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

\+ **<u>CRL.L.P. 419/2017 & CRL.M.A. 11942/2017 & CRL.MA 12872/2019</u>**

PREETAM SINGH ..... Petitioner

Through Mr Lalit Bhardwaj, Mr J.K. Verma, Mr Shubham Chaturvedi, Advocates.

versus

SINGARA SINGH ..... Respondent

Through Mr Ayub Khan, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**<u>O R D E R</u>**

% **13.12.2019**

1. The petitioner has filed the present petition, seeking leave to appeal against the judgment dated 25.03.2017 passed by the MM-09, South-East District, Saket Courts, whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

2. The petitioner contends that the Trial Court erred in acquitting the respondent since there were various inconsistencies in the testimonies of the defence witnesses. The petitioner also contends that the wife of the respondent had executed a mortgage deed in his favour and therefore, his statement that he did not know the petitioner, was false. The petitioner further contends that the cheque in contention had been dishonored due to the funds being insufficient and not because the signatures of the respondent did not tally.

3. It is the case of the complainant (petitioner herein) that in the month of April, 2015, the respondent had approached him for a friendly loan of ₹3 lakhs. The petitioner gave the said loan to the respondent on 29.04.2015. The said loan was to be paid back within three to four months. In lieu of the same, the respondent issued a cheque bearing No. 854597 dated 25.02.2016 for a sum of ₹3 lakhs, drawn on Canara Bank, Maharani Bagh Branch, in discharge of the said liability. The said cheque was presented for encashment but was dishonored by a return memo dated 09.03.2016 with the remark “funds insufficient”. A legal notice dated 08.04.2016 was issued but the respondent refused to accept the said legal notice. The respondent failed to make payment of the abovementioned amount and thereafter, the petitioner was constrained to file a complaint.

4. On receiving the complaint, summons were issued to the respondent. The respondent pleaded not guilty and claimed trial.

5. The Trial Court noted that the petitioner had tendered evidence by way of affidavit and the presumption under Section 139 of the NI Act was in the favour of the petitioner.

6. The accused (respondent herein) claimed that he had not issued the cheque in question and it did not bear his signature. He stated that he had never met with the petitioner and had no legal liability towards him. The defendant examined three witnesses in his defence: his wife as DW1; cashier of the bank (Canara Bank) where he maintained the account, as DW-2; and himself, as DW3

7. The Trial Court noted that the complainant had stated that he had given a loan in April, 2015, after taking out ₹2 lakhs from his bank account and ₹1 lakh in cash, which was lying with him. However, on perusal of the

passbook of the account of the petitioner, the Trial Court observed that the passbook did not reflect any withdrawal of ₹2 lakhs at the relevant point of time. Since the complainant failed to show any entry of the abovementioned amount, he changed his stance and stated that he withdrew an amount of ₹80,000/- and the rest of the amount was lying with him in cash.

8. Thereafter, the Trial Court also examined the financials of the petitioner to ascertain whether he had the means to extend the said loan. The petitioner had stated that he was earning ₹20,000/- to ₹25,000/- by working as a *thekedar* of timber and had stopped working around six to seven years ago. He had also stated that he had given his two houses in Govind Puri and Tuglakabad on rent and earned ₹30,000/- per month as rental income. He also stated that he had no other income other than the said rental income.

9. The Trial Court examined the pass book of the petitioner to verify the abovementioned claims and observed that the passbook reflected that on 27.04.2015, the balance in the account of the petitioner was ₹93,584.52/- and the closing balance on 28.08.2015 was only ₹33,221.56/-. The petitioner had only deposited ₹50,000/- in a span of four months, whereas the petitioner had contended that he was earning ₹30,000/- as rental income per month. Further, the petitioner had not produced any rent agreement or rent receipts to determine that he was receiving any such rental income. The Trial Court concluded that the petitioner did not have sufficient means to extend the said loan and it was not the case of the petitioner that he had borrowed money from any other person to extend the said loan.

