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

\+ **CRL.L.P. 493/2019**

SHASHI SHEKHAR ..... Petitioner

Through: Mr G. P. Singh and Mr Yashvir Kumar, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Ms Kusum Dhalla, APP for State.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **02.09.2019**

1. The appellant has filed the present petition seeking leave to appeal against the judgment dated 18.07.2019 passed by the learned Metropolitan Magistrate (South), Saket Courts, New Delhi. The appellant had filed a complaint alleging an offence under Section 138 of the Negotiable Instruments Act, 1881. A cheque for an amount of ₹40 lakhs drawn on Canara Bank had been dishonoured and the appellant's complaint is predicated on the same.

2. In his defence, respondent No.2 stated that he had signed a blank cheque and handed over the same to his brother for purchase of certain property. It is stated that the said blank cheque was issued in the year 2002 and not against any liability in the present.

3. Respondent no. 2 had alleged that the complainant had entered the premises of his brother and had taken away the said cheque, which was subsequently misused. In his evidence, DW 4 also established that the cheque in question was from a series that was used and exhausted in past. In

view of the above, the trial court held that onus of establishing that the said cheque was issued to the complainant and the same was against any liability, had shifted on the complainant.

4. It was the complainant's case that he had paid the accused, his brother and his sister-in-law, a sum of ₹40 lakhs in tranches for purchasing a certain property. He claimed that, thereafter, the said persons (sellers) had a change of heart and therefore, respondent no.2 issued a cheque for returning the amount, which was earlier paid by the complainant.

5. Concededly, the complainant did not place any documentary evidence to establish that he had paid the amount of ₹40 lakhs as claimed. The said amount was not paid through banking channels. The trial court noted that the appellant did not have any receipt; agreement to sell; or any other document, which would even remotely support the case set up by the petitioner. In addition, it was also noticed that the complainant had neither produced his books of account nor his income tax returns, which would establish that the petitioner had paid any amount either to the respondent, his brother or his sister-in-law. In view of the above, the learned trial court came to the conclusion that the petitioner had failed to establish that the respondent had committed the offence as alleged.

6. This Court finds no infirmity with the aforesaid decision. Clearly, the onus to establish that the cheque was issued against a liability had shifted to the petitioner and he had failed to discharge the same.

7. The application filed by the appellant is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 02, 2019/MK