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

% Decided on: 13th September, 2018

\+ **CRL.L.P. 171/2016**

ANKUR GUPTA ..... Petitioner

Represented by: Mr. Rabindra Tiwary, Advocate.

versus

STATE & ANR. ..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP for the State.
Mr. Manish K. Bishnoi and Ms.Tanvi Sapra, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 5016/2018

For the reasons stated in the application, delay of 381 days in re-filing the petition is condoned.

Application is disposed of.

Crl.M.A. No. 5015/2018 and Crl.M.A. No. 31920/2018

1. By these applications, the petitioner seeks to place on record additional document. Additional document sought to be placed is the receipt of loan amount. Though in oral arguments petitioner claims that the receipt was lost, however, no such averment has been made in the application. The receipt being in possession of the petitioner, it is not the case where the

petitioner was not in possession of this evidence during the course of trial. Permission to lead additional evidence for documents which were already in possession to fill up the lacunae in the prosecution case is not permissible. Further what can be permitted in an appeal is leading of additional evidence that too sparingly on the evidence which was not available to the parties during the course of trial and not merely placing on record documents.

2. Applications are dismissed.

3. Petitioner has now placed on record original cash receipt, at page 54 of the present petition as Annexure- P/9, which the Registry is directed to return to the petitioner by keeping the registered copy thereof on record.

CRL.L.P. 171/2016

1. The present leave to appeal petition is directed against the impugned judgment dated 19th December, 2015 passed by the Learned Metropolitan Magistrate acquitting the respondent in CC No. 1406/15 titled as '*Ankur Gupta v. Braj Mohan Pandey*', whereby the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') was dismissed and the respondent/accused was acquitted.

2. Brief exposition of facts as per the complaint is that the petitioner was engaged in the business of sale and purchase of computer parts/equipment. Respondent was known to the petitioner and they had good relations. Respondent approached the petitioner for a personal loan as he was in dire need of money due to financial crunch. Petitioner gave the loan to the respondent on the assurance of the respondent having given a post dated cheque bearing number 062946 dated 1st March, 2015 for a sum of ₹5,00,000/- drawn on Axis bank, East of Kailash, New Delhi and that the

cheque would be honoured when presented. When the cheque was presented for encashment on 9th March, 2015, it was returned unpaid vide memo dated 17th March, 2015 with remarks *'funds insufficient'*. Thereafter, petitioner sent legal notice dated 26th March, 2006 through registered post and courier. Despite notice having been served, respondent failed to make the payment within statutory period. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was framed against the respondent to which he pleaded not guilty and claimed trial.

4. To substantiate the case, petitioner examined himself as CW-1 and adduced his evidence by way of an affidavit and proved original cheque vide Ex.CW-1/A, returning memo vide Ex.CW-1/B, legal notice and registered post receipts and courier receipts vide Ex.CW-1/C to Ex.CW-1/L and original complaint vide Ex.CW-1/M.

5. In the statement of the respondent recorded under Section 313 Cr.P.C., he denied having taken loan from the petitioner and also denied the receipt of any legal notice.

6. A perusal of the evidence on record shows that the petitioner failed to disclose the date and the amount of the alleged loan given by him to the respondent. He also failed to produce any document on record to prove the factum of advancement of alleged loan. Further, the petitioner admitted in his cross-examination that he had not shown the loan amount in the Income Tax Return. Thus, the petitioner failed to prove that there was a legally recoverable debt payable by the respondent.

7. Finding of the learned Metropolitan Magistrate based on the evidence on record is a plausible view. Hence, the impugned judgment acquitting the

respondent cannot be held to be perverse warranting interference of this Court.

8. Leave to appeal petition is dismissed. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
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