

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

% Decided on: 30th January, 2019

+ **CRL.L.P. 250/2017**

SUNIL KUMAR TANDON

..... Petitioner

Represented by: Mr. Sanjay Kr. Singh,
Advocate

versus

SHIV KUMAR

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 23rd December, 2016, 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 gave a friendly loan of ₹1,50,000/- to the respondent in the month of January 2010. In order to discharge the liability, respondent issued three cheques bearing numbers 046014, 046019 and 046020 dated 15th October, 2010, 15th September, 2010 and 11th October 2010 for a sum of ₹42,000/-, ₹1,00,000/ and ₹2,500/- respectively in favour of the petitioner. On presentation, the aforesaid cheques were dishonoured with remarks '*Account Closed*' on 25th October, 2010. Legal demand notice dated 3rd November, 2010 was sent to the respondent. Despite the service of legal notice, respondent failed to make the payment. Hence, the complaint.

3. Notice under section 251 Cr.P.C. was served upon the respondent

vide order dated 27th January, 2015 to which he pleaded not guilty and claimed trial.

4. In the post-notice evidence by way of affidavit, Petitioner examined himself as CW-1 and tendered his evidence as Ex.CW-1/H and relied upon original cheques, returning memos, legal notice and postal receipts.

5. Statement of respondent was recorded under Section 313 Cr.P.C. wherein he stated that he did not know the petitioner but he was a good friend of his uncle Sultan Singh. He stated that he wanted to purchase a bike in 2016 and the petitioner told him that he could get the bike financed for him. He handed over a photocopy of his ID proof, residence proof and various blank signed cheques including the cheques in question to the petitioner so that the formalities of the loan/finance could be completed. He further stated that 5-7 days after he handed over the cheques to the petitioner, he told him to collect the bike from the showroom as the finance had been granted. Thereafter, he took the delivery of his bike. Later he found out that the bike had been financed in the name of the petitioner and the ECS transactions were going on from the account of the petitioner with respect to the bike in possession. The petitioner then informed him that there were some defects in the documents he provided so he got the bike financed in his name. He further stated that he used to make cash payments to the petitioner for payment of EMIs and after some time the bank recovery agents approached him and told him that the EMIs are not being paid. He then started making the payments to the petitioner in cash against written acknowledgement. When he asked the petitioner to return the cheques, he asked him to go to some place in Jhandewala where his cheques were deposited. On going to Jhandewala, he was informed that neither his

documents nor his cheques were available as the bike was not financed in his name. He then lodged a complaint with PS Farsh Bazar in this respect.

6. The respondent examined himself as DW-1 and relied upon 25 payment receipts of ₹1,123/- each vide Ex.DW-1/A1 to Ex.DW-1/A-25.

7. Perusal of the record reveals that, the petitioner in his cross-examination had conceded to the fact that he was the registered owner of the motorcycle and had given the same to the respondent with the original documents. Even though the petitioner admitted being the owner of the vehicle he has failed to place on record the registration number of the motorcycle and has also not provided any reasonable explanation for handing over the original documents to the respondent. Moreover, no loan documents were proved by the petitioner to show the advancement of loan nor was the loan amount reflected in his Income Tax Returns.

8. Respondent has placed on record receipts of payment of EMI's in respect of a two-wheeler, all of which have been deposited on behalf of the petitioner, thus supporting his defense that the EMIs towards the motorcycle were deposited by him with the bank in the name of the petitioner who is admittedly the registered owner of the motorcycle.

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

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2019
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