$~30.

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

\+ CRL.L.P. 489/2016

SHAILENDRA KUMAR

..... Petitioner

Through: Mr. S.K. Dayal, Advocate

versus

SARJEEVAN MITTAL

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

% **14.09.2016**

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 04.06.2016 passed by the learned MM (East), Karkardooma, Delhi in CC No.48959/16 titled *Shailendra Kumar vs. Sarjeevan Mittal,* whereby the complaint of the petitioner under Section 138 of the NI Act has been dismissed and the respondent/accused acquitted.

2. The said complaint had been preferred by the petitioner/complainant in respect of a dishonoured cheque of Rs. 2.5 Lakhs drawn by the respondent/accused.

3. The complainant claimed that he was the personal advocate of the accused, representing him in about 22 criminal cases. It was the case of the

complainant that the accused had issued the cheque in question of Rs.2,50,000/- in discharge of his liability for payment of professional fees of the complainant. The accused has admitted his signature on the cheque and filling of the contents on the same. His defence was that the cheque was issued as a loan to the complainant. However, the loan could not be advanced due to some dispute between the parties and, therefore, the accused had asked his bank to stop payment. He has further submitted that he was regularly paying the professional fees of the complainant on per hearing basis, and that he had no outstanding liability towards the professional fees of the complainant.

4. The Trial Court dismissed the complaint on the ground that the complainant failed to establish that the cheque in question had been issued by the accused for payment of professional fees of the complainant. The Court observed that the complainant furnished no document to disclose the amount of fees charged. He did not produce any schedule of fees (whether in lumpsum or per hearing basis), invoice, bill or any written demand raised by him for payment of his professional fees as against the accused. It observed that the complainant has taken a contradictory stand with respect to payment of his professional fees. On one hand, he suggested to the accused that no lumpsum amount was decided to be paid by the accused to the complainant for representing his cases, but on the other hand, he suggested that the complainant and the accused has come to an understanding of payment of a lumpsum amount of Rs 5 lakhs as total fees for all 22 cases. He has further suggested that an amount of Rs 2.5 lakhs has already been paid from the total fees. However, no document was produced before the court to establish

the part-payment.

5. The conduct of the complainant was also found to be unusual, as he continued to represent the accused, despite his fee remaining outstanding until 2012. He was appearing on behalf of the accused even after the dishonour of the cheque. This conduct, infact, was contrary to the suggestion given to the accused in his cross examination, that the complainant had in August 2012 informed the accused, that if his remaining fee of Rs.2.50 lacs is not paid, he would not contest the remaining cases on his behalf.

6. The Trial Court recorded that the accused has maintained a consistent defence of paying professional fees on a per hearing basis for all cases defended by the complainant. This is further corroborated by the testimony of DW1 i.e. the father of the accused, who had himself handed over the fees to the complainant.

7. The submission of counsel for the petitioner is that the Trial Court has failed to appreciate the fact that the respondent/ accused had admitted issuance of the cheque in question in favour of the petitioner. He submits that the presumption in favour of the petitioner and against the accused, that the cheque in question had been issued in respect of an outstanding debt or other liability under Section 118 and 139 of NI Act was not rebutted as the accused had failed to establish that the cheque in question had been issued towards advancement of a loan, and not towards payment of the balance fee of the petitioner.

8. Having perused the impugned judgment and heard learned counsel for the petitioner, I am of the view that the Trial Court was correct in

concluding that the presumption under Section 118 and 139 of the NI Act stood rebutted in the facts of this case. The complainants case itself clearly found to be inconsistent as taken note of herein above. The complainant did not produce any bill, invoice or written demand ever issued to the accused in respect of the professional fee. In fact, it was not established as to on what basis the fees was charged, namely, as a lumpsum fee or on a per hearing basis and what was the total fee of the petitioner. The suggestions given by the petitioner to the two witnesses of the accused themselves clearly showed the inconsistent and shifting stand of the petitioner.

9. In my view, the judgment of the Trial Court does not disclose any error, calling for interference by this Court in appeal. I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 14, 2016