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

+ **Date of Decision: 28.01.2015**

% **CRL.L.P. 540/2014, CRL.L.P. 541/2014 & CRL.L.P. 542/2014**

INDERJIT NARULA

..... Petitioner

Through: Mr. Abinesh K. Mishra and Mr. S.S.
Mishra, Advocates

versus

ROHIT DUA & ANR

..... Respondent

Through: Mr. Anil Sharma, Advocate

% **CRL.L.P. 576/2014**

ASHU CHANANA

..... Petitioner

Through: Mr. Abinesh K. Mishra and Mr. S.S.
Mishra, Advocates

versus

ROHIT DUA & ANR

..... Respondent

Through: Mr. Anil Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The aforesaid leave petitions have been preferred to assail the similar judgments rendered by Sh. Gajender Singh Nagar, MM-01 (Central), Karkardooma Courts (East), Delhi in four complaint cases under Section

138 of the Negotiable Instruments Act, 1881 (the Act). The details of the complaint cases are as follows:

Crl LP No.	Complaint No.	Cheque No., Dated & Bank	Amount
540/2014	5789/2010	415490 dt.12.08.2007 drawn on Syndicate Bank	3,50,000
541/2014	6617/2010	449125 dt. 04.04.2008 drawn on ICICI Bank	2,85,000
542/2014	5411/2010	462444 dt. 14.08.2007 drawn on ICICI Bank	1,25,000
576/2014	7128/2010	418124 dt. 15.10.2007 drawn on Syndicate Bank	50,000

2. By the impugned similar judgments, the learned MM has dismissed the said complaints preferred against the same respondent/accused Rohit Dua.

3. The case of the complainant was that the respondent/accused was a tenant at the relevant time of the complainant at Shop No.4RH, Shanker Market, Railway Road, Shahdara, Delhi for 7-8 months. The complainants claimed that the accused had taken loans aggregating to Rs.7,60,000/- in all, and in respect thereof, from time to time, the aforesaid cheques had been issued for repayment of the said amount. The loans were taken in cash without any documented receipts acknowledging the receipt of the

loans. The said cheques were dishonoured upon presentation, and consequently the aforesaid four complaints were preferred after issuance of statutory notices, since payment had not been made.

4. Notice under Section 251 Cr PC was framed by the learned Magistrate, which was read out to the accused. Though the accused admitted that the cheques in question bear his signature and pertained to his account, he had stated that he had never issued the cheques in question to the complainant. His stand was that he had taken the shop in question on rent from the complainant. Once a theft had occurred in the said shop, wherein, along with other articles 2-3 cheque books, including one cheque book of his wife, were also stolen. He stated that the said cheques in question might be from the stolen cheque books. He pleaded not guilty.

5. The complainant led his evidence as CW-1 and exhibited the requisite documents. The statement of the accused under Section 313 Cr PC was recorded on 18.04.2013, whereafter the accused examined himself and other witnesses in all these cases.

6. The learned Magistrate dismissed the complaints on the reasoning that the amounts claimed to have been loaned were not claimed to have been given by way of cheque; the same would have been in contravention of Section 269 of the Income Tax Act; the same had not been advanced against written receipts or other documents acknowledging receipt of the loan; the complainants had not examined any witness regarding handing over of the money to the accused; though the complainants had allegedly advanced a sum of Rs.7,60,000/- in all, the said figure was not disclosed in the complaints; the said amount of alleged loan had not been disclosed by

the complainants in their income tax returns to the extent they had allegedly advanced the loans; the complainants failed to disclose the exact dates when the loans were given; though the complainants claimed to have advanced the loans by way of advance of six instalments of Rs.1 lac each, and the seventh instalment of Rs.1,10,000/- (by the complainant Inderjit Narula) and another instalment of Rs.50,000/- (by the complainant Ashu Chanana), they could not disclose the time gap between the payment of the instalments of the loan; though the complainants claimed to have saved the amounts of loan for construction of a house, the said premises had been sealed by the MCD and the letter dated 10.10.2006 of the complainant showed that the complainant was holding the said amount for almost 8-9 months as cash in hand – which was not the conduct of a prudent person. In respect of the loans mentioned at Sl. nos.1 to 3 in the aforesaid tabulation aggregating to Rs.7,10,000/-, the learned Magistrate observed as follows:

