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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL. L.P. 410/2018, CRL. M.A. 11844/2018

RAJESH CHANDER KATYAL Petitioner
Through: Mr. Rakesh Malviya and Mr. Manish
Choudhary, Advs.

Versus

SHAFI MOHD @ SHAFE MOHDRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **04.07.2018**

This petition impugns an order dated 21.03.2018 dismissing the petitioner's complaint case under section 138 of the Negotiable Instruments Act, 1881 ("NI Act"). It is the petitioner's case that the respondent had issued a cheque of Rs. 33,85,813/- drawn on ICICI Bank in the discharge of an outstanding debt but the cheque was dishonoured on account of "*insufficient funds*". The said amount was claimed to be in repayment of vehicles which were given on wet lease/rent to the accused and since the respondent was unable to pay the said monies, the arrangement between the petitioner and the respondent were brought to an end and the outstanding dues were purported to be repaid to the petitioner through the said cheque.

According to the petitioner, the respondent had worked with him through a proprietorship firm, namely, M/s Space Travels, from 2003 to 2008; the professional relationship had ended amicably; later in December, 2009, the respondent approached the petitioner and sought re-initiation of

working association. The petitioner had handed over to him two vehicles which were procured on hire-purchase from M/s Tata Motor Finance Limited in December, 2009 and March, 2010. These vehicles were used for transportation of call centre employees. Subsequently, two more vehicles were put in the possession of the respondent under the same arrangement as the previous two vehicles. Later on, the ownership of one vehicle was transferred in the name of one Mr. Umar Mohd. at the request of the accused. In November, 2010, another vehicle was transferred, from Mr. Vijay Pratap in the name of the accused.

According to the petitioner with the passage of time, the liability of the accused increased to Rs. 4,90,290/- with respect to one vehicle bearing no. UP16AT3721; collectively his liability apropos all the vehicles became Rs. 27,95,735/-. The respondent's cheque of this amount was dishonoured. By 5th February, 2013, the total outstanding amount regarding all four vehicles increased to Rs. 33,85,813/-, this had been duly acknowledged by the accused by his signature in the ledger book; the aforesaid cheque of Rs. 33,85,813/- was issued by the respondent in discharge of the aforesaid dues. However, upon presentation, the same was dishonoured. A notice was sent within the statutory period of 15 days, but to no avail. Hence, the complaint under section 138 NI Act was filed.

In his defence, the respondent has denied any such outstanding amounts. He contended that the vehicles were taken on wet lease; he had paid an amount of Rs. 1.65 lacs for each vehicle at the time of taking possession of the same. It is contended that rents and other EMIs were paid by him and the monies, as claimed by the petitioner, were never due; that the arrangement/agreement between him and the respondent was that at a fixed

rate of Rs. 10 per km, received from the BPO call centre for the vehicles used in transportation of its employees, the respondent could receive Rs. 8 per km, thereby leaving a profit of Rs. 2 per km for the petitioner. The vehicles were in the petitioner's name and possession. Of the Rs. 8 per km, certain amounts were deducted by the petitioner towards repayment of the said loan. The respondent contended that the petitioner had taken the said cheques from him and had made him sign on other documents, on the plea that they were required for income tax purposes.

The petitioner has relied upon the ledger accounts, especially the signatures of the respondent/accused, on the first and last page of the each ledger account. However, the figures between the first and last amounts, do not explain as to what amounts were adjusted towards repayment of the loan/EMIs and what amounts were given to the respondent towards his profit. The terms governing working relationship between the parties was not reduced to writing, therefore, the burden is upon the petitioner/complainant to prove the terms and conditions of the oral agreement governing their business association. The petitioner had admitted that there was no written agreement between them, concerning the arrangement that although the vehicles were purchased in the name of the petitioner, the respondent would be liable to pay EMIs installments of loan in respect of those vehicles.

The petitioner had deposed that there was a clear understanding on the methodology of payments and receipts by way of the arrangement are clearly reflected in the ledgers; this is sought to be proven by the long period of arrangement between them. The arrangement however was neither explained nor proven. The entries in the ledger account purporting to show

the manner in which the said monies were adjusted, was never explained to the respondent or to the Court; it was also not explained how much money was repayable by the respondent, after each deduction from his account by the petitioner; the rate at which the monies were received was also not specified in the ledger accounts. In other words, the petitioner had maintained a self-serving account of finances.

