

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

% Decided on: 14th May, 2018

+ **CRL.L.P. 324/2018**

SMT PUSHPA DEVI Petitioner
Represented by: Mr. Pradeep Singh and
Mr.K.K. Vijay, Advocates.
versus

SMT SUSHILA Respondent
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 9044/2018 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.A. No. 9045/2018 (Delay)

For the reasons stated in the application delay of 63 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 324/2018

1. Aggrieved by the judgment dated 18th December, 2017 whereby the learned Metropolitan Magistrate acquitted the respondent in Complaint Case No.2388/2016 titled as '*Pushpa Devi v. Sushila*' under Section 138 of Negotiable Instrucemtns Act, 1881 (in short 'NI Act'), the petitioner/complainant has preferred the present leave to appeal petition.
2. Succinctly stated, the case of the petitioner is that the respondent availed loan of ₹4,50,000/- from the petitioner on two occasions, that is, ₹50,000/- on 15th December, 2004 and ₹4,00,000/- on 5th January, 2005

which was to be repaid after three-four months. The respondent issued two cheques bearing Nos. 643019 for ₹50,000/- dated 15th December, 2004 and 643015 for ₹4,00,000/- dated 5th January, 2005, both drawn on Punjab and Sind Bank, Peeragarhi Branch. On presentation both the cheques were dishonoured on 10th May, 2005 with remarks '*Account Closed*'. Petitioner issued legal notice dated 6th June, 2005 through registered post, demanding the payment of cheque amount within the stipulated period. Despite service, the respondent did not pay the amount. Hence, the petitioner preferred the present complaint under Section 138 NI Act.

3. Upon summoning respondent appeared and notice was framed under Section 138 NI Act to which she pleaded not guilty and claimed trial. Petitioner examined herself as CW-1 and proved original cheques vide Ex.CW-1/1 and CW-1/2, return memos vide Ex.CW-1/3 and Ex.CW-1/4, legal notice vide Ex.CW-1/5, postal receipt vide EX.CW-1/6 and Ex.CW-1/7, UPC vide EX.CW-1/8 and registered envelope received back vide Ex.CW-1/9. Statement of the respondent was recorded under Section 313 Cr.P.C. on 2nd July, 2014. No defence witness was examined.

4. Learned Metropolitan Magistrate acquitted the respondent on the ground that the cheques were not filled by the respondent as she only knew how to sign. A bare look on both the cheques revealed that the body of the cheques was not filled by the person who had signed it and also more than one pen had been used to fill the cheques in question. Secondly, no document was prepared regarding the transaction and there was no witness to handing over of the money to the respondent or issuance of cheque by her.

5. Furthermore, despite having friendly relations, the petitioner charged an interest of 24% p.a. from the respondent even though the loan was given for a duration of three-four months. The cheques also do not support the case of the petitioner. It is the case of the petitioner that the loan was repayable after three-four months, however, the cheques were issued on 15th December, 2004 and 5th January, 2005, when the loan was advanced. Further no post-dated cheques were issued since the loan was to be repaid after three four months and the amount mentioned in the cheques did not include the interest @24% p.a., thus creating a doubt on the case of the petitioner. Lastly, cheque bearing No.643015 which ordinarily would have been issued prior in time to cheque bearing No.643019, in the present case was issued 20 days later.

6. Considering, the reasoning of the learned Metropolitan Magistrate, this Court concurs with the view expressed by the learned Metropolitan Magistrate. As the impugned judgment acquitting the respondent cannot be held to be perverse or illegal, no interference is warranted by this Court.

7. Leave to appeal petition is dismissed.

नात्यमेव जयते

(MUKTA GUPTA)
JUDGE

MAY 14, 2018
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