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

% Decided on: 8th August, 2018

\+ **CRL.L.P. 517/2018**

RAJENDRA PRATAP SINGH ..... Petitioner

Represented by: Mr. Jaspreet Singh Kapur and Mr. Inderjit Singh Kapur, Advocates.

versus

STATE & ORS ..... Respondents

Represented by: Mr. Ashok Kumar Garg, APP for the State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No.29546/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 517/2018 and Crl. M.A. No.29545/2018 (additional evidence)

1. Aggrieved by the judgment dated 7th June, 2018 whereby the learned Metropolitan Magistrate acquitted the respondent No.2 for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (in short 'NI Act), the petitioner/complainant has preferred the present leave petition.

2. The case of the petitioner is that the respondent No.2 and the petitioner were living in the same locality were known to each other for the past 15 years. On 17th November 2009, respondent No.2 approached the petitioner for a loan of ₹4,00,000/- as he was in urgent need of money. Acceding to his request, the petitioner gave him the aforesaid sum in cash. In receipt of the loan, respondent No.2 executed a promissory note of ₹4,00,000/- and promised to repay the same within a period of five months.

After 3 months, the petitioner approached respondent No.2 for repayment, however respondent No.2 sought more time showing his inability to repay. After expiry of 5 months, respondent No.2 issued a cheque bearing No. 118084 dated 7th May 2010 for a sum of ₹4,00,000/- drawn on Syndicate Bank, Delhi. When the cheque was presented for encashment, it was dishonoured with remarks 'stop payments' vide cheque return memo dated 11th May 2010. Petitioner sent a legal notice dated 14th May 2010 to which respondent No.2 replied vide reply dated 25th May 2010 where he denied taking personal loan of ₹4,00,000/- and issuance of cheque and also refused to pay the cheque amount.

3. Notice under Section 251 Cr.P.C. was framed against respondent No.2 to which he pleaded not guilty. In his plea of defense he stated that his cheque book used to remain with the petitioner as the petitioner often used to visit his shop. He also stated that he was mentally ill as a result of which the petitioner took undue advantage. He further claimed that the bank account from which the cheque in question was drawn was already closed in the month of November/December 2008.

4. The petitioner examined himself as CW-2 and tendered his evidence by way of an affidavit. He proved the cheque in question as Ex.CW-1/A, cheque returning memo as Ex.CW-1/B, legal demand notice as Ex.CW-1/C and reply to legal notice vide Ex.CW1/D. During his cross-examination, he stated that he was a teacher by profession and was drawing a salary of about ₹35,000/- per month. He also stated that the loan amount of ₹4,00,000/- was not withdrawn by him from any bank account but was arranged by him from different sources. A part of the loan amount was withdrawn from a chit fund of which he was a member and the balance was taken from his mother-in-

law and wife. He admitted that the fact of execution of promissory note by the respondent No.2 was not mentioned by him in the legal demand notice as he had filed a civil suit in this regard against respondent No.2. He categorically denied the fact that respondent No.2 was mentally unwell.

5. One senior manager from Central Bank of India, Dwarka, where the petitioner was maintaining his bank account, was examined by the Petitioner as CW-1.

6. Respondent No.2 in his statement recorded under Section 313 Cr.P.C. took the same defense that he was not mentally fit and therefore the petitioner took advantage of his mental condition/illness and breached the trust reposed by him in the petitioner.

7. Mukesh Kumar, Manager of Syndicate Bank where the respondent No.2 was maintaining his bank account was examined as DW-1. He deposed that as per the record, the account of the respondent No.2 from which the cheque in question was drawn was closed in the month of December 2009.

8. The learned Trial Court noted that the petitioner failed to bring any evidence on record to prove that he had the financial capacity to advance a loan of ₹4,00,000/- as he deposed that in the year 2016 he was earning ₹35,000/- per month and since the loan was advanced in the year 2009 he must be earning less than ₹35,000/- per month. Furthermore, since the petitioner failed to bring on record the copy of the alleged promissory note, an adverse inference was also drawn against the petitioner. Furthermore, neither any written contract was executed nor was the loan advanced in the presence of any witness to secure its repayment. The petitioner also failed to examine his wife and mother in law from whom he arranged the alleged loan amount to prove the source of funds or his financial competency.

9. This Court concurs with the view expressed by the learned Metropolitan Magistrate. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

10. Leave to appeal petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 8, 2018
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