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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 08.03.2016

+ CRL. L.P. 543/2015 and Crl. MA No. 9928/2015

RAVINDER KUMAR Petitioner
Through Mr. B.R. Kaushik, Advocate

versus

BALBIR SINGH Respondent
Through None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition seeks leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 against the order of acquittal dated 11th February, 2015 passed by the learned MM (NI Act)-03, Dwarka Courts, New Delhi.

2. The leave petitioner herein instituted a case being CC No. 6366/2014 against Balbir Singh, the respondent herein. It was the case of the complainant/leave petitioner herein that he was the registered owner of two Maruti Vans and one Tata Truck, which had been purchased by him to run a transport business. It was alleged that Mr. Balbir Singh had been permitted

by the complainant/leave petitioner to operate the said vehicles commercially and pay a fixed amount to the former i.e. the complainant/leave petitioner in consideration thereof.

3. The subject post-dated cheques were issued by Balbir Singh, the respondent herein, in consideration of the afore-stated business arrangement between the parties. Upon the cheques being dishonoured on presentation, the subject complaint came to be instituted by the complainant/leave petitioner.

4. The learned MM (NI Act)-03, Dwarka Courts, New Delhi, after perusing the evidence on record and hearing counsel for the parties, observed as follows:-

“11. In the complaint as well as entire evidence of the complainant, there is no mention about the time when the two cheques in question were handed over to the complainant. Further, while in the complaint as well as in affidavit of evidence it was stated that accused handed over the two cheques in question to the complainant to show his bonafide and for the settled amount of monthly rent for the three vehicles, there was no mention in either the complaint or the affidavit of evidence as to how the monthly rent in respect of the three vehicles was calculated. It was only during his cross examination dated 25.04.2011 that it was stated by the complainant that rent of the truck was Rs. 7,000/- per day. The complainant also stated in his cross examination that drier Akam was working with him till February 2008 and he gave the above

Tata truck to driver Akam when he was working with him. Complainant also stated that on 02.07.2008 he gave the above Tata truck to somebody else to drive. He further stated that in February 2008 he gave the above Tata truck to one person on contract basis.

12. In view of the above statements, the case of the complainant that all the three vehicles were in the custody of the complainant since March 2008 also becomes highly doubtful. During his cross examination, complainant also stated that the FIR regarding the incident (of theft) was with respect to acts of the accused on 30.07.2008. Both the cheques in question are dated 11.10.2008 and 16.10.2008 respectively. Now if, as per the complainant's own case, he had filed the complaint against the accused regarding theft of the Tata truck on 30.07.2008, the relations between the complainant and the accused were far from cordial as the accused was also being accused of theft of the above truck. It was put to the accused during his cross examination as DW1 that an FIR No. 97/2009 PS KW Camp, Model Town dated 17.03.2009 u/s 406 IPC had been registered against him and the accused accepted the same. In these circumstances, it is very difficult to believe that while on the one hand the complainant was proceeding against the accused regarding theft of the truck, on the other hand the accused gave two cheques in question to the complainant.

13. Complainant has also admitted that he did not have any document showing handing over of the above truck to the accused. In view of the contradictory statements made by the complainant regarding month of handing over of the truck, the very handing over of the truck to the accused seems highly doubtful. Further, while in the affidavit of evidence as well as the complaint it was stated that the cheques in question were towards settled amount of rent of all the three vehicles, the accused categorically stated in his cross examination dated 25.04.2011 that both the cheques in question were given by the accused for

payment of Tata truck. This is another major contradiction in the statement of the complainant and makes his entire case doubtful. Complainant also stated during his cross examination that he did not maintain any entry with respect to the amount given by the accused to him and that the accused maintained the account regarding the same. The conduct of the complainant in not maintaining any account regarding dues of the accused is also contradictory to the conduct of a prudent man.”

5. The learned MM followed the ratio of the decision of the Supreme Court in *Vijay vs. Laxman* reported as (2013) 3 SCC 86 to the effect that “when the case set up by the holder of the cheque itself was dubious, initial presumption under Sections 118 and 139 of the NI Act itself comes to an end” and concluded that accused- Balbir Singh had been able to successfully rebut the statutory presumption.

6. Nothing has been urged before me on behalf of the leave petitioner to rebut the finding arrived at by the learned MM (NI Act)-03, Dwarka Courts, New Delhi in the order impugned herein.

7. In view of the foregoing, the present leave petition is devoid of merit and is accordingly dismissed.

8. Pending application also stands disposed of.

SIDDHARTH MRIDUL, J

MARCH 08, 2016
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