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

\+ **<u>CRL.L.P. 614/2019</u>**

INDERJEET SINGH ..... Petitioner

Through Mr Shray Kaushal, Advocate.

versus

GULSHAN KUMAR ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **18.11.2019**

1. The petitioner has filed the present petition, *inter alia*, seeking leave to appeal against a judgment dated 30.09.2019 passed by the learned Metropolitan Magistrate whereby the respondent was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The petitioner had filed a complaint alleging commission of the said offence on account of the dishonour of two cheques of ₹2,50,000/- each, allegedly issued by the respondent. According to the petitioner, the said cheques had been issued for the repayment of a friendly loan that was extended by the petitioner to the respondent.

3. The respondent had examined himself as DW 1. He had stated the cheques in question, which bore his signatures, had been misplaced. The respondent stated he and the petitioner's son had some business arrangement for dealing in certain property and the said cheques may have come into his

possession in the course of the said business.

4. He has stated that after the said cheques had been mis-placed he visited the concerned bank and filed a complaint regarding the said cheques and had also closed the account. The Trial Court noticed that the cheques were dated 17.06.2015 and 18.06.2015, and the respondent had closed the bank account on 04.09.2013, which is much prior to the said dates.

5. The witness from the concerned bank (Delhi State Cooperative Bank Limited, Kesho Pur Branch, Tilak Nagar, New Delhi) had also been examined. He had produced a letter dated 04.09.2013 sent by the respondent (Ex. DW 2/D) wherein the respondent had requested for closure of the bank account.

6. In view of the evidence led by the respondent, he had repelled the presumption of liability. The defence presented by the respondent that cheques had been misplaced had already been reported two years prior to the date inscribed on the said cheques, is probable.

7. In the given circumstances, it was incumbent upon the petitioner to produce sufficient evidence to establish that he had extended a loan to the respondent and the cheques in question had been issued in discharge of the said liability. However, the petitioner was unable to discharge the said burden. He did not produce any documents which would establish the disbursal of the loans. Although it was initially stated that the respondent had issued a receipt for the said loan, no such receipt was produced and upon subsequent examination, the petitioner had also acknowledged that no receipt had been issued by the respondent.

8. The petitioner could not establish that he had means to extend a loan of ₹5,00,000/-. On the contrary, the testimony of the petitioner indicates that

he had borrowed funds from other relatives for his medical expenses.

9. In view of the above, this Court finds no infirmity with the impugned judgment and therefore finds no reason to allow the present petition seeking leave to appeal against the impugned judgement.

10. The present petition is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 18, 2019

pkv