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

+ **CRL.L.P. 439/2018**

DHIRAJ SHARMA

.....Petitioner

Through: Mr Murari Lal Sharma, Adv. (through VC)

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.Respondents

Through: Mr Raj Kumar, APP for State

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.01.2025

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CRL.M.A. 12519/2018

1. This is an application seeking condonation of 81 days delay in filing the present appeal.
2. It is stated that the petitioner got the certified copy of the order on 09.01.2018 and some time was consumed in obtaining the relevant documents. In addition, during the said period, there were exams of the children of the petitioner and hence, the delay.
3. In the present petition, reply has been filed on behalf of respondent No.2, however there is nobody appearing.
4. In view of the submissions made by learned counsel and for the reasons stated in the application, the delay of 81 days in filing the petition is condoned.
5. The application is disposed of.

CRL.M.A. 12520/2018

6. This is an application seeking condonation of 34 days delay in re-



filing the petition seeking leave to appeal.

7. In view of the submissions made by learned counsel and for the reasons stated in the application, the delay of 34 days in re-filing the petition is condoned.

8. The application is disposed of.

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9. This is a petition seeking leave to appeal against the judgment dated 29.11.2017 passed by the learned MM-03 (NI Act), New Delhi District, Patiala House Court, New Delhi in CC No. 50014/16 titled '*Dhiraj Sharma v. Mohan Singh*'.

10. Mr. Sharma, learned counsel for the petitioner has drawn my attention para 14 and 15 of the order dated 29.11.2017 which reads as under:

14. Though it is not the case of the complainant that the accused was liable to pay any interest to the complainant for loan advanced to him, yet for the sake of argument even if it is assumed that the accused was liable to pay interest @ 2% per month as reflected in Ex.CW1/H, then also, the accused would have been liable to pay only Rs. 1,25,800/- (Rs.85,000/- towards principle and Rs.40,800/- towards interest @2% per month for 24 months) as on 17.04.2017. Thus, it is seen that even if documents of the complainant are taken to be correct, still the accused had no liability to pay Rs. 85,000/- to the complainant on the date as mentioned on the cheque.

15. Under the circumstances, presumption u/s 139 of the act stands rebutted and defence of the accused that the cheque taken as security for a loan of lesser amount has been filled for inflated amount without liability and misused in filing the present complaint has been established. Accused Mohan Singh is accordingly acquitted of offence u/s 138 of Negotiable Instrument Act.

11. He further states that a perusal of all the receipts shows that the total



amount advanced by the petitioner is Rs. 1,50,000/-, which also included a sum of Rs. 25,000/-, however the said factum was totally ignored by the learned MM.

12. I am of the view that prima facie there is some merit in the submissions of the petitioner. The matter requires consideration. Even though there is a reply on behalf of respondent No.2 supporting the impugned judgment dated 29.11.2017, however, there is nobody appearing on behalf of respondent No. 2.

13. In this view of the matter, the petition seeking leaving to appeal is allowed and the appeal is directed to be numbered.

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

14. “Admit”

15. To be listed in due course.

16. The parties are at liberty to obtain copy of the Trial Court Records from the Registry in accordance with Delhi High Court Rules & Procedures.

JASMEET SINGH, J

JANUARY 28, 2025

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Click here to check corrigendum, if any