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

\+ **CRL.L.P. 212/2018**

H.P. DUBEY ..... Petitioner

Through: Mr. S. N. Pandey, Advocate.

Versus

THE STATE GNCT DELHI& ANR. ..... Respondents

Through: Mr. Tarang Srivastava, Additional Public Prosecutor for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **09.08.2018**

This petition impugns an order dated 05.02.2018 dismissing the petitioner's complaint under section 138 of the Negotiable Instruments Act, 1881. It was his claim that he had loaned Rs.3.5 lacs to respondent no.2 and the cheque from respondent no.2 for the said amount in repayment of the loan was dishonoured. However, the petitioner was never able to prove that the said cheque was issued in repayment of the debt or other liability. Respondent no.2 denied the petitioner's/ complainant's case under sections 138 and 139 of the N.I. Act and set up a probable defence, which was duly considered in the impugned order. It has reasoned as under:-

"7. During cross examination complainant (CW1) stated that he is retired cashier of a bank and he used to file ITR. However, CW1 stated that he does not remember whether he had shown the loan in question in his ITR. CW1 further stated that he had advanced loan in question in two installments of Rs. 2 lacs and Rs. 1.5 lacs although, he did not remember the dates of said installments. CW1 further explained that some amount had been

arranged from his pension account and some amount had been brought by him from his village out of farming business. CW1 deposed that he did not remember the exact date, month and year when he advanced the loan amount to the accused and when accused had handed over cheque in question to him. CW1 claimed that the accused had given duly filled cheque in question to him and he denied suggestion of filling the contents of cheque in question. However, careful scanning of cheque in question reflects that the signature and remaining contents of cheque in question had been put with different pens in view of the deepness of colour of ink. It indicates that accused might have given signed blank cheque. Complainant also admitted during his cross examination that he had advanced loan in question in cash and it is also reflected in para 2 of his written original complaint u/s 138 of NI Act. However, Ld. Counsel for the complainant seeks to rely upon bank statement Ex. CW1/X and Ex. CWI/Y wherein Rs. 30,000/- & Rs. 50,000/- had been transferred to some Manohar on 17.02.2015 and 03.05.2013 respectively. In such circumstances, the claim of complainant as to he advanced loan in question only in two installments and that too in cash only for a period of three months only does not get support from his said bank statements. Further, complainant is admittedly a retired banker, having his pension account and knowledge of well accounted banking transaction mode of payment and he had paid such huge amount of money in cash that too without any receipt. Complainant did not explain as to why he had not opted any well aware safer and accounted mode of payment and why he had allegedly advanced such huge loan in question to the accused in cash only that too without execution of any documentary proof or securing any eye witness to the alleged transaction in question. Complainant neither examined any witness to the alleged transaction nor filed any receipt or pronote reflecting loan transaction in question. Complainant had also not examined any eye witness to the alleged transaction. On other hand, accused has just to probabilize his defence with balance of probability and he may do the same by exposing the material contradiction and infirmities in the case of complainant even without entering himself into witness box. In these circumstances, case of complainant appears to be improbable in given facts and *circumstances as said discussion of the facts and reasons created reasonable doubts in the case of the complainant. On other side, accused has admitted that he had taken loan of Rs. 80,000/- from the complainant and he was ready to make unpaid due amount to the complainant in respect of the committee run by complainant. Here, complainant has to prove that he had actually given Rs. 3.5 lacs to the accused beyond all reasonable doubts and accused had issued cheque in question in discharge of part or whole debt liability in question i.e. Rs. 3.5 lacs as for attracting the culpability u/s 138 of NI Act, the dishonoured cheque should not have been issued for an amount exceeding the whole liability. It is noticeable that complainant has admitted that he had advanced friendly loan in cash for three months and there is no mentioning of any interest. In such situation, even admission of accused qua part liability towards the complainant would not exonerate the complainant from shouldering the burden of proof to prove the factum of advancement of loan of Rs. 3.5 lacs in cash to the accused beyond all reasonable doubts without taking benefit of any lacuna in the defence of the accused after rebuttal initial of presumption when accused probabilies his defence.*

8. The court is also mindful of basic tenant of criminal jurisprudence as to benefit of doubt must go in favour of accused and in case of two possible versions, the version favouring the innocence of accused should be opted by the court In view of above discussions, the court is of considered view that accused has created reasonable doubt over the veracity of story of complainant by balance of probabilities and complainant failed to prove his case beyond all reasonable doubts thereafter."

The respondent had admitted to taking a loan of Rs. 80,000/- which he had repaid. The petitioner/ complainant had not established that the respondent had been given a loan of Rs. 3.5 lacs and the dishonoured cheque was in discharge of the said debt. A probable defence has been set out by the respondent.

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merits and is dismissed accordingly.

NAJMI WAZIRI, J.

AUGUST 09, 2018

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