



* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: December 20, 2023.
Pronounced on: January 05, 2024*

+

CRL.L.P. 438/2022

**BHAGWATI DEVI THROUGH L.RS. PRAMOD
KUMAR**

.....Petitioner

Through: Mr. V.K. Sharma, Advocate

Versus

SH. BALRAJ SINGH CHOPRA

..... Respondent

Through: Mr. Suresh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

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J U D G M E N T

1. The petitioner/complainant, vide the present leave petition under Section 378(4) of the Code of Criminal Procedure, 1973 [**CrPC**], seeks leave to appeal against the impugned order dated 29.06.2022 passed by the learned Metropolitan Magistrate, East, Karkardooma Courts, Delhi [**Trial Court**] in Complaint Case No.58354/2016, whereby the respondent/accused has been acquitted qua the alleged commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [**NI Act**].

2. As per the facts alleged by the petitioner (since deceased), the petitioner as landlady of the premises being property no.A-2/188, Harsh Vihar Main, 20 Foota Road, Delhi [**property**] entered into a Rent Agreement

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dated 03.08.2011 with the respondent whereby the respondent took on rent the first floor of the aforesaid property for a monthly rent @ Rs.3,600/- to be increased by 10% after the expiry of 11 months. The respondent handed over cheque bearing number 151026 dated 16.08.2012 for a sum of Rs.16,079/- drawn on the Janata Co-operative Bank Ltd., East Krishna Nagar, Delhi-110051 to the petitioner in lieu of rent w.e.f. 03.04.2012 to 02.07.2012 and electricity charges.

3. On the presentation of the said cheque for encashment by the petitioner, it was dishonoured vide return memo dated 03.09.2012 for the reasons '*Funds Insufficient*'. The petitioner then sent a Legal Notice dated 20.09.2012 to the respondent which was returned undelivered for the reasons that the respondent did not reside at the said address. Since the respondent failed to make the payment, the petitioner filed the complaint dated 07.10.2017.

4. The learned Trial Court issued summons to the respondent vide order dated 09.01.2013, whereafter notice under Section 251 of the CrPC was issued to the respondent on 24.03.2014, wherein he raised his defence that though the cheque in question was signed by him, however, it was never handed over to the petitioner, as it was given to an Insurance Agent from T.R. Sawney Motors for the purpose of insurance of his vehicle, which was returned to him and was later stolen from his house on 30.08.2012. The respondent thereafter moved an application under Section 145(2) of the NI Act which was allowed and the petitioner was duly cross examined. Vide order dated 16.04.2018, the LRs of the deceased petitioner were impleaded

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and the statement of the respondent under Section 313 of the CrPC was also recorded vide order dated 16.10.2019.

5. Vide the impugned order dated 29.06.2022, the learned Trial Court acquitted the respondent of the offence punishable under Section 138 of the NI Act, holding that since the respondent had admitted his signature on the cheque, but the onus under Sections 139 of the NI Act fell upon the respondent to rebut the same, and the respondent had successfully rebutted as there were serious contradictions in the testimony of the petitioner which created serious doubts as to the veracity of the complaint. Further, the petitioner failed to overcome the contradictions and omissions in her case to establish a legally enforceable debt in her favour, leading to the respondent being acquitted of the alleged offence under Section 138 of the NI Act.

6. Before this Court, learned counsel for the petitioner submits that the learned Trial Court failed to take into consideration that the relationship of landlord and tenant was duly established between the petitioner and the respondent and that all requirements under Section 138 of the NI Act were duly fulfilled as the cheque in question was handed over by the respondent to the petitioner in lieu of the rent as well as electricity charges and since the respondent had admitted his signatures on the cheque in question, all the material requirements of Section 138 of the NI Act, were fulfilled.

7. Learned counsel for the petitioner further submits that the respondent had claimed that the said cheque was for a sum of Rs.6,079/- and that the same was given to an Insurance Agent from T.R. Sawney Motors for the purpose of insurance of his vehicle which was returned to him as some of the

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denting and painting was still remaining, however, the Trial Court has erred in not considering that the same was never proved by the respondent and that the witness from T.R. Sawney Motors also did not support the case of the respondent.

