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

%   Decided on: 23rd July, 2018

\+   **CRL.L.P. 711/2017**

IQBAL HUSSAIN   ..... Petitioner
Represented by: Mr. Rashid Hussain, Advocate.

versus

QAISAR RAZA KHAN @ PAPPU   ..... Respondent
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 21st September, 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. The facts leading to the present petition are that on 1st September, 2012, the respondent approached the petitioner for financial assistance of ₹3,25,000/-. The petitioner gave a loan of ₹3,25,000/- to the respondent on 4th September, 2012 and in discharge of legal liability, respondent issued two post dated cheques bearing numbers 997811 dated 15th March, 2013 for a sum of ₹1,25,000/- and 997812 dated 29th June, 2013 for ₹2,00,000/-, both drawn on ICICI Bank, New Friends Colony Branch, New Delhi. On presentation, cheque bearing No. 997812 dated 29th June, 2013 for ₹2,00,000/- was returned unpaid with remarks 'payment stopped by drawer' vide memo dated 2nd July, 2013. Despite legal notice dated 27th July, 2013, the respondent failed to make the payment within the stipulated period of

time. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was served upon the respondent on 12th December, 2013 to which he pleaded not guilty and claimed trial.

4. The petitioner examined himself as CW-1 and tendered his evidence by way of an affidavit Ex. CW-1/1. He proved the cheque in question as Ex.CW-1/A, receipt dated 1st February, 2013 as Ex.CW-1/B, cheque returning memo dated 2nd July, 2013 as Ex.CW-1/C, legal demand notice dated 27th July, 2013 as Ex.CW-1/D, postal receipts as Ex.CW-1/E and Ex.CW-1/F.

5. Respondent in his statement recorded under Section 313 Cr.P.C. stated that though he had taken the loan of ₹3,25,000/-, however, he had repaid it one week before 15th March, 2013 in the presence of Khushi Ahmad Khan, Idrees Zahir, Hanif Khan and Sahir Khan. He further stated that the petitioner did not return the cheque in question despite repayment of loan and that was the reason he gave instructions to the bank for stop payment. Hanif Ali Khan was examined as DW-1 and Sahir Ali Khan was examined as DW-2. Both of them stated that the respondent repaid the loan of ₹3,25,000/- to the petitioner in March, 2013. Respondent examined himself as DW-3.

6. Learned Metropolitan Magistrate acquitted the respondent on the basis of the testimonies of Hanif Ali Khan (DW-1) and Sahir Ali Khan (DW-2) who were consistent in their examination-in-chief and cross-examination. Nothing contradictory could be elicited during their cross-examination. Furthermore, petitioner admitted that Hanif Ali Khan was a witness to the factum of giving of loan and handing over of cheque. Direction to the bank to stop payment by the respondent further proves his

bonafide as he acted as a prudent person after making repayment of loan. Conduct of the respondent supports his defence. Lastly, respondent in his testimony as DW-3 stated that he arranged ₹3,25,000/- for repayment after selling one property situated at Sangam Vihar in February, 2013.

7. Considering the findings of the learned Metropolitan Magistrate, this Court concurs with the view expressed by the learned Metropolitan Magistrate. Hence, the impugned judgment acquitting the respondent warrants no interference by this Court.

8. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 23, 2018
'yo'