

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

% Decided on: 29th August, 2018

+ **CRL.L.P. 563/2018**

RAJESH KUMAR Petitioner

Represented by: Mr. Mahavir Singh and
Mr.Rajkamal, Advocates.

versus

BABUDDIN Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.30955/2018 (Delay)

For the reasons stated in the application delay of 119 days in filing the leave to appeal petition is condoned.

Application is disposed of.

Crl.M.A. No.30956/2018 (Exemption)

Allowed subject to just exceptions

CRL.L.P. 563/2018

1. Aggrieved by the judgment dated 22nd August, 2017 whereby the learned Metropolitan Magistrate acquitted the respondent 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 facts leading to the present case are that the petitioner, who was the supplier of eggs, supplied eggs to the respondent worth ₹3,39,000/- from the period beginning from March 2009 to February 2010. Respondent issued two cheques bearing Nos.075940 and 075941 for a sum of ₹39,000/- and

₹3,00,000/- respectively both dated 17th March, 2010 drawn on Standard Chartered Bank, New Delhi in discharge of his liability. When the petitioner presented the aforesaid cheques for encashment, both were returned unpaid vide returning memos dated 16th April, 2010 with remarks "Insufficient funds". When this fact was brought to the knowledge of the respondent, respondent requested the petitioner to present the cheques again for encashment. The cheques were returned unpaid again with the endorsement "insufficient funds" vide memo dated 29th April, 2010. Petitioner sent a legal notice dated 24th May, 2010 calling upon the respondent to make the payment within the stipulated period of time. When the respondent failed to make the payment, the petitioner preferred the instant complaint under Section 138 NI Act.

3. During the pre-summoning evidence, petitioner filed his affidavit by way of evidence vide Ex.CW-1/A and reiterated all the averments made in the complaint and relied upon the documents Ex.CW-1/1 to Ex.CW-1/4. Summoning order under Section 204 Cr.P.C. was passed vide order dated 9th January, 2015. Notice under Section 251 Cr.P.C. was served upon the respondent vide order dated 26th October, 2015 to which he pleaded not guilty and claimed trial. Respondent stated that he had no liability towards the petitioner. Defence of the respondent was that respondent and petitioner were working in partnership in the egg business and he had given his entire cheque book including the aforesaid cheques for installment purposes of two commercial vehicles to the petitioner who misused the same. He also disputed the receipt of legal notice. He had also registered an FIR against the petitioner in PS Galauthi, District Bulandshehr, Uttar Pradesh. The petitioner had filed the present complaint after the registration of FIR to

falsely implicate the respondent.

4. The petitioner examined himself as CW-1 and reiterated the contents of his affidavit Ex. CW-1/1A. Respondent also reiterated his defence taken in notice under Section 251 Cr.P.C.

5. Respondent examined himself as DW-1, Umesh Chand as DW-2 and Chander Dutt Sharma as DW-3 to prove his defence.

6. In the present case, the petitioner admitted that he used to maintain the record of transactions in his ledger books, however, the same was not placed on record to prove the alleged transactions. Petitioner took the plea that he misplaced the books of accounts but he failed to specify as to when he had misplaced the same and in the absence of statement of account, how he quantified the liability of the respondent. Furthermore, petitioner neither mentioned the exact dates on which the eggs were supplied nor the exact amount of the supplies. Thus, in the absence of written record, it was highly improbable to remember the accurate details of supplies provided on day to day basis.

7. Based on the findings noted above the learned Metropolitan Magistrate acquitted the respondent. This Court concurs with the view expressed by the learned Metropolitan Magistrate. The impugned judgment acquitting the respondent warrants no interference by this Court.

8. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 29, 2018
‘vn’