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

+ **CRL.L.P. 115/2017**

RAMA

..... Petitioner

Through: **Mr. Alok Sinha and Neeraj Sinha,**
Adv.

versus

SEEMA & ANR.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

03.03.2017

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CRL.L.P. 115/2017 & Crl. M.A. No. 3642/2017

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 13.11.2016 passed by the learned MM, NI Act (E), Karkardooma Courts, Shahdara, Delhi in case No.48662/2016, whereby the complaint preferred by the petitioner u/s 138 of Negotiable Instrument Act has been dismissed and the respondent acquitted. The petitioner has preferred the aforesaid application to seek condonation of 22 days delay in filing the leave petition. Since I have heard learned counsel for the petitioner on merits and perused the impugned judgment and documents placed on record and I am not inclined to issue notice in the leave petition, no useful purpose would be served in issuing notice in the

delay application.

The case of the petitioner/ complainant is that he had entered into an agreement to purchase property bearing no.150B, 1st Floor, Type-3, Janta Flats, Ghazipur, Delhi which belonged to the father in law of the accused and pursuant to that agreement, bayana/ earnest money of Rs.7 lakhs was paid in cash. However, the said agreement did not fructify and to refund the said amount, two cheques of Rs.3.50 lakhs each were issued by the accused in favour of the complainant. The cheques were, however, dishonoured upon presentation. Since the amount was not paid despite issuance of a statutory notice, the complaint was preferred.

After presuming evidence was recorded, the accused were summoned. The defence taken by the accused was that they had given blank signed cheques in question to the complainant as security in respect of a chit fund committee run by the complainant of which the accused no.1 was a member. I may observe that there are two accused who are wife and husband. The accused denied having taken any money from the complainant in respect of any property transaction.

The complainant examined herself as her witness. In her cross examination, several contradictions emerged, apart from various issues which remained unanswered by the complainant and, consequently, the Trial Court did not find merit in the complaint.

The Trial Court observed that while in her complaint, the complainant had alleged that she had handed over Rs.7 lakhs as earnest money in cash for the purchase of the aforesaid flat owned by Surender Singh, in her cross examination she stated that she had given a friendly loan of Rs.7 lakhs to the accused persons as they had to give bayana for a property to be purchased

by them. She stated that no property transaction took place between her and the accused persons.

She could not explain as to why the cash was handed over to the accused in respect of a property belonging to Surender Singh and if the story of the complainant were true, why the cheque was issued by the accused and not Surender Singh. Surrender Singh was not led as a witness by the complainant. No document of the so called agreement to sell or its cancellation was produced. The complainant could also not provide the year, month and date when the transaction, or its cancellation took place. Though she claimed that the transaction took place in the presence of her husband, he was not produced as a witness. She could not explain the source of income of Rs.7 lakhs. In her cross examination, she stated that she had sold her one property at 26/48, Sarvodaya Mini Market, Trilokpuri to one Prem Wati for Rs.6.70 lakhs. However, no document was produced in this respect and the so-called Prem Wati was not even produced as a witness.

The Trial Court has also found contradictions in the statement of the complainant with regard to the contents of the cheque in question. At one point, she stated that the accused persons had handed over duly filled in cheques to her. However, later on, in cross examination she stated that the accused persons had signed the cheques in question in her presence and in the presence of father in law of the accused Seema, and the dates on cheques in question were filled later by a lady who had accompanied the accused persons.

In the aforesaid circumstances, the Trial Court held that the defence of the accused was probabalised.

The submission of counsel for the petitioner is that petitioner is an illiterate lady which led to apparent contradictions creeping in during her cross examination. He submits that she had deposed that she had entered into the agreement in respect of the aforesaid flat belonging to Surender Singh, the father in law of accused no.1 and father of accused no.2.

The aforesaid submission of the petitioner cannot be accepted. There are clear and serious contradictions in her testimony which cannot be passed off as a result of her illiteracy. Moreover, she claimed that the transaction took place in the presence of her husband. But for no disclosed reason, the husband was not produced as a witness.

There is no error found in the impugned judgment which calls for interference. Dismissed.

VIPIN SANGHI, J

MARCH 03, 2017

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