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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.L.P. 774/2018

AMIT KUMAR Petitioner

Through: Mr. Amarjeet Singh Gambhir, Adv.

versus

ANURAG KUMAR Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 26.11.2018

CRL.L.P. 774/2018 & CRL.M.A. 47985/2018 (delay of 13 days in re-
fling)

The petitioner is aggrieved by the acquittal of the respondent in his complaint case bearing no. 40475/2016 under section 138 of the Negotiable Instruments Act, 1881.

The learned counsel for the petitioner submits that there was a clear admission of the amounts due to the petitioner by the respondent in terms of Ex.CW1/1, therefore, the cheques which were issued, were in discharge of a debt, i.e. in lieu of the said outstanding amount.

The Trial Court has reasoned as under:

15. Ex.CW1/1 has been disputed by the accused stating that blank signed paper has been subsequently filled up by the complainant and misused for the purposes of the present case and for this reason only the legal demand notice and the complaint did not have a whisper about Ex.CW1/1.

16. Be that as it may, the complainant in his cross examination 16.10.2015, he had filed

another case under section 138 NI Act against the accused in which accused was acquitted and said case pertained to the transactions of the same period as mentioned in the present complaint.

17. Thus, it is seen that on the one hand complainant claimed that the entire balance amount towards the various loans taken by the accused was Rs.3,63,500/- for which impugned cheques were issued. On the other hand, for the transactions pertaining to the same period he admittedly filed another case under section 138 NI Act. Despite the suggestion being put to this effect, the complainant denied any other transactions with the accused. It is also not the case of the complainant that he had any other dues towards business transaction etc from the accused. Therefore, it was for the complainant to explain as to how he had filed two separate cases under section 138 NI Act pertaining to the transaction for the same period when he is claiming entire balance amount in the present case.

18. No evidence has been led by the complainant on this aspect to show that another case filed by him under section 138 NI Act pertained to some other transactions and the said case did not include the transactions for which claim is being made in the present case. The contradiction arising from the statement of the complainant in his evidence by way of affidavit and his admission during his cross examination, give rise to the doubts regarding the existence of legally enforceable liability of the accused towards the complainant and probability that the cheques issued for some other purpose has been misused in the present case cannot be entirely ruled out.

23. ^ In light of the circumstances discussed

above, particularly the transaction in the statement of complainant in his evidence by way of affidavit and his cross examination as discussed above and failure of the complainant to reflect the alleged loan in his books of account and ITR, probability of misused of blank signed cheques and blank signed papers cannot be entirely ruled out. Consequently, the presumption u/s 139 of the act stands rebutted.

24. Once presumption u/s 139 N.I. Act is rebutted, burden of proof shifts upon the complainant to prove as a matter of fact that cheques were actually issued in discharge of liability. The complainant failed to produce an iota of evidence to show that the accused had legally enforceable debts to the extent of cheque amount towards the complainant. Therefore, complainant has not been able to prove that the said cheques were issued by the accused in discharge of legal liability towards the alleged loan. Accused Anurag Kumar is accordingly acquitted of offence u/s 138 of Negotiable Instrument Act.”

From the above, it is evident that the petitioner has been unable to show that there were corresponding entries in his books of account and in the ITRs of the aforementioned outstanding amount. Otherwise also, there is nothing on record to show that there were transactions of money between the parties resulting in an acknowledged repayable debt or legal liability.

In view of the above, there is no merit in the petition. It is dismissed.

NAJMI WAZIRI, J

NOVEMBER 26, 2018/acm