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

+ **CRL.L.P. 114/2019**

BIJENDER KUMAR JAIN

..... Petitioner

Represented by: Mr. Prashant Sharma, Advocate
with Petitioner in person.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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08.02.2019

Crl. M.A. No. 2926/2019 (Exemption)

Exemption allowed subject to just exceptions.

Crl.M.A. No.2927/2019 (Delay)

For the reasons stated in the application delay of 48 days in re-filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 114/2019

1. Aggrieved by the judgment dated 18th September 2018, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC No. 52806/16 the petitioner/complainant has preferred the present leave petition.
2. Facts of the present case as per the complaint are that on 1st July 2014 the respondent approached the petitioner for purchase of fine material of 'caric grey' for commercial purpose and expressing his inability to pay the

consideration amount in cash issued a post-dated cheque bearing number 23712 dated 25th July 2014 for a sum of ₹1,67,260/-. Considering the request and trusting the respondent, the petitioner agreed to accept the payment by way of the post dated cheque. On presentation of the aforesaid cheque, it was dishonoured with remarks '*funds insufficient*' vide cheque returning memo dated 30th August 2014. Legal demand notice was sent to the respondent. Despite the service of legal notice, respondent failed to make the payment. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was served upon the respondent to which he pleaded not guilty and claimed trial.

4. Petitioner relied upon the cheque in question vide Ex.CW-1/1, bank return memo dated 7th October 2014 vide Ex.CW-1/2, legal demand notice dated 5th November 2014 vide Ex.CW-1/3, postal receipts dispatching the legal notice vide Ex.CW-1/4 & 5 and internet generated proof of delivery vide Ex.CW-1/6 and Ex.CW-1/7.

5. Statement of respondent was recorded under Section 313 Cr.P.C.

6. Perusal of the record reveals that, the petitioner has only made an assertion that the cheque in question was issued in discharge of his liability as on his request, the fine material of 'camric gray' was supplied to him. However, except making this assertion the petitioner has not placed on record any single document which would show that any supply of such fabric was actually ever made by the petitioner to the respondent. Despite opportunities, the petitioner failed to place on record any books of accounts pertaining to the transactions with the respondent, any purchase order or proof of delivery of goods to the respondent. On the other hand, the respondent has taken the plea that the cheque in question was given to the

petitioner for issuance of license of Teh Bazari from MCD. Hence the petitioner failed to prove that the cheque was issued in discharge of the legal liability.

7. Findings of the learned Metropolitan Magistrate, based on the facts noted above cannot be said to be perverse warranting interference of this Court.

8. Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

FEBRUARY 08, 2019
‘vj/yo’