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

+ **CRL.REV.P. 507/2022**

KANWALJEET KAUR

..... Petitioner

Through: **Mr Naveen Sharma, Adv.**

versus

HEMANT SHARMA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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08.08.2022

CRL.M.A. 15498/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 507/2022

1. This is a petition seeking setting aside of the impugned judgment dated 30.07.2022 passed in C.A. No. 122/2021 titled '*Smt. Kanwaljeet Kaur v. Hemant Sharma*' passed by the learned ASJ-04, Saket Court, new Delhi arising out of judgment dated 30.03.2021 and the order on sentence dated 25.10.2021 passed in C.C. No. 4219/2017, under Section 138 of the Negotiable Instruments Act.

2. Mr Sharma, learned counsel has taken me through the evidence of the complainant where in para 3, the complainant has stated that: "3. *That in December, 2015 the accused approached me and citing some personal financial crisis requested for a loan of Rs. 2,50,000/- for some personal*



need.”

3. Thereafter he has drawn my attention to the cross-examination of the complainant/respondent No.1 to state as under:

“..... I am not a licensed lender. I did not give loan to the accused. Person Ashwani mentioned in Para 2 is male and Ashwani being described there in a “Ms.” Is wrong. Ashwani lives in Sun light colony but I do not know his father’s name and address.

I have a construction business. I am an income tax payee since 2011. I had given 2.5 lacs to the accused on 10.12.2015 in cash. No receipt or agreement or pro note was executed qua the same. I have no document to show that sum of 2.5 lacs was given to the accused by me. It is correct that Ashwani is also in construction business. Ashwani had introduced me to the accused and accused had family relations with Ashwani.

I am not aware whether Ashwani had to construct a flat/property of the accused and qua the same, some blank signed cheque of the accused were lying with him. I do not have any document to show that the money was promised to be returned in one year by the accused to me. It is wrong to suggest that the cheques in question were handed over the Ashwani to me or that the same were misused by me after filing them up. Vol. The accused had given the cheques to me in January 2017 and asked me to fill them. I don’t remember the date when they were handed over.”



4. Mr Sharma, learned counsel has further drawn my attention to judgment titled '*Krishna Janardhan Bhat v. Dattatraya G. Hegde*' (2008) 4 SCC 54 and more particularly para 30 which reads as under:

“30. The proviso appended to the said section provides for compliance with legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.”

5. In view of the cross-examination, I am prima facie of the view that the respondent has not discharged or shown existence of a legally recoverable debt which is a *sine qua non* for proceedings under Section 138 of Negotiable Instruments Act.

6. Issue notice to the respondent through all modes including electronically, returnable on 03.11.2022.

CRL.M.(BAIL) 944/2022

7. This is an application under Section 389 Cr.P.C for suspension of sentence.

8. For the reasons stated above, issue notice to the respondent through all modes including electronically, returnable on the next date.

9. Mr Sharma, learned counsel states that even during the pendency of the appeal, the sentence of the petitioner was suspended.

10. For the reasons stated above, and subject to payment of 20% of the



cheque amount to the complainant/respondent within 60 days, as per the provisions of Section 143-A of Negotiable Instruments Act, the sentence against the petitioner shall remain stayed till the next date of hearing.

11. List on 03.11.2022

Dasti.

JASMEET SINGH, J

AUGUST 8, 2022

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