$~26.

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

\+ CRL.L.P. 239/2016

B.N MEHRA

..... Petitioner

Through: Mr. Prashant Jain and Ms. Pratibha Sabharwal, Advocates

versus

AJAY GOEL

..... Respondent

Through: Mr. Asim Naeem, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **03.10.2016**

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 08.01.2016 passed by the learned MM (East) Karkardooma Courts, Shahdara, Delhi, whereby the learned Magistrate has acquitted the respondent/ accused in the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant was that he had advanced a friendly loan in cash of Rs.13 lacs to the respondent accused in January 2012. He claimed that out of the said amount, the accused had repaid Rs.1.10 lacs and had also issued the cheque in question for Rs.11.90 lacs drawn on his bank dated 10.02.2013. When the said cheque was dishonoured on account of stop

payment instructions, the complainant issued a demand notice. Since the accused responded to the notice denying the liability and setting up a defence, the complainant preferred the complaint.

3. Under Section 251 Cr PC, the accused made a statement pleading Not Guilty and claimed trial. His plea in defence was that the signatures in the cheque were, indeed, his. However, he denied having filled up the contents of the same. He stated that he had handed over four cheques including the cheque in question to his brother-in-law, Vikas Gupta, who was his business partner. He admitted to have stopped the payment of the cheque in question in 2006. He stated that he had responded to the legal notice issued by the complainant.

4. The petitioner/ complainant examined himself as CW-1 and he was cross examined. The reply to the legal notice issued by the complainant was exhibited as Ex. CW-1/D1 during the cross examination of CW-1. The statement of the accused was recorded under Section 313 Cr PC, wherein he reiterated his plea of defence with elaboration. The accused denied knowing the complainant as well as having any liability towards the complainant in respect of the cheque in question. He stated that in 2006 he was in a partnership business with Vikas Gupta - his jija, and father of Vikas Gupta, Ravinder Gupta. He stated that he had kept his blank signed cheques with Vikas Gupta for business purposes, as he used to travel out of station. He stated that the cheque in question had been misused by the complainant along with Vikas Gupta by filing the present complaint. He also stated that he had already filed a FIR against Vikas Gupta, Ravinder Gupta and B.N. Mehra for misusing the cheques of the accused and filing various complaint

cases. He chose to lead his evidence and he was examined as DW-1.

5. He exhibited the reply issued by Amba International with respect to the cheque in question along with other cheques which were missing. He also exhibited the certificate from the bank certifying that the stop payment instructions in respect of the bank had been issued in 2006. He also exhibited the charge sheet filed in case FIR No.474/2006, as aforesaid, apart from several other documents.

6. The Trial Court held that the accused had probabalised his defence, since the advancement of the loan was itself not documented. The complainant had not established the availability of Rs.13 lacs in cash with him which could be advanced to the accused. The said loan was not also reflected in the income tax return of the complainant. Pertinently, the complainant could not identify the accused in court on 22.07.2014. This was despite the fact that while under cross examination, the complainant on 27.03.2014 claimed that he had known the accused for the last 12 years through his father, with whom he had family relationship.

7. The submission of counsel for the petitioner is that the accused did not prove the documents tendered in evidence in accordance with law. No witness was produced from the bank to prove the certificate dated 08.05.2013 (Ex. DW-1/2), according to which the stop payment instruction was issued on 19.06.2006, inter alia, in respect of the cheque in question. The said document was tendered in evidence by the accused himself i.e. DW-1.

8. Similarly, the accused had tendered in evidence the communication dated 16.09.2006 of Amba International, wherein Amba International had

stated that, inter alia, the cheque in question was lying with it and was misplaced somewhere. I may observe that Amba International was stated to be the concern of Ravinder Gupta.

9. Having heard learned counsel for the parties, perused the impugned judgment and the evidence led by the parties, I do not find any merit in this petition, as a perusal of the impugned judgment does not show that the same suffers from any perversity or error of law. The Trial Court has satisfactorily analysed the evidence led by the parties while returning its findings.

10. So far as the submission of counsel for the petitioner with regard to admissibility of Ex. DW-1/1 (the confirmation of balance letter issued by Amba International, wherein it disclosed that, inter alia, the cheque in question had been misplaced), and the admissibility of Ex. DW-1/2 (the certificate issued by State Bank of India certifying that the payment of, inter alia, the cheque in question had been stopped on 19.09.2006) is concerned, I do not find any merit in these submissions that the said documents could not have been led in evidence by DW-1/the accused. Pertinently, both these communications come from the right source, namely, the accused. The communication (Ex. DW-1/1) was addressed to the accused and Ex. DW-1/2 was obtained by the accused from his own banker. It is also pertinent to note that when these documents were led in evidence by the accused, there was no objection raised by the complainant on the ground that they could not be produced by the accused, or that they could not be exhibited and relied upon by the court. It is too late in the day for the petitioner/ complainant to now raise such an objection.

11. The accused was able to probablise the defence that the cheque in

question was not issued in respect of an outstanding debt or other liability on cumulative analysis of the evidence brought on record. Firstly, the petitioner/ complainant could not establish the advancement of the alleged loan of Rs.13 lacs as the complainant did not establish the availability of funds to that extent with him. The complainant also did not establish the return of the loan to the extent of Rs.1.10 lacs by the accused. He also did not establish that contemporaneously the loan had been reflected in his income tax returns. It is extremely pertinent to note that the complainant could not even recognise the accused to whom he claimed to have advanced a large amount of Rs.13 lacs in the year 2012, and in respect of whom claimed that he knew the accused and his father for the last 12 years, and with whom he claimed family relationship. This conduct of the petitioner is in accord with the defence of the accused that he did not know the complainant at all and saw him for the first time in the court. Pertinently, the stop payment instructions were issued by the accused way back in 2006, whereas the cheque in question had allegedly been issued in 2012.

12. For all the aforesaid reasons, I find no merit in the present petition. Dismissed.

VIPIN SANGHI, J

OCTOBER 03, 2016

sr