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

\+ CRL.L.P. 175/2016 and Crl. M.A. No.4537/2016

VIJAY VINAYAK

..... Petitioner

Through: Mr. M.L. Kalra, Advocate.

versus

IRISH DUGGAL

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **02.08.2016**

1. The aforesaid application has been filed to seek condonation of delay in filing the leave petition.

2. I may observe that in the application, there is no mention about the number of days delay. However, the office note shows that there is a delay of 149 days in filing the leave petition. Since I have heard learned counsel for the petitioner on merits and I am not inclined to issue notice on the leave application, no purpose would be served by issuing notice in the delay application as well.

3. The petitioner has preferred the present leave petition to assail the order dated 24.07.2015 passed by the learned Metropolitan Magistrate-02

South, Saket Courts in CC No.420/2014, i.e. the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act against the respondent/ accused. The learned MM has acquitted the accused and dismissed the complaint.

4. The case of the complainant was that the petitioner had supplied the plastic raw materials to the accused on credit basis. A running account was being maintained between the parties. The outstanding liability of the accused came to Rs.14,66,379/-. In part discharge of the said liability, the accused issued 13 post-dated cheques amounting to Rs.12,35,000/- on different dates to the complainant. The outstanding liability of the accused as on 18.08.2008 was claimed to be Rs.11,31,834/-. The petitioner claimed that out of the 13 post-dated cheques, 5 cheques became stale as they were not deposited within their validity period. The remaining 8 cheques, when deposited, were dishonoured for insufficient funds. Consequently, the petitioner issued statutory notice of demand. As the amounts covered by the said cheques were not paid, the petitioner preferred the aforesaid complaint under Section 138 of the NI Act.

5. The reason why the learned Magistrate has dismissed the complaint is that the complainant sought to place reliance on an account statement of his firm Exhibit CW-1/6, which was stated to be a computer generated ledger running account for the period 01.04.2008 to 31.03.2009. Admittedly, the same was not an audited ledger account. The learned Magistrate, therefore, held that the same could not be relied upon – it being not audited.

6. The learned Magistrate also held that according to the complainant, he

had issued 13 cheques aggregating to Rs.12,35,000/-, even though at the time when the cheques were issued the outstanding liability was Rs.11,31,834, according to the petitioner, as on 18.08.2008. The learned Magistrate observes that it was improbable that the accused would issue cheques for a higher amount when the outstanding liability, even according to the petitioner, was lesser.

7. The accused had taken the defence that the said cheques had been issued as security cheques. Learned Magistrate observes that out of the 13 post-dated cheques, 11 cheques were bearing the running serial numbers while two cheques had different serial numbers. Learned Magistrate held that it was improbable that cheques issued from time to time would have successive serial numbers and, thus, the probability of the same having been issued at the same time towards security cannot be ruled out.

8. The submission of learned counsel for the petitioner is that the learned Magistrate has proceeded on the principle of preponderance of probabilities, which is not the standard applicable to criminal trials. I do not find any merit in this submission. It is well-settled that to dislodge the presumption under Section 139 of the NI Act, the accused is required to establish his defence only on the principle of preponderance of probabilities and not beyond reasonable doubt.

9. The further submission of learned counsel for the petitioner is that since the parties were maintaining the running account, it was not necessary that the accused should have issued cheques for the exact outstanding liability as on18.08.2008. Thus, the issuance of cheques for the larger

amount of Rs.12,35,000/- could not create a doubt in the petitioner's case. I do not find this plea to have been set up in the complaint. Moreover, the petitioner could not establish the running account since the ledger produced by the petitioner was not believed, and rightly so by the learned Magistrate – it being an unaudited account.

10. I find no infirmity in the impugned order.

11. Dismissed.

VIPIN SANGHI, J

AUGUST 02, 2016

B.S. Rohella