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

\+ **CRL.L.P. 231/2017**

DILBAGH KAUR CHANDOK THR. LRS
DALJEET SINGH ..... Petitioner

Represented by: Mr Vijay K. Aggarwal, Mr. Shailesh Pandey, Mr. Khurram Salim, Ms. Shepheli Ailawadi and Mr. Deepanshu Choitani Advocates.

versus

STATE & ANR. ..... Respondents

Represented by: Mr. Ashok K. Garg, APP for the State.
Mr. Ashok Upadhayay, Advocate for respondent No.2.

\+ **CRL.L.P. 232/2017**

HARPREET KAUR CHANDOK ..... Petitioner

Represented by: Mr Vijay K. Aggarwal, Mr. Shailesh Pandey, Mr. Khurram Salim, Ms. Shepheli Ailawadi and Mr. Deepanshu Choitani Advocates.

versus

STATE & ANR. ..... Respondents

Represented by: Mr. Ashok K. Garg, APP for the State.
Mr. Ashok Upadhayay, Advocate for respondent No.2.

\+ **CRL.L.P. 233/2017**

BALVINDER KAUR ..... Petitioner

Represented by: Mr Vijay K. Aggarwal, Mr. Shailesh Pandey, Mr. Khurram Salim, Ms. Shepheli Ailawadi and Mr. Deepanshu Choitani

Advocates.

versus

STATE & ANR. ..... Respondents

Represented by: Mr. Ashok K. Garg, APP for the State.
Mr. Ashok Upadhayay, Advocate for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **06.02.2019**

1. Aggrieved by the judgment dated 22nd February 2017, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC nos. 26476/16, 27172/16, 26478/16 the petitioner/complainant has preferred the present leave petitions.

2. Facts as per the complaint filed by the petitioners are that the petitioners had given a total sum of Rs.17,00,000/- in cash in August 1999 for a period of one year to the respondent as an investment in the business of chit funds run by her. Later on, when the petitioners demanded their money back respondent No. 2 in discharge of her liability issued the following five cheques to the petitioners:

i. *Cheque bearing number 480697 and dated 2nd January 2001 for a sum of Rs.6,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*
ii. *Cheque bearing number 480698 and dated 2nd January 2001 for a sum of Rs.2,50,000/- drawn on Indian Overseas Bank, Karol Bagh.*
iii. *Cheque bearing number 480699 and dated 2nd January*

2001 for a sum of Rs.1,50,000/- drawn on Indian Overseas Bank, Karol Bagh.

iv. *Cheque bearing number 480700 and dated 2nd January 2001 for a sum of Rs.5,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

v. *Cheque bearing number 498219 and dated 2nd January 2001 for a sum of Rs.2,00,000/- drawn on State Bank of India, Lajpat Nagar.*

3. When the cheques were presented for encashment, cheques (i) to (iv) were returned unpaid with remarks *"insufficient funds"* and cheque (v) was returned unpaid with the remark *"refer to drawer"* vide memos dated 6th February 2001. Legal notice was sent to the respondent, however, despite notice, the respondent failed to make the payment within the stipulated period of time, hence, the instant complaints were filed.

4. Notice under Section 251 Cr.P.C. was framed against respondent No. 2 to which she pleaded not guilty and claimed trial.

5. Daljeet Singh Chandok examined himself as CW-1 and relied upon original cheques, power of attorney, cheque return memos, legal notice, postal receipt, registered AD Card and the complaints.

6. Statement of the respondent No. 2 was recorded under Section 313 Cr.P.C. wherein she claimed that her blank signed cheque book was lying in the house of Daljeet Singh Chandok who is the husband of her real sister who misappropriated the same.

7. The respondent examined Jagish Salwan and Ashok Sarda, Manager's of Citi Bank as DW-1 and DW-2 who proved the bank statements of Harpreet Chandok and Dilbagh Kaur Chandok. Gopal Kumar, Assistant Manager, Indian Overseas Bank was examined as DW-3.

8. As per the evidence on record the petitioners have failed to make a specific assertion as to the knowledge of the power of attorney holder about the said transaction explicitly in the present complaint. It was the claim of the petitioners that the income was from mutual funds however the power of attorney holder of the petitioners did not explain as to what was the actual income of the petitioners at the relevant time nor has he been able to explain how the petitioners got the said income converted into cash. The petitioner has contended that the money was handed over to the respondent in 12-14 instalments however the power of attorney holder has nowhere stated as to any payment in instalments in his complaint or his cross-examination. The source of the cash has not been adequately explained by the petitioner.

9. The Supreme Court in the decision reported as (2004) 12 SCC 83 <u>G. Pankajakshi Amma v. Mathai Mathew</u> observed:

> *10. There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these transactions were to be unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons also the suit was required to be dismissed.*

10. The transaction between the parties was of an unaccounted cash transaction therefore making it difficult to trace the loan amount. The alleged liability to repay an unaccounted cash amount admittedly not disclosed in the Income Tax Return cannot be a legally enforceable liability.

11. Findings of the learned Metropolitan Magistrate, based on the facts

noted above cannot be said to be perverse warranting interference of this Court.

12. Leave to appeal petitions are dismissed.

13. TCR be returned.

MUKTA GUPTA, J.

FEBRUARY 06, 2019
'vj/yo'