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

%                                                    Decided on: 9th February, 2018

+                    **CRL.L.P. 552/2016**

OM PRAKASH                                                  ..... Appellant
Represented by: Mr. Jitendra Kumar and Mr. Prashant K. Singh, Advocates

versus

SUBHASH                                                     ..... Respondent
Represented by: Mr. Prince Arora, Advocate

**CORAM:**
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. Aggrieved by the judgment dated 24th June, 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881, the petitioner/complainant has preferred the present leave petition.

2. Briefly stated, case of the petitioner is that in the first week of December, 2010, respondent approached the petitioner, who are real brothers, to advance a friendly loan of ₹20 lakhs to Samar Bahadur Thakur, friend of respondent. Petitioner gave ₹20 lakhs to Samar Bahadur from 3rd December, 2010 to 24th February, 2011. Samar Bahadur issued a cheque for this liability which was dishonored due to insufficient funds. Respondent arrived at a settlement with the petitioner to give ₹16,93,000/- against the loan amount. He executed an undertaking to repay the amount. Respondent in discharge of part liability issued a cheque bearing no. 284350 dated 20th

November, 2011 for a sum of ₹10,00,000/- drawn on Punjab National Bank, Vikaspuri Branch, New Delhi. Aforesaid cheque was returned back dishonored vide return memo dated 23rd November, 2011 with the remark "Drawer Signature Incomplete". Thereafter, petitioner gave a legal notice dated 29th November, 2011, however, despite notice the respondent did not make the payment within the stipulated period. Consequently, the petitioner filed a complaint under Section 138 of Negotiable Instruments Act, 1881 before the Learned Metropolitan Magistrate.

3. Vide impugned judgment dated 24th June, 2016, Learned Metropolitan Magistrate acquitted the respondent on the ground that the loan was taken by Samar Bahadur, however, the respondent entered into an settlement agreement and agreed to pay the settlement amount. The defence taken by the respondent was that Ikrarnama and cheque were signed by him in the police station where he was compelled to do by SI Vijender and his property papers were kept by Brahm Prakash and later by SI Vijender. DW-1 Brahm Prakash, who is the real brother of the petitioner and respondent and who was also a witness to the settlement/ Ikrarnama (Ex. DW-1/A) also stated that Ikrarnama was written by him at PS Uttam Nagar in the presence of SI Vijender Singh. Learned Metropolitan Magistrate observed that there is apparent coercion when a person is detained in police station at the instance of his real brothers and the fact respondent agreed to pay for some third party, i.e. Samar Bahadur, and also agreed to sell his house for the liability of third person is highly improbable. Furthermore, the liability of ₹10,00,000/- had not been proved because as per the ikrarnama, respondent agreed to pay ₹5,00,000/- to the petitioner.

4. This Court concurs with the view expressed by the learned

Metropolitan Magistrate as the liability of the respondent based on Ikrarnama was not free from coercion and there was no liability of ₹10,00,000/- i.e. the cheque amount. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

5. Leave to appeal is dismissed.

**(MUKTA GUPTA)**
**JUDGE**

**FEBRUARY 09, 2018**
**'vn'**