8. *Per contra*, learned counsel for the respondent submits that there is no error or perversity in the impugned order as the learned Trial Court has rightly held that the petitioner had failed to establish its case beyond reasonable doubt. Learned counsel for the respondent further submits that the cheque in question was never handed over to the petitioner and that in any event, the same was stolen from the premises of the respondent on 30.08.2012 and the respondent had also made a police complaint in this regard.

9. Learned counsel for the respondent also submits that the respondent never met the petitioner and that the respondent had rented the premises from a third party i.e., one Satish Chand, who had actually taken his signatures on blank documents. He also submits that there are material contradictions in the testimony of the petitioner and that the complaint did not fulfil the requirements of Section 138 of the NI Act as the petitioner had been unable to prove that there was a legally enforceable debt to be paid by the respondent and that as to how the amount of Rs.16,079/- was arrived at.

10. This Court has heard the learned counsel for the parties and has perused the documents on record.

11. For any complaint under Section 138 of the NI Act, a complainant like the petitioner herein, is duty bound to show and establish the basic



ingredients therein, without which, the very complaint is bound to crumble and fall as the very essence of such a complaint is lost. In the present case, the petitioner has failed to do so, as she has been unable to fulfil the requirements of Section 138 of the NI Act. The petitioner has not been able to establish that there was a legally enforceable debt which was due to be paid by the respondent. Further, though the respondent has admitted his signatures on the cheque in question, however, that by itself is not sufficient for the offence under Section 138 of the NI Act to be made out as it was upon the petitioner to establish beyond reasonable doubt the link between the cheque amount, the relationship with the petitioner and all the surrounding circumstances thereof for making out the offence under Section 138 of the NI Act against the respondent.

12. Furthermore, a perusal of the record reveals that there are material contradictions in the testimony of the petitioner as she had all throughout been varying her stand. The petitioner had been inconsistent in her complaint and in her cross examination. On one hand, though she had averred in the complaint that only the first floor of the property was rented out to the respondent, however, very surprisingly, the Rent Agreement annexed with the complaint pertains to the entire property comprising of both the ground and first floor. Though the relation of landlord and tenant was the fulcrum of her complaint, she was unable to show and establish when the respondent started residing in the rented premises and whether the rent @ Rs.3,600/- per month was for the whole property or only the first floor of the said property. Each of the aforesaid, being extremely vital factors, had to be met with the

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highest threshold and any complainant like the petitioner herein, had to be cautious and prudent while making out a complaint as also when stepping into the witness box, more so whence the said facts are interconnected and form the very backbone of her complaint.

13. Further, the amount mentioned in the cheque in question also played a pivotal role before the learned Trial Court and it was incumbent upon the petitioner to show that the same was a '*legally enforceable debt*' recoverable from the respondent which was owing and due to her. However, in the case at hand, the petitioner failed to show and/ or prove anything on that account as not only there was a (complete) silence about the amount mentioned in the cheque but also there was no explanation qua the breakup of the amount therein. Even though the petitioner had averred that the amount includes both outstanding rent as also electricity charges, however, she failed to bring on record any evidence to show the said electricity charges due and payable by the respondent.

14. Most interestingly, the cheque in issue was the same qua the loss of which the respondent had in fact, already made a police complaint prior to the institution of the complaint by the petitioner. Thus, the facts herein reveal that the respondent was successful in discharging the onus under Section 139 of the NI Act as he was able to rebut the contentions of the petitioner as it is and was consistent in the stand taken by him.

15. In view thereof, this Court finds that there are no new grounds or cause made out by the petitioner showing any illegality and/ or perversity in the order passed by the learned Trial Court. It is the petitioner who failed to

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discharge her onus as she was unable to establish her case beyond reasonable doubt. Moreover, the learned Trial Court has arrived at a plausible view, which as per the considered opinion of this Court, requires no interference at this stage. Considering the above, this Court is agreeable with the view taken by the learned Trial Court and thus finds that the present petition is without any merit.

16. Accordingly, the present leave petition is dismissed.

SAURABH BANERJEE, J.

JANUARY 05, 2024/rr