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

\+ **CRL.L.P. 610/2018 & Crl.M.A. No. 32511/2018**

MANJEET SINGH ..... Petitioner

Through: Mr. Sandeep Thakur, Advocate.

Versus

STATE OF GOVT. OF N.C.T. OF DELHI & ANR. ..... Respondents

Through: Mr. G. M.Farooqui, Additional Public Prosecutor for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **19.09.2018**

Crl.M.A. No. 32511/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

CRL.L.P. 610/2018

The petitioner impugns an order dated 04.07.2018 acquitting the respondent No.2 in appeal. It is the petitioner's case that: i) three cheques bearing Nos. 072364-66 of Rs.1.5 lacs each, dated 29.01.2016, 05.02.2016 and 12.02.2016 respectively were issued by him in lieu of a loan duly accepted by him and so recorded in a Promissory Note dated 18.10.2015; ii) that the signatures on the said Promissory Note as well as the signature on the Bail Bond executed by the respondent No.2 had been compared by the Trial Court and both were found to be similar, therefore, to that extent, there would be *prima facie* evidence that the said Promissory Note had been signed by the respondent No.2; iii) that the service of Legal Notice stands proved in terms of section 27 of the General Clauses Act, 1897, that the Legal Notice had been posted through registered AD and there is a presumption that it has been served upon him since it was sent at the correct address; and iv) that this aspect has not been denied by respondent No.2.

However, the Court would note that the Appellate Court has duly considered these aspects as under:-

> *"6. Ld. counsel for appellant argued that complainant took money from his mother and brother to give aforesaid loan to the accused as he did not have sufficient money. He further argued that false claim of complainant is evident from his cross-examination that his mother took money from father (though father was already dead). Ld. counsel further argued that brother of complainant did not say in his examination in chief that he gave Rs.60,000/- to the complainant. He further argued that question to financial status was raised during cross-examination of complainant. Even if all amounts stated to be taken from mother and brother of complainant is added, it falls short of Rs.4.5 lac. Ld. counsel further argued that CWl said in his examination in chief that accused came with one person, who refused to sign promissory note, whereas CW2 said in his examination in chief that at the time of transaction, his mother, wife etc. were present and he did not talk about another person coming with accused. Ld. counsel further argued that CWl said that he gave money in the presence of his mother and brother, which means that other witnesses i.e. Raj Kumar was not present there, who signed the promissory note. He further argued that if loan was given on interest, then interest rate/amount is silent in complaint and claim of complainant, which is not possible. Ld. counsel further argued that CW2 was not aware of cheques at all and he did not know who filled promissory note.*
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> *7. Per contra. Id. counsel for respondent no.l/complainant argued that no suggestion was given regarding financial status*

of complainant. He further argued that admittedly promissory note and cheques in questions were given in favour of complainant. He further argued that on the basis of memory test of witness, presumption cannot be rebutted. He further argued that complainant took one week's time to arrange amount of loan for accused. Ld. counsel for complainant further argued that just because amount is not shown in ITR, liability does not vanish. He further argued that judgment of K. Prakashan v. P.K. Surenderan, Appeal (CrI.) 1410 of 2007 decided by Supreme Court on 10.10.2007, is based on different facts and evidence. Ld. counsel further argued that it was not asked from CW2 as to who accompanied accused. CWl did not say that cheques were taken on same day. He further argued that no action was taken by accused, if no money was given but cheques taken from him.

The impugned order has reasoned that:-

"11. ln the present case, at the stage of notice under Section 251 Cr.P.C, appellant admitted that he had issued the cheques in question to the complainant. He pleaded that he did not receive the legal notice. He took defence that the cheques in question were given in blank signed condition as complainant had assured him that he would facilitate loan for him from a committee, but he' had not taken any money from the complainant. Therefore, he had no liability towards complainant.

12. Complainant/ CWl in his affidavit reiterated the contentions made in the complaint. In his cross-examination, he deposed that out of Rs.4.5 lac, around Rs.1-1.5 lac was given from his saving, his mother had given around Rs.1-2 lac and his brother/CW2 had given about Rs.50-60,000/-. He further deposed that the mother was having such amount from his father who had saved it for the purpose of his sister's marriage and his brother had given him money from his own earnings, Both of them had given him money in cash at home. When the loan amount was given to the appellant, promissory note was also executed at the same time. One person was accompanying the appellant who had signed the promissory note and his brother *had signed the same. He again modified the statement to say that person accompanying the appellant refused to sign the same, therefore, his brother called one Raj Kumar to sign the same. The promissory note was filled by him as accused refused to fill the same stating that he did not know how to fill the same. He denied the suggestion that appellant had not executed the promissory note or that he took blank singed cheque as well as blank signed paper from the appellant. He further deposed that he had received the cheques in question on separate dates and the cheques were given to him by appellant in presence of his mother and brother at home. CW2 Sh. Suraj Singh was brother of complainant, who also filed his affidavit affirming that amount of Rs,4.5 lac was taken by appellant and he had executed promissory note in his presence. CW2 had also signed the same and another witness Raj Kumar had also put his signature on the same.*

13. In his cross-examination, CW2 deposed that the loan was given to the appellant by complainant on 18.10.2015 at about 4-5 PM. At that time his wife, mother and his sister were present. Complainant had taken about Rs.50-60,000/- from him, some amount from his mother and remaining amount was arranged by complainant. But he did not know the amount taken from mother. Promissory note was prepared after giving loan to the appellant, however, he did not know who had filled the details of promissory note as it was prepared by complainant himself. He had only witnessed the signatures on the same. First of all, appellant had signed the promissory note and thereafter complainant signed the same. Thereafter, he signed as witness and then another witness also signed on the same. He did not know if his mother had withdrawn money from bank account. His mother had received about Rs.2 lac as insurance money on death of his father. She had also received savings of his father. He did not know anything about cheques given by the appellant to the complainant.

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"20. Another aspect related to this case is that according to CWl, amount of Rs.1.5 lac or amount of Rs.2 lac was given from home. This I situation in itself is not very convincing. The best possible evidence was within reach of complainant so as to show as to how such amount came to be kept in home. If during the week's time, such amount was withdrawn from somewhere to keep it at home, then such evidence could have been produced on the record to show that actually such amount was arranged by the complainant. However, no such evidence was led by him.

21. Another circumstance relevant for consideration is that according to CWl the cheques were handed over to him subsequently, but even at that time his mother and brother were present. However, his I brother/ CW2 had shown altogether ignorance about the cheque being given by appellant to the complainant. Such contradiction leads to show that somewhere artificial facts were deposed by these witnesses. Similarly, CWl deposed that the appellant had been accompanied by a person, who refused to sign promissory note and then his brother had called Mr. Raj Kuma; to sign the same. However, his brother/ CW2 did not say anything about calling Raj Kumar for the purpose of signing this pro-note and he did not mention anything about the companion of appellant or his refusal to sign the same. Though, he claimed that this pro-note was prepared after giving loan to appellant in his presence and he also claimed in his affidavit that amount of loan was given in his presence. Thus, these contradictions also go into the roots of the credibility of versions given by complainant and his brother CW2."

What emanates from the aforesaid discussion is that the respondent had discharged the rebuttable presumption under section 139 of the Negotiable Instruments Act, 1881 i.e. disproving that there was an admitted liability of the debt and that the cheques were issued in repayment of the same.

In the circumstances, the Court finds no reason to interfere with the impugned order. Accordingly, the petition is dismissed. The dismissal of the petitioner's complaint case would not prejudice his rights to pursue other remedies, as may be available to him in law.

NAJMI WAZIRI, J.

SEPTEMBER 19, 2018
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