



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

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Date of Decision: 25.04.2024

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CRL.L.P. 207/2024

SUNIL JOSHI

..... Petitioner

Through: Mr. Manikant Singhal, Advocate.

versus

MANISH SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL. M.A. /2024 (To be numbered)

1. By way of present application filed under Section 5 of the Limitation Act, the petitioner seeks condonation of delay of 37 days in filing the present petition.
2. For the reasons stated in the application, the application is allowed and the delay of 37 days in filing the petition is condoned.
3. Application is disposed of.

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1. By way of present petition filed under Section 378(1) read with Section 482 Cr.P.C., the petitioner seeks to assail the judgment dated 18.12.2023 passed by learned M.M. (NI Act-07), South West, Dwarka Courts, New Delhi in Complaint Case No. 50004591/2016, arising out of proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). Vide the impugned judgment, the respondent was acquitted in the said complaint case.

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2. The facts, in a nutshell, are that the petitioner/complainant filed a complaint alleging that the respondent/accused, who was his brother-in-law, had approached him for financial help to the tune of Rs.5 lacs in the month of June, 2012. The said loan of Rs.5 lacs was extended to the respondent vide three different cheques bearing Nos. 739692, 739693 and 739694, all dated 27.06.2012. It has been further averred that it was agreed that the same alongwith periodical interest would be repaid within a period of three years. While initially, the periodical interest payments were made, however, respondent discontinued to pay the same after September, 2014. It was further stated that on 30.03.2016, the respondent issued two cheque bearing No. 481446 and 380106 both dated 28.06.2016 for Rs.2.65 lacs and Rs.5 lacs respectively both drawn on Punjab National Bank, Sector 10, Dwarka, New Delhi which, when presented for encashment, were dishonoured with the remarks “kindly contact drawer/drawee bank” vide return memo dated 12.07.2016. A demand notice dated 04.08.2016 came to be served upon the respondent, however, upon his failure to make the payment, the subject criminal complaint came to be filed.

3. On being summoned, the respondent appeared before the Trial Court and admitted to have taken the loan of Rs.5 lacs with interest @ 0.5%, and further stated that out of the same, an amount of Rs.3.35 lacs had already been paid by way of monthly instalments of Rs.12,500/-. Further, one of the subject cheques for the amount of Rs.2.65 lacs was issued as full and final settlement of the said loan. Insofar as other cheque of Rs.5 lacs was concerned, it was stated that the same was given as a blank cheque towards security. At the stage of statement under Section 313 Cr.P.C., it was additionally stated that 28 monthly instalments of Rs.12,500/- (Rs.10,000/-



towards principal amount and Rs.2,500/- towards interest) had been paid in cash as well as by cheque. Further, an amount of Rs.10,000 was also paid by the respondent from the account of his wife. It was further stated that the cheque of Rs.2.65 lacs was issued towards the full and final settlement of account and when the other cheque issued as security was demanded back, it was not returned by the petitioner on the pretext of him having misplaced it. At the stage of defence evidence, the respondent relied upon the transaction sheet of his cheque book [Ex. DW1/1 (OSR)], copy of bank account statement [Mark A] and certain WhatsApp chats [Ex. DW1/2] to substantiate his contentions.

Petitioner, on other hand, disputed the said contention and stated that though certain instalments were paid, the same were only towards payment of interest. It was further stated that even the said payments were stopped after September, 2014. The contention of one of the cheques being issued as security was also disputed by the petitioner, by stating that the same was issued for making payment of the principal amount of the loan i.e. Rs.5 lacs.

4. After a perusal of the entire evidence placed on record, learned MM came to the conclusion that the accused had been able to prove his defence that the cheques were presented for more than his liability as on date of presentation and has been able to successfully rebut the presumption of law.

5. The petitioner has contested the impugned order by contending that the order passed by the learned MM was passed without due appreciation of the facts and material placed on record. He has disputed the fact averred by the respondent before the learned MM and has further argued that the learned MM was incorrect in noting that he had failed to prove the essential requirements under Section 138 NI Act.



6. Concededly, in the present case, the respondent has admitted his signatures on both the cheques in question, which were drawn on his bank account. Resultantly, a presumption arose in favour of the petitioner under Section 118(a) read with Section 139 of the NI Act. To rebut the said presumption, the respondent/accused had put forth the case that he had paid certain amount through 27/28 instalments of Rs.12,500 (both towards principal amount as well as interest) and that subsequently, a settlement was arrived at between them wherein the respondent issued a cheque of Rs.2.65 lacs as full and final settlement. It was also the case of the respondent that the other cheque for the amount of Rs.5 lacs was a blank cheque issued as security.

7. Further, while the factum of loan is not disputed, the bone of contention between the parties relate to the repayment of the said loan. While the petitioner had argued that the subject cheques were issued towards repayment of the entire principal amount as well as the remaining interest, the respondent had contended that one of the cheques was issued in lieu of the settlement arrived at between them, whereas the other was a security cheque issued to secure the payment of the loan.

8. The learned MM, after a due consideration of the contentions raised by the parties, came to the conclusion that the petitioner had failed to prove its case and the fact sought to be put forth by him were not logically and legally tenable. A perusal of the impugned judgement would show that it was observed that the petitioner had failed to prove an essential condition for calculating the liability of the accused i.e. the agreed period of the loan and the agreed rate of interest.

9. Insofar as the aspect of time period of the loan is considered, it was



noted that while the petitioner had averred that the loan was for a period of three years, the respondent states that there was no determination upon the same and that the only determination in this regard was that the loan would be repaid by way of 50 monthly instalments. Further, in the cross-examination, the petitioner deposed that the same was to be paid within 1 year. Consequently, it was observed in the impugned judgement that contradictory statements made by the petitioner qua the aspect of time period of loan and that the same was a material contradiction in light of the specific facts of the case.

10. Further, on the aspect of rate of interest, the impugned judgement notes that while the respondent contended that there was no agreed upon rate of interest and the only determination was that out of the monthly instalment of Rs.12,500/-, Rs.2,500/- would be towards interest. The petitioner, on the other hand, in his cross-examination, had deposed that the rate of interest was agreed to be 2.5%. Consequent to the same, learned MM observed that petitioner's contention of the interest rate being 2.5% stood contradicted by his own case. Noting the various payments made by the respondent, which the petitioner himself stated to be towards interest, it was concluded that the issuance of cheque of Rs.2,65,000/-, statedly towards balance interest payment, was not logically tenable: if the time period was considered to be one year, the interest liability would come to be Rs.1,50,000/-, while if the time period was considered to be three years, the interest liability would come out to be Rs.4,50,000/- and in either situation, it could not be understood how the cheque amounting to Rs.2,65,000/- could be towards interest payment.

11. After noting the same, learned MM observed that the accused had



been able to prove his defence that the cheques were presented for more than his liability on the date of their presentation and had successfully rebutted the presumption of law. Upon a perusal of the impugned judgement, this Court finds no infirmity with the observations made by the learned MM.

12. Further, a decision of acquittal, strengthens the presumption of innocence in favor of the accused. The appellate court, while considering a leave to appeal, has a duty to satisfy itself as to whether 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 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],

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

² (2020) 10 SCC 166



*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”

13. After consideration of the facts and circumstances of the case, I find no ground to entertain the present petition. The petitioner has failed to make out a case that the conclusion of the trial court is unjust and unreasonable, and based upon erroneous interpretation of the law and facts of the case. Resultantly, the application for leave to appeal is dismissed. Consequently, the leave petition is dismissed.

**MANOJ KUMAR OHRI
(JUDGE)**

APRIL 25, 2024

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