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

\+ CRL.L.P. 405/2016

RAVINA

..... Petitioner

Through: Dr.(Maj.) J.C. Vashista, Advocate along with petitioner in person.

versus

SANJAY VAID

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>O R D E R</u>

% **05.08.2016**

<u>Crl.M.A. No.11971/2016</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>CRL.L.P. 405/2016</u>

The petitioner has preferred the present leave petition to seek leave to appeal against the order dated 10.06.2016, whereby the learned MM-03 (NI Act) Central, Tis Hazari Courts, Delhi has dismissed the petitioner's complaint under Section 138 of the NI Act being CC No.1460/2016 and acquitted the respondent accused.

The case of the complainant/ petitioner was that the petitioner had loaned an amount of Rs.5 Lakhs to the respondent. Towards repayment of the said loan, the respondent had issued the cheque in question for Rs.5 Lakhs. The said cheque was dishonoured upon presentation and the amount was not paid despite issuance of statutory notice. Consequently, the complaint was preferred.

The respondent, upon being summoned, took the defence that he had not taken loan of Rs.5 Lakhs, as alleged. He had taken a loan of Rs.30,000/- only, which was repayable in 100 instalments of Rs.360/- each inclusive of interest. He claimed that he had repaid the said loan. He claimed that he had issued three blank cheques to the petitioner at the time of taking of the loan. Out of these cheques, two cheques have been returned. However, the complainant continue to retain one cheque, which has been misused. He also claimed that he had made two police complaints on 09.06.2009 and 12.08.2009 much before the presentation of the cheque in question which were exhibited as Exhibit DW-1/1 and DW-1/2 by the witness from Police Station – Saket. In these complaints, he had complained against the petitioner that the petitioner was trying to blackmail the accused therein on the basis of the said cheque. The petitioner did not take any receipt when the alleged loan of Rs.5 Lakhs was claimed to have been advanced to the respondent. She did not produce any income-tax return to show that she had reflected income/ availability/ advance of the said loan of Rs.5 Lakhs to the respondent. In this background, the Trial Court held that presumption under Section 139 of the NI Act had been rebutted by the respondent.

The submission of learned counsel for the petitioner is that the respondent has acted in a cunning manner by pre-planning the registration of two complaints against the petitioner so as to avoid liability prescribed under

Section 138 of the NI Act. He submits that the petitioner was taking tuitions and her husband is in Government employment. They had saved the amount of Rs.5 Lakhs advanced to the respondent. Unfortunately, for the petitioner, the aforesaid aspects do not dilute the probability of the defence raised by the accused.

I do not find any infirmity in the impugned order.

Dismissed.

VIPIN SANGHI, J

AUGUST 05, 2016

B.S. Rohella