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

\+ CRL.L.P. 401/2016

MEER SINGH

..... Petitioner

Through: Ms. Arunima Dwivedi, Advocate

versus

PRAMOD KUMAR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **08.11.2016**

Crl. M.A. No.11784/2016

Exemption allowed, subject to all just exceptions. The application stands disposed of.

Crl. M.A. No.11786/2016

By this application, the petitioner seeks condonation of 67 days in re-filing the leave petition. For the reasons stated in the application, the same is allowed. The application stands disposed of.

CRL.L.P. 401/2016 & Crl. M.A. No.11785/2016

1. The petitioner has preferred the present leave petition to assail the judgment dated 13.01.2016 passed by the learned MM (SE)-05, Saket Courts in CC No.810/2013, whereby the said complaint u/s 138 of

Negotiable Instrument Act preferred by the petitioner/ complainant has been dismissed and the respondent/ accused acquitted.

2. The case of the petitioner was that he had advanced a friendly loan of Rs.7 lacs to the accused. In discharge of the said liability, the accused had issued one cheque dated 13.04.2010 for Rs.5 lacs drawn on Punjab and Sind Bank, Pocket-H Branch, Sarita Vihar, New Delhi. Upon presentation, since the cheque was dishonoured on account of insufficient funds, the petitioner issued a legal notice. Despite receipt of the legal notice, the accused failed to make payment and consequently the complaint was preferred.

3. The accused was summoned and pleaded guilty and claimed trial. He claimed that the impugned cheque has been issued as a security in order to compensate Raghuraj for a land purchased by the said person from the accused as there was a dispute regarding the said land. He claimed to have delivered a blank signed cheque to Raghuraj and not to the complainant. He claimed that the said cheque had been misused by the complainant. The petitioner then recorded his evidence. Statement of the accused u/s 313 Cr PC was recorded, wherein he reiterated his defence disclosed at the time of service of notice. He claimed that the property had been purchased by Raghuraj in the name of his brother. There was a dispute regarding demarcation of the said land by the UP Irrigation Department. The purchasers Vijay Singh and Raghuraj asked him to issue a security cheque against the land in question. He agreed to move the appropriate authority for getting the demarcation corrected and he issued two cheques of Rs.2 lacs and Rs.5 lacs and handed over the same to Raghuraj. Subsequently, the corrected demarcation of the land was carried out in respect of the land sold

to Raghuraj. He demanded the return of the cheques from Raghuraj which were not returned. He denied having any transaction with the complainant. He also examined himself as DW-1 and Vijay Singh as DW-2. He also examined the witnesses from the Irrigation Department, the patwari and the kanungo as DW-3, 4 and 5.

4. Though in the examination in chief on affidavit, the complainant claimed to have advanced the loan during the period 13.04.2009 to 21.08.2009, in his cross examination the petitioner claimed to have advanced the loan in a single instalment. Firstly, the aforesaid discrepancy raised a doubt about the advancement of the loan which was claimed to be a friendly loan without any acknowledgment being recorded by the accused. The complainant also claimed to have friendly relations with the accused since birth. However, the complainant did not lead any evidence about the so-called old friendly relationship between the parties. In his cross examination, the complainant could not bring out any element of the old friendship. He was questioned about the family of the accused, namely, how many children he had, but he could not answer the said question.

5. A copy of the cheque in question has been placed on record. A perusal of the same shows that the amount in words, figures, date and signature as well as the inscription "A/c" to mark the cheque as A/c payee are in one handwriting, whereas the name of the payee Meer Singh is in a different handwriting.

6. The petitioner in his evidence stated in para 4 of his affidavit towards examination in chief that the accused had issued the cheque in question. He did not state that the cheque was issued blank so far as name is concerned

and that he had subsequently filled it up. The implication that follows the making of a statement that the accused had issued the cheque in question is that the cheque was already filled up in all respects.

7. The defence of the accused was held to have been probablised on account of the fact that the accused had led in evidence the demarcation proceedings in respect of the land claimed to have been sold to Raghuraj and his brother falling in khasra no.590/592, village Mandapur Khadar. The accused had stated in his evidence as follows:

