

\$~43.

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

+ CRL.L.P. 450/2016 & CrI.M.A. No.13381/2016

RAKESH SHARMA

..... Petitioner

Through: Mr. Manish Kumar, Advocate

versus

RAJENDER KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

30.08.2016

%

Crl. M.A. No.13380/2016

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

CRL.L.P. 450/2016 & CrI.M.A. No.13381/2016

The petitioner has preferred the aforesaid leave petition to seek leave to appeal against the judgment dated 30.04.2016 passed by the learned MM-04 (Saket) in CC No.412-1/12, whereby the petitioner's complaint under Section 138 of Negotiable Instruments Act was dismissed and the respondent/ accused has been acquitted. The petitioner has preferred the

aforesaid application to seek condonation of 33 days delay in filing the present leave petition. Since I am not inclined to issue notice in the leave petition, no useful purpose would be served in issuing notice in the application seeking condonation of delay. Accordingly, I proceed to disposed of the petition itself.

The petitioner claims to have advanced a sum of Rs.5 lacs as friendly loan to the respondent/ accused on 15.03.2010. He claimed that towards repayment of the said loan along with interest, the respondent issued the cheque in question for Rs.9.50 lacs. The said cheque was in respect of the principal amount of Rs.5 lacs and the interest amount of Rs.4.5 lacs. The amount had been advanced by the petitioner to the respondent under a mutual agreement in writing, which reads as follows:

“Mutual Agreement

I, Rajinder Kumar, s/o Sh. Kundan Lal, r/o A-553, Transit Camp, Govindpuri, Kalkaji, New Delhi-110019 is residing alongwith my family at the abovementioned address. Today on 15.03.2010, I am taking a loan of Rs.5,00,000/- (Five Lakh Rupees) from Sh. Rakesh Sharma, s/o Sh. Liladhar, r/o House No.831, Street No.7, Govindpuri, Kalkaji, New Delhi-110019, which is to be returned within one year. I, Rajinder Kumar, is also giving a blank cheque no.815916 drawn on Jammu and Kashmir Bank, Okhla New Delhi branch as a security to Sh. Rakesh Sharma. If I do not replay this amount within the stipulated time then in that event Sh. Rakesh Sharma can initiate legal proceedings against me to recover money. This agreement is written so that it can be used at the time of need.

Signed Rajinder Kumar (person receiving money)

*Signed Rakesh Sharma (person giving money)
831/7, Govindpuri, Kalkaji, ND-19”*

The said cheque having been dishonoured upon presentation and payment not having been made despite issuance of statutory notice, the complaint was filed by the petitioner under Section 138 of the Negotiable Instruments Act. The learned Magistrate has held that the respondent has been able to dislodge the presumption under Section 118 and 139 of the Negotiable Instruments Act and, consequently, the accused has been acquitted.

The accused in his examination under Section 313 Cr PC admitted the signatures on the loan agreement Ex. CW-1/A as well as on the cheque, but he denied that the complainant had given any loan of Rs.5 lacs. He claimed that after getting the loan agreement and the blank signed cheque, the petitioner asked him to come on the next date for availing the loan but he did not give the loan thereafter. The loan agreement Ex. CW-1/A itself records that the loan was for Rs.5 lacs and the respondent had issued the blank signed cheque in favour of the petitioner as a security. It, inter alia, records *“If I do not repay this amount within the stipulated time then in that event Sh. Rakesh Sharma can initiate legal proceedings against me to recover money.”* Pertinently, this loan agreement is absolutely silent about payment of any interest by the accused.

Learned counsel for the petitioner submits that the agreement to pay interest was an oral agreement subsequently arrived at. This is denied by the respondent. In these circumstances, it cannot be conclusively held that the debt due owed by the accused to the petitioner was to the tune of Rs.9.50 lacs, which is the cheque amount.

In the aforesaid circumstances, I do not find any error in the impugned judgment. There is no merit in this petition. Dismissed.

VIPIN SANGHI, J

AUGUST 30, 2016

sr