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

\+ CRL.L.P. 626/2018, CRL.M.A. 33052/2018

SMT. MADHU NAVAL ..... Petitioner

Through: Mr. Sanjay Kumar, Ms. Rashi Aggarwal and Ms. Yamini Gupta, Advocates.

versus

THE STATE & ANR. ..... Respondents

Through: Mr. Amit Gupta, APP for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% **27.09.2018**

The petitioner impugns an order dated 20.07.2018 dismissing her complaint under section 138 of the Negotiable Instruments Act, 1881. It is the petitioner's case that she had loaned Rs. 6 lacs to the respondent No.2 which was sought to be returned, however, the monies were not being returned. After many requests, two cheques were issued, which upon presentation, were dishonoured with the remark 'insufficient funds'. The respondent No.2 has not denied the signatures on the cheques but stated that they were not presented for discharge of a debt. The respondent No.2 did not deny the factum of issuance of both the cheques, Ex.CWl/A & Ex.CWl/B, for Rs. 1 lac and Rs. 5 lacs respectively, however, she denied the factum of the amounts mentioned therein being inscribed by her, as the amount in words and figures in cheque Ex.CWl/B and date in cheque Ex.CWl/A are in different inks and in different handwriting from that of respondent No.2 and that the petitioner did not present any loan agreement or witness to support the transaction of the loan.

It was the petitioner's case that she had borrowed the aforesaid amount from her mother and husband to loan it to the respondent No.2. However, neither the mother nor the husband had filed any affidavit in this regard before the Trial Court. She submits that of the said amount, she had borrowed Rs. 3 lacs from her mother, who had given the same after withdrawing it from the Bank. The Trial Court found a inconsistency apropos her averments in the complaint petition and the testimony given by her during the trial. Furthermore, if she had given a loan of Rs. 6 lacs, it would be specifically reflected in her ITR. However, it was not so done. It is also the case of the petitioner that the cheques were paid as security for the loan. However, subsequently, she stated that the cheques were issued after persistent follow-up, towards repayment of the loan amount.

The Court is of the view that these arguments too do not bring out a clear admission of debt by the respondent No.2. The impugned order as reasoned as under:-

> *"12. In case in hand, the complainant has alleged that the cheques in question were given by the accused to the complainant in discharge of his liability against the loan of Rs. 6 lakhs availed by him after repeated requests and reminders of the complainant when the accused failed to return the loan amount to the complainant as per his promise. The same stand was taken by the complainant in her pre summoning evidence by way of affidavit. However, during her cross examination, she had taken a contradictory stand that the cheques in question were given by the accused to the complainant at the time of taking the loan with the assurance that the same can be presented by the complainant after one month. Similarly though as per the averments made in the complaint as well as pre summoning*

evidence by way of affidavit complainant had given the loan to the accused after arranging the same from the same from her mother as well as her husband, however, during her cross examination dated 08.03.2017, she had taken a contradictory stand that a sum of the Rs. 3 lakhs out of the total amount of 6 lakhs was arranged by her from her mother and the balance amount was available with her as her personal savings. Significantly, a loan of huge amount of Rs 6 lakhs was allegedly given by complainant to the accused without execution of any document which is highly improbable. More so in view of the fact that the complainant during her cross examination dated 08.03.2017 had alleged that the sum of Rs. 3 lakhs was given by her mother after without any explanation as to why the loan of such a huge amount was given by her to the accused in cash when the same could have been given to the accused by way of cheque as the amount of at least Rs. 3 lakhs was available in the bank account of mother of the complainant.

13. The complainant has examined her husband as CW-2 who has simply deposed that the sum of Rs 6 lakhs was given by complainant to the accused in his presence without any whisper about the source of funds of the complainant. The omission of CW- 2 regarding the source of funds of the complainant is significant, in view of the fact that in her complaint as well as pre summoning evidence by way of affidavit, complainant had alleged that part of the loan amount was also arranged by her from her husband. It is further significant to note that neither CW-1 nor CW-2 has given any specific date of grant of alleged loan by the complainant to the accused. Besides the complainant has also failed to examine her mother form whom she had allegedly arranged the sum of Rs. 3 lakhs for giving the same to the accused.

14. Besides a bare perusal of both the cheques shows that the same have been filled up in different handwritings and inks. While the accused has admitted that the cheque Ex. CW1/A is filled up in his own handwriting, the cheque EX.CW1/B, according to him had been given by him to the *complainant as a blank signed security cheque. The aforesaid defence of the accused finds corroboration from a bare perusal of two cheques EX. CW1/A & EX. CW1/B wherein it is apparent that the amount in words and figures in cheque EX.CW1/B and date in cheque EX. CW1/A is not in the handwriting of the accused. If the case of the complainant as per the cross examination is believed to be true that the cheques in question were given by accused to the complainant at the time of availing the loan with the assurance that the complainant can present the cheques after one month, there was no reason for both the cheques bearing different dates with a gap of almost one month from each other and amount in words and figures in the cheque Ex.CW1/B and the date in the cheque Ex.CW1/A to be in different handwriting and ink. It is not even the case of the complainant that the accused had requested the complainant not to present the cheques in question on the dates mentioned on the cheques, in the absence of which, it remains unexplained as to why the cheques in question dated 10.07.2013 was first presented by the complainant on 23.08.2013 after the presentation of cheque dated 06.08.2013 on 08.08.2013".*

What emanates from the above, is that the rebuttable presumption under section 139 NI Act has been duly set-up by the respondent. The petitioner has not proven the factum of the loan. All claims of such loans are oral. Likewise, the respondent stated that all monies had been repaid. If the cheques were issued against admitted liability, then this assertion should have been proven through some documentary evidence. No supportive material was produced. There is no merit in the petition. Accordingly, it is dismissed.

NAJMI WAZIRI, J

SEPTEMBER 27, 2018

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