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

\+ CRL. L.P. 429/2018, CRL.M.A. 12279/2018

NITIN SHARMA ..... Petitioner

Through: Mr. Raj Kumar Tanti and Mr. Vikas Chadha, Advocates.

Versus

SANJAY BHARDWAJ .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **10.07.2018**

This petition impugns an order dated 24.04.2018 dismissing the petitioner's complaint case against the respondent under section 138 of Negotiable Instruments Act, 1881 ("NI Act"). It is the petitioner's case that he had renovated the flat of the respondent/accused and raised a bill of Rs. 10,53,272/-, out of which the respondent had paid amounts of Rs. 5,65,000/-, Rs. 1,60,000/- and Rs. 1,00,000/-; a cheque of Rs. 49,000/- was issued and lastly a payment of Rs. 84,888/- was made to the complainant. Leaving Rs. 1.66 lacs as outstanding. After many requests, the respondent issued two cheques, which upon presentation, were dishonoured. However, the respondent had denied any such outstanding amounts as payable to the petitioner and had stated that cheques were given as security and that he had already repaid all outstanding amounts and nothing remained to be paid to the petitioner. In other words, it was a case of the respondent that, the cheques given to the petitioner as security were misused and wrongly presented for encashment.

The learned counsel for the petitioner relies upon the judgment of the Supreme Court in ***V.G. Saraf and Sons vs. H. Ranjith and Ors.*** 2009 (5) SCC 141 to contend that the documents presented by the complainant should be examined by the Trial Court. The Court is of the view that the said judgment was in the context of a case where the Supreme Court concluded that the Trial Court had not examined the matter in the proper perspective because in that case the probative value of the documents and the acceptability of the evidence of PW-1 had not been examined. However, in the present case, the Trial Court has examined the matter and considered the version of the respondent as well, who had declined any such liability. Furthermore, the respondent has contended that the said cheques were issued only as a security and there was no admitted liability.

The impugned order has reasoned that if the outstanding amount was only Rs. 1.66 lacs, there was no reason to have presented two cheques for Rs. 2 lacs because no prudent person would issue two separate cheques when the liability was only Rs. 1.66 lacs; therefore the claim that the respondent owed the said monies to the petitioner was doubtful and it could be presumed that the cheques were issued in lieu of discharge of legal liability.

The impugned order has reasoned, *inter alia*:-

> *"...A conjoint reading of sections 138, 118(a) and 139 of the Negotiable Instruments Act shows that once a cheque is issued there is presumption in favour of holder of the cheque that he has received the same for discharge in whole or in part of a debt or other liability. Under section 139 of the Negotiable Instruments Act, there is legal presumption that cheque was issued for discharging the debt or liability and that presumption can be rebutted only by the person, who drew*

> *the cheque. The aforesaid presumption is in favour of holder of the cheque. The presumption available under section 139 of the Negotiable Instruments Act can be rebutted by the accused by adducing evidence.*
>
> *So, the burden of proof is on the accused and evidence available on record have to be appreciated in light of aforementioned principle regarding burden of proof.*
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> *8. It is a settled law that presumption under Section 139 of the Act is rebuttable presumption in favour of the holder of a cheque that the cheque was received for discharge of whole or in part of any debt or other liability and that the standard of proof to rebut the presumption is that of preponderance of probabilities".*

What emanates from the above is that, the petitioner has not been able to show that there was a clear admissible debt or legal liability repayable to him by the respondent. Furthermore, if the amount repayable was only Rs. 1.66 lacs, there is no reason why the respondent would have issued two cheques of a lakh each. The respondent's claim that the two cheques were given as security to the petitioner; that he had already repaid all the outstanding amounts to the petitioner; that the cheques were wrongly presented for encashment instead of having been returned to the respondent are sound/probable defences and the presumption under section 139 NI Act is duly rebutted.

The impugned order does not call for any interference. The petition is without merits and is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 10, 2018/RW