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

% Decided on: 27th July, 2018

\+ **CRL.L.P. 476/2018**

MEENA TYAGI ..... Petitioner
Represented by: Mr.Pawan Sharma, Advocate

versus

RAJINDER SHARMA ..... Respondent
Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A.28591/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 476/2018

1. By this petition, the petitioner seeks leave to appeal against the judgment dated 10th May, 2018 acquitting the respondent for offence punishable under Section 138 of the Negotiable Instruments Act.

2. Briefly, the case of the petitioner in his complaint was that the petitioner extended a friendly loan of ₹11.50 lakh to the respondent and in order to liquidate the liability, the respondent handed over a cheque bearing No.548947 dated 22nd October, 2010 for a sum of ₹11.50 lakh drawn on ICICI Bank, Sonepat Branch with the assurance that on presentation, it would be honoured. When the petitioner presented the said cheque in his bank i.e. UCO Bank, New Subzi Mandi, Azadpur Branch, it was returned with the remark 'Account Closed' vide return memo dated 8th February,

2011. The complainant thus issued a legal notice dated 20th February, 2011 and since despite service of notice the respondent did not pay the amount, the complaint was filed. During the course of trial, petitioner proved the original cheque, original cheque returning memo, deposit slip of the cheque, UPC and legal notice vide Ex.CW-1/1 to Ex.CW-1/5 respectively.

3. Plea of the respondent in his defence was that the cheque in question was handed over by him to one Rampal Kashyap as security and in this regard, he had made a complaint in Gannaur Police Station against Rampal Kashyap. During the course of cross-examination the petitioner admitted that she was earning a sum of ₹50,000/- approximately, had never paid income tax and at one go had never given loan to the accused but paid the entire sum in different instalments. She admitted that there was no written agreement between the parties. The petitioner also examined her husband as CW-2 who stated that he knew the respondent as he belonged to the same village as that of his wife, thus his wife extended the loan. According to him, she arranged the amount of ₹6 lakh by withdrawing from his account, ₹2 lakh were lying at home, ₹2,80,000/- were again withdrawn from his account and ₹70,000/- was arranged from his maternal uncle. He further stated that they had also sold some family property and thus gave the loan to the respondent. CW-2 admitted that the land sold by them was for a sum of ₹2.60 lakh and the remaining amount was received in cash.

4. The learned Trial Court acquitted the respondent for the reason that no loan agreement was entered into before extending the loan for a sum of ₹11.50 lakh. Though, the petitioner claimed that she was indulging in property dealing and made earnings out of the same, however, she was unable to disclose the source of the funds. No income tax documents were

produced to show that the petitioner was an income tax payee which could have shown the outstanding loan. Assuming that the loan was given in instalments, the complainant is vague about the details and does not give the dates when the loan amounts were extended. Though CW-2 stated that most of the amounts were withdrawn from the bank account, no statements of bank accounts were proved and the petitioner showed her ignorance about these withdrawals. Considering the fact that the petitioner has not been able to prove beyond shadow of doubt that there was a legal liability of the respondent to be discharged, the respondent was acquitted.

5. As noted above, the petitioner has failed to prove as to when the petitioner extended the total loan in various instalments, there being no loan agreement, no bank account statement nor any other record to prove the same, this Court finds that the view expressed by the learned Trial Court on the evidence adduced before it is a plausible view and warrants no interference.

6. Leave to appeal petition is thus declined.

(MUKTA GUPTA)
JUDGE

JULY 25, 2018
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