each). The complainant however stated that his signatures were taken on them in blank by the accused. Complainant also stated that he did not know who had written the contents of the above documents mark XX and YY. Thereafter the complainant was also confronted with document mark ZZ which is an original handwritten document. The complainant denied the suggestion that the said document was the extract of diary written in his presence and also denied his signature thereon.

10. The above documents mark XX, YY, ZZ and Ex.DW1/A may now be closely examined. All the above documents are handwritten in Hindi. The document mark XX is written on a stamp paper of Rs. 10 bearing date of purchase as 20.03.2008 and is in the nature of an agreement between the accused and the complainant. It firstly records that accused has mortgage documents relating to his property measuring 140 Sq.Yds, located at Sangam Vihar for the sum of Rs. 8 Lacs. There is an undertaking of the accused to make payment of Rs. 8,64,000/- to the complainant. The above narration is written in blue ball pen, followed by signature of the accused, the complainant and one witness namely Rahul. However, in continuation of the above narration and in blue but different ink, it is recorded that accused has further obtained Rs. 2 Lacs from the complainant on 02.04.2008 and he has to pay Rs. 10,80,000/- to the complainant by 25.04.2008. The said recording is immediately followed by signature of the complainant. It is pertinent to note that signatures of the complainant appears to be in the same blue but different ink in which the additional entry is also written. At the bottom of first page of the above document, there *is a further recording to the effect that after making payment of Rs. 6,48,000/- to the complainant, the accused would take back the documents of plot measuring 140 Sq.Yds. It is further recorded that the last date (of payment) was 25.05.2008 and (thereafter) the final decision would be of Hari Kishan (the complainant). The above addition is also immediately followed by signature of the complainant and the accused. There is an another entry on the back of this document and the same is dated 25.06.2008. It is recorded on the said date that the dues had been settled between the accused and the complainant after making payment of Rs. 6,48,000/- and no further dues were pending between them. The above recording is also immediately signed by accused and the complainant and has also been witnessed by Rishi Raj and Prateek Sharma (DW).*

11. The document mark YY is also an original document is also in the nature of an agreement between the accused and the complainant handwritten in Hindi on a stamp paper of Rs. 10/-. The date and month of purchase of the said stamp paper are 4th of August but the year is not legible. It is recorded on the above document that the accused has mortgaged documents relating to his plot no. 87, measuring 100 Sq.Yds, located in Shyam Vihar, Phase-3 for a sum of Rs. 12 Lacs till 21.10.2008. Thereafter undertaking of the accused to pay Rs. 96,000/- to the complainant per month is recorded. It is also recorded that the accused has handed over cheque no. 319622 for a sum of Rs. 12 Lacs (same as cheque in question Ex.CW1/2). Below the above statement, signatures of the complainant and the accused appear. After the signatures, another statement appears to the effect that all the dues arising from this agreement have been cleared. This addition is followed by addresses of both the complainant and the accused, followed by their signatures. Signature of the accused are dated 21.10.2008. At the bottom of *the above agreement appear signatures of two witnesses Rishi Raj and Prateek Sharma (DW).*

12. Document Ex. DW1/A is written on a stamp paper of Rs. 50/- which bears the date of purchase as 05.01.2009. It also contains an agreement handwritten in Hindi of the same date between complainant, Rakesh and the accused . It is also recorded that complainant and Rakesh have returned all documents intact relating to plots of the accused. It is further recorded that no dues are now outstanding against the accused. Very importantly, the above agreement also contains a statement from the complainant that a cheque bearing number 319622 drawn on HDFC Bank Ltd for the sum of Rs. Twelve lacs (same as cheque in question Ex. CW1/2) has been misplaced. An undertaking of the complainant is also recorded that he would not misuse the said cheque in any manner. This is followed by signatures of the complainant and the accused. Immediately below is an additional recording to the effect that cheque no. 0319602 for a sum of Rs. 11,60,000/- drawn on HDFC Bank (same as cheque Ex. CW1/1) has bounced with a similar undertaking by the complainant not to misuse the same.

13. Document mark ZZ is a handwritten statement in Hindi on a lined paper, in black ink, dated 24.04.2008 to the effect that complainant has received payment of Rs. 4,80,000/- of his plot measuring 140 square yards and the same is signed by the complainant below the heading "Receiver", also in black ink. The above receipt also bears signatures of the accused dated 24.04.2008 and is witnessed by Rishi Raj and Prateek Sharma (DW) in blue ink.

