

\$~48

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

+ **CRL.L.P.424/2017**

%

Date of Decision: 28.07.2017

MUNESH KUMARI

..... Petitioner

Through Mr.Vinay Kumar Mishra, Adv.

versus

IMRAN & ANR

..... Respondents

Through

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J (ORAL)

Crl.M.A. 12084/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Crl.M.A. 12085/2017 (delay of 9 days in filing)

For the reasons stated in the application, the delay of 9 days in filing the leave petition is condoned.

Application stands disposed of.

Crl.L.P.424/2017

1. The petitioner/complainant claims to have advanced a loan of Rs.2 lakh to the respondent on 12.01.2014 for a period of one year as the respondent was in need of money for running his business of sale of mobile sets and repairs.

2. According to the petitioner/complainant, the loan was advanced after arranging the same from various other sources. The details of those sources have neither been stated in the complaint nor could be ascertained at the time of trial.
3. The petitioner/complainant, in his complaint as well as in his evidence by way of affidavit had affirmed the fact that the respondent, on request, handed over the cheque in question for repayment of loan amount on 27.05.2015 in the morning. This assertion was ratified by CW2 during trial.
4. The case of the petitioner is that in discharge of the loan liability, the respondent drew a cheque bearing No.000020 dated 27.05.2015 for an amount of Rs.2 lakhs drawn on HDFC Bank, Mayur Vihar, Phase-I, Delhi in favour of the petitioner. The said cheque was dishonoured for “insufficiency of funds”. A demand notice dated 08.07.2015 was sent to the respondent. Since money was not paid to the petitioner, a complaint was filed.
5. The Trial Court was of the view that in the absence of the details as to from whom the loan money was arranged by the petitioner, it was difficult to believe in the solvency of the petitioner in advancing loan. The Trial Court was also of the view that there was nothing on record even to infer about the earnings and the financial strength of the petitioner for him to have advanced a loan of Rs.2 lakhs for business purposes.
6. No written agreement or receipt appears to have been placed on record to prove that the loan was actually advanced. The evidence adduced on behalf of the petitioner regarding advance of loan is only

photocopy of a Voter ID Card of the respondent (Ex. CW1/1) on which it was written in Hindi that loan of Rs.2 lakhs was taken along with the signature of the respondent. This, the Trial Court held, was no evidence in support of the fact that loan was obtained from the petitioner/complainant. There is no mention in the aforesaid document (Ex. CW1/1) about the name of the lender and no date of the loan has been given.

7. The respondent, during trial sought to rebut the presumption further by bringing in evidence that on the day when the cheque is said to have been handed over by the respondent to the petitioner i.e. on 27.05.2015 in the morning, the respondent was at Dubai. Ex. DW1/1 is copy of the flight tickets of the respondent. Copy of the passport bearing the immigration stamp showing the departure of the respondent from India on 17.04.2015 and his arrival in India on 06.07.2015 was pressed by the respondent to demonstrate that the case of the petitioner/complainant was false.

8. The Trial Court, therefore, following the decision rendered in **K. Prakashan vs. P.K. Sundaran: 2007 (4) CCC 713 (SC)** and **Vipul Kumar Gupta vs. Vipin Gupta: 20012 (4) JCC (NI) 248** held that in the absence of any evidence to show the solvency of the petitioner for him to advance loan to the respondent, the complaint must necessarily fail.

9. The Supreme Court in **Vijay vs. Laxman 2013: (V) AD (SC) 243** has held that in the absence of any documentary or other evidence to show that any such loan transaction had indeed taken place between the parties, is a significant circumstance to be taken into account.

10. The presumption of the cheque in question having been issued in discharge of the debt has been successfully rebutted by the respondent.

11. Section 139 of Negotiable Instruments Act, 1881 is in the nature of a reverse onus clause. The accused/respondent is only required to raise a probable defence which creates doubt about the legally enforceable debt or liability. The standard of proof for doing so would be on the basis of “preponderance of probabilities” and not “beyond the shadow of any doubt”.

12. This court finds no merit in the present leave petition as the judgment delivered by the Trial Court cannot be faulted with.

13. Leave declined.

14. This criminal leave petition is dismissed.

ASHUTOSH KUMAR, J

JULY 28, 2017

ns