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

%	Decided on: 5th February, 2019

+	**CRL.L.P. 100/2019**

PRADEEP KUMAR ..... Petitioner

Represented by: Mr. S.N. Pandey and Ms. Ananya Roy, Advocates

versus

STATE OF GNCT (DELHI) & ANR. ..... Respondent

Represented by: Ashok Kr. Garg, APP for the State

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 2602/2019 (Exemption)

Exemption allowed subject to just exceptions.

Crl.M.A. No.2601/2019 (Delay)

For the reasons stated in the application delay of 20 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 100/2019

1. Aggrieved by the judgment dated 12th October 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 of the present case as per the complaint are that the petitioner knows respondent no.2 through his cousin Mr. Harinder Sharma who resides in the same village as respondent no.2. The petitioner gave a friendly loan of

₹6,50,000/- to respondent no.2. In order to discharge the liability, respondent no.2 issued a cheque bearing number 738759 dated 14th October, 2013, for a sum of ₹6,50,000/- in favour of the petitioner. On presentation of the aforesaid cheque, it was dishonoured with remarks *'funds insufficient'* vide return memo dated 17th October, 2013. Legal demand notice dated 13th November, 2013 was sent to respondent no.2. Despite the service of legal notice, respondent no.2 failed to make the payment. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was served upon respondent no.2 vide order dated 30th November, 2017 to which he pleaded not guilty and claimed trial. In his defence he claimed that the cheque in question was issued as a blank signed cheque to the petitioner. The cheque was issued as he had taken a loan of ₹ 30,000/- from the petitioner in the year 2013. He had already repaid that loan amount to the petitioner.

4. Petitioner examined himself as CW-1 and tendered his evidence as Ex.CW-1/1 and relied upon the cheque in question vide Ex.CW-1/A, returning memo vide Ex.CW-1/B, legal notice vide Ex.CW-1/C, receipt of registered post vide Ex.CW-1/D and receipt of courier vide Ex.CW-1/E.

5. Statement of respondent no.2 was recorded under Section 313 Cr.P.C. wherein he stated that he had given a blank cheque to the petitioner as a security as he had opened a trading account for the petitioner with Religates Security. He further stated that he had not taken any loan from the petitioner neither had he received any legal demand notice.

6. Perusal of the record reveals that there is no written/documentary proof to show the advancement of loan of ₹6,50,000/-. Moreover, the date of giving the loan has also not been mentioned in the complaint. The petitioner has also not proved that he had the financial capacity for advancing the loan

amount. He has also admitted that the ink used for the signature and for filing other particulars on the cheque is different. Furthermore, the petitioner in his cross-examination has admitted receiving an amount of ₹30,000/- from respondent no.2.

7. Considering the facts noted above findings of the learned Metropolitan Magistrate cannot be said to be perverse warranting interference of this Court.

8. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 5, 2019
'vj/ga'