

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

% Decided on: 25<sup>th</sup> February, 2019

+ **CRL.L.P. 724/2018**

VIVEK KUMAR AGARWAL ..... Petitioner  
Represented by: Mr. Uday Shankar, Shah  
Hussain, Advocates

versus

RAJNISH SHARMA ..... Respondent  
Represented by: None.

**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

**Crl. M.A. No. 35396/2018 (Exemption)**

Exemption allowed subject to just exceptions.

**CRL.L.P. 724/2018**

1. Aggrieved by the judgment dated 6<sup>th</sup> August 2018, 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 in the month of April 2015 the respondent had approached the petitioner for a friendly loan of ₹1,00,000/- for a period of 2-3 months on interest, and the petitioner gave an interest free loan of ₹1,00,000/- to the respondent in cash on 15<sup>th</sup> April 2015. In order to discharge the liability, respondent issued a cheque bearing number 026199 dated 16<sup>th</sup> August 2016 for a sum of ₹1,00,000/- in favour of the petitioner. On presentation of the aforesaid cheque, it was dishonoured with remarks '*funds insufficient*' vide return memo dated 17<sup>th</sup> August, 2016.

Legal demand notice dated 30<sup>th</sup> August 2016 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 served upon the respondent vide order dated 12<sup>th</sup> February 2018 to which he pleaded not guilty and claimed trial. In his defence he claimed that he had not taken any loan from the petitioner and the cheque in question was never issued by him in favour of the petitioner. The cheque bears his signatures; however, remaining particulars were not in his handwriting. The blank cheque was given to the petitioner in discharge of his liability of about ₹5,000 - ₹6000 on account of supply of milk and milk products by the petitioner, which has been subsequently misused by the petitioner by filling in the details. He denied the receipt of the legal notice.

4. Petitioner examined himself as CW-1 and tendered his evidence by way of an affidavit vide Ex.CW-A/B and relied upon the cheque in question vide Ex.CW-1/1, legal notice vide Ex.CW-1/2, postal receipts vide Ex.CW-1/3 and copy of the passbook of the petitioner reflecting dishonour of cheque vide Ex.CW-1/4.

5. Statement of respondent was recorded under Section 313 Cr.P.C. wherein he reiterated his statement given under Section 251 Cr.P.C.

6. Perusal of the record reveals that there is no proof to show the advancement of loan by the petitioner. The petitioner has failed to produce the books of accounts of his shop wherein he had allegedly reflected the loan in question nor has he produced the diary which has been maintained by him in respect of the loan given to the petitioner. The loan amount has also not been reflected in his Income Tax Return. The petitioner claimed that the

loan was advanced in the presence of his brother but his brother has not been examined by him in court.

7. Moreover, the petitioner in his complaint has admitted that the respondent being poorly educated had handed over the cheque book to him while instructing him to fill up the details. However, he has denied the same in his cross examination while stating that the amount in words and figures was in the handwriting of the respondent. The aforesaid contradictions in the evidence tendered by the petitioner with his admission regarding the supply of milk and milk products by him to the respondent dispels the presumption against the respondent that loan was given by the petitioner to the respondent. It is clear that the blank signed cheque in question was given by the respondent to the petitioner which has been subsequently misused by him by filling up the amount in words and figures and date as per his choice.

8. Considering the facts noted above findings of the learned Metropolitan Magistrate cannot be said to be perverse warranting interference of this Court.

9. Leave to appeal petition is dismissed.

नात्यमेव जयते

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 25, 2019**

**vj**