

\$~3.

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

+ CRL.L.P. 278/2016

SHANKER PAL SINGH Petitioner

Through: Mr. Ranjit Singh, Advocate.

versus

VISHNU PANDEY

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

09.09.2016

%

Crl. M.A. No.8338/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.L.P. 278/2016 and Crl. M.A. No.8337/2016

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 09.03.2015 passed by the learned MM-02 NI Act (SED), Saket Court, New Delhi in complaint case No.1866/2014, whereby the said complaint preferred by the petitioner under Section 138 of the NI Act has been dismissed and the respondent accused acquitted.

The petitioner also seeks condonation of 28 days delay in filing the leave petition. However, since I am not inclined to issue notice in the leave petition, no purpose would be served in issuing notice in the delay application.

The case of the petitioner complainant was that the petitioner had

advanced a friendly loan of Rs.1,90,000/- to the respondent accused, and towards repayment of the same, the accused had issued the cheque in question for equivalent amount. The said cheque was dishonoured upon presentation and the amount was not paid despite statutory notice. Consequently, the complaint was filed.

The accused in his defence took the stand that he had not taken any loan from the petitioner. The petitioner could not establish advancement of the loan as there was no acknowledgement or receipt and the loan had allegedly been advanced in cash. The petitioner could not establish the availability of amount of Rs.1,90,000/- with him. The source of the said fund was not established. Consequently, the Trial Court held that the presumption under Section 118/ 139 stood rebutted.

The other aspect on which the Trial Court held against the petitioner was that there were two versions available on record with regard to the presentation of the cheque for encashment by the petitioner. Whereas the petitioner led evidence to show that the cheque had been presented for payment; the same had been dishonoured and; the dishonoured cheque had been returned along with return memo report, the respondent accused had led evidence of the Bank Manager to show that the said cheque had not been presented. Since two versions were available, the Trial Court held that the version of the complainant could not be accepted in view of the doubt created by the accused.

So far as the second aspect is concerned, I find the impugned judgment is patently laconic. The returned cheque itself had been led in evidence apart from the cheque return memo. The cheque itself showed that the same had been presented for payment since it bears the stamp of the

State Bank of India dated 30.05.2011. Even the cheque return memo issued by the State Bank of India is on record, which shows that the cheque was returned unpaid on account of “insufficient funds”. There was no basis for the defence witness stating that there was no record of the cheque having been presented for encashment before the bank. That statement was made by the witness merely on the basis of the bank statement of the accused. The said bank statement would not reflect the dishonour of the said cheque since no amount was debited from the account of the accused. When there are two testimonies, the Court ought to have applied its mind to the documentary evidence available before it and on perusal of the returned cheque and cheque return memo, it was established that the cheque was presented to the bank and the same was returned unpaid on account of insufficient funds.

Returning to the first aspect, the submission of learned counsel for the petitioner is that the petitioner had agricultural cash income. However, this aspect is neither disclosed in the complaint, nor any evidence was led in this respect. Since the petitioner could not establish the advancement of the loan and the availability of the amount in cash on the date when the loan was allegedly advanced and the source of the said amount, the impugned judgment does not call for interference.

I do not find any merit in this petition.

Dismissed.

VIPIN SANGHI, J

SEPTEMBER 09, 2016

B.S. Rohella