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

\+ **CRL.L.P. 177/2019**

SUNIL DILORY ..... Petitioner

Through: Mr. Hitesh Chopra, Mr. Ashok Tobria and Mr. Pradeep P., Advocates.

Versus

MANISH KUMAR @ MANISH DANG ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **06.03.2019**

The petitioner impugns an order dated 11.01.2019 dismissing the complaint case under section 138 of the Negotiable Instruments Act, 1881 ('NI Act').

It is the petitioner's case that the order has erred inasmuch it has overlooked the fact that there is a presumption under section 139 NI Act in favour of the complainant and about the validity of the cheque. However, the learned Trial Court has reasoned as under:-

> *"18. It is alleged by the accused that the Impugned cheque was handed over in blank signed form to the complainant as security for the loan. However, during his cross-examination, the complainant has denied that he filled the particulars of the impugned cheque. Even if it is admitted that a blank signed cheque was given to the complainant, the said fact does not dilute the liability of the accused as the legal position on inchoate instruments is well settled. Section 20 of the N1 Act provides that if a person signs and delivers a paper*

stamped in accordance with the loan and either wholly blank or have written thereon an incomplete negotiable instrument, such person thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. In the case of ***Moideen vs. Johny*** *[2006 (2) DCR 421], it has been held that when a blank cheque is issued, the drawer gives an authority to the person to whom it is issued, to fill it up at the appropriate stage with necessary entries and to present it to the bank. Further in* ***Ravi Chopra vs. State and others*** *[2008 (102) DRJ 147], the Hon'ble High Court of Delhi has been held that "if a blank signed cheque is given then it is possible that the drawer has consented impliedly or expressly to filling up of the cheque by the payee on a later date".*

19. The primary defence of the accused is that the complainant never extended a loan of Rs. 6,20,000 to him. In support of his contention, he alleges that the complainant has not filed any documents in support of the loan given to the accused. It is further alleged that the loan has not even been disclosed in the Income Tax Returns of the accused. In ***Devender Kumar vs. Khem Chand*** *[2015 (223) DLT 419], the Hon'ble High Court of Delhi held that as the loan was not shown in the ITR of the petitioner, an adverse inference could be drawn against the petitioner on that loan account and hence, loan amount appears to be doubtful. Therefore, in view of the case laws discussed above, it can be concluded that a cash loan transaction which is not shown in the income tax returns cannot be the basis of an offence under Section 138 of the Nl Act. No compelling circumstances have been shown for extending the loan in cash. Such transactions are unaccounted transactions. Either the transaction should be by way of account payee cheque or if it is in cash, it should be adequately reflected in the income tax returns so that it is an accounted transactions. There is no evidence whatsoever in favour of the cash loan extended by the complainant to the accused.*

*20. During the cross-examination of the complainant, the accused put across questions to the complainant relating to the financial capacity of the complainant. The complainant stated that at the relevant time, he was doing the business of property dealing. He also voluntarily stated that he had arranged the loan amount from known persons. However, neither is the said fact written in the complaint nor were said known persons who were aware of said transaction between the complainant and the accused examined. This definitely hampers the case of the complainant especially in light of the fact that no other evidence has been forthcoming in support of the loan transaction. Considering the evidence on record, it does appear improbable that a loan of Rs. 6.2 lakhs was given in cash to the accused without any interest or execution of written document as the complainant himself borrowed the amount from "known persons". Further, no proof of solvency has been placed on record by the complainant in the form of bank statements. The Hon'ble High Court of Delhi in catena of decisions including **Satish Kumar vs. NCT of Delhi and another** [2013 (204) DLT 289] and **Kulvinder Singh vs. Kafeel Ahmed** [2013 (2) AD (Delhi)] has in the context of friendly loans given importance to the financial capacity of the complainant as well as the source of the loan. In both these decisions, the Hon'ble High Court deemed appropriate to acquit the accused where the complainant was unable to show his capability of advancing the loan, in **K. Prakashan vs. P.K. Surendran** [2008 1 (SCC) 258], the Supreme Court held that if a huge amount of money is advanced as loan then the person who has purportedly advanced the loan must also show the solvency to the extent of the loan either through the bank account or through other means. In the case at hand, the accused has been able to raise a suspicion as to the existence of the loan by bringing to light the financial capacity of the complainant. Moreover, the complainant has not been able to remove the said suspicion and his averment as to known persons funding the loan remains a bare averment as they have neither been examined nor records / details have been furnished.*

