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

\+ CRL.L.P. 612/2015

HITESH BHUTANI

..... Petitioner

Through: Mr. Ketan Malhotra, Advocate

versus

ONKAR NATH HANDA

..... Respondent

Through: Mr. Sanjeev Soni, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **18.10.2016**

CRL.M.A. 11870/2015

By this application, the petitioner seeks condonation of 14 days delay in filing the leave petition. The ground disclosed is personal and the same is not opposed by counsel for the respondent. Accordingly, the delay is condoned and the application is allowed. The application stands disposed of.

CRL.L.P. 612/2015

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 29.05.2015 passed by the learned MM-02 (Central), Tis Hazari Courts, Delhi in CC No.239/1/04, which was a

complaint under Section 138 of the Negotiable Instruments Act. Thereby the said complaint preferred by the petitioner has been dismissed and the respondent/ accused acquitted.

2. The petitioner/ complainant had preferred the said complaint in respect of dishonour of a cheque of Rs.1.20 lacs on the ground that the accused had availed of a loan of Rs.1.20 lacs in the year 2002, which he had agreed to repay with interest @ 24% p.a. The complainant claimed that the accused had issued the cheque in question Ex. CW-1/1 for Rs.1.20 lacs drawn on Syndicate Bank, Karol Bagh, New Delhi with the assurance that the same shall be encashed. However, the said cheque upon presentation was dishonoured on the ground that the account had been closed. Consequently, the petitioner issued a legal notice which was replied to by the respondent/ accused. Since the amount was not paid, the complaint in question has been preferred.

3. The learned Magistrate while dismissing the complaint, firstly, observed that there was contradiction in the case of the petitioner with regard to the date of advancement of the alleged loan. CW-3, the complainant stated that the loan had been advanced in the year 2002 in his examination in chief. However, during his cross examination, he stated that the loan had been advanced in January/ February 2004. Secondly, the loan had not been disclosed in the income tax return filed by the complainant, and the income tax returns were not produced by the petitioner/ complainant.

4. The submission of learned counsel for the petitioner is that in response to the legal notice issued by the petitioner under Section 138 of the

Act, the respondent had sent a reply wherein he had admitted to have received a loan of Rs.3 lacs from the complainant in April 2001 for a period of 40 months on the understanding that he shall pay an additional fixed amount of Rs.1.20 lacs towards interest on the said amount. The accused claimed that he had repaid the loan of Rs.3 lacs and also the amount of Rs.1.20 lacs. He had claimed that he had also paid a further penalty on account of a slight delay. However, he could not lead any evidence to establish repayment of the loan of Rs.3 lacs; or the payment of interest of Rs.1.20 lacs, or; further payment towards interest/ penalty. The accused admitted having filled in the cheque and signed the same. Learned counsel submits that merely because the loan had not been reflected in the income tax return, did not mean that the same was not a legally recoverably debt. The submission is that the presumption of the cheque having been issued in discharge of a legally recoverable debt or other liability has not been dislodged by the respondent.

5. On the other hand, the submission of learned counsel for the respondent is that the petitioner had filed a civil suit for recovery of Rs.9 lacs against the respondent/ accused. The said suit had been preferred, inter alia, in respect of the cheque in question for Rs.1.20 lacs. By a detailed judgment dated 27.02.2015, after a prolonged trial, the Trial Court dismissed the suit being C.S. No.370/2004, titled Hitesh Bhutani v. Omkar Nath Handa & Anr.

6. The submission is that since the civil suit premised on the cheque in question had been dismissed, the petitioner possibly cannot succeed and secure conviction of the respondent on the basis of the said cheque, as the

existence of a legally recoverable debt cannot be established. The standard of proof required in criminal proceedings is higher than that required in a civil proceeding. Since the petitioner has failed to establish his claim in the civil proceedings, inter alia, in respect of the cheque in question, there is no question of his succeeding in the criminal proceedings.

7. Learned counsel further submits that while in the complaint in question, the complainant claimed that the cheque in question was issued towards repayment of loan of Rs.1.20 lacs, in his cross examination he stated that the said cheque had been issued towards security.

8. Having heard learned counsels, I am of the view that there is no merit in the petition and the impugned judgment does not call for interference. It is not necessary to go into the issue as to whether, or not, the discrepancy with regard to date of advancement of the alleged loan or whether or not the failure of the petitioner to reflect the loan transaction in the income tax returns would non-suit the complainant. The fact remains that the civil suit preferred by the petitioner/ complainant in respect of the same cheque has been dismissed. Thus, the petitioner has not been able to establish - even in the civil proceedings, where the standard of proof is lower (and the rule of evidence is preponderance of probabilities), that there existed a legally recoverable debt or other liability in respect whereof the cheque in question was issued. Consequently, the petitioner cannot possibly succeed in the proceedings under Section 138 of the Act, where the standard of proof is much higher and the guilt of the accused has to be established beyond all reasonable doubts.

9. In view of the aforesaid, I find no merit in this petition and the same is, accordingly, dismissed.

VIPIN SANGHI, J

OCTOBER 18, 2016

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