10. The Trial Court further noted that the fact that the petitioner had admitted that the loan was not reflected in his Income Tax Return (ITR), which raised doubt on the truthfulness of the version put forth by him. The

fact that the complainant was not filing his ITRs; the amount of three lakhs were not reflected in his bank statement; and the source of the amount had not been disclosed, raised serious doubts on the fact that the petitioner had sufficient money to advance a loan of ₹3 lakhs to the respondent.

11. The Trial Court also examined the defense taken by the respondent that the signature on the cheque in question were not his. The respondent had examined himself as DW3; Sh Balbir Singh (cashier at Canara Bank) as DW2; and his wife Darshan Kaur, as DW1, in support of the abovementioned contention. DW2, Balbir Singh, stated that the signatures on the cheque in question did not match with specimen signatures of the respondent and the report of the manager was exhibited as Ex. DW2/X. The statement of the account of the respondent and his specimen signatures were exhibited as Ex. DW2/1 and Ex. DW2/2, respectively. The Trial Court noted that the report (Ex. DW2/X) was a certified document of Canara Bank and it was based upon the records being maintained by the bank and therefore, it was duly proved. The Trial Court held that the report reflected that the signatures on the said cheque did not match the specimen signatures. The Trial Court also examined the signatures of the respondent on the notice framed on 04.10.2016 and on the testimony as recorded in Court on 27.02.2017 and concluded that the said signatures were similar, even though they were four months apart; however, they did not match the signatures on the cheque in question. In light of the same, the Trial Court held that the bare perusal of the signatures on the cheque and that on the court record reflected that the signatures on the cheque issued did not belong to the respondent.

12. In view of the abovementioned findings, the Trial Court held that the presumption under Section 139 of the NI Act had stood rebutted. The defendant had raised a probable defence that he had not issued the cheque and he had not borrowed any amount from the petitioner. Since it was apparent that the petitioner did not have sufficient means to extend a loan of ₹3 lakhs and the cheque in question did not bear the signatures of the respondent; the respondent was acquitted of the charges under Section 138 of the NI Act.

13. The learned counsel appearing for the petitioner contended that the respondent had not rebutted the presumption of liability. He stated that it was admitted that the cheques had been given by his wife and thus the issue of cheques could not be disputed. He also stated that the testimony of the respondent (DW 3) was unreliable, as the petitioner could establish that DW 3 was acquainted with the petitioner. He stated that PW 3 had entered into certain mortgage deeds and therefore his testimony could not be relied upon.

14. The aforesaid contentions are unmerited. Respondent no.1 had examined three witnesses in defense. The cashier of Canara Bank (Balbir Singh) had testified that the signatures of respondent on the cheques did not tally with the bank account. The respondent's wife (DW 1) had deposed that she had given the cheques to one Smt Renu Gautam and the same had been misused.

15. This Court concurs with the view of the Trial Court that respondent had presented a probable defense. In the circumstances, the presumption under Section 139 of the NI Act stood rebutted. It was now up to the petitioner to establish its case that the cheque had been issued to him against an enforceable liability. However, apart from his oral testimony, the

petitioner could not produce any material to establish that he had lent any sum to the respondent. As noticed earlier, in his cross-examination, the petitioner had stated that he had withdrawn ₹2,00,000/- from his bank account. He had also asserted that "*the entry of withdrawal of Rs.2,00,000/- is made in my passbook and I can produce the same*". However, the passbook produced by petitioner did not reflect any such entry of ₹2,00,000/-.

16. In the given facts, the conclusion of the Trial Court that the petitioner had failed to establish that it had received the cheque in question against an enforceable liability, cannot be faulted.

17. In view of the above, this Court finds no reason to interfere with the impugned order.

18. The present petition seeking leave to appeal against the impugned judgment dated 25.03.2017 is, accordingly, dismissed.

19. The pending applications are disposed of.

**VIBHU BAKHRU, J**

**DECEMBER 13, 2019**

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