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

+ Crl.L.P. 352/2018

SUNSTAR CCI (INDIA) PVT LTD Petitioner

Represented by: Mr. Desh Raj, Advocate.

versus

R 2 AGENCIES & ANR Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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22.05.2018

Crl.M.A. No. 9878/2018 (Exemption)

Allowed, subject to all just exceptions.

**Crl.M.A. No. 9879/2018(delay in filing) and Crl.M.A. No. 9880/2018
(delay in refiling)**

For the reasons stated in the applications delay of 13 days in filing and delay of 4 days in refiling the leave to appeal petition is condoned.

Crl.L.P. 352/2018

1. Aggrieved by the judgment dated 23rd December, 2017 passed by the learned Metropolitan Magistrate in CC No. 432SR/2014 titled as “*M/s Sunstar CCI (India) Pvt. Ltd. Vs. M/s R 2 Agencies*” whereby the respondents were acquitted for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (in short NI Act), the petitioner has preferred the present leave to appeal petition.

2. Briefly stated, the case of the petitioner as per the complaint is that

respondent No. 1 which is a proprietorship concern through respondent No. 2 who is the proprietor of respondent No. 1 used to approach the petitioner for purchasing coolant, brake fluid etc. against cash payments and the petitioner used to supply goods to the respondents. Respondent No. 2 on behalf of respondent No. 1 issued a cheque bearing No. 205885 drawn on ICICI Bank, Faridabad Branch, Sector-15, Haryana as security cheque for payments of goods and it was agreed that in case the payment was not made in cash, the cheque shall be presented for encashment. Consequently, goods were delivered to the respondents, however, they failed to make the payment. The petitioner requested the respondents to make the payment in cash, however, a respondent No. 2 instructed the petitioner to present the cheque for payment of goods. Since there was an outstanding amount of ₹ 6,74,510/- as on 28th February, 2007 as per the petitioner's books of accounts, the petitioner filled in the amount of ₹6,74,510/- on cheque bearing No. 205885 dated 20th February, 2008 and presented the cheque for encashment. The cheque was returned unpaid with remarks '*payment stopped*' vide return memo dated 24th February, 2008. Consequently, the petitioner issued legal notice dated 24th March, 2007 demanding payment within the stipulated time. Since the respondents failed to make the payment, the petitioner preferred the above noted complaint.

3. Respondent was summoned vide order dated 4th May, 2007. Notice under Section 251 Cr.P.C. was framed on 1st March, 2011. Petitioner reiterated the averments made in the complaint in his evidence by way of an affidavit exhibited vide Ex.CW-1/X and relied upon the documents Ex. CW-1/1 to Ex. CW-1/11.

4. Defence of the respondents was that the cheque was issued blank,

undated and was used for the purpose of security for business transactions. The cheque was later manipulated by the petitioner by filling all its contents except the signatures. Respondents examined Shri Amit Kumar, Sales Officer ICICI Bank, Sector-16, Faridabad who had brought the statement of account of respondent No. 1 for account bearing No. 008305002403 for the period 1st April, 2005 to 28th February, 2007 vide Ex. DW-1/A.

5. The complaint is absolutely silent as to when the cheque was handed over by the respondents. Further, the petitioner in his cross examination admitted that when the cheque was received, the name of the payee was filled but no date and amount were filled. The petitioner also admitted that the cheque was taken as a security. Petitioner has not placed on record his statement of account or any other documents like bill, invoice etc. to show transactions between the petitioner and respondents. Thus, the petitioner has failed to prove that the cheque was issued in the discharge of any legally enforceable debt.

6. This Court concurs with a view expressed by the learned Metropolitan Magistrate. The impugned judgment acquitting the respondents cannot be said to be perverse or illegal warranting interference of this Court.

7. Leave to appeal is dismissed.

MUKTA GUPTA, J.

MAY 22, 2018

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