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

\+ **CRL.L.P. 673/2019**

SATYA PAL SINGH ..... Petitioner

Through: Mr Rahul Gulia and Mr Himanshu Jain, Advocates.

versus

SANJAY SEN ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **06.12.2019**

CRL.M.A. 42052/2019

1. For the reasons stated in the application, the delay in filing is condoned.

2. The application is disposed of.

CRL.M.A. 42053/2019

3. Allowed, subject to all just exceptions.

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4. The petitioner has filed the present petition seeking leave to appeal against a judgment dated 30.08.2019 passed by the learned MM-06, New Delhi District, Patiala House Courts, rejecting the petitioner's complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

5. The petitioner had filed the said complaint as a cheque for a sum of ₹3,55,000/- drawn on the bank account of the respondent had been

dishonoured. The cheque return memo dated 13.03.2014 indicated the reasons for dishonour as "*funds insufficient*". The petitioner had issued a legal notice and thereafter, filed a complaint against the respondent.

6. The petitioner has not filed the pre-summoning evidence along with the present petition. However, the impugned order indicates that the petitioner had filed an affidavit and supported the averments made in his complaint. It is not disputed that the affidavit filed did not disclose that the petitioner had advanced a loan to the respondent in instalments. The petitioner had merely stated that he had advanced a loan and the respondent had issued a cheque for repayment of the same.

7. The respondent had appeared before the Trial Court pursuant to the summons and notice issued under Section 251 of the CrPC and had pleaded not guilty. He had also recorded his statement under Section 313 of the CrPC. According to the respondent, the cheque in question was issued as a security in lieu of a "*Committee*". However, he also stated that he did not receive any demand notice.

8. Thereafter, the accused moved an application to cross examine the complainant (CW-1). His cross-examination has been placed on record. In his cross-examination, he stated that the loan had been given in instalments by way of cash. However, the petitioner could neither indicate the number of instalments, nor the dates on which the said instalments had been paid to the respondent. He also acknowledged that he did not take any receipt for the loan amount allegedly disbursed to the respondent.

9. As noticed above, in his complaint (and in the affidavit by way of

evidence), the petitioner had not mentioned that he had extended a loan in instalments; he had merely stated that he had extended a loan of ₹3,55,000/-. He further stated that he had taken the cheque in question at the time of disbursal of the loan. However, since the loan itself was disbursed in various instalments, the Trial Court found that the said statement was also not reliable. In addition, the petitioner stated that he did not file his income tax return. Thus, it is also indicated that the petitioner did not have any taxable income.

10. The respondent on the other hand led evidence by examining the petitioner's banker. The impugned judgment indicates that the petitioner's banker produced the petitioner's bank account and the same did not indicate that the petitioner would have had the funds to advance a loan of ₹3,55,000/-, as claimed by the petitioner.

11. Undeniably, the averments made in the complaint are vague inasmuch as, the petitioner has not provided any details as to when the instalments of the loan were disbursed. On the contrary, the complaint does not even disclose that the loan had been disbursed in instalments. In view of the evidence obtaining in the case, the Trial Court had concluded that the respondent had successfully rebutted the presumption of liability. The respondent had made a statement disputing the receipt of a loan as claimed by the petitioner. In addition, he had led evidence to show that the petitioner did not have the wherewithal to advance such a loan.

12. The cross-examination of the petitioner is also important as that too raised doubts as to the petitioner's case. Considering the above, the Trial

Court, by the impugned judgment, dismissed the petitioner's complaint. The view expressed by the Trial Court is a plausible one and this Court finds no reason to interfere with the impugned judgment.

13. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 06, 2019
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