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

%   Decided on: 9th April, 2018

+   **CRL.L.P. 211/2018**

SANJAY CHOUDHARY   ..... Petitioner

Represented by: , Advocates

versus

DINESH KUNDRA   ..... Respondent

Represented by: , Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 6156/2018 (Exemption)

Exemption allowed subject to just exceptions.

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1. Aggrieved by the judgment dated 19th December, 2017, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881, petitioner has preferred the present leave petition.

2. Briefly stated, the facts of the present case are that respondent approached the petitioner with a request for a friendly loan from time to time for his business and personal requirement, committing to repay the same by the last week of December 2014. When the petitioner approached the respondent for repayment of loan, respondent sought more time to repay and the petitioner agreed to it. Respondent executed a promissory note dated 29th November, 2014 agreeing to repay Rs.50,00,000/- along with interest @ 3% per month. Subsequently, the respondent requested the petitioner to present the cheque bearing no. 000142 dated 29th July, 2015 for a sum of Rs.50,00,000/- drawn on HDFC Bank Ltd, Sheikh Sarai, New Delhi. Aforesaid cheque was

returned unpaid with remarks "Insufficient Funds" vide return memo dated 30th July, 2015. Since the respondent failed to make payment within stipulated time despite service of legal notice, the petitioner filed a complaint under Section 138 of Negotiable Instruments Act, 1881 before the Learned Metropolitan Magistrate.

3. Vide impugned judgment dated 19th December, 2017, Learned Metropolitan Magistrate acquitted the respondent on the grounds that the petitioner failed to disclose the mode and manner as well as the date/dates and exact amount of loan advanced by him to the respondent and had merely banked upon the acknowledgment by the respondent of his liability to the extent of Rs.50,00,000/- by way of promissory note Ex.CW-1/B. Furthermore, the petitioner, during his cross-examination, took a stand that he had advanced an interest free loan and that respondent promised to repay a sum of Rs.50,00,000/- against a loan of Rs.35,00,000/- vide promissory note dated 27th November, 2014. However, it is beyond comprehension that why will a person agree to repay a sum of Rs.50,00,000/- against an interest free loan of Rs.35,00,000/-. Petitioner had also failed to prove due execution of promissory note Ex.CW-1/B. Petitioner also failed to examine the witnesses to the said promissory note despite the fact that they were employees of the petitioner.

4. Considering the findings of the learned Metropolitan Magistrate, this Court concurs with the view expressed by the learned Metropolitan Magistrate. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

5. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 09, 2018/'ga'