* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Decided on: 5th October, 2018

\+ **CRL.L.P. 641/2018**

RADHEY ..... Petitioner

Represented by: Mr. Keshav Kumar, Advocate

versus

STATE & ANR. ..... Respondents

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

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.33565/2018 (Delay)

For the reasons stated in the application, delay of 13 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 641/2018

1. Aggrieved by the judgment dated 5th June 2018, whereby the learned Metropolitan Magistrate acquitted the respondent No. 2 for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC No.5609/17 titled as "*Radhey v. Kuldeep Kumar*", the petitioner/complainant has preferred the present leave petition.

2. Facts leading to the present case as per the complaint are that the petitioner gave a friendly loan of ₹1,00,000/- for a short period to the respondent No.2 on his request. In order to discharge the liability, respondent No.2 issued two cheques bearing numbers 015413 and 015414

both dated 12th November, 2016 for a sum of ₹50,000/- each drawn on Allahabad Bank, New Friends Colony, Delhi in favour of the petitioner. On presentation of the aforesaid cheques, they were dishonoured with remarks *'payment stopped by drawer'* vide return memos dated 13th January, 2017. Legal demand notice dated 23rd January, 2017 was sent to the respondent No.2 though speed post. Despite the service of legal notice, respondent no.2 failed to make the payment. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was framed against the respondent No.2 and was served upon him on 1st February, 2018 to which he pleaded not guilty and claimed trial. In his defence, he denied any friendly relations with the petitioner. He also denied his liability to the extent of cheque amount and stated that he had booked the services of tent house which was run by the petitioner for the marriage of his sister for a consideration of ₹1,20,000/- out of which of ₹20,000/- was paid by him in advance and for the balance payment, he issued two cheques in question at the instance of the petitioner. However, due to deficiency in the services of the petitioner, he was constrained to issue stop payment instructions. He admitted the receipt of notice and stated that he approached the petitioner and made an offer to pay ₹70,000/- after making deductions on account of supply of inadequate material and deficiency in services but the petitioner refused to accept the said amount.

4. Petitioner examined himself as CW-1 and adopted the pre summoning evidence by way of an affidavit Ex.CW-1/A and relied upon original cheques vide Ex.CW-1/1 and Ex.CW-1/2, original cheque returning memos vide Ex.CW-1/3 and Ex.CW-1/4, legal demand notice vide Ex.CW-1/5, postal receipt regarding dispatch of legal notice vide Ex.CW-1/6, internet

generated delivery report of legal notice vide Ex.CW-1/7 and complaint under Section 138 of Negotiable Instruments Act vide Ex. CW-1/8.

5. Statement of respondent No. 2 was recorded under Section 313 Cr.P.C. wherein he took the same plea as taken by him under Section 251 Cr.P.C.

6. Petitioner failed to disclose the date, month or year when he granted loan to the respondent No. 2 either in the legal demand notice or complaint or evidence by way of an affidavit. He also failed to disclose the time period for which the alleged loan was granted and whether the loan was repayable with or without interest. It was only during his cross-examination, he stated for the first time that the alleged loan was granted in the month of August 2016 for a period of 1 month. Furthermore, the petitioner failed to prove the availability of funds for advancing loan.

7. Petitioner admitted the supply of tent house material to the respondent No.2 on 11th November, 2016 for the marriage of sister of the respondent No.2. As per the petitioner, the amount due against supply of material/services was ₹1,25,000/-. He also admitted that no demand for the aforesaid amount was raised by him. He further admitted the deficiency in services provided by him to the respondent No. 2 in relation to the marriage. Since the dates of the cheques and date of marriage of sister of respondent No. 2 match, it casts doubt on the petitioner's case that the two cheques were in discharge of liability towards a friendly loan. Furthermore, even if the loan was given for one month in August 2016, it becomes repayable by September 2016 but the cheques in question are dated 12th November, 2016. Cheques were presented on 13th January, 2017 without giving any explanation as to why the cheques were not presented prior to the said date.

It is also not the case of the petitioner that the cheques were not presented at the request of the respondent No. 2.

8. As against the case of the petitioner the defence of the respondent No.2 seems more probable that initially the cheques were not presented due to deficiency in services and subsequently to take revenge from Ramji Lal, relative of respondent No. 2, cheques were presented and present complaint was filed since Ramji Lal had filed a criminal complaint against the petitioner. Furthermore, the explanation rendered by the respondent No. 2 in his statement recorded under Section 313 Cr.P.C. has been admitted by the petitioner.

9. For the facts noted above, the findings of the learned Metropolitan Magistrate are probable. The impugned judgment acquitting the respondent cannot be said to be perverse warranting interference by this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 05, 2018
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