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

\+ CRL.L.P. 68/2018 & CRL.M.A. 1767/2018, CRL.M.A. 1769/2018

SUKHDEV DHAWAN .....Petitioner

Through: Mr. Prag Chawla, Ms. Muskan Aggarwal, Advs.

versus

SMT PRATIMA NEOL DASS .....Respondent

Through: Mr. Vishesh Wadhwa Ms. Swadha Gupta, Mr. Shivam Dahiya, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **05.12.2024**

1. This is a leave to appeal application filed under Section 378(4) of the Cr.PC seeking leave to appeal against the judgment dated 01.08.2017 passed by the learned M.M Saket Courts, New Delhi, thereby, dismissing the Criminal Complaint No. 468015/2016 filed by the appellant under Section 138 of the Negotiable Instruments Act, titled *'Sukhdev Dhawan vs Pratima Noel Dass @Pratima Joseph.'*

2. As per the judgment, the learned M.M was pleased to dismiss the complaint on the ground that the respondent has successfully rebutted the presumption that the cheque was without consideration.

3. The learned MM was further of the view that the appellant did not have the financial capacity to advance a loan of Rs. 38.35 lakhs to the respondent for re-payment of which the cheques in question were issued.

4. The brief facts as per the complaint are that the respondent and the wife of the petitioner were having friendly relations and were working at All India Institute of Medical Sciences Hospital, New Delhi.

5. In January, 2008 the respondent requested the wife of the petitioner

for a friendly loan of Rs. 38.35 lakhs as the respondent was in dire need of money for purchasing a house.

6. Considering the request, the petitioner advanced a loan of Rs. 38.35 lakhs to the respondent during various months in 2008.

7. For repayment of the said loan, the respondent issued 10 cheques, namely as under:

S. No.	Cheque No.	Dated	Amount
i.	718005 Drawn on SBI, Ansari Nagar, New Delhi	15.10.2009	Rs.1,10,000/-
ii.	282528 Drawn on HDFC Bank Ltd. New Delhi-110096	05.07.2010	Rs.25,000/-
iii.	718003 Drawn on SBI, Ansari Nagar, New Delhi	02.08.2010	Rs.1,00,000/-
iv.	282529 Drawn on HDFC Bank Ltd. New Delhi-110096	02.08.2010	Rs.4,00,000/-
v.	254873 Drawn on SBI, Ansari Nagar, New Delhi	05.08.2010	Rs.7,00,000/-
vi.	254868 Drawn on SBI, Ansari Nagar, New Delhi	05.08.2010	Rs.1,00,000/-
vii.	366867 Drawn on SBI, Ansari Nagar, New Delhi	06.08.2010	Rs.7,00,000/-
Viii	254867 Drawn on SBI, Ansari Nagar, New Delhi	06.08.2010	Rs.4,00,000/-
ix.	366868 Drawn on SBI, Ansari Nagar, New Delhi	06.08.2010	Rs.6,00,000/-
x.	299446 Drawn on SBI, Ansari Nagar, New Delhi	07.08.2010	Rs.7,00,000/-

8. The 3 cheques namely cheque bearing No. 282528, cheque bearing No. 718003 and cheque bearing No. 282529 were presented for encashment but were returned unpaid with the remarks "Account Closed."

9. Hence, the complaint for Rs. 5, 25,000/- based on the dishonour of the 3 cheques.

10. Mr. Chawla, learned counsel appearing for the appellant states that the

only case set up by the respondent was that the cheques in question were issued without consideration and hence the complaint should be dismissed.

11. He states that it was never the case of the respondent that the petitioner did not have the financial means to advance the loan. Hence, this defence of the respondent should not have been looked into by the learned M.M.

12. In addition, he further states that there is a presumption in favour of the petitioner being the holder of the cheques.

13. The presumption is rebuttable only if the respondent leads cogent and substantial evidence.

14. In the present case, no evidence has been led by the respondent and hence the presumption in favour of the petitioner stands proved.

15. Lastly, he has drawn my attention to the Income Tax Return filed by the petitioner which shows a sum of Rs. 40 lakhs as loan advanced by the petitioner, another fact which has totally been ignored by the learned MM.

16. The statement u/s 251 CrPC dated 05.11.2012 reads as under:

> *"A. The cheques were issued in blank to the wife of the complainant a collateral security against committee. There is no liability against the complaint."*

17. The said statement clearly shows that the respondent has categorically raised a defence that the cheque was issued without consideration and as a security.

18. The said statement consumes within itself the question of the financial capacity of the petitioner to advance the loan to the extent of Rs. 38.35 lakhs.

