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

\+ **<u>CRL.L.P. 516/2016 and Crl.M.A. No. 14924/2016</u>**

RAMESH KUMAR AGGARWAL

..... Petitioner

Through: Mr. Gulshan Kumar Sharma, Advocate.

versus

ASHOK KUMAR ARORA

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

% **27.03.2017**

1. By the aforesaid application, the petitioner seeks condonation of 1055 days delay in filing the leave petition. Since I have heard learned counsel for the petitioner and I am not inclined to issue notice in the leave petition, no useful purpose would be served in issuing notice in the delay application as well.

2. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 11.02.2013 passed by the learned MM, Rohini Courts, Delhi in C.C. No.2392/1/09, whereby the complaint preferred by the petitioner/ complainant under Section 138 of the NI Act has been rejected and the respondent / accused acquitted.

3. The case of the complainant was that he had advanced a friendly loan of Rs.1,45,000/- to the accused in instalments from time to time. Till April 2007, the liability of the accused aggregated to Rs.1,45,000/-. In liquidation of this debt, the accused issued the cheque in question bearing No.854884 dated 13.05.2007 for the amount of Rs.1,45,000/- drawn on his bank. When the said cheque was presented for payment, it was returned unpaid with the remarks that the account had been closed. Consequently, a legal notice was issued on 04.06.2007. The accused allegedly sent a false reply and did not make payment and, consequently, the complaint was preferred.

4. The accused upon being summoned pleaded not guilty and claimed trial. The complainant examined himself as CW-1. He also produced the witnesses from State Bank of Travencore and State Bank of Patiala. The statement of the accused was recorded under Section 313 Cr.P.C. on 19.08.2010. The accused also led the evidence of three witnesses, namely Sh. Babu Lal, Sh. Ajay Khera from State Bank of Patiala, and Sh. Suresh Chand Gupta (DW-3). He also examined himself.

5. During his examination, CW-1/ complainant, *inter alia*, stated that no written agreement was prepared at the time when the loan was advanced since the same was a friendly loan. He claimed that the cheque in question had been issued by the accused in 2007 and that the accused had filled up the amount in the cheque. He claimed that the name and date were filled by another person accompanying the accused whom he did not know. He denied that the name and the date were written in his handwriting. He denied that in the year 2007 he did not have any loan transaction with the

accused.

6. I may observe that the defence set up by the accused was that he had taken loan from the petitioner/ complainant in the year 2002, and at that stage, he had issued the cheque in question to the complainant. He also claimed that he had repaid the entire loan in instalments and the last instalment of Rs.21,000/- had been returned by him in January 2004 in the presence of Sh. S.C. Gupta/ DW-3, who was a neighbour of the accused and was also an uncle (distant relative) of the complainant. His defence was that he demanded return of the cheque in question from the accused. However, the same was not returned since the complainant claimed to have lost the same. Since the cheque was not returned despite repeated requests, he had issued stop payment instructions on 05.03.2004 in respect of the cheque in question, and also closed his account on 17.11.2006.

7. The accused brought on record through DW-2/ Babu Lal his letter dated 05.03.2004 by which stop payment instructions were issued in respect of the cheque in question on the ground that the same was missing. He also brought on record his communication for closure of the bank account and for deposit of his cheque book and passbook. DW-3/ Sh. S.C. Gupta deposed that the instalment of Rs.21,000/- was repaid by the accused in his presence at the residence of Ramesh Kumar Aggarwal/ complainant. He also deposed that the complainant informed that the cheque is not traceable at the moment and would be handed over in due course. He stated that about a month and a half, the accused again approached him and told that the accused had not received the cheque from the complainant, whereupon he advised the accused to stop payment of the cheque. He further stated that

the cheque referred to by him was the cheque payment of which was made in 2004. He further informed that in the year 2007, the complainant had filed the present case against the accused and he advised the accused to get the matter amicably settled.

8. Pertinently, during the cross-examination of the accused, the petitioner/ complainant confronted him with the document Exhibit DW-1/C-2. The accused admitted his signatures on the said document in respect of the portion encircled as Point 'A' by the Trial Court. The portion admitted by the accused in English language which reads "received Rs.1,45,000/-". It bears the signature of the accused admitted by him on a revenue stamp. The portion admitted by the accused is on the lower half of the page. On the upper half of the page writing is made in Hindi dated 06.04.2007 to the effect that the accused has taken a loan of Rs.1,45,000/- in several instalments and towards repayment of the same, the cheque in question has been issued.

9. I may here itself observe that the two handwritings on the same page, namely the one admitted by the accused and the one in Hindi dated 06.04.2007, are in different inks and different handwritings. It is also pertinent to note that the complainant during his cross-examination stated that no writing was created at the time of advancement of the loan and the complainant did not produce the document dated 06.04.2007 sought to be relied upon which contain admission of the accused at Point 'A'.

10. In the face of the evidence brought on record by the accused in support of his defence, the Trial Court held that the defence of the accused

was probablised and, accordingly, acquitted the accused.

11. The submission of learned counsel for the petitioner, firstly, is that DW-3 was only a distant relative of the complainant. Moreover, he was having financial interest with the accused since he had constructed the factory of the son of DW-3.

12. Apart from putting suggestions to DW-3 during his cross-examination to the aforesaid effect, the petitioner/ complainant did not produce any evidence to the said effect. Pertinently, DW-3 had denied any such involvement of the accused in the construction of the factory of his son. He denied the other suggestions given to him to show his financial involvement with the accused.

13. Learned counsel for the petitioner has further submitted that DW-3 was not a witness to advancing of the loan and had no personal knowledge, and thus, he could not say that the amount of Rs.21,000/- paid by the accused in his presence in January 2004 was the last instalment in respect of the loan of Rs.1,45,000/-.

14. No doubt, DW-3 was not a witness to advancing of the loan. However, he was a witness to return of the instalment of Rs.21,000/-. He has deposed that he was informed at that stage that the said instalment was the last instalment towards repayment of the loan. He was also a witness to the conversation which took place with regard to return of the cheque by the petitioner/ complainant to the accused, and the response of the petitioner that the said cheque was not available. Pertinently, on the aforesaid aspects, there is no cross-examination of DW-3. The accused had stopped payment

of the cheque in the year 2004 itself, as is evident from the testimony of DW-2/ Babu Lal.

15. For all the aforesaid reasons, it is absolutely clear that the accused had been able to probablise his defence that the cheque in question may have been issued at the time of advancing of the loan in the year 2002 which had been repaid in January 2004 and the cheque which had been retained by the petitioner/complainant, had been misused in 2007. The impugned judgment, therefore, does not call for interference.

16. Dismissed.

17. Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

MARCH 27, 2017

B.S. Rohella