21. The complainant has alleged that the accused is a habitual borrower and he has defaulted in making repayments to many other persons. It is pertinent to note that there is no evidence in support of said averment that the accused was a habitual defaulter. Furthermore, even if it is admitted that the accused was a habitual defaulter, it does not aid the case of the complainant as there is no proof in relation to the loan transaction of Rs. 6.2 lakhs. The complainant has also placed on record statement given by the accused in P.S. Tilak Nagar (Ex. DWl/Cl and DW1/C2) wherein the accused has admitted that he runs committees. However, again, the instant case does not pertain to the committee business run by the accused and hence, does not help the case of the complainant. The complainant has also argued that the accused in his deposition has stated falsely that he does not have bank transactions of more than Rs. 2,000 to Rs. 3,000. It is averred that bank statements (Ex. DWl/A) have been placed on record which reflect transactions ranging more than Rs. 15,000. Again, said averments do not aid the complainant as none of the transactions in the bank statements act as proof of loan extended by the complainant and they do not go to the root of the testimony to an extent that the deposition of the accused ought to be discredited.

22. The complainant has rightly argued that the accused ought to have issued "stop payment instructions" as the accused has alleged that the complainant did not return the cheque despite repayment of the entire loan amount of Rs. 70,000. It is also correct that the accused has not furnished any explanation as to why said stop payment instructions were not issued. However, despite said weakness in the case of the accused, 1 am inclined to dismiss the case of the complainant as the version of the complainant appears to be more unbelievable as compared to that of the accused. The complainant has stated that there were monetary transactions between the parties. The possibility that the cheque could have been given in lieu of earlier transactions cannot be written off / not considered. The complainant has not even been able to

> *clearly state the date on which loan of such a big amount was given to the accused. He has not examined any third person who would have knowledge of the loan transaction. It is a well settled principle of law that prosecution has to stand on its own leg and prove its case beyond reasonable doubt. Also it has been held by Hon'ble Supreme Court in* ***Rahul Builders vs. Arihant Fertilizers and Chemicals and another*** *[(2008) 2 SCC 321], Nl Act envisages application of the penal provisions which needs to be construed strictly. Therefore, even if two views in the matter are possible, the Court should lean in favour of the view which is beneficial to the accused. This is more so, when such a view will also advance the legislative intent, behind enactment of this criminal liability."*

In effect, the petitioner's case is that he had loaned an amount of Rs.6.2 lacs to the complainant and the same was sought to be recovered by the cheque, which was dishonoured. While there would be a presumption in favour of the petitioner about the validity of the said cheque, nevertheless, the said presumption is rebuttable under section 139 NI Act and the respondent had to make out a probable case. The respondent has raised certain issues, primarily, that he had no transaction with the petitioner of the nature alleged.

A loan of Rs. 70,000/- was repaid by the respondent to the petitioner and despite the said repayment, the blank cheque, which was given as security for the said loan amount of only Rs. 70,000/-, has not been returned to him. Furthermore, the petitioner has neither brought any proof nor documentation nor witnesses to show that he has financial wherewithal, to loan Rs.6.2 lacs to the complainant. It is a large amount, which should have been reflected in his Bank Account or in his Income Tax Returns. However, the same does not find mention in the aforesaid transaction. It is only the petitioner's case that he had loaned the amount when there are no witnesses to the same.

In view of the defence raised by the respondent that no monies are payable to the petitioner, a rebuttable presumption has been raised, the learned Trial Court has rightly rejected the complaint.

A case under section 138 NI Act is made out only if the cheque was issued in repayment of an admitted liability or a debt. However, neither of the two aspects have been proved. Therefore, no case is made out under Section 138 NI Act.

This Court finds no merit in the petition. It is dismissed.

NAJMI WAZIRI, J.

MARCH 06, 2019
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