$~3.

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

\+ CRL.L.P. 629/2015

PAWAN MUDGAL

..... Petitioner

Through: Mr. D.P. Sherawat, Advocate.

versus

MANI RAM

..... Respondent

Through: Mr. Rohit P. Ranjan & Mr. Himanshu Kapoor, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **29.08.2016**

1. The petitioner has preferred the present petition to seek leave to appeal against the judgment dated 27.04.2015 passed in CC No.174/1/10 titled *Pawan Mudgal Vs. Mani Ram Sharma* by the learned MM (South)-01 NI Act, Saket Courts, New Delhi, whereby the said complaint has been dismissed by the learned Magistrate and the respondent acquitted in a complaint under Section 138 of the NI Act.

2. The case of the complainant is that the complainant had advanced a personal loan of Rs.4.9 Lakhs to the respondent accused, out of which Rs.3 Lakhs was advanced by way of cash and Rs.1.9 Lakhs was advanced by way of two cheques of Rs.1.5 Lakhs and Rs.40,000/- respectively dated

10.07.2008 and 14.02.2009. The petitioner claimed that the respondent accused issued 7 post-dated cheques of Rs.70,000/- each towards repayment of the said personal loan. The two cheques aforesaid of Rs.70,000/- dated 28.02.2010 and 25.03.2010 issued by the respondent were dishonoured on account of the account being closed. Consequently, the petitioner issued a statutory notice of demand, and since the payment was not made, the aforesaid complaint came to be filed.

3. Learned counsel for the petitioner has submitted that the other 5 cheques of Rs.70,000/- became time barred as they were not deposited during the validity period. The petitioner has preferred a civil suit in respect of the entire amount of Rs.4.9 Lakhs, which is pending trial. The plea of the respondent accused, when the statement under Section 313 Cr.P.C. was recorded was that he had not approached the complainant for financial assistance and had not taken any loan, and he also stated that the complainant was a business partner of the accused. The business had suffered losses. The complainant had used stolen blank signed cheques and misused the same by filling up the cheques in question.

4. The Trial Court, as aforesaid, dismissed the complaint by holding that the accused had probablised a defence and, thus, the statutory presumption in favour of the petitioner stood rebutted.

5. The submission of learned counsel for the petitioner is that, admittedly, the amount of Rs.1.9 Lakhs had been advanced by way of cheques. The 2 cheques in question were for Rs.70,000/- each aggregating to Rs.1.4 Lakhs. The submission of learned counsel for the petitioner is that

the respondent accused, during the cross-examination of the petitioner as CW-1, had confronted the petitioner with the complaint dated 12.04.2010 allegedly made to the SHO, Police Station – Pul Prahlad Pur, Delhi in relation to the missing cheque book containing 12 cheques, including the cheques in question. The same had been marked as Exhibit CW-1/I. He submits that the said cheque book could not have been exhibited during the cross-examination of the petitioner/ CW-1, as the petitioner was not the author or recipient of the said communication, which had been purportedly issued by the respondent accused to the SHO, PS– Pul Prahlad Pur, Delhi. The submission is that, subsequently, on gathering information under the Right to Information Act, it was found that the said communication has never been issued to the SHO, PS- Pul Prahlad Pur, Delhi.

6. No separate application has been moved by the petitioner to lead additional evidence at this stage. Consequently, the last recorded submissions of the petitioner cannot be accepted at this stage. In any event, as pointed out by learned counsel for the respondent, the cross-examination of the petitioner conducted on 08.09.2014 sufficiently demolishes the presumption in favour of the petitioner under Section 118 and 139 of the NI Act. Pertinently, the petitioner/ CW-1 was confronted with his bank statement filed along with the ITR for the Assessment Year 2009-10 by the petitioner, i.e. Exhibit CW-1/H. The witness confirmed that there was no payment made to the accused. The total income of the petitioner during the Assessment Year 2009-10 as per CW-1/H is Rs.2,26,854/-. Thus, the case of the accused was that the petitioner could not have advanced the loan of Rs.4.9 Lakhs when his income was Rs.2,26,854/- in the said financial year.

The petitioner also admitted to have entered into a partnership business with the accused under the name of New Ashish Cargo and claimed to have made payment of Rs.1.50 Lakhs and Rs.40,000/- by way of cheques in the name of the partnership firm. He also admitted as correct the suggestion that a police complaint had been lodged towards the loss of the blank signed cheque book of the accused firm. It was only thereafter that he was confronted with the police complaint dated 12.04.2010 lodged with SHO, PS – Pul Prahlad Pur, Delhi, which was exhibited as CW-1/I.

7. The above cross examination completely demolishes the case of the petitioner/ complainant and explains the reason why the complaint Ex CW-1/I was read in evidence. The respondent was able to raise sufficient doubts in the petitioners case to deserve acquittal.

8. In view of the aforesaid evidence, in my view, the learned Magistrate was justified in holding that the accused had probablised a valid defence and that the statutory presumption stood rebutted.

9. I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

AUGUST 29, 2016

B.S. Rohella