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

+ CRL.L.P. 546/2016

M/S FIIT JEE LTD

..... Petitioner

Represented by: Mr. Mukesh M. Goel and Ms. Arti
Rawat, Advocates.

versus

SHIKHA MALHOTRA

..... Respondent

Represented by: Mr. Biswajit, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

06.02.2019

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In the present petition, the petitioner challenges the discharge of the respondent for offence punishable under Section 138 of the Negotiable Instruments Act. The first issue urged by the learned counsel for the petitioner is that at the stage framing of notice the Trial Court has no option but to frame notice against the accused. This contention of learned counsel for the petitioner is contrary to the settled legal position as noted in the Supreme Court decisions reported as 2012 5 SCC 424 Bhushan Kumar and Anr. Vs. State and Anr. and 2012 12 SCC 485 Krishna Kumar Variar Vs. Share Shopee wherein it was held that even at the stage of framing of notice the Magistrate is duty bound to carefully go through the allegations made in the charge sheet, consider the same and if he comes to the conclusion that the commission of an offence is not disclosed then it is the bounden duty of

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the Magistrate to discharge the accused as per Section 239 of the Code.

Further against an order of discharge no leave to appeal petition is maintainable.

Faced with this situation learned counsel for the petitioner prays that the present petition be treated as revision petition.

Registry is directed to treat the present petition as a revision petition and list the petition before the roster bench subject to orders of Hon'ble the Chief Justice on 18th February, 2019.

MUKTA GUPTA, J.

FEBRUARY 06, 2019
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