The Impugned order has reasoned as under:-

“17. Further, the complainant has produced ledger account Ex. CW- 1/DX1 to Ex. CW-1/DX4 which as per complainant were maintained vehicle wise. The complainant has produced these account during cross examination but has not even bothered to clarify the entries. Thereafter, at the stage of final judgment the Court has examined the complainant u/s 311 Cr. PC suo moto and has asked the complainant to explain the terms used by the complainant in the statement of account and has also given opportunity to the complainant to explain how these statements of account have been maintained by the complainant. During examination U/s 311 Cr.PC, complainant has clarified that 'payable' is the amount which is earned by the accused either by running the vehicle or by way of advance payments. However, from the examination of complainant U/s 311 Cr.PC as well as the way in which the account has been maintained by the complainant, it is clear that unless complainant explains the entries, none can understand the ledger account. Therefore, the plea of complainant that accused has signed the accounts statement is not consider that accused has acknowledged his liability unless complainant states that he has explained the entries to the accused but complainant has nowhere stated that he has explained the entries to the accused. Moreover, the complainant has not explained why he has not taken signatures of accused at the end of every month because if as per complainant, he was maintaining the record properly then as per general practice, he should have taken the signatures of accused at the end of every month.

18. Further, admittedly-accused has made advance payment/down payment towards the purchase of vehicles and he has also made the payment of EMIs, then at the end of the day when accounts are being concluded, then the contribution made by the accused towards the value of the vehicle has to be set off or has to be debited from the outstanding with ratio/percentage of contribution of accused. Further, the complainant has deducted the EMI from the amount of accused and admittedly, complainant is in possession of vehicles, then the amount paid by the accused towards the EMI has to be set towards the valuation of vehicles on the date of closing of the accounts. But complainant has failed to show that he has deducted the contribution of accused made towards the purchase of vehicles from the outstanding amount.

19. Rather the way complainant has put the facts before the court where vehicles have been purchased on hire agreement in name of complainant but down payment/advance payment has been made by the accused and even EMIs are being deducted from the account of accused and despite that, accused is being asked to pay such a huge amount raises a serious question over the lacunae prevailing in transportation system where the Financers are taking benefit of financial and educational status of drivers and are exploiting money from the drivers.

20. Further, as per complainant, in August 2012, accused had issued cheque for the amount of Rs27,95,735/- which got dishonoured and thereafter, accused issued cheque in question for a total sum of Rs33,85,813/- (i.e. for the more amount than the previous amount) and complainant has shown the statement of accounts showing that even after dishonour of first cheque, complainant kept giving money to accused but it is highly improbable that when the First cheque got dishonoured, thereafter, any ordinary prudent person would keep giving money without realization of previous dues.

21. Further, as per complainant if the vehicles were given on wet lease and complainant was making so accurate accounts, then no reason is coming forward why complainant has not entered into written agreement thereby penning down

the terms and conditions into writing. Moreover, even if the oral agreement is considered, then complainant has not disclosed as to when the vehicles would be transferred or what is the criterion or duration when accused would be entitled to claim the ownership of the vehicles because From the accounts statement produced by the complainant, it appears that the accounts were being maintained even when the balance was outstanding in favour of the accused”.

What emanates from the above is that, there is no acceptance of the outstanding amount of Rs. 33,85,813/- by the respondent, as payable to the petitioner apropos the alleged wet-lease governing the four vehicles. Interestingly, if two vehicles were transferred in the name of Umar Mohd. and Mr. Vijay Pratap, it is also not explained how the petitioner would be liable for those two vehicles. All vehicles remained in the name of the petitioner. The respondent used them for transportation of the BPO call centre employees. For such services rendered by the respondent by using the said vehicles, bills were raised by the petitioner and monies were released to him; how much of these monies were paid to the respondent and how much were adjusted towards the alleged wet lease is not clear from the ledger accounts. Insofar as there is doubt or a rebuttable presumption by the respondent, the said amount of Rs. 33,85,813/- cannot said to be a legally payable debt or liability. Therefore, the cheque cannot be said to be in repayment of the said amount. The respondent also states that he never had large sum of monies in his account. The respondent has discharged the burden of raising a probale defence. The impugned order has examined the same and rejected the presumptions under sections 118 and 139 of the NI Act on the basis of the preponderance of probabilities as raised by the respondent/accused.

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 04, 2018/acm/RW