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

\+ CRL. L.P. 473/2018, CRL.M.A. 28535/2018, CRL.M.A. 28536/2018

ABHINAV KAD ..... Petitioner

Through: Mr. Ajit Kumar, Advocate.

Versus

AJAY SARNA .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **26.07.2018**

This petition impugns an order dated 07.05.2018 dismissing the petitioner's complaint under section 138 of Negotiable Instruments Act, 1881. It is the petitioner's case that the respondent/accused had issued a cheque of Rs. 5 lacs, which was issued in repayment of the loan for the aforesaid amount, upon presentation, was dishonoured with the remark "*account closed*". He states that there is a presumption of validity of the cheque being issued in discharge of a debt or other liability under sections 118 and 139 of NI Act. The impugned order, however, kept into consideration that the said presumption is rebuttable. The respondent/accused had denied ever taking such loan from the petitioner.

It is the respondent's case that he had reported to the police on 14.02.2011 that his cheque, dated 16.02.2011 had been stolen. In other words, the aforesaid cheque was never handed over by him to the petitioner in repayment of any dues. Interestingly, the petitioner never proved, how he came into the possession of Rs. 5 lacs, so as to have loaned it to the respondent; it is not reflected in his Income Tax Returns. The petitioner had made a blank statement that Rs. 5 lacs were given as a loan to the respondent. The impugned order found the petitioner's statement to be "a very vague case". The complainant had stated that he did not remember the exact date of handing over the cheque, but it was some time in the month of March, 2011. However, in his examination-in-chief in June, he had deposed that the same was handed over to him in January, 2011 and that the date mentioned March, 2011 in the complaint is a typographical error. The petitioner did not disclose in the complaint on 26.12.2010 that he had a quarrel with the wife of the accused, for which he tendered a written apology before the local police. The impugned order found it improbable that after such a quarrel, the accused would have handed over a cheque in January, 2011 to the complainant, in the absence of any settlement. It found that the petitioner had been unable to show a legally recoverable debt and to establish his case beyond reasonable doubt whereas the respondent had been able to rebut the presumption against him by raising a probable defence. The impugned order has reasoned as under:-

> "*13. In his cross examination the complainant/CW1 deposed that he did not remember the dates on which he advanced the loan amount though he advanced the loan amount in installments ranging from Rs. 15,000/- to Rs. 1.5 lakhs. This is nowhere stated in the complaint. Moreover, the complainant/CW1 did not remember the exact number of installments of the loan deposing that he gave the amount in about 10 to 15 installments of various amounts. Thus the complainant presented a very vague case.*
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> *14. More importantly, the complainant/CW1 deposed that he had not annexed any documents with his complaint which could show the withdrawal or possession of Rs. 5 lakhs with him and he admitted that he had not shown the loan of Rs.*

5 lakhs in his ITR, giving an explanation for the same that it was because he had handed over this money out of his savings which is not a legally sound explanation at all. Although he denied the suggestion that he had not shown the loan of Rs. 5 lakhs in his ITR as he never advanced that money to the accused however the genuineness of the complainant's case comes under a grave cloud of suspicion as the source of funds has not been disclosed by the complainant nor has he shown this loan in the Income Tax Return in violation to the provision of S.269SS Income Tax Act".

What emerges from the above is that the petitioner has not disclosed the date on which the loan was advanced; that there were no ledger entries shown in any ledger account; no Income Tax Returns were produced; the loan was never established; the acknowledgement of the debt by the respondent is not on record. On the contrary, the respondent has stated that he had filed a police complaint regarding the loss of his cheque dated 16.02.2011; he produced the FIR wherein it has been mentioned that the cheque had been stolen; the cheque was presented but dishonoured on 27.04.2011, i.e. more than two months after the respondent's complaint to the police. The respondent has discharged the burden of probable defence in his favour.

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

NAJMI WAZIRI, J.

JULY 26, 2018/acm/RW