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

% *Order pronounced on 07.09.2022*

+ CRL.L. P.587/2016

JAGDISH KUMAR BAJAJ Petitioner

Through: Ms. Naina Bajaj, Advocate.
versus

STATE & ANR. Respondents

Through: Mr. N.S. Bajwa, APP for State.
Mr. J S Malik, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has filed this petition under Section 378 Cr.P.C. praying for grant of leave to appeal against the judgment and order dated 01.09.2016 passed by the learned Metropolitan Magistrate (the MM), South Saket District Court in Complaint Case No.1663/2015.
2. By the said order the the respondent No. 2 has been acquitted in a complaint under Section 138 Negotiable Instrument Act (for short "NIA").
3. In brief the case of the petitioner is that he had filed a complaint regarding the dishonour of the cheque bearing No. 308067 dated 30.10.2011 for an amount of Rs.2 lakhs. This cheque was received from the respondent No. 2 as return of the loan given on 30.10.2011 by the complainant to the accused. The accsued is stated to be a government teacher at Ambala who approached the present petitioner/complainant through one Sh. Ajay Kumar Arora on or around 29.10.2011 for an urgent need of money amounting to Rs.2 lakhs. On recommendations of Sh. Ajay Kumar Arora,

petitioner/complainant advanced the said loan for a month in cash after withdrawing the same from his bank account and this amount was paid in the presence of Sh. Ajay Kumar Arora at Delhi. The cheque for the same date was handed over by respondent No. 2 to the petitioner. The respondent No. 2 promised to pay back the amount within 30 days, otherwise the said cheque could be deposited. Since, no money was paid by respondent No. 2 after the expiry of 30 days, so the petitioner/complainant deposited the cheque in his bank in the 4th week of January, 2012 as per the assurance given by respondent No. 2 to honor the same but the cheque was dishonored with remarks on the bank memo “insufficient funds”.

3.1. A legal notice was served and thereafter the present complaint was filed. The complaint was initially filed in Delhi but in view of the judgment of Hon’ble Supreme Court, the case was transferred to Ambala, where the accused was admitted on bail and thereafter notice under Section 251 Cr.P.C. was framed. Both the parties also tried mediation but the same was not successful. Witnesses were examined, statement of the accused/respondent No. 2 was recorded. The case was transferred back to Delhi, in view of the amendment in the NI Act and complaint was dismissed vide impugned order.

3.2. The order has been challenged by filing the present petition for special leave to file an appeal. Alongwith the present application, the proposed appeal has also been filed on record.

4. Notice was issued. Reply has been filed by the accused/respondent No. 2.

4.1. Sum and substance of his defence is that the cheque in question was given to Sh. Ajay Kumar Arora, who is a friend of present petitioner as

security regarding a property deal. The said property deal did not mature and respondent No. 2 returned the amount of Rs.3.5 lakhs through cash and cheques. The present cheque was given as security which was to be returned to respondent No. 2 on full payment but the same was not returned. It has been further mentioned that there is no written proof on record like receipt or promisory note evidencing that the loan of Rs.2 lakhs was given by the petitioner to respondent No. 2.

5. Rejoinder has been filed on behalf of the petitioner/complainant reiterating the facts in the present application. It has been submitted that recently another cheque was also found with Sh.Anil Kumar. The petitioner/complainant has no concern with any property dealing and the cheque in question was handed over by respondent No. 2 to the petitioner against his legal debt.

5.1. Initial theory of the respondent was that there were two cheques given to Sh. Ajay Kumar Arora, out of which one cheque has been taken back and other was found with Sh. Anil Kumar, so the cheque in question has no concern with any such property deal or the cheques given as security for the finalisation of the said deal.

6. Arguments have been heard. Both the parties have also filed their written submissions in support of their contentions. My considered view is as under:

6.1. In the judgment in question dated 01.09.2016, the learned M.M. has reached to a conclusion that the complainant has failed to establish his case beyond reasonable doubt and the accused has successfully rebutted the presumption arising against him, hence the accused has been acquitted. The learned MM has observed that in the complaint filed by the

petitioner/complainant, there is no mention of the month and even of an year, when the alleged loan of Rs.2 lakhs was given by the petitioner/complainant to the respondent No. 2. Copy of the complaint is on record. I have gone through the same. I am in concurrence with the learned MM that no such details have been provided. Even the place where any such loan was given was also not mentioned. Learned MM has further stated in his order that there is nothing on record to show that the complainant has financial capacity to extend loan of Rs.2 lakhs. Again nothing is mentioned in the complaint as to from where the complainant had got Rs.2 lakhs in cash for advancing the loan. It is also to be noted that affidavit in evidence filed by the present petitioner/complainant is also on the same lines and no such details have been given even in the said affidavit.

6.2. As per the judgment, the main defence of the accused is that he has given the cheque in question as security for return of earnest money. In cross-examination of the petitioner/complainant it is noted that the petitioner/complainant stated that he does not know whether cheque in question was given by the accused as security to one Ajay Kumar Arora. Similarly, the said Ajay Kumar Arora has appeared as CW-2 and during his cross-examination he stated that he does not know whether cheque in question was given by accused as security regarding the settlement arrived in a property dispute. CW-2 has further admitted that cheque in question was not returned to the accused. The averments of the accused that the said cheque was given as security cheque for property transaction has not been specifically denied by the complainant as well as this witness, so in the opinion of learned Metropolitan Magistrate it casts a shadow of doubt on complainant's case.

6.3. I am in full concurrence with the view expressed by learned Metropolitan Magistrate in the impugned order dated 01.09.2016. During cross-examination, the present petitioner/complainant, stated that he did not know the respondent No. 2 before giving the loan in cash. He only knew respondent No. 2 through one Ajay Kumar Arora. As per him, since respondent No. 2 was a teacher and a responsible person that is why he gave him cash loan. He admits that the ink of date, signature and the amount on the cheque is the same but the name was written in different ink. He did not remember who had written the same. The petitioner has further stated that he had withdrawn the amount from his bank 2-3 days prior to the date of transaction but he had neither mentioned the same in his complaint nor in his affidavit.

6.4. The point to be noted here is that in the next line the petitioner/complainant shows that he was introduced to respondent No. 2 on 30.10.2011 but he had withdrawn Rs.2 lakhs prior to that why he had withdrawn a huge amount in anticipation; there is no explanation on record.

6.5. The petitioner denied any knowledge about the property transaction. The petitioner was also not aware about the name of the bank on which the cheque was drawn. In his cross-examination Sh. Ajay Kumar Arora has denied the suggestion that he had misused the cheque and filed the case through the complainant. He had also not mentioned the month, date and year, when this loan of Rs. 2 lakhs was given to respondent No. 2 by the petitioner.

7. Keeping in view the above facts and circumstances, it is not a fit case for grant of special leave to appeal.

8. The application for leave to appeal is hereby dismissed.

TALWANT SINGH, J

SEPTEMBER 07, 2022/mr

Click here to check corrigendum, if any

