$~23

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

\+ CRL.L.P. 158/2014

MEENA GUPTA ..... Petitioner

Through: Mr. Amit Rao, Adv.

versus

M/S CHAUHAN ENGINEERING WORKS & ORS..... Respondents

Through: Mr. Alok Sharma, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

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

% 10.08.2017

<u>Crl.M.A.3116/2014</u>

For the reasons stated in the application, the delay of 98 days in filing the petition is condoned.

Application is disposed of.

<u>CRL.L.P. 158/2014</u>

The petitioner/complainant has challenged the judgment dated 31.08.2013 passed in CC No.195/12 by the learned Metropolitan Magistrate-02, Shahdara, Karkardooma Court, New Delhi whereby the respondents have been acquitted of the offence under Section 138 of Negotiable Instruments Act, 1881.

The case of the complainant is that her brother was a partner of M/s Swastik Fibre Pack with whom the respondents had some association. It was through that contact that a demand for loan of Rs.3,25,000/- was made by the accused persons. The complainant/petitioner is said to have given loan of Rs.3,25,000/- to the respondents vide cheque bearing No.641546 dated 13.12.2004 drawn on Indian Overseas Bank, Preet Vihar, New Delhi. The accused persons had promised to return the amount within 15 days. The cheque issued by the accused persons towards discharge of the debt was dishonoured as the amount of the cheque exceeded the arrangement with the bank. A demand notice dated 30.07.2005 was sent to the respondents. Since no payment was made, a complaint was lodged.

The respondents, at the trial admitted of having received the legal demand notice but denied to have taken any loan from the petitioner/complainant. Consequently, they denied any liability of theirs to be discharged. It was further asserted that the payment involved in the cheque in question had already been made to the complainant in cash. The other respondents took the plea that they were absolutely unaware of the loan having been taken by the respondent No.2.

In his defence, the respondent No.1 through Rajesh Chauhan tendered his evidence. It was stated by Rajesh Chauhan that one Sanjeev Malik introduced Ashish Jain and Mahesh Jain, partners of M/s Swastik Fibre Pack, to him and his father (respondent No.3). Aforesaid Mr. Ashish Jain and Mahesh Jain, disclosed to Rajesh Chauhan that their company, namely, M/s Swastik Fibre Pack had applied for loan from HPFC, Shimla and that in order to show the company's credibility, they have also filed balance sheet amounting to Rs.31,50,000/-. A cheque was issued to the respondents only to show the credibility of the firm for getting loan from HPFC. Since the purpose of giving the money by cheque by M/s Swastik Fibre Pack was for establishing the credibility, the money was immediately withdrawn by the respondents and paid back.

During the trial, the aforesaid assertions of Rajesh Chauhan was supported by Sanjeev Malik(DW2), D.P. Miyan (DW3) and Rajesh Kumar Singh (DW4). It was argued by the respondents that the complainant is the sister of Anil Gupta who was partner in M/s Swastik Fibre Pack. The cheque in question was given to show the credibility of the firm of Mr. Gupta for obtaining loan from HPFC. Thus, all the transactions took place between M/s Swastik Fibre Pack and the respondents.

The trial court on perusal of the deposition of the complainant came to the conclusion that contradictory statements were made by her in the trial as compared to her averments in the complaint. The Trial Court in para 13 of the judgment has held as follows:

> *"13. The complainant stated to have given money to the accused at the asking of her brother. It is alleged that there was some dealing between accused and M/s Swastik Fibre Pack for which accused approached the complainant for a loan. The accused was allegedly in need of money at that point of time. The complainant has later, during cross-examination, denied having any knowledge about dealings with M/s Swastik Fibre Pack. Perusal of the record shows that the complainant has not proved any documents to show that she has given a loan of Rs.3,25,000/- to the accused. Neither has she examined any person in whose presence the said loan was given nor the complainant has got signed any promissory note from the accused at the time of granting loan. The complainant stated to have given the loan to the accused in the presence of her brother. It is not clear why the complainant has not examined her brother to substantiate her version. The submissions of CW1 itself casts a doubt whether any loan was ever disbursed by the complainant to the accused at all. It is highly unlikely that a person who is giving such huge amount in cash will not take a receipt/agreement while handing over such cash to some other person. Moreover, she did not even think fit that witness to such transaction be made and did not even confirm the*

identity of the accused before advancing loan. It is highly improbable that complainant will advance such huge amount in cash to the accused without even signing loan agreement or any receipt or confirming identity. Such conduct of the complainant is not as that of reasonable prudent person.”

The petitioner/complainant failed to show any document in support of the advancement of any loan to the respondents. As such, a doubt was created as to the existence of any legally enforceable debt.

The Trial Court was, thus, rightly of the opinion that in the totality of the circumstances, the complainant failed to prove the ingredients of Section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubt and the respondents were able to rebut the presumption under Sections 118 and 139 of the N.I. Act.

This court does not wish to interfere with the judgment of acquittal which is based on sound reasoning.

Leave declined.

The petition is, accordingly, dismissed.

ASHUTOSH KUMAR, J

AUGUST 10, 2017
ns