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

%   Decided on 23rd April, 2018

+   **CRL.L.P. 264/2018**

CHETNA FAB FINISH   ..... Petitioner
Represented by: Mr. K. S. Aryu, Advocate

versus

SUDHA COLLECTION   ..... Respondent
Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 7398/2018 (Exemption)

Exemption allowed, subject to all just exception.

Application is disposed of.

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1. Aggrieved by the judgment dated 23rd January, 2018, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881, the petitioner/complainant has preferred the present leave petition.

2. Petitioner Chetna Finish Fab, through its proprietor Raj Kumar, filed complaint case no. 614650/16 under Section 138 Negotiable Instruments Act, 1881 (in short 'NI Act') stating that Sudha Collection (respondent) through its proprietor C. V. Ramana Rao was engaged in export of home products. Chetna Finish Fab used to perform printing work for Sudha Collection and as per the books of accounts, an amount of Rs. 15,93,063/- was due to Chetna Finish Fab towards the job work. Sudha Collection in

discharge of its liability issued a cheque bearing no. 71515 dated 19th July, 2010 for a sum of Rs. 5,00,000/- drawn on Syndicate Bank, SME Branch, Sector-18, Noida. When the cheque was presented for encashment, it was returned vide memo dated 28th August, 2010 with remarks 'Insufficient Funds'. Chetna Finish Fab issued a legal notice dated 21st September, 2010 through registered post but Sudha Collection failed to make the payment, hence the present complaint.

3. To substantiate the case, Raj Kumar examined himself as CW-1, adduced his evidence by way of an affidavit vide Ex.CW-1/A and exhibited original cheque as Ex.CW-1/3, return memo as Ex.CW-1/4, legal notice as Ex.CW-1/-5, postal receipt as Ex.CW-1/6 and complaint as Ex.CW-1/C.

4. C. V. Ramana Rao, proprietor of Sudha Collection, in his statement recorded under Section 313 Cr.P.C. stated that the aforesaid cheque was an undated cheque issued towards security. He also denied the receipt of legal notice.

5. V.D. Sharma, Senior Officer, ICICI Bank was examined as DW-1. He produced the statement of account of Raj Kumar for the period 1st April, 2005 to 3rd March, 2010 as Ex.DW-1/A.

6. Atul Kumar, LDC, Estate Sections, AIIMS, was examined as DW-2, who brought allotment letter dated 8th June, 2010 (Ex.DW-2/B) in favour of Sudha Rao issued by V.V. Mishra, Ex. Admin Officer and occupation report (Ex.DW-2/C). He further stated that the possession was taken by the allottee on 15th June, 2010.

7. Suresh Kr. Gupta (DW-3), Manager, Syndicate Bank, proved the statement of account of Sudha Collection vide Ex. DW-3/A and instrument issued report vide Ex.DW-3/B. Akash Bhardwaj (DW-4), Accountant,

proved the statement/certificate vide Ex.DW-4/A.

8. To prove the fact that the petitioner maintained a running account of the respondent, petitioner relied upon the copy of ledger (Mark CW-1/2) which was not an exhibited document. Moreover, the ledger did not reflect the date wise or year wise transactions. Furthermore, since the bills pertained to year 2006, the recovery against the bills was barred by limitation since the cheque in question dated 19th July, 2010 was issued after a lapse of 3 years.

9. Considering the evidence on record, the learned Trial Court rightly held that the petitioner failed to prove that there was any legal liability of the respondent to pay the cheque amount and dismissed the complaint, thereby acquitting the respondent. Finding of the learned Trial Court is neither illegal nor perverse warranting interference.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 23, 2018
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