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

\+ **<u>CRL.L.P. 362/2019</u>**

PRAVEEN GOYAL ..... Petitioner

Through: Mr Ashutosh Jha, Advocate.

versus

M/S SSS ACCESSORIES AND ORS ..... Respondents

Through: Mr Shiv Ram Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% **19.11.2019**

1. The petitioner has filed the present petition seeking leave to appeal against the judgment dated 18.03.2019 passed by the MM (South) 01, NI Act, Saket Courts, New Delhi, whereby the trial court has acquitted the accused persons (respondents herein) of an offence under Section 138 of the Negotiable Instruments Act, 1881 (hereafter 'NI Act').

2. The petitioner contends that the Trial Court had failed to appreciate that the presumption under Section 118, read with Section 139 of the NI Act, rises in favour of the petitioner and inasmuch as the petitioner was not required to prove that the cheques in question were issued by in his favour by the respondents towards the repayment of a loan amount.

3. Respondent no.1 is a partnership firm and respondent nos. 2 and 3 are partners in the said firm. The petitioner was working as a sales executive and claims that the respondents were liable to pay an amount of ₹ 2,18,525/- to the petitioner as remuneration for work done by him. Since the respondents were going through a financial crisis, they sought time to make

payment of the same. The petitioner also claims that the respondents requested the petitioner to arrange a loan and the petitioner had lent a sum of ₹5,50,00/- to the respondents after arranging the loan from his relatives and friends.

4. The petitioner claims that the respondents issued two cheques in the favour of the petitioner to repay the abovementioned amounts: (a) a cheque No. 176063 dated 30.10.2015 for ₹5,50,000/-; and (b) a cheque No. 176064 dated 30.11.2015 for ₹2,18,525/-, drawn on bank account maintained with UCO Bank, New Delhi.

5. Both cheques were returned unpaid on account of "exceeds arrangement" vide return memos. Legal notices were duly sent by petitioners to the respondents, but to no avail. The respondents failed to pay the cheque amounts within the statutory period. Thereafter, the petitioner filed Complaint Case — CC No. 417/2016, alleging an offence under section 138 of the Negotiable Instruments Act, 1881.

6. The Trial Court observed that although the complainant had claimed that the said cheques were issued against liability for work done and repayment of loan; no evidence had been brought on record to show as to how and on what basis had the petitioner become entitled to receive the said amount for work done or any evidence to establish that the petitioner had lent any money.

7. The Trial Court noted that the averment of the petitioner that he had extended a friendly loan of ₹5,50,000/- to the respondents was also not established. The court observed that it is was highly unlikely that the petitioner would extend such a loan to his employer, especially in light of the fact that the employer had been unable to pay his salary. The petitioner

was also unable to mention the exact date and month on which such loan had been given. Further, the source from which the said loan had been allegedly arranged had not been disclosed by the complainant. A vague and generic statement had been made that the said amount had been arranged from friends and relatives. In light of the abovementioned observations, the Trial Court came to the conclusion that the petitioner had been unable to lead cogent evidence to prove that an offence under Section 138 of the NI Act had been committed.

8. The learned counsel appearing for the petitioner (complainant) contended that the Trial Court had erred in not appreciating that there is statutory presumption that the cheques had been issued against an enforceable liability. He submitted that in the present case, the respondents had failed to overcome the said presumption. On the other hand, the petitioner had filed an affidavit affirming that the cheques were issued against an enforceable liability and the respondents had not cross examined the petitioner.

9. Undeniably there is a statutory presumption that cheques are issued against an enforceable liability. However, this presumption is rebuttable. In the present case, respondent No.3 (who is a partner of respondent No.1) had examined himself as DW-1. He deposed that he was a partner of respondent No.1 and the petitioner was their employee from February 2014 to June 2015. He deposed that the petitioner's salary was around ₹12,000/- per month and he used to look after the accounts of the firm. He became aware of the financial misconduct on the part of the petitioner and had warned him. He deposed that he had asked the petitioner to leave their services and the petitioner had threatened him.

10. He testified that the petitioner was in custody of the signed cheques for payment to the customers in the course of his employment. He also affirmed that he had not taken any money from the petitioner. Respondent No.3 was cross examined. He reiterated his testimony in his cross examination and had denied the suggestion that he had taken any loan from the petitioner.

11. It is relevant to note that the learned counsel appearing for the petitioner had put a suggestion to respondent no.3 during his cross examination to the effect that the petitioner was employed with respondents from February 2013 to September, 2014. This suggestion was denied by respondent No.3. This does give an impression that there is no dispute that the petitioner was employed with the respondents. The only controversy appears to be whether he was employed during the course of February 2013 to September 2014 as suggested on behalf of the petitioner, or from February 2014 to June 2015 as deposed by respondent no.3. The defence that the petitioner was in custody of the cheques as an accountant is not improbable.

12. In view of the above, respondent no.3 successfully repelled the presumption that the cheques had been issued in discharge of any liability. According to respondent no.3, the petitioner had misappropriated the signed cheques which were kept in his custody. In the given circumstances, the onus to prove that the cheques in question were issued in discharge of a legal liability shifted to the petitioner.

13. The petitioner had not produced any material to establish that any amount was owed by the respondents to him, neither could the petitioner give any break-up of the amount of ₹2,18,525/- which the petitioner claimed

was owed to him on account of work done. The petitioner could not provide any material to establish that he had extended a loan of ₹5,50,000/- to the respondent. He neither produced any receipt for the same nor any material evidencing the source of the said amount. The Trial Court had evaluated the evidence in this case and had concluded that the petitioner was unable to establish that respondents had issued the cheque against any enforceable liability.

14. This Court finds no infirmity with the aforesaid decision. In view of the above, the present petition seeking leave to appeal against the impugned judgement is dismissed.

VIBHU BAKHRU, J

NOVEMBER 19, 2019