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

Decided on: 1st May, 2017

+ CRL.L.P. 56/2017

JUGNU SAINI

..... Petitioner

Through: Mr. Nitesh Kumar Singh and Mr.
Rahul Kumar, Advocates

versus

JAGDISH PRASAD MISHRA

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

R.K. Gauba, J. (Oral)

1. The petitioner herein invoked Section 378(4) of the Code of Criminal Procedure, 1973 (Cr. PC) to seek leave to appeal against the judgment dated 17.10.2016 of the court of the Metropolitan Magistrate-02 (North) in complaint case 63/01 whereby his complaint case under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act) against the respondent was dismissed and the respondent consequently acquitted.

2. The complaint case was instituted on the basis of the facts that cheque no.744043 dated 01.02.2013 drawn on Vijaya Bank, Samaypur , Delhi-110 042 in the sum of Rs. 2,00,000/- which had been issued by the respondent in favour of the petitioner (complainant) had been returned, upon being presented, by the bank with the remarks “account closed” and

that inspite of legal demand notice dated 23.03.2013, duly served, the money equivalent to the cheque amount was not paid and, therefore, the offence under Section 138 of the N.I. Act had been committed.

3. A copy of the proceedings of the trial court, as submitted, discloses that after the pre-summoning inquiry on the complaint submitted on 03.05.2013, the respondent was put to trial on the basis of notice under Section 251 Cr. PC, he having contested the case denying having taken any money from the complainant and taking the defence that his deceased brother Mr. Dwarka Prasad Mishra had taken some amount from the complainant but had expired in September 2009 and that he (respondent) had already settled the matter with the complainant with regard to such liability of his deceased brother by paying an amount of Rs.2,79,000/- to him at Rohini Court and that the case presented was false.

4. The complainant led evidence by examining himself as CW-1 on the strength of his affidavit CW1/A. The respondent also led evidence by examining himself as DW-1. The learned trial judge found the respondent to have been successful in rebutting the presumption of liability and the version of the complainant having advanced a loan for repayment of which the cheque was issued to be not believable. In this context, the defence evidence led was taken note of.

5. It appears that the complainant had instituted another criminal complaint case with similar allegations of offence under Section 138 of N.I. Act respecting another cheque, it bearing no.744042 drawn against the same very account of the respondent, it bearing the date of its issue as of 2010. The said other cheque, noticeably a cheque leaf immediately

preceding the cheque which is the subject matter of the proceedings at hand, when presented at the bank was returned unpaid on 24.02.2010 with the remarks “account closed”. By the evidence led in defence, it was proved beyond all doubts that in the proceedings arising out of the previous complaint case instituted in 2000, the respondent had paid and the petitioner had received an amount of Rs.2,79,000/- as full and final settlement.

6. The learned trial court has disbelieved the version respecting the circumstances in which the cheque which is the subject matter of the present case to have been issued for the reason the petitioner had been put to caution in the context of the earlier cheque which had returned unpaid on 24.02.2010 with the remarks informing him that the account stood closed. The Magistrate observed that, in these circumstances, the same very petitioner could not have accepted yet another cheque against the same very account, such cheque being the very next leaf, after a gap of two years, it clearly being the period during which the proceedings in the other case were still pending.

7. In these facts and circumstances, the view taken by the learned trial court cannot be said to be perverse or implausible.

Dismissed.

R.K.GAUBA, J.

MAY 01, 2017

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