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

\+ CRL.L.P. 66/2024 and CRL.M.A. 3663/2024

DES RAJ SETHI ..... Petitioner

Through: Mr.Kamal Sethi, Advocate

versus

KRISHAN GOYAL ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>
% **05.02.2024**

1. The present petition has been instituted by the petitioner/appellant under Section 378(1) read with Section 482 Cr.P.C. seeking leave to appeal against the judgment of acquittal dated 23.12.2023 passed by learned MM in Complaint Case No.32057/2019 arising out of Section 138 NI Act.

2. The facts, as noted in the impugned judgement, are as under:-

> *"xxx*
>
> *2. The substance of allegations, as contained in the complaint, are as follows:*
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> > *A. That accused approached the complainant for a loan of Rs.3,50,000/-. Initially, the complainant refused to give the loan amount as the accused did not have any security against which the loan could be sanctioned. The accused made repeated requests and showed immediate and urgent need for the abovesaid amount to the complainant. That the complainant considering such requests, agreed to advance the loan*

of Rs.3,50,000/- to the accused. That in order to secure this loan amount, the accused herein mortgaged the title documents of the property No. 20/37, Ground Floor, West Patel Nagar, New Delhi including the registered agreement to Sell and GPA to the complainant by the way of Equitable Mortgage against which the loan was advanced.

B. That the complainant advanced the loan on good faith to the accused in the sum of Rs.3,50,000/- on 02.04.2013 against the said property which was repayable by him @24% interest per annum in 12 EMI's of Rs.36167/- each. Accordingly, the accused entered into an agreement bearing No.3657 with the complainant. Thereafter, the accused has made payments timely and complainant returned all the aforesaid title documents related to Mortgaged property to the accused and closed the case.

C. That the accused again approached the complainant in the month of August, 2014 and requested him to advance a short term cash loan of Rs.1,50,000/- against the property bearing No. 20/37, Ground Floor, West Patel Nagar, New Delhi-110008 by way of Equitable Mortgage. The complainant agreed to advance the cash loan of Rs.1,50,000/- to the accused on 22.09.2014.

D. That to discharge his liability and to make a payment of the above said loan amount, the accused issued two cheques i.e. cheque bearing No.226494 for Rs.1,10,000/- dated 21.01.2015 and cheque No. 226495 for Rs.50,000/- dated 01.03.2015, both drawn on Vijaya Bank, Ram Nagar, New Delhi in favour of the complainant.

E. On assurance of the accused, the complainant presented the cheque bearing No. 226494 for Rs.1,10,000/- dated 21.01.2015 issued by the accused to his Punjab & Sind Bank, S.S.Mota Singh School, *Janakpuri, New Delhi-58, the said cheque got dishonoured for the reason "Kindly Contact the Drawer/Drawee Bank and please present again" vide cheque return memo dated 17.02.2015.*

F. That thereafter, the complainant sent the accused a legal notice dated 05.03.2015 through his counsel.

xxx"

3. The appellant/complainant, in his evidence, led the following evidence to prove its case: cheque in question (Ex. CW1/1), Return Memo dated 17.02.2015 (Ex. CW1/2), legal notice dated 05.03.2015 (Ex.CW1/3), postal receipt (Ex.CW1/4) and Tracking Report (Ex.CW1/5).

4. The accused/respondent appeared at the stage of Section 251 Cr.P.C., and though admitted his signatures but denied filling of the other details on the subject cheque. The respondent took the defence admitting that he took a loan of Rs.3,50,000/- from the complainant in the year 2013. The respondent, in his statement under Section 313 Cr.P.C., stated that 12 blank signed cheques were given as security alongwith property documents in respect of his *Shop No.20/37, Ground Floor, Old Market, West Patel Nagar*. The said loan amount stood paid however, the complainant retained two cheques. He also denied taking further loan of Rs.1,50,000/-. The respondent also examined himself, appearing as DW-1 and reiterated the aforesaid defence.

5. 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 principles guiding the Court in such situations has been succinctly delineated by Supreme Court in

Anwar Ali & Anr. *v.* State of Himachal Pradesh[1] as under:-

"xxx

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 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"

6. In the present case, the complaint was filed under Section 138 of the NI Act. The respondent has admitted his signatures on the subject cheque however, has denied existence of any debt or liability. Section 118(a) and Section 139 of the NI Act provide that the Court shall presume the liability of the drawer of the cheque for the amounts for which the cheque was drawn. The presumption is a presumption of law, as distinguished from a presumption of fact. The presumption is however, rebuttable and the onus lies on the accused to raise a probable defence. The standard of proof for

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[1] (2020) 10 SCC 166

rebutting the presumption is that of preponderance of probabilities. However, on the aspect of as to how the presumption is rebutted, the Supreme Court in Basalingappa v. Mudibasappa[2] observed:-

> *"xxx*
>
> *25. We having noticed the ratio laid down by this Court in the above cases on Section 118(a) and 139, we now summarise the principles enumerated by this Court in the following manner:*
>
> *25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
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> *25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
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> *25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.*
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> *25.4. That it is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.*
>
> *25.5. It is not necessary for the accused to come in the witness box to support his defence.*
>
> *xxx"*

7. The Trial Court has also returned a finding about the issuance and

[2] (2019) 5 SCC 418

receipt of the demand notice stating therein that the same was duly delivered as per the principles enumerated in Section 114, Indian Evidence Act and Section 27 General Clauses Act.

8. Admittedly, the issuance of cheque and its dishonour is not in dispute. The accused has also admitted his signatures on the subject cheque. It is only the existence of any debt or liability which is disputed by him.

9. The appellant claims that he had advanced two loans to the respondent. At the time of advancing of the first loan of Rs.3,50,000/-, the parties entered into an agreement to sell and GPA w.r.t the property mentioned above. Further, 12 blank signed cheques were also given as security. The loan itself was advanced by way of a cheque. Admittedly, this loan stands repaid. The second loan of Rs.1.50 lac was a cash loan. Concededly, no document was executed at the time of the said second loan. The appellant though stated that a receipt was executed, but the same was never placed before the Trial Court. The Trial Court, in the impugned judgment, also noted that in the earlier loan, the complainant had charged interest @ 24% per annum. However, at the time of advancing second loan of Rs.1.50 lac, no such interest was charged and it was alleged that the accused owed a sum of Rs.1.60 lac. Although the respondent has not given any explanation as to why two blank cheques retained by the appellant were not demanded back however, the same would not stand in his way, as the complainant failed to place any material on record in support of his claim of existence of any debt or legal liability. As already noted above, the loan was a cash loan without any document of any nature to establish the same. The respondent had also established that the subject cheque belonged to the same series of cheques which were used in repaying the earlier loan and as such

was handed over as security at the time of the first loan transaction, which admittedly already stands paid.

10. In view of the aforesaid, I find no ground to entertain the present leave petition and the same is accordingly dismissed alongwith the pending application.

MANOJ KUMAR OHRI, J

FEBRUARY 5, 2024

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