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

\+ **CRL.L.P. 137/2018**

RAJENDER KUMAR ..... Petitioner

Through: Mr. Sachin Aggarwal and Mr. B. K. Koli, Advocates.

Versus

MEHRA JEWELS & ORS. ..... Respondents

Through: Mr. Vaibhav Mehra, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **11.07.2018**

This petition impugns the judgment dated 27.11.2017 which dismissed the complaint under section 138 of the Negotiable Instruments Act, 1881 (in short "the Act") against the respondents. It is the petitioner's case that he had loaned Rs.10 lacs to the respondents by a cheque transaction i.e. there would be a corresponding banking transaction; Rs.2.5 lacs was repaid to him and for repayment of remaining Rs.7.5 lacs, cheques worth Rs.4 lacs and Rs.3.5 lacs were issued; on presentation, the said cheques were dishonoured; the petitioner issued a legal notice in November, 2003, which was not responded to; constrained by the same, a complaint/petition was filed, after trial it was dismissed by the impugned order on the ground, that the petitioner could not show that any monies were due to him from the respondents. The reason for the conclusion arrived at by the Trial Court was that no evidence was led by the petitioner to prove that Rs.10 lacs was ever transferred into the account of the respondents; that it was very easy for him to do so by producing his statements of bank accounts. In this regard, the Trial Court has reasoned as under:-

> *"25. Coming to the law of partnership, it is categorical that section 25 of the Indian Partnership Act, 1932 makes every partner liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. Thus, even if accused no. 2 issued the cheque on behalf of accused no. 1 firm, then accused nos. 3 and 4 would also be liable for acts of one partner would bind the other partners also. Furthermore, the instruction form of the bank Ex. CW-2/2 in clause (b) clearly says that the bank shall honour all the cheques issued by any one partner or the firm. Thus, all the signatories of the bank instruction form which include accused nos. 3 and 4 had bound themselves to the cheques issued by any one partner also. The partnership deed and the instruction form do show that accused nos. 3 and 4 were active partners in the accused no. 1 firm. Accused nos. 3 and 4 have only made bald averments that they were not partners in the firm. They have not led any evidence to prove the same. They did not even come to the witness box to depose that they are not partners in the said firm. They did not lead evidence even to prove that they were not active partners or that they were not involved in the day to day affairs of accused no. 1 firm.*
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> *26. Ld. Counsel for the accused submitted that as per the judgment of Monaben Ketanbhai Shah &Anr. v. State of Gujrat & Anr. AIR 2004 SO 4274, the complainant has to aver in his complaint that the accused person was responsible for the day to day affairs of the company while the complainant in the present case has not done so. However, careful reading of the complaint shows that in paragraph number 2 itself the complainant has stated that accused nos. 2 to 4 are the partners of accused no. 1 and thereafter, in every paragraph, the complainant has stated that accused purchased pure gold and accused failed to pay the amount. Thus, the complainant has clearly complied with the requirement of Monaben Ketanbhi case {Supra).*
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> *27. Ld. Counsel for the accused further argued that even if a*

person is a partner in a firm, he cannot be held liable under section 138 of the Act unless he has knowledge about the commission of the offence. Ld. Counsel for the accused submitted that the accused nos. 3 and 4 were not aware of the present transaction and therefore, they cannot be held liable. He pointed out that the complainant has admitted that he had had the transaction with accused no. 2 and that it was accused no. 2 who had handed over the cheque to the complainant. He contended that this shows that the complainant dealt only with accused no. 2 and that accused nos. 3 and 4 were not aware of the transaction. However, this court is of the contrary view. Merely because the transaction took place between complainant and accused no. 2, it does not mean that accused nos. 3 and 4 were not aware of the said transaction. For an offence under section 138/141 of the Act to be made out, it is not important that the business transaction takes place between the complainant and all the accused partners. What is of importance is that the partners who are arrayed as accused had knowledge about the transaction. This has not been contended by the accused on oath. They have not led any evidence to prove that they had no knowledge about the transaction with the complainant."

Even in this petition, no documents have been adduced to show that the petitioner was prevented by any circumstance from obtaining the bank details to prove that the monies allegedly loaned to the respondents was through bank transaction or was otherwise entered into the ledger account or reflected in their Income Tax Returns.

In view of the above, in the absence of any relevant document or proof, the defence set up by the respondents under section 139 read with section 118 of the Act would not be completely ignored and the respondents have made good their plea. There is no evidence of the loan of Rs.10 lacs being given to the respondent or of the latter acknowledging a debt or dues of Rs.7.5 lacs to the petitioner. Therefore, the cheque of Rs.7.5 lacs cannot be said to be in discharge of a debt or liability.

In the circumstance, the Court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 11, 2018

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