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

%   Decided on: 15th May, 2019

+   **CRL.L.P.333/2019**

KALI CHARAN GOSWAMI   ..... Petitioner

Represented by: Mr. C.M. Mathur, Advocate

versus

STATE & ANR   ..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP for the State.
None for Respondent No. 2

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CRL.L.P. 333/2019

1. Aggrieved by the judgment dated 12th March 2019, 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 complainant and Respondent No.2 had friendly relations. In April 2014 the complainant gave Rs.4,75,000/- in cash as friendly loan to Respondent No.2 on the condition that he would repay the same within a period of twelve months. In November 2015 in order to discharge the liability the Respondent No.2 issued a cheque bearing no. 000013 dated 21st December 2015 for a sum of Rs. 4,75,000/- drawn on Bank of Baroda, Mandoli Branch, Nand Nagri Bus

Depot, Delhi in favour of the petitioner. On presentation of the aforesaid cheque, it was dishonoured with remarks *"funds insufficient"* vide bank return memo dated 29th December 2015. Legal demand notice dated 11th January 2016 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 to which he pleaded not guilty and claimed trial. In his defence he stated that the petitioner who was his cousin brother had stolen the blank signed cheque from his house in respect of which he had also filed an NCR.

4. The petitioner examined himself as CW-2 and tendered his evidence by way of an affidavit vide Ex.CW-1/A. He relied upon the cheque in question vide Ex.CW-1/1, cheque returning memo Ex.CW-1/2, legal demand notice vide Ex.CW-1/3, postal receipt vide Ex.CW-1/4, tracking reports vide Ex.CW-1/5 and reply to legal notice vide Ex.CW-1/6.

5. Statement of respondent was recorded under Section 313 Cr.P.C. wherein he reiterated his statement given under Section 251 Cr.P.C. He admitted the factum of dishonour of cheque in question and also the receipt of legal notice.

6. Perusal of the record reveals that the petitioner was unable to provide the details of the disbursement of the loan or the date on which the cheque in question was handed over to him by Respondent No.2. The petitioner has relied upon the reply to the legal notice sent by Respondent No.2 wherein he has specifically denied the factum of him having taken any friendly loan and also specifically denied that the cheque in question was issued for discharge of any liability. Furthermore, the petitioner has also not mentioned the advancement of the abovementioned loan amount in his Income Tax Return.

The petitioner further testified that the loan was disbursed in the presence of his wife and son but has failed to examine them in court.

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

MAY 15, 2019
'vj'