

\$~20

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

+ **CRL.L.P. 253/2016**

PARVINDER SINGH

..... Petitioner

Represented by: Mr. Iqbal Singh, Adv.

versus

SURENDER KAPOOR

..... Respondent

Represented by: Mr. Yog Verdhan, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

17.01.2018

%

In the complaint filed by the petitioner it was his case that he knew the accused for several years, due to financial crisis the complainant arranged a loan of ₹2,50,000/- and in lieu thereof accused issued a post-dated cheque bearing No.317566 dated 15th December, 2005 for a sum of ₹1,90,000/- drawn on Punjab National Bank, Hari Nagar. On the request of the respondent who sought time till April, 2006 the cheque was presented on 1st May, 2006. On presentation of the aforesaid cheque for realization the same was returned vide memo dated 1st May, 2006 with the remarks 'Accounts Closed'. The petitioner served legal notice to the respondent, however he failed to make payment. Hence, the complaint under Section 138 of the Negotiable Instruments Act.

CRL.L.P. 253/2016

page 1 of 2

To prove that it was a legally enforceable debt, the father of the petitioner appeared in the witness box as CW-1 who deposed that he did not know the facts of the case as he was the attorney of the complainant. In the pre-summoning evidence, the complainant filed his own affidavit by way of evidence, however did not subject himself to cross-examination. As noted the power of attorney holder was not aware of the facts.

The learned Trial Court thus held that the petitioner having failed to prove the ingredients of offence punishable under Section 138 of the Negotiable Instruments Act, no presumption under Section 139 NI Act is required to be raised and acquitted the accused as he was entitled to get the benefit of doubt.

In view of the discussion aforesaid and the fact that CW-1 who appeared in the witness box was not aware of the facts being the attorney of the complainant, the view expressed by the learned Metropolitan Magistrate in the impugned judgment dated 17th February, 2016 cannot be said to perverse warranting interference.

Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

JANUARY 17, 2018

‘ga’

CRL.L.P. 253/2016

page 2 of 2