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

\+ **Date of Decision: 13.03.2015**

% **CRL.L.P. 96/2014**

CHARANJEET GABA

..... Petitioner

Through: Mr. Manish Gandhi and Mr. M.K. Singh, Advocates

versus

ARJUN LAL AHUJA & ANR

..... Respondent

Through: Mr. Naresh K Daksh, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present leave petition preferred under Section 378 Cr PC is directed against the order dated 05.10.2013 passed by Sh. J.R. Aryan, District & Sessions Judge, North East District, Karkardooma Courts, Delhi in Crl Appeal No.13/2009, titled "Sh. Arjun Lal Ahuja & Anr. V. Sh. Charanjeet Gaba".

2. By the impugned judgement, the appeal preferred by the respondent/accused had been allowed and the judgment of the learned MM Sh. Amit Kumar in Case No.129/2004 rendered on the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act (the Act) convicting the respondents, was set aside.

3. The case of the petitioner/complainant was that respondent no.1 Arjun Lal Ahuja was the Managing Director of the respondent no.2 company M/s Cosmos Flex Pvt. Ltd. The accused was a known friend of the complainant. Sometime in August 1995, the accused approached the complainant and suggested that he joins the accused company as a director on allurement of good returns. The accused company proposed to start a business in products like polysters, polythene, printed laminated frames, flexible punching material etc. Believing the assurances of the accused, the complainant was inducted as a director in the company in September 1995. Another person named Kamal Arora was also taken as a director in the accused company.

4. The further case of the complainant was that in January 1996, the accused started asking the complainant for arranging finances for the accused company. Accordingly, the complainant arranged finances on interest basis between 07.02.1996 and 20.10.1997. These amounts were transferred through cheques aggregating to Rs.12,05,000/. The complainant claimed that the amount was to carry interest @ 18% p.a. as per the agreement of the parties.

5. The complainant claimed that since he was already engaged in another business, the accused Arjun Lal Ahuja used to get papers signed from the complainant, and the complainant in good faith signed papers in blank and gave even blank cheques. The complainant claimed that disputes arose between the parties and with the intervention of others, it was decided in a meeting held on 14.03.1998 that the complainant would resign from directorship of the accused company and that the accused company would pay an amount of Rs.16,20,000/- in full and final settlement of the

complainants claim. A cheque dated 06.04.1998 was issued for a sum of Rs.30,000/- towards part payment of the settlement, which was encahsed.

6. The complainant stated that the accused started avoiding making of payment of the balance amount of Rs.15,90,000/-. However, subsequently, the cheque in question dated 23.10.1998 for Rs.15,90,000/- was issued by the accused from the account of the accused company towards settlement of the petitioners claim. The said cheque was returned unpaid on account of insufficient funds. Consequently, the petitioner issued a demand notice dated 30.10.1998 to the accused. Despite service of notice, payment was not made and, consequently, the complaint was preferred.

7. Upon framing of notice under Section 251 Cr PC on 22.07.1999, the accused pleaded "not guilty" and claimed trial. Apart from examining two bank witnesses, the complainant examined himself as CW-1. He was also cross examined. In the statement of the accused made under Section 313 Cr PC, Arjun Lal Ahuja stated on his behalf and on behalf of the accused company that at no point of time any loan liability was incurred by the accused company, and there was no occasion to issue the cheque in question to discharge any such loan liability. The accused examined himself as DW-4, apart from examining the official witnesses like DW-1—the official from Registrar of Companies, DW-2 – the official from Punjab National Bank, and DW-3—an official from Haryana Financial Corporation, Gurgaon. Another official from Punjab National Bank was examined at the appellate stage as DW-5.

8. As noticed above, the learned MM had convicted the

respondent/accused of the offence under Section 138 of the Act. In appeal, the said conviction has been set aside and the accused have been acquitted.

9. The submission of learned counsel for the petitioner is that the payment of amount of Rs.12,05,000/- between 07.02.1996 and 20.10.1997 by cheque to the accused company, by the petitioner, is admitted. Learned counsel submits that the stand taken by the respondents – that the said amount had been invested towards purchase of shares of the accused company, could not be believed, since the respondents failed to produce any record pertaining to making of an application for allotment of shares; the allotment of shares by the management of the company in favour of the petitioner, and; the membership register. Learned counsel submits that DW-4 was examined on two dates, i.e. 05.01.2002 and 15.02.2002. Despite the said witness being questioned with regard to the record of the accused company, he did not produce the same on either of the dates, vis-a-vis, the alleged allotment of shares. This conduct of the accused militates against the defence set up by the accused, since the records of the accused company are in the possession of accused Arjun Lal Ahuja and an adverse inference should have been drawn against the accused.

10. Learned counsel submits that the accused initially denied having received the legal notice dated 30.10.1998, but subsequently admitted its receipt. He further submits that the legal notice was not replied to. This raises presumption against the respondents.

11. Learned counsel for the petitioner further submits that the reason for issuance of the cheque in question – admittedly issued by the accused in

favour of the petitioner, disclosed by the accused in their defence was that the same had been issued for meeting the sundry expenses of the accused company. However, the records of the company were not produced to substantiate this defence.

