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

\+ **CRL.L.P. 453/2016 & Crl.M.A. Nos. 13480/2016 and 13481/2016**

DALJEET SINGH 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. 454/2016 & Crl.M.A. Nos. 13488/2016 and 13489/2016**

TIRATH SINGH 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: Ms. Rajni Gupta, APP for the State.
Mr. Ashok Upadhayay, Advocate for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **06.02.2019**

1. Aggrieved by the judgment dated 29th June 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable

under Section 138 Negotiable Instruments Act, 1881 in CC nos. 27090/16, 26848/16, 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.27,00,000/- 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 six cheques to the petitioners:

i. *Cheque bearing number 480691 and dated 2nd January 2001 for a sum of Rs.6,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

ii. *Cheque bearing number 480692 and dated 2nd January 2001 for a sum of Rs.5,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

iii. *Cheque bearing number 480693 and dated 2nd January 2001 for a sum of Rs.5,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

iv. *Cheque bearing number 480694 and dated 2nd January 2001 for a sum of Rs.3,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

v. *Cheque bearing number 480695 and dated 2nd January 2001 for a sum of Rs.6,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

vi. *Cheque bearing number 480696 and dated 2nd January 2001 for a sum of Rs.2,00,000/- drawn on Indian Overseas Bank, Karol Bagh.*

3. When the cheques were presented for encashment, they were returned unpaid with remarks *"insufficient funds"* 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 Jagmohan Sharma, Clerk, Indian Overseas Bank as DW-1 and Ishwar Kumar, Ahlmad as DW-2. DW-1 proved the bank statement of the savings account of the respondent No. 2 and DW-2 proved the copies of cross-examination proceedings of Daljeet Singh Chandok.

8. As per the evidence on record, the petitioners have failed to prove the legality of the initial transaction between the parties as it comprised of unaccounted cash money. During cross-examination the petitioners were examined as to the source of his income however the petitioners failed to specifically mention their income sources from where they arranged the funds for investment in chit funds run by the respondent No. 2.

9. 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 and applications are dismissed.

13. TCR be returned.

MUKTA GUPTA, J.

FEBRUARY 06, 2019
'vj/yo'