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

%   Decided on: 3rd October, 2018

\+   **CRL.L.P. 410/2016**

GOPAL GOEL ..... Petitioner

Represented by: Mr. Pranav Sapra, Advocate.

versus

SAPNA ..... Respondent

Represented by: Father of respondent in person.
Mr. Ashok K. Kumar, APP for the State with ACP Akanksha Yadav, Inspector Arun Dev Nehra, SHO Paschim Vihar and SI Imran Khan.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.12087/2016 (Delay)

For the reasons stated in the application delay of 36 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 410/2016

1. Aggrieved by the judgment dated 23rd March 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC No. 316/1/2016 titled as "*Gopal Goel v. Sapna*", the petitioner/complainant has preferred the present leave petition.

2. Briefly stated, the facts of the case as per the complaint are that the petitioner was on friendly terms with the respondent and her family. Petitioner advanced ₹50,000/- as a friendly loan on interest at the rate of

24% per annum on 1st November, 2002 to the respondent for a period of six months. When the petitioner approached the respondent for repayment, she gave a cheque bearing number 184340 dated 17th May, 2003 for a sum of ₹50,000/- drawn on Oriental Bank of Commerce, Delhi against the aforesaid loan amount. When the cheque was presented for encashment on 22nd May, 2003, it was returned dishonoured with remarks '*funds insufficient*' vide return memo dated 26th May, 2003. Petitioner intimated the respondent about the dishonour of cheque and requested her to make the payment, however, she failed to make the payment despite repeated requests and demands. Petitioner sent a legal demand notice dated 3rd June, 2003 through registered AD and UPC but the respondent failed to make the payment within the stipulated time. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was framed against the respondent vide order dated 16th November 2010 to which she pleaded not guilty and claimed trial.

4. Petitioner examined himself as CW-1 and filed his evidence by way of an affidavit and relied upon original cheque vide Ex.CW-1/1, returning memo vide Ex.CW-1/2, legal demand notice vide Ex.CW-1/3, registered AD receipt and UPC receipt vide Ex.CW-1/4 and Ex.CW-1/5 respectively.

5. Statement of respondent was recorded under Section 313 Cr.P.C. Respondent examined her brother Kamal Arora as DW-1 and herself as DW-2.

6. Kamal Arora (DW-1) stated that he had taken the loan of ₹20,000/- from the petitioner and had handed over a blank signed cheque of his sister i.e. the respondent herein. He further stated that he had paid most of the loan amount to the petitioner in installments. During his cross-examination, he

denied the suggestion that the respondent had taken the loan from the petitioner and in lieu of that she had given the aforesaid cheque.

7. Respondent (DW-2) deposed that the cheque in question was given by her to her brother. The cheque was only signed by her and the particulars were not filled by her. Her brother took the cheque from her on the pretext of using it in a bank. She asked her brother to return the cheque but he failed to return the cheque. She denied the receipt of legal notice. After receiving the summons from the Court, she contacted her brother who told her that he took ₹20,000/- from the petitioner and he had already returned ₹18,500/- to the petitioner. During her cross-examination, she categorically stated that she did not know the petitioner.

8. Petitioner in his cross-examination stated that he knew the respondent since 2002. Respondent was not in direct contact with him, her brother was known to him and he introduced her for loan. He also stated that before giving the loan, he did not know the respondent.

9. From the testimony of the petitioner, it is apparent that the petitioner granted the alleged loan to the respondent without even knowing her and only on knowing her through her brother. In fact, petitioner admitted that he did not even know the brother of the respondent directly. Version of the petitioner of advancing loan to the respondent without knowing her or her brother properly does not only seem unbelievable but also highly improbable. Further, from the deposition of the petitioner, it is evident that he did not remember the place where loan was advanced.

10. Petitioner also admitted in his cross-examination that the cheque details were filled by him although, later on, he stated that it was filled in the presence of the respondent. Thus, it is not denied that the petitioner filled up

the details in the cheque.

11. Lastly, loan was advanced to the respondent by the petitioner without ascertaining what work respondent does and her repayment capacity. Admittedly, no security for the loan was also taken.

12. In view of the facts noted above findings of the learned Metropolitan Magistrate cannot be held to be perverse warranting interference of this Court.

13. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 3, 2018
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