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

+ CRL.L.P. 291/2016

RAM PHAL

..... Petitioner

Through: Mr. Manoj Sharma, Advocate.

versus

BIJENDER RANA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
14.09.2016

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This matter has been taken up today since 13.09.2016 was declared as holiday on account of Id-ul-Zuha (Baqried).

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 05.03.2016 passed by the learned MM (North-West), Rohini, Delhi in CC No.11793/1/10 titled *Ram Phal Vs. Bijender Rana*, whereby the complaint of the petitioner under Section 138 of the NI Act has been dismissed and the respondent accused acquitted.

The said complaint had been preferred by the petitioner complainant in respect of a dishonoured cheque of Rs.14 Lakhs drawn by the respondent accused. The petitioner claimed to have advanced the said amount in cash

as friendly loan to the accused. Admittedly, there was no acknowledgement received by the petitioner regarding the same. The petitioner had stated that he is a Gardener with the DDA having salary of Rs.31,000/- per month.

The Trial Court, firstly, held that the petitioner had not been able to establish the source of the said fund of Rs.14 Lakhs, which he allegedly advanced to the accused. The submission of learned counsel for the petitioner is that during his cross-examination, the petitioner had stated that he had sold some other property and also taken loan from his other friends/acquaintances and that is how he could advance the loan to the accused. However, no evidence was led by the petitioner complainant in this respect. The submission of learned counsel for the petitioner that the statement made by the complainant during his cross-examination was sufficient evidence, cannot be accepted. It was for the petitioner to lead evidence with regard to the availability of the amount of Rs.14 Lakhs in cash with him, which he failed to establish. Thus, the presumption in his favour stood rebutted.

The accused also took the stand that he had issued a cheque for Rs.4 Lakhs, which was a part of the sale consideration of Rs.6.5 Lakhs payable by the accused complainant in respect of a sale of an immovable property by the complainant to the accused. The accused claimed that he had paid Rs.2.5 Lakhs out of the total sale consideration of Rs.6.5 Lakhs in cash – the receipt whereof was admitted by the petitioner complainant during his cross-examination. The accused claimed that the remaining amount was tendered by a cheque of Rs.4 Lakhs. However, the complainant allegedly tempered with the cheque and changed the figure of 4 Lakhs to 14 Lakhs. The accused led the evidence of handwriting expert, who established that the figure ‘1’ had been put before the figure of 4,00,000/- in the cheque.

The Court also took into account the said report of the handwriting expert which was not contradicted by the petitioner by leading any contrary report of another handwriting expert. The submission of learned counsel for the petitioner is that the petitioner had tendered the agreement entered into with the accused in respect of the immovable property, which was marked as Mark 'X'. The said document shows that the total sale consideration was Rs.2.5 Lakhs only and it was not Rs.6.5 Lakhs. Thus, the defence of the accused that he had tendered the cheque of Rs.4 Lakhs to the petitioner towards part-payment of the sale consideration was shaken.

I may observe that this document was not exhibited and, therefore, was not read in evidence. Secondly, the same does not militate against the evidence of the handwriting expert led by the accused, which shows that the cheque in question had been tempered with.

In my view, the Trial Court was correct in its conclusion that the presumption in favour of the petitioner under Sections 118/ 139 of the NI Act stood squarely rebutted.

I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 14, 2016

B.S. Rohella