> "2. *I state that Vijay Singh s/o Sh Hansraj r/o House No.J-123/4D, Malviya Nagar, N Delhi, was asked by Raghuraj s/o Tikam Singh r/o Meethapur, N Delhi-44, "his long time acquaintance" to find a suitable property/ land for purchasing.*
> *3. I state that Vijay Singh s/o Sh Hansraj r/o House No.J-123/4D, Malviya Nagar, N Delhi, "who was known to me and my partner in property dealing business Mohd. Saeed since long" introduced the above said Shri Raghuraj to us, for the intended purchase of one plot of land.*
> *4. I state that after deliberations and negotiations, a plot admeasuring 500 sq. Yards (approx) in khasra no.590-592, village Madanpur Khader Extn N Delhi, which was owned by Mohd. Saeed, was purchased in the name of Raghuraj's brother in law Sh Chander r/o Sidola, Faridabad, and the title deeds for the same were executed by Mohd Saeed (owner) in the name of Chandr r/o Sidola, Faridabad. That in the above said property deal, Vijay Singh s/o Sh Hansraj r/o House No.J-123/4D, Malviya Nagar, N Delhi and Sandeep s/o David Ostin r/o House No.1, Siddharth Nagar, Delhi Road Hapur, U.P. were witnesses.*
> *5. I state that the above said plot of land "purchased in the name of Raghuraj's brother in law chander r/o sidola, Faridabad", was joined on the other side, by land falling under the U.P Govt. Jurisdiction.*
> *6. I state that after some time a dispute arose in respect of the above said property "purchased in the name of above said*

Chander" due to Nishan Delhi/Demarcation carried out by the officials of U.P Irrigation Department, wherein they claimed an area admeasuring 125 sq. Yards out of the above said land "purchased in the name of Chander" as belonging to UP Govt.

7. I state that hence above said Raghuraj alongwith his brotherin law Chander, met me and my partner Mohd. Saeed and demanded that until the above said dispute as to the above said land admeasuring 125 sq yards is cleared, I should issue security cheque for the above said disputed portion of land as per the then prevailing market price.

8. I state that I assured the above said Raghuraj and his brother in law Chander, that the Nishan Delhi/Demarcation carried out by the UP Irrigation Department, claiming an area admeasuring 125 sq yards out of the above said property sold to Chander, was entirely wrong. I state that I further assured them that I would ge the Nishan Delhi/Demarcation again by getting moved an appropriate application. However, the above said Raghuraj and his brother in law Chander pressurised me to issue security cheque in regard to the above said dispute. Hence, I issued two cheques of Rs.5 lakhs and 2 lakhs bearing cheque no.877749 & 883805, both drawn on Punjab & Sind Bank, Pocket H, New Delhi, without filling the name of the payee, as security, and handed over the same to above said Raghuraj in the presence of above said Vijay Singh and Sandeep s/o David Ostin.

9. I state that thereafter I got moved the application for reconducting the Nishan Delhi/Demarcation and after that the Nishan Delhi/Demarcation was conducted again, whereby the above said dispute was resolved and the land admeasuring 125 sq yards was reverted back to above said Chander r/o sidola, Faridabad and brother in law of above said Raghuraj. The Nishan Delhi/Demarcation report dated 07.01.2011 in respect of the above said property is Ex. DW1/A colly.

10. I state that after that I demanded my above said two security cheques back from the above said Raghuraj "as the dispute in respect of the above said land has already been resolved" but he told me that those two security cheques were misplaced and whenever he finds the same, he would return *those security cheques to me, which he never did*".

8. Thus, on the one hand, the case of the complainant was that he had advanced a friendly loan of Rs.7 lacs to the accused in cash without any acknowledgment – the date of advancement not having been disclosed but the period was stated to be about 4 ½ months when the said loan is advanced; the complainant during cross examination stated that he had advanced the loan as a single instalment; the complainant could not establish his friendly relationship with the accused, and; the name was filled in, in the cheque in a different handwriting. On the other hand, the accused had led in evidence to show that demarcation of the land allegedly sold to Raghuraj and his brother was indeed carried out by the revenue authorities. His positive case that the cheque had been issued as security to Raghuraj with a view to secure the investment of the purchasers by issuing the blank cheque which has been misused by the complainant. In this background, the learned Magistrate held that the defence of the accused was probablised and thus the complaint was dismissed.

9. The submission of learned counsel for the petitioner is that since the accused admitted his signatures on the cheque, a presumption arose in favour of the complainant that the cheque had been issued in respect of an outstanding debt or other liability. She submits that the story set up by the accused with regard to the so-called transaction with Raghuraj is not evidenced from the demarcation proceedings, and there is no linkage between the said so-called transaction and the liability owed to the petitioner. The accused did not examine Raghuraj and did not lead any other evidence to show that the cheque in question had been issued as a

security to Raghuraj or his brother.

