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

+ CRL.L.P. 260/2017 and Crl. M.A. Nos.7214/2017 & 7215/2017

SHATRUGHAN DASS Petitioner

Through: Mr. Ajay Chaudhary, Mr. Viresh
Chaudhary and Mr. Parambir Singh, Advocates

versus

SANT RAM Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **02.05.2017**

The petitioner had prosecuted the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 by instituting criminal complaint which was registered vide no.55435/2016, it resulting in judgment dated 20.01.2017 of the court of the Metropolitan Magistrate whereby the respondent stands acquitted.

The petitioner is before this court seeking leave to appeal in terms of Section 378(4) of the Code of Criminal Procedure, 1973 (Cr. PC) assailing the view taken by the Metropolitan Magistrate.

The learned counsel for the petitioner has been heard and record has been perused.

Though the transaction in the nature of agreement to sell dated

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16.07.2007 (ex. CW1/8) is stated to have resulted in the respondent issuing two cheques, the present proceedings pertained to only one of the said two cheques, it being cheque bearing no.553106 dated 12.08.2009 for the amount of Rs.10,00,000/-. It appears the said cheque (ex. CW1/1) when presented at the bank was returned unpaid with the remarks “insufficient funds” on 18.08.2009 vide cheque returning memo (ex. CW1/2). It is petitioner’s own case that he had sent a legal demand notice dated 22.08.2009 (ex. CW1/3) by registered post, but the said registered envelope (ex. CW1/5) had been returned with the remarks that the noticee was not found residing at the given address. It was conceded by the petitioner at the trial that the said legal demand notice dated 22.08.2009 was sent at a wrong address. This is the reason why the petitioner got issued another demand notice, it being dated 09.10.2009 (proved at the trial as ex. CW1/6). It was on the basis of service of the said second notice and non payment there-against that the criminal complaint was instituted.

Admittedly, the second demand notice was beyond the statutory period prescribed for such purposes.

Thus, the petition is devoid of substance and is dismissed. The pending applications also stand dismissed.

R.K.GAUBA, J

MAY 02, 2017

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