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

% Decided on: 5th September, 2018

\+ **CRL.L.P. 578/2018**

M/S ANU IMPEX ..... Appellant

Represented by: Mr.K.S. Arya, Advocate.

versus

M/S SUDHA COLLECTION .....Respondent

Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.31391/2018 (Exemption)

Allowed, subject to all just exceptions.

Crl.M.A. No.31392/2018 (Delay)

For the reasons stated in the application delay of 39 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 578/2018

1. Aggrieved by the judgment dated 23rd January, 2018 whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (in short 'the NI Act'), the petitioner/complainant through Ms. Chandra Adhikari has preferred the present leave petition.

2. The facts leading to the present case are that the respondent is a proprietorship concern and was engaged in the export of home products through C.V. Ramna Rao who was responsible for day to day affairs and running the business of the respondent. The respondent used to purchase

grey fabrics from the petitioner since the year 2006 and as per the books of accounts maintained by the petitioner, an amount of ₹11,24,853/- was due from the respondent as on 10th March, 2009. In lieu of the above said transactions, respondent through C.V. Ramna Rao issued 3 cheques bearing number 414723, 414724 and 414725 for a sum of ₹2,00,000/- each, all dated 12th June, 2016 drawn on Syndicate Bank, Green Park Extension, New Delhi in favour of the petitioner to discharge its legal liability. The petitioner presented the abovementioned cheques for encashment, however, all the cheques were returned unpaid with remarks "Account Closed" vide memo dated 14th July, 2010. The petitioner issued a legal notice dated 12th August, 2010 upon the respondent directing it to pay the amount within 15 days of receipt of said legal notice. Even on service of the said notice, the respondent did not make payment to discharge its liability. Hence, the complaint.

3. On 12th October, 2011, notice under Section 251 Cr.P.C. was issued to the respondent to which it pleaded not guilty and claimed trial. Respondent through C.V. Ramna Rao stated that the above mentioned undated cheques were given as security in the year 2006 when the business transactions with the petitioner were initiated. Bill numbers 105, 106, 109, 111, 154, 155 which were filed by the petitioner were forged and the entire liability in respect of the other bills had already been discharged.

4. During the pre-summoning evidence, petitioner through Ms. Chandra Adhikari filed an affidavit by way of evidence vide Ex.CW-1/A and reiterated all the averments made in the complaint. Petitioner relied upon copy of bills (Ex.CW-1/1), copy of ledger account (Ex.CW-1/2), cheques bearing number 414723, 414724 and 414725 (Ex.CW-1/3, CW-1/4 and CW-

1/5), bank return memos (Ex.CW-1/6, CW-1/7 and CW-1/8), legal notice dated 12th October, 2010 (Ex.CW-1/9), original postal receipt and AD (Ex.CW-1/10 and Ex.CW-1/11).

5. C.V. Ramna Rao examined himself as DW-2, I.S. Dass, Manager, Syndicate Bank was examined as DW-1 and Akash Bhardwaj as DW-3 to prove the defence. Respondent through C.V. Ramna Rao was examined under Section 313 Cr.P.C. on 26th October, 2012 wherein he reiterated his statement given under Section 251 Cr.P.C. He additionally stated that the cheques in question were given as advance payment for regular transactions between him and the petitioner to one Raj Kumar who used to handle the entire business of the petitioner. The entire material was purchased on credit basis and he had already cleared all the outstanding dues and liabilities in respect of all the transactions.

6. C.V. Ramna Rao (DW-2) additionally stated that Chandra Adhikari was not the proprietor of M/s Anu Impex and that same was the firm of Raj Kumar Neem and Chandra Adhikari was only working as accountant for Raj Kumar Neem. He had not received any legal notice as he had already vacated the premises on which legal notice was sent and the same was in the knowledge of Chandra Adhikari.

7. I.S. Dass, Manager, Syndicate Bank (DW-1) proved the statement of current account of M/s Sudha Collection vide Ex.DW-1/A and the letter issued by M/s Sudha Collection vide Ex.DW-1/B.

8. Learned Metropolitan Magistrate acquitted the respondent on the basis that bill number 155 appears to have been subsequently made by the petitioner in order to show that the business transaction between the petitioner and respondent continued till 2009. The bill bearing number 146

dated 8th March, 2008 placed on record by the respondent and admitted by the petitioner is not shown in the ledger account relied upon by the petitioner. Furthermore, the petitioner has failed to place on record the original ledger accounts or bills. The cheque book having cheques in question were issued to the respondent on 14th November, 2006 by I.S. Dass (DW-1) when the letter dated 28th March 2011 was written by the respondent to Chief Manager, Syndicate Bank seeking issuance of cheque-book. The aforesaid letter (Ex.DW-1/B) and the endorsement has been proved by I.S. Dass (DW-1). The statement of current account of the respondent (Ex.DW-1/A) reveals that cheque bearing number 414726 for a sum of ₹2,00,000/- was issued by the respondent in favour of Chetna Fab and the same was cleared on 7th February, 2007 much prior to the cheques in question bearing number 414723, 414724 and 414725 all dated 12th June 2010. The petitioner has also not placed on record any evidence to prove that Chandra Adhikari was the proprietor of the petitioner.

9. Findings of the learned Metropolitan Magistrate are based on the evidence on record and this Court concurs with the view expressed by the learned Metropolitan Magistrate. Hence, the impugned judgment acquitting the respondent warrants interference by this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 5, 2018
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