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

+ **CRL.L.P. 478/2016**

AASHA RANI

..... Petitioner

Through Ms Biji Rajesh, Advocate with Ms Aarti
Mahto, Advocate.

versus

VINEET KUMAR

..... Respondent

Through Mr Yash Kutar, Mr Divyam Agarwal,
Advocate with respondent

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.01.2020

CRL.M.A. 14021/2016

1. The petitioner has filed the above captioned petition seeking leave to impugn an order dated 05.12.2014 passed by the learned Metropolitan Magistrate-IV (East) Karkardooma Courts, Delhi, whereby Complaint Case No.177/2010 preferred by the petitioner under Section 138 of the Negotiable Instrument Act, 1881 (hereafter 'the NI Act'), was rejected.

2. The petitioner had presented a cheque for a sum of ₹50,00,000/- which was signed by the respondent. She had alleged that the said cheque was issued in consideration for the loan extended by the petitioner to the respondent. She stated that the respondent is the son of one of the petitioner's close friend and had borrowed some money to invest the same in his property business. The respondent stated that he had taken a loan of ₹5,70,500/- from the complainant and the cheque in question (which he

claims was blank and undated) was handed over to the petitioner for the interest payable on the said amount. He had also claimed that he had repaid the said amount and interest through a demand draft. The Trial Court came to the conclusion that the petitioner had discharged its initial burden by rebutting the presumption of liability and the onus to prove that there was an enforceable liability, rested on the petitioner (complainant). The learned M.M. had also evaluated the evidence obtaining in the case and concluded that the petitioner had failed to establish the existence of an enforceable liability and, accordingly, rejected the complaint filed by the petitioner.

3. The petitioner has filed the present petition after an inordinate delay of almost one and a half years (466 days). The petitioner states that she had filed an appeal against the impugned order before the learned Additional Sessions Judge, Karkardooma Courts in good faith, however, the said court did not have the jurisdiction to entertain the said appeal and hence, the same was disposed of as withdrawn on 11.05.2016. Thereafter, the petitioner had filed the present petition seeking leave to appeal against the impugned judgment dated 05.12.2014.

4. The respondent has filed a reply and it is contended on behalf of the respondent that the delay is wilful and without any excuse. The learned counsel appearing for the respondent pointed out that the appeal filed by the petitioner before the learned Additional Sessions Judge was also beyond the period of limitation (after a delay of 28 days). He also drew the attention of this Court to the application for condonation of delay filed by the petitioner before the learned Additional Sessions Judge. Paragraph 2 to of the said application is relevant and reads as under:-

“That feeling shocked by the acquittal of the accused, the

complainant immediately contacted her lawyer, who demanded a fee on much higher side stating that the appeal would be filed before the High court of Delhi. Since the applicant had lost everything in the present case by the acquittal of the accused, she was not in a position to pay that much of fee. She contacted other advocates who also refused to accept her brief for a lower fee. On the advice of one of the advocates, the applicant thereafter approached the Delhi High Court Legal Services Authority, which also vide order 6.2.2015 refused to extend any help to the applicant, passing an order as if the said Authority was sitting in appeal to the judgments passed by the District Courts.”

5. It is apparent from the above that the petitioner was advised that the appeal is required to be filed before this Court and not before the learned Sessions Judge. Therefore, the contention that the petitioner had been ill advised to file an appeal before the learned Additional Sessions Judge, is unmerited. It is clear that the petitioner was duly aware that the appeal before the learned ASJ would not be maintainable.

6. In view of the above, the explanation that the petitioner had been ill-advised to prefer an appeal before the learned ASJ and had filed the said appeal in the *bona fide* belief that the court had jurisdiction, is unpersuasive.

7. The application is, accordingly, dismissed. Consequently, the petition is also dismissed.

VIBHU BAKHRU, J

JANUARY 06, 2020

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