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

% Decided on: 15th February, 2019

\+ **CRL.L.P. 135/2019**

NARENDER GOYAL ..... Petitioner

Represented by: Mr. Satyam Pandey and Mr. Vikash Kumar Sinha, Advocates.

Versus

MAHESH KUMAR ..... Respondent

Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 3443/2019 (Exemption)

Exemption allowed subject to just exceptions.

Crl.M.A. No.3442/2019 (Delay)

For the reasons stated in the application delay of 77 days in filing the leave to appeal petition is condoned.

Application is disposed of.

Crl.M.A. No.3444/2019 (Delay in Re-filing)

For the reasons stated in the application delay of 43 days in re-filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 135/2019

1. Aggrieved by the judgment dated 4th August 2018, 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. Facts leading to the present petition as per the complaint are that the respondent had demanded a sum of ₹3,00,000/- from the petitioner for starting a new business as the two were close friends. The petitioner had handed over the said amount in cash to the respondent in July 2011 on the condition that he would return the same within one year. The respondent returned a sum of ₹1,00,000/- in October 2012. In discharge of the remaining liability the respondent issued a cheque bearing number 507158 dated 15th November 2014 drawn on ICICI Bank for a sum of ₹2,00,000/- in favour of the petitioner. On presentation of the aforesaid cheque, it was dishonoured with remarks '*Account Closed*' vide cheque return memo dated 9th December 2014. Legal demand notice dated 24th December 2014 was sent to the respondent. Despite the service of legal notice, the respondent failed to make the payment. Hence, the complaint.

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

4. Petitioner filed his evidence by way of affidavit vide Ex.CW-1/A and relied upon documents vide Ex.CW-1/1 to Ex.CW-1/5. In his cross-examination the petitioner admitted that he had not mentioned the name of the business which the respondent was supposed to start. He further stated that he had arranged the loan amount from the money lying with him and some amount was borrowed from his relatives.

5. Statement of the respondent was recorded under Section 313 Cr.P.C. wherein he stated that in the last week of December 2007 the petitioner had

visited his house for a friendly loan of ₹2,00,000/-. As he did not have sufficient cash with him at that time, he had given the cheque in question to the petitioner and told him that in the last week of January 2008 he can present it after confirming the same from him. He later told his family members about this and his wife objected stating that he should have taken a receipt for the same from the petitioner. When he approached the petitioner for a receipt he stated that he would return the cheque in question to him. He delayed the same and avoiding his request informed him that he had misplaced the cheque.

6. Respondent examined himself as DW-1 wherein he reiterated his statement recorded under Section 313 Cr.P.C. In his cross-examination he admitted to have spoken to the petitioner on the phone after receiving the legal demand notice but denied accepting the factum of loan. He further stated that he had closed his business running in the name of M/s Pro International India in 2008 and is now running the business of plywood's in the name of Lovely Plywoods and Timber. He examined his wife Ms. Neelam Kumar as DW-2 who corroborated the statement of DW-1.

7. From the material placed on record it is evident that no written document was executed between the petitioner and the respondent for the loan amount. Moreover, the copy of the income tax return has not been filed to prove the loan of ₹3,00,000/-. The petitioner in his cross-examination has claimed that the loan was advanced to the respondent in the presence of his wife but she has not been examined by him in court. He also claimed that he had borrowed a sum of ₹1,00,000/- from his brother-in-law Vipin Agarwal and Rajinder Sharma each but the same does not find any mention in the complaint, neither has any document been filed by him to that effect nor

have they been examined in court. Furthermore, he has also not mentioned the details of the business that the respondent was going to start. The date and place of advancement of loan and repayment of ₹1,00,000 have also not been mentioned in the complaint.

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

9. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 15, 2019
'vj'