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NEUTRAL CITATION NO: 2022/DHC/004133

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CRL.A. 122 of 2018

Between:-

**SH. KULVINDER SINGH,
S/O DARYAO SINGH KHATRI
R/O VILLAGE & P.O. KATEWARA,
DELHI** **.....APPELLANT**

*(Through: Shri Prag Chawla, Shri Jaspreet Kaur & Shri
Varun Singh, Advocates.)*

AND

**SH. GULAM MOINUDDIN @ KALU BHAI,
S/O LATE SH, NAWAB KHERUDDIN,
R/O B-9/6, DDA FLATS,
SARAI KHALIL, SADAR BAZAR, DELHI.** **..... RESPONDENT**

(Through: Shri Sheetesh Khanna, Advocate.)

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Pronounced on : 11.10.2022

J U D G M E N T

1. This appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the appellant assailing the order dated 29.10.2011 passed by the Senior Civil Judge-cum Rent Controller, North-West Rohini Court Delhi in CC No. 1064/2009, whereby, a complaint under Section 200 of the Cr.P.C. for

the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 has been rejected by the said court.

NEUTRAL CITATION NO: 2022/DHC/004133



2. The facts of the case are that appellant (hereinafter referred as 'complainant') was in friendly terms with one *Ramesh Chand* and the respondent (hereinafter referred as 'accused'). It is the case of the complainant that on or around 05.11.2005, the accused approached the complainant with a request for a friendly loan of Rs.50,000/-. The complainant considering the request to be genuine, offered him a friendly loan of Rs.50,000/- on 06.11.2005. It is also the case of the complainant that on 06.05.2006, the accused again visited the complainant and had requested for a further financial assistance of Rs.20,000/-, which was again extended by the complainant towards friendly loan. It is thus the case of the complainant that a total sum of Rs.70,000/- was given to the accused towards friendly loan and to assure the complainant the accused had given three cheques. The first cheque is dated 03.06.2006 for a sum of Rs.25,000/-, the second cheque is of the same date for the same amount and the third cheque is of Rs.20,000/-.

3. It is stated that the complainant had to defer the presentation of the cheques on an assurance given by the accused. It is the case of the complainant that on 11.07.2006, he received a notice on behalf of the accused that the cheques in question were given towards security against the committee run by the complainant. The complainant stated that before he could receive the notice he had already presented the cheques for encashment on 11.07.2006 which were returned unpaid by the bank of the accused with the remark of 'FUNDS INSUFFICIENT'. A legal notice of demand was issued on 14.07.2006, which was served on the accused and thereafter, a complaint in question has been filed.



4. The learned court below after examining the evidence produced

NEUTRAL CITATION NO: 2022/DHC/004133

by the respective parties has come to the conclusion that the complainant has failed to prove his case beyond reasonable doubt and consequently, the complaint has been dismissed. The complainant is, therefore, in the instant appeal against the accused.

5. The learned counsel appearing on behalf of the complainant submits that impugned order is illegal and improper and the same has been passed without considering the provision of the NI Act in right perspective. According to him, the trial court has erred in drawing adverse inference against the complainant that the complainant has not established that whether the said amount of loan was shown in the Income Tax Return or not. According to him, the learned trial court had further erred in holding that the standard of proof to prove the case under Section 138 of NI Act beyond reasonable doubt is not upon the complainant. However, according to him the initial burden is upon the accused to rebut the presumption which in the case, the accused has failed to do so. He, therefore, submits that the impugned order is illegal and improper and deserves to be set aside.

6. Learned counsel appearing on behalf of the accused, vehemently opposed the submissions and submits that the impugned order is strictly in accordance with law and the same does not call for any interference. According to him, the accused has never asked the complainant for any friendly loan as alleged by the complainant. It is submitted that the appellant used to run committee i.e. sort of chit fund and the accused had participated in the said committee. Blank cheques without date and name of payee were given by the accused to the complainant as security in connection with the committee run by the complainant. It is his further case that on 11.07.2006, a legal

notice was issued by the accused on the complainant demanding return of cheque.

NEUTRAL CITATION NO: 2022/DHC/004133



7. Learned counsel for the accused has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *M.S. Narayana Menon @ Mani v. State of Kerala & Anr.*¹, *Prakashan v. P.K. Surenderan*² and the decision of this court in the case of *Kulwinder Singh (the present complainant himself) v. Kafeel Ahmed*³ and it is submitted that the instant appeal is misuse of the process of law.

8. I have heard the submissions made by learned counsel appearing on behalf of the parties and perused the record.

9. In paragraph 8 of the impugned judgment, the learned court below has rightly observed that as the execution of the cheques have been duly proved, the presumption of Section 139 of the NI Act comes in favour of the complainant and initial burden of proof shifts upon the accused, who has to rebut the presumptions in order to raise a reasonable probable defence in his favour. The learned court below has also noted that a suggestion was given by the accused to the complainant that the complainant is engaged in money financing. The complainant in his cross-examination has admitted that he is engaged in the work of money financing but in the instant case, he has stated that he had offered friendly loan to few of his friends. The court below has also noted that the complainant is income tax payee since last five years and had filed the Return of two years prior to filing of the complaint but did not disclose the aforesaid friendly loan in his Income Tax Return.

