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

\+ CRL.L.P. 545/2015

DALBIR SINGH

..... Petitioner

Through: Ms. Neha Garg, Advocate with Mr. Amit Gupta, Advocate

versus

ANAND JANGRA &ANR.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

% **27.01.2017**

The petitioner has preferred the present petition to seek leave to appeal against the judgment dated 07.04.2015 passed by learned Metropolitan Magistrate (NI Act) – 03, Dwarka Courts, in CC No. 6782/14 whereby the petitioner's complaint under Section 138 of the Negotiable Instruments Act, had been rejected and the respondent accused acquitted.

The petitioner filed a complaint with the allegation that the respondent accused had taken a friendly loan of Rs. 1.70 lakhs from him in the month of August, 2011, and had issued the cheque in question dated 16.08.2012 towards the repayment of the said loan drawn on his bank. When presented, the cheques were dishonoured on account of 'stop payment instructions'.

Since the amount was not paid despite issuance of statutory notice, the complaint was filed. When the respondent accused was summoned, in his defence, he took the plea that he had, by mistake, left his cheque book containing two signed cheques, which were otherwise blank, at the house of the petitioner/complainant. He disclosed that he had signed the two cheques so that the same could be utilized by his family in his absence to meet their expenses. He also disclosed that on the same day i.e. on 02.08.2011, he realized the loss of the cheque book and had made a complaint to the police vide NCR No. 988/2011 dated 02.08.2011 at police station Mayapuri. He also stopped payment of the said cheques by issuing instructions to his bank on 24.08.2011 through phone banking.

The accused led in evidence the NCR as Ex.DW2/A and the stop payment instructions issued to his bank as Ex.DW1/A. He produced Mr. Mukul Bindal, Assistant Branch Manager of HDFC Bank, Nazafgarh Branch, as DW1, to substantiate his defence. The trial court, on the aforesaid premises, held that the accused has probablized his defence.

The submission of learned counsel for the petitioner is that if the cheques had been signed in blank so as to meet the family expenses, there was no reason for the accused to carry the said cheques in his cheque book which he had allegedly left at the residence of the complainant by mistake. Moreover, in his complaint/NCR, he had not reported that he had left the cheque book at the residence of the complainant.

Having perused the impugned order and heard learned counsel for the petitioner, I find no merit in the petition. Pertinently, the petitioner/complainant did not claim to have advanced a friendly loan on Ist of August, 2011. It was merely claimed that the loan was advanced in the month of August, 2011. Since the NCR was lodged on 02.08.2011, the only day in the month of August, 2011, that the loan could have been advanced was 01.08.2011. The complainant did not lead in evidence any other witness to the alleged friendly loan transaction and the complainant also did not produce any other evidence showing acknowledgement of loan by the accused. Since the accused claimed to have lost the cheque book, obviously, he would not be aware as to where the same was lost and, therefore, while making the NCR, he could not be expected to say that the cheques were lost or left at the residence of the complainant. This is an aspect which he would have become aware of only once the complaint was filed after the use of the cheque by the petitioner/complainant.

In view of the aforesaid, I am of the opinion that the accused disclosed the defence which was highly probablized. The petitioner could not lead any evidence to substantiate the alleged loan. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

JANUARY 27, 2017
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