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

+ **CRL.L.P. 522/2016**

DARTS IT NETWORKS PVT LTD

..... Petitioner

Through Mr Arun Kumar Gupta, AR of petitioner.
versus

MS SANGYA GUPTA

..... Respondent

Through Mr A. Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.08.2019

1. The petitioner has filed the present petition seeking leave to appeal against the judgment dated 28.05.2016 (hereafter 'the impugned judgment') passed by the Ld. Metropolitan Magistrate (South-East) -08, Saket Courts, whereby the respondent/accused has been acquitted of the offence punishable under Section 408 of the Indian Penal Code, 1860 (IPC).
2. The respondent/accused is an ex-employee of the petitioner/complainant company. The respondent was appointed as Senior Business Manager in terms of the Letter of Appointment dated 27.10.2006. On 13.09.2007, the respondent resigned from the services of the petitioner company. The petitioner states that on 15.12.2006, the respondent was handed over the possession of certain articles – including a laptop – for discharging her functions. The petitioner alleges that the respondent has misappropriated the said articles.
3. It is alleged that at the time of leaving the petitioner company, the respondent failed to handover the possession of the following articles

provided to her by the petitioner company: (i) a laptop (Model no. CMQ NB 5201) containing the company data; (ii) a Reliance Data Card with Phone no. 9313813353 provided for internet connection; and (iii) the Identity Card of the respondent as an employee of the petitioner company. It is further alleged that a legal notice dated 25.10.2007 was sent to the respondent calling upon her to return the aforesaid articles, however, the respondent failed to reply to the same. Thereafter, a reminder dated 20.11.2007 was also sent to the respondent in relation to the aforesaid but she failed to return the articles of the petitioner company.

4. The Trial Court, after examining the material available on record and the witnesses (PWI and PW2), framed charges under Section 408 IPC for committing criminal breach of trust against the petitioner company. The petitioner/complainant also produced certain email correspondence between the parties in relation to the recovery of the said articles. After the framing of charges, no additional evidence was produced by the complainant/petitioner.

5. The accused/respondent in her statement under Section 313 Cr.P.C., denied all the allegations levelled against her and further stated that she had returned the aforesaid articles through an office boy, which was sent to her residence to recover the said articles. The statement of the accused was also recorded under Section 315 Cr.P.C. as DW-1, wherein she stated that she had been provided a laptop and a data card alongwith an ID card by the complainant company. One Mr. Rajiv Kumar deposed as DW-2 and stated that the accused/respondent had told him that she had returned the said articles belonging to the petitioner company.

6. The petitioner had sent an email dated 03.10.2007 (CW-1/6) calling upon the respondent to submit the articles in question. She was called upon to indicate a convenient time at which the same could be collected from her residence. She had responded on 10.10.2007 (CW1/F) calling upon one Ms. Kiran to send the delivery boy on 11.10.2007 at 4.30 PM. According to the respondent, she had returned the articles in question to the delivery boy sent by Ms Kiran.

7. After hearing the arguments and in light of the evidence and witnesses produced by the complainant/petitioner and the accused/respondent, the Trial Court held that the complainant/petitioner had failed to establish its case against the accused beyond reasonable doubt. The Court noted that the petitioner/complainant had filed certain correspondences showing that the petitioner/complainant had called upon the accused to submit the said articles immediately. In reply, the accused/respondent had asked Ms Kiran to send a delivery boy to her residence on 11.10.2007 at 4:30 pm to collect the said articles. The Court noted that, thereafter, the correspondence had stopped between the parties and no further details of the communication had been filed by the petitioner to substantiate its case. In this light, the Trial Court noted that although it was an undisputed fact that the said articles were provided to the accused/respondent by the petitioner company, the petitioner/complainant had failed to prove that the same were still in possession of the accused/respondent.

8. Accordingly, the Trial Court acquitted the accused/respondent of charges levelled against her under Section 408 IPC.

9. Mr Arun Kumar Gupta, who states that he is a Director of the petitioner company appeared on its behalf. He sought to assail the impugned judgment on the solitary ground that the Trial Court had ignored the transcript of the conversation between him and the respondent, which took place on 13.04.2011. He submitted that the transcript of the said conversation established beyond any reasonable doubt that the respondent had not returned the laptop provided to her and, therefore, clearly established that the respondent was guilty of the offence for which she was charged.

10. It is seen that the said conversation had taken place much after the FIR had been filed and the proceedings had been commenced. A plain reading of the transcript of the said conversation indicates that the same was initiated with the view to arrive at an amicable settlement; it appears that the same was suggested by the Court. The said conversation indicates that the respondent was willing to provide a brand-new laptop to end the disputes between both the parties. However, it does not appear that the petitioner was interested in any such settlement.

11. According to the petitioner, the cost of the laptop was ₹29,900/-, but it appears that the petitioner had demanded a sum of ₹1.25 lacs to settle the disputes. However, as a counter offer, the respondent had volunteered to provide a new laptop. Mr Gupta drew the attention of this Court to the statement alleged to be made by the respondent: “*meri jo unse baat hui hai ki Mere paas laptop thaa*”. He submitted that this clearly established that the respondent had not returned the laptop, which was provided to her.

12. This contention is not persuasive. The respondent had merely stated that she *had* a laptop and the same cannot be construed as the respondent admitting to have not returned the same.

13. Since Mr Gupta has rested his case only on the aforesaid statement, this Court is of the view that no interference with the impugned judgment is warranted.

14. It is also relevant to note that the petitioner had called upon the respondent to indicate a convenient time when the articles in question could be collected. The respondent in turn readily agreed to return the said articles. She had indicated that the delivery boy would be sent to her residence on 11.10.2007 at 04:30 p.m.

15. The learned Trial Court had noted that there was no further correspondence, thereafter. The same supported the respondent's contention that she had returned the articles to the delivery boy sent by the petitioner. Thus, the decision that the petitioner had not established its case beyond reasonable doubt is a plausible view.

16. In view of the above, the leave to appeal as sought for by the petitioner is rejected.

17. CRL.L.P. 522/2016 & Crl. M.A. 15064/2016 are, accordingly, dismissed.

VIBHU BAKHRU, J

AUGUST 28, 2019
pkv/RK