14. DW1 Prateek Sharma (inadvertently recorded as DW2) deposed that he was working as a Property Dealer along with the accused. He also knew the complainant as he used to come to the office of the accused. He further deposed that he knew *about repayment of Rs. 4,80,000/- by accused to the complainant in April 2008. In May 2008, Rs. 6,48,000/- was further repaid by the accused to the complainant in the office of Kannoou Properties. In October 2008, an amount of Rs. 12 lacs including interest of Rs. 96,000/- was repaid to the complainant in the same office. All the above transactions took place in his presence.*

15. From the testimony of DW1 Prateek Sharma, read with the documents Mark XX, YY (which also bear signatures of DW1 as a witness) and document Ex. DW1/A, it emerges clearly that accused borrowed a sum of Rs. Eight lacs from the complainant on 20.04.2008 and a sum of Rs. Two lacs on 02.04.2008 while he repaid Rs. 4,80,000/- to the complainant in April 2008 and Rs. 6,48,000/- in May 2008. The above repayment also explains entry dated 25.06.2008 on the back of document mark XX (also witnessed by DW Prateek Sharma) that all the dues arising of the said agreement had been cleared with payment of Rs. 6,48,000/-. Similarly, it also emerges that accused borrowed Rs. Twelve lacs from the accused on 21.10.2008 as per document Mark YY by mortgaging his property documents and also handed over cheque Ex. CW1/2 to the complainant while he repaid Rs. Twelve lacs to the complainant on 21.10.2008 including interest of Rs. 96,000/- in the presence of DW Prateek Sharma. The same also explains entry dated 21.10.2008 in the above document YY also witnessed by DW Prateek Sharma, that dues arising out of the above agreement had now been settled.

16. The receipt mark ZZ is for a sum of Rs. 4,80,000/-, also witnessed by DW Prateek Sharma, who explained the same in his deposition that the said sum of Rs.4,80,000/- was repaid by the accused to the complainant on that day. Reference of 140 square plot in the above Receipt also logically links it with *document mark XX, as per which documents of a plot of the same measurement were mortgaged by the accused with the complainant. Thus, it emerges clearly that the above receipt related to repayment of loan amounts recorded in document Mark XX.*

17. The statements recorded in document Ex. DW1/A clearly show that all the dues between the complainant and the accused were settled on 05.01.2009. As noted above, it was also recorded in the above document that cheque for Rs. 12 lacs (Ex. CW1/2) was misplaced by the complainant while cheque for Rs. 11,60,000/- (Ex. CW1/1) had bounced but complainant promised not to misuse the same.

18. The documents mark XX, YY and ZZ gain credence from the testimony of DW Prateek Sharma as his signatures appear on all the above documents. DW Prateek Sharma has clearly established the existence of the said documents and the veracity of their contents.

19. In this back drop, claim of the complainant that accused obtained his signatures on the above documents, while the same were blank, seems highly improbable. The court fails to understand as to why the complainant signed blank papers on the mere assurance of the accused about repayment of the loan. The same is also contrary to the behaviour of a prudent man.

20. It is also pertinent to note that during his cross examination, the complainant admitted his signatures at point 'A' and 'B' on the colour- copy version of document Ex. DW1/A. Signature of the complainant at point 'A' appear immediately below the initial statement recorded jointly by complainant and accused while his signature at point 'B' appear at the very end of the page, after it is recorded that the cheque no. 0319602 for a sum of Rs. 11,60,000/- (same as