“v) The story of the complainant that he had given total loan of Rs.7,10,000/- by way of six instalments of Rs.1,00,000/- and last instalment of Rs.1,10,000/- appears to be improbable on the ground that the three cheques involved in the present three cases filed by the complainant against the accused are of Rs.1,25,000/-, Rs.2,85,000/- & Rs.3,50,000/-. It is submitted by the complainant that after receiving certain amount accused used to issue cheque of an amount lesser than that amount to the complainant, but he can not tell after payment of how much amount the cheque of Rs.1,25,000/- was issued and after how much payment the cheque of Rs.2,85,000/- was issued and after how much payment the cheque of Rs.3,50,000/- was issued. Furthermore all the three cheques are from different cheque books and in fact the two cheques one of Rs.1,25,000/- and Rs.2,85,000/- are from ICICI Bank and the cheque of Rs.3,50,000/- is of syndicate bank. The complainant has also not submitted the period for which the loan was given. As the

cheque of Rs.1,25,000/- is bearing the date 14.08.2007 and cheque of Rs.3,50,000/- is bearing the date 12.08.2007 while the cheque of Rs.2,85,000/- bearing the date 04.04.2008. This huge gap between the dates of first two cheques and the last cheque of Rs.2,85,000/- raises a serious doubt if they were in respect of a same loan. It is unexplainable as to why the complainant concealed the fact of the total amount of loan in his complaint, affidavit of legal notice. Thus the story of the complainant is not believable.

vi) It is submitted by the accused at the time of framing notice U/s 251 Cr PC that the cheque in question is bearing his signature only and nothing on the cheque is in his own handwriting. However, it is submitted by the complainant that amount in words and figures on the cheque were also filled up by the accused. However, complainant accepted that date of the cheque and name of payee were filled up by him. Thus to prove handwriting of the accused complainant examined a handwriting expert namely Syed Faizal Huda, who had given the report that all the particulars on the cheque are in the handwriting of the accused. Interestingly the expert have submitted that the date and name of payee on the cheque is also in the handwriting of the accused. Thus this expert witness is not reliable as he could not distinguish the admitted handwriting of the complainant on the cheque with the alleged handwriting of the accused”.

Similar is the position with regard to the fourth cheque of Rs.50,000/- mentioned at Sl. no.4 in the aforesaid tabulation in favour of the complainant Ashu Chanana.

7. The submission of learned counsel for the petitioners is that the respondent had admitted that all the cheques had been signed by him. He submits that the stand taken by the respondent was that there was a theft in the tenanted premises, during which, *inter alia*, few cheque books had been

stolen and the cheques in question appears to be from the said stolen cheque books. The stand was that the petitioners had misused the said cheques and the accused had not taken any loan from the complainants.

8. Learned counsel submits that though the accused had examined Head Constable Brij Bhushan as DW-3 in Complaint Case No.5411/2010, 5789/2010 and 6617/2010, to substantiate the complaint allegedly made regarding the theft in the shop, the accused had not been able to establish that he had indeed made a police complaint regarding the alleged theft. The theft, according to the accused, had been recorded in the complaint dated 05.12.2007 made by Mr. Madan Gopal Dua, the grandfather of the accused. He could not produce the said complaint. Learned counsel submits that Exh. DW-3/3 relating to the written complaint at Entry No.1706 was received by way of post. DW-3 had stated that the same appeared to be in respect of a family dispute. However, he was not sure.

9. Learned counsel submits that the presumption which arises under Section 139 of the Act pertains also to the existence of debt. In this regard, he places reliance on the decision of the Supreme Court in ***Rangappa v. Sri Mohan***, (2010) 11 SCC 441. Learned counsel submits that the accused has failed to establish the stand taken by him qua the issuance of the cheques, and had consequently failed to rebut the presumption.

10. On the other hand, learned counsel for the accused apart from placing reliance on the impugned judgment and in particular para (v) as extracted above, has also placed reliance on the cross examination of the complainant CW-1, which has been taken note of in the aforesaid extract of the judgment. He submits that the respondent had been able to dislodge the

presumption by the cross examination of the complainant. The complainants were not able to establish the source of the said amounts, and claimed to have advanced such huge amounts without even taking a receipt. It is not the complainants case that the cheques had been issued simultaneously while advancing the alleged loans. Learned counsel also has sought to place reliance on DW-3/3 which was regarding the complaint made to the police and registered at Sl. no. 1706.

