



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

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Date of Decision: 11.01.2024

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CRL.L.P. 27/2024 & CRL.M.A. 1056/2024

OMBIR

..... Petitioner

Through: Mr. S.Chakraborty, Mr.Mahender
Singh Gehlan, Advocates

Versus

AYUSH GOEL

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 378(1) and (4) Cr.P.C., the petitioner/complainant seeks leave to appeal against the judgment dated 26.10.2023 passed by the trial court in CC No.33055/2019 titled as 'Ombir v. Ayush Goel', whereby the respondent has been acquitted.

2. Pithily put, the proceedings arose on account of a cheque of Rs.5 lacs alleged to have been issued by the respondent in discharge of loan, which was dishonored upon presentation. The petitioner issued a demand notice and upon respondent's failure to pay the cheque amount within the stipulated period, the subject complaint came to be filed under Section 138 of the Negotiable Instrument Act (hereafter, '*NI Act*'). The complainant, in his complaint, alleged that he had advanced a sum of Rs.5 lacs to the respondent on different occasions i.e., Rs.1 lacs in the month of July, 2018,



Rs.50,000/- in the month August, 2018 and Rs.3,50,000 in the month of October, 2018, with an understanding that the said sum would be paid within a period of 9 months. The subject cheque was issued by the respondent, which when presented for encashment, was dishonoured vide return memo dated 03.07.2019 with the remarks 'Account Closed'.

3. The petitioner contends that the trial court erred in observing that the petitioner had failed to show the source of Rs.5 lacs, which was given to the respondent as loan. In support of submissions, reference has been made to the statement of the respondent who appeared as DW-1, wherein he admitted to the earlier transaction of loan for Rs.3 lacs between the parties.

4. A decision of acquittal, strengthens the presumption of innocence in the favor of the accused. At the same time, the appellate court, while considering a leave to appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The appellate court should be slow in reversing an order of acquittal passed by the trial court.¹ The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. v. State of Himachal Pradesh² as under:-

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14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189])

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by

¹ Jafarudheen & Ors. v. State of Kerala, (2022) 8 SCC 440,

² (2020) 10 SCC 166



ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Arulvelu [Arulvelu v. State, (2009) 10 SCC 206] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636])"

xxx"

5. In the present case, the complainant has alleged to have advanced a loan vide three transactions of Rs.1 lac s, Rs.50,000/- and Rs.3.5 lacs in the months of July, August and October, 2018 respectively. The complainant has further stated that the said sum was arranged by way of personal loan from bank, money received from LIC policy and amount borrowed from relatives. The said money was stated to have been advanced to the respondent as loan. The petitioner had however, failed to place on record any documentary material of loan arranged from LIC or Bank before the trial court. Further, in his cross-examination, the petitioner stated that he had handed over the loan amount in the presence of one Pawan, who was however not examined. Concededly, there is no receipt or any other document on record showing receipt of Rs.5 lacs by the respondent. Indeed, the petitioner's case is based on the cheque issued by the respondent. In her evidence, mother of the accused, who appeared as DW-2 has explained that the petitioner being a police official had forcibly taken away 5/6 cheques including the subject cheque and in this regard a police complaint had also



been filed. The respondent by raising such defence had been able to rebut the presumption under Section 139 of the NI Act and thus, the onus lies on the petitioner to prove his financial capacity.

6. As noted above, the petitioner made out a case that the money was arranged from three different sources however, he has failed to substantiate his defence qua the money raised from bank and the LIC. Though the petitioner had relied on an entry of Rs.4 lacs received from his sister however, the same in itself is not enough to discharge the burden of proof put upon him.

7. In view of the above, I find no ground to entertain the present petition. The appellant has failed to make out a case that the conclusion of the trial court is manifestly unjust and unreasonable, based upon erroneous interpretation of the law and facts of the case. There is no perversity in the impugned judgment. The leave petition alongwith pending application is accordingly dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 11, 2023

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