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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 339/2016**

INDU JAIN

..... Petitioner

Through: Mr.Sanjay Aggarwal, Advocate

versus

SATBIR SHARMA & ORS

..... Respondents

Through: Ms.Anita Abraham, APP for State

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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11.07.2016

Crl. M.A.10166/2016 (for exemption)

Exemption allowed, subject to just exceptions.

Crl. L.P. 339/2016

The petitioner seeks leave to appeal against the order dated 28.03.2016 passed by the learned Metropolitan Magistrate (North-west), Rohini, Delhi in CC No.14634/1/11 titled ***Indu Jain v. Satbir Sharma*** preferred by the petitioner/complainant under Section 138 of Negotiable Instruments Act. By the impugned order, learned Metropolitan Magistrate has dismissed the said complaint of the petitioner/complainant by holding that the complainant had failed to prove her case beyond reasonable doubts as the ingredients of Section 138 Negotiable Instruments Act could not be established.

The case of the complainant was that the respondent and the husband of the complainant were known to each other since childhood and the

complainant had advanced a personal loan of Rs.65,00,000/- to the respondent at his request. The petitioner claimed that the respondent handed over several cheques to the complainant including the cheques in question for Rs.20,00,000/- and Rs.45,00,000/- dated 20.1.2011 and 2.5.2011 respectively, drawn on United Bank of India, Connaught Circus, New Delhi, towards repayment of the loan. The said cheques were presented but were returned unpaid on account of insufficiency of funds vide memos dated 27.04.2011 and 3.5.2011 respectively. The petitioner then issued demand notice and since the amounts were not paid, the complaints were preferred. The complainant examined herself as CW1 and in her cross-examination she stated that she is a house wife and she did not remember as to when loan was given to the accused. She stated that she had brought an amount of Rs.65,00,000/- to be given to accused as a loan to the accused from her parental house. She could not explain as to how her parents had arranged the loan amount.

The statement of accused was recorded under 281 Cr.P.C. read with Section 313 Cr.P.C. He denied the taking of loan from the complainant. He denied issuance of the cheques towards discharge of any liability, though, he admitted his signatures on the cheques in question.

The accused led his own evidence. He examined four witnesses.

The defence of the accused was that the husband of the complainant used to visit his office and apparently the cheque book was stolen from his office which contained signed cheques. In relation to the said stealing of cheques, he had made a DD entry.

The learned Magistrate held that the presumption have been rebutted by the accused that inasmuch, as, the complainant was not able to explain as

to how she had arranged a large amount of Rs.65,00,000/- for purposes of advancement of the loan to the accused. The complainant did not examine either of her parents. The advancement of such a large amount of loan without any receipt also raises doubts about the story. The accused had also produced witnesses from the bank wherein the husband of the complainant was having his accounts who produced his bank statements as EXDW-2/1 and Ex.DW-3/A. The same showed that her husband did not have sufficient means for advancing such a huge amount. The submission of learned counsel for the petitioner is that though the accused had claimed that he had lodged DD entry with the concerned police station, the same was not proved on record.

Be that as it may, in my view, the learned Magistrate was right in holding that the presumption arising in favour of the petitioner/complainant stood rebutted since the complainant was not able to explain as to how the large amount of Rs.65,00,000/- was arranged by her and her statement that it was arranged through her parents remains unsubstantiated.

Keeping in view the overall surrounding facts and circumstances of the case, in my view, the decision of the learned Magistrate cannot be faulted. Accordingly, I find no merit in the petition and the same is dismissed.

VIPIN SANGHI, J

JULY 11, 2016

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