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

\+ CRL.L.P. 229/2017

DARTS IT NETWORKS P.LTD. ..... Petitioner

Through: Mr. Arun Kumar Gupta, AR of the petitioner in person.

versus

ALOK KUMAR CHOUBEY ..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% **20.04.2017**

On the complaint (criminal complaint No. 676/1/2014) lodged by the appellant herein, hereinafter referred to as the complainant), the respondent (hereinafter referred to as the respondent) was tried in the court of Metropolitan Magistrate, South East District, Saket Court Complex, New Delhi on the accusations of offence under Section 138 of Negotiable Instruments Act, 1881 primarily on the allegations that inspite of service of demand notice dated 6.9.2013, in the wake of return of cheque bearing No. 035387 dated 15.7.2013 in the sum of Rs. 14,000/- drawn on HDFC Bank, Kalkaji, New Delhi (hereinafter referred to as "the cheque") unpaid with the remarks "stop payment", by returning memo dated 26.8.2013, the respondent had not made the payment of the cheque amount to the complainant.

The trial before the Metropolitan Magistrate resulted in judgment dated 19.12.2015 whereby the respondent was held guilty and convicted. By subsequent order 21.12.2015, the Metropolitan Magistrate directed the respondent to pay compensation to the complainant in the sum of Rs. 28,000/- and in case of default to undergo simple imprisonment for three months. The respondent assailed the said judgment and order on sentence of the trial Court by Criminal Appeal No. 204279/2016 in the Court of Additional Sessions Judge-02, South East, Saket Court, New Delhi. The said appeal was heard by the Sessions Court and decided by judgment dated 30.09.2016 whereby the judgment and order on sentence of the trial Court were set aside and consequently the respondent stood acquitted.

It is the above said judgment of the first appellate court which is sought to be challenged by the complainant through the petition at hand seeking leave to appeal under Section 378 (4) of the Code of Criminal Procedure, 1973 (Cr.P.C.).

The petition for leave to appeal has been presented by the complainant through its authorised representative Mr. Arun Kumar Gupta who claims to be fully conversant with the facts and circumstances of the case as also the law on the subject. He has appeared in person without assistance of any advocate. He was asked if he wanted time to engage a counsel or avail of the counsel at state expense if the rules were to so permit. He declined stating that he is competent to prosecute the appeal on his own without any such assistance.

The complainant through its authorised representative has been heard at length and the documents submitted with the petition for leave to appeal have been perused.

From the material on record, it is clear that the respondent was engaged as an employee in the capacity of Business Manager by the complainant in terms of letter (Annexure 'D') of appointment dated 14.11.2012 (Ex.CW-1/D1) effective from 10.12.2012. The gross emoluments indicated in the said letter of appointment are indeed indicated to be Rs. 28,000/- per month. It appears from the evidence led at the trial, as discussed in the judgments of the two courts below, that the respondent did join the said employment as Business Manager but resigned from the services on 7.5.2013 as per resignation letter (Ex.CW-1/7). It appears that in the terms of engagement there was a stipulation that the employee would be obliged to give one month's prior notice before tendering resignation from the job. The complainant concededly insisted on payment of one month's salary in lieu of the notice. The respondent admittedly issued two cheques for Rs.14,000/-, each payable in favour of the complainant one having admittedly been duly paid upon presentation and the other having become subject matter of the criminal prosecution.

The complainant proved the facts concerning presentation of the cheque (Ex.CW-1/2) at the bank and it having returned unpaid vide memo dated 26.8.2013 (Ex.CW1/3) with remarks "stop payment" this having been followed by issuance of legal notice dated 16.9.2013 (Ex.CW1/5) and its service on the respondent, he not making any payment in response within the statutory period leading to the complaint being presented in the Court.

At the trial, the respondent took the defence that the money represented in the cheque was not a legally enforceable debt. The complainant, on the other hand, relied on the presumption under Section 139 of Negotiable Instruments Act that the holder of cheque had received the instrument for the discharge of debt due. The learned appellate court has accepted the said defence with the following observations:-

> *"13. ... Respondent No. 2 has neither filed nor proved the salary slip of appellant on record. The respondent No.2 has further failed to prove that the company was paying Rs. 28,000/- to appellant. There is nothing on record to suggest that respondent no.2 was in fact paying or has paid Rs. 28,000/- to appellant as salary to him as per Appointment Letter Ex.CW1/D1 which is the basis of case of respondent no.2.*

14. Appellant examined himself as DW-1. He stated that he was offered appointment letter and was told that he would be paid salary of Rs. 28,000/- per month excluding the incentives. He stated that on 09.01.2013, he received salary vide cheque of Rs. 15,000/- for the month of December, 2012. He further deposed that in February, 2013, he received salary vide cheque of Rs. 14,000/- and he was told that remaining Rs. 14,000/- would be transferred directly to his account. He stated that the said cheque of Rs. 14,000/- got dishonoured. The officials of respondent no.2 told him that he would be paid only one month salary as mentioned in the offer letter. So appellant resigned from his job for the first time. He further stated that company requested him not to resign and he was told that he would be paid salary of Rs. 15,000/- per month including incentives. He stated that he was paid salary for the month of March 2013 in April 2013. He was not paid salary for the month of April 2013. He stated that he was blessed with a baby on 14.01.2013 and all his savings were spent on the hospital expenses. The appellant stated that he resigned from the job in the month of May 2013 as he was not paid salary. He stated that the officials of complainant company refused to relieve him from his duties and asked him to give one month's notice. He agreed to give one month notice but he was told that he would not be paid salary for the said month. He was further asked to submit a cheque for one month salary. He stated that he had to issue the said cheque for a sum of Rs.14,000/- because he had no other choice. He stated that he issued two cheques of Rs. 14,000/- each because he was not earning at that time and in case of dishonour of first cheque, the second cheque would be honoured by him after 1 ½ month. He stated that first cheque of Rs. 14,000/- firstly got dishonoured and thereafter, he honoured the said cheque after borrowing money from his friend. He stated that he stopped the payment of second cheque of Rs.14,000/- because he was not liable to pay for the second cheque. He proved the statement of his bank account which is Ex.DW1/1.

15. In his cross-examination, the appellant stated that he was not given salary of Rs. 28,000/- for any month. The respondent failed to prove on record that appellant was ever paid Rs. 28,000/- as salary as promised in Appointment Letter

Ex.CW/D1. In the face of categorical denial by the appellant, it was the duty of the respondent to prove on record that respondent No.2 was paying salary of Rs.28,000/- to appellant. Respondent No.2 failed to do so. On the other hand, appellant proved on record from his statement of his bank account that he was only paid Rs. 14,000/- per month. There is no entry in the statement of bank account Ex.DW1/1 which shows that Rs. 28,000/- ever came in the account of appellant.

16. Respondent miserably failed to prove on record that the cheque in question was given towards discharge of legally enforceable debt or liability. On the other hand, appellant succeeded to raise probable defence that the cheque in question was issued towards security and not towards any liability. The respondent No.2/complainant failed to prove its case against appellant under Section 138 NI Act beyond all shadow of reasonable doubt. Hence, benefit of doubt is given to appellant."

In the opinion of this Court, the reasons set out in the impugned judgment of the first Appellate Court are sound and correct. There are no good grounds to grant leave to appeal since the respondent has come up with valid defence rebutting the presumption under Section 139 of the Negotiable Instruments Act, there being no sufficient evidence adduced by the petitioner to prove facts to be otherwise. Thus, the impugned judgment cannot be faulted.

This petition for grant of leave to appeal is dismissed *in limine*.

R.K.GAUBA, J.

APRIL 20, 2017
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