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

+ CRL.L.P. 780/2015

JAIDEV KUMAR

..... Petitioner

Through: Mr. Mayank Mohan, Advocate.

versus

RAM SAROOP

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

27.07.2016

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The petitioner has preferred the present leave petition to seek leave to appeal against the order dated 23.10.2015 passed by the learned MM, NI Act, West-03, Tis Hazari Court in C.C. No.3123/1/15 Police Station – Mianwali titled *Jaidev Kumar Vs. Ram Saroop*.

By the impugned order, the learned Magistrate dismissed the petitioner's complaint under Section 138 of the NI Act and acquitted the respondent accused. The case of the complainant was that he had advanced a loan of Rs.1,30,000/- to the respondent in cash. He claimed that respondent had issued a cheque bearing No.263260 dated 10.08.2012 amounting to Rs.1,30,000/- drawn on Canara Bank, Paschim Vihar, New Delhi in discharge of the said liability. The said cheque was dishonoured

upon presentation on account of insufficient funds. Despite notice, the amount was not paid within the statutory period and, consequently, the complaint was preferred.

In his statement made under Section 313 Cr.P.C., the respondent accused, inter alia, stated that he had not issued any cheque in favour of the complainant and that the same had not been signed by him qua any legal liability. Upon the cross-examination of the complainant, he could not produce any document to show that he had advanced the loan of Rs.1,30,000/- since the said amount was not reflected in the account of the complainant anywhere. The accused chose to lead evidence. He produced a witness from his bank. The said witness produced the specimen signature of the accused as maintained by the bank, which is Exhibit DW-1/1.

The Court compared the signature found on the cheque attributed to the accused with the specimen signature maintained by the bank and concluded that there was a significant difference between the two. Whereas in the cheque in question the letter S (in Devnagari script) was written in full, the same was written only as a *Maatraa*, i.e. half in the cheque. On this basis, the learned Magistrate held that the defence of the accused that he had not signed the cheque, was plausible. The Magistrate has, therefore, held that the presumption under Section 139 of the Negotiable Instruments Act stood rebutted by the accused.

The submission of learned counsel for the petitioner is that the respondent did not produce any handwriting expert to establish that the signature on the cheque was not his.

I do not find any merit in this submission. It was not essential for the respondent to produce a handwriting expert for the said purpose. The

primary responsibility to compare the signatures/ handwriting and to draw a conclusion on a comparison lies with the Court. It is not essential for the Court, in every case, to call for a report of the handwriting expert before reaching its conclusion.

I do not find any infirmity in the impugned order.

Dismissed.

VIPIN SANGHI, J

JULY 27, 2016

B.S. Rohella