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

Decided on: 8th May, 2017

\+ CRL.L.P. 209/2015 and Crl.M.A.4820/2015, 4822/2015

RAJESH KUMAR MATREY ..... Petitioner
Through: Mr. K.K. Sharma, Advocate with Mr. S. Khan, Advocate

versus

M/S. DIGITAL WORLD & ANR. ..... Respondents
Through: Mr. Rakhshan Ahmed, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

<u>ORDER (ORAL)</u>

1. The petitioner had prosecuted the respondents by criminal complaint case registered as 10 of 2012 in the court of Metropolitan Magistrate (N.I.Act) of District East at Karkardooma Courts alleging offence under Section 138 of the Negotiable Instruments Act, 1881 having been committed respecting cheques bearing nos.377743 dated 15.09.2011, no.377744 dated 15.10.2011 and no.377745 dated 15.11.2011 all drawn on IDBI Bank, GF Ocean Complex, P-6, Sector 18, Noida, U.P. which, on presentation, were returned unpaid with remarks *"payment stopped by drawer"*, the respondents having failed to pay the amounts equivalent to the cheques in spite of demand by legal notice dated 22.12.2011. The second respondent, in his capacity as the proprietor of the first respondent was put to trial by notice on accusations under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on

19.12.2012 to which he pleaded not guilty. The trial eventually ended with the judgment dated 20.11.2014 whereby he was acquitted. It is the said result of the prosecution through private complaint which is sought to be assailed by the petitioner through the petition at hand seeking leave to appeal under Section 378 (4) Cr.P.C.

2. On notice, respondent has appeared through counsel. Arguments of the petitioner and respondent have been heard. Record perused. On careful consideration of the submissions on both sides, this court is satisfied that the view taken by the learned trial court cannot be faulted.

3. Noticeably, in the complaint the petitioner had described himself as an erstwhile employee in the capacity of Manager (Accounts) of the respondents in their office at Faridabad and there being some dispute over non-payment of salary for four years, amount involved therein being to the tune of Rs.4,24,722/-. It was conceded by the learned counsel for the petitioner at the hearing that such averments or background history were not relevant for the present prosecution which was founded essentially on cheques referred to above.

4. It has came out from the evidence on record that, in all, twenty four cheques had been issued they including the cheques which are the subject matter of the case at hand. It was own case of the complainant that the second respondent owed an amount of Rs.90,000/- to one Jitender Sethi, a customer and that these cheques were issued for discharge of the said outstanding liability towards said Jitender Sethi. Jitender Sethi was not examined at the trial. The complainant, during his cross-examination, while deposing as CW-1 in support of his case at the trial, came out with

a new theory by testifying that since the respondent was facing some financial crises and had sought help from him, at his instance, two other persons namely, Govind Ram Sethi and Ram Prasad Soni had advanced loan of Rs.2,40,000/- and Rs.1,00,000/- respectively to the latter (the respondent) through him (the complainant) and it was *"in recognition of aforesaid loan"* that the respondent (accused) had handed over the said twenty four cheques to him. As in the case of Jitender Sethi, even the other two persons, namely, Govind Ram Sethi and Ram Prasad Soni were not called in as witnesses. Noticeably, there was no averment that the cheques had been issued in the name of the complainant with the consent of the persons who had actually lent money to the respondent.

5. Interestingly, after coming with the above noted new version, the complainant, in the course of his testimony, relied on two additional documents, they having been styled as *"agreement",* both purporting to have been executed on 22.08.2002, having been referred to on record as Ex.CW-1/X1 and CW-1/X2 respectively. The documents purport to have been signed by one Ashok Gupta, they having been executed on the letter head of firm described as *"First Collection"*. Even if one were to assume that the signatory of these documents is none other than the second respondent, the documents nowhere refer to the complainant as the intermediary of, or the person authorized by, the lenders of money (Govind Ram Sethi and Ram Prasad Soni) with power to collect the repayment of the loan amount on their behalf.

6. The petitioner, thus, failed to substantiate at the trial that the cheques were issued to discharge, in whole or in part, any debt or any liability owed by the drawer in his favour.

7. In the above view of the matter, no case is made out for any leave to appeal being granted.

8. Petition along with accompanying applications is dismissed.

R.K.GAUBA, J.

MAY 08, 2017
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