19. The petitioner has led substantial evidence and was duly cross-

examined. The relevant portions of the examination reads as under:

> *"Today! have brought the ITRs for the assessment year 2003-04, 2004-05, 2005-06, 2006-07, 2011-12, 2012-13, 2013-14, 2014-15 which are exhibited as Ex. CW- 1/A1 (colly, running into 9 pages) and I have also brought the acknowledgment of Income Tax Department of assessment year 2008-09 which is Ex. CW-1/B1(0SR).*
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> *It is correct that the document Ex. CW-1/B1 does not bear any stamp of IT Department......... It is correct that I have not brought the ITR of the assessment year 2009-10........The loan amount of Rs. 38.50 lakhs was arranged by me from my brothers DB Dhawan (Rs. 05 lakhs), RK Dhawan (Rs. 8-9 lakhs), brother in law Ashwani Sapra (Rs. 10 lakhs), from my wife (though I have not remember), from my sister (Rs. 5-6 lakhs) and rest of the amount arranged myself. I used to take the money from my wife on many occasion as and when the accused has demanded".*
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> *"It is correct that on the documents Ex. CW-1/A (colly, 09 pages), it nowhere reflect that any amount of loan was ever given to the accused. It is further correct that these documents nowhere reflect that I have obtained any loan from my relatives or friends to give it to the accused".*
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> *"I took this money of Rs 01 lakh and gave the same to the accused in the AIIMS Hospital in the year 2008 but I do not remember the month. I gave the said amount in front of my wife who was present in the hospital. In the beginning of the year 2008, my wife told me that one of her Muhboli sister wanted a*

ban of Rs 04 lacs to which I agreed and the accused along with her husband came to my house and I gave them the money. I had met the husband of accused for the second time when he came to receive money from my house.........It is correct that no receipt or any document was executed in connection with the alleged loan. Vol : Accused had tendered a cheque only.

Impugned cheque was tendered on the same day that the first instalment of money was given to the accused. It was a cheque of Rs 04 lacs. No time frame was fixed within which this amount of Rs 04 lacs was supposed to be paid back. I do not maintain any books of accounts, it is correct that this amount of rs 04 lacs does not reflect anywhere in any of my accounts. In March 2008, rs 05 lacs were given to the accused. Uptill that time, no final amount was decided which was supposed to be given to accused.......Rs 08 lacs were given in April. Rs O8 lacs each were given in April as well as in May and Rs5.35 lacs were given in June and in July, Rs 07 lacs were given".

"Loan from bank was taken in the year 2005 for construction of my house and no loan was taken in the year 2004 from any bank. Loan amount was rs.4.23 lacs. No loan has been taken apart from this loan. This loan was in the name of my wife".

"One day accused requested me specifically to give her an amount of Rs 8-10 lacs initially as financial help. Accused repeatedly requested me to help her financially and also told me to talk to my husband regarding this financial help. Accused came to my house along with her husband Rajeev. Both of them

requested us a number of times. Thereafter, we arranged a sum of Rs 04 lacs for them in the end of February 2008. Thereafter, the accused and her husband told us that since they hove taken a good amount of money for their house so we shall have to pay them more in order to help them otherwise the money that had already been invested would also go to waste or be forfeited.......By July 2008, we had given a huge amount of money to the accused totalling Rs38,35,000/-".

20. Further, as per the petitioner, his monthly income is Rs. 50-60 thousand and thus his annual income is below Rs. 06 lacs. The evidence in this regard reads as under:-

" ......I generate a monthly income of either Rs. 30,000/- or Rs. 40,000/- from the transport company. It is correct that I have not filed any document on record evidencing the fact that I earn an of Rs. 30,000/- or Rs. 40,000/- from the company. It is incorrect that I am not the co-owner of the said company and also not drawing any amount from the said company that is why I have not placed on record pertaining the same. Apart from transport business, I have a monthly income of Rs. 20,000 to Rs. 30,000 from used oil business. It is correct that there is nothing on record to show that I am earning Rs. 20,000 to Rs. 30,000 from the said oil business. It is correct that no document is filed on record to show that I am into used oil business. I am an income tax payee and pay income tax. I have earning of Rs. 3.5 lacs per year and as per the same I deposit tax to the government........ "

21. Despite such a meagre income, the petitioner advanced a loan of Rs. 38.35 lakhs to the respondent.

22. The said sum of Rs. 38.35 lakhs raised also involved a sum of about Rs. 13 lakhs which was borrowed by the petitioner from his relatives to advance a loan to the respondent.

23. The learned M.M found the said stand of the petitioner improbable and ground enough to rebut the presumption under Section 118 and 139 of the Negotiable Instruments Act.

24. In addition, the learned M.M also found that the petitioner did not explain as to how he arranged for the remaining amount of Rs.24.85 lakhs, even assuming that family had given about Rs. 13.5 lakhs to the petitioner.

25. The learned M.M also relied on the testimony of the petitioner, that the petitioner on the one hand himself had taken a loan for construction of his house but on the other hand was financially sound to advance a loan of Rs. 38.35 lakhs to the respondent.

26. To my mind, the learned M.M duly considered in its right perspective, the presumptions in favour of the respondent against the petitioner under Section 118 and 139 of the Negotiable Instruments Act and also held that the respondent has successfully rebutted the presumption in favour of the petitioner.

27. For the said reasons, I am of the view that the judgment dated 01.08.2017 passed by the learned M.M is well reasoned based on sound appreciation of law and facts and need no interference.

28. The leave to appeal filed by appellant is denied.

29. Since the leave to appeal is denied, consequently, the appeal filed by the petitioner is also dismissed.

JASMEET SINGH, J

DECEMBER 5, 2024/sp

Click here to check corrigendum, if any