10. She has also placed reliance on ***K.N. Beena v. Muniyappan & Anr.***, in Crl A No.1066/2001 decided on 18.10.2001, wherein the Supreme Court held that in view of the presumption arising u/s 118 and 139 of the Act, it was not for the petitioner to establish the existence of a debt or liability. The burden of proving that the cheque had not been issued for a debt or liability is on the accused. She has also placed reliance on ***Ravi Chopra v. State & Anr.***, decided by this court on 13.03.2008 to submit that merely because the blank cheque may have subsequently been filled up by the payee, the conviction u/s 138 of the Act cannot be avoided if the offence is otherwise made out.

11. I have heard learned counsel for the petitioner. The legal presumption which arises by virtue of section 118 and 139 of the Act is a rebuttable presumption. It is well settled that to rebut the said presumption, the accused is obliged to set up a probable defence and not to establish his defence beyond all reasonable doubts. If the said presumption is rebutted, it is then for the complainant to establish the offence on the basis of evidence led. No doubt, since the accused in the present case has not disputed his signatures on the cheque in question, a presumption arose in favour of the petitioner that the cheque in question had been issued by the accused in favour of the petitioner/ complainant and that the said cheque had been issued towards an outstanding debt or other liability. What is to be examined is whether the accused has been able to rebut the said presumption in the factual background of this case.

12. Firstly, on account of denial of any loan transaction by the accused, it

needs examination whether the petitioner had the capacity to advance the said loan. In this respect, no evidence was led by the petitioner. Even on the aspect as to when the loan was advanced, the petitioner contradicted himself. Earlier, he claimed in the complaint that the loan was advanced over a period of four months or so, whereas in his cross examination he stated that the loan was advanced as a single lumpsum payment.

13. A person is generally not expected to advance a friendly loan of a large amount of Rs.7 lacs, and that too in cash without making a record thereof, to an acquaintance unless he or she is personally and closely known. The claim of the petitioner that the accused was an old friend was disputed by the accused and the said claim of the complainant/ petitioner was challenged during his cross examination by asking him about the family of the accused. The complainant could not answer the queries put to him in this regard. Thus, the accused was able to raise a doubt in the case of the complainant with regard to his personal friendly relations with the accused, as also with regard to the advancement of the friendly loan in cash.

14. Coupled with this is the fact that the accused claimed to have issued two blank cheques of Rs.5 lacs and Rs.2 lacs to one Raghuraj, since there was a dispute with regard to demarcation of certain land sold by the accused and his partner to the brother of Raghuraj. The cheques were claimed to have been issued as a security so as to provide comfort to Raghuraj and his brother. It was claimed that even though that aspect was resolved by the demarcation proceedings undertaken, the cheques were not returned to the accused by Raghuraj, and have been misused by the complainant. The factum of demarcation of the land allegedly sold to the brother of Raghuraj

has been established. This fact, in itself may not probabalise the defence of the accused, but it is a factor that would have to be viewed in the overall context.

15. No doubt, the accused would have been better advised to firstly take a receipt at the time of issuance of the cheques to Raghuraj, or to have taken steps to stop payment of the cheques when they were not returned, but his failure to do so would not lead to the conclusion that the cheques in question were issued in favour of the complainant. The accused was not expected to establish his defence to the hilt. He was only required to probabalise his defence.

16. In the facts of this case, even if one were to accept that the accused was not able to establish his so-called transaction with Raghuraj and his brother, one thing is clear that the cheque though filled up by the accused in his own handwriting in all respects, the name of the payee was not filled up by him. It was not the case of the complainant that the cheque had been delivered duly filled up in all respects by the accused except the name of the payee. A doubt is raised since the name of the payee in the cheque is in a different handwriting and this also probablises the case of the accused that the cheque was delivered blank to Raghuraj.

17. The decisions relied upon by the petitioner are of no avail. In ***K.N. Beena*** (supra), the Supreme Court held that the accused can rebut the presumption by raising a probable defence, which has been done in the facts of this case. The decision in ***Ravi Chopra*** (supra) is of no avail because it was not the petitioners case in his complaint that the cheque had been delivered blank qua the name of the payee, and that he had filled up the

same subsequently. The claim of the petitioner was that the cheque as such had been issued by the accused towards repayment of the outstanding debt.

18. In the aforesaid circumstances, I am of the view that no error can be found in the impugned judgment and the Trial Court has rightly come to the conclusion that the accused had been able to probabalise his defence and create a sufficient doubt with regard to the advancement of the alleged loan of Rs.7 lacs in cash without acknowledgment by the petitioner/ complainant to the respondent/ accused. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

NOVEMBER 08, 2016
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