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

\+ CRL.L.P. 691/2014

KARNIK PANDIT ..... Petitioner

Through: Mr.Amit Vohra, Adv.

versus

MANISH SARDANA ..... Respondent

Through: Mr.Nitish Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

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

% 27.07.2017

The petitioner is aggrieved by the judgment and order dated 08.09.2014 passed by the learned M.M-04, (North), Rohini Courts, New Delhi in CC No.294/1/12, whereby the respondent has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881.

A complaint was filed by the petitioner regarding dishonour of a cheque of an amount of Rs.2,25,000/- drawn on Canara Bank, Sector 15, Rohini, Delhi by the respondent. The allegation in the complaint is that he had entered into a transaction for purchase of a property with one Surinder Kumar. The aforesaid agreement was brokered through the respondent. An agreement to sell dated 27.06.2011 was executed between Surinder Kumar and the petitioner. It is alleged that the respondent was given a sum of Rs.2,00,000/- on 11.12.2011 and an amount of Rs.25,000/- on 30.12.2011 for which a receipt in the form of an endorsement at the back of the stamp paper of the agreement to sell was made by the respondent.

It is further alleged that on 19.03.2012, the respondent further induced the petitioner to convert the deal into one between him and the petitioner and the petitioner was informed that a sum of Rs.10,25,000/- has already been paid to the aforesaid Surinder Kumar. The rest of the amount, it was assured, would be paid by the respondent. The aforesaid deal did not finalise and the respondent issued a cheque bearing No.303765 dated 15.07.2012 drawn on Canara Bank, Sector 15, Rohini, Delhi which was not honoured for insufficiency of funds.

An agreement to sell was entered into between Surinder Kumar (vendor) and the petitioner. The “agreement to sell” indicates that the property was to be conveyed to the petitioner for a sum of Rs.22,50,000/-. Out of the aforesaid amount, Rs.8,00,000- was paid in advance on the date of the execution of the agreement to sell. The balance amount of Rs.14,50,000/- had to be given to Surinder Kumar on the date of execution of the sale deed. No reason has been assigned by the petitioner/complainant for paying to the respondent an amount of Rs.2,00,000/- and later Rs.25,000/-. The terms of the agreement indicate that the last date of execution of the agreement was 10.10.2011. The money was allegedly given to the respondent on 11.12.2011 which appears from the endorsement on the back of the stamp paper appended to the “agreement to sell” referred to above. In the absence of any evidence regarding extension of the date of execution, the Trial Court did not believe the statement of the petitioner/complainant and, therefore, even if the cheque was signed by the respondent, it was not considered to be in discharge of any debt. No evidence or explanation was offered by the petitioner as to why such payment was made to the respondent. The agreement clearly indicates that advance payment of Rs.8,00,000/- was made to the petitioner by one Surinder Kumar.

Thus, the Trial Court rightly found that the petitioner had failed to prove that the acknowledgement of the respondent on which the case of the petitioner rested was in the handwriting of the respondent and that the signature appended to the same was also his. The Trial Court also was at a loss to understand as to why money was paid to the respondent, much after the last date of the execution of the sale deed.

No case could be made out by the petitioner for establishing that any recoverable dues as against the respondent was available.

The Trial Court was, thus, left with no alternative but to dismiss the complaint and acquit the respondent.

This Court does not find any reason to interfere with the aforesaid judgment and order.

Leave declined.

Hence this criminal leave petition is dismissed.

ASHUTOSH KUMAR, J

JULY 27, 2017
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