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

\+ CRL.L.P. 692/2018, CRL.M.A. 34879/2018,CRL.M.A. 34880/2018

P A JOSEPH ..... Petitioner

Through: None.

versus

THE STATE & ANR ..... Respondents

Through: Mr. G.M. Farooqui, APP for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **26.10.2018**

The petitioner impugns the order dated 07.03.2018 dismissing his complaint under section 138 of the Negotiable Instruments Act, 1881 (NI Act). It is the petitioner's case that he had loaned Rs.7 lacs to respondent no. 2. A cheque of Rs.1 lac had been given to the petitioner in repayment of the said amount. The said respondent disputed the transaction of loan as well as the fact that a cheque for Rs. 1 lac had been issued as a security in repayment of the said loan amount. The impugned order found that there was no record whatsoever of the said loan transaction i.e. no Income Tax Returns were filed to that extent; financial wherewithal to loan the said amount was not shown; no accounts were maintained by the petitioner to show that the said money had been given to respondent no. 2 and no receipt, as proof, had been filed. It is only at the time of deposition that the petitioner had mentioned such a receipt. However, the Trial Court found that evidently the date of the document was smudged and the amount was not visible.

Therefore, the said document could not be taken into consideration as a receipt of proof of any loan to the respondent. In the absence of any document whatsoever, the Court found that respondent no. 2 had set up a rebuttable presumption under section 139, that the cheques were not given in discharge of any debt or liability; that there was a dispute apropos the amount claimed by the petitioner. The impugned order has referred to the judgments (i) ***K. Prakashan v. P.K. Surendran [2008 1 (SCC) 258],*** (ii) ***Kulvinder Singh v. Kafeel Ahmed (Criminal L.P. No. 478 of 2011, decided on 04.01.2013)*** and (iii) ***Devender Kumar v. Khem Chand [2015 (223) Dtx 419]*** in support of the contentions of the respondent to the extent that ordinarily financial wherewithal would be taken into consideration. Nevertheless, in the circumstances, obtaining in the present case, it was necessary to examine other aspects. The order has reasoned as under:-

> " *22. Now if we carefully look at the evidence as well as documents on record then the story of the complainant of lending money to the accused appears quite unbelievable. The above statements given by the complainant completely discredits his testimony and shows that his story of advancing loan to the accused is completely sham and moonshine. It is also to be noted that further the complainant has not been able to show the background of the transaction or establish whether at the relevant point of time he had enough money with him for giving the same to the accused. The contradictory statements made by the complainant coupled with the evidence on record probablises the defence of the accused that the cheque in question might have been issued to the complainant as a security and not in discharge of any legal liability".*

The petitioner is stated to be in the business of money lending. However, he has neither filed any licence to prove that the said business was legitimate.

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

NAJMI WAZIRI, J

OCTOBER 26, 2018

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