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

\+ CRL.L.P. 422/2016

RAJENDER KUMAR AGGARWAL

..... Petitioner

Through: Ms. Jyoti Gupta, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. Rajat Katyal, APP

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **10.08.2016**

The present leave petition has been preferred to assail the order dated 11.05.2016 passed by the learned MM (NI Act) in Case No.46872/2016 on the petitioner's complaint under Section 138 of the Negotiable Instruments Act. The said compliant has been dismissed and the respondent/ accused has been acquitted. The petitioner had preferred the said complaint in respect of dishonour of a cheque for Rs.2 lacs. He claimed that he had advanced a friendly loan to the accused of the said amount on 15.09.2011 and a post dated cheque was issued for the said amount dated 15.11.2011. Since the cheque was dishonoured upon presentation and the amount was not paid despite notice, the complaint was preferred.

In his defence, the defendant stated that he had taken a loan from the complainant of Rs.1 lac and not Rs.2 lacs. He had admitted that the said loan of Rs.1 lac was outstanding. He stated that he had been paying interest on the said loan to the petitioner/ complainant. He also stated that when the loan was taken, he had executed a document mark A and also deposited his title documents of his flat to create a mortgage in favour of the complainant. He claimed that the said title documents were in custody of the petitioner.

I may observe that in his cross examination, the complainant admitted the document mark A. Therefore, the said document could be led in evidence. Another document had been produced mark B, which was denied by the complainant and, therefore, the Trial Court has not led the same in evidence. I may observe that only at that stage the complainant claimed that the document mark A was in relation to an earlier loan transaction of Rs.1 lac which the accused had repaid. The complainant claimed that the subsequent loan transaction was for Rs.2 lacs, and the cheque in question was issued was in respect of the subsequent transaction. This background was not narrated in the complaint.

The learned Magistrate in the impugned order has, inter alia, observed as follows:

> "*13. With respect to the cheque in question again it is observed that the complainant has stated that the accused had handed him over cheque in question on the same day i.e. 15.09.2011 which was post dated for 15.11.2011 and also that the accused had told him to present the said cheque for encashment in case the loan is not repaid. On perusal of cheque in question, it is manifest that the cheque has been signed in a different ink and handwriting than the one in which it has been filled. Other than the signature on cheque in question, the entire remaining contents including the date, the name of payee*

and the amount in words as well as in figures have been filled in the same ink and handwriting, which clearly indicates the possibility that the cheque in question had been handed over by the accused to the complainant in blank signed form on which the contents have been later filled by the complainant.

14. Another peculiarity of this case is the transaction of loan of Rs.1,00,000/ which was executed between the parties on 25.04.2009 as the same has been admitted by the complainant as well. The said transaction was admittedly entered between the parties vide document Mark A to which both the parties have acceded to. As per the said document, the accused had taken a loan of Rs. 1,00,000/ from the complainant and mortgaged the title documents of his flat to the complainant. The accused has also brought another document i.e. Mark B which he alleges to be receipt in continuation of document Mark A where loan transaction of Rs. 1,00,000/ has been mentioned and it has also been written that the cheque in question alongwith another cheque has been given by the accused to the complainant. However, document Mark B has been denied by the complainant and he has stated in his cross examination that the transaction of Rs. 1,00,000/ has been completed as the accused has returned the said amount within 10 to 11 months of the date of demand and also that the title documents of the flat of the accused have already been returned by the complainant to the accused. The suspicion arises in the conduct of the complainant on the aspect that the loan of Rs. 1,00,000/ was advanced not only after execution of a written document but also after keeping the title documents of the flat of the accused as mortgage, but the loan of Rs. 2,00,000/ was advanced without any kind of documentation. It is difficult to believe that the complainant advanced cash loan of Rs. 2,00,000/ to the accused within 23 days of his demand without getting any written document made in that regard especially because with respect to the admitted loan of Rs. 1,00,000/ sufficient safeguards seem to have been taken by the complainant for ensuring the repayment".

The learned Magistrate has doubted the case of the petitioner on several considerations which, according to me, are not relevant. However, the twin consideration taken note of herein above in the impugned order appear to be germane. The petitioner did not disclose in his complaint that there were more than one transactions of friendly loan from him to the respondent. The earlier dealing claimed by the petitioner in relation to the loan transaction of Rs.1 lac was not disclosed in the complaint. According to the accused, the only loan transaction was for Rs.1 lac, which was still outstanding. The learned Magistrate has observed that when the complainant was so meticulous and careful - while advancing the alleged first friendly loan of Rs.1 lac to the accused, as to get executed the document mark A, there was no justification for not adopting the same modus operandi when the larger alleged loan of Rs.2 lacs was advanced on a subsequent occasion. Moreover, the cheque in question had different ink and handwriting in relation to the signature and in relation to the other aspects mentioned therein.

In my view, the Trial Court rightly observed that the aforesaid aspects rebutted the presumption under Section 118 and 139 of the NI Act in favour of the petitioner. I do not find any error in the impugned order. Dismissed.

VIPIN SANGHI, J

AUGUST 10, 2016

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