



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

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Reserved on: December 07, 2023

Pronounced on: December 14, 2023

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CRL.L.P. 37/2022

SH. C. P. SINGH

..... Petitioner

Through: Mr. M.P.S. Kasana, Advocate

Versus

SH. VINOD PRASAD

..... Respondent

Through: Mr. Abhiesumat Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The petitioner, vide the present leave petition under Section 378(1) of the Code of Criminal Procedure, 1973 [*CrPC*], seeks leave to appeal for setting aside of the judgment dated 29.10.2021 passed by the learned MM (NI Act)-02, Central, Tis Hazari Courts, Delhi in CC No.510612/2016 titled as *C.P. Singh vs Vinod Prasad*, whereby the respondent was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [*NI Act*].

2. As per the complaint filed by the petitioner, the petitioner and the respondent were on friendly terms for the past 10-12 years. Sometime in the first week of January, 2016, the respondent had approached the petitioner for a friendly loan of Rs.15,00,000/- [*Rupees Fifteen Lakhs Only*] for his personal business needs and the same was extended by the petitioner to him sometime in the second week of January, 2016. In exchange for receiving the said friendly loan amount, the respondent had given original property documents of his property bearing No.B-181,

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Arjun Nagar, Nangli Vihar, Najafgarh, New Delhi-110043 to the petitioner as also *two* post-dated cheques bearing No.675042 dated 21.04.2016 for Rs.7,50,000/- [*cheque no.1*] and bearing No.675043 dated 29.04.2016 for Rs.7,50,000/- [*cheque no.2*], both drawn on State Bank of India, Branch Nangli Sakarwati, New Delhi. Thereafter, both the cheques were presented by the petitioner at United Bank of India, Branch Timarpur, Delhi, whereupon, cheque no.1 was returned vide return memo dated 25.04.2016 with the remarks '*Insufficient Funds*' and the cheque no.2 was also returned with the remarks '*Insufficient Funds*' vide return memo dated 02.05.2016. Aggrieved thereby, the petitioner sent a legal notice dated 06.05.2016 by registered post to the respondent. The same was duly replied to by the respondent. Thereafter, as the respondent failed to make the payment, the petitioner filed the complaint under Section 138 of the NI Act against him, sometime in July, 2016.

3. This Court, vide order dated 08.02.2022, issued notice. Further, vide order dated 12.05.2022, a fresh notice was directed to be served upon the respondent and the respondent was duly served. Finally, arguments were heard and judgment was reserved on 07.12.2023.

4. Learned counsel for the petitioner submitted that the petitioner has complied with all the procedural formalities as regards the offence under Section 138 of the NI Act; and that the respondent has not denied that the cheques in question belong to him and as such, the learned Trial Court has erred in opining that the petitioner was to prove that the signature(s) on the cheques in question were indeed the signature(s) of the respondent since the presentation of the cheques in question by the petitioner and their subsequent dishonour was nowhere denied by the respondent; and that



since, based on settled principles of law, there is a presumption in favour of the petitioner, therefore, the onus lay upon the respondent to prove the contrary and *lastly* since the petitioner had complied with all the requirements mandated under Section 138 of the NI Act, therefore, the respondent ought to have been convicted for the offence punishable under Section 138 of the NI Act.

5. Learned counsel for the respondent submitted that merely because the respondent has not denied that the cheques in question belong to him, therefore, the presumption under Section 139 read with Section 118 of the NI Act does not arise in favour of the petitioner; and that the petitioner has not been able to prove that there exists a legally enforceable debt as on the date of issuance of the cheques in question or on the date of their dishonour; and that the petitioner has not been able to prove his financial capacity as on the date of the advancement of the friendly loan amount; and that it was proved during the cross-examination of the petitioner before the learned Trial Court that the petitioner had no personal friendly relations with the respondent and on the contrary, the respondent has been able to prove that he was in no way involved with the petitioner and had not taken any loan from him, more so, whence, the respondent had proved before the learned Trial Court that on 31.01.2016, his bag was stolen from Vishnu Garden, Delhi and the same had various documents including the cheques in question and he had duly reported the said theft to the Police and *lastly* since the petitioner has been unable to satisfy the essential ingredients of an offence under Section 138 of the NI Act, therefore, the petition is liable to be dismissed.

