

Crl. L. P. No. 04/2016
Amrit Singhi vs. Radhey Shyam Swami

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

05. 19.05.17 Present: Mr. Ajay Rathi, Mr. Aditya Makkhim and Mr. Phurba Diki Sherpa, Advocates for the Petitioner.

Mr. Zangpo Sherpa, Advocate for the Respondent.

1. The instant application is preferred seeking leave of the Court under Section 378(4) of the Code of Criminal Procedure, 1973, against the judgment and order dated 30.07.2016, rendered in Private Complaint Case No. 52 of 2013. The petitioner herein made a complaint under provisions of Section 138 of the Negotiable Instruments, Act, 1881, (for short, N.I. Act.) against the respondent alleging that the cheque issued by the respondent was dishonoured and the respondent even on having given intimation in respect of dishonour of the cheque, did not respond and as such, has committed the offence under provisions of N.I. Act. The learned Judge, examining all the relevant documents and considering submissions put forth by the learned counsel appearing for them, came to the conclusion that there is inconsistency in the stand taken by the Complainant and the case is not made out for holding the respondent as guilty.

2. The respondent was afforded sufficient opportunity to file reply on 17.11.2016 and, thereafter on 11.04.2017, but has chosen not to file any response.

3. Learned counsel, appearing for the petitioner, submits that the learned judge has exceeded his jurisdiction and has gone into the material, which was not the subject matter of the complaint.

4. In response, learned counsel, appearing for the respondent, submits that the case was examined from all angles even the petitioner has failed to establish debt. The documents containing signature were also found to be false. It is also contended that if the respondent was acquitted after a proper consideration of trial, the Court may be slow in granting leave.

5. Heard learned counsel for the parties. On examining all the facts of the case and on consideration, it is *prima facie* noticed that the case has not been examined properly and as such, it requires reconsideration. Thus, I am inclined to grant leave.

It is ordered.

Chief Justice
19.05.2017