

Ram Avtar Singh Yadav vs Vijay Babu on 18 February, 2019

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 139/2019

RAM AVTAR SINGH YADAV

..... Petitioner

Through: Mr. S.K. Sharma, Advocate.

versus

VIJAY BABU

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 18.02.2019 This petition impugns the order dated 30.10.2018 passed by the Metropolitan Magistrate which dismissed the petitioner's complaint dated 30.06.2014 and acquitted the respondent/accused for offenses punishable under section 138 of the Negotiable Instruments Act, 1881.

The brief facts according to the learned counsel for the petitioner are that the respondent/accused approached the petitioner/complainant for a friendly loan of Rs.4,00,000/-; the petitioner arranged monies from his friends and family and paid Rs. 3,70,000/- in cash to the respondent. He further submits that the respondent issued a post dated cheque in favour of the petitioner for discharge of the said liability, which upon representation was dishonoured and was returned unpaid by the bank with remarks "funds insufficient". Hence, the petitioner filed a complaint under section 138 read with section 142 of the NI Act.

The learned counsel for the petitioner argues that the respondent did not admit in his examination in chief that he took a loan of Rs. 3,70, 700/- but admitted that the cheque belongs to him; that as the respondent denied writing anything on the cheque in question, the learned Trial Court should have compared the writing on the cheque with the help of an expert; that the learned Trial Court ignored the fact that an NCR report bearing no 233/15 was lodged against the respondent as he threatened the petitioner to not to proceed with the legal proceedings against the said cheque in question; that it is a settled law apropos section 138 of NI Act that when a cheque is issued, it is presumed that the same is issued against a loan until the contrary is proved.

The respondent has denied his signature on the cheque or him filling any particulars on it; he also denied receiving any legal notice from the petitioner and stated that he did not know the petitioner nor had he ever taken any loan from him whatsoever; he has denied any family relations or any previous transaction with the petitioner; the learned counsel for the respondent contended that the

complainant had misused the respondent's blank cheque.

The learned Trial Court held as under:

"8. It is also noticeable that accused may probabalize his defence by exposing the contradiction in the story of the complainant by way of cross examination of complainant even without jumping into witness box in cases u/s 138 of NI Act. The complainant has to prove his case beyond all reasonable doubts as matter of fact once accused managed to cast probable doubts on the veracity of the story of the complainant. The case of complainant has to stand on its own legs and supported with cogent and reliable evidence on the record of the case. Here, the complainant did not tell in his complaint as to when he had advanced loan in question to the accused and from where he had arranged the loan in question for the accused and also before whom loan transaction took place. The complainant (CW1) failed to explain as to why he had not examined said Vijender and no documentary proof was secured for loan in question and why he had given huge loan in question in cash to the accused, when he had option to pay any amount of money to the accused in well accounted banking modes. Said conducts of complainant cast reasonable doubts on the genuineness of the case of the complainant.

9. In view of above discussions, the court is of considered view that accused has created reasonable doubt over the veracity of story of complainant by balance of probabilities and the complainant failed to prove his case beyond all reasonable doubts thereafter as matter of fact. It is noticeable that the complainant cannot be allowed to prove his case beyond all shades of reasonable doubts by taking any benefit in the lacuna of the defence like how complainant got cheque in question or what action taken by the accused in respect of cheque in question. Further, the court is also mindful of basic tenant of criminal jurisprudence as to benefit of reasonable doubt must go in favour of accused and in case of two possible versions, the version favouring the innocence of accused should be opted by the court.

10. In upshot of aforesaid discussion, I return finding of acquittal of accused for offence u/s 138 of NI Act in this case".

Evidently, the petitioner has failed to explain as to why he did not secure any written proof or security before advancing the loan amount. The petitioner also did not disclose in his complaint as to when the loan was allegedly advanced to the respondent. The cheque in question with the address and mobile number of the respondent on the back also does not prove as to why the petitioner would give a loan to the respondent. Simply because the cheque was dishonoured, it cannot be inferred that the respondent had issued it to the petitioner. The complainant has not disclosed the source of arrangement of funds of the said loan; his case is implausible in the context of the respondents' contentions, which effectively raises a probable defence. The petition is without merit and does not warrant an interference with the impugned order; he has not been able to prove his case beyond reasonable doubt and the accused has succeeded in creating a reasonable doubt over

the veracity of the story of the petitioner.

Accordingly, the petition is dismissed.

NAJMI WAZIRI, J FEBRUARY 18, 2019 RW