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

\+ CRL.L.P. 165/2016

SUNNY GAHLOT ..... Petitioner

Through: Mr.R.K.Lamba, Advocate

versus

THE STATE (NCT OF DELHI) & ANR ..... Respondents

Through: Mr.Ashish Dutta, APP

Ms.Neha Pamnani, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

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

% 17.08.2017

The petitioner is aggrieved by the judgment and order dated 13.01.2016 passed by the Trial Court whereby the respondent has been acquitted of the offence under Section 138 of the NI Act.

The respondent, it has been argued, had taken a friendly loan of Rs.50 lacs from the petitioner on 28.02.2014 with a promise to repay the same within 50 days. In discharge of the aforesaid liability, the respondent issued one cheque bearing No.568330 dated 06.03.2014 for the amount of Rs.50 lacs, drawn on Corporation Bank, Najafgarh Branch, New Delhi. The aforesaid cheque, on presentation, was dishonoured for insufficient funds.

Hence the complaint.

The respondent, during the trial, denied her obligation to pay Rs.50 lacs to the petitioner. The cheque in question, it was urged by the respondent, was never issued by her and in fact she had lost a cheque book of the account maintained by her along with other documents for which she had filed a complaint (Ex.CW-1/D1). The consistent stand of the respondent before the Trial Court had been that the cheque in question was misused by the petitioner.

From the records it appears that the loan was allegedly advanced on 28.02.2014 for a period of 50 days, whereas the cheque in question is dated 6.3.2014. The averment in the complaint is that the respondent had promised to repay the loan amount within a period of 50 days. As such, the cheque was issued prior to the 50^{th} day from the date of handing over of the loan amount.

With respect to the source of money and the financial capability of the petitioner, it was argued that the money was obtained on sale of a plot of land and an agreement to sell dated 11.03.2013 was placed on record (Ex.CW-1/A). The Trial Court, however, was of the opinion that the sale transaction was never held as the plot of land which was stated to have been sold, belonged to the co-sharers of the petitioner also and the petitioner was only entitled to $1/8^{th}$ share. The total sale transaction which was shown to the Trial Court was Rs.1,37,60,000/- and as per the agreement to sell, an amount of Rs.1,16,00,000/- was paid in advance. Since petitioner/complainant was entitled to $1/8^{th}$ share in the property, he could have retained only an amount of Rs.14,50,000/-. The Trial Court therefore doubted the financial capability of the petitioner in advancing a loan of Rs.50 lacs and that too without any surety.

The complaint also does not refer to the cause or the reason for obtaining loan by the respondent.

The petitioner, during trial, laid emphasis on a mutual agreement dated 28.02.2014 (Ex.CW-1/6) which inter-alia stated that the respondent acknowledged the receipt of Rs.50 lacs from the petitioner as loan and had also promised to repay the same or transfer some immovable property of equal worth in favour of the petitioner. In support of the aforesaid document, one Ms.Kanta Rana, Notary Public deposed that the parties executed the document before her and also signed in the register maintained by her.

The respondent did not deny the signature on the register referred to above but submitted that the signature was obtained on a blank page which was later converted into an admission of the fact that such mutual agreement was entered into by her.

The Trial Court therefore rightly doubted the genuineness of the claim of the petitioner regarding his financial capacity to advance a loan of Rs.50 lacs.

There is no corresponding entry of the aforesaid amount in the income tax return of the petitioner.

No good ground has been raised by the petitioner for interference in the aforesaid judgment and order of acquittal.

Leave is declined.

Accordingly, the petition is dismissed.

ASHUTOSH KUMAR, J.

AUGUST 17, 2017
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