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

%   <u>*Order delivered on: 29th January, 2015*</u>

\+   **<u>CRL.M.C. 3286/2014</u>**

LALIT KUMAR ..... Petitioner

Through Mr.K. Bhardwaj, Adv. with Mr.Ajay Sejwal, Adv.

versus

MURLIDHAR SHYAM SUNDER & ANR ..... Respondents

Through None.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

<u>MANMOHAN SINGH,</u> J. (Oral)

<u>Crl.M.A. No.11357/2014</u>

Exemption allowed, subject to all just exceptions.

The application is disposed of.

<u>CRL.M.C. 3286/2014</u>

1. The petitioner has filed the present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure against the judgment of acquittal dated 19th April, 2014, passed by the Court of ASJ-07, Central, Tis Hazari, Delhi, in the case title 'M/s Murlidhar Shyam Sunder and Anr vs. Lalit Kumar.

2. The complaint filed by the petitioner was allowed by virtue of the judgment dated 2nd July, 2013. The respondent No.2 was sentenced to simple imprisonment of three months and he was asked

to pay compensation of Rs.5,50,000/- to the petitioner failing which he was liable for further simple imprisonment of four months. His prayer for suspension of sentence was allowed subject to conditions.

3. The respondent challenged the said order by filing of the Revision Petition No.81/2013 under Sections 397/399/401 Cr.P.C. against the judgment dated 24th June, 2013 and order dated 2nd July, 2013 whereby the respondent No.2 was convicted under Section 138 of Negotiable Instrument Act, 1881.

4. The revision petition filed by the respondent No.2 was allowed and the impugned judgment and sentence was set aside. The respondent No.2 was acquitted. The contention of the respondent No.2 was recorded.

5. Para 9 of the judgment reads as under:

> "Petitioner has stated that in lieu of the loan of 2004 he had issued cheques in the year 2007 and on 13/12/2008 there was settlement between the parties and he had paid the settled amount. Complainant acknowledged the receipt of the amount and also returned the original loan receipt to the petitioner. Complainant/CW1 has stated that the original loan receipt was delivered to the petitioner under coercion and has denied executing the receipts of the settled amount and also denied his signatures on the same stating that he was signing in English and not in Hindi. Complainant's version in this regard is not beyond doubt as complainant was has failed to mention that the original loan receipt were delivered to the petitioner under coercion in his complainant or even in the legal notice Ex.CW1/DX12. In any case the nature of coercion was required to be explained by the complainant but the same is missing. Merely pleading coercion without explaining the same is of no

consequence. In regard to the signature on the receipt of settled amount, complainant stated he was signing in English but in regard to his affidavit Ex.CW1/DX5 to DX7 stated that he had delivered the affidavit to petitioners without signatures but has written his name in Hindi on the same at point B. The said affidavits CW1/DX5 to DX7 also bear signatures of complainant at point 'A' which are denied but the same are shown to be attested by notary Ghaziabad and identified by Sh. Madan Singh, Advocate who was admittedly the counsel for the complainant at the relevant time. Thus signatures of complainant in Hindi do not appear to be improbable. Complainant has however also not denied receipt of the amount of Rs.1,25,000/- mentioned as settled amount on Ex.CW1/DX2 to DX4. The cheques of settled amount are dated 13/12/2008 and of different bank and the cheques in question are also shown to be dishonoured twice on a prior dated i.e. 15/11/2008 and 22/11/2008 to the said settled cheques. Thus, it would have been natural and reasonable for the complainant to have atleast asked the petitioner why his account was shown to be closed in respect of the cheques in question. There is no statement to this effect and the complainant has also failed to explain why he had not raised the said issue when the petitioner issued settlement cheques from different bank account. DW1 petitioner stated in his examination that the settlement was for Rs.3,25,000/- and Rs.2 lakh was paid in cash for which no receipt was obtained. Though this fact of delivery of Rs. 2 lakh in cash was required to be explained by the petitioner but there is no cross examination of the said witness by the complainant on these aspects. The contention of the petitioner on this ground therefore stands substantiated."

6. The said order has been challenged by the petitioner. It appears from the record that the father of the petitioner had given

loan of Rs.5 lac to the respondent to be repaid with interest in the year 2004. The respondent had issued three cheques of Rs.5,11,880/-. As per the respondent the said cheques were not issued in 2008 as alleged by the petitioner but the petitioner altered the figure of the year from 2007 to 2008. There was a final settlement between the parties in regard to the loan of 2004, wherein the respondent paid a sum of Rs.1,25,000/- by means of 3 cheques dated 13th December, 2008 drawn on State Bank of India, Chandni Chowk. Petitioner also handed over the affidavit to the petitioner for admitting that the liability has been discharged and no dues were pending by the respondent. Despite of the same, the petitioner filed the complaint on the basis of the earlier cheques issued by the respondent which were returned with the remark 'account closed' in order to create cause of action by changing the figure of the year from 2007 to 2008. After hearing the petitioner, it appears to the Court that there is no infirmity in the impugned judgment. The petition is dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 29, 2015