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

\+ CRL.L.P. 646/2018

RAJESH KUMAR SHARMA ..... Petitioner

Through: Mr. Amit Kumar, Adv.

Versus

RAJENDER SHARMA ..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **08.10.2018**

The petitioner impugns an order dated 10.07.2018 dismissing his complaint against the respondent under section 138 of the Negotiable Instruments Act, 1881 ('the Act'). It was the petitioner's case that he had lent an amount of Rs.6.53 lacs to the respondent in the Financial Year 2010-11 and that cheques were issued by the respondent in repayment of the same. However, the petitioner has not brought on record any documents to show that the amount was loaned to the respondent; neither is it reflected in withdrawal of such monies from his personal bank account nor is it shown as an outstanding amount in his Income Tax Returns. It is merely the petitioner's statement that he had lent the amount, which by an equally bland statement was denied by the respondent. The respondent has stated that his blank cheque no. 430984 was stolen by someone and the signature thereon was forged.

The impugned order reasoned as under:

> *"11.2 Submissions of both sides considered.*
>
> *This Court sees no substance in this defence of accused side. It is not the case of accused side that legal demand notice was not sent vide postal receipt(s) available on record on his/her known correct address. Once, it is not*

disputed and proved on record that the legal demand notice was sent to known address(es) of the accused then the defence of the accused side that accused side has not received any legal demand notice is no defence in the eyes of law in view of the judgment passed by Hon'ble Supreme Court of India in matter of ***"C. C. Alavi Hazi Vs. Palapetty Mohd. & Anr."*** *reported in (2007) 6Supreme Court Cases 555.*

12.4 The contentions of both side considered in view of above-cited case law. In cross-examination, CWl has deposed that his income tax return in financial year 2010 - 2011 was nil. He has however deposed that he now earns around Rs.20,000/- to Rs.25,000/-. He has also deposed that he does not remember how much amount he has deposited in his only bank account in financial year 2010- 2011 and 2011 - 2012. He, further deposed that no receipt etc. was prepared/executed at the time of providing loan amount of Rs.6,53,000/-. He has also deposed in his cross-examination that he provided amount in question to the accused on 28.12.2010 and same was provided in the presence of Amit Sharma S/o Sh. Gaya Prasad Sharma. CWl was also confronted by defence with document Ex.AWl/A which is certified copy of one recovery suit filed by complainant against the accused under order 37 of The Code of Civil Procedure, 1908 in his cross-examination. He was also confronted with plaint (part of CWl/A collectively) wherein cause of action is stated to have arisen (by complainant) in month of January, 2011 when money was lended to the defendant (accused) on 30.01.2011. He had admitted Ex.AWl/A to be correct. In these circumstances, it is clear that even complainant is not sure as to when he has provided the loan amount in question to the accused as he had taken different stands in different forums regarding date of providing of the money in question to the accused. The deposition of CWl that his income tax return was nil in financial year 2010 - 2011 shows that he must be having meagre income in financial year 2010 - 2011. The deposition of accused that he cannot tell how many *transaction of deposit were made by him in his only account in financial years 2010 - 2011 and 2011 - 2012 appears to have been made to cover up the issue of non-explainable source of money, as it appears that the complainant had no accountable source of income at that relevant point of time from which he could have proved to have arranged loan amount in question. The complainant has deposed in his cross-examination that amount in question was provided in presence of one Amit Sharma S/o Sh. Gaya Prasad Sharma to cover up the issue of non-preparation of any document acknowledging the amount being provided/received as per the case of complainant, but said Amit Sharma was examined by accused as defence witness and he has deposed that no such transaction took place in his presence. The defence hastaken stand since initial stages that cheque in question does not bear signatures of accused and he does not know how it came into possession of complainant. The defence has also examined DWl Sh. Deepak Jain who has deposed that after detailed examination he is of opinion that signatures on cheque in question are not of the person who has signed the applications, personal bond, surety bond, vakalatnama etc. admittedly to have been signed by the accused. The md witness was cross-examined at length by complainant side, however, the complainant side was not able to extract something favourable to the complainant side as show why the report Ex.DWl/1 of the said witness should not be believed and is unreliable. In given circumstances, where the defence has been able to brought on record circumstances that the complainant had no capacity to lend such a huge amount to the accused at relevant point of time and has been able to create reasonable suspicion that the signatures on the cheque in question may not be of the accused person, the defence of accused side becomes probable that no money was ever lent by the complainant to the accused and the cheque in question was never issued by accused to the complainant. So, the accused side has been able to raise preponderance of probabilities that the existence of consideration is*

doubtful one in present matter.
FINAL CONCLUSION
13. Though other ingredients of offence punishable under Section 138 of The Negotiable Instruments Act, 1881 stands established on record, but, the accused side has been able to raise probable defence that consideration is improbable or doubtful in given circumstances.
FINAL ORDER
14. In view of the aforementioned facts and circumstances, this Court is of the opinion that complainant has not been able to prove its case against the accused for offence punishable under Section 138 of The Negotiable Instruments Act, 1881 beyond shadow of reasonable doubt. Accordingly, accused namely Rajender Sharma stands acquitted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881."

In the first place, the petitioner has been unable to show that the cheque was due in discharge of debt or other admitted liability. Furthermore, the petitioner has not proven his financial wherewithal to lend the said money. On the other hand, the respondent has shown a plausible defence and rebutted the presumption under section 118 and 138 of the Act. It is for the petitioner/complainant to have proven his case on the facts presented. No such records were produced before the learned Trial Court.

In view of the above, the Court finds no reason to grant leave to appeal against the said order. The petition is without merit and accordingly, it is dismissed.

NAJMI WAZIRI, J.

OCTOBER 08, 2018
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