11. The parameters applicable for consideration of a leave petition against the judgment of acquittal have been set out in ***Guru Nanak Tractors Vs. Swarn Singh***, 2014 (3) RLR (CRI) 601. The relevant extract from the said decision reads as follows:

“8. Their Lordships of the Supreme Court in 'Allarakha K. Mansuri v. State of Gujarat, 2002 (1) RCR (Cri) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court. This view has been reiterated in State of Goa v. Sanjay Thakran, (2007) 3 SCC 755', and 'Chandrappa v. State of Karnataka, (2007) 4 SCC 415'.

9. A Division Bench of this Court in 'State of Punjab v. Hansa Singh, 2001(1) RCR (Cri) 775', while dealing with an appeal against acquittal, has opined as under:-

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991 (1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a misreading of the evidence and merely because the appellate Court was inclined to take a different view, could

not be a reason calling for interference”

In Mrinal Das & others v. The State of Tripura, 2011 (9) SCC 479', decided on September 5, 2011, the Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable ", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

10. Similarly, in the case of 'State of Rajasthan v. Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602', the Hon'ble Supreme Court has observed as under:-

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a

criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for”.

11. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

“10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience”.

12. Thus, this Court would consider granting leave to appeal only if the judgment under appeal appears to be perverse, or passed by misreading of

the evidence. If the Trial Court has accepted one of the two possible views and acquitted the accused, this Court will not grant leave to appeal merely because it may be inclined to take a different view.

13. In the present cases, though the complainants claim to have advanced a substantial amount of Rs.7,60,000/- to the accused, the said advance was, even according to the complainants, made in cash without obtaining any receipt. It is not the complainant's case that the aforesaid cheques had been issued simultaneously with the alleged advance of the amount of loan, or that the cheques were issued for the same amounts which were advanced, contemporaneously.

14. The accused, apparently, was a tenant of the complainant for about 7-8 months. Thereafter, according to the accused, a theft had taken place in the shop in question when, *inter alia*, his and his wife's cheque books were also stolen. The accused had claimed to have made a police report regarding the same on 27.11.2007, which was registered at serial number 1706 in Exhibit DW-3/3. The statement of the accused that he had been a tenant for 7-8 months before the theft, has not been challenged by the complainant. Thus, when the alleged loan was advanced in June-July 2007, the accused had been a tenant for about 3-4 months. This itself raises a serious doubt, as it is highly improbable that a person would lend such large amounts to his tenant of 3-4 months in cash without obtaining a receipt/acknowledgement. Pertinently, it is not the complainant's case that the cheques had been issued simultaneously when the amounts were advanced. Thus, if the complainants are to be believed, the said advances were fully unsecured – not even through issue of cheques for the amounts advanced,

simultaneously. In this background, the challenge raised by the accused to the capacity of the complainants to even advance such large amounts of money as loan, assumes significance. The complainants demonstrably are not persons of such means as to advance loan of Rs.7,60,000/- within a short span of two odd months, i.e. June-July 2007. The complainants could not give any details, or particulars, either with regard to the dates when the amounts were advanced, or the terms & conditions on which the loans were advanced. The analysis of the complainant's evidence found in the impugned judgment, as extracted in paragraph 16(v) thereof (which has been quoted hereinabove) is telling and raises a serious doubt with regard to the reliability of the complainant's case of advancing the loan.

15. The submission of learned counsel for the petitioners/complainants that since the stand taken by the accused with regard to the alleged theft had not been established, the presumption under Section 139 of the Act could not be said to have been rebutted, has no merit for two reasons. Firstly, Exhibit DW-3/3 shows that the accused had lodged a police complaint, which was received and entered in the register on 27.11.2007. The entry made in the column with regard to the nature of the complaint showing "family dispute" is an entry not attributable to the accused. Thus, the stand taken by the accused cannot be dismissed, as not even being probable.

16. Secondly, it is open to the accused to rebut the presumption without leading any evidence of its own, and by placing reliance on the evidence – including the cross-examination, of the complainant's witnesses.

17. In my view, in these cases, the complainant's cross-examination taken note of by the learned Magistrate in paragraph 16(v) itself rebuts the

said presumption, as it raises serious doubt about the story of the complainant with regard to the advance of loan. The view taken by the learned Magistrate is certainly a plausible view, and it cannot be said that the said view is either perverse, or that the Trial Court has not appreciated the evidence correctly. The accused having been acquitted, the presumption of innocence has been fortified.

18. I, therefore, find no merit in these petitions and dismiss the same.

VIPIN SANGHI, J

JANUARY 28, 2015

sr/bsr