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

+ **CRL.L.P. 587/2022**

MURARI PRASAD

.....Petitioner

Through: **Mr. Subodh Kumar Jha, Adv.**

versus

SURENDRA VERMA

.....Respondent

Through: **Mr. Vishesh Wadhwa, Ms. Swadha Gupta, Ms. Shubhangi Singh, Advs.**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.03.2025

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1. This is an application filed under section 378 (4) of the Code of Criminal Procedure, 1973 seeking of grant of leave to appeal against the judgment dated 30.07.2022, passed by the learned Metropolitan Magistrate - 04, North-West District, Delhi in Complaint Case No. 22873/2016, whereby the respondent was acquitted of the offences under section 138 of the Negotiable Instruments Act, 1881.

2. The learned Metropolitan Magistrate, while acquitting the respondent, observed that the petitioner, being merely a Class 10th graduate with an income of approximately ₹20,000 to ₹50,000 per month and a fluctuating bank balance of around ₹5,000, lacked the financial capacity to purchase a pendant worth ₹5 to ₹8 lakhs.

3. The learned Metropolitan Magistrate was of the view that the respondent has discharged the onus of showing that there was no legally



enforceable debt.

4. To my mind, the entire discussion as well as the finding arrived at by the learned Metropolitan Magistrate becomes insignificant upon reading the respondent's statement under Section 313 of the Code of Criminal Procedure, 1973. The operative portion reads as under:

“Do you want to say anything else?

A When the complainant approached me, I was told that he was a goldsmith and also doing a business of loose diamond and diamond jewelery I am also a jeweler and the complainant used to buy loose diamond jewelery from me since the year 2009 and used to sell the same in Bihar. The complainant used to come to me twice or thrice in a couple of months. Complainant approached me to sell a diamond pendant which I never took because of disagreements over price The complainant again approached me to sell the same pendant because he was in dire need of money Upon considering his repeated request, I gave him a cheque of Rs 5,00,000/- against the said pendant. The complainant upon not getting the required market price, took his pendant and I forgot to take back the said cheque in question. Complainant misused the said cheque and filed a false and frivolous case against me.”

5. In the present case, the respondent has himself admitted that the pendent was purchased by the respondent and in this regard, he had given a cheque of Rs 5,00,000 to the petitioner, but since the petitioner was not getting the required market price, the petitioner took back the pendant and the respondent failed to take his cheque back.



6. *Prima-facie*, the same to my mind does not inspire confidence as the respondent is a jeweler and deals in such kind of transactions on regular basis. He cannot be expected to return a pendant and not take the cheque back which was given for purchase of the pendant.

7. For the said reasons, the issue needs consideration.

8. In this view of the matter, the application is allowed and the petitioner is granted leave to appeal against the judgment dated 30.07.2022, passed by the learned Metropolitan Magistrate - 04, North-West District, Delhi in Complaint Case No. 22873/2016.

9. The application is disposed of.

CRL.A /2025 (TO BE NUMBERED)

10. Since the leave to appeal has been granted, the Registry is directed to number the appeal.

11. Issue notice.

12. Mr. Wadhwa, learned counsel accepts notice on behalf of the respondent.

13. For the reasons stated in the appeal, the appeal is “**Admitted**” and shall be listed in due course.

JASMEET SINGH, J

MARCH 3, 2025/sp

Click here to check corrigendum, if any