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

% Decided on: 6th February, 2019

\+ **CRL.L.P. 614/2016**

S.E. INVESTMENTS LTD. ..... Petitioner

Represented by: Mr. Shyam Babu, Advocate

Versus

PREM SINGH ..... Respondents

Represented by: Mr. Abhishek Sabharwal, Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CRL.L.P. 614/2016

1. Aggrieved by the judgment dated 29th June 2016, whereby the learned Metropolitan Magistrate acquitted the respondent for the offence punishable under Section 138 Negotiable Instruments Act, 1881 in CC no. 3108/15 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 company carrying on financing business of Corporate loans, Term loans, Auto Loans, Loan against property, SME Trade & others. The respondent had taken a loan from the petitioner company on executing a Loan Cum Guarantee Agreement dated 8th January, 2013. Pursuant to the Loan Cum Guarantee Agreement, the respondent had to repay the said loan as per its terms and conditions but he failed to comply with the same. On

repeated demands by the petitioner company for repayment of outstanding dues the respondent issued a cheque bearing number 589134 dated 6th May 2013 for a sum of Rs.26,63,037/- drawn on Canara Bank, Digner, Shamshad, Agra in favour of the petitioner company. On presentation of the aforesaid cheque, it was dishonoured with remarks '*insufficient funds*' vide return memo dated 16th May 2013. Legal demand notice dated 6th June 2013 was sent to the respondent though registered post and AD. 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.

4. Petitioner company filed its evidence by way of affidavit Ex.CW-1/1 through Mr. Amit Chaudhary and relied upon copy of extracts of Board Resolution dated 22.12.2009 vide Ex.CW-1/A, original cheque vide Ex.CW-1/B, original returning memo vide Ex.CW-1/C, legal demand notice vide Ex.CW-1/D, postal receipt and tracking reports vide Ex.CW-1/E and Ex.CW-1/F, copy of loan cum guarantee agreement vide Ex.CW-1/G, copy of letter dated 10th December 2012 vide Ex.CW-1/H, copy of voucher dated 8th January 2013 vide Ex.CW-1/I and copy of statement of account vide Ex.CW-1/J.

5. Statement of the respondent was recorded under Section 313 Cr.P.C. wherein he stated that he issued a blank signed cheque to the petitioner at the time of taking employment with the petitioner company.

6. Respondent examined himself as DW-1 and Mr. Surender Singh as DW-2.

7. During the course of evidence, authorized representative of the

petitioner company admitted that the respondent was its employee. CW-1 in his affidavit admitted that the respondent was working on agency basis called as Field Manager for the petitioner company and his work was to select appropriate and eligible borrowers for disbursal of loan and was responsible to recover the installments of loan. The petitioner company did not file the appointment letter of the respondent wherein the terms and conditions of the respondent's employment were mentioned, nor the loan documents vide which the loan was granted to the borrowers at the instance of the respondent nor did it file any details of the mode of payment of loan amount to such borrowers. The petitioner company did not file any books of account to show what loan amount was disbursed to the borrowers and what amount was due to such borrowers. Moreover, the petitioner's contention in the complaint is that the respondent failed to deposit the amount of Rs.20,25,000/- that was collected from the borrowers but has failed to examine any such borrower to prove that they made the payment to the respondent for the repayment of loan.

8. The petitioner company has also heavily relied upon the loan agreement which was allegedly executed on 8th January 2013 whereas the stamp paper on which the loan agreement was executed was purchased on 6th March, 2010. The petitioner company failed to explain why the stamp papers for the loan agreement were purchased almost three years prior to the execution of loan documents. Moreover, the loan agreement is a void contract for want of consideration. It is evident that the consent of the respondent was obtained through misrepresentation thus making the loan agreement between the petitioner and respondent void under Section 19 of the Indian Contract Act.

9. As per the loan agreement dated 8th January 2013 the loan amount was for Rs.20,25,000/- whereas the cheque in question for an amount of Rs.26,63,037/- was presented on 16th May 2013. The petitioner company has failed to explain how the liability increased from Rs.20,25,000/- to Rs.26,63,037/- within a period of five months. Therefore, the legal demand notice was not a valid notice as it was a demand for more than the actual loan amount and would not fasten any criminal liability on the respondent.

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

11. Leave to appeal petition is dismissed.

12. TCR be returned.

(MUKTA GUPTA)
JUDGE

FEBRUARY 06, 2019
vj