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

\+ CRL.L.P. 633/2019

RAJESH GUPTA ..... Petitioner

Through: Mr Javed Ahmad with Ms Mehvish Hameed, Advocates.

versus

RASHID ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **26.11.2019**

CRL.M.A. 41125/2019

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition, *inter alia,* seeking leave to appeal against the judgment dated 28.09.2019, whereby the respondent (the accused) was acquitted of the offence under Section 138 of the Negotiable Instrument Act, 1881.

3. The petitioner had filed a complaint alleging that two post dated cheques issued by the respondent (cheque bearing no.115770 dated 08.11.2013 for a sum of ₹2,50,000/- and another cheque bearing no.115771 dated 24.10.2013 for a sum of ₹2,00,000/-) had been dishonoured for want of sufficient funds.

4. The petitioner (complainant) alleged that the said cheques had been issued by the respondent in discharge of his liability to return a friendly loan that was advanced by the petitioner to him.

5. The petitioner had produced the cheques; the memo of concerned bank dishonouring the cheques in question; and notice issued to the accused.

6. The accused (respondent herein) in his statement recorded under Section 313 of the Cr P.C. had stated that the said cheques were given to the complainant (petitioner herein) as a guarantee for a loan of ₹20,000/- that was extended by the complainant to one Hafisulla, who was stated to be a friend of the accused. The respondent has further stated that he is ready and willing to repay the said amount but the petitioner had misused the said cheques.

7. In addition to the above, the accused had also examined Hafisulla in his defence, as DW-1. Hafisulla had deposed that he had availed a loan of ₹20,000/- from the petitioner and the accused had stood guarantee for him. He also stated that the accused had handed over a cheque to the petitioner in his presence.

8. The petitioner had also examined himself as CW-1. His cross-examination had indicated various inconsistencies. At one point, he had stated that he did not know the reasons why the accused had borrowed funds. However, in his cross-examination on another date, he stated that the accused had borrowed the money for purchasing a vehicle. He also emphatically denied the suggestion that the loan was not taken by the accused for purchasing the vehicle.

9. He was cross-examined as to the source of the funds. He deposed that

his monthly income was only ₹15,000/- and he used to save a significant portion of the same. He also stated that the same was deposited in his bank account. In the circumstances, it is inexplicable how a sum of ₹4,50,000/- was lying with him in cash, which he claims was advanced as a loan to the accused. The court had also concluded that the petitioner did not have means to advance the loan.

10. In addition to the above, there were several inconsistencies as noted by the trial court. The fact that such loan claimed to have been advanced in cheque itself raises several doubts as to the claim made by the petitioner.

11. The petitioner relies solely on the provisions of Section 118 and 139 of the Negotiable Instrument Act, 1881; that is, the presumption that the cheques had been issued in discharge of the enforceable liability. However, it is well settled that the said presumption is rebuttable. The case of the complainant can also be rebutted by discrediting the complainant's claim in cross-examination as well.

12. The trial court had found that in this case the accused had effectively rebutted the said presumption not only by the statement under Section 313, but also by leading the evidence in his defence as well as establishing that the case set up by the petitioner is wholly improbable and cannot not be relied upon. The view taken by the trial court is clearly a plausible view. This Court finds no compelling reasons to interfere with the said decision.

13. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 26, 2019/ MK