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

\+ CRL.L.P. 209/2017

AJAY SETHI ..... Petitioner

Through: Mr. J.K. Nayyar, Adv.

versus

THE STATE NCT OF DELHI ..... Respondent

Through: Dr. M.P. Singh, APP for the State.

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

**O R D E R**

**% 12.04.2017**

By this petition under Section 378(1) read with Section 482 of the Code of Criminal Procedure, 1973, petitioner has prayed for the grant of leave to appeal against the acquittal of respondent of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

Petitioner had filed a complaint under Section 138 of the Act before the trial court alleging therein that he had extended a friendly loan to respondent amounting to ₹2.80 lacs on different occasions during the period August, 2010 to November, 2010. Respondent had assured to return the same within 2-3 months. However, he did not refund the loan within time. When petitioner put pressure on the respondent through a relative only then respondent issued three post dated cheques in the month of February, 2011, from his joint account with his wife. The details of these cheques are as under :-

| Cheque No. | Date | Amount | Bank |
|---|---|---|---|
| 306592 | 01.03.2011 | ₹80,000/- | Union Bank of India |
| 306593 | 01.04.2011 | ₹1,00,000/- | -Do- |
| 306594 | 01.05.2011 | ₹1,00,000/- | -Do- |

On presentation, the cheques were returned dishonoured on 27th July, 2011 with the remarks 'insufficient funds'. When petitioner contacted the respondent he requested him to present the cheques again in the last week of August, 2011. Accordingly, petitioner again presented the cheques but the same again returned dishonoured vide Bankers' return memo dated 30th August, 2011. Despite issuance of notice dated 28th September, 2011 respondent did not pay the cheque amount within the statutory period, thus, the complaint.

After the service of summons, respondent appeared before the trial court and notice under Section 251 Cr.P.C. was served on him to which he pleaded not guilty. Respondent took a defence that the cheques in question, along with other cheques, were given by him to complainant for the purposes of securing personal loan through the complainant. The bank account was got opened by the complainant for him and for that purpose he took his signatures. However, complainant did not procure loan for him. Complainant even passed on some of the cheques to a third person who also filed a complaint under Section 138 of the Act against the respondent but the same was dismissed. The cheques have been misused by the complainant.

Petitioner examined himself as CW1; whereas respondent stepped in the witness box as DW1. Statement under Section 313 Cr.P.C. of the respondent was recorded wherein, he denied having issued the cheques to the complainant in discharge of any legally enforceable debt or liability. He reiterated that he had approached the complainant (petitioner) for getting a loan from the bank and upon assurance of the complainant (petitioner), he opened a joint account with his wife in Union Bank of India and another in his individual name in ICICI Bank. Complainant (petitioner) represented that he required cheque books for making statements. On this pretext, he took blank signed cheques from him and his wife. Later on, he has misused the cheques along with one Dr. Abdul Salam in order to extort money from him.

On scrutiny of evidence adduced by the parties, trial court has concluded that petitioner had failed to prove his case beyond reasonable doubt, inasmuch as, respondent had succeeded in proving his defence on the scale of preponderance of probability.

I have heard the learned counsel for the petitioner and perused the entire material placed on record and find the view taken by the trial court to be a possible view, inasmuch as, the same does not suffer from any perversity.

In my view, the presumption under Section 139 of the Act stands rebutted in view of the evidence on record more particularly, in view of the sketchy, shaky and vague pleas taken by the petitioner. Admittedly, no documentary evidence was produced on record to prove that ₹2.80 lacs were given as a loan to respondent between August, 2010 to November, 2010. The averments made in this regard are totally vague. No details have been given as to on which date(s) and how much amount(s) were paid. In his cross examination, petitioner has deposed that he does not remember the amount paid by him to the respondent in the month of August, 2010. He deposed that first instalment was given on 18th April, 2010, however, he has not mentioned this date in the complaint. He further deposed that he does not remember as to when he paid the second instalment and also the last instalment. He admitted that he did not issue any receipt of the loan amount. In the complaint, petitioner has alleged that respondent had approached him in the year 2010 for the grant of loan on the pretext that he was facing financial problems in his business. However, in his cross-examination, he has stated that respondent along with wife used to come to him to take money. This is contrary to what has been stated in the complaint.

It is further noted that petitioner has stated in his cross-examination that he took ₹2.80 lacs from HDFC Bank and thereafter, lent the said money to the respondent. This is quite unnatural that a person would take loan from the bank only to lend the same to his friend. No document was, otherwise, placed and proved on record to support this plea. This also shows that petitioner had no financial capacity to extend the loan. In his cross-examination, petitioner has deposed that accused (respondent) had taken the loan on several occasions from his father and from him. However, as per the complaint, respondent used to take loan from him. Petitioner's father has not stepped in the witness box. Petitioner has alleged in the complaint that respondent had issued the cheques on the pressure put on him through one of his relatives. In his cross-examination, he has given the name of his relative as 'Rajesh', however, 'Rajesh' was not produced in the witness box.

For the foregoing reasons, I do not find it to be a fit case to grant leave to appeal to petitioner. Petition is dismissed.

**A.K. PATHAK, J.**

**APRIL 12, 2017**ga