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

\+ **<u>CRL.L.P. 363/2019</u>**

NEETU 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 cheque in question was issued in her favour by the respondents towards the repayment of a loan.

3. Respondent no.1 is a partnership firm and respondent nos. 2 and 3 are partners in the said firm. The petitioner claims that respondent no.3 had requested her for a loan and in lieu of the same, the petitioner had arranged a loan of ₹5,00,000/- from her friends and relatives in August, 2015.

4. The petitioner claims that the respondents issued a cheque bearing No. 176062 dated 30.09.2015 for ₹5,00,000/-, drawn on bank account maintained with UCO Bank, New Delhi in her favour for the repayment of the abovementioned loan. The cheque was returned unpaid on account of "exceeds arrangement" vide return memos. A legal notice was duly sent by the petitioner to the respondents, but to no avail. The respondents failed to pay the cheque amount within the statutory period. Thereafter, the petitioner filed Complaint Case 'CC No. 36/2016', alleging an offence under Section 138 of the NI Act.

5. The Trial Court observed that although the complainant had claimed that the said cheque was issued as repayment for a loan; no evidence had been brought on record to show that any such loan was given by the petitioner to respondents.

6. The Trial Court further took note of the complaint bearing CC No. 417/2016 filed by the petitioner's husband, wherein he had alleged that he had given a loan of ₹5,50,000/- to the respondents, despite the fact that a salary amount of ₹2,18,525/- had not been paid to him. The Trial Court held that in light of the said facts, it is highly unlikely that a person would give a loan of five lakh rupees to the employer of her husband when such an employer had not been able to pay the salary of her husband on time.

7. The Trial Court further observed that a vague averment had been made by the petitioner that a loan of ₹5,00,000/- had been given. The petitioner had not mentioned the exact date on which the said loan had been given. During her cross examination, CW1 (petitioner herein) stated that she did not know when the loan in question was given to the accused and nor did she remember the place where the said loan was given by her. She further

stated that she could not say whether she had any discussion with respondent no.2 (Babu Ram Tyagi) with respect to the loan in question. The Trial Court held that the failure on part of the petitioner to answer relevant questions raised doubts on the case of the petitioner.

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 cheque had been issued against an enforceable liability. He submitted that in the present case, the respondents had failed to overcome the said presumption.

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 firm and the petitioner's husband was an employee of his firm from February, 2014 to June, 2015 and used to look after the accounts of their firm. He was entrusted with signed cheques for making payments to customers. He had been employed on the reference of the petitioner, as she was known to respondent no.3. DW-1 deposed that when he came to know about the financial misconduct of the husband of the petitioner, he orally warned him. Finally, in June, 2015, the husband of the petitioner left their firm and demanded an amount of ₹15 lakhs. The petitioner had told him that her husband had forced her to file the present complaint.

10. In view of the above, respondent no.3 has successfully repelled the presumption that the cheques had been issued in discharge of any liability. According to respondent no.3, the husband of the petitioner had misappropriated the signed cheques, which were kept in his custody and had

forced the petitioner to file the present complaint. In the given circumstances, the onus to prove that the cheque in question was issued in discharge of a legal liability, shifted to the petitioner.

11. The petitioner had neither produced any material to establish that any amount was owed by the respondents to her nor was she able to justify the source of the loan. A vague and a generic averment had been made by her that the loan amount was arranged from her friends and relatives. The names of the said friends and relatives had nowhere been mentioned in the complaint nor had such persons been examined to substantiate the case of the petitioner.

12. In view of the above, the Trial Court held 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 by the respondents.

13. 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