* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Decided on: 26th September, 2018

\+ **CRL.L.P. 74/2017**

VIJAY KUMAR ..... Petitioner

Represented by: Mr. Manoj K. Srivastava, Advocate

versus

DILIP KUMAR ..... Respondent

Represented by: Mr. Rakesh Paliyal, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CRL.L.P. 74/2017

1. Aggrieved by the judgment dated 29th September 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC no. 625555/2016 titled as "*Vijay Kumar v. Daleep Kumar*", the petitioner/complainant has preferred the present leave petition.

2. Briefly stated, the facts of the present case as per the complaint are that respondent was one of the partners with the petitioner in the partnership firm namely 'M/s Mag Graphics'. In the month of January, 2013, respondent agreed to retire from the aforesaid firm and deed of retirement dated 24th January, 2013 was executed. As per the retirement deed, petitioner and another retiring partner received a machine called 'Scitex Dolev 800V' and they were jointly and severally liable to pay ₹13 lakhs to the firm. Respondent issued a cheque bearing number 833626 dated 16th September, 2013 for a sum of ₹13 lakhs drawn on Indian Overseas Bank, Okhla

Industrial Area, New Delhi in favour of the petitioner to discharge his joint liability and liability of another retiring partner. Upon presentation, the aforesaid cheque got dishonoured with remarks *'funds insufficient'* vide return memo dated 15th October, 2013. Petitioner sent legal demand notice dated 15th October, 2013 through registered post and AD card but the respondent failed to make the payment within the stipulated time. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was framed against the respondent to which he pleaded not guilty and claimed trial.

4. Petitioner examined himself as CW-1 and filed his evidence by way of affidavit Ex.CW-1/A and relied upon the deed of retirement (Mark CW-1/1), original cheque vide Ex.CW-1/2, return memo vide Ex.CW-1/3, legal demand notice vide Ex.CW-1/4, postal receipts and tracking reports vide Ex.CW-1/5 and Ex.CW-1/6 respectively and his ITR for the assessment year 2013-14 vide Ex.CW-1/7.

5. Ranjit Kumar Jha, Assistant Manager, Indian Overseas Bank, Okhla was examined as CW-2 to prove the account opening form of the petitioner bearing account number 158602000000621 vide Ex.CW-2/1 (colly).

6. Respondent in his statement recorded under Section 313 Cr.P.C. stated that he executed the deed of retirement without being aware of its content. The cheque in question was not issued to the petitioner and he had misplaced his cheque book and stopped the payment thereof.

7. Respondent examined himself as DW-1 and Deepak Kumar as DW-2.

8. Petitioner in his complaint as well as evidence by way of an evidence stated that respondent was one of the partners with him in the partnership firm 'M/s. Mag Graphics', however, during his cross-examination, he stated

that 'M/s. Mag Graphics' was a proprietorship firm of which he was the sole proprietor. Petitioner failed to produce any partnership deed allegedly executed with the respondent whereby it was agreed upon to share the profits and losses equally.

9. Petitioner, in his cross-examination, also admitted that no books of account of partnership firm were maintained, only accounts of proprietorship firm were prepared. He failed to prove that any assets were purchased in the name of the partnership firm.

10. Petitioner, in his cross-examination, also admitted that the machine 'Scitex Dolev 800V' or any other machine was never purchased in the name of the so called partnership firm. Petitioner also failed to lead any evidence to prove delivery of the said machine to the respondent as per the retirement deed which was only a mark document.

11. Respondent (DW-1) stated that in the year 2008, petitioner prepared the partnership deed to start business in the name of 'M/s. Mag Graphics' and he gave ₹4.5 laks and ₹1 lakh in the year 2009 and 2010 respectively to the petitioner. However, neither any business was ever started by the petitioner under the name of 'M/s. Mag Graphics' nor any property/machinery was purchased. No bank account was opened in the name of 'M/s. Mag Graphics'. When he demanded his money back, petitioner prepared the retirement deed and he signed the retirement deed in good faith without reading the contents thereof. The stand of the respondent has remained consistent and the same fact was reiterated by him at the time of explanation of his plea of defence under Section 251 Cr.P.C., statement recorded under Section 313 Cr.P.C. and the one recorded under Section 315 Cr.P.C. His testimony has gone unchallenged.

12. Deepak Kumar, who was examined as DW-2 and was shown the retirement deed as outgoing partner from the partnership firm, stated that he was doing job in the office of the petitioner from 2008 to 2013. He proved the salary certificate issued by 'M/s. Mag Graphics' vide Ex.DW-2/1. Testimony of Deepak Kumar has also gone unrebutted and unchallenged and the authenticity of the salary certificate has not been disputed by the petitioner.

13. Findings of the learned Metropolitan Magistrate, based on the evidence on record cannot be held to be illegal or perverse. Hence, the impugned judgment acquitting the respondent warrants no interference by this Court.

14. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 26, 2018
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