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

\+ CRL.L.P. 93/2019, CRL.M.A. 2426/2019, CRL.M.A. 2427/2019
CRL.M.A. 2428/2019, CRL.M.A. 2429/2019

MADAN LAL ..... Petitioner

Through: Mr. Aditya Wadhwa, Advocate.

versus

PRAVEEN KUMAR ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% 04.02.2019

The petitioner impugns the order dated 25.09.2018 dismissing his complaint under section 138 of Negotiable Instruments Act, 1881 (NI Act). It is impugned on the ground that the rebuttable presumption under section 139 of NI Act is not made out in the present case because there is a denial of the signature of the accused on the cheque concerned. The Court is not persuaded by the petitioner’s argument for the simple reason that his claim of giving a friendly loan of Rs. 3.50 lacs to the respondent is not supported by any evidence. The petitioner himself runs a small motor repair shop. He had allegedly taken Rs. 10 lacs from his father and advanced a friendly loan of Rs. 3.5 lacs to the respondent. There is no proof whatsoever of the said monies having been given to the respondent. It was allegedly given to the respondent at the petitioner’s residence, where the latter’s wife and other family members were present. However, none of them were brought-in, as witnesses to the alleged transaction. Neither is there any proof to establish that the amount of Rs. 10 lacs was borrowed by the petitioner from his father**.** Lastly, if the said monies had been borrowed from the father, it would reflect in both their bank accounts and Income Tax Returns but there is no evidence of it. Nor there is on record to prove that the petitioner had the necessary financial wherewithal to loan any monies to the respondent. The petitioner's case must stand on its own legs but it does not. Whereas the respondent, claims that one Raju had taken a loan of Rs.8,000/- from the petitioner, for which the respondent stood as a guarantor and had given the petitioner a blank cheque for the guarantee; the cheque been misused; that this is quite evident from the fact that the petitioner set up his case of dishonour of the cheque on the basis of a computer generated statement, which shows that the cheque was dishonoured on the basis of an account having been closed; the said document was neither signed by the banker nor accompanied by a certificate under section 65B of Indian Evidence Act, 1872 and therefore, it cannot be taken cognizance of as a document of dishonour of the cheque, hence no case under section 138 of NI Act is made out.

The learned Trial Court has relied upon the judgment of the Gujarat High Court in ***Rajendra Kumar vs. State of Gujarat*** 2012(1) Crimes 500, which held that when the Banker's Note is neither stamped nor duly signed, it cannot be taken as evidence.

The learned Trial Court reasoned as under:-

> "*Learned counsel for the complainant pointed out that the accused failed to prove that he did not take the loan in question from the complainant and hence, his version is established as unsubstantiated. However, this argument hardly holds water on the premise that the complainant cannot take*

advantage of the fact that the accused did not fortify his defence. The prosecution is required to stand on its own legs and put forth facts which unquestionably point towards the guilt of the accused. In the present case, dismally for the complainant, he has failed to bring forth facts which are reasonably believable, more so, in the wake of the fact that no corroborative evidence has been produced to brick the story.

Learned counsel further argued that the defence examined DW-2 who did not corroborate his testimony by filing any receipts qua payments made on behalf of the accused towards the settlement. This argument is also not tenable on the edifice that the complainant cannot expect the court to believe his story to be true which is equally bereft of any corroborative documentary evidence taking his word as a gospel truth whereas decline to believe the oral version of the accused and his witness owing to the very same reason. As far as the deposition of DW-2 is concerned, the same is irrelevant for the purposes of adjudication of this case as the liability sought to be enforced against the accused is in respect of the impugned cheque and not qua any settlement. Whether the accused paid the instalments as per the terms of the settlement or not has no bearing on the merits of the instant complaint.

The accused, in the present case, has caused the probabilities to lie in his favour and thus, the prosecution case has succumbed to the weight of the cumbersome onus which the complainant has failed to discharge. The complainant has failed to prove any fact required for the purpose of inculpating the accused with guilt. The presumptions under section 139 read with section 118 of the NI Act stand rebutted.

Ratio. Finally, having considered the totality of the facts and circumstances of the case, the presumption spelled under section 139, the law enunciated under section 138 and the judgments cited above, the offence under section 138 of The Negotiable Instruments Act, 1881 is not made out against the accused, Praveen Kumar. The weight of the evidence adduced by the complainant to prove his case against the accused is negligible, much less sufficient enough to impute criminality on him. The complainant has failed to discharge his burden to *prove his case against the accused beyond all reasonable doubt. The accused is accordingly, acquitted of the said offence.*

In view of the above, the Court is not inclined to grant leave to appeal. The petition is without merit. Accordingly, it is dismissed.

NAJMI WAZIRI, J

FEBRUARY 04, 2019

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