$~48.

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

\+ CRL.L.P. 19/2017

RAJ KUMAR KIRAR

..... Petitioner

Through: Mr. R.C. Tiwari, Mr. Tushar Saini, Advocates along with petitioner in person.

versus

V K BHATNAGAR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>O R D E R</u>

% **13.01.2017**

<u>Crl.M.A. No. 702/2017</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>CRL.L.P. 19/2017</u>

The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 06.12.2016 passed by the learned MM-02, South, Saket Courts, New Delhi in CC No.469597/2016 titled *Raj Kumar Kirar Vs. V.K. Bhatnagar*. By the impugned judgment, the respondent accused has been acquitted in the petitioner's complaint under Section 138 of the Negotiable Instruments Act.

The case of the petitioner/ complainant was that he had advanced a friendly loan in cash to the accused for an amount of Rs.4,50,000/-, in respect whereof the accused had issued the cheque in question dated 12.11.2013. The said cheque was dishonoured on presentation, and despite statutory notice, the payment was not made. Consequently, the complaint was preferred.

The accused admitted to the issuance of the cheque. However, he stated that the said cheque had been delivered to the petitioner in the year 2008 in respect of a loan taken from the petitioner in 2008. He stated that the cheque was undated. He further stated that the petitioner/ complainant had misused the cheque in the year 2013 despite the fact that the loan taken by him had been repaid. The accused led in evidence his daughter as DW-1, who produced her account statements to show that she had repaid an amount of Rs.7.17 Lakhs to the complainant till 2013. She stated that the said amount includes the payment in respect of her father's loan account also.

According to the complainant, the daughter of the accused had taken a loan of Rs.2,70,000/- apart from the loan of Rs.4.5 Lakhs taken by the accused himself. Whereas the accused claimed that the loan of Rs.4.5 Lakhs had been taken with interest @ 5% per month, the petitioner had claimed that the loan was interest free. He further claimed that to advance a loan of Rs.4.5 Lakhs to the accused in March 2012, he had himself taken the loan from Muthoot Finance by pledging gold and the remaining amount has been taken by him as loan from his relatives.

The Trial Court has held that the accused was able to probablise the defence in view of the fact that the complainant claimed to have advanced an interest free friendly loan of Rs.4.5 Lakhs to the accused in March 2012 by himself taking a loan of Rs.3 Lakhs against gold pledged by him to Muthoot Finance, which obviously would be an interest bearing loan.

The submission of learned counsel for the petitioner is that the loan advanced to DW-1 was distinct and separate amounting to Rs.2,70,000/-.

Even if that be the position, the petitioner has not been able to explain as to on what account he had received Rs.7.17 Lakhs from DW-1, the daughter of the accused, which is evidenced from her bank statement.

In view of the aforesaid, I find absolutely any merit in this petition and the impugned judgment does not call for interference.

Dismissed.

VIPIN SANGHI, J

JANUARY 13, 2017
B.S. Rohella