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

+ **CRL.L.P. 6/2020 and CRL.M.A. Nos. 74/2020 & 75/2020**

D.N. BHASKAR

..... Petitioner

Through: Mr Om Prakash Mishra, Advocate.

versus

MANMOHAN SRIVASTAVA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.02.2020**

1. The petitioner has filed the present petition, *inter alia*, seeking leave to impugn an order dated 08.05.2019 passed by the learned Metropolitan Magistrate-02, District East, Karkardooma Courts, *inter alia*, acquitting the respondent of the offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

2. It was the petitioner's case that he had advanced a sum aggregating ₹3,00,000/- to one Mr Kamal Ratan (who was arrayed as accused no.1 before the learned Metropolitan Magistrate). The petitioner had alleged that Sh. Kamal Ratan had given him a cheque that was drawn by the respondent (Sh. Manmohan Srivastava) in favour of Mr Kamal Ratan, after endorsing the same in favour of the petitioner.

3. The statement of the respondent was recorded and he stated that he did not know the accused; had no dealings with him; and had not issued any cheque to Sh. Kamal Ratan. The petitioner was, of course, in no position to claim that the said cheque had been issued by the respondent in discharge of an enforceable liability.

4. In the given circumstances of the case, the learned Metropolitan Magistrate rejected the complaint and acquitted the respondent of committing an offence under Section 138 of the NI Act.

5. Although the learned counsel for the petitioner is correct that there is a presumption of liability once it is accepted that the cheque had been signed by the account holder; however, in the present case, the said presumption was rebutted by respondent no.2. He had stated that he had not filled in the cheque and had not issued the same to Sh. Kamal Ratan and did not know how the cheque had found its way to the petitioner. He stated that Sh. Kamal Ratan was his friend and has access to his office.

6. In view of the above, the onus to establish that there was an enforceable liability, rested with the petitioner, which in this case was not discharged.

7. This Court finds no infirmity with the impugned order.

8. It is seen that the present petition is filed beyond the prescribed time. The only explanation provided by the petitioner for the delay of one hundred and forty-six days is that his wife was not keeping well. This is not supported by any document. Accordingly, the present petition seeking leave to appeal is dismissed, both, on merits and limitation. The pending applications are also disposed of.

VIBHU BAKHRU, J

FEBRUARY 05, 2020/ RK