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

+ **CRL.M.C. 3810/2018 & CrI.M.A. 29011/2018**

RAJ BALA SHARMA

..... Petitioner

Through: Mr. Satyendra Kumar & Ms. Sunita
Bhardwaj, Advs.

versus

NARENDER KAPOOR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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16.01.2019

The petitioner is facing the criminal trial in complaint case (618351/2016) instituted by the respondent (the complainant) it alleging offence under Section 138, Negotiable Instruments Act, 1881 having been committed on account of non-payment of the amount of the cheque inspite of notice of demand duly served in the wake of dishonour of cheque which had been issued by the petitioner (the accused), the case of the respondent (the complainant) being that the cheque represented the amount due, such amount having been taken as loan in the year 2012.

The petitioner, after notice under Section 251 Cr.P.C. had been served, had moved an application under Section 145 (2) of Negotiable Instruments Act, 1881 praying for an opportunity to cross-examine the complainant, her contention, *inter alia*, being that the amount of loan taken

in 2012 had been repaid by RTGS and that the cheque had been issued as security for the said amount and was liable to be returned.

The Metropolitan Magistrate has rejected the said prayer observing, *inter alia*, that these are defences which can be proved by the petitioner by defence evidence. The said order dated 17.02.2018 is challenged by the petition at hand.

The respondent inspite of notice did not appear to contest.

To say the least, the Metropolitan Magistrate has not comprehended the import and effect of the contentions urged before her. Undoubtedly, the petitioner will have to prove her defences at the trial but one of the tools of fair procedure for criminal prosecution is to afford an opportunity to the opposite party to test the credibility of evidence by way of cross-examination. In a criminal complaint case it is the complainant who has to discharge the initial burden. The evidence on affidavit of the complainant being already on record, in the given facts and circumstances, opportunity for cross-examination should have been afforded.

Thus, the petition is allowed. The impugned order is set aside. The Metropolitan Magistrate is directed to facilitate an opportunity to the petitioner to cross-examine the respondent (the complaint) before proceeding further in the matter.

The petition and the application filed therewith are disposed of.

R.K.GAUBA, J

JANUARY 16, 2019

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