

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

% Decided on: 19th November, 2018

+ **CRL.L.P. 305/2018**

RAM YUDHISTHIR YADAV Petitioner
Represented by: Mr. T.N. Tripathi, Advocate

versus

JAIR PRAKASH GARG Respondent
Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 12th December 2017, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC no. 47053/16 titled as "*Ram Yudhisthir Yadav v. Jair Prakash Garg*", the petitioner/complainant has preferred the present leave petition.

2. Facts of the present case as per the complaint are that the petitioner gave a friendly loan of ₹1,50,000/- for 2-3 months to the respondent. In order to discharge the liability, respondent issued a cheque bearing number 000083 dated 31st December, 2012 for a sum of ₹1,50,000/- in favour of the petitioner. On presentation of the aforesaid cheque, it was dishonoured with remarks '*funds insufficient*' vide return memo dated 30th March, 2013. Legal demand notice dated 29th April, 2013 was sent to the respondent. Despite the service of legal notice, respondent failed to make the payment. Hence, the complaint.

3. Petitioner examined himself as CW-1 and admitted that he had a business of chemicals and cable TV. He came to know the respondent through his friend Shakambar Dutt as the respondent used to visit his office. During his cross-examination, he stated that he did not know whether Shakambar Dutt had ever given any loan to the respondent and he had advanced the loan in question on the saying of Shamkambar Dutt. It was suggested during cross-examination that he had business relationship with the respondent and due to strained relationship on account of substandard goods, he misused security cheque in question by filing the present case.

4. Shakambar Dutt was examined as CW-2. He stated that he was close friends with the petitioner since last 8-10 years and he knew the son of the respondent namely Amit Garg since 1995. He stated that Amit Garg told him that the respondent was to undergo bypass surgery and therefore, he needed money. He stated that he had come to depose before the court at the behest of the petitioner.

5. Statement of respondent was recorded under Section 313 Cr.P.C. wherein he stated that he used to purchase chemicals from the petitioner who had taken blank signed security cheque and supplied defective goods to him. He further stated that he had stopped purchasing goods from the petitioner and he cleared the entire due in the year 2012. He denied taking any loan from the petitioner. He also claimed that he asked the petitioner to return the cheque but instead of returning the cheque, the petitioner misused it by filing the present complaint case.

6. As noted above, petitioner admitted that he did not know the respondent personally and he advanced the loan on the asking of his friend Shakambar Dutt. However, this fact was not stated in his complaint or

affidavit. It is an admitted fact the petitioner and Shakambar Dutt were dealing in chemicals and the respondent had taken the consistent plea that he had purchased the chemicals from the petitioner and the cheque in question was given as a security cheque. Respondent also took the consistent plea that the petitioner supplied goods of substandard quality and due to strained relationship between them, the petitioner misused the cheque in question by filing the present complaint case. Shakambar Dutt stated that the son of respondent approached him in September/October 2012 for money as respondent had to undergo bypass surgery on 24th/25th November, 2012, however, the petitioner stated that the loan in question was advanced in December 2012. The date of advancement of loan and issuance of cheque was not mentioned in the complaint as well as the affidavit of the petitioner. Petitioner also failed to explain as to why the cheque was dated 31st December 2012 when the loan was given in December 2012 for 2-3 months. Furthermore, neither any written agreement was executed between the parties nor the income tax return of the petitioner reflected the advancement of loan to the respondent.

7. Findings of the learned Metropolitan Magistrate, based on the facts noted above cannot be said to be perverse warranting interference of this Court.

8. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

NOVEMBER 19, 2018

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