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

+ **CRL.L.P. 313/2019**

JITENDER WADHWA

..... Petitioner

Through: Mr Vikash Kumar and Mr Nikhil
Yadav, Advocates.

versus

SWARN BHATIA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.11.2019**

1. The petitioner has filed the present petition seeking leave to appeal against a judgment dated 21.01.2019 passed by the Metropolitan Magistrate, East District, Karkardooma Courts in CC No. 1379/2017 titled '*Jitender Wadhwa v. Swarn Bhatia*', whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereafter 'the NI Act').

2. The case of the petitioner is that he and the respondent were known to each other. The respondent was a close friend of the petitioner's father. On the respondent's request, the petitioner advanced a friendly loan of ₹2,17,000/- to the respondent in the month of October, 2016. In discharge of his liability, the respondent issued a cheque (cheque bearing no. 830248 dated 25.01.2017 drawn on Delhi State Cooperative Bank, Shahdara, Delhi – 110051) in favour of the petitioner. However, the same was dishonoured with the remark '*funds insufficient*'. The said fact was informed to the petitioner vide cheque return memo dated 30.01.2017. Thereafter, the

petitioner sent a legal notice dated 14.02.2017 demanding payment from the respondent. On 14.03.2017, the petitioner filed a complaint under Section 138 of the NI Act against the respondent.

3. Process was issued against the accused, and thereafter he was examined under Section 251 of the Cr.P.C. The accused pleaded not guilty. In his plea of defence, the accused stated that no loan had been taken by him from the complainant (petitioner herein); he pleaded that instead, the cheque in question was given by him to the father of the complainant in a blank signed condition.

4. Before the Trial Court, the petitioner was examined as CW-1. During his cross examination, he deposed that no Income Tax Returns had been filed by him for the year 2016-17. It was deposed by him that he had borrowed ₹25,000/- from his friend Vicky and ₹90,000/- from his friend Mohit for the purposes of lending money to the respondent, and the loan was given to the accused by him on 25.01.2017, in the presence of his father and mother. It was further deposed by him that no written document was executed with respect to the said loan transaction.

5. The statement of the accused/respondent was recorded under Section 313 of the Cr.PC, wherein he denied taking a loan of ₹2,17,000/- from the complainant and further denied issuing a cheque (cheque bearing no. 830248 dated 25.01.2017 drawn on Delhi State Cooperative Bank, Shahdara, Delhi – 110051) to the complainant for the said purpose. It was stated by the accused/respondent that the said cheque was given by him to the father of the complainant, as he had promised to provide an auto to the respondent in instalments. It was further stated by the respondent that no auto was

provided to him by the petitioner's father and the said cheque was also not returned by the petitioner's father.

6. The respondent was also examined as DW-1. During his examination in chief, he deposed that two cheques were issued by him to the father of the complainant on the promise of getting an auto in return. However, no such auto was provided to him by the complainant's father even after five to six months of issuing of the cheques. He further denied receiving any legal demand notice sent by the petitioner.

7. After examining all the witnesses and evidence, the Trial Court held that the complainant had not placed any material on record to prove the fact that he had loaned a sum of ₹2,17,000/- to the accused/respondent. It was observed by the Trial Court that there was no agreement in writing with respect to the said loan transaction and the same created a doubt regarding the actual advancement of the alleged loan by the complainant to the accused. Further, as per the complainant, the said loan amount was advanced to the accused in cash, which is in contravention of Section 269SS of the Income Tax Act, 1961. The Trial Court observed that since (a) no document has been produced by the complainant; (b) no books of account have been maintained by him; and (c) the loan is purportedly in contravention of the tax laws, the same "*creates a doubt regarding the truthfulness of the stand taken by the complainant about advancement of loan.*" The Trial Court further held that the accused has been able to successfully rebut the presumptions available to the complainant under Section 118 and 139 of the NI Act, as he was able to cast doubts on the complainant's version through his deposition that he had issued cheques to the complainant's father on the

promise of getting an auto in return.

8. In light of the aforesaid observations, the Trial Court concluded that the accused had been able to successfully defend his case through the cross examination of CW-1 as well as through the evidence led by him. Accordingly, the accused/respondent was acquitted of the offence under Section 138 of the NI Act.

9. The learned counsel appearing for the petitioner has contended that the Trial Court had erred in not appreciating that there was a statutory presumption that the cheques were issued in discharge of an enforceable liability. He submitted that the respondent has not produced any material or evidence to establish otherwise. He submitted that in the circumstances, it was not necessary for the petitioner to establish that the cheque in question was issued in discharge of an enforceable liability.

10. This Court is unable to accept the aforesaid submission. The respondent had examined himself as DW-1 and had deposed that he had given the cheque to the petitioner's father for obtaining an auto. He had, thus, provided an explanation as to how the cheques found their way in the petitioner's possession. In the given circumstances, it was necessary for the petitioner to produce at least some evidence to establish that he had advanced a loan to the respondent. According to the petitioner, the loan was extended in cash and there was no document that recorded the said fact. The petitioner also did not have the means for extending such a loan. He claimed that he had borrowed the said amount from his friends to extend the loan to the respondent. The Trial Court had rightly disbelieved the aforesaid testimony.

11. In view of the above, this Court finds no infirmity with the impugned decision holding that the petitioner has been unable to establish that the cheques were issued against any enforceable liability. The present petition seeking leave to appeal against the said decision is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 19, 2019
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