6. This Court has heard the learned counsel for the parties and has also



perused the documents on record.

7. Before advertng to the merits of the matter, it is important to note, that to constitute an offence under Section 138 of the NI Act, the following essential ingredients are required to be fulfilled :

- a. *The 'drawer' has drawn a cheque for 'discharge' of an 'existing debt or liability'.*
- b. *The said cheque has to be presented 'within 3 months' or within its validity period, whichever is earlier.*
- c. *The cheque has to be dishonoured/ returned 'unpaid' due to 'insufficient funds' or due to it 'exceeding' the amount arranged.*
- d. *Apropos the above, the 'drawee' has to make a demand qua the payment of the cheque amount by way of a written legal notice to the 'drawer' of the cheque within a further period of '30 days' of the said dishonour.*
- e. *The drawer of the cheque must fail to make the payment of the cheque amount within a further period of '15 days' of receipt of the aforesaid notice.*

8. Once the aforesaid essential ingredients, having been set into motion, are complete in all respects, it is only then that the drawer of the cheque can be held to be guilty of the offence under Section 138 of the NI Act.

9. However, the same has to be read together with the provisions of Section 118(a) of the NI Act, which relates to the presumption to be made as regards *consideration* of every negotiable instrument as also the provisions of Section 139 of the NI Act which relates to the presumption in favour of holder of the cheque. Importantly, the said presumptions under Section(s) 118(a) and 139 of the NI Act, are to be raised at the first given instance and depending thereon, the burden shifts accordingly.

10. Facts of the present proceedings reveal that though the respondent



has not denied that the cheques in question belong to him, however, he has denied his signature(s) thereon. In fact, the respondent has neither admitted to the issuance of the cheques in question nor his signature(s) at any stage, be it at the time of framing of notice under Section 251 of the CrPC or at the time of recording of his statement under Section 313 of the CrPC or at the time of producing his evidence.

11. Considering the aforesaid, it was incumbent upon the petitioner to discharge the initial burden of proving the issuance of the cheques in question. Besides this, the petitioner, for reasons best known to himself, chose not to examine any other independent witnesses barring himself, especially none of the concerned Bank officials. The cheques in question are themselves shrouded in mystery as there is no clarity qua the facets of as to *firstly*, who had filled them, *secondly*, when were they issued and *lastly*, where were they issued. In essence thereof, as the petitioner was unable to discharge the statutory burden cast upon him, there was no occasion for the presumption under Section 139 of the NI Act arising in his favour.

12. In fact, the petitioner was unable to prove anything as regards to his alleged long standing friendly relations with the respondent or as regards any cogent reasons for him allegedly extending an amount of Rs.15,00,000/- to the respondent. Further, the petitioner has not been able to provide any reasonable explanation as to why and based upon what relationship, he had advanced the huge sum of Rs.15,00,000/- to the respondent without taking any receipt or acknowledgment thereof. So much so, the alleged property documents which were also mentioned by him in the complaint never saw the light of the day before the learned



Trial Court. Lastly, the petitioner was also unable to prove, beyond reasonable doubt, that there was any legally enforceable debt in his favour and against the respondent. In fact, the cross-examination of the petitioner was contrary to the case set up by him in his complaint.

13. On the other hand, the respondent, indeed raised a probable defence and was steadfast in his version all throughout, from his response to the legal notice till the proceedings before the learned Trial Court. Also, the respondent had already lodged a Police complaint qua the various documents including the cheques in question being lost much prior to the issuance of the cheques in question. Further, during cross-examination, the respondent had himself called a Bank official, who had indeed deposed that the property papers were in fact deposited in the Bank.

14. In view thereof, this Court finds that the impugned order passed by the learned Trial Court is well reasoned and balanced as it has carefully taken note of all the factors necessary for deciding a complaint under Section 138 of the NI Act and has accordingly adjudicated upon the present dispute.

15. Accordingly, finding no infirmity with the impugned order dated 29.10.2021 passed by the learned MM (NI Act)-02, Central, Tis Hazari Courts, Delhi in CC No.510612/2016 titled as ***C.P. Singh vs Vinod Prasad*** and after considering the factual matrix involved coupled with legal position at hand, the present petition, alongwith the pending application, if any, is dismissed in the above terms.

SAURABH BANERJEE, J

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