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

\+ CRL.L.P. 376/2016 & Crl.M.A.11277/2016 (Stay)

LALIT KUMAR ..... Petitioner

Through: Mr.Ankit Jain, Adv.

versus

SURESH KUMAR ..... Respondent

Through: Mr.Jitender Verma, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

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

% 14.07.2017

The complaint of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 was dismissed and the respondent was acquitted by judgment and order dated 28.05.2016 passed by learned Metropolitan Magistrate-01 (East), Karkardooma Courts, Delhi in CC No.52343/2016.

The leave petitioner and the respondent were known to each other and because of the old acquaintance, a loan of Rs.2 lakhs was given by the petitioner to the respondent. The said loan was given vide cheque drawn on Oriental Bank of Commerce. Another amount of Rs.3 lakhs was paid by cheque by the petitioner to the respondent. The respondent, in discharge of his liability issued two cheques drawn on Canara Bank which was returned for insufficient funds in the account of the respondent.

Learned counsel for the petitioner has drawn the attention of this Court to the fact that though the respondent stated under Section 313 of the

Code of Criminal Procedure that he had repaid the loan and the cheques which were presented by the complainant were only given as security but the respondent did not lead any evidence in order to rebut that presumption. The Trial Court did not believe the statement of the petitioner as he did not disclose the details of his having advanced loans to other persons as well.

The petitioner is also said to have admitted that the respondent had given two cheques of Rs.2 lakhs and Rs.3 lakhs respectively which were encashed on 09.07.2013 and no receipt also was given for such payments. The cheques by which loan was given appear to have been encashed after the issuance of cheques towards its repayment. This goes a long way in demonstrating that such issuance of cheques by the respondent was not in discharge of any liability.

In the absence of any receipt towards repayment of loan, there is no proof of the fact that the accused had not repaid the loan.

Taking into account the aforesaid facts and the law in that regard, the Trial Court acquitted the respondent.

No good ground has been made out by the leave petitioner for interfering with the judgment and the order of acquittal.

Leave declined.

The petition is dismissed.

ASHUTOSH KUMAR, J

JULY 14, 2017
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