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

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Date of Decision: 11.07.2016

% **CRL.L.P. 335/2016 & CRL MA 10130/2016**

BANSHIDHAR CHITS

..... Petitioner

Through: Mr. Manish Sharma, Ms.Sonia
Khandelwal and Ms.Malika Sharma,
Advocate

versus

CHANDRA PRAKASH AGGARWAL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This application to seek leave to appeal has been preferred under section 378(4) Cr PC to assail the judgment dated 02.02.2016 passed by the learned Metropolitan Magistrate (T), North-East, Karkardooma Courts, Delhi in CC No.46192/2015, titled Banshidhar Chits (P) Ltd. v. Chandra Prakash Aggarwal. By the impugned order, the said complaint preferred by the petitioner under Section 138 Negotiable Instruments Act, 1881 has been dismissed by the learned Magistrate and the respondent/ accused has been acquitted of the said offence.

2. The leave to appeal is delayed by 26 days and, accordingly, the petitioner has filed an application to seek condonation of delay vide Crl MA No.10130/2016. However, since I have heard learned counsel for the

petitioner and I am not inclined to grant leave, no useful purpose would be served in issuing notice on the said application seeking condonation of delay.

3. The case of the petitioner is that it is dealing in the business of chit fund. The accused is a member of the chit group BCPL/1 and BCPL/3 of the complainant. He is also a member of the chit group SBD/18, SBD/20, SBD/23 of a sister concern of the complainant/ petitioner M/s. Shree Bhaiya Dass Chits Pvt. Ltd. The case of the complainant was that the accused was paid monies through cash as well as cheques under the schemes. However, he failed to pay the instalments despite requests. He settled the account on 14.10.2012 in respect of all his accounts with the complainant as well as the sister concern Shree Bhaiya Dass Chits Pvt. Ltd. He had issued a post dated cheque bearing no.000037 dated 10.12.2012 drawn of Bank of India, Chandni Chowk Branch to discharge his liability owed to the petitioner as well as Shree Bhaiya Dass Chits Pvt. Ltd. The said cheque was dishonoured upon presentation. Consequently, after issuance of the statutory notice, since the payment was not made, the complaint was preferred.

4. The respondent/ accused was summoned. He pleaded not guilty and claimed trial.

5. The statement of the accused was accordingly recorded. He stated that the cheque had been issued in blank for the purpose of security as he was a member of the complainants chit fund. The accused moved an application under section 145(2) of the Negotiable Instruments Act to cross examine the witness of the complainant, which was allowed. The petitioner/ complainant led in evidence several documents including the settlement

letter executed by the accused as Ex. CW-1/D; the statement of account of the respondent/ accused maintained with the complainant as Ex. CW-1/N running into 12 pages, and; copy of the ledger account of Shree Bhaiya Dass Chits Pvt. Ltd. and Banshidhar Chits as Ex. CW-1/O (Colly) running into 10 pages.

6. In his statement recorded under Section 313 Cr PC, the accused stated that he had taken a loan of Rs.50,000/- from the complainant against blank cheques. He stated that his signatures were taken on blank papers and that he had no liability to pay to the complainant or its sister concern. He also examined himself as DW-1 in support of his defence. He stated that he and his wife were members of the chit of the complainant company. He had taken a loan of Rs.50,000/- from the complainant. At the time of taking loan, the complainant company had taken three blank cheques and also signatures and thumb impressions on three blank papers. The same were not returned and one of those cheques have been misused by the complainant. He stated that he had filed a complaint against the complainant company with the police and also filed a recovery suit for Rs.7 lacs against the complainant company which is pending adjudication. His wife had also filed a recovery suit against the complainant company which was pending adjudication. He examined his wife as DW-2, who deposed on the same lines.

7. The learned Magistrate examined the issue whether the accused had dislodged the legal presumption in the light of the evidence led by the parties, and found in favour of the accused. The complainants witness CW-1 stated that the liability of the accused claimed in the cheque is a

cumulative liability of the accused towards the complainant and its sister concern. During his cross examination, CW-1 admitted that the accused had taken a loan of Rs.50,000/- and that he had handed over blank cheques to the complainant apart from a bond and undertaking of the sureties.

