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

% Decided on: 11th February, 2019

\+ **CRL.L.P. 190/2017**

SWASTIK PAPER & PACKAGING ..... Petitioner

Represented by: Mr. Saurabh Kansal, Advocate

Versus

AMIT UPADHYAYA ..... Respondent

Represented by: Mr. Ajay Gulati, Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.5599/2017 (Delay)

For the reasons stated in the application delay of 8 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 190/2017

1. Aggrieved by the judgment dated 15th December 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC no. 377/15, the petitioner/complainant has preferred the present leave petition.

2. Facts leading to the present case as per the complaint are that the petitioner is a proprietorship concern dealing in business of papers and packaging and the respondent used to have a running account with the petitioner company for purchasing papers. The respondent had placed an

order for supply of papers with an assurance of payment on delivery vide invoice dated 29th April 2011 and 30th April 2011 amounting to a total of ₹5,80,598/- and as there was a previous balance of ₹35,983/- on the respondent and the petitioner had later purchased paper from the respondent for a sum of ₹1,80,611/-, after adjusting the same the liability of the respondent towards petitioner as on 30th April 2011 was of ₹4,35,970/-. In discharge of that liability the respondent issued a cheque bearing number 158770 drawn on Syndicate Bank for a sum of ₹4,35,970/- in favour of the petitioner company. On presentation of the aforesaid cheque, it was dishonoured with remarks '*Account Closed*' vide return memo dated 19th September 2011. Legal demand notice 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. In his defence he claimed that the petitioner had cheated him and he was not liable to pay any amount to the petitioner. He further submitted that he used to supply goods to the petitioner and a sum of ₹2,68,781/- had to be paid by the petitioner to him.

4. Petitioner company filed its evidence by way of affidavit through its proprietor Mr. Ritesh Kumar Jain and relied upon original cheque vide Ex.CW-1/A, dishonour memo vide Ex.CW-1/B, legal notice dated 10th September, 2011 vide Ex.CW-1/C, postal receipt of registered post vide Ex.CW-1/D, courier receipt vide Ex.CW-1/E and delivery proof of registered post vide Ex.CW-1/F, invoice dated 29th April 2011 vide Ex.CW-1/G and invoice dated 30th April 2011 vide Ex.CW-1/H. During his cross-

examination the petitioner company also filed an invoice dated 8th June 2007 vide Ex. CW-1/D1. Petitioner company also examined Mr. Baleshwar Singh as CW2 to prove the presentation and dishonour of cheque.

5. Statement of the respondent was recorded under Section 313 Cr.P.C. wherein he stated that he never bought any paper from the petitioner but used to supply paper to the petitioner and the bills placed by the petitioner are not in order otherwise they would have been countersigned. As regards the cheque the respondent stated that the cheque was lost by him of which he had lodged a police complaint in the month of August 2011 and when he received the legal notice it was duly replied by him.

6. Respondent examined himself as DW-1 wherein he reiterated his statement recorded under Section 313 Cr.P.C. He further stated that he used to sell corrugated papers to the petitioner of which he filed around 15 bills vide Ex.DW-1/A-1 to A-15 having signatures of the petitioner along with stamp. He also stated have the petitioner owed him a sum of ₹2,68,781. He also reproduced his DVAT form from 1st April 2011 to 30th September 2011 vide Ex.DW-1/B and copy of summary of purchase for the month of April, May, August and September 2011 as Ex.CW-1/D-1 to D-4. The respondent also produced ledger balance with the petitioner vide Ex.DW-1/E. He also stated that he had replied to the notice of the petitioner and produced a copy of the reply as Mark A and sent notice for recovery of his outstanding amount as Mark B. He also proved his complaint regarding loss of cheque as Ex.DW-1/F.

7. After perusing the evidence on record, the petitioner has relied on two invoices to show the liability of the respondent but none of these two invoices are countersigned by the respondent. The ledger of the running

account with the respondent has not been placed on record by the petitioner. Moreover, the invoices and ledger with respect to the business transactions between the petitioner and the respondent that have been relied upon by the respondent have not been denied by the petitioner.

8. From the material placed on record it is evident that the petitioner purchased goods from the respondent on 15 occasions and kept on paying those in regular intervals leaving a balance of ₹2,68,781 on 24th March 2011. After this the petitioner claimed to have sold goods to the respondent on 29th April 2011 and 30th April 2011 through two invoices which are not countersigned by the respondent despite that being the usual practice of the petitioner of countersigning the invoices whenever he purchased goods from the respondent. The petitioner chose not to produce any book of accounts in support of the invoices filed by him yet admitting the last sale by the respondent and adjustment of ₹35,983/-.

9. On the facts as noted above no case for interference by this Court is made out.

10. Leave to appeal petition is dismissed.

11. TCR be returned.

(MUKTA GUPTA)
JUDGE

FEBRUARY 11, 2019
‘vj/yo’