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

\+ CRL.L.P. 217/2024, CRL.M.A. 13012/2024 and CRL.M.A. 13013/2024

PARVEEN KUMAR .....Petitioner
Through: Mr. Deepak Bhardwaj, Advocate

versus

CHARANJEET SINGH .....Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

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

% **24.07.2024**

1. The present petition has been filed by the petitioner/complainant seeking leave to assail the judgment of acquittal dated 15.12.2023 passed in Case No. 2189/2021 titled as "Parveen Kumar vs Charanjeet Singh" by the court of learned JM-I, Shahdara District, Karkardooma Court, Delhi, whereby respondent/accused has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881.

2. Facts of the present case in a nutshell, are that the respondent/accused was well known to the petitioner/complainant and keeping in mind their friendly relations, the respondent approached the petitioner/complainant for a friendly loan of Rs. 2,00,000/- which was provided by the petitioner in cash on 04.06.2021. The respondent in discharge of the said liability had issued a cheque bearing no. 492175 dated 26.07.2021 drawn on Canara Bank, Karkardooma, Delhi-92 Branch. The said cheque on presentment was returned dishonoured vide return memo dated 09.08.2021 with the remarks

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“funds insufficient”. A legal demand notice dated 06.09.2021 calling upon the respondent to make payment was sent through speed post on 09.09.2021, however the amount remained unpaid. Hence the filing of the criminal complaint.

3. The learned court below, after examining the evidence produced by the respective parties has come to the conclusion that the respondent/accused had successfully managed to rebut the presumption raised against him by showing material inconsistencies in the case of the petitioner/complainant, thereby proving that the said cheque was not given in discharge of the legal debt. Aggrieved by the aforesaid order dated 15.12.2023, the petitioner/complainant has filed the present petition seeking leave to appeal.

4. Learned counsel for the petitioner submits that the impugned order is illegal and has been passed without considering the proper facts and law. It is contended that the learned trial court has erred in not appreciating the deposition by Sh. Vikram Anand/ DW-3 in his examination in chief. It is stated by the learned counsel that the said cheque was issued by the respondent for repayment of a loan advanced by the complainant and that the respondent was under a legal obligation to repay the said amount. It is further stated that the Ld. Trial Court has failed to appreciate the fact that no document has been produced by the respondent in favour of his submission that the said cheque was given as a security cheque for running a canteen at GTB Hospital, in which, the complainant and the accused’s uncle Param Jeet Singh were partners.

5. I have heard the submissions made by the learned counsel and perused the records available.

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6. Before proceeding to the merits of the case, it would be fruitful to restate the legal position regarding offences under Section 138 NI Act. An offence under Section 138 NI Act is made out, when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque, which has been drawn on an account maintained by the drawer, ought to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: MSR Leathers v. S. Palaniappan & Anr.[1], Charanjit Pal Jindal v. L.N. Metalics[2] and N. Harihara Krishnan v. J. Thomas[3].]

7. The allegations against the present respondent are that he had obtained a friendly loan of Rs. 2 lacs from the petitioner and in discharge of the said liability had issued the subject cheque, which got dishonoured on presentation.

8. A perusal of the impugned order and the Trial Court records reveal

[1] (2013) 1 SCC 177
[2] (2015) 15 SCC 768
[3] (2018) 13 SCC 663

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that respondent did not dispute his signatures on the cheques in question however, stated that the said cheque was issued as a blank security cheque when he took a canteen on lease from the complainant, wherein his uncle was also a partner. The said cheque was issued in 2016 for security of the fitting and fixtures of the canteen. The respondent denied having taken any loan from the complainant and alleged that the said cheque was misused by the complainant. The respondent had chosen to rebut the presumption raised against him by relying on cross examination of CW1 i.e. the complainant and by way of independent evidence exhibited.

9. In Basalingappa v. Mudibasappa **(2019) 5 SCC 418**, the Hon'ble Apex Court, after taking note of several judicial precedents, has summed up the relevant principles as under:

> *"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in 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.*
>
> *25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
>
> *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.*
>
> *25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139*

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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."
(Emphasis supplied)

10. It has been the case of respondent that he was able to rebut the presumption raised in favour of holder/complainant by raising probable defence. As discernible from the record, the petitioner has failed to bring sufficient evidence on record in order to substantiate the fact that he shared friendly relations with the accused to the extent that he would give a friendly loan to him. A perusal of the cross examination of the petitioner would also show certain inconsistencies and contradictions in his testimony when enquired as to the profession of the accused. He also deposed as to not being aware if the accused was managing a canteen in GTB Nagar with his uncle, despite being a visitor at the canteen and having statedly known the accused's uncle since 2009. In addition, no bank statement has been placed on record by the petitioner to corroborate the withdrawal of the said amount of Rs 2 lacs. The petitioner has also stated that the said loan was advanced to the respondent in cash in his office where no person was present. With respect to the advancement of the security cheque by the respondent, the respondent had cited 2 witnesses namely Durgesh/DW2 and Vikram Anand/DW3 who had corroborated his version of the story. A perusal of the testimony of DW2, who was a cashier in the said canteen, would show his deposition to the extent that the complainant and the accused's uncle were partners in the said canteen. DW2 also deposed that the respondent had taken the canteen from the very same uncle. To a similar extent is the testimony of DW3 who has stated that the canteen is of the complainant and

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"mama ji" i.e. the uncle of the accused and that the accused had given a cheque of Rs 2 lacs to his *"mama ji"*.

11. It is based on these indiscrepancies that the learned trial court concluded that respondent/accused had managed to rebut the presumption raised against him by showing that the case of the petitioner/complainant itself, is improbable and therefore, respondent ought to have been acquitted for the offence under Section 138 of the Negotiable Instruments Act. This court is inclined to concur with the decision of the trial court. The respondent was able to establish his defence on preponderance of probabilities. It is the opinion of the Court that the case of the petitioner, in light of the contradictions, creates a substantial doubt. After perusing the documents available on record, the trial court rightly come to the conclusion that the accused had successfully rebutted his presumption by highlighting these very inconsistencies in the case of the prosecution. It is further seen that once the burden of proof had shifted back to the petitioner, he was unable to prove his case beyond a reasonable doubt.

12. In view of the aforesaid facts and circumstances, this court finds no ground to grant leave to appeal. Accordingly, the present petition stands dismissed alongwith the pending applications.

MANOJ KUMAR OHRI, J

JULY 24, 2024/js

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