

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

+ **Date of Decision: 17.03.2015**

% **CRL.L.P. 741/2014**

RAJ KUMAR & ASSOCIATES PVT LTD

..... Petitioner

Through: Mr. Ashish Bhagat, Ms. Manisha
Suri, Mr. Saksham Garg and Ms.
Charu Sharma, Advocates

versus

HANS RAJ

..... Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

1. The present leave petition is directed against the judgment dated 04.09.2014 passed by the learned Metropolitan Magistrate (NI Act), South East District, Saket Courts Complex, New Delhi in CC No.2049/1/2008 in Raj Kumar & Associates v. Hans Raj in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act).

2. By the impugned judgment, the said complaint has been dismissed while acquitting the respondent/accused. The case of the complainant was that the accused had requested the complainant to give him a loan for purchase of land on the Jaipur-Ajmer Highway. The complainant advanced a sum of Rs.30 lacs as loan to the accused on 04.02.2006 in the presence of witnesses. The accused had executed a receipt for Rs.30 lacs in the presence

of witnesses, and agreed to return the same alongwith interest @ 18% p.a. The complainant also claimed that at the time of executing the receipt dated 04.02.2006, the accused issued a post dated cheque dated 05.06.2008 for Rs.30 lacs drawn on his bank, namely, Punjab National Bank, Manesar, Gurgaon. When the said cheque was presented, it was returned with the remarks 'insufficient funds'. Despite notice, the accused did not make payment. Consequently, the complaint was preferred.

3. Upon framing of notice under Section 251 Cr PC, the accused pleaded not guilty and claimed trial. The complainant examined Ravinder Bakshi as CW-1 and closed its evidence. The statement of the accused was recorded under Section 313 Cr PC. The accused denied having taken any loan from the complainant and claimed that, in fact, the complainant had sought a loan in the year 2008 for Rs.30 lacs for purchase of certain properties, and the cheque in question was issued for advancing a loan to the complainant.

4. The learned Magistrate dismissed the complaint, and acquitted the respondent/accused for the following reasons:

“11. Perusal of the file reveals that complainant in its legal demand notice Ex. CW-1/5, complaint and evidence by way of affidavit has categorically submitted that the cheque in question was issued by the accused as a post dated cheque on the date of execution of receipt dated 04.02.06 Ex.CW-1/1, but during the arguments, Ld. Counsel for the complainant submitted that the said cheque was issued as pre-dated cheque later on and not on the execution of the receipt dated 04.02.06 Ex. CW-1/1. The arguments of the Ld. Counsel for the complainant are totally contradictory stand taken by the complainant in its legal demand notice, complaint and evidence by way of affidavit. The reasons for this contradictory stand is the testimony of the

court witness who has completely demolished the stand taken by the complainant in its legal demand notice, complaint and evidence by way of affidavit. Because the said court witness has submitted that the account from which the cheque is drawn was opened only on 08.02.06 as per account opening from Ex CT/1 i.e. after 4 days of the execution of receipt dated 04.02.06 Ex CW-1/1. The said court witness further submitted that the cheque book containing the cheque was issued to the accused only on 28.06.06 as per photocopy of register Ex. CT/2 maintained by the bank i.e. almost 4 months after the execution of receipt dated 04.02.06 Ex. CW-1/1.

12. From the testimony of the court witness, it is proved that the complainant has stated wrong facts that the cheque in question was issued by the accused on 04.02.06 on the date of execution of receipt dated 04.02.06 Ex. CW-1/1.

13. Moreover, the complainant is a private registered company. It must be maintaining its accounts as per the accounting standards, but no account books were produced by the complainant company to prove that the complainant company gave an amount of Rs.30 Lacs to the accused on 04.06.10. If the complainant had given the loan of Rs.30 Lacs to the accused, it must have been shown the same in the account books i.e. Balance Sheet for the year 2006 up to till date. Therefore, an adverse inference can be drawn u/s 114(g) of Indian Evidence Act that account books are unfavourable to the complainant”.

5. Learned counsel for the petitioner/complainant submits that since the cheque in question, admittedly, had been issued by the respondent from his account, a presumption arose with regard to the existence of a debt – and that the cheque had been issued for repayment of a legally recoverable debt. He submits that the said presumption had not been rebutted by the respondent in the facts of this case.

6. Having heard learned counsel, and perused the impugned judgment as well as the evidence placed on record, I am of the view that there is absolutely no merit in this petition. The categorical stand taken by the complainant in the complaint, the legal demand notice Ex CW-1/5, and; the evidence by way of affidavit, was that the cheque in question was issued by the accused as a post dated cheque on the execution of a receipt dated 04.02.2006 (Ex CW-1/1). However, the accused was able to establish by leading unimpeachable evidence, that the account on which the cheque was drawn was opened by the accused with the bank only on 08.02.2006, i.e. four days after the execution of the receipt Ex CW-1/1 and the cheque book containing the cheque in question was issued to the accused only on 28.06.2006. Thus, the accused had been able to establish that the complainant had filed the complaint on a false factual basis by claiming that the cheque in question had been issued simultaneously while issuing the receipt Ex. CW-1/1 dated 04.02.2006. The aforesaid facts and circumstances completely demolish the complaint of the petitioner.

7. This Court would not interfere with the judgment of acquittal, which reinforces the innocence of the accused, unless it is found that the judgment is perverse, or is mis-directed in the appreciation of evidence. In the present case, neither of these circumstances exist. Accordingly, I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

MARCH 17, 2015

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