

\$~18

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

+ **CRL.L.P. 3/2018**

CHINTA MANI TIWARI

..... Petitioner

Represented by: **Mr. A.K. Shukla, Adv.**

versus

BASIND KUMAR DIWEDI

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

03.01.2018

%

By this petition the petitioner seeks leave to appeal against the judgment dated 1st November, 2017 whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act was dismissed and the respondent acquitted of the notice framed against him.

The case of the petitioner was that the petitioner was the brother-in-law of the respondent/ accused and had extended a friendly loan of ₹1,50,000/- to him for a period of three months on 30th June, 2012. In discharge of the said liability to repay the above-mentioned loan amount respondent issued cheque bearing No.234596 dated 10th October, 2012 for a sum of ₹1,50,000/- drawn on his bank account maintained at HDFC Bank, Greater Kailash - II Branch, New Delhi. When the cheque was presented by the petitioner the same was returned unpaid on account of account closed vide return memo dated 20th November, 2012.

CRL.L.P. 3/2018

page 1 of 2

Vide the impugned judgment learned Trial Court on appreciation of evidence acquitted the respondent for the reason the plea of the respondent was that he had never issued the cheque and the petitioner was not able to prove that the cheque in question was issued by the respondent. The hand-writing on the cheque in question was also sent for comparison to the FSL and as per the report received no definite opinion on the signatures on cheque in question could be rendered.

Learned counsel for the petitioner submits that the petitioner has lodged a FIR against the respondent. Mere lodging of the FIR against the respondent would not bring on record material evidence to show that respondent had committed the offence punishable under Section 138 NI Act. It is the further plea of the learned counsel for the petitioner that as per the FSL opinion if admitted hand-writing of the respondent was received, the re-examination could be done. The FSL report was received during the pendency of trial and no such application was filed by the petitioner seeking admitted signatures of the respondent. No case has been made out to permit the petitioner to lead additional evidence. In the absence of the petitioner having proved that the cheque in question was issued by the respondent, this Court finds no illegality in the impugned judgment of acquittal.

Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

JANUARY 03, 2018
‘ga’

CRL.L.P. 3/2018

page 2 of 2