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

\+ CRL.L.P. 108/2017

MMTC LTD. ..... Petitioner

Through : Mr. Narender Singh Hooda, Sr. Advocate with Mr. Shoumendu Mukherji, Adv.

versus

VIPIN SEHGAL & ORS. ..... Respondents

Through : None.

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

O R D E R

% 27.02.2017

Crl. M.A. No. 3316/2017 (Delay)

For the reasons explained in the application, delay is condoned.

Application is disposed of.

Crl.M.A. No. 3315/2017 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.L.P. No. 108/2017

By this petition under Section 378(4) of the Code of Criminal Procedure, 1973 (“the Code”, for short), petitioner has prayed for grant of leave to appeal against the acquittal of respondent no. 1 for the offences under Sections 420/467/468/471 IPC by the trial court, vide judgment dated 31st May, 2016.

Briefly stated, facts are that the petitioner filed a complaint under Sections 420/467/468/471 IPC against the respondent no. 1 before the trial court alleging therein that respondent no. 1 had availed the packing credit facility from the petitioner for exporting the gold jewellery. Packing credit agreement was executed on 4th May, 1992. Even prior thereto, respondent no. 1 had come to the office of petitioner in the month of May, 1990 along with one person, to whom he introduced as Harsai Lal Sehgal S/o Late Kedarnath Sehgal and they offered to create equitable mortgage by deposit of title deeds of the property bearing no. H-5, South Extension Part – I, New Delhi, allegedly owned by the said person, that is, Harsai Lal Sehgal to secure the packing credit facility. A certificate duly signed by Harsai Lal Sehgal and countersigned by the respondent no. 1 and two witnesses, namely, Vikas Shetty and Gulshan was also produced. Respondent no. 1 defaulted in making the payment of outstanding amount of ₹73,58,951/-, as on 10th April, 1997. Apprehending that South Extension property might be sold by the mortgager, petitioner filed a suit bearing no. 702/1996 against Harsai Lal Sehgal in the Delhi High Court. Legal heirs of Harsai Lal Sehgal appeared in Court and informed that their father Harsai Lal Sehgal had expired way back on 1st July, 1983, accordingly, the said suit was dismissed. At this stage, petitioner realized that respondent no. 1 had executed and/or used the forged documents for availing the packing credit facility, thus, had committed aforesaid offences.

Trial court has noted that petitioner had examined only one witness, namely, Ashwani Kapoor as PW1, to prove its case, whose deposition was not sufficient to prove the charges against the respondent no.1, beyond the shadow of reasonable doubt. PW1 deposed that M/s. Sangeeta Jewels, through its Director, namely, Vipin Sehgal (respondent no. 1) had approached the petitioner in the month of May, 1990. V.P. Sehgal also accompanied the respondent no. 1. Both of them produced the documents of property Ex. PW1/A. Affidavit dated 30th April, 1992 Ex. PW1/D of Harsai Lal Sehgal was also produced. Memorandum of Mortgage Ex. PW1/C for depositing the title deed dated 30th April, 1992 was also submitted along with No Objection Certificate Ex. PW1/F. These documents were purportedly issued by Harsai Lal Sehgal. PW1 also deposed that respondent no. 1 had also signed other documents, such as Promissory Note, hypothecation agreement, agreement of guarantee etc. as the Director of

M/s. Sangeeta Jewels. He also deposed that Sangeeta Jewels defaulted in making the payment. In the month of April, 1997, the unrealized bill with interest approximately ₹74 lacs was raised but the payment was not made. Petitioner filed a suit for injunction against Harsai Lal Sehgal in this Court, when it was revealed that Harsai Lal Sehgal had expired on 1st July, 1983 and the forged property documents were used by the respondent no. 1. In his cross-examination, PW1 admitted that he was not posted in the office when the loan was extended, inasmuch as when the documents were executed. He was not connected with the transaction and was deposing only on the basis of records. He admitted in his cross-examination that P.S. Shastri and Chander Molly had dealt with the matter in the year 1990. Trial court has noted that both these officers were not examined. During the course of cross-examination of PW1, it was also revealed that alleged collateral security was transferred from the name of another firm M/s. Jewel to M/s. Sangeeta Jewels in the year 1990. No document in this regard was produced and proved. PW1 further admitted that Ex. PW1/A to PW1/E do not bear the signatures of respondent no. 1 or his wife Sangeeta Sehgal. Petitioner had also failed to prove any document to establish that any such firm in the name of M/s. Sangeeta Jewels was registered and functional at the time of the alleged incident. No witness was produced regarding the impersonation of Harsai Lal Sehgal by the other person, at the instance of respondent no. 1.

It is clear from the statement of PW1, in his cross-examiantion, that transaction was dealt with by Mr. P.S. Shastri and Mr. Chander Molly on behalf of the petitioner in the year 1990. Only these persons could have identified the respondent no. 1 in Court and deposed about the facts narrated above as it is before them only that the person impersonating himself as Harsai Lal Sehgal had accompanied the respondent no.1 to the petitioner's office and had submitted the aforesaid documents relating to the mortgage. In view of the sketchy evidence led by the petitioner, the view taken by the trial court that petitioner had failed to prove its case beyond the shadow of reasonable doubt against the respondent no. 1, is a possible view and does not suffer from any perversity.

For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

FEBRUARY 27, 2017
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