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

+ **CRL.L.P. 461/2016**

SULTAN SINGH

..... Petitioner

Through: Mr. V.K. Sharma and Mr. Anshu Mahajan, Advs. with petitioner in person.

versus

GIRI RAJ SINGH SAINI

..... Respondent

Through: Counsel for the respondent (appearance not given).

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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18.01.2017

Petitioner has prayed for grant of leave to appeal against the acquittal of respondent under Section 138 of the Negotiable Instruments Act, 1881 ('The Act' for short).

Petitioner filed a complaint under Section 138 of the Act, before the trial court alleging therein that he had paid ₹40,000/- in cash to respondent in respect of a property deal, in the year 1995. Later on, in the year 2010, he came to know that the title of the land was defective. The matter was settled between him and the respondent for ₹20 lacs. Accordingly, respondent issued a cheque dated 5th June, 2013 for ₹20 lacs in favour of the petitioner. However, on presentation, the said cheque was returned unpaid on 24th

August, 2013 with the remarks “no such account”. Legal notice dated 28th September, 2013 was served on the respondent, however, cheque amount was not paid. Hence the complaint.

During the trial, petitioner proved the cheque as CW1/B, return memo as Ex. CW-1/C, legal notice as Ex. CW-1/D, postal receipts as Ex. CW-1/F and Ex. CW-1/G and reply to the legal notice as Ex. CW-1/H. In his statement under Section 313 Cr.P.C., respondent denied that he had issued cheque no.423429 dated 5th June, 2013 for ₹20 lacs. In his defence he stated that he allowed petitioner to deposit ₹1,88,000/- in his account and handed over to him several blank cheques. Petitioner withdrew ₹1,88,000/- by using four cheques. Petitioner did not return remaining cheques and has misused one cheque. He had closed his account in the year 2006.

Respondent examined Mr.Pawan Sharma, Assistant Manager, State Bank of India, Najafgarh, New Delhi as DW1. According to DW1, respondent was having account no. 10493103033 which has remained inoperative since 2008. DW1 further deposed that one Smt. Ramratti Devi was also maintaining a bank account bearing old account no. 01190036435 and new account no. 10493068417. The cheque in question, in fact, mentions the account number of Smt. Ramratti Devi, even though the

signatures were that of the respondent. Trial court has held that respondent had succeeded in proving that cheque in question pertained to account no. 10493068417, that is of Ramratti Devi, thus, ingredients of offence under Section 138 of the Act were not attracted. On the cheque in question the account number of the respondent is not mentioned. It has not been issued from the bank account of the petitioner. From the evidence led it is clear that the cheque pertains to some other account and not of the respondent. The view taken by the trial court is a possible view and does not suffer from any perversity.

For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

JANUARY 18, 2017

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