$~54

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

\+ CRL.L.P. 467/2018, Crl. M. 28422/2018

BHUPINDER KHEMANI ..... Petitioner
Through: Mr. Sumit Kumar, Adv.

versus

RAJ KUMAR SINGH ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% **25.07.2018**

This petition impugns an order dated 23.04.2018 which dismissed his complaint under section 138 of the Negotiable Instruments Act, 1881. He had sought action against the respondent for dishonouring of cheques worth Rs.4,20,000/- which was claimed to have been given to the petitioner in discharge of dues i.e. a loan of Rs.5,20,000/-. The petitioner claims that Rs.1 lac had been repaid to him in cash by the respondent. The respondent, however, had denied the entire story, claims and transactions.

It is the respondent's case that the cheques were given to the petitioner as a security on a promise made by the latter that he would arrange for loan for the respondent. The loans were neither arranged by the petitioner nor was any loan taken by the respondent from the petitioner. Therefore, according to him, there were no dues or any outstanding money which had to be paid to the petitioner.

It is the petitioner's case that he had given the loan to the respondent over a period of time. However, no Loan Agreement was ever executed.

After his deposition, when the respondent's evidence was coming to an end, the petitioner produced a document purporting to be the Loan Agreement. It was rightly dismissed by the Trial Court as inadmissible because it defeated the petitioner's own case, set-up in his deposition. Furthermore, the petitioner has not been able to show any Ledger entry, or Bank account details or Income Tax Returns to substantiate his claim that he had lent any money to the respondent. The purpose for which the loan was taken has also not been proved or substantiated.

In view of the above, the Trial Court has rightly dismissed the petitioner's claim. The impugned order has reasoned as under:

> *6.7 "Thus, it is apparent that there is complete lack of details as regards the dates on which the loan of Rs. 5,20,000/- was given by the complainant to the accused in different installments. There is also complete lack of details as regards the dates on which the cheques in question were handed over by the accused to the complainant as post dated cheques for discharge of alleged loan amount. It is nonetheless true that the complainant in a complaint u/s 138 of N. I. Act is entitled to the benefit of presumption. However, it is also equally true that the burden of proof on the accused is not unduly high and the accused is not required to prove his defence merely by bringing on record direct evidence. The accused is permitted to probabilise his defence by relying upon the evidence led by the complainant. In the facts and circumstances brought on record from the cross-examination of the complainant, it can be said that the accused has discharged the initial burden of proof cast upon him by probabilising his defence and a reasonable doubt is cast on the case of the complainant and it cannot be said that he has proved his case beyond reasonable doubt".*

"7.1. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the accused has rebutted the presumption U/s 139 of N.I Act and has successfully created a reasonable doubt in the case of the complainant. However, the complainant has failed to discharge the burden of proof which shifted on it after the rebuttal of presumption u/s 139 N.I. Act, Resultantly, complainant has failed to prove its case beyond reasonable doubt.

7.2. Resultantly, the accused is entitled to be acquitted for the commission of offence u/s 138 of the N.I.Act. Accordingly, accused Raj Kumar Singh isacquitted".

In view of the above, particularly, the absence of any document to show receipt of monies by the respondent from the petitioner or of any outstanding monies from the respondent to the petitioner, the cheques cannot be said to be in repayment of a debt or liability. This Court finds no merit in the petition. It, alongwith pending application, is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 25, 2018/acm