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

Date of decision: 27.03.2024

\+ **CRL.L.P. 69/2024**

M/S SACHDEVA ENTERPRISES ..... Petitioner

Through: Mr.Vivek Singh, Mr.Harsh Chugh and Mr.Digvijay Singh, Advs.

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed seeking leave to appeal against the judgment dated 05.12.2023 passed by the learned Metropolitan Magistrate (NI Act)-03, Patiala House Courts, New Delhi District, New Delhi (hereinafter referred to as 'Trial Court') in CC No.45060/2016, titled ***M/s Sachdeva Enterprises v. Sh. Mohit @ Moni***, dismissing the said complaint filed by the petitioner herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').

Facts in brief

2. It is the case of the petitioner that in the year 2013, the petitioner gave an amount of Rs.1.50 crores to the respondent no.2 for

purposes of arranging for an Australian Visa and Immigration. Subsequently, as the respondent no.2 could not arrange for a Visa, the said amount was adjusted in an import deal of LED Bulbs consignments. After repeated requests, the respondent no.2 issued one post dated cheque for an amount of Rs.1.28 crores, which, however, upon presentation was returned dishonored with the remarks '*Account closed*' vide cheque return memo dated 06.05.2016. A legal demand notice dated 04.06.2016 was also sent to the respondent no.2, however, as the payment was not made by the respondent no.2, the above complaint was filed.

Submissions of the learned counsel for the petitioner

3. The learned counsel for the petitioner submits that the respondent no.2 had admitted the cheque in question. In this regard, he draws my attention to the statement of the respondent no.2 recorded before the learned Trial Court on 30.05.2019.

4. The learned counsel for the petitioner further submits that in view of the presumption prescribed under Section 118(a) and Section 139 of the NI Act, the learned Trial Court has erred in giving a benefit of doubt to the respondent no.2, and acquitting him of the charges. He submits that, in fact, the respondent no.2 had made contradictory statements in his statement recorded under Section 251 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') on 30.05.2019 and the one recorded under Section 313 of the Cr.P.C. on 05.04.2022.

Analysis and Findings

5. I have considered the submissions made by the learned counsel for the petitioner.

6. In the present case, the petitioner alleges that he had given an amount of Rs.1.50 crores '*in cash*' to the respondent no.2 without any documentation. Apart from the cheque in question, there is no other document in the hands of the petitioner.

7. The learned Trial Court appreciating the evidence led before it, and keeping in view the law governing the presumption under Section 118(a) and Section 139 of the NI Act, has observed as under:

> ***"18.*** *During cross-examination of CW-1 conducted on 10.02.2020, complainant deposed before the court that Sachdeva Enterprises is only engaged in the business of surplus (lot rejection items), garments and grey fabric. It was further deposed that Sachdeva Enterprises does not deal in any other business apart from the abovementioned business. CW-1 further deposed that accused had told him that he is into immigration business and was having a shop in partnership with some-Pappu, Gaurav, Dimple, who deals in imported LEDs, Headlamp of various imported cars. CW-1 further deposed that he did not have any documents in the hard form pertaining to the immigration business of the accused but the accused had shown him the documents at his residence and once at the shop of the accused in his laptop.*
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> ***19.*** *During cross-examination of CW-1 conducted on 20.02.2020, CW-1 deposed before the court that there was no written document/agreement executed between the complainant and the accused at the time of handing over the alleged amount of Rs. 1.5 Cr. The entire amount was allegedly handed over to the accused in cash. CW-1 further deposed that he had not given the alleged amount from Sachdeva Enterprises. He voluntarily deposed that the, amount was given by his mother. The amount was handed over by his mother to the accused and he was also present there. He*

further agreed that the alleged amount of Rs.1.5 Cr has not been shown in the ITR of Sachdeva Enterprises. CW-1 further stated that he had not claimed any receipt of the amount which he had given to the accused.

20. *The court is of the opinion that it is unlikely that a person would grant a huge amount of Rs.1.5 Cr in cash to another person without there being any written document acknowledging the same. Moreover, CW-1 has deposed before the court that alleged amount of Rs.1.5 Cr was given by his mother to the accused meaning thereby that there was no legally enforceable debt between the complainant and the accused.*

21. *In view of the above discussion, a doubt has been created in the mind of the court with respect to the liability of the accused for the aforesaid amount in favour of the complainant."*

8. I find no infirmity in the above findings of the learned Trial Court.

9. Accordingly, the present petition is dismissed.

NAVIN CHAWLA, J

MARCH 27, 2024/ns/RP

Click here to check corrigendum, if any