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

+ **CRL.L.P. 171/2017**

NARENDER KUMAR AGGARWAL Petitioner

Through: Mr. Ajaypal Singh, Advocate.

versus

JASVINDER SINGH Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

23.03.2017

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Crl. M.A. No. 4916/2017

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

Crl. M.A. No. 4917/2017

3. For the reasons stated in the application, the delay of 11 days in re-filing the leave petition is condoned.
4. The application stands disposed of.

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5. The petitioner has preferred the present petition to seek special leave

to appeal against the judgment dated 27.09.2016 passed by the learned MM (Shahdara), Karkardooma Courts, Delhi in CC No. 199/2015, whereby the respondent/ accused has been acquitted in the complaint preferred by the petitioner/ complainant under Section 138 of the NI Act.

6. The case of the complainant was that he had advanced a friendly loan of Rs.7 Lakhs to the respondent in November 2011. Towards repayment of the said amount, the accused had issued the cheque in question for the amount of Rs.7 Lakhs. The said cheque, upon deposit, was dishonoured for insufficient funds. Consequently, the petitioner issued statutory notice of demand. Since the amount was not paid, the complaint was preferred.

7. In response to the statutory notice of demand issued by the petitioner, the respondent sent a reply stating that he had issued the said cheque in the year 2008, in blank, to the son of the petitioner Shalabh Aggarwal on his demand for the purpose of granting him a friendly loan. He stated that the said amount was required by Shalabh Aggarwal to make payment to his estranged wife under a settlement to obtain divorce by mutual consent. He stated that he had given the said cheque with the understanding that the amount up to a maximum of Rs.30,000/- may be filled in by the petitioner's son as per his requirement.

8. The petitioner examined himself as CW-1 and he was also cross-examined by the accused. The cross-examination of the petitioner, inter alia, related to the aspect of availability of the amount of Rs.7 Lakhs with the petitioner in cash at the time when the said loan was allegedly advanced by the complainant to the accused. The Trial Court held that the petitioner

could not establish availability of the amount of Rs.7 Lakhs with him in cash and, consequently, the defence of the accused was held to be probablised. The respondent's statement under Section 313 Cr.P.C. was recorded.

9. The submission of learned counsel for the petitioner, firstly, is that in his statement recorded under 313 Cr.P.C., in response to query No.4 as to whether the accused wished to say anything else in his defence, the accused stated that "*No, I shall present my defence*". The submission is that the defence taken by the accused in response to the legal notice was not reiterated by him before the Court.

10. The further submission of learned counsel for the petitioner is that the accused did not lead any evidence to establish his defence. The presumption in favour of the petitioner, who was holding the cheque, admittedly, signed by the accused, was not rebutted and the conduct of the accused also remained unexplained inasmuch, as, he neither demanded return of the said cheque from the son of the petitioner, nor stopped payment thereof, if the story of the accused were to be believed.

11. Learned counsel further submits that on the aspect of availability of the amount of Rs.7 Lakhs, the petitioner had produced his income-tax returns for the relevant period, which showed availability of an amount of Rs.4 Lakhs with him and the petitioner had stated that he had borrowed the remaining amount of Rs.3 Lakhs from his other relatives to be able to advance the said amount to the accused.

12. Having heard learned counsel for the petitioner & perused the record, including the impugned judgment, I am of the view that there is no merit in

this petition. The accused had sent the reply to the legal notice dated 13.03.2012 clearly setting out his version with regard to issuance of the cheque in question. During recording of his statement under Section 313 Cr.P.C. – which is not a statement made on oath, merely because the accused may have stated that he shall present his defence, it does not tantamount to admission by him of the claim of the petitioner/ complainant. Pertinently, in response to query No.1, wherein it was put to him that he had taken a friendly loan of Rs.7 Lakhs from the complainant for a period of three months, he had responded that the same was incorrect. He had also stated that he never gave the cheque in question to the complainant. He acknowledged receipt of the legal notice (Ex. CW-1/3) and also stated that he sent his reply (Ex. CW-1/6).

13. On the aspect of availability of funds of Rs.7 Lakhs with the petitioner, he admitted that his son Shalabh Aggarwal was having a matrimonial dispute with his wife, and that the divorce case was pending in Tis Hazari Courts since 2011. The complainant also stated in his cross-examination that his income-tax return for the financial year 2011-12 reflected an income of Rs.4 Lakhs. Even if that position were to be accepted, it does not follow that Rs.4 Lakhs, i.e. the entire income for the financial year 2011-12 was available with the petitioner on the date of advancing of the alleged loan of Rs.7 Lakhs, i.e. on 18.11.2011. Firstly, the said financial year was not complete on 18.11.2011. Secondly, if the version of the petitioner were to be accepted, it would follow that every penny earned by the petitioner towards his income in the financial year was saved by him and none was expended for his personal and family expenses

and he advanced his entire income/ savings to the accused. Not only that, he also borrowed Rs.3 lakhs from his relatives to, in turn, advance the friendly loan to the accused. Pertinently, the petitioner did not name or examine any of his other relatives from whom he claimed to have taken loan of Rs.3 Lakhs to advance to the accused.

14. In view of the aforesaid circumstances, in my view, it cannot be said that the Trial Court has fallen in any error. The impugned judgment does not call for interference.

15. Dismissed.

VIPIN SANGHI, J

MARCH 23, 2017

B.S. Rohella