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

+ **CRL.L.P. 251/2013**

Decided on 15<sup>th</sup> July, 2016

**LYCA FINANCE LTD.**

..... Petitioner

Through : Mr. Rakesh Garg, Adv.

versus

**STATE & ANR.**

..... Respondents

Through :Mr. Tarang Srivastava, APP for the  
State

Mr. Neeraj Bhardwaj, Adv. for  
respondent no. 2

**CORAM:  
HON'BLE MR. JUSTICE A.K. PATHAK**

**A.K. PATHAK, J. (ORAL)**

1. Petitioner seeks leave to appeal against the judgment dated 24<sup>th</sup> January, 2013 whereby complaint under Section 138 of the Negotiable Instruments Act, 1881 ('the Act', for short), filed by the petitioner against the respondent no. 2, has been dismissed, after trial.

2. Case set up by the petitioner, before the trial court, was that it had financed ₹42,600/- to respondent no.2, to enable him to purchase a motorcycle. Loan-cum-hypothecation agreement dated 16<sup>th</sup> March, 2005 was executed between the petitioner and respondent no. 2. As per the agreement, respondent no. 2 was to pay ₹57,000/- in 30 instalments. First instalment was payable on 15<sup>th</sup> April, 2005. Petitioner alleged that respondent no. 2 did not adhere to financial discipline resulting in accumulation of outstanding dues. On persuasion of petitioner the respondent no. 2 issued a cheque bearing no. 045159 dated 17<sup>th</sup> February, 2009 for ₹30,650/- drawn on Indian Overseas Bank, Naraina, New Delhi to discharge his part liability. However, on presentation the cheque was returned unpaid vide banker's memo dated 19<sup>th</sup> February, 2009 for the reason "Funds Insufficient". Since cheque amount was not paid within the prescribed period despite service of legal notice dated 13<sup>th</sup> March, 2009, hence, the complaint.

3. The complaint case was contested by respondent no. 2. Issuance of cheque was not disputed. However, it was alleged that cheque was as security cheque. Subsequently, it was accepted that it was not a security cheque. On the basis of evidence adduced by the parties, it was concluded

that cheque amount was much more than the actual amount due, therefore, cheque was not in discharge of a legal liability. Trial court has meticulously scrutinized evidence adduced by the parties and on the basis thereof has held that, as per the loan agreement Ex. CW1/B, petitioner had advanced ₹42,600/-. As agreed the interest of ₹14,400/- was also payable. Thus, total amount payable in instalments was ₹57,000/-. CW1 admitted in his cross-examination that respondent no. 2 had already paid about ₹40,000/- to petitioner. Statement of account Ex. CW1/1 indicated that as on 16<sup>th</sup> February, 2009 ₹17,100/- was outstanding balance. Over and above this, overdue charges of ₹12,451.48 were added. Even the aggregate of this amount comes to ₹29,551.48; whereas cheque amount was much more than this. Thus, the cheque being of higher amount could not be taken towards discharge of the existing legal liability.

4. Reliance has been placed on the judgments, that is, Alliance Infrastructure Project Pvt. Ltd. and Ors. Vs. Vinay Mittal, MANU/DE/0031/2010 and Angu Parameswari Textiles (P) Ltd. and Ors. Vs. Sri Rajam & Co., MANU/TN/0662/2001 to conclude that if cheque amount is much more than liability, section 138 of the Act is not attracted. In Alliance Infrastructure (supra), it has been held as under:-

“8. The question which comes up for consideration is as to what the expression “amount of money” means in a case where the admitted liability of the drawer of the cheque gets reduced, on account of part payment made by him, after issuing but before presentation of cheque in question. No doubt, the expression “amount of money” would mean the amount of the cheque alone in case the amount payable by the drawer, on the date of presentation of the cheque, is more than the amount of the cheque. But, can it be said the expression “amount of money” would always mean the amount of the cheque, even if the actual liability of the drawer of the cheque has got reduced on account of some payment made by him towards discharge of the debt or liability in consideration of which cheque in question was issued. If it is held that the expression “amount of money” would necessarily mean the amount of cheque in every case, the drawer of the cheque would be required to make arrangement for more than the admitted amount payable by him to the payee of the cheque. In case he is not able to make arrangement for the whole of the amount of the cheque, he would be guilty of the offence punishable under [Section 138](#) of Negotiable Instruments Act. Obviously this could not have been the intention of the legislature to make a person liable to punishment even if he has made arrangements necessary for payment of the amount which is actually payable by him. If the drawer of the cheque is made to pay more than the amount actually payable by him, the inevitable result would be that he will have to chase the

payee of the cheque to recover the excess amount paid by him. Therefore, I find it difficult to take the view that even if the admitted liability of the drawer of the cheque has got reduced, on account of certain payments made after issue of cheque, the payee would nevertheless be entitled to present the cheque for the whole of the amount, to the banker of the drawer, for encashment and in case such a cheque is dishonoured for want of funds, he will be guilty of offence punishable under Section [138](#) of Negotiable Instrument Act.”

5. In Angu Parameswari Textiles (supra), it has been held thus:-

“4. Section [138](#) of the Negotiable Instruments Act reads that where any cheque was drawn for payment of any amount of money for the discharge in whole or any part of any debt or other liability and the same is dishonoured by the Bank, the person who drew the cheque shall be punishable. Therefore, the cheque drawn should be towards the discharge of either the whole debt or part of the debt. If the cheque is more than the amount of the debt due, I am afraid, Section [138](#) cannot be attracted. This is a case where the cheque amount was more than the amount due on the date when the cheque was presented. The presentation of the cheque and subsequent dishonour alone raises a cause of action. When the cheque cannot be said to be drawn towards the discharge of either the whole or part of any debt or liability, Section [138](#) is not attracted. On this sole ground, the complaint is liable to be quashed and is accordingly quashed.”

(emphasis laid)

6. For the foregoing reasons, I do not find any perversity in the view taken by the trial court. The view taken by the Trial Court, obviously, is a possible view. In my view, petitioner has failed to make out a case for grant of leave to appeal against the judgment of the trial court. Petition is dismissed.

**A.K. PATHAK, J.**

**JULY 15, 2016/rb**

