* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Decided on: 18th September, 2018*

\+ **CRL.L.P. 644/2017**

HARISH CHAND CHAUHAN ..... Appellant
Represented by: Mr. Islam Khan, Advocate

versus

GANGA SARAN .....Respondent
Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.18350/2017 (Delay in Re-filing) and Crl.M.A. No.18348/2017 (Delay)

For the reasons stated in the applications delay of 31 days and 26 days in re-filing and filing the leave to appeal petition is condoned.

Applications are disposed of.

CRL.L.P. 644/2018

1. Aggrieved by the judgment dated 26th May, 2017 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. Facts leading to the present petition are that the petitioner and the respondent were residents of the same locality. Petitioner had introduced the respondent to a committee being run by one Mr.Bhim Singh of which he was a member. Respondent paid the subscription of the committee twice

after which he took the committee money. Thereafter respondent showed his inability to pay the committee money due to financial problems as a result of which the petitioner had to pay the committee money on behalf of the respondent as he had introduced him to the committee. In February 2014, the respondent requested the petitioner to advance a loan of ₹1,00,000/- as he needed the same urgently. He assured the petitioner that he would pay an interest of 3.5% per month on the loan amount and also gave him original property papers as security. Respondent refused to pay the money after repeated requests from the petitioner. With the intervention of a friend, mediation took place and it was settled between the parties that an amount of ₹2,63,271/- including the committee money, the loan amount and the interest on the loan was due as on 11th November 2014. On 28th July 2016, the respondent handed over a cheque of ₹2,20,000/- bearing number 000002 dated 28th July 2016 drawn on Bank of India, Dewali Branch, Duggal Colony, New Delhi and took back his original property documents. Petitioner presented the abovementioned cheque for encashment, however, the same was returned unpaid with the remarks *"Funds Insufficient"* vide memo dated 18th August 2016. Petitioner issued a legal notice dated 27th August 2016 upon the respondent to make the payment of the cheque amount within 15 days of receipt of notice. Even on service of the said notice, the respondent did not make payment to discharge his liability. Hence, the complaint.

3. During the pre-summoning evidence, the petitioner filed an affidavit by way of evidence and relied on copy of property papers, copy of settlement deed dated 11th November 2014, original cheque, return memo, copy of legal notice and postal receipts vide Ex.CW-1/1 to Ex.CW-1/7. On

4th October 2016, summoning order under Section 204 Cr.P.C. was issued against the respondent.

4. On 24th December 2016, notice under Section 251 Cr.P.C. was served upon the respondent to which he pleaded not guilty and claimed trial. He stated that the blank cheque was given to the petitioner as security for the committee only and he had no legal liability to pay the cheque amount to the petitioner.

5. Respondent was examined under Section 313 Cr.P.C. wherein he reiterated his statement given under Section 251 Cr.P.C. In his defense, the respondent stated that he had not received the legal notice dated 27th August 2016 and the cheque in question was not issued to the petitioner towards any legal liability.

6. Learned Metropolitan Magistrate acquitted the respondent on the basis that no written agreement or receipt was executed regarding the loan of ₹1,00,000/-. During the cross-examination, petitioner stated that the committee that started in the year 2012-2013 consisting of 16 members was being run by Bhim Singh for about 1 year and 4 months. There were two committees for ₹1,00,000/- each and the respondent had picked up two committees wherein the first one was at the first number/first round and the second was at third number/third round. He stated that he had taken the amount of committee from Bhim Singh on behalf of the respondent.

7. Thus it is clear from the statement of the petitioner that he had taken the committee money from Bhim Singh on behalf of the respondent and the onus shifts upon the petitioner to prove that he had given the amount to the respondent. The petitioner has also not examined any witness in whose presence the settlement agreement was executed. Furthermore, as per the

settlement, the amount due as on 11th November 2014 was ₹2,63,671/- while the cheque in question dated 28th July 2016 was for ₹2,20,000/- only. It is highly improbable that a person to whom an amount of ₹2,63,671/- was due in 2014 would accept a cheque of the amount ₹2,20,000/- in 2016. Petitioner had nowhere made a demand for the remaining amount or even placed any evidence on record to show that the cheque was issued towards discharge of part liability or that he had handed over the committee amount to the respondent or that he had paid the subscription amount of committee on behalf of the respondent. Further it is improbable that the petitioner would give out a further loan of ₹1,00,000/- to the respondent who had not even repaid the earlier amount to him.

8. As per the testimony of the petitioner, a settlement agreement had been executed between the petitioner and the respondent however the same was not exhibited during trial. Further as per the evidence on record the committee had already been closed.

9. Findings of the learned Metropolitan Magistrate are based on the evidence on record. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 18, 2018
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