12. On the other hand, the submission of learned counsel for the respondent/accused is that the petitioner had invested the amount of Rs.12,05,000/- towards purchase of shares in the respondent company. He has referred to Ex. DW-1/D, the list of shareholders of the respondent company as on 30.09.1998, which shows that the petitioner and his wife were both shareholders holding 1,07,500 and 13,000 shares respectively. He has also referred to the list of directors dated 30.09.1998 (Ex DW-1/C) which shows the petitioner as one of the directors of the respondent company. He has also referred to the statement of DW-2, Mr. V.K. Saini, Manager, Punjab National Bank, who deposed that the respondent company had applied for loan for purchase of third party cheque to the tune of Rs.5 lacs; for cash credit hypothecation to the tune of Rs.10 lacs; cash credit hypothecation of goods to the tune of Rs.30 lacs, and; for letter of credit limit to the tune of Rs.20 lacs. He had stated that he knew all the five directors of the respondent company and he identified, inter alia, the petitioner as one of the directors of the accused company in Court. He also identified the signatures of the complainant/petitioner on several documents, namely, the photocopy of the agreement dated 13.12.1997 (Ex DW-2/B), copy of the agreement dated 24.12.1997 (Ex DW-2/C), copy of agreement of hypothecation of book debts (Ex DW-2/D) and copy of hypothecation of books to secure a demand cash credit (Ex DW-2/E). All these documents

bore the signatures of the complainant. The originals were produced by this witness, seen and returned. He also stated that personal guarantees had been given by all the five directors, which included the petitioner. Copy of the agreement of guarantee dated 24.12.1998 executed by the directors was exhibited as Ex DW-2/F and DW-2/E. Ex DW-2/F bore the signatures of, inter alia, the petitioner.

13. He further stated that as per the record, the five directors including the petitioner had given a guarantee in their capacity as directors and shareholders of the accused company and all of them had also pledged their shares with the bank. The bio data of the petitioner had been duly obtained by the bank before disbursement of the loan. Copy of the bio data as per the banks record was exhibited as Ex DW-2/H. He has further disclosed that during his tenure in the bank, the petitioner had moved a written application for withdrawal of his guarantee. However, the bank did not agree with the same.

14. He has referred to Ex DW-2/H, which bears the signatures of the petitioner and in column 13 – "*Capital – Loan Contribution at the beginning in the unit in hand"* bears the inscription *"Share capital – 10.20 lacs*". Learned counsel submits that the aforesaid clearly establishes that the petitioner was a shareholder director of the accused company. The petitioner has not explained as to for what consideration the shares had been allotted, if the amount of Rs.12.05 lacs was not towards the share application money. He further submits that DW-5 had produced the original share certificates of the complainant which stood pledged with the bank along with the forwarding letter Exhibit DW-5/2. The form is exhibited as Ex DW-5/3, and

the share certificates are exhibited as DW-5/4.

15. It is further pointed out that the petitioner changed his stand in the complaint, vis-a-vis the stand taken by him in the legal notice. It is submitted that in the legal notice dated 30.10.1998 (Ex CW-1/D), the stand taken by the petitioner was that in consideration of his tendering his resignation from directorship of the accused company "*and giving up all his rights, shares, monies etc., you settled your liability to pay a sum of Rs.15,90,000/- (Rupees Fifteen Lacs Ninety Thousand Only) to my client in full and final settlement of his dues*". Thus, the stand taken was that the cheque in question had been drawn to settle the said liability. However, in the complaint, the petitioner claimed that the cheque in question had been drawn towards return of the loan amount of Rs.12,05,000/- along with interest.

16. The principles applicable to grant of leave to appeal against a judgment of acquittal are well settled. The petitioner seeking leave to appeal has to show perversity in the impugned judgment or a mis-direction in the appreciation of evidence. The petitioner would have to establish that the view taken is not a reasonable view. Merely because the Appellate Court considering the application for leave to appeal may arrive at another possible view, is no reason to interfere with the judgment of acquittal which reemphasises the innocence of the accused if the view of the Court is reasoned and plausible.

17. In the present case, the respondent/accused were clearly able to probablise a defence that the amount of Rs.12.05 lacs was not given as a

loan to the accused company, but as share subscription money. The stand of the petitioner that he was not a shareholder of the accused company was sufficiently dented by the evidence produced by the accused and his independent witnesses. The submission of learned counsel for the petitioner is that the petitioner had signed several documents in blank, which have been misused by the accused to claim that the petitioner had subscribed to the shares of the accused company, and had also applied for and obtained loan from the bank in the name of the accused company by furnishing pledge of his shares and security. It is for the petitioner to establish the said alleged signing of blank documents, and the alleged forgery and fabrication in independent proceedings. On the face of it, the same affords a probable defence to the complaint of the petitioner.

18. The reasoning adopted by the learned District & Sessions Judge in the impugned judgment contained in para 20 onwards cannot be said to be either perverse or mis-directed on account of mis-appreciation of evidence. Consequently, I find no merit in this petition. Dismissed.

19. The amount deposited by the accused at the first appellate stage shall be released to the accused along with the accrued upto date interest.

VIPIN SANGHI, J

MARCH 13, 2015

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