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

+ **CRL.L.P. 732/2015**

M/S BANSAL BROTHER

..... Petitioner

Through: Mr. A.K.Mishra, Advocate

versus

THE STATE & ANR

..... Respondent

Through: Ms. Anita Abraham, APP
Mr. K.Kaushik, Advocate for R2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
26.07.2016

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The petitioner has preferred the present leave petition to assail the order dated 25.08.2015 whereby the respondent has been acquitted and the complaint of the petitioner under Section 138 of the Negotiable Instruments Act was dismissed.

The petitioner had preferred the aforesaid complaint case No. 212/1/13 against the respondent on the premise that the petitioner had lent an amount of Rs. 2 lacs to the respondent and towards repayment of the said amount, the respondent had issued a cheque bearing No. 527049 dated 19.08.2013 for Rs. 2,00,000/-. The said cheque has been presented on the due date, however, the same had been dishonoured for insufficient funds.

Despite issuance of notice, the amount had not been paid and, consequently, the complaint had been preferred. The defence of the respondent accused was that the petitioner/builder was raising construction of a building in Block B-1, New Ashok Nagar, New Delhi. The respondent was interested in purchasing the fourth floor of the said building and in connection with the said transaction, three cheques had been issued to the complainant. The respondent stated that the fourth floor of the said building was illegal and, therefore, the respondent dropped the idea of purchasing the same from the complainant and, consequently, payment of the said cheques were dishonoured.

The respondent denied having taken any loan from the complainant. The petitioner complainant, in his cross-examination, could not produce any proof of advancing of the loan. The complainant had also not reflected the said loan in his account or ledger. The same had not been disclosed in the income tax return for the relevant period. He admitted during his cross-examination that at the relevant time, he was indeed raising construction of a building in Block B-1, New Ashok Nagar, Delhi. The learned Magistrate, in view of the aforesaid fact, held that the presumption of a recoverable debt against the accused had been rebutted and that the complainant/petitioner had failed to establish the existence of a legally recoverable debt in respect whereof the cheque had been issued.

The submission of learned counsel for the petitioner is that the said presumption could not have been rebutted inasmuch, as, the respondent/accused failed to enter into the witness box and lead any evidence to rebut the same. I do not find any merit in the submission of the petitioner that it is necessary for the accused to lead his evidence to rebut the

said presumption. It is well settled that the standard of proof required to rebut the presumption is based on the preponderance of probabilities and the standard of proof is not to establish the defence beyond reasonable doubt. I do not find any infirmity in the impugned order.

This petition is, accordingly, dismissed.

VIPIN SANGHI, J

JULY 26, 2016

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