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

+ **CRL.L.P. 157/2017**

REETU MONGIA

..... Petitioner

Through: Mr. Kunal Kalra, Advocate

versus

MANJU GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
20.03.2017

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Crl. M.A. No. 4538/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

Crl. M.A. No. 4540/2017

For the reasons stated in the application, the delay in re-filing is condoned. The application stands disposed of.

Crl LP 157/2017 & Crl. M.A. No. 4539/2017

I have heard learned counsel for the petitioner. Since I am not inclined to issue notice in the leave petition, no purpose would be served in issuing notice on the aforesaid application as well.

The petitioner has assailed the judgment dated 21.11.2016 passed by

the learned MM-06, South East, Saket Courts in CC No.48/1/2014 whereby the respondent/ accused has been acquitted in the complaint preferred by the petitioner u/s 138 of Negotiable Instrument Act. The respondent had issued the cheque in question for Rs.8 lacs in favour of the petitioner so as to provide a security to the petitioner in respect of damages that the petitioner may suffer on account of the raising of construction by the respondent in the building also occupied by the petitioner. The petitioner claims that the respondent raised illegal construction which was demolished at the petitioner's behest. The petitioner claims to have suffered damages and therefore proceeded to bank the cheque which was dishonoured upon presentation.

The Trial Court has held that the cheque was given only towards security and there was no outstanding debt or liability which can be enforced against the respondent. The Trial Court has placed reliance, inter alia, on the judgment in *Collage Culture & Ors. V. Apparel Export Promotion Council*, (2007) 99 DRJ 251.

The submission of counsel for the petitioner is that the judgment in *Collage Culture* (supra) has been set aside by the Supreme Court. He has also relied on the decision in *Apparel Export Promotion Council v. Mahavir International P. Ltd. & Ors.*, 234 (2016) DLT 84 to submit that merely because the cheque is given towards security, it cannot be said that the complaint u/s 138 of Negotiable Instrument Act cannot be maintainable in respect of the said cheque upon its dishonour.

In the facts of the present case, there is no adjudication of the liability of the respondent on account of damages allegedly suffered by the petitioner. There is no outstanding debt or liability. The petitioner cannot

be a judge of the damage suffered by him. There has to be an adjudicatory process known to law, before which it cannot be said that the petitioner suffered any damages which the respondent was obliged to pay.

In these circumstances, I do not find any merit in this petition.
Dismissed.

VIPIN SANGHI, J

MARCH 20, 2017

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