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

\+ CRL.L.P. 571/2012

AMRIK SINGH BATRA ..... Petitioner

Through : Mr. Himanshu Jaina, Adv.

versus

BALIRAM @ BHOOL SINGH & ANR. ..... Respondents

Through : Mr. Tarang Srivastava, APP.

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

O R D E R

% 24.11.2016

Petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1887 ('the Act' for short) before the trial court. After trial, complaint has been dismissed and respondent no.1 (accused) has been acquitted. Trial court has concluded that petitioner had failed to prove his case that respondents had committed an offence punishable under Section 138 of the Act beyond the shadow of reasonable doubt.

Petitioner seeks leave to appeal against the acquittal of respondent no.1.

As per the petitioner, respondent had taken a friendly loan of ₹2,00,000/- for construction of his house in the month of January, 2002. To discharge his liability, respondent no.1 issued two cheques of ₹1,00,000/- each in favour of the petitioner. On presentation, both these cheques were returned unpaid vide bank's memos dated 26th March, 2003 on the ground "Account Closed". Bank memos came to the knowledge of petitioner on 2nd May, 2003. Legal notice dated 12th May, 2003 was served on the respondent no.1. Despite service of notice, amounts were not paid within the statutory period prescribed under Section 138 of the Act.

Petitioner examined himself as CW-1. He proved certain documents including cheques, legal notice etc. as Ex.CW-1/A to Ex.CW-1/P. Mr. S. S. Rajput, Assistant Manager, State Bank of India was produced as CW-2. He deposed that the cheque return register, in respect of the return memos, was not traceable in the branch. In his statement under Section 313 Cr.P.C., respondent no.1 took a plea in defence that cheques were issued in the year 1995-96 as security to start the business of making and installing vehicles' number plates. It was denied that any loan was taken and cheques were issued in discharge of the loan liability.

Trial court has held that case of petitioner, as set up in the complaint, was full of contradictions and discrepancies and was not trustworthy. It was further held that cheques were dishonoured vide return memos dated 26th March, 2003; whereas demand notice was issued on 13th May, 2003, that is, beyond the prescribed period of 30 days. Trial court has noted that there was no endorsement on the part of the bank to show that memos were notified to the complainant on 2nd May, 2003, the date on which complainant has claimed to had received. Trial court has further noted that testimony of CW-2 was not sufficient to corroborate the plea of petitioner that return memos were received by him on 2nd May, 2003 as no documentary evidence could be produced by him in this regard. In ordinary course, memos would have been received in March itself. Legal notice was issued beyond the prescribed period of 30 days.

Learned counsel for the petitioner has contended that trial court has erred in holding that the notice was beyond the prescribed period of limitation. He has further contended that respondent no.1 had not led any evidence to prove his defence that cheques were not issued towards discharge of debt. According to him, minor contradictions in the complaint, vis a vis evidence lead, were not sufficient to reject the plea of petitioner that he had advanced a friendly loan of ₹2,00,000/- to respondent no.1 and that the cheques were issued towards discharge of the loan liability. Learned counsel for petitioner has placed reliance on V. S. Yadav Vs. Reena, 2010 VIII AD (DELHI) 325, Harpreet Singh Vs. Harjeet Singh & Anr., 2012 V AD (DELHI) 710, Bharat Bhushan Vs. State & Anr., 2011 VIII AD (DELHI) 329, Rajesh Agarwal Vs. State & Anr., 2010 VII AD (DELHI) 576, Rangappa Vs. Sri Mohan, 2010 V AD (SC) 565, M/s. Metlon India Pvt. Ltd. & Ors. Vs. M/s. Ester Industries Ltd., 2010 VIII AD (DELHI) 174 and BRM Lease & Credit Limited Vs. Joginder Singh, 2012 II AD (DELHI) 181.

I find the judgments relied upon to be in context of different facts. I do not find any force in the contention of learned counsel for petitioner that the evidence lead was in consonance with the case set up in the complaint and the discrepancies noted in the impugned order are minor discrepancies. Complainant's case is full of contradictions which have been noted by the trial court in detail. In the complaint, petitioner has alleged that he had extended a friendly loan of ₹2,00,000/- to respondent no.1 in cash in the month of January, 2003. However, as per Ex.CW-1/P the receipt dated 25th December, 2002, amount was paid by cheque as well as cash. ₹50,000/- was given by the cheque and ₹1,50,000/- in cash. It is noted that respondent no.1 has not even admitted this receipt. Above all, petitioner himself produced the income tax return in which only ₹50,000/- has been shown as the loan extended to respondent no.1. This statutory document has to be preferred as against the ocular statement of petitioner. It is trite to say that documentary evidence has to be accepted as against the oral statement, in view of the Sections 91 and 92 of the Evidence Act. In view of the material contradictions as noted above, the defence of respondent no.1 assumes importance and creates a doubt about the veracity of the version of the petitioner. It is trite law that prosecution/complainant has to prove its case beyond the shadow of reasonable doubt; whereas accused has to make the case of prosecution suspicious. I am of the view that the view taken by the trial court is a possible view and does not suffer from any perversity.

For the foregoing reasons, I am of the view that no case is made out for grant of leave to appeal against the acquittal of respondent no.1. Petition is dismissed.

A.K. PATHAK, J.

NOVEMBER 24, 2016/dk