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

%   *Decided on: 16th July, 2018*

\+   **CRL.L.P. 442/2018**

RATTAN LAL   ..... Petitioner

Represented by: Mr. Akhil Sharma and Ms. Isha Aggarwal, Advocates.

versus

RAM KISHAN SHARMA @ R.K. SHARMA   ..... Respondent

Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 12572/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 442/2018

1. Aggrieved by the judgment dated 12th April, 2018 whereby the learned Metropolitan Magistrate acquitted the respondent for offence punishable under Section 138 Negotiable Instruments Act, 1881, (in short NI Act) the petitioner/complainant has preferred the present leave petition.

2. Facts leading to the present petition are that the petitioner and the respondent had friendly relation with each other. It is the case of the petitioner that the respondent approached him for a loan of ₹16,00,000/- in April, 2014. The petitioner obtained the entire funds from his brother and advanced the same to the respondent for a period of two years and in lieu of the loan, respondent gave two post dated cheques dated 6th April, 2016 and 7th April, 2016 both drawn on State Bank of India, Central Secretariat, New Delhi. After the expiry of two years, when the petitioner presented both the two cheques for

encashment, they were returned vide bank return memos dated 12th April, 2016 with remarks "funds insufficient". Thereafter, the petitioner served a legal notice dated 2nd May, 2016 upon the respondent to which he replied by denying any liability towards the petitioner. In the reply, the respondent also alleged misuse of cheques by the petitioner and that the two blank signed cheques were given by him to the petitioner in the year 2013 to find out the exact amount payable by the respondent to two co-operative societies and the cheques to be deposited in the office of societies after filling the same. Consequently, the petitioner preferred the present complaint case.

3. Petitioner examined himself as CW-1 and led his evidence by way of an affidavit Ex. CW-1/A. He proved the two cheques, one bearing no. 568023 dated 6th April, 2016 for a sum of ₹9,00,000/- and other bearing no. 568024 dated 7th April, 2016 for sum of a ₹7,00,000/-, both drawn on SBI, Central Secretariat, New Delhi as Ex.CW-1/A and Ex.CW-1/B respectively, cheque returning memos dated 12th April, 2016 as Ex.CW-1/C and Ex.CW-1/D respectively, legal demand notice dated 2nd May, 2016 as Ex.CW-1/E, postal receipts of speed posts and registered posts as Ex.CW-1/F (Colly), tracking report of delivery of registered post and speed post as Mark-A (colly), reply dated 23rd May, 2016 to legal demand notice alongwith envelope as Ex.CW-1/G. Petitioner also examined his brother Ram Singh as CW-2.

4. Respondent in his statement recorded under Section 313 Cr.P.C. stated that he had never requested the petitioner for any loan and the cheques in question were given by him to the petitioner for the purpose of payment of installment of co-operative societies loan. Respondent examined himself as DW-1.

5. It is the case of the petitioner that he had advanced a loan of ₹16,00,000/- to the respondent, however, the source of funds was disclosed for

the first time in his cross-examination and there is no mention of the same either in his complaint or examination-in-chief. During his cross examination he stated that he procured the entire amount from his brother. He admitted no document or loan agreement was executed at the time of grant of loan. Petitioner in his cross examination stated that the respondent required the loan to pay of his other creditors.

6. With respect to the source of funds, Ram Singh (CW-2) deposed that he had given ₹16,00,000/- in cash to the petitioner who immediately handed it over to the respondent. Ram Singh (CW-2) further deposed that he had sold a house that is D-22, Sewak Park, Uttam Nagar, Delhi and advanced funds to the petitioner out of the sale proceeds, however, no document regarding the said property was placed on record. Moreover, Ram Singh (CW-2) in his cross-examination stated that he did not get any document from the purchaser regarding the sale of immovable property, which in itself casts serious doubt on the testimony of Ram Singh CW-2.

7. The line of defence of the respondent has been consistent with his reply to legal demand notice, in application under Section 145(2) of NI Act as well as defence evidence. Respondent also stated that the petitioner had told him that the cheques had been misplaced but he came to know that they have been dishonored on receipt of legal demand notice. Furthermore, he had not taken any money in the presence of Ram Singh (CW-2).

8. Learned Metropolitan Magistrate observed that in view of the above findings and that the brother of the petitioner being an interested witness, his testimony regarding witnessing the loan transaction was not credible and that the respondent was able to rebut the presumption. Version of the petitioner casts serious doubt on the case of the petitioner as no prudent

person would advance a loan of substantial amount without executing any document and also when he knows that the person is indebted to other creditors. Furthermore, it is highly improbable that if a loan is granted for two years, there is no conversation during the period of those two years regarding repayment of loan.

9. The view expressed by the learned Metropolitan Magistrate is a plausible view on the facts of the case. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 16, 2018
'yo'