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

\+ CRL.L.P. 428/2015

M/S LUNAR HOLDINGS LTD ..... Petitioner

Through: Ch. Ranjit Singh, Advocate

versus

ARVIND NAIK ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **07.11.2016**

1. The petitioner has preferred the present leave petition to assail the judgment dated 14.10.2014 passed by the learned Magistrate in CC No.4566/1/09 being the complaint of the petitioner under Section 138 of the Negotiable Instruments Act, whereby the said complaint was dismissed and the respondent/ accused acquitted.

2. The petitioner had preferred the said complaint in respect of a cheque allegedly issued by the respondent for an amount of Rs.23,90,604.39 dated 30.11.2001. Out of the said amount, the petitioner claimed principal outstanding liability of Rs.11,09,876.14 and the remaining amount towards interest for the period 20.05.1998 to 30.11.2001 @ 2% p.m. The case of the complainant/ petitioner was that the petitioner is a member of National Stock Exchange engaged in the business and activities of brokerage of share and securities. The accused was appointed as a sub-broker of the petitioner. The petitioner stated that during the course of business relations, certain part

payment were made by the accused to the complainant company for the services rendered by it. The case of the petitioner was that the cheque in question was issued by the accused to settle its outstanding liabilities in respect of the share transaction undertaken by the petitioner on behalf of the accused. Since the cheque was dishonoured upon presentation, the petitioner issued a legal notice dated 15.01.2002, which was replied to by the respondent. As the payment was not made, the complaint has been preferred.

3. The statement of the accused was recorded after the complainant examined his witnesses and led his evidence. The said statement of the accused has been summarised in the impugned judgment as follows:

> "*5. Thereafter, statement of accused was recorded after putting all the incriminating evidence on record, to which he pleaded innocence and stated that he has paid for all the services rendered by the complainant on his behalf and behest. The last payment made by him was by way of cheque bearing no.546990 dt.20.05.1998 for a sum of Rs.30,000/ on 28.05.1998. There was no transaction between him and the complainant company after 20.05.1998. The cheque in question was issued as a blank cheque only bearing his signatures towards security in the year May 1996. He had replied the legal notice dt. 15.01.2002 vide his letter dt.24.01.2002. He has examined himself as DW1 and relied upon the passbook of his savings bank account no. 23275 at Sarawat Cooperative bank, Worli Branch, Mumbai w.e.f 15.12.1997 to 19.05.2000 as Ex.DW1/1 and the passbook for the period from 20.04.1996 to 08.12.1997 as Ex. DW1/2. He also placed on record the cheque record slip alongwith a cancelled cheque bearing no.547000 as Ex.DW1/3 (Colly.)*".

4. The learned Magistrate proceeded to marshal the evidence and found that the defence of the accused that the cheque in question was issued as a

security cheque and not in respect of an outstanding debt or liability was probabalised. Consequently, the complaint was dismissed.

5. The submission of learned counsel for the petitioner is that in view of section 139 of Negotiable Instruments Act since the signatures on the cheque were admitted by the accused, a presumption arose that the said cheque was issued against an outstanding debt or liability which, according to the petitioner, had not been dislodged.

6. A perusal of the impugned judgment shows that the learned Magistrate has, in detail, analysed the cross examination of PW-1, the witness of the petitioner/ complainant and found several lacunas therein. The relevant extract from the impugned judgment in this regard reads as follows:

> "*7 PW1 during his cross examination stated that the transaction was made through accused as a subbroker. He further stated that no contract notes or invoices were placed on record by him with respect to the trade done by the accused. The transaction was made at National Stock Exchange. He further stated that consequent agreement was executed between complainant and accused, however, no such agreement was placed on record. He stated that trading was started in 1996 and continued upto 1997 and accused made payment even after 1997. He admitted that the ledger pertaining to the period before 01.04.1997 is not on record. He denied the suggestion that the same was not filed intentionally to suppress the truth. He can produce the ledger concerning the accused for the period January 1996 to March 1997.*
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> *7.1 However, PW 1 did not file any such ledger account for the period January 1996 to March 1997. The only ledger account on record is for the period 01.04.97 to 31.03.1998 Ex. PW 1/C. PW 1 stated that the ledger is a computerised statement and the print out was taken in 1998 but it does not*

contain any certificate or signatures of any company official. He stated that he has no personal knowledge regarding the transaction in question nor he has ever dealt with the accused. He stated that the cheque in question was not drawn in his presence and was handed over to Mr. S.C. Sethia having his office in Mumbai. The office of complainant was situated at Mumbai where the trade was done. The last payment was done by the accused in the year 2008 but he does not remember the date, month or the amount. He stated that he is not aware that one cheque bearing no. 449290 was issued on 20.05.1996 for Rs.37,884.5/ by the accused in favour of complainant company or that the same was encashed. He stated that he does not remember the number of cheques issued from the first payment till the last payment in 2008.

