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

+ **CRL.L.P. 260/2016**

SWATI JAIN

..... Petitioner

Represented by: Mr. R.K. Bharani, Adv.

versus

M/S AMIT BROTHERS & ORS

..... Respondent

Represented by: Mr. Vivek Kumar, Ms.
Priyanka Tyagi, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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22.02.2018

CrI.M.A. 7832/2016

For the reasons stated in the application delay of 13 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CrI.M.A. 13451/2017

By this application the petitioner seeks leave to add two more respondents/ accused to the present leave petition.

A perusal of the impugned judgment reveals that the petitioner initially filed the complaint under Section 138 of the Negotiable Instruments Act against the firm M/s. Amit Brothers; Amit Jain, Santosh Jain and Shailesh Jain as partners. Vide order dated 1st April, 2009 passed by this Court Santosh Jain and Shailesh Jain were discharged. The said order has attained finality and in a leave to appeal petition against the acquittal of M/s. Amit Brothers and Amit Jain, the petitioner cannot implead those two

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persons as parties and seek leave to appeal against them also.

Application is dismissed as misconceived.

CrI.M.A. 12175/2016

By this application the petitioner seeks to file four annexures to the present petition. The documents sought to be placed as annexures are Annexure 'C' certificate of registration, Annexure 'D' Deed of Retirement cum Dissolution Deed, Annexure 'E' request letter written to Sales Tax Officer and Annexure 'F' copy of the registration with the Sales Tax Department.

In a leave to appeal petition or an appeal only documents which were exhibited during the course of trial can be looked into and no fresh documents can be filed as annexures. In case the petitioner seeks to lead additional evidence there is a specific provision for the same and application in this regard is required to be filed in accordance with law.

This application is also dismissed as misconceived and Annexure 'C' to 'F' sought to be placed on record cannot be taken into consideration in the manner sought to be placed by the petitioner.

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By the present petition the petitioner seeks leave to appeal against the judgment dated 15th July, 2015 acquitting the respondents M/s. Amit Brothers and Shri Amit Jain for offence punishable under Section 138 of the Negotiable Instruments Act.

One of the major reasons for acquittal by the impugned judgment is that Sudhir Kumar Jain who appeared as CW-1 had no personal knowledge about the transactions. Learned Trial Court noted that case of Sudhir Kumar

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Jain was that he was managing the business on the basis of power of attorney Ex.CW-1/A executed on 28th September, 2008. It was held that the said power of attorney could not explain as to how he was managing the affairs of the firm in the year 2000 when the cheque in question was allegedly issued.

No document having been exhibited in evidence to show authority of Sudhir Kumar Jain for M/s. Parshav Traders, the complainant in the complaint case as on the date when the cheque was issued or when the same was dishonoured or when notice was issued; the views expressed by the learned Trial Court cannot be said to be not a plausible view. Leave to appeal is thus declined.

Petition is dismissed.

MUKTA GUPTA, J.

FEBRUARY 22, 2018
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