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

\+ CRL.L.P. 560/2018

YESHWANTI ..... Petitioner

Through: None.

versus

THE STATE & ANR. ..... Respondents

Through: Mr. Tarang Srivastava, APP for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% **29.08.2018**

This petition seeks to impugn the order dated 25.06.2018 dismissing the petitioner's complaint under section 138 of Negotiable Instruments Act, 1881 ('NI Act'). It is the petitioner's case that she had advanced a loan of Rs. 14 lacs to the respondent, for which two cheques for Rs. 7 lacs each were issued. The loan was not repaid; hence the cheques were presented for encashment; they were dishonoured on account of "insufficient funds". The petitioner's complaint was dismissed on the ground that the petitioner was unable to produce any evidence or document to substantiate the claim that Rs. 14 lacs had been advanced as a loan to the respondent. Furthermore, in her evidence, the petitioner/complainant had stated that cheques were issued in 2016. The impugned order was of the view that no specific date was mentioned by the petitioner, on which the alleged loan was advanced to the respondent. The petitioner/complainant had only stated that it was done sometime in September, 2015. The petitioner had claimed to be an agriculturist and to have accumulated the monies and thus had the financial capacity to advance the said loan to the respondent. The impugned order found it odd that such large sums of monies would be lent in a cash transaction, without any receipt from the borrower, who was merely the lender's neighbour. Furthermore, there was no mention of the rate at which the said loan was granted, nor was any income tax return filed to show that in the first instance, she had accumulated the said monies legitimately or otherwise in September, 2015.

In this regard, the Trial Court has reasoned as under:

> *"16.1. In complaint, the averments were made that complainant advanced loan of Rs.14,00,000/- to the accused in September 2015 and took post dated cheques for repayment of the same. No specific dates as to advancement of loan or taking of cheques were mentioned. Even during her cross-examination, the complainant failed to tell the date when the loan as alleged was advanced. Further, no documents in respect of the loan advanced were produced and as testified by the complainant during her cross-examination, no such documents were ever executed. The complainant deposed that, she knows the accused as accused resides in her neighbourhood. The conduct of the complainant does not appear to be that of a reasonably prudent person as no prudent person is expected to advance such a huge amount to a neighbour without execution of any documents. Further, it is hard to believe that any person who advances such a huge sum of money does not remember the date of advancing the same.*
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> *16.2. Further it was averred in the complaint that accused issued post dated cheques for repayment of loan and during her cross-examination, the complainant stated that said cheques were issued in 2016. This fact is conspicuously missing from the complaint and again defies*

what is expected of a prudent person. No explanation was furnished as to why the post dated cheques for repayment of loan alleged to have been advanced in 2015 were taken in 2016. Also, the period for which loan was advanced is nowhere stated in the complaint or evidence.

16.3. Further, the complainant has failed to sufficiently prove the source of the money. It was stated that amount was advanced in cash and source of income is from farm produce. No explanation as to how the complainant was in possession of such a huge amount of cash was furnished even after she was asked to disclose the source of her income".

Clearly there is no proof of loan or other debt against the respondent. The dishonour of the cheques would not be actionable under section 138 of the Act unless they are in discharge of such liability. The presumption under section 139 of the Act stands discharged by the respondent, who had denied receiving any such loan.

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

AUGUST 29, 2018
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