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

% *Decided on: 13th July, 2018*

\+ **CRL.L.P. 608/2016**

MAHESH CHAND SHARMA ..... Petitioner

Represented by: Mr. Dinesh Malik and Mr.Akash Saini, Advocates with petitioner in person

Versus

HARI CHANDER @ HARIYA ..... Respondent

Represented by: Mr. Biswajit K. Patra, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 17757/2016 (Delay)

For the reasons stated in the application delay of 20 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 608/2016

1. Aggrieved by the judgment dated 20th August, 2016 whereby the learned District & Sessions Judge, while setting aside the judgment of conviction dated 12th October, 2015 and order on sentence dated 20th October, 2015, acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881, the petitioner/complainant has preferred the present leave petition.

2. Case of the petitioner is that the respondent approached the petitioner for a friendly loan in the month of December, 2007. Consequently, petitioner advanced a sum of ₹65,000/- to the respondent and in discharge of his liability,

the respondent issued a cheque bearing no. 139316 dated 10th April, 2008 for a sum of ₹65,000/- drawn on State Bank of India, Ghazipur. When the cheque was presented for encashment, it was returned unpaid with remarks "*funds insufficient*". When the petitioner approached the respondent and asked for payment of cheque amount, the respondent asked him to present the cheque again for encashment but it was dishonored again on 26th June, 2008. When the petitioner again approached him, he refused to pay the cheque amount. Consequently, legal demand notice dated 3rd July, 2008 was sent to the respondent through speed post and UPC. Respondent replied to the notice vide letter dated 10th July, 2008 denying all the allegations. Hence, the complaint.

3. Petitioner was examined as CW-1 who tendered his evidence by way of an affidavit Ex.CW-1/1. He proved the original cheque vide Ex.CW-1/A, cheque return memos vide Ex.CW-1/B and Ex.CW-1/C, legal demand notice vide Ex.CW-1/D, receipt of speed post and UPC vide Ex.CW-1/E and Ex.CW-1/F and reply of respondent to legal demand notice vide Ex.CW-1/G.

4. Respondent in his statement recorded under Section 313 Cr.P.C. stated that he had taken a loan of ₹20,000/- from the petitioner by way of a cheque and he was returning the loan amount in monthly installment of ₹1000/- to one Rajan as per an agreement executed between him and the petitioner. He further stated that at the time of taking the loan, he had issued a blank cheque duly signed in favour of the petitioner as a security cheque for the loan amount. He had already returned the entire loan amount as per the agreement and thus a false complaint had been filed.

5. During defence evidence, the respondent moved an application to examine himself as DW-1, however, he failed to examine himself as a defence witness. Respondent examined Rajan as DW-2, Sheela as DW-3, bank officials of Punjab National Bank being Rajender Prasad Sati as DW-4 and Rakesh

Kumar Midha as DW-5.

6. In the present case, no exact date of alleged loan has been mentioned. Even in the legal notice Ex.CW-1/D, the date was not mentioned. Furthermore, no period of loan, as to when the loan was to be returned was stated. There was no document regarding advancing of the alleged loan. The petitioner in his cross-examination admitted that an agreement had taken place between the respondent and Rajan and not between him and the respondent. Petitioner admitted that the stamp paper was in his hand writing which was exhibited as Ex. CW1/D1 though Rajan did not support the case of the respondent however DW-4 and DW-5, the two bank officials proved that a cheque no. 734088 for a sum of ₹20,000/- was encashed from the account of Mahesh Chand Sharma by Hari Chand, belying the version of the petitioner that he advanced a loan of ₹65,000/- by cash. The learned District & Sessions Judge thus held that the defence of the respondent that he had taken a loan of ₹20,000/- which he had returned and the cheque in question was given as a security cheque which was signed by him but he had not filled the particular seems to be a plausible view.

7. Considering the findings of the learned District & Sessions Judge this Court concurs with the view expressed by the learned District & Sessions Judge. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference by this Court.

8. Leave to appeal is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 13, 2017
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