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

% Decided on: 13th September, 2018

\+ **CRL.L.P. 647/2017**

B. L. TEJASVI ..... Petitioner

Represented by: Mr. Ajay Kumar, Advocate.

versus

MAHAVIR PRASAD ..... Respondent

Represented by: Mr. B.K. Gautam & Mr. Siddhartha Nanwal, Advs with respondent in person.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No.18493/2017 (delay)

Allowed, subject to all just exceptions.

CRL.L.P. 647/2017 and Crl. M.A.18407/2017 (special leave to appeal)

1. The present leave petition is directed against the judgment dated 4th July, 2017 whereby the learned Additional Sessions Judge acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881.

2. Facts of the present case in a nutshell as per the complaint are that petitioner advanced a friendly loan of ₹12,00,000/- to the respondent for the construction of house in the month of November, 2013. Respondent, in order to discharge his liability, issued two post dated cheques bearing numbers 107223 dated 17th July, 2014 and 107224 dated 2nd March, 2015 for ₹6,00,000/- each drawn on Oriental bank of Commerce. Out of the aforestated loan amount, respondent repaid a sum of ₹6,00,000/- to the petitioner in cash from time to time between July 2014 to September 2014. Thus, cheque bearing number 107223 was returned to the respondent. Cheque bearing number 107224 was presented for encashment, however, the

same was returned dishonoured vide return memo dated 12th March, 2015 with remarks *'funds insufficient'*. Consequently, legal demand notice dated 30th March, 2015 was sent to the respondent but despite service of notice, he failed to make the payment within stipulated period of time. Hence, the petitioner instituted the complaint under Section 138 of the Negotiable Instruments Act before the learned Metropolitan Magistrate.

3. Learned Metropolitan Magistrate took cognizance of the offence under section 138 Negotiable Instrument Act and summoned the respondent. During the course of trial, parties led both oral as well as documentary evidence and the respondent was convicted for the offence punishable under Section 138 of Negotiable Instrument Act vide judgment dated 27th June, 2016 and sentenced vide order dated 29th August, 2016. Appeal was preferred by the respondent being Crl.A. 50/16 titled as *'Mahavir Prasad v. B.L.Tejasvi'* and vide impugned judgment dated 4th July, 2017, learned Additional Sessions Judge reversed the findings of the learned Metropolitan Magistrate and acquitted the respondent. Hence, the present leave petition.

4. Respondent raised the defence that he did not avail the loan. The petitioner was running a Chit Fund and respondent was a member of the said Chit Fund. He claimed that he received the prize money of ₹12 lakhs from the said Chit Fund and in order to pay the said amount, he issued the aforesaid two security cheques. He further claimed that not only did he pay ₹6,00,000/- against cheque bearing number 107223 but also paid ₹5,60,000/- against the cheque bearing number 107224. He issued another cheque for ₹50,000/- (₹40,000/- balance amount and ₹10,000/-litigation expenses) but the said cheque was stopped as per the instructions of the petitioner.

5. Respondent had placed on record evidence to show that he made the

payment of ₹5,60,000/- through cheques which were collectively exhibited as Ex.DW-3/2 (colly) and through cheque number 045840 which was reflected in the statement of account (Ex.DW-3/4) of the respondent. This fact has not been disputed by the petitioner. Petitioner, in his cross-examination, neither denied about receiving ₹5,60,000/- nor explained as to why the said amount of ₹5,60,000/- reflected in the statement of account of the respondent showed payment made to him or for which transaction the amount was received by him.

6. Furthermore, no loan document was placed on record regarding alleged friendly loan of ₹12,00,000/-. No source of money/capacity of the petitioner to advance loan has been proved. There are discrepancies in the version of the petitioner as to the purpose the alleged loan was given to the respondent. In his complaint, he stated that the loan was advanced for the purpose of house construction whereas during cross-examination of the respondent, petitioner had put a suggestion to the respondent that he had advanced money to him at the time of marriage of his daughter.

7. It was also alleged that cheque bearing number 061384 drawn on Oriental Bank of Commerce for a sum of ₹50,000/- issued by the respondent to the petitioner was misplaced by the petitioner. Thus, petitioner requested the respondent to issue stop payment instructions to his bank regarding the said cheque. The respondent nowhere admitted that the cheque in question was lost by the petitioner. The petitioner failed to prove that the cheque was lost/misplaced by him by way of leading secondary evidence under Section 65 of Indian Evidence Act.

8. For the facts noted above this Court finds no ground to interfere in the impugned judgment passed by the learned Additional Sessions Judge. Leave

to appeal petition is dismissed.

9. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
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