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

\+ CRL.L.P. 398/2016

BRIJ MOHAN

..... Petitioner

Through: Mr. Rajeshwar Singh, Advocate.

versus

SANJEEV SHARMA & ANR.

..... Respondents

Through: Ms. Radhika Kolluru, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **01.08.2016**

Crl.M.A. No. 11648/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

Crl.M.A. No. 11649/2016

The petitioner has preferred the aforesaid application to seek condonation of 21 days delay in re-filing the petition.

For the reasons stated in the application, the delay is condoned.

The application stands disposed of.

CRL.L.P. 398/2016 and Crl.M.A. Nos.11645-647/2016

The petitioner has preferred the present petition to seek leave to assail the order dated 02.02.2016 passed by the learned Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi in Crl. Appeal No.74/2016 (old No.14/2015) titled *Sanjeev Sharma Vs. State etc*. The said first appeal preferred by the respondent accused was allowed by the learned Additional Sessions Judge and the judgment dated 29.05.2015 passed by the learned MM-01 Karkardooma Courts, East, New Delhi convicting the accused/ respondent herein was set aside. The petitioner had preferred a complaint under Section 138 of the Negotiable Instruments Act on the premise that the cheque issued by the respondent towards repayment of a friendly loan had been dishonoured upon presentation and payment not made despite issuance of a statutory notice within time. The case of the petitioner was that in the month of January 2013, he had advanced a loan of Rs.2 Lakhs to the respondent accused. In repayment of the said loan, the cheque for Rs. 2 Lakhs dated 15.03.2013 was issued by the respondent accused, which had been dishonoured upon presentation. The learned Additional Sessions Judge while acquitting the respondent referred to the cross-examination of the petitioner, wherein he has admitted that he had not shown this amount in his income-tax returns. No explanation had been given by the petitioner for this omission. Admittedly, there was no other document/ receipt taken by the petitioner while allegedly advancing the said loan. In these circumstances, the learned ASJ has held that the presumption under Section 139 of the Negotiable Instruments Act stood rebutted.

The submission of learned counsel for the petitioner is that at the appellate stage, the petitioner had sought to place reliance on his income-tax return for the year ending 31.03.2014. However, the same was not taken into account by the learned ASJ. Admittedly, no application was moved before the appellate court to produce the said document. In any event, the same is not relevant as the reflection of the alleged loan in the accounts for the year ending on 31.03.2014 appears to be an afterthought. Had the loan been duly reflected, the same should have been found mentioned in the accounts for the year ending on 31.03.2013 (since it is claimed that the loan was advanced in January 2013). This is, admittedly, not the position.

In view of the aforesaid, I do not find any error in the impugned order. The petition is dismissed.

VIPIN SANGHI, J

AUGUST 01, 2016

B.S. Rohella