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

%   Decided on: 21st September, 2016

\+   **CRL.M.C. 3478/2016**

VIKRAM SINGH ..... Petitioner

Represented by: Mr. Mrinal Beri, Adv.

versus

THE STATE (NCT OF DELHI) & ORS. ..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP with SI Shri Bhagwan, PS Neb Sarai.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.MA 14708/2016

Exemption allowed, subject to all just exceptions.

Crl.M.C. 3478/2016

1. The case of the petitioner is that he gave a friendly loan to respondent No.2 for ₹3 lakhs and in discharge of said liability he issued a cheque dated 20th January, 2012 for ₹3 lakhs drawn on Punjab National Bank which was dishonoured on presentation.

2. After legal notice was served, a complaint was filed under Section 138 of Negotiable Instruments Act (in short ‘ NI Act’) wherein the stand taken by respondent No.2 was that he did not issue the cheque in question whereas the case of the petitioner is that the same was signed by respondent No.2 in his presence. Handwriting expert was summoned who also opined that

cheque was signed by respondent No.2. During the course of trial, record of Punjab National Bank, Khanpur Branch was called and it was revealed that the cheque belonged to respondent No.3 and respondent No.2 handed over the same by signing it in the presence of the petitioner. Based on this evidence, the complaint under Section 138 NI Act was dismissed and respondent No.2 was acquitted on ground that neither the cheque was issued from the account of respondent No.2 nor did he have any account in Punjab National Bank, Khanpur Branch.

3. The petitioner filed a complaint with the Commissioner of Police however no action was taken thereon and thus he filed a complaint under Section 200 Cr.P.C. along with application under Section 156(3) Cr.P.C.

4. Vide order dated 7th January, 2016 learned Metropolitan Magistrate relying on the decisions reported as 2001 IV, AD Delhi 625 *M/s Skiper Beverages Pvt. Ltd. Vs. State* 2002(2) Crimes 488 *Gulab Chand Upadhyaya Vs. State of UP & Ors* and 2006(1) Crimes 239 *Baldev Thakural Vs. Stae of Uttranchal* dismissed the application for the reason whatever evidence and material was required to be gathered in police investigation was within the reach of the petitioner and he adduce the same by summoning the expert witness and record from the bank and matter was listed for examination of complainant.

5. Aggrieved by the order dated 7th January, 2016 the petitioner preferred a revision petition before learned Additional Sessions Judge which was also dismissed vide the impugned order dated 22nd March, 2016 for the reasons noted by the learned Metropolitan Magistrate.

6. The contentions urged before this Court are again the same. It is well settled that when a complaint is filed before the learned Metropolitan

Magistrate under Section 200 Cr.P.C. he has two options either to examine the complaint and proceed as a complaint case wherein he can also get a limited inquiry under Section 202 Cr.P.C. conducted or direct registration of FIR under Section 156(3) Cr.P.C in case the complaint discloses facts which need police investigation.

7. As noted above, the petitioner alleges that that offence of cheating and forgery has been committed by respondent No.2. The facts to be discovered are in the knowledge of the petitioner. The allegation of cheating can be proved by the deposition of the complainant and his witnesses. Whether the signatures on the cheque are of respondent No.2 can be proved by handwriting expert which report has already been obtained by the petitioner. Thus, besides examining himself, the petitioner can prove his case by summoning the handwriting expert and bank officials with the concerned bank records.

8. I find no error in the order dismissing the application under Section 156(3) Cr.P.C. which was upheld in the revision petition vide the impugned order.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 21, 2016
'vkm'