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

+ CRL.L.P. 350/2016

JAI SINGH

..... Petitioner

Through: Mr. Rakesh Nautiyal, Advocate.

versus

PRAVEEN KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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15.09.2016

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 09.03.2016 passed by the learned MM, NI Act (West), Delhi in CC No.3524/1, whereby the aforesaid complaint preferred by the petitioner/ complainant under Section 138 of the NI Act has been dismissed and the respondent accused acquitted.

2. The case of the complainant was that he had advanced a friendly loan of Rs.3.5 Lakhs to the respondent accused in cash. Admittedly, there was no receipt executed in respect of the said loan. The complainant claimed that a sum of Rs.1.5 Lakh was repaid by the accused. He further claimed that towards repayment of the balance amount of Rs.2 Lakhs, the accused issued

the cheque in question, which was dishonoured upon presentation. Since the amount was not paid despite statutory notice, the complaint was preferred.

3. The stand taken by the respondent accused at the time of framing of notice as well as at the time of recording his statement under Section 313 Cr.P.C. was that he had taken a loan of Rs.20,000/- only, which he had repaid. He denied that the cheque in question had been issued towards any debt or liability. He further stated that he had signed the cheque in question and the same was blank in all other aspects.

4. I may observe that the signature on the cheque in question is in Hindi, whereas the said cheque has been filled up in English language in all other respects.

5. The Trial Court held that the accused had been able to probablise his defence since the petitioner/ complainant had not been able to establish the availability of the sum of Rs.2 Lakhs with him, which could be advanced to the accused as a loan. The complainant had claimed that he had borrowed the amount of Rs.2 Lakhs from his friend Joginder Kumar, however, Joginder Kumar has not been examined as a witness by the complainant. Reference was placed on ***Kajal Vs. Vikas Marwah***, Crl. Appeal No.870/2013 decided by this Court on 27.03.2014. The complainant had not reflected the availability of the said funds in his income-tax returns and, reliance was placed on ***K. Subramani Vs. K. Damodara Naidu***, a judgment of the Supreme Court delivered on 13.11.2014 in Crl.A. No.2402/2014. The submission of learned counsel for the petitioner is that in a revision preferred by the accused, i.e. in Crl.Rev. No.125/2013, the Court had

granted one effective opportunity to the accused to cross-examine the complainant subject to payment of costs. This order was assailed by the complainant before this Court and vide order dated 27.02.2015 passed in CrI. M.C. No.2138/2014, this Court had clarified that the respondent accused will not be permitted to seek examination or cross-examination of any other witness, except the petitioner. Learned counsel submits that on this account, the petitioner was precluded from examining Joginder Kumar or any other witness.

6. I do not find merit in this submission. It was for the complainant to examine his witnesses at the same time when he offered himself as a witness and recorded his statement as CW-1. The clarification provided by the Court was only to the effect that the respondent accused was permitted to cross-examine the witnesses already examined by the petitioner and he was not permitted to examine the witness on his own behalf.

7. In the light of the fact that the petitioner could not establish the availability of the amount that he had claimed to have loaned to the accused, as also the fact that the cheque in question had been signed by the accused and not filled up by him, the defence of the accused was probablised.

8. I do not find any infirmity in the impugned order. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 15, 2016

B.S. Rohella