¹ (2006) 6 SCC 39

² (2008) 1 SCC 258

³ (2013) SCC OnLine Delhi 34



10. The trial court has doubted the version of the complainant

NEUTRAL CITATION NO: 2022/DHC/004133

absence of any source of the arrangement for fund of Rs.70,000/- to the accused and under the circumstances, the learned court below has held that the complainant was not given the cheque against any admitted liability. It is to be noted that with respect to the same appellant, another complaint case was filed by him against one *Kafeel Ahmed* and in the said complaint case also he alleged that a friendly loan of Rs.9,30,000/- was given to one *Kafeel Ahmed*. The said *Kafeel Ahmed* was the witness in the instant case and the present respondent accused was witness in the case of *Kafeel Ahmed*. Since the cheque in the case of *Kafeel Ahmed* was also dishonoured thereupon, the complainant filed a case under Section 138 of the NI Act and the learned trial court in that case after considering the evidence and material available on record acquitted *Kafeel Ahmed* and dismissed the complaint of the present complainant. The present complainant preferred CRL.L.P. No.478/2011 before this court. This court vide order dated 04.01.2013 in CRL.L.P. No.478/2011 ***Kulwinder Singh v. Kafeel Ahmed (supra)*** dismissed the appeal while recording following observations in paragraph No.7, which is reproduced as under:

7. *The case of the petitioner in nutshell is that he had been approached by the respondent and he had advanced a loan of Rs.9,30,000/- in the first instance. If such a huge amount of money is advanced as a loan to the respondent, the petitioner ought to have shown to the court concerned as to the source from where he had generated such a huge amount. In his examination/cross-examination, he states that he had sold his machinery but he failed to produce any record to that effect. He has not reflected the loan advanced to the respondent in his income-tax return nor is he able to tell to the court the Ward in which the income-tax return is filed. The learned Magistrate has rightly placed reliance on the provisions of Section 269 SS of the*



Income-Tax Act wherein it is specifically laid down that if a loan is advanced which is more than Rs. 20,000/-, it has to be by way of writing reflected in the books of account but nothing of that sort has been done in the instant case. Obviously, this clearly creates a doubt regarding the truthfulness of the stand taken by the petitioner that he had advanced a loan of Rs. 9,30,000/- to the respondent. Moreover, the presumption of law which is to be drawn in favour of the drawee of the cheque, namely, the petitioner, that the cheque has been issued to him for the valid discharge of his debt, gets dislodged by a plausible explanation furnished by the respondent/accused wherein he states that he was a member of a committee where he was contributing an amount and the petitioner used to take two duly signed cheques from each of the member. These facts get verified from the testimony of two other independent witnesses DW-2, Gulam Moinuddin and DW-3, Masoom. Their testimony has not been dented. So this clearly establishes that the petitioner was running some kind of committee and was taking two security blank cheques duly signed by the member. The respondent has taken the plea that he had issued two cheques in consecutive order sometime in the middle of the year 2004 when he was a subscriber to a committee. One cheque for a sum of Rs. 18,000/- was encashed in the month of July, 2007. This further lends strength to the version of the respondent/accused. It is the case of the respondent that the second cheque which was bearing an earlier number 593765 and was signed by him was sought to be retrieved by him from the petitioner but the petitioner stated that the cheque has been lost while as he surreptitiously presented the cheque after filling up the amount in the cheque to the tune of Rs. 9,30,000/-. This seems to be fairly possible and creates a doubt in the case of the petitioner. The basic principle in criminal law is that the guilt of the respondent/accused must be proved beyond reasonable doubt and if there is a slightest doubt about the commission of an offence then the benefit has to accrue to him. In the instant case also this doubt has been created by the respondent by adducing evidence. I, therefore, feel that the benefit of this doubt has been rightly given by the trial court to the respondent and he has been rightly acquitted.



11. A perusal of the finding given by this court in the case of same complainant shows that a doubt was created by the respondent therein by adducing evidence with respect to the cheque in question and accordingly, the appeal preferred by the present complainant against *Kafeel Ahmed* was dismissed.

12. I have considered the submissions made by learned counsel for the parties and I am of the opinion that in the instant case, no interference is called for in exercise of power under Section 378 of the Cr.P.C. The respondent-accused has discharged his burden while placing reliance on a notice issued to the accused that the cheques in question were not issued against any admitted liability but were issued towards security being member of the committee. The complainant has not thereafter been able to prove that the cheques in question were issued to him against an admitted liability. No evidence has been adduced by the complainant thereafter. On the contrary, from the earlier decision, as referred above and the evidence adduced in the instant case, would clearly reveal that the appellant is engaged in the business of money lending. He has not disclosed the loan extended to the respondent. Without any license he cannot engage himself in the business of money lending. These are the findings recorded by the court below.

13. Under the aforesaid circumstances, this court is not inclined to interfere into the impugned order. Accordingly, the instant appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 11, 2022

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