$~23

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

\+ CRL.L.P. 135/2023

M/S MAKE MY TRAVEL INDIA PVT. LTD ..... Petitioner

Through: Mr. Bharat Chugh, Mr. Mayank Arora, Mr. Prasoon S., Mr. Manoj Chopraand Mr. Mr. M. Choudhary, Advocates.

versus

GAURAV BHATIA ..... Respondent

Through: Mr. Suhail Sehgal and Mr. Prashant Drolia, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

<u>O R D E R</u>

% **22.05.2024**

1. The present appeal under Section 378(4) of the Cr.P.C. seeks the following prayers:-

> "It is most respectfully prayed that this Hon'ble Court may graciously be pleased to: -
> a. Call for the records of C.C. No. 615439/2016 titled as M/s Make my travel (India) Pvt Ltd Vs Gaurav Bhatia from the Court of Ms. Aditi Rao, Ld. Metropolitan Magistrate (NI Act)-03, South East, Saket Court, New Delhi;
> b. Set aside the impugned judgment dated 07.12.2022 passed by Ms. Aditi Rao, Ld. Metropolitan Magistrate (NI Act)-03, South East, Saket Court, New Delhi in C.C. No. 615439/2016 titled as M/s Make my travel (India) Pvt Ltd Vs Gaurav Bhatia;
> c. Pass any other order/orders and grant any other and/or further relief(s) which this Hon'ble Court may be pleased to deem fit in the facts and circumstances of the case.
> AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND AND SHALL EVER PRAY."

2. Learned counsel appearing on behalf of the petitioner submits that the

defence taken by the respondent during the course of the trial was that the payment reflected in his account by way of RTGS from the petitioner company's account was with respect to the professional services rendered by him. It is further submitted that a specific defence was taken by the respondent that the cheques were given as a security for advance payment of professional fees of Rs. 50,00,000/- by the company. It is submitted that during the course of the cross-examination of the Authorised Representative, no documents or invoice were put forward reflecting the services rendered to the company. It is also submitted that respondent did not examine himself in the defence.

3. *Per contra*, learned counsel appearing on behalf of the respondent submits that it has come on record by way of documents that on the amount through RTGS which was paid into the respondent's account, TDS was deducted, which as per the Income Tax Rules could not have been done. It is further submitted that the present petitioner company has no approval to extend any personal loan as claimed by them. It is reiterated that the amount received by the respondent by way of RTGS from the petitioner company was on account of professional services rendered by him.

4. Heard learned counsel for the parties and perused the record.

5. The respondent's defence that the money received in account from the petitioner company for reasons of professional services rendered by the respondent has not come on record by way of any document or invoice. The fact of specific defence taken by the present respondent that the amounts which were received by him were for professional services rendered and that the cheques were issued as security for an advance payment of those amounts transferred by the company, have not been *prima facie* supported

by placing documents on record.

6. Leave granted. The present criminal leave petition is allowed and disposed of. The same may be registered as criminal appeal and the registry is directed to number it accordingly. Pending application is also disposed of accordingly.

7. In the meantime, respondent is directed to furnish a personal bond in the sum of Rs. 15,000/- with one surety to the satisfaction of the Registrar General of this Court, before the next date of hearing.

CRL.A...(to be numbered)

8. List on 15.10.2024.

9. It is pointed out that the respondent is permanently residing in Australia. In view thereof, the respondent is permitted to appear through video conferencing.

AMIT SHARMA, J

MAY 22, 2024/*sn*

Click here to check corrigendum, if any