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

\+ CRL.L.P. 490/2023

MOHAN LAL ..... Petitioner

Through: Mr. Vijay Kinger, Mr. Ashwani Gehlot & Ms. Roopa Nagpal, Advs.

versus

STATE -GOVT. OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Hemant Mehla, APP for the State with Ms. Mridul Sharma, Adv.
Mr. Harbeer Singh Chadha, Adv. For R-2.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT SHARMA**

**O R D E R**

% **20.05.2024**

1. The present petition under Section 378(4) read with Section 482 of the Cr.P.C. seeks leave to appeal against the judgment dated 26.08.2023 passed by the learned Metropolitan Magistrate in CC No. 1726/2021 titled 'Mohan Lal vs. Manjeet Singh', whereby the respondent herein has been acquitted by the learned Metropolitan Magistrate for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

2. Learned counsel appearing on behalf of the petitioner submits that the learned Trial Court while acquitting the present respondent has relied upon receipt (Ex.CW1-XI/A) dated 10.08.2021. It is submitted that the learned Trial Court failed to appreciate that the said receipt was independent of the pronote executed by the present respondent in pursuance of which the subject cheque had been issued. It is submitted that the transaction in the

aforesaid receipt was distinct from the subject matter of the pronote. It is further submitted that the said receipt does not find mention of the subject cheque issued by the respondent.

3. *Per contra*, learned counsel appearing on behalf of the respondent submits that there is no infirmity or illegality in the impugned order of the learned Trial Court. It is pointed out that consistent stand of the respondent in reply to notice under Section 251 of the Cr.P.C. as well as in the statement under Section 313 of the Cr.P.C. had been that he had issued the subject blank cheque, which the petitioner did not return even after the execution of the aforesaid receipt. In view of the above, necessary instructions ("stop payment") were given regarding subject cheque. It is further submitted that apart from the claim that the receipt did not concern the subject matter of pronote, no document has been placed on record by the petitioner in support of the said claim.

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

5. The learned Trial Court while acquitting the present respondent has observed and held as under:-

> "20. It is argued by the counsel for the accused that the case of the complainant itself is full of infirmities, and that the accused has been able to rebut the presumptions raised against him by way of cross-examination of the complainant; and by bringing on record cogent evidence and witnesses. It is further argued that that the cheque in question was issued and the security cheque and there does not exist any liability of the accused towards the complainant as the accused has already discharged the liability for which the impugned cheque is stated to be issued by the complainant, therefore the liability of the accused as per the version of the complainant does not exist. It is further argued that, the accused has been able to point of circumstances and contradictions show that the version of the complainant is unworthy of credit.
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> 21. To substantiate his defence, counsel for the accused has placed

reliance upon the receipt dated 10.08.2021, Ex. CW1/X1/A, which was produced by the accused at the time of cross examination of the complainant. It is further submitted by the counsel for the accused that two defence witnesses, Kashmere Singh DW-1 and Umesh Prasad Uman, DW-2 have supported and corroborated the version of the accused and have also proved the receipt Ex.CW1/X1/A as they are witnesses to the same.

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24. Perusal of the statement of both DW-1 and DW-2 shows that both of them have identified their signatures on point Al and A2, respectively on receipt Ex. CW1/X1/A and have also identified the complainant who was present in court. Further, during the cross examination DW-2 has stated that he signed the same without reading the document, however DW-1 has stated that he has read the document before signing it. Both DW-1 and DW-2 in their cross have stated that the accused did hand over some cash in their presence to the complainant and the complainant signed receipt Ex CW1/X1/A in their presence.

26. Section 70 of the Indian Evidence Act, 1872 provides that any admission by a person to an attested document as to its execution by himself shall be sufficient proof of its execution against him.

27. To summarize the above discussion, it can be concluded that the complainant has executed the receipt Ex. CW1/X1/A and the same can be duly read against him.

28. At this stage it becomes pertinent to refer to section 82 of the NI Act. For ready reference the same is reproduced below: “82. Discharge from liability.—The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon— (a)By cancellation—to a holder thereof who cancels such acceptor’s or indorser's name with intent to discharge him, and to all parties claiming under such holder; (b)By release—to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; (c)By payment—to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.”

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30. Thus, the contentions raised by the counsel for the complainant that the receipt Ex.CW1/X1/A which does not mention the amount due or the cheque number cannot be regarded as a valid receipt does not hold water with the court. The receipt Ex. CW1/X1/A produced by the accused is a proved document, and there is no cloud regarding the fact that the complainant executed the same discharging the accused from all his liabilities and as such on 10.08.2021, the accused stood discharged from all his liabilities towards the complainant by virtue of Ex.CW1/X1/A.

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32. Since, the accused has discharged the initial burden on him, now that the onus has shifted back to the plaintiff to prove that the cheque in question was issued for legally enforecable debt. To butteress his contention the counsel for the complainant has argued that the accused had issued the cheque in question related to other transaction pertaining to the pronote dated 10.06.2019 which is Ex. CW1/6 and the accused via the Ex CWI/X1/A has discharged some other liability which does not pertain to the impugned cheque as the same arises from pronote EX. CW1/6.
33. Section 101 of Indian Evidence Act clearly states that who ever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. One who asserts a particular fact is in existence, then he has to prove the said fact unless and until the law says that the burden lies anymore else.
34. Perusal of the complaint as well as the evidence affidavit Ex. CW 1/A shows that there is no averment or mention regarding any other loan or any date upon which the money was advanced to the accused. Further, a careful analysis of the promote Ex CW1/6 and the complaint shows that the amount mentioned in the complaint corresponds to the amount mentioned upon the promote Ex.CW1/6. It is noteworthy that the pronote Ex. CW1/6 is dated 10.06.2019 whereas the receipt EX. CW1/X1/A is dated 10.08.2021 and the same has already discharged the accused of all his debts and liabilities.
35. Further perusal of the complainant shows that there is no averment in the complaint to show that a new liability arose in the favour of the complainant against the accused subsequent to 10.08.2021, whereupon the complainant had already given a full and final discharge to the

