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

+ CRL.L.P. 236/2023 & CRL.M.A. 12023/2023 (on record further document/evidence)

BRAHAM PRAKASH YADAV

..... Petitioner

Through: Mr. Siddharth Pandit, Mr. Vishwa
Prakash Rai and Mr. Vipin Kumar,
Advocates alongwith petitioner in
person.

versus

RAKESH KUMAR & ANR.

..... Respondents

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

24.04.2024

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1. Amended memo of parties has been filed and the same is taken on record.
2. The present petition under Section 378(4) of the Code of Criminal Procedure, 1973 seeks leave to appeal against judgment dated 02.03.2023 passed by the learned Metropolitan Magistrate (NI-05), West District, Tis Hazari Courts, Delhi, in CC No. 4202/2016, titled '*Braham Prakash Yadav v. Rakesh Kumar & Ors.*'.
3. Learned counsel appearing on behalf of the petitioner submits that the impugned judgment of acquittal has been passed primarily on the ground that the notice under Section 138 of the Negotiable Instruments Act was issued to the respondent and one other person namely, Rakesh Kumar and not to the proprietorship concerned, i.e., M/s D.D. Plastic, who was the



drawer of the cheque. It is submitted that during the course of the trial, it has come on record that the sole proprietor of the said firm was the present respondent. Accordingly, on the statement made before the learned Predecessor Bench of this Court, the name of aforesaid Rakesh Kumar was deleted from the array of parties.

4. The attention of this Court has been drawn to the statement of the respondent, wherein he admitted a payment coming to his account on 18.12.2012 from petitioner. It is the case of the petitioner that the said amount was returned by way of the subject cheque dated 22.07.2013.

5. Learned counsel appearing on behalf of the respondent submits that the judgment of acquittal passed by the learned Trial Court was on the basis of correct appreciation of the evidence on record. It is submitted that while acquitting the present respondent, the Court had noted that notice under Section 138 of the NI Act was not issued to the proprietorship concerned but only to the present respondent and the aforesaid Rakesh Kumar. It is further submitted that the petitioner has not been able to prove any transaction for which subject cheque was issued to the respondent.

6. Heard learned counsel for the parties and perused the record.

7. The stand of the present respondent before the learned Trial Court was that the subject cheque was issued; however, he had not filled any particulars. Subsequently, it was stated that the said cheque was given as security with respect to the ongoing transaction between the respondent and the petitioner herein.

8. As pointed out hereinabove, the respondent during his testimony before the learned Trial Court had clearly admitted receiving an amount through a cheque in his account dated 18.12.2012 and subsequently during



the course of the said testimony, the respondent had made a claim that an amount access to the one received in his account was paid to the petitioner; however, no documents were placed on record with respect to the same.

9. Leave granted. The present criminal leave petition is allowed and disposed of. The same may be registered as criminal appeal and the Registry is directed to number it accordingly. Pending application is also disposed of accordingly.

10. In the meantime, respondent no.1 is directed to furnish a personal bond in the sum of Rs. 15,000/- with one surety to the satisfaction of the Registrar General of this Court.

CRL.A.....(to be numbered)

11. List on 28.08.2024.

12. The Registry is directed to requisition the Trial Court Record with proper index, pagination and bookmarks for perusal of this Court before the next date of hearing.

AMIT SHARMA, J

APRIL 24, 2024/sn

Click here to check corrigendum, if any