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

%   Decided on: 11th September, 2018

\+   **CRL.L.P. 634/2017**

ANIL KUMAR ..... Petitioner

Represented by: Mr. Rajinder Singh, Advocate

versus

STATE (NCT OF DELHI) & ANR ..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the State

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The present leave petition is directed against the judgment dated 6th September, 2017 whereby the learned Metropolitan Magistrate acquitted the respondent No.2 for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (in short 'NI Act').

2. Facts stated by the petitioner in the complaint, in a nutshell are that respondent no. 2, who was on friendly terms with the petitioner, approached him for a loan of ₹12,00,000/-. On the request of respondent No.2, petitioner advanced the loan amount and in discharge of his liability, respondent No.2 issued cheque bearing number 156411 dated 16th March, 2009 for a sum of ₹12,00,000/- drawn on HDFC Bank, Sector 9, Rohini. When the cheque was presented for encashment, the same was dishonoured with remarks *"funds insufficient"* vide return memo dated 20th March, 2009. When the petitioner informed the respondent no.2 about the dishonour of

cheque, he requested the petitioner to present it again and gave the assurance that the cheque will be honoured. When the cheque was presented again, it was returned unpaid again vide memo dated 2nd April, 2009 with the remarks *"funds insufficient"*. Thereafter, petitioner served legal notice dated 16th April, 2009 upon the respondent No.2 demanding payment of the cheque amount. Despite legal notice, respondent No.2 failed to make the payment within the stipulated period of time. Hence, the petitioner filed the instant complaint.

3. Notice under Section 251 Cr.P.C. dated 26th August, 2009 was framed upon the respondent No.2 to which he pleaded not guilty and claimed trial.

4. To substantiate his case, the petitioner examined himself as CW-1 and Randhir Sehdev as CW-2. Petitioner proved the cheque in question vide Ex.CW-1/1, return memos dated 20th March, 2009 and 2nd April, 2009 vide Ex.CW-1/2 and Ex.CW-1/3 respectively, legal notice vide Ex.CW-1/4, postal receipts vide Ex.CW-1/5 and Ex.CW-1/6 and UPC vide Ex.CW-1/7.

5. Respondent No.2 examined himself as DW-2 and Deepak Jain, Handwriting and Finger Print Expert, as DW-1.

6. The explanation rendered by the respondent No.2 in his statement recorded under Section 313 Cr.P.C. was that petitioner had stolen the cheque in question from him and thereafter, the petitioner forged the writing and signature on the cheque with the intention to extract money from him and the aforesaid facts came to his knowledge only when he received the legal notice dated 16th April, 2009.

7. The case of the petitioner as per the complaint was that respondent No.2 was on friendly terms with him and since respondent No.2 expressed his dire need for money, he advanced the loan of ₹12,00,000/-. The

petitioner tried to set up the version during the cross-examination of respondent No.2 suggesting that since the respondent No.2 was suffering from clotting in the head and was getting treatment from Dr. Banerjee, Vidya Sagar Institute Hospital, Lajpat Nagar and due to expenses of the treatment, respondent No.2 was in dire need of money. It was asserted by the petitioner that he even accompanied the respondent No.2 to the doctor.

8. Petitioner did not remember the date on which he advanced the loan to respondent No.2 which casts doubts on the veracity of the petitioner's case as the loan amount was a substantial sum of money. Petitioner admitted that respondent No.2 had issued a receipt of money on the letterhead of M/s. Vicky Trading Company but the petitioner failed to prove the receipt on record to substantiate his case. Petitioner also admitted in his cross-examination that out of Rs.12,00,000/- of the loan advanced, some money was lying with him and some he had borrowed from his friends namely Sanjay Singhla, Bala Mittal, Randhir Sehdev and Atul Sehdev and they had also issued receipts about the money taken by the petitioner but the same have also not been proved on record.

9. Furthermore, respondent No.2 has been consistent with his defence since reply to the legal notice dated 16th April, 2009 that the cheque in question was stolen from his office and it does not bear his signature. To substantiate his defence, he examined Deepak Jain (DW-2) a Handwriting and Finger Print Expert and as per his report Ex.DW-1/A, there were unnatural variations in the signature on the cheque and he opined that the signatures on the cheque were not by respondent No.2. There is no reason to disbelieve the report of Deepak Jain who was not discredited by the petitioner in his cross-examination.

10. Learned counsel for the petitioner has strenuously relied upon the decision of the Supreme Court reported as (2010) 11 SCC 441 *Rangappa v. Sri Mohan*. In the said decision it was held that Section 139 of the NI Act was an example of a reverse onus clause that has been included in furtherance of the legislature objective of improving the credibility of negotiable instruments. While Section 138 of NI Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 NI Act is a device to prevent undue delay in the course of litigation.

11. In the present case the respondent No.2 has been able to rebut the presumption and discharge the burden by leading the evidence of Deepak Jain who opined that the signatures on the cheque in question were not that of respondent No.2.

12. The view expressed by the learned Metropolitan Magistrate is a plausible view on the evidence led by the parties. Hence, the impugned judgment acquitting the respondent No.2 cannot be said to be perverse warranting interference by this Court.

13. Leave to appeal petition is dismissed.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 11, 2018
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