cheque Ex. CW1/1) had bounced but the complainant promised not to misuse the same. The Court fails to understand that, if at all the complainant signed on blank papers, why did he sign at two places on the same page? The placing of signatures, both of the complainant and the accused, on the above document Ex. DW1/A itself makes it clear that they were recorded in natural flow, immediately after the initial and the additional statements ended, as a token of their having been jointly made by the complainant and the accused. As noted earlier, signatures of both the complainant and the accused as well as two witnesses Rishi Raj and Prateek Sharma also appear on back of the agreement Mark XX. If the complainant was made to sign blank papers, there certainly was no need for him to sign on the back of the above documents. It is also pertinent to note that the complainant did not mention anything about the documents mark XX, YY and Ex. DW1/A either in the complaint or his affidavit of evidence. The complainant has also not stated as to when the accused obtained his signatures on blank papers and under what circumstances. Thus, the claim of the complainant that he signed documents mark XX, YY and Ex. DW1/A while they were blank, has to be rejected being highly doubtful. Similarly, even though the complainant has denied his signatures on receipt mark ZZ, the same gets clearly established from the deposition of DW Prateek Sharma and also gets linked to the loan amount advanced through document XX, as discussed above. The claim of the complainant that he advanced a loan of Rs. 23,70,000/- to the accused in the month of June -July, 2008 also seems highly doubtful as the complainant did not even mention the exact date on which the above loan was advanced nor did he execute any document while advancing such a huge amount.

21. It has been held by Hon'ble Supreme Court in Vijay vs Laxman (2013) 3 SCC 86 that when the case set up by the holder of the cheque itself was dubious, initial presumption u/s 118 & 139 NI Act itself comes to an end.

22. Ld. Counsel for the complainant sought to impeach the credibility of DW Prateek Sharma on the ground that he was not a summoned witness. Ld. Counsel also argued that as the said witness worked in the office of the accused, he was an interested witness. I have carefully considered the above submission. In his testimony, DW has only deposed what was already recorded in documents mark XX, YY and ZZ and Ex. DW1/A and they get credance from each other. Testimony of DW Prateek Sharma inspires confidence of the Court and is credible. In my considered opinion, the mere fact that the said witness was working in the office of the accused did not make him an interested witness as his testimony was also corroborated by the above documents.

23. Ld. counsel for the complainant also pointed out that accused had answered in the affirmative question 4 and 5 put to him during his examination u/s 313 Cr.P.C that both the cheques in question were returned dishonoured after they were presented upon his "assurance". Ld. Counsel argued that the above answers were an implied admission of liability of the accused towards the complainant. I have carefully considered the above submissions and also perused the statement of the accused recorded u/s 313 Cr.P.C carefully. As noted above, accused categorically denied that he had obtained loan of Rs.23,60,000/- from the complainant or that he issued the two cheques in question towards repayment of the said loan. Thus, in my considered opinion, the accused, by answering the above question 4 and 5 in the affirmative, has admitted only the dishonour of the cheques in question and not even impliedly *admitted any liability towards the complainant in respect of the above cheques*".

(Emphasis supplied)

7. The submission of learned counsel for the petitioner is that the document marked 'YY' purportedly executed in the year 2008 is on a stamp paper, which was purchased in the year 2009.

8. I do not find any merit in this submission for the reason that the photocopy of the stamp paper on which document mark 'YY' is executed, shows the date as 4/8/(illegible). It cannot be said with certainty that the same was purchased in the year 2009, because the last character (pertaining to the year does not read "08", or "09". The same appears to be read as either "8" or "9". Even more importantly, Ex. DW1/A is a clear acknowledgment by the petitioner/complainant as on 05.01.2009, that he has handed over all the papers of the agreements of all the plots to the respondent, and that from 05.01.2009 nothing is due from the respondent. It also records "*In case any documents is found with us of Sh. Ranjeet, the same will be treated as illegal. I Harikishan s/o Mangeram state that cheque no.319622 HDFC Bank amount Rs.12,00,000/- have been lost, I shall neither claim it nor misuse it in future. Cheque No.319602 amount Rs.Eleven lakhs sixty thousand from HDFC Bank is bounced. I Harikishan will not do any action for this. Harikishan s/o Sh Mangeram r/o RZ-P-97, New Roshanpura, Njf, ND-43*". The petitioner has not been able to explain why, and in what circumstances he claimed to have given blank signed papers to the respondent. In any event, the same raised a probable defence

in favour of the accused.

9. In the light of the aforesaid evidence, it is evident that the learned Magistrate has appreciated the evidence correctly. It cannot be said that the impugned order suffers from any patent error. This Court would not interfere with the judgment of acquittal, which reinforces the presumption of innocence of the accused, particularly when it is not shown that the impugned judgment suffers from perversity, or patent mis-direction in the appreciation of evidence.

10. In view of the aforesaid, I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

MARCH 17, 2015
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