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

\+ **CRL.L.P. 156/2020**

KUNWAR PAL KAUSHIK ..... Petitioner

Through Mr Madhukar Rao, Senior Advocate with Mr Sunil Kumar Jha, Ms Ritu Puri, Mr Kanchan Shukla, Mr Rakesh Kumar, Mr Amrit Anunay, Advocates.

versus

STATE & ANR ..... Respondents

Through Mr Amit Gupta, APP for state.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **17.02.2020**

CRL.M.A. 3610/2020

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CRL.L.P. 156/2020 & CRL.M.A. 3609/2020

3. The petitioner has filed the present leave to appeal against the judgment dated 28.09.2019 passed by the learned Metropolitan Magistrate (04), North East, Karkardooma Courts, Delhi, rejecting the petitioner's complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereafter 'N.I. Act').

4. The petitioner had filed the said complaint alleging that a cheque (bearing no. 171532 for a sum of ₹9,80,000/- drawn on Canara Bank Rakesh Nagar, New Delhi) was issued by the respondent in discharge of his liability

to return a friendly loan and the same was dishonoured.

5. The petitioner claimed that he had advanced a friendly loan to the respondent for a sum of ₹9,50,000/- on 20.09.2008 and the respondent had issued a security cheque (the cheque in question) on the same date, itself.

6. It was the respondent's defence that he had kept two blank signed cheques in his drawer, as he used to travel to Dehradun for the purposes of a school being run there. He stated that the said cheques were kept for withdrawing funds in his absence. He further submitted that the petitioner was a priest and used to perform *pooja* at his office and at his home and therefore, had access to the said cheques. He claims that the said cheques had been taken away by the petitioner.

7. The petitioner (complainant) had no material to even remotely establish that he had advanced any money in cash to the respondent. The Trial Court noted that the petitioner had not produced any receipt or any other documents evidencing any such transaction. Further the transaction was also outside the banking channels.

8. It was the petitioner's case that the cheque was also filled up by the respondent at the material time, however, the learned Trial Court noted that this could not be believed as the date on the cheque was 21.06.2011, while according to the petitioner it was handed over to him on 20.09.2008 and the alleged loan was to be returned within a period of one month. The Trial Court also noted that the pen used for signing the cheque and for filling the same was different.

9. In the given circumstances, the Trial Court held that the respondent had successfully rebutted the presumption of liability by raising a plausible defence and the complainant (petitioner) was unable to discharge his onus to

establish that he had lent any money to the respondent.

10. This Court finds no infirmity with the aforesaid decision. The presumptions under Sections 118 and 139 of the NI Act are rebuttable. The respondent had raised a defence and it was essential for the petitioner to establish by evidence that he had lent an amount of ₹9,50,000/- to the respondent on 20.09.2008. However, the petitioner had failed to do so. Further, the petitioner's claim that the respondent had issued the cheque on the same date i.e. 20.09.2008, for return of the loan or as a security was inconsistent with his case that the loan was to be returned in a month as the cheque was dated 21.06.2011.

11. It is also seen that there is a delay of 33 days in filing the present petition. The only explanation provided by the petitioner is that the petitioner could not arrange the money for filing the present petition for seeking leave to appeal. Curiously, the petitioner claims that he was in possession of ₹9,50,000/- in cash to advance a friendly loan and at the same time, states he does not have the money to file an appeal. The explanation is unpersuasive.

12. The present petition is dismissed on the ground of delay as well as on merits. The pending application is disposed of.

VIBHU BAKHRU, J

FEBRUARY 17, 2020

pkv