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

%   Decided on: 12th November, 2018

\+   **CRL.L.P. 328/2016**

M/S KIDS COLLECTIONS ..... Petitioner
Represented by: Mr. Himanshu Jain, Advocate

versus

M/S SHRISHTI COLLECTION ..... Respondent
Represented by: Mr. Mohd. Qasim, Advocate

\+   **CRL.L.P. 329/2016**

M/S KIDS COLLECTIONS ..... Petitioner
Represented by: Mr. Himanshu Jain, Advocate

versus

M/S SHRISHTI COLLECTION ..... Respondent
Represented by: Mr. Mohd. Qasim, Advocate

\+   **CRL.L.P. 331/2016**

M/S KIDS COLLECTIONS ..... Petitioner
Represented by: Mr. Himanshu Jain, Advocate

versus

M/S SHRISHTI COLLECTION ..... Respondent
Represented by: Mr. Mohd. Qasim, Advocate

\+   **CRL.L.P. 332/2016**

M/S KIDS COLLECTIONS ..... Petitioner
Represented by: Mr. Himanshu Jain, Advocate

versus

M/S SHRISHTI COLLECTION ..... Respondent
Represented by: Mr. Mohd. Qasim, Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A.Nos.9619/2016 (delay) in CRL.L.P. 328/2016
Crl.M.A.Nos.9628/2016 (delay) in CRL.L.P. 329/2016
Crl.M.A.Nos.9641/2016 (delay) in CRL.L.P. 331/2016
Crl.M.A.Nos.9646/2016 (delay) in CRL.L.P. 332/2016

1. For the reasons stated in the applications delay of 30 days in filing the leave to appeal petitions are condoned.

2. Applications are disposed of.

CRL.L.P. 328/2016 and Crl.M.A. No. 9622/2016
CRL.L.P. 329/2016 and Crl.M.A. No. 9631/2016
CRL.L.P. 331/2016 and Crl.M.A. No. 9644/2016
CRL.L.P. 332/2016 and Crl.M.A. No. 9649/2016

1. Aggrieved by the judgments dated 5th January 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC nos. 728/1/06, 729/1/06, 730/1/06 and 731/1/06 titled as "*M/s. Kids Collections v. M/s Shristi Collection*", the petitioner/complainant has preferred the present leave petitions.

2. Case of the petitioner as per the complaints is that the petitioner was engaged in the business of kids garments and respondent was the customer of the petitioner who was purchasing the goods from time to time on cash and credit basis. Petitioner had maintained a running account of the respondent. It is the case of the petitioner that the respondent in discharge of his partial liability against the purchases made issued cheques bearing numbers 376922 dated 20th July, 2006 for a sum of ₹33,431/-, 376923 dated 25th July, 2006 for a sum of ₹32,477/-, 376924 dated 30th July, 2006 for a sum of ₹23,826/- and 376925 dated 5th August, 2006 for a sum of ₹15,558/-

all drawn on ICICI Bank, Rajouri Garden, New Delhi. When the cheques were presented for encashment, they were returned unpaid with remarks *"insufficient funds"* vide dishonour memos dated 8th August, 2006. Legal notice dated 1st September, 2006 was sent to the respondent through registered post and UPC, however, despite notice, the respondent failed to make the payment within the stipulated period of time, hence, the complaints were filed.

3. Notice under Section 251 Cr.P.C. was framed against the respondent vide order dated 17th November, 2009 to which he pleaded not guilty and claimed trial.

4. Mr. Venus Kumar, one of the partners of the petitioner's firm, was examined as CW-1 who led his evidence by way of affidavit (Ex.CW-1/A) wherein the facts as stated in the complaints were reiterated.

5. Mr. Sanjay was examined as CW-2 who in his evidence by way of affidavit stated that he was the Special Power Attorney Holder of Mr. Venus Kumar. His affidavit mentioned the similar facts as that of Mr. Venus Kumar (CW-1).

6. Statement of the respondent was recorded under Section 313 Cr.P.C. wherein he stated that he had already made the payment towards the material supplied and the cheques in question were issued for the purpose of security which were misused. He denied the receipt of legal notice.

7. On perusal of the evidence led on record, it is evident that the petitioner failed to produce the certified or audited statement of running account of the respondent maintained by the petitioner to evaluate the exact liability towards the petitioner. Furthermore, no particular date was mentioned by the witnesses as to when the cheques in question were handed

over by the respondent to the petitioner because the last bill in respect of material supplied was dated 27th April, 2006 and the cheques in question were of much later date of the last bill and as per the statement of Venus Kumar (CW-1), the petitioner firm did not give credit period beyond 45 days.

8. Furthermore, though Venus Kumar claimed himself to be one of the partners of the petitioner's firm, however, no power of attorney in his favour by other partners to depose or prosecute on behalf of the petitioner's firm has been placed on record.

9. Legal notice sent to the respondent was received back with the endorsement "unclaimed and returned to sender". Address upon which the legal notice was sent to the respondent was different from the address upon which the respondent was served summons from the court. Moreover, the last bill issued to the respondent by the petitioner also mentions some other address of the respondent. Petitioner did not examine any witness from post office to prove service of legal notice upon the respondent. Thus, there cannot be any presumption of deemed service of legal notice in the present case.

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

11. Leave to appeal petitions and applications are dismissed.

(MUKTA GUPTA)
JUDGE

NOVEMBER 12, 2018/'yo'