

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

% Decided on: 9th July, 2018

+ **CRL.L.P. 367/2016**

REKHA RANI

..... Petitioner

Represented by: Mr. Sushil Kumar, Advocate

versus

KIRAN MALHOTRA

..... Respondent

Represented by: Mr. Amit Dubey and Mr. Ankit Tyagi, Advocates

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 14th March, 2016 whereby the learned Metropolitan Magistrate acquitted the respondent for offence punishable under Section 138 Negotiable Instruments Act, 1881, the petitioner/complainant has preferred the present leave petition.

2. Briefly stated, the facts of the present case are that Baldev Malhotra, brother of respondent, entered into negotiation with husband of the petitioner to sell property bearing No. 1384/13, Khasra No. 93 measuring 42 square yard along with a shop bearing No. 1372/13 measuring 8 X 12 feet, Govindpuri, Kalkaji, New Delhi for a sum of ₹22 lakhs. Payment of ₹19.70 lakhs was made by the petitioner and her husband to respondent and her brother till 30th May, 2011. On 1st June, 2011, it came to the knowledge of the petitioner and her husband that the respondent and her brother have finalized to sell the aforesaid property to somebody else without consulting them. However, respondent and her brother agreed to return the amount by way of cheques and issued multiple cheques including cheque No. 328466

dated 5th June, 2011 for a sum of ₹1 lakh drawn on Canara Bank, Kalkaji, New Delhi. When the cheque was presented for encashment, the same was returned unpaid with remarks "account closed" vide returning memo dated 22nd July, 2011. On 6th August, 2011 the petitioner issued a legal notice through registered post and courier, however, the respondent failed to make the payment within stipulated time. Hence the present complaint was filed.

3. Notice under Section 251 Cr.P.C. was framed against the respondent to which he pleaded not guilty and claimed trial. To substantiate the case, petitioner examined herself as CW-1 and lead her evidence by way of an affidavit Ex. CW-1/A and proved original cheque vide Ex. CW-1/1, returning memo vide Ex. CW-1/2 and copy of legal demand notice, postal receipts and AD card vide Ex. CW-1/3 to Ex. CW-1/6. During her cross examination she relied upon the photocopy of the sale deed Ex. CW1/D1 and a receipt Ex. CW1/D2.

4. Respondent in her statement recorded under Section 313 Cr.P.C. denied the execution of any agreement with the petitioner for purchase of property. She further stated that she did not issue the cheque in question and denied the receipt of legal demand notice.

5. Respondent examined Om Pal Singh, Officer, Canara Bank, Kalkaji, New Delhi as DW1 to prove the photocopy of ID of respondent vide Ex. DW1/1, certified copy of customer ID of respondent vide Ex. DW1/2 and statement of account vide Ex. DW1/3.

6. Om Pal Singh was also examined as Court witness, proved the copy of cheque issuance register vide Ex. C1, statement of account vide Ex. C2 and sample signature of respondent vide Ex. C3.

7. Vide impugned judgment dated 14th March, 2016, Learned

Metropolitan Magistrate acquitted the respondent on the ground that the petitioner failed to produce any written agreement with the respondent and her brother for purchase of property. Mere production of a copy of ownership of respondent of the property in question does not prove the execution of the agreement to sell or purchase of the property. Furthermore, the petitioner failed to examine her husband as a witness to prove that there was an oral agreement between the respondent and her husband for sale of property in question. Petitioner had also stated that she had borrowed ₹5 lakhs from her brother, ₹3 lakhs from a committee and rest of the amount was sent to her by her son in installments who was residing in Canada. However, the petitioner failed to examine her brother and did not produce any document to prove that she had received the money from the committee or her son. Lastly, the respondent had proved that the cheque in question did not bear her signature and the same is fortified by the testimony of DW1 Om Pal Singh who is an independent witness. The petitioner did not lead any evidence to discharge the onus that the cheque in question was signed by the respondent.

8. This Court concurs with the findings of the learned Metropolitan Magistrate. The impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

9. Leave to appeal petition is dismissed.

10. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 09, 2018

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