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

+ **CRL.L.P. 489/2017**

SURAJ BAL

..... Petitioner

Represented by: Mr. Vishal Soni, Adv.

versus

MONTU CHADHA

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

05.03.2018

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CrI.M.A. 13944/2017

Exemption allowed subject to just exceptions.

CRL.L.P. 489/2017

1. By this petition the petitioner seeks leave to appeal against the judgment dated 31st May, 2017 acquitting the respondent for offence punishable under Section 138 of the Negotiable Instruments Act (in short NI Act).

2. The first and foremost contention of learned counsel for the petitioner is that the learned Trial Court has wrongly acquitted Narender Kumar for offence punishable under Section 138 NI Act. To the said extent there is an error in the impugned judgment for the reason the petitioner in the complaint has impleaded Montu Chadha, S/o S.C. Chadha as respondent who has been summoned as an accused and answered the notice and also appeared as DW-1. However, no leave to appeal is required to be granted on this error which

CRL.L.P. 489/2017

page 1 of 3

is typographical in nature and can be corrected by this Court.

3. Case of the complainant in the complaint filed by him was that he had advanced a friendly loan of ₹3 lakhs to the respondent Montu Chadha in the month of January 2012 and in discharge of the said liability Montu Chadha issued a cheque 677179 dated 7th May, 2012 for a sum of ₹3 lakhs drawn on Canara Bank, Sector-5, Rohini in favour of the petitioner. When the said cheque was presented it was returned with the memo dated 8th May, 2012 with the endorsement “Funds Insufficient”. The petitioner thus sent a legal demand notice to the respondent through his counsel dated 30th May, 2012; however despite service of the notice, respondent failed to pay the aforesaid amount.

4. Learned Trial Court noting the essential ingredients for an offence punishable under Section 138 of the Negotiable Instruments Act held that once cheque had been signed and executed by the respondent admittedly it was an acknowledgement of the transaction, however it was for the petitioner to prove the liability where after mandatory presumption under law could be raised. It further held that case of the petitioner that he advanced a friendly loan was not supported either by any documentary evidence in the form of a loan agreement or income-tax record or any other supporting evidence.

5. The defence of the respondent was that he had never taken the loan of ₹3 lakhs and in fact the cheque in question was misplaced and fraudulently taken by the petitioner and misused. This defence was taken by the respondent in his application under Section 145(2) of the NI Act, in his statement under Section 313 Cr.P.C. and also by examining Tula Ram as

DW-2. Learned Trial Court thus held that in relation to the consistent defence of the respondent he also filed an application with the Bank for stopping of the payment of the said cheque vide Ex.DW-1/1 and the matter was also reported to the SHO PS Prashant Vihar and PS Malka Ganj vide complaint dated 9th May, 2012 exhibited as Ex.DW-1/2. Thus the respondent has been able to rebut the presumption raised against him.

6. Documents exhibited by the respondent are prior to even the legal notice sent by the petitioner. Further, besides the respondent, Tula Ram who appeared as DW-2 also stated that the petitioner used to frequently visit the shop of the respondent and was having friendly relations with him. As per Tula Ram, petitioner used to sit on the seat of the respondent and in the drawer of the respondent blank signed cheques were lying. Respondent was an asthma patient and thus those cheques were kept to meet the exigencies of the business transactions. The defence having been probabalized by documentary and supporting evidence, respondent thus improbabilised the stand of the petitioner. The view expressed by the learned Trial Court on the evidence led by the parties cannot be said to be an improbable view warranting interference.

7. Petition is dismissed.

8. However, in the impugned order instead of words ‘accused Shri Narender Kumar is acquitted’ be read as ‘accused Shri Montu Chadha is acquitted’.

MUKTA GUPTA, J.

MARCH 05, 2018

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CRL.L.P. 489/2017

page 3 of 3