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

%　　Decided on: 12th March, 2018

\+　　**CRL.L.P. 272/2016**

RAJ SINGH ..... Petitioner

Represented by: Mr. Sukhbir Singh, Adv.

versus

RAM AVTAR MEHRA ..... Respondent

Represented by: Mr. Rajesh Pandey, Ms. Anuradha Pandey, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 8282/2016

For the reasons stated in the application delay of 74 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 272/2016

1. By this petition the petitioner seeks leave to appeal against the judgment 19th December, 2015 acquitting the respondent for offence punishable under Section 138 of the Negotiable Instruments Act.

2. Case of the petitioner in the complaint filed was that the petitioner and respondent were having friendly relations. Since the respondent was in dire need of money, in the month of July 2012 he approached the petitioner and sought a friendly loan of ₹2 lakhs for a period of three months. The

petitioner could arrange a sum of ₹1,60,000/- and extended the said amount to the respondent by way of a friendly loan on 3rd July, 2012 for a period of three months. It is the case of the petitioner that on 10th October, 2012 the respondent issued three cheques in discharge of the said liability i.e. cheque Nos. 185065 and 185073 dated 10th October, 2012 and 16th October, 2012 both amounting to ₹40,000/- each drawn on Axis Bank Ltd. and the third cheque for a sum of ₹80,000/- bearing No. 243164 dated 15th October, 2012 drawn on Indian Overseas Bank. On presentation the three cheques were returned with the remarks "Funds Insufficient". The petitioner sent a legal notice of demand to the respondent, however despite having received the notice in the prescribed period for return of the money having elapsed no payment was made constraining the petitioner to file the complaint under Section 138 of the Negotiable Instruments Act.

3. Before the learned Trial Court, the complainant examined himself as the sole witness whereas the respondent examined himself as DW-1, Amritpal Singh, Window Operator of Central Bank of India as DW-2, his mother as DW-3 and Surender @ Sunder as DW-4.

4. The defence taken by the respondent in the application under Section 145(2) Cr.P.C. as also the cross-examination of the complainant was that on 13th July, 2012 a sum of ₹2 lakhs was paid to the petitioner in the presence of his mother DW-2 and Surender @ Sunder DW-4 and the petitioner returned the documents relating to the property and promised to return the security cheques within 2-3 days. However, instead of returning the said cheques he manipulated those cheques and filed the complaint case.

5. Learned counsel for the petitioner before this Court submits that the claim of the respondent of return of the amount to the petitioner is not

fortified by the Income-tax return of the petitioner. Further there is contradiction in the testimony of the respondent and his mother as to the property sold. Hence the respondent having failed to prove the return of amount, the learned Trial Court could not have acquitted the respondent.

6. Legal position with respect to proof on a complaint under Section 138 of the Negotiable Instruments Act is well-settled. Once the petitioner proves its case, presumption is raised under Section 139 of the Negotiable Instruments Act which the accused is required to rebut, however the standard of proof required to rebut the presumption is not beyond reasonable doubt and if by preponderance of probability the respondent is able to rebut the presumption the same is sufficient. The case of the respondent is that amount of ₹2 lakhs was returned in cash which fact is corroborated by the statement of the mother of the respondent who appeared as DW-3 and an independent witness Surender @ Sunder as DW-4.

7. In this regard it would be relevant to note the testimony of Surender as under:

> *"On S.A.*
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> *About 2-3 years earlier, Sh. Ram Avtar telephonically called me at his house and asked me to accompany him to pay some money to somebody whose name I do not remember now. I along with accused Ram Avtar and his mother went to the residence of the complainant situated in Village Bagdola, New Delhi. There in our presence the accused has paid an amount of ₹2 lakhs in cash to the complainant and thereafter the complainant has given certain documents to the accused, regarding which the accused has later on told to me that the documents were earlier handed over by him to the complainant. At the same time, the accused demanded back his cheque or cheques from the complainant, however, the complainant has refused to return the same by stating that he would return the*

cheque(s) after payment of some outstanding amount which remained unpaid on account of interest on the loan for a certain period.

XXXXX by Sh. Gulshan Gupta, counsel for the complainant.

I do not remember the exact date, month & year, however, as far as I remember it is during the month of june or july when accused called me telephonically. On the same day, during afternoon I went to the house of the accused by my car. Accused had told me that he had to pay some amount to someone in Village Bagdola, New Delhi. Accused told me that he had earlier took some loan and that he had to repay the same. The amount was ₹2 lakhs. The accused had collected the amount from his house. Thereafter, we all visited the house of the complainant in village Bagdola, New Delhi by my car. I know the accused for last 5-6 years. When we reached the house of the complainant, he has himself opened the door of the house and thereafter we were made to sit in the drawing room. At that time, the complainant was alone at his home. The accused paid the amount in the notes of denomination of ₹500/- in my presence. Accused did not obtain any receipt from the complainant in respect of the said amount. We remained at the house of the complainant for around half an hour. I did not ask the accused as to from where he has brought the amount of ₹2 lakhs which he had paid to the complainant. It is wrong to suggest that I did not visit the house of the complainant along with accused and that I am deposing falsely in this regard. It is further wrong to suggest that no amount was paid by the accused to the complainant in my presence and that I am deposing falsely in this regard. It is wrong to suggest that I am deposing falsely on behest of accused as he is my friend."

8. It is thus the case of the independent witness also that the money in cash was returned and the respondent repeatedly asked for the cheques issued by him which the complainant refused to return stating that he would return the cheques after the payment of some outstanding amount which

remained unpaid on account of interest on the loan for a certain period was cleared.

9. Testimonies of the defence witnesses have not been shaken in cross-examination. Merely because there is a contradiction in the cash amount being received from the sale of a particular property between the evidence of the respondent and his mother cannot be a ground to discard the defence. The view taken by the learned Trial Court is a plausible view warranting no interference. Leave to appeal is thus declined.

10. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 12, 2018
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