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

\+ CRL.L.P. 160/2017 & Crl. M.A. No. 4614-15/2017

INTEC SECURITIES LTD. ..... Petitioner

Through :Mr. Avadh Kaushik and Mr. Devashish Maharishi, Advs.

versus

STATE & ANR. ..... Respondents

Through :Dr. M.P. Singh, APP for the respondent no. 1

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

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

% 20.03.2017

Respondent no. 2 has been acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”, for short) by the trial court. Petitioner seeks leave to appeal against the acquittal of respondent no. 2.

I have perused the impugned judgment and material placed on record and do not find any perversity in the impugned judgment, inasmuch as the view taken by the trial court is a possible view.

It is not in dispute that loan of ₹9,06,000/- was taken by the respondent no. 2 from the petitioner pursuant to a loan agreement executed between the parties on 1st August, 2000. On the same day 31 post dated cheques for ₹34,604/- each were handed over by the respondent no.2 to the petitioner, towards the monthly instalments. Petitioner alleged that four post dated cheques were returned dishonoured on presentation in the year 2002.

It was contended before the trial court that presumption under Section 139 of the Act arose as signatures on the cheques and its issuance was not disputed. Trial court has held that such presumption stood rebutted, from the evidence, which had come on record. In paras 22 and 23, trial court has held as under:-

> "22. Admittedly, the cheques in question were issued by the accused at the time of execution of loan agreement in the year 2000 in advance for payment of EMIs. The complainant has to prove the liability of the accused to pay the cheque amount at the time of presentation of cheques in question in the year 2002. The complainant did not produce any document on record to prove that how much loan amount was disbursed to the accused against the sanctioned loan amount of ₹9.06 lacs. The AR of the complainant has failed to disclose the loan amount which was disbursed to the accused. On

25.02.2016 the Ld. Counsel for the complainant has requested for some time to verify the payment vide receipt Ex.CW1/D1. On 04.03.2016 the Ld. Counsel for the complainant orally stated that earlier two cases were filed against the accused out of which one was settled and the other case (present case) is pending in this court. But complainant failed to produce any document on record that two cases were filed against the accused and only one case was settled nor deny the payment made by the accused vide Ex. CW1/D1. In view of above discussion, the court is of the considered opinion that the complainant has miserably failed to prove the liability of the accused.

23. In view of the aforesaid findings, the court is of the considered opinion that accused is able to adduce a probable defence in his favour that the cheque in question was not issued by him to discharge the liability and rebut the presumption u/s 139 of Negotiable Instruments Act successfully. The onus to prove the legal liability of the accused shifts back to the complainant, which the complainant has failed to discharge. Hence, accused Amit Kumar is acquitted for the offence u/s 138 N.I. Act."

I find the view taken by the trial court to be a possible view, inasmuch as it does not suffer from any perversity. Statement of account was not placed on record to show that the amount mentioned in the cheques' were due as on the date of transaction of the cheque. Respondent no. 2 has succeeded in showing that the matter was settled and dues were cleared on 23rd December, 2008, inasmuch as a receipt was produced and proved as CW1/D1. CW1 Shri Pramod Gulati, in his cross examination, has simply stated that the receipt Ex. CW1/D1 was a forged and fabricated. Ex.CW1/D1 also contained seal but it was not stated by the witness that the seal was forged one. No statement of account was produced to show that the amount, as shown in the receipt, was credited in the account. Since statement of account was withheld by the petitioner, an adverse inference under Section 114(g) of the Evidence Act has rightly been drawn against the petitioner.

It is noticed that CW1 had given vague replies on this point. He deposed, in his cross-examination, that he does not know as to how much amount was outstanding against the respondent no. 2 in respect of the loan transaction in question as on 23rd December, 2008. He stated that he can tell the same after verifying the records including the statement of account. However, he did not enter into the witness box thereafter, inasmuch the petitioner also did not challenge the same. Statement of account was also not produced. Interestingly, CW1, in his cross-examination, also feigned ignorance about the receipt of ₹2,25,000/- on 23rd December, 2008. He deposed thus, "I do not know as to whether the complainant company received an amount of ₹2,25,000/- on 23rd December, 2008 or not. I can bring the statement of account of the accused, if directed to do so." Again petitioner did not produce the statement of account to show that ₹2,25,000/- as shown in the receipt, was not paid.

For the foregoing reasons, petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

MARCH 20, 2017
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