8. To prove the liability owed to Shree Bhaiya Dass Chits Pvt. Ltd., the complainant placed reliance on a copy of the board resolution passed by the Board of Directors of Shree Bhaiya Dass Chits Pvt. Ltd. as Ex. CW-1/C. The said resolution, however, did not mention the amount which was due from the accused to the said company. The statement of account of Shree Bhaiya Dass Chits Pvt. Ltd. (Ex. CW-1/N) and the ledger account of Shree Bhaiya Dass Chits Pvt. Ltd. (Ex. CW-1/O colly) as also the statement of account maintained by the complainant/ petitioner (Ex. CW-1/N) and the ledger account (Ex. CW-1/O colly) were challenged by the accused during cross examination.

9. The learned Magistrate held that the said documents have not been proved in accordance with law inasmuch, as, they are print out of electronic record and the complainant had not filed the certificate in terms of Section 65B of the Indian Evidence Act. Same was the position with regard to ITRs filed by the complainant (Ex. CW-1/O colly & CW-1/P colly). On account of non-compliance of Section 65B of the Indian Evidence Act, by placing reliance on *Anwar P. V. v. P.K. Basheer*, (2014) 10 SCC 473, the said evidence produced by the complainant/ petitioner was ignored.

10. The submission of learned counsel for the petitioner is that even if the petitioner failed to prove the aforesaid records of the petitioner and the sister concern on account of non furnishing of the certificate under Section 65B of

the Indian Evidence Act, the admission of liability owed to the petitioner as well as the sister concern Shree Bhaiya Dass Chits Pvt. Ltd. stands established on record by the settlement letter issued by the accused Ex. CW-1/D. Learned counsel submits that the learned Magistrate disregarded the said evidence despite the fact that the accused admitted to have given signed documents, though in blank, to the complainant and also stated that the signatures on the said documents appear to be similar to his signature.

11. I do not find any merit in this submission of the petitioner. The learned Magistrate doubted the veracity of the said document by observing as follows:

“I have perused the document. It is a small paper which has been torn out of a larger paper. Perusal of the document would show that it does not bear the handwriting of the accused. The handwriting in the body of the document is not similar to the handwriting of the signatures of the accused at the end of the document. The way document has been written with a narrow line spacing, a doubt has been created on its originality. The accused has denied execution of this document. It is not written in his handwriting. The complainant in his evidence has not explained the circumstances under which the accused had executed this document. Therefore, I am of the considered opinion that the accused has proved, on the preponderance of the probabilities, that he had not executed this document and that it has been prepared on a blank signed paper later on”.

12. The submission of learned counsel for the petitioner, that before disregarding Ex. CW-1/D, the learned Magistrate did not rely upon the report of handwriting expert has no merit. It is not necessary for the Trial Court to call for the report of a handwriting expert before examining and ruling on the veracity of a document premised upon the handwriting and signatures found thereon. Photocopy of the said document Ex. CW-1/D has

been placed on record along with the present petition and it is evident that the letter formation in the signatures of the accused is quite different from that in the body of the document itself.

13. A perusal of the complaint shows that the petitioner did not even aver with regard to execution of Ex. CW-1/D by the accused in the complaint. In his affidavit towards examination in chief, CW-1 for the first time made a mention about the settlement letter allegedly executed by the accused as Ex. CW-1/D. Even then, it was not disclosed that the said letter was scribed by some other person and not the accused. In his cross examination, CW-1 said he could not tell who has written the letter Ex. CW-1/D. He volunteered that it was produced by the accused and that it bears his signatures.

14. In the light of the aforesaid evidence, in my view, the learned Magistrate correctly came to the conclusion that the legal presumption with regard to existence of a debt in respect whereof the cheque was claimed to have been issued stands rebutted as a reasonable doubt was created in the story of the complainant. The complainant could not establish the existence of the crystallised liability allegedly owed to the complainant and its sister concern. Consequently, the complainant did not prove the commission of the offence by the accused beyond reasonable doubt. In the aforesaid circumstances, there is no merit in the present petition. Dismissed.

VIPIN SANGHI, J

JULY 11, 2016 sr