7.2 PW 1 admitted that there is no document on record to claim interest from the accused. He admitted that accused issued last cheque bearing no.546990 dt. 19.05.1998 for Rs.30,000/ which was encashed. He stated that the colour of the ink appears to be different for writing the amount as well as the date and the name of payee as compared to signatures. He denied the suggestion that the cheque was filled by the complainant subsequently. He further denied the suggestion that the cheque in question was issued on 15.05.1996 as security or that there was no legally enforceable debt or liability against the accused when this cheque was issued. He admitted that no acknowledgment debt or liability by the accused is on record after 19.05.1998. He admitted that the complainant company did not receive any payment from the accused after 19.05.1998. He stated that the complainant apprised the accused of the outstanding liability by hand. When he was specifically asked as to whether any confirmation to the effect that the accused has received the statement of accounts was received from the accused, he replied that no talks took place with him regarding the statement of accounts. But the accused conveyed their employee Mr.S.C. Sethia regarding receiving of statement of accounts and assured that he would make the payment at the earliest. He admitted that this fact is not mentioned either in the complaint or in the affidavit. He *stated that he cannot produce the ledger of the complainant company before 01.04.1997. He denied the suggestion that present complaint has been filed after calculating the interest which was never agreed upon. He denied the suggestion that there was no reconciliation of account or that the cheque in question was not issued against the said reconciliation.*

8 At one point of time, PW1 during his cross examination has admitted that the complainant company did not received any payment from the accused after 19.05.1998 and on the other hand he has stated that the last payment was made by the accused in the year 2008. Though, he has admitted that some agreement was executed between the complainant and accused, however, no such agreement has been placed on record by the complainant company. PW 1 has categorically admitted that there is no document on record to show that the complainant company was entitled to claim interest from accused. Neither any agreement, or letter or ledger pertaining to the period before 01.04.1997 has been placed on record by the complainant. The only ledger/statement of account which has been placed on record by the complainant is Ex.PW1/C. The said document is merely a photocopy of some ledger account with outstanding balance at the end which is stated as Rs.11,09,867.14/. At the end of the said statement, it is written with the hand that interest at the rate of 2% on Rs. 11,09,867.14/ from 20.05.1998 to 31.11.2001. There is no certificate of any sort appended with the said ledger account that it is a true certified copy of the original ledger account. According to CW1, the said ledger account has been signed by Mr. S.C. Sethia. The complainant has not examined Mr. S.C. Sethia nor any other person from the accounts department to prove the ledger account or the entries therein. No agreement has been placed on record by the complainant company that the interest at the rate of 2% was agreed between the complainant and the accused. PW1 further admitted that ledger does not contain any certificate or signatures of any company official. Since the ledger account has not been proved by the complainant, no reliance can be placed upon the same.

8.1 As per complainant the cheque in question was issued as per the liability which was due against the accused as per Ex. PW 1/C. PW1 has deposed that the cheque in question was handed over to Mr. S.C. Sethia having his office in Mumbai and even the trade was done in Mumbai. PW1 further admitted that there is no document on record to claim interest from the accused. PW1 further stated that their employee Mr. S.C. Sethia was conveyed by accused regarding receiving of statement of accounts. However, the complainant has not examined Mr. S C Sethia to prove these facts or any other person who had dealt with the accused or prepared the statement of account. DW 1 during his cross examination, denied the suggestion that the amount of Rs. 11,09,876/ was due against complainant company for the period from 20.05.1998 to 30.11.2001. He denied the suggestion that he had agreed to pay 2 % interest on the said amount in case of default in payment. He denied the suggestion that the entire statement of account showing the due amount was supplied to him by the complainant company or that towards the said amount, he had issued the cheque in question.

He stated that he had not demanded back the security cheques from the complainant when he entered into full and final settlement with the complainant on 20.05.1998.

7. The Trial Court has also analysed the defence of the accused in the following manner:

"*9 The defence of the accused is that the cheque in question was given as security cheque to the complainant. DW1 during his examination in Chief deposed that he has given first cheque no.449290 dt.20.05.1996 and last payment was made by him vide cheque no. 546990 dt.20.05.1998 against the full and final settlement amount with the complainant company and afterwards there was no transaction with the company and there was no debt or liability against him. He further deposed that complainant has used the security cheque and misused the same. In 1996, the size of the cheque was small in dimension*

> *and subsequently they have issued bigger cheque in dimension in 1998 onwards. He stated that he had not filed any document to show that the cheque in question was given towards security or as security cheques.*
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> *10 The number of the cheque in question is 449289. When PW 1 was asked about the cheque no.449290 dt. 20.05.1996 for the amount of Rs. 37,884.50 which was duly encashed by the complainant, he stated that he has no knowledge about the same. He denied the suggestion that he is deposing falsely with regard to the said cheque as the cheque in question is bearing no.449289. As per the statement of account placed on record by the accused Ex.DW1/1 for the year 1996, the cheque bearing no.449290 for the amount of Rs.37,884.50/ was encashed on 20.05.1996. PW1 during his cross examination admitted that accused issued last cheque bearing no.546990 dt.19.05.1998 for Rs.30,000/ which was encashed. PW1 further stated that the colour of ink appears to be different for writing the amount as well as the date and name of payee as compared to signatures. PW1 further admitted that there is no acknowledgment debt or liability by accused on record after 19.05.1998. He further admitted that the complainant company did not received any payment from accused after 19.05.1998. Further, as per the statement of account filed by the accused, many subsequent cheques issued by him in favour of the complainant company have been encashed*".

8. In the aforesaid background, in my view, no error can be found in the impugned judgment to call for interference thereof by grant of leave in the present case. The defence of the accused was clearly probablised in the aforesaid circumstances.

9. Dismissed.

VIPIN SANGHI, J

NOVEMBER 07, 2016

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