

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

% Decided on: 10th September, 2018

+ **CRL.L.P. 471/2016**

SURENDER SINGH

..... Petitioner

Represented by: Mr. Karan Kumar Gogna,
Advocate

versus

SANJEEV KUMAR THAKUR

..... Respondent

Represented by: Mr.B.K.Pandey, Advocate

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 28th July, 2016 whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881, the petitioner/ complainant has preferred the present leave petition.

2. The facts leading to the present case are that the petitioner and the respondent were friends and have known each other for the past 2-3 years. The respondent had approached the petitioner on 20th March, 2014 and requested him to give a friendly loan for a sum of ₹20,00,000/- for a period of 2 months to improve his business. Considering the urgency of the respondent, the petitioner advanced a loan of ₹20,00,000/- to him. The respondent issued a cheque in favour of the petitioner bearing number 354139 dated 13th May 2014 for ₹20,00,000/- drawn on Punjab National Bank, Bijwasan, New Delhi. Thereafter, the petitioner presented the said cheque for encashment, however, the cheque was returned vide returning

memo dated 15th May 2014 with remarks “*drawers signatures differ*”. Petitioner sent a legal demand notice dated 27th May 2014 to the respondent to make payment within the statutory period. It was duly served at the Bijwasan address but was returned unserved at the Bhagalpur, Bihar address. When the respondent failed to make the payment, the petitioner preferred the instant complaint under Section 138 of the Negotiable Instruments Act.

3. The petitioner led pre-summoning evidence on 24th June 2014 and summons were issued against the respondent. The respondent appeared before the court in execution of bailable warrants on 12th November 2014 whereafter notice was framed under Section 251 Cr.P.C. against him. The respondent pleaded not guilty and claimed trial.

4. The petitioner examined himself as CW-1 and Ishwar Singh as CW2. Petitioner adopted his pre-summoning evidence as post-summoning evidence and relied upon original cheque bearing number 354139 vide Ex.CW-1/A, returning memo dated 15th May 2014 vide Ex.CW-1/B, copy of legal notice vide Ex.CW-1/C, registered postal receipt vide Ex.CW-1/D and Ex.CW-1/E, delivery report and AD card vide Ex.CW-1/G and CW-1/F.

5. Statement of the respondent was recorded under Section 313 Cr.P.C. on 5th January, 2016 wherein he stated that he was running a fabrication business and required a current account for the same. The petitioner helped him in getting rented accommodation in Bijwasan and assured him that he will get his current account opened. The petitioner also asked the respondent to make him a partner in his business, but he refused to do so. One day the petitioner called him at his home and took his photo ID's and made him sign the complete cheque book and certain blank papers forcefully. The

respondent further stated that he was also confined by the petitioner for 5 to 6 days. The cheque in question was part of the cheque book which was given to the petitioner to get the current account opened. The petitioner had misused this cheque. He denied the receipt of the legal demand notice.

6. The respondent examined himself as DW-1 and his father Kailash Thakur as DW-2 to prove his defence. DW-2 in his testimony stated that his son was abducted by some persons who gave him threats on the mobile phone and asked him to give ₹51,00,000/- in order to save his son. He filed a complaint regarding the same in the court of Ld. Chief Judicial Magistrate Bhagalpur on 26th May 2014. The certified copies of the same were proved vide Ex.DW-2/A.

7. To prove the present case, the petitioner relies on the document Ex.DW-1/Y-1 which was brought on record at the time of cross-examination of the respondent. Since this document was not brought on record along with his complaint, it raises doubt about the genuineness of the document. Furthermore, no explanation was given as to why the said document was brought at the later stage of trial. The said loan agreement Ex.DW-1/Y-1 was dated 10th May, 2014 while the petitioner allegedly advanced the loan to the respondent on 20th March, 2014, thus, raising doubts about the advancement of loan. Moreover, when the document Ex.DW-1/Y-1 was executed on 10th May 2014, the respondent claimed to have been abducted by the petitioner, further casting doubt on the authenticity of the document. A perusal of the document Ex.DW-1/Y-1 indicates that two witnesses namely Naveen Kumar Thakran and Jaivir Singh have signed it, however, the petitioner failed to examine these two witnesses in order to prove his case.

8. The petitioner had tried to prove his financial capacity through Ishwar Singh (CW-2). Petitioner, in his cross-examination, stated that his relative Ishwar Singh gave him the money in cash on 19th March, 2014 and the same was handed over to the respondent on 20th March, 2014. However, Ishwar Singh stated that he had given the cash of ₹20,00,000/- to the respondent in the year 2013 and only ₹5,00,000/- were given in the year 2014. He also stated that the petitioner was not his relative but a friend. On perusal of the testimony of the petitioner and Ishwar Singh, there are material contradictions with respect to the dates and place with regard to the receiving of money and the fact that such a huge amount was given away by Ishwar Singh without execution of any document creates doubt on the version of the petitioner. The petitioner has also not produced Amit as a witness in whose presence he had advanced the loan in question to the respondent.

9. The petitioner admitted in his cross-examination that he was not an income tax assessee despite his claim to be a PAN card holder casts further doubt about the case of the petitioner.

10. Considering the facts noted above the findings of the learned Metropolitan Magistrate cannot be held to be perverse warranting interference of this Court.

11. Leave to appeal petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 10, 2018
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