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

\+ CRL.L.P. 81/2024

M/S OCEAN LOGISTICS ..... Petitioner

Through: Mr. Harsh Vardhan Sharma, Advocate

versus

NAGENDER SHARMA ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **15.02.2024**

1. By way of present petition filed under Section 378(4) Cr.P.C., the petitioner seeks leave to appeal against the impugned judgment dated 11.12.2023 passed by the learned MM (NI Act), Rouse Avenue Courts, New Delhi in Complaint Case No.29902/2016 arising out of the proceedings initiated under Section 138 NI Act, whereby the respondent has been acquitted.

2. The petitioner/complainant preferred a criminal complaint contending therein that on the instructions of the respondent/accused, the complainant had despatched the goods from time to time for which the bills/invoices were raised and sent to the respondent. In discharge of his liability towards the three invoices, the respondent issued cheque bearing No.059750 dated 18.07.2012 for a sum of Rs.3,02,836/- drawn on UTI Bank Ltd., Palam Branch, Delhi in favour of the petitioner. The said cheque when presented for encashment, was dishonoured vide return memo dated 19.07.2012 with the remarks *'drawer's signature incomplete/ illegible/ differs/ required'*. Consequently, legal notice dated 16.08.2012 was statedly served on the respondent however, no payment was

made and thus, the subject complaint came to be filed under Section 138 of the NI Act. The respondent appeared and at the time of framing of notice set up his defence that no transaction occurred between him and the petitioner and that the cheque in question though given to the petitioner, was unsigned and blank and was given as a security. However, the cheque in question was misused by the petitioner. The respondent in support, summoned officer from the concerned bank as DW-3. The trial court returned a finding that the specimen signatures available in the bank are completely different from those appearing on the cheque. The petitioner did not lead any evidence in rebuttal on the said issue or on the aspect whether there existed any debt or liability. The petitioner produced three invoices (Ex.CW1/1A, Ex.CW1/1B and Ex.CWl/1C), which were admittedly computer-generated printouts. The same were however, not accompanied by a certificate under Section 65B of Evidence Act.

3. The law on Section 65B of Evidence Act is settled in terms of the decision of Apex Court in Anvar P.V. *v.* P.K. Basheer[1] and later reiterated in Arjun Panditrao Khotkar *v.* Kailash Kushanrao Gorantyal & Ors.[2] and Sundar @ Sundarrajan v. State by Inspector of Police[3] that production of certificate under Section 65B(4) of Evidence Act, 1872 is mandatory in case an electronic record is to be proved by way of a secondary evidence.

4. In the opinion of this Court, the trial court was right in not taking into account the computer-generated printouts. The trial court also noted that airways bills vide which the goods were claimed to have been sent, were never produced by the complainant in the trial. Another factor which swayed against the petitioner was that it had taken a stand that the cheque in question was issued in

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[1] (2014) 10 SCC 473

[2] (2020) 7 SCC 1

the presence of the manager and typist however, neither was an averment made in this regard in the complaint or in the affidavit of evidence of the complaint nor were they summoned in the trial.

5. Further, 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.[4] The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. *v*. State of Himachal Pradesh[5] as under:-

> *"xxx*
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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)]*
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> *"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]"*
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> *xxx"*

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[3] 2023 SCC OnLine SC 310

[4] Jafarudheen & Ors. v. State of Kerala, (2022) 8 SCC 440,

6. In view of above, I find no ground to entertain the present petition. Accordingly, the same is dismissed.

MANOJ KUMAR OHRI, J

FEBRUARY 15, 2024

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[5] (2020) 10 SCC 166