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

\+ CRL.L.P. 558/2015

M/S S.E. INVESTMENTS LTD.

..... Petitioner

Through: Mr. Rishi Sood, Advocate

versus

VIJENDRA SINGH & ANR

..... Respondent

Through: Mr. Abhishek Sabharwal for R-1
Mr. Rajat Katyal, APP

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

% **28.11.2016**

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 20.04.2015 passed by the learned MM (NI Act)-03, Dwarka Courts, whereby the petitioner's complaint us/ 138 of the Negotiable Instruments Act has been rejected and the respondent/ accused acquitted.

The case of the complainant is that the accused took a personal loan of Rs.26.75 lacs from the complainant and executed a loan cum guarantee agreement on 05.01.2013. For repayment of the outstanding dues, the accused issued the cheque in question for Rs.35,13,676/- in favour of the complainant which included the amount of interest payable on the loan amount. Since the cheque was dishonoured upon presentation on account of the account being closed and the amount was not paid despite issuance of a statutory notice, the petitioner preferred the aforesaid complaint.

At the time when the notice under Section 251 CrPC framed, the accused stated that he was an employee of the complainant from the year 2009 till February 2013. He states that the cheque in question was obtained from him by the complainant at the time when he joined service for the purpose of security. He had only signed the cheque but had not filled in the particulars. He denied having received any legal notice. When the statement was recorded under Section 313 Cr PC, he substantially reiterated the same defence and also stated that at the time of joining service, the complainant obtained from him some blank papers and some other papers which were written in English.

The accused also led his evidence as DW-1. He stated that he applied for a job with the complainant on 21.03.2009 and got the same. He used to accompany the officials of the complainant company in the field and used to introduce customers to the said officials. At the time when he joined the service of the complainant, three blank signed cheques were obtained from him as security for the aforesaid job and also got signed blank stamp papers and some completely blank papers from him.

The Trial Court has taken note of the fact that the AR of the company who filed his affidavit by way of evidence had merely stated that the accused had taken a loan and had executed a loan cum guarantee agreement dated 05.01.2013. The relationship between the complainant and the accused either as an employee or as a field manager was not disclosed. However, in the post summoning evidence, the AR in his affidavit by way of evidence stated that the accused was working on agency basis as field manager for the complainant company and his work was to select appropriate and eligible borrowers and to get disbursed loans to them on behalf of the company. He also stated that the accused was also responsible to recover the instalments of loan from the borrowers and deposit the same with the complainant. He also stated that the accused recovered the amounts of instalments from the borrowers but failed to deposit the amount of Rs.26.75 lacs with the complainant and, therefore, requested the complainant in writing to grant him a personal loan of Rs.26.75 lacs and to adjust the same by giving credit to the borrowers from whom he recovered the amount of instalments but failed to deposit with the complainant. He stated that accordingly the complainant granted the aforesaid loan to the accused on execution of loan cum guarantee agreement dated 05.01.2013 and disbursed them by way of adjustment of credit not received from the borrowers.

The Trial Court also takes note of the fact that the loan cum guarantee agreement Ex. CW1/G is written on a stamp paper bearing the date 11.02.2009. It does not mention the name of the borrower, the purpose of the loan or the date of its execution. It only mentions the amount of loan of Rs.26.75 lacs. While the other portions of the agreement are typed, the loan amount has been written in blank space by hand. The agreement also does not bear the date but records date in the schedule annexed to the agreement would be date of the execution. It also mentions that the borrower described in the schedule shall be referred to as borrower. The name of the authorised signatory of the complainant company or the borrower or the guarantor has also not been mentioned. The signatures of the parties are also not dated. The schedule forming part of the agreement is also in a printed format and various particulars have been filled in long hand. It records date of the agreement as 05.01.2013. The stamp also does not bear the date with the signatures.

The Trial Court has also taken note of the fact that the complainant failed to explain as to why a stamp paper purchased in the year 2009 was used four years later to execute the loan cum guarantee agreement. The court also took note of the fact that the purported letter Ex. CW-1/H dated 11.12.2012 allegedly issued by the accused to the complainant accepting his liability to the extent of Rs.26.75 lacs also bore the signatures of the witness Mukesh Kumar who was also a witness on each page of the loan cum guarantee agreement Ex. CW-1/G. Thus, the Trial Court held that it is highly probable that the fact that the loan agreement Ex. CW1/G and schedule forming part thereof were got signed from the accused on a printed format in the year 2009 itself when he joined the service of the complainant as a field manager. This is also explained by the use of the stamp paper for the loan agreement executed on 05.01.2013. Thus, the court has held probable the fact that the blank signed security cheque were obtained from the accused at the time of his joining service. Since the defence of the accused was probablised, the accused was acquitted.

The submission of learned counsel for the petitioner is that when the accused recorded his statement under Section 251 Cr PC, he did not make a mention of his signing any other blank papers or documents. However, he sought to improve his defence while recording statement under Section 313 Cr PC. Learned counsel for the petitioner has also sought to refer to the agreement dated 21.03.2009 whereby the accused was appointed as field manager and to the loan cum guarantee agreement.

Having heard learned counsel for the petitioner, perused the impugned judgment as well as the aforesaid two agreements, this court is of the view that there is absolutely no merit in the present petition. The Trial Court has correctly and minutely appreciated the several peculiar features in the loan cum guarantee agreement taken note of herein above. The said agreement, which is purportedly of the year 2013 is executed on a stamp paper of the year 2009 when the accused joined the service as field manager. There is no explanation as to why a stamp paper of the year 2009 would be utilised in the year 2013 if the loan cum guarantee agreement was actually executed in 2013. The amount of alleged loan of Rs.26.75 lacs is written in hand in a blank space. The agreement whereby the accused was appointed as field manager also has certain peculiarities. Though the same states that the appointment of the accused is on a principal to principal basis, so far as the consideration payable to the accused is concerned, it states that in consideration of rendering services by the field manager pursuant to the agreement "*the salary and incentive shall be mutually decided by the parties hereto and shall be payable to financer separately from time to time which shall form part of this agreement*".

On a query by the court, learned counsel for the petitioner states that the accused was paid Rs.5,000/- p.m. for his services. This court fails to understand as to how a field manager who was being paid a fixed monthly salary of Rs.5,000/- p.m. could have been saddled with the responsibility of standing a guarantee in respect of loans obtained by third parties. It is clear to this court that the petitioner sought to abuse its dominant position with a view to fasten the liability on a semi-literate person who was seeking employment. To the extent that the accused was fastened with liability as guarantor, the agreement is without consideration and void.

In the aforesaid circumstances, I do not find any infirmity in the impugned judgment. Dismissed.

VIPIN SANGHI, J

NOVEMBER 28, 2016
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