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

\+ CRL.L.P. 334/2015 & Crl.M.A. No. 18043/2015, 6348/2015

SHIV KUMAR

..... Petitioner

Through: Mr. S.K. Rai and Mr. Shiv Kumar, Adv.

versus

DINESH CHAND PANDEY & ANR

..... Respondent

Through: Mr. Alok Singh, Mr. Deepak Shukla and Puspraj Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **21.03.2017**

The petitioner has preferred the present petition to seek leave to appeal against the judgment dated 29.10.2014 passed by the learned MM (NI Act), South-East Distt., Saket Courts in CC No.2/1/2012. The respondent/ accused had been acquitted by the impugned judgment.

The case of the petitioner is that he had advanced a friendly loan of Rs.3 lacs to the accused and towards repayment thereof, the accused had issued the cheque in question bearing no.65586 dated 10.12.2012 for the same amount. The said cheque was dishonoured upon presentation on account of insufficient funds. Despite notice, the amount was not paid and consequently the complaint was preferred.

The respondent upon being summoned pleaded not guilty. The consistent stand of the respondent was that he had taken a loan of Rs.50,000/- from the petitioner in the year 2007 and the cheque in question had been given as security in 2007. The said loan of Rs.50,000/- had been repaid. The complainant had misused the security cheque given in 2007.

The complainant examined himself as his witness. He was cross examined. He stated that he had arranged the amount of Rs.3 lacs by borrowing Rs.1.50 lacs from his brother in law, while the remaining Rs.1.50 lacs was lying at his house. The complainant did not examine his brother in law as a witness. In his cross examination, he stated that he had filed his income tax returns for income of Rs.3 lacs. However, he did not produce his income tax return in evidence.

The Trial Court disbelieved the version of the petitioner/ complainant that a person would advance a loan of Rs.3 lacs without executing an agreement, promissory note or receipt, particularly when the accused was not a family relation of the complainant. The Trial Court also doubted the version of the complainant on the premise that he did not examine his brother in law and showed the availability of the amount of Rs.1.50 lacs with him as his own funds as claimed by him.

The submission of learned counsel for the petitioner, firstly, is that the defence of the accused that he had taken a loan of Rs.50,000/- in the year 2007, and in respect thereof he had issued the cheque in question was not substantiated. He submits that since the question regarding the petitioner's filing of his income tax return was put only during his cross examination, he could not file his return before the Trial Court. However, he is carrying the same and wishes to lead the same in evidence before this court.

I may observe that no application to lead additional evidence has been moved by the petitioner.

Learned counsel for the respondent submits that the respondent/ accused had also examined the Bank Manager, Oriental Bank of Commerce, Nehru Place Branch as DW-2 who had also produced the accounts statement of the firm of the accused Sasi Enterprises as Ex. DW-2/A. He pointed out that though the Trial Court has not discussed the important aspect, from the statement of account it is evident that the cheque immediately preceding and immediately succeeding the cheques in question, namely, cheque bearing nos.65585 and 65587 were in seriatim issued from the same cheque book were encashed in the year 2007 itself. He submits that this probabilises the defence of the accused that the cheque in question was issued in 2007 when the loan of Rs.50,000/- was taken by the accused from the complainant.

Having heard learned counsel and perused the impugned judgment and also having perused the testimony of the CW-1 and DW-2 as well as Ex. DW-2/A, I am of the view that there is no merit in this petition. The accused was only required to probablise his defence. The defence of the accused was that the cheque in question was issued in blank to the petitioner in the year 2007 against the taking of loan of Rs.50,000/-. On the other hand, the case of the complainant was that the cheque in question was issued in November 2012. The statement of Ex. DW-2/A clearly shows that cheque no.65585 was encashed on 22.09.2007 for Rs.8,475/-, whereas cheque no.65587 relates to a cash withdrawal of Rs.6,000/- on 08.11.2007.

The aforesaid probabilises the defence of the accused that cheque no.65586 may have been issued from the same cheque book in the year 2007 itself as it is in the normal course that a person would use the cheque leaves in a cheque book in seriatim. Coupled with the aforesaid fact is the relevant fact that the petitioner did not examine his brother in law from whom he claimed to have arranged Rs.1.50 lacs. Nothing prevented the petitioner from producing his income tax return during examination to show the availability of funds with him. It is not his case that the income tax return was not available with him at the relevant time.

In the aforesaid circumstances, in my view, there is no merit in this petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

MARCH 21, 2017
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