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

\+ CRL.L.P. 146/2019, CRL.M.A. 3709/2019 (Exemption)

RAHUL JAIN ..... Petitioner

Through: Mr.Ankit Jain, Advocate for the petitioner

versus

M/S RIYA GARMENTS & ANR ..... Respondent

Through:

\+ CRL.L.P. 148/2019, CRL.M.A. 3749/2019 (Exemption)

NAVEEN JAIN ..... Petitioner

Through: Mr.Ankit Jain, Advocate for the petitioner

versus

M/S RIYA GARMENTS & ANR ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **19.02.2019**

CRL.M.A. 3709/2019 (Exemption) in CRL.L.P. 146/2019
CRL.M.A. 3749/2019 (Exemption) in CRL.L.P. 148/2019

Allowed, subject to all just exceptions.

Applications stand disposed of

CRL.L.P. 146/2019 & CRL.L.P. 148/2019,

The petitioner seeks leave to appeal against the judgment dated 29.11.2018, dismissing his complaint case under Section 138 of the Negotiable Instruments Act. It is the case of the petitioner that the cheque for Rs.5.0 lakhs was issued by the respondents in repayment of monies due to the petitioner for supply of goods and has sought to prove the case on the basis of invoice regarding sale of readymade garment and filing of sales-tax returns against the said sale. The respondent had made a claim and in fact had stated that they had nothing to do with the petitioner/ complainant. The petitioner has contended that the goods were delivered at the premises / shop of the respondent through a rickshaw-puller, however, there is no endorsement of receipt of the goods by the respondent, nor was the rickshaw-puller brought-forth for evidence.

In the absence of any material on record, to prove a transaction or admitted liability, the essential ingredients of Section 138 of the Negotiable Instruments Act are not made out i.e. the cheque ought to have been issued in repayment of debt or admitted liability. Furthermore, the respondent/ accused has stated that the cheque was given to a middle-man/ broker and was never meant or intended for the petitioner and it was for some other transaction. The petitioner has possibly mis-used the same because of his proximity with the said middle-man/ broker.

The impugned order has reasoned as under:

> *"12. Now coming back to the facts of the present case, after hearing both the parties, the court finds merits in submissions of Ld. Counsel for accused as none of the document relied upon by the complainant proves that any raw material was ever supplied to the accused. Even if we do not doubt the documents relied upon by him at the maximum only, it can be presumed that the bills were raised by the complainant against the accused and that sales tax for such transaction as also paid. However, the said documents do not prove that such raw material which was shown to be sold through such invoices was also*

actually delivered to the accused. Accordingly, as the accused has categorically denied the business relation and the delivery of goods in discharge of which the cheque in question was alleged to be issued by her as is claimed by the complainant clearly the very claim on which the case of the complainant is based falls flat on the ground. Thus, in the absence of any proof of delivery of raw material, the complainant clearly fails to prove his case and the accused is able to discharge the burden of rebutting the presumption existing against her. Mere proving that the cheque in question was issued by the accused would not prove the case of the complainant as it is also required to prove that the same was issued in discharge of some legally enforceable debt. However, in the present case, the complainant has miserably failed to prove the same.

13. Hence, after giving my anxious and thoughtful consideration to the submission made by both the Learned Counsels for the accused and the Complainant and further keeping in my mind the judgments mentioned above, the court is of the opinion that the accused has been able to raise reasonable probabilities and has been able to rebut the presumption which were raised against her. The defence raised by the accused is sufficient to discharge the initial burden of proof raised on her. On the other hand, the complainant has failed to prove that the cheque in question were issued by the accused in discharge of her legally enforceable debt. This court do not find any force in the arguments advance by the learned counsel for the Complainant that the accused has failed to rebut the presumption under Section 139 of the NI Act. Presumption is not in itself evidence but it only enables a party in whose favour it exists to show that he has a prima facie case. In the case in hand the presumptions under Section 139 of NI Act alone cannot be the sole basis to prove the case of the complainant. The materials and evidence available on the record do not bridge the gap. From the materials brought on record by the complainant it is highly improbable that *the accused had given the cheque in question to discharge any liability. Therefore, I hereby hold that the Complainant has not been able to prove and substantiate its allegations that the cheque in question was issued by the accused by the accused in discharge of any legal debt or other liability."*

In view of the above, it is clear that petitioner has not made out a case and has failed to establish that the cheque was issued for him or that it was issued against an admitted liability. The complainant has set out a probable defence.

In the facts and circumstances of the case, the Court is of the view that the impugned order does not warrant any interference. The petition is accordingly, dismissed.

NAJMI WAZIRI, J

FEBRUARY 19, 2019
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