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

\+ CRL.REV.P. 546/2013

STATE NCT OF DELHI ..... Petitioner

Through :Ms. Neelam Sharma, APP with SI Ramphal Singh, P.S. Tilak Nagar

versus

KRISHAN KUMAR ..... Respondent

Through : Mr. Aashish Gumber, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

% 01.12.2016

FIR No. 483/1993 under Section 420 IPC was lodged at Police Station Tilak Nagar on the complaint of Manager, Punjab National Bank, Tilak Nagar Branch, Delhi. As per the prosecution, one Krishan Kumar, an employee of Delhi Transport Corporation (DTC), on his retirement was issued a cheque bearing no. 086127 dated 30th April, 1993 for Rs.73,723/- towards his retiral benefits. The Said cheque was lost in transit. However, subsequently, it was revealed that the said cheque was encashed from Punjab National Bank, Delhi on 15th May, 1993. On enquiry it came to the notice of bank that one Krishan Kumar had opened the account bearing no. SF 37150, on the introduction of Sh. Vijay Kumar, and the cheque was deposited in the said account and amount was withdrawn by a withdrawal slip Ex.PW3/D.

As per the prosecution, it was the respondent Krishan Kumar, who had opened the account, deposited the cheque and withdrew the money.

During the interrogation, specimen signatures of respondent were taken and were sent to CFSL along with the "Account Opening Form". According to the CFSL, the signatures on the "Account Opening Form" matched with the specimen signatures taken during the investigation.

Trial court has noted that apart from the CFSL report, no other evidence was there to connect the respondent with the offence alleged. Trial court has held thus:-

> "The case of the prosecution so far as the account no.37150 is concerned ended at a point that one Krishan Kumar resident of RZ37, Roshan Pura, Najafgarh opned the said account. Who was that Krishan Kumar? How did he succeed in opening the account? Who was the resident of RZ37, Roshan Pura, Najafgarh? These facts have not been explained by the prosecution. Further, the said account was opened on the introduction of one Vijay Kumar who was introducer of that account. Vijay Kumar has not been cited as a witness to prove that the accused had opened that account.

Though, the prosecution has not convincingly established who was the account holder of 19162, but the accused has admitted that he opened the account no.19162. Thus, the prosecution has only one link to connect the accused with the account no.37150 and that is a report of CFSL Expert which says that the signatures of account holder of account no.19162 matched with the signatures of account holder of account no.37150. Section 45 of Indian Evidence Act says that when the court has to form an opinion upon a point of identify of handwriting, the opinion upon that point of persons, especially skilled in such science award are relevant fact. It is a settled principle of law that court must be cautious while relying upon the opinion upon the opinion of handwriting expert. In the matter of Ram Narian Vs. State of Uttar Pardesh, AIR 1973 Supreme Court 2200, it was held that opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence had to be received with great caution. Except this link of handwriting expert, the prosecution has miserably failed to establish the identity of the accused persons who opened the account no.37150. Thus, there is element of doubt in the prosecution case and it is a settled principle of law that when the story of prosecution gives rise to doubt, benefit of the same must be given to the accused. Thus, prosecution has failed to prove that accused Krishan Kumar had opened the account no.37150 and got the cheque no. 086127 dated 30.04.1193 for an amount of Rs.73,723/- encashed in his favour. Accordingly, the accused is acquitted of the charge under Section 420 IPC. File be consigned to the RR after due compliance.”

Petitioner preferred Criminal Appeal No. 249/4/13 before the Additional Sessions Judge, (West – 02), Tis Hazari Courts, Delhi against the acquittal of respondent, which has been dismissed by the impugned order dated 22nd March, 2013. Appellate court has concurred with the view taken by the trial court, on appreciation of evidence led before the trial court.

Arguments heard and material placed on record perused. I do not find any illegality or irregularity in the impugned order, inasmuch as view taken by the courts below is a possible view, on appreciation of evidence on record. Admittedly, respondent was having a saving bank account no. 19162 in the Tilak Nagar Branch and as per the rules, other account could not have been opened by the same person. This has come on record in the evidence led by the prosecution. Admittedly, no evidence was led to fix the Identity of the respondent. No bank official identified the respondent to be the same person who had opened the saving bank account no. 37150. Introducer Vijay Kumar was neither cited as a witness nor was examined. On the sketchy evidence adduced by the prosecution, trial court and appellate court have taken a view that prosecution had failed to prove the guilt of the respondent beyond the shadow of reasonable doubt and that the respondent was entitled to benefit of doubt.

For the foregoing reasons, revision petition is dismissed.

A.K. PATHAK, J.

DECEMBER 01, 2016
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