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

+ **CRL.L.P. 403/2022**

DILIP KUMAR

.....Petitioner

Through: **Mr Vinod Yadav, Adv. (through VC)**

versus

SACHIN TANWAR

.....Respondent

Through: **Mr Lalit Kumar Dixit and Mr Rajesh Kumar, Advs. (through VC)**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

15.01.2025

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1. This is an application filed under section 378 (4) of Code of Criminal Procedure, 1973 ("**CrPC**") seeking leave to appeal against the judgment dated 23.06.2022 passed by the learned MM, Digital Court-04, South, Saket, New Delhi in CC No. 01/2020 titled as '*Dilip Kumar v. Sachin Tanwar*' wherein the respondent has been acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**").

2. In the Complaint filed by the petitioner, it is stated that in the month of August, 2018, the respondent had taken a friendly loan of Rs. 7 lakhs from the petitioner for a period of two years for his business. On 29.09.2020, the respondent issued the cheque in question bearing Cheque No. 268186 dated 29.09.2020 drawn on Punjab National Bank, Patparganj Branch, Delhi-110091 for Rs. 7 lakhs to discharge his legal liability towards the petitioner.



3. On presentation, the said cheque was returned dishonoured with the remark “Funds Insufficient”. Consequently, the Complaint was filed by the petitioner which was dismissed by the learned Trial Court acquitting the respondent. Hence, the present petition.

4. It is stated by Mr Yadav, learned counsel for the petitioner that in the present case, the bank statement of the petitioner Ex. CW-1/D-1 shows that though there may not be any withdrawal in the month of August, 2018 but the petitioner has been withdrawing money from his bank account from January to July, 2018 for the purpose of making a house in his village. Since on account of disputes, the house could not be made, the respondent borrowed money from the petitioner. The said aspect was ignored by the learned MM.

5. He further states that the respondent has not disputed that he was present with the petitioner and no explanation has been given by the respondent being with the petitioner. Hence, the presumption under Section 118 of NI Act needs to be drawn against the respondent.

6. I have heard learned counsel for the parties.

7. On perusing the material placed on record, in the present case, there is no document to show that the petitioner and the respondent were in a friendly relationship. The petitioner has failed to show the withdrawal of Rs. 7 lakhs from his bank account around August, 2018.

8. Further, a perusal of the bank statement shows that it is not the case where the petitioner has lakhs of rupees in his account for him to continue withdrawing money to keep a sum of Rs. 7 lakhs available with him.

9. The stand of the respondent has throughout been that the respondent gave a cheque of Rs. 1 lakh to the petitioner and gave another signed blank



cheque for the purpose of securing a government job. The petitioner, in fact, is in a government job and the version of the respondent is consistent from the beginning and seems to be plausible.

10. The case of the petitioner is also substantiated by DW-1 i.e. Suraj Prakash Sharma that respondent had given a cheque of Rs. 1 lakh and another signed blank cheque in his presence for securing a permanent government job. The cheque in question was the blank cheque given by the respondent to the petitioner.

11. All the above facts and issues have been duly considered and well appreciated by the learned Trial Court when the learned Trial Court has categorically observed that the respondent has successfully rebutted the statutory presumption under Section 118 (a) read with Section 139 of the NI Act.

12. For the said reasons, there is no infirmity in the judgment dated 23.06.2022 passed by the learned MM, Digital Court-04, South, Saket, New Delhi in CC No. 01/2020 titled as '*Dilip Kumar v. Sachin Tanwar*'.

13. Consequently, the leave to appeal is rejected.

14. Since the leave to appeal is rejected, the appeal has also become infructuous and is disposed of accordingly.

JASMEET SINGH, J

JANUARY 15, 2025

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[Click here to check corrigendum, if any](#)