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

\+ CRL.L.P. 499/2022 & CRL.M.A. 22755/2022

KAMLESH ADWANI .....Petitioner

Through: Mr Apurb Lal, Adv. (through VC)

versus

RADHEY SHYAM .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **15.01.2025**

1. This is an application seeking leave to appeal against the judgment dated 29.11.2018 passed by the learned MM-04, N.I. Act, Central District, Tis Hazari Courts, Delhi in CC No. 523450/2016 titled as '*Kamlesh Adwani v. Radhey Shyam*' wherein the respondent has been acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881 (***"NI Act"***).

2. As per the Complaint filed by the petitioner, the petitioner gave a friendly loan of Rs. 4,15,000/- to the respondent in the month of January, 2013. To return the said loan, the respondent issued cheque No. 000009 dated 22.02.2013 for a sum of Rs.80,000/- and another cheque bearing No.000010 dated 22.03.2013 for a sum of Rs.3,35,000/-.

3. Both the cheques on presentation were 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 Lal, learned counsel for the petitioner that in the present case, the respondent has stated that the cheques in question bear his signatures, thus there is a presumption in favour of the petitioner that the cheques were issued for legally enforceable debt. It is the respondent who has to discharge onus.

5. On 05.05.2016, the petitioner in his cross-examination has duly admitted that no transaction as alleged took place in the year 2013. The petitioner further admitted that only a loan of Rs. 80,000/- was given and two blank cheques were taken as security from the petitioner. For the sake of perusal, the operative portion of the testimony of the petitioner reads as under:-

> *"At this stage, the passbook entries of the bank account of the accused has been shown to the witness and the same is marked as mark A colly. It is correct that in lieu of giving such amount of Rs. 80,000, through cheque on 18.06.2011, I have taken two blank cheques as security from the accused. It is correct that the accused has only given such cheques in 2011 and later on never given any cheques to me. The names, amounts and dates on the cheques Ex. CW-1/1 and Ex. CW-1/2 had been filled up by my Chachaji namely Sukhdev Singh Saini."*

6. The petitioner has also admitted in his cross examination that *"In the year 2013, I was drawing the salary of Rs. 35,000/- approximately"*. Hence, it is highly improbable that she could have given a loan of Rs. 4,15,000/- to the respondent.

7. Since nothing incriminating had appeared against the respondent, the

learned MM was pleased to dismiss the Complaint.

8. In the present case, I am of the view that the respondent has successfully rebutted the presumption under Section 118 of NI Act. The statements and the pleadings of the petitioner are contradictory and self defeating.

9. I have already quoted the relevant portions of the testimony and for the said reasons, to my mind, the impugned judgment passed by the learned Trial Court is in accordance with law and based on the correct appreciation of the evidence.

10. For the said reasons, the leave to appeal is rejected.

11. 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