accused regarding all the debts and the liabilities. Also, no document has placed on record to show that there existed any liability of the accused subsequent to the execution of receipt Ex. CW1/X1/A. It is noteworthy that the cheque in question Ex. CW1/1 is dated 30.08.2021, whereas the receipt Ex. CW1/X1/A is dated 10.08.2021 and nothing has been pleaded or placed on record to show how the accused was still under a liability or a new liability was raised subsequently, after being discharged by the receipt Ex. CW1/X1/A. 36. Section 92 of the Indian Evidence Act carves out six exceptions where in evidence to contradict the terms of written document may be lead. However, the complainant has not lead any evidence to show that any such circumstances exist in order for the court to consider that receipt Ex. CW1/X1/A would fall in any of these exceptions. It is only when any such circumstances are pointed out that oral evidence of variation of terms can be taken. Thus, the complainant by merely stating that Ex. CW1/6 and Ex. CW1/X1/A do not pertain to same transaction cannot claim that the receipt Ex. CW1/X1/A pertains to other transaction and raise a new liability towards the accused.

37. At this stage, it is pertinent to mention of Section 43 of NI Act. As per the Section 43 any negotiable instrument made without consideration creates no obligation as to payments between parties to a transaction. No circumstances have been brought forth by the complainant wherein a new consideration has been pleaded or mentioned after the discharged on 10.08.2021 through the receipt Ex. CW1/X1/A."

6. In the present case, it is a matter of record that the pronote stated to be executed by the respondent was on 10.06.2019, the petitioner in his cross-examination has admitted his signatures on the receipt dated 10.08.2021 (Ex.CW1-XI/A). The receipt clearly records that the petitioner had taken a sum of Rs. 1,90,000/- from the respondent in full and final settlement of all his dues recoverable from him and it further confirms that after receipt of the full and final settlement, the petitioner will not have any other amount recoverable from the respondent. For the sake of completeness the receipt is reproduced as under:-

Annexure A-II
CW-1/X/A

(92)

**RECEIPT**

**TO WHOMSOEVER IT MAY CONCERN**

I, Mohan Lal s/o Shri Kishan Chand resident of 1/7446, East Gorakh Park, Street No. 12C, Shahdara, Delhi – 110032 hereby confirm having received from Shri Manjeet Singh s/o Shri Sajjan Singh resident of 1/7441, East Gorakh Park, Gali No. 13A, Shahdara, Delhi – 110032 the sum of Rs. 1,90,000/- (Rupees One Lakh Ninety Thousands only) in full and final settlement of all my dues recoverable from the above borrower. It is hereby further confirmed that after the receipt of the aforesaid sum of Rs. 1,90,000/- (Rupees One Lakh Ninety Thousands only) in full and final settlement of my loan, I will have no other amount recoverable from the above borrower or any member of his family as on date.

"A" (Mohan Lal) (Mohan Lal) "B"

**New Delhi**

**Dated** 10-08-2021

(Manjeet Singh)

**(Mohan Lal)**
**s/o Shri Kishan Chand**
**R/o 1/7446, Street No. 12C,**
**East Gorakh Park, Shahdara,**
**Delhi 110 032.**

**WITNESSES**

1. Kashmeer Singh S/o S. Jetha Singh E-21 Ranjeet Vihar Chander Vihar Nilothi Extn. Nangloi Delhi-110041

2. UMESH PRASAD UMAN S/o Shri Ram Udgar yadav 175, Gali No. 2, [illegible] Part-2, Ballabgarh, Haryana.

ATTESTED
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Examiner

7. In view of the aforesaid categorical statement contained in the receipt it reflects that the present respondent was discharged from all his liabilities

towards the petitioner. Record further reflects that the present respondent had taken the stand that he was taking money from the petitioner in small sums as he required the same for treatment of his wife and during the said course, he had given the subject blank cheque to the petitioner. It is further stated that he had paid the petitioner/complainant all the amount by August 2021 and thereafter, when the petitioner did not return his cheque, he had issued stop payment instruction to his bank. It is also a matter of record that the subject cheque was returned *vide* return memo (Ex. CW-1/2) with endorsement "payment stopped". The petitioner did not put anything on record to demonstrate that the receipt executed by him was independent of the pronote which was prior in time.

8. The Hon'ble Supreme Court in **Murlidhar Alias Gidda And Another v. State of Karnataka, (2014) 5 SCC 730**, after referring to various decisions, has culled out the principles relating to appeals from a judgment of acquittal. The Hon'ble Supreme Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

> "12. ....(*i*) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;
> (*ii*) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
> (*iii*) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal

is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(*iv*) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

9. Therefore, in view of the aforesaid discussion, there is no illegality, perversity, or mis-appreciation of facts in the impugned judgment passed by the learned Metropolitan Magistrate.

10. The present leave to appeal is accordingly dismissed and disposed of accordingly.

11. Pending applications, if any, also stand disposed of.

12. Order be uploaded on the website of this Court, *forthwith.*

**AMIT SHARMA, J**

**MAY 20, 2024/nk**