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

+ CRL.L.P. 390/2016

HEMANT KUMAR

..... Petitioner

Through: Mr. Pankaj Kumar, Advocate.

versus

HEMANT KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

01.08.2016

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Crl. M.A. No.11542/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

Crl.M.A. No.11543/2016 & CRL.L.P. 390/2016

The aforesaid application has been preferred to seek condonation of 39 days delay in filing of the leave petition.

I have heard learned counsel for the petitioner. Since I am not inclined to grant leave to appeal, no useful purpose would be served in issuing notice in the delay application as well.

The petitioner has filed the leave petition to assail the order dated 31.03.2016 passed by the learned MM (Shahdara), Karkardooma Courts, Delhi in New Case No.10971/16, CC No.686/2015, whereby the petitioner's complaint under Section 138 of the Negotiable Instruments Act has been dismissed and the respondent accused has been acquitted. The said

complaint had been preferred on account of dishonour of two cheques of Rs.1 Lakh and Rs.4 Lakhs issued by the respondent. The case of the complainant was that he had engaged as a contractor to carry out certain civil works by the respondent and the said cheques had been issued in discharge of the liability under the contract. On the other hand, the stand taken by the accused was that the said cheques had been issued as security prior to execution of the work and that the complainant did not carry out the work and yet sought to encash the cheques. The petitioner/ complainant in his evidence admitted that he had not placed on record any document regarding the jobs for supply of labour and material to the accused. It is claimed he had no document that he had provided labour or supplied material to the accused. He also admitted that he had not mentioned in his complaint regarding the particulars, address, or place where the work has allegedly been done or where material was allegedly supplied. In these circumstances, the learned MM concluded that the complainant had failed to establish a crystallised liability of the respondent accused. The learned Magistrate has held that the defence set up by the accused, on preponderance of probabilities, rebuts the statutory presumption in favour of the petitioner complaint.

In my view, there is no error in the said view taken by the learned Magistrate.

Dismissed.

VIPIN SANGHI, J

AUGUST 01, 2016

B.S. Rohella