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

\+ CRL.L.P. 524/2016

MEENA SHARMA

..... Petitioner

Through: Mr. A.K. Padhy, Advocate.

versus

NEERU RANI

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **03.10.2016**

Crl. M.A. No. 15082/2016

Exemption allowed, subject to all just exception.

The application stands disposed of.

CRL.L.P. 524/2016

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 19.07.2016 passed by the learned MM/ Municipal Magistrate (East), Karkardooma Courts, Delhi in Complaint Case No.51420/16 (Old No.64/13), whereby the learned MM has dismissed the complaint of the petitioner under Section 138 of the Negotiable Instruments Act and acquitted the respondent accused.

The case of the petitioner complainant was that he had advanced a friendly loan to the accused of Rs.7,50,000/- To return the said loan, the accused had issued a cheque for Rs.7,50,000/- drawn on HDFC bank, which was returned unpaid vide memo dated 08.01.2013 with the endorsement "Funds Insufficient". After issuing the legal notice dated 06.02.2013, since the amount was not paid, the complaint was preferred by the petitioner.

The accused denied having issued the cheque. The accused also denied the liability to pay the cheque amount. The case of the accused was that the cheque in question had been stolen from the tenanted shop in November 2012. The accused examined herself as DW-1. She led in evidence the FIR No.880/2012 as Exhibit DW-1/1. The certified copy of the notice framed against the complainant in the FIR No.880/2012 was exhibited as Exhibit DW-1/2. The Complaint Case No.73/2013 pending in the Court of MM, Karkardooma Courts, was exhibited as DW-1/3, apart from other documents. The accused also examined a forensic expert as DW-2, whose opinion along with photographs and photocopy of his qualifications was exhibited as Exhibit DW-2/1(Colly.).

During the cross-examination of the petitioner, he could not establish advancing of the loan by any other document. No receipt was shown to have been executed by the accused. The availability of the funds to advance the loan of Rs.7,50,000/- with the petitioner complainant was not established. He had not reflected the same in his income tax records. DW-2, in his report, opined that the cheque in question does not bear the signature of the accused.

The Court after taking note of the judgment of the Supreme Court in ***Ram Narain Vs. State of Uttar Pradesh***, (1973) 2 SCC 86; and ***Lalit Popli Vs. Canara Bank***, (2003) 3 SCC 583, proceeded to examine the disputed signatures of the accused on the cheque with the admitted signatures of the accused and observed that there was a fundamental dissimilarity in the manner of making strokes by the accused. The Court observed that there is a difference in the manner the letter 'R' is found on the disputed and the admitted signatures. In the light of the aforesaid, the Court held that the defence of the accused was probablised.

The submission of learned counsel for the petitioner complainant is that the cheque in question had not been dishonoured on the ground of mismatch of signatures. He submits that the complainant had produced a witness from the Bank as CW-2, who stated that the signatures found on the cheque were similar to the specimen signatures of the accused.

On the one hand, the learned Magistrate had the testimony of the witness from the bank who found that the signatures of the accused on the cheque were similar to the specimen signatures. On the other hand, the accused had produced DW-2 – a handwriting expert who had pointed out fundamental differences in the manner in which the disputed signatures were executed, when compared to the admitted signatures of the accused. The Court itself proceeded to compare and examine the signatures and found them to be fundamentally different. Coupled with this, is the fact that the petitioner complainant could not establish the advancing of the loan itself, as the petitioner could not establish the availability of the funds with him in cash; he did not led in evidence any receipt executed by the accused at the time of taking of the loan, and; he did not reflect the alleged loan in his income-tax returns.

In the aforesaid circumstances, in my view, no error can be found in the conclusion drawn by the learned Magistrate in the impugned judgment that the defence of the accused was probablised. I find no merit in the present petition.

Dismissed.

VIPIN SANGHI, J

OCTOBER 03, 2016
B.S. Rohella