

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.Rev.P.163/2007

% Date of decision: 26.02.2008

Pawan Gupta ...PETITIONER

Through: Mr.M.C.Sharma, Advocate

Versus

State & Anr. ...RESPONDENTS

Through: Mr.Pawan Sharma,
Addl.P.P.for the State/R-1.

Mr.Prakash Kumar, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Whether the Reporters of local papers
may be allowed to see the judgment? No

To be referred to Reporter or not? No

Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J. (Oral)

1. A complaint was lodged by respondent no.2 under Section 138 of the Negotiable Instruments Act, 1881 ('the said Act' for short) impleading the petitioner as the accused. The complaint was based on the allegation that in May, 2001, the petitioner came to respondent no.2 and requested for a loan for the tuition fee of his son who is studying in Mumbai. The loan was advanced on 28.05.2001 for a period of ten months and the petitioner issued two cheques for Rs.25,000/- each on 08.11.2002

and 14.11.2002. These cheques were dishonoured on presentation due to insufficient funds as per the memo dated 13.03.2003 issued by the concerned bank. The respondent no.2 issued a legal notice dated 26.03.2003 whereafter the complaint was filed. On the complaint being filed, the summoning order was passed on 19.09.2003.

2. The petitioner did not dispute his signatures on the cheques as also the factum of the amounts being filled in his own hand writing. However, the defence set up by the petitioner was that the name of the person in whose favour the cheque was drawn was left blank and these cheques were given over to the brother of the respondent no.2 who had arranged for the loan of Rs.50,000/-. It is stated that the brother of respondent no.2 paid him only Rs.15,000/- who obtained cheques worth Rs. 50,000/- and the remaining balance of Rs.35,000/- was not paid. Thus legally enforceable right for encashment of cheques was not available to the respondent no.2.
3. Another defence raised by the petitioner was that a legal notice was served on the petitioner prior to the legal notice in question and the cheques in question were re-presented after the same whereafter the second legal notice in question was issued. It was thus pleaded that the complaint based on the second legal notice was not maintainable.

4. The parties led their evidence. Insofar as the earlier legal notice was concerned, it was admitted that no such earlier legal notice had been filed on record. The Trial Court, after examining the evidence, found that the petitioner had failed to rebut the presumption by proving his defence in terms of Section 118/138/139 of the said Act and since the cheques were dishonoured and the amount not paid within the period of legal notice, the petitioner was held guilty of the offence under Section 138 of the said Act.
5. Insofar as the aspect of sentence was concerned, acceding to the request of the learned counsel for the petitioner for leniency, the petitioner was directed to pay compensation amount of Rs.75,000/- to the respondent no.2 and was granted time of one month to pay the amount either directly to the complainant or deposit the same in Court failing which further proceedings would be conducted.
6. The petitioner, aggrieved by the said order, filed an appeal, but the said appeal was dismissed by the learned Addl.Sessions Judge vide order dated 01.03.2007.
7. The petitioner now seeks to assail both the aforesaid orders.
8. Learned counsel for the parties have been heard and the orders perused. The witnesses of the complainant/respondent no.2 have proved the cheques and the return memo. It emerged during the course of

evidence that the brother of the petitioner had introduced him to respondent no.2. It also came to light, as observed above, that there was no earlier alleged notice placed on record other than the legal notice dated 26.03.2003. The cheques in question were written under different inks. The cheques were not containing any date when they were issued but as per the complainant, the cheques were to be filled in later. The petitioner/accused admitted that both the cheques bore his signatures and the amounts on the cheques were written by him but the date and the person in whose favour they were drawn were left blank. The cheques were alleged to have been handed over to the brother of the complainant who failed to make arrangement for the payment of full amount of Rs.50,000/- and had only paid Rs.15,000/-. The receipt of the legal notice was admitted. The petitioner/accused initially wanted to lead defence evidence but subsequently did not want to lead any defence evidence. These aspects have been referred to only show that the Trial Court has discussed the evidence in question.

9. The Trial Court also took note of the fact that where a person signs and delivers to another person a paper stamped in accordance with the law relating to a negotiable instrument in force in India, either wholly blank or having written thereon an incomplete negotiable instrument, he gives prima facie authority to the holder

thereof to make it complete, as the case may be, for any amount specified therein not exceeding the amount covered by the stamp in view of provisions of Section 20 of the said Act.

10. The petitioner in the appeal court also sought to raise the issue of an earlier notice dated 25.01.2003, but it was found that no such notice had been placed on record or proved. Not only that, even the case of the petitioner was that the said notice was for the recovery of the said amount and thus the appeal court found that it could not be construed as a notice under Section 138 of the said Act.

11. Learned counsel for the petitioner once again sought to emphasis that there was an earlier noticed dated 25.01.2003 which has been referred to in para 6 of the subsequent notice dated 26.03.2003. A perusal of the notice dated 26.03.2003 no doubt shows a reference to an earlier notice dated 25.01.2003 but whether the said notice was actually under Section 138 of the said Act could have been determined only if the notice was placed on record and proved.

12. In my considered view, the plea of the petitioner is hardly sustainable when the alleged notice sent earlier has not even been placed on record. Learned counsel for the respondent no.2 has rightly relied upon the judgment of the Supreme Court in Bindeshwari Prasad Singh@ B.P.Singh & Ors v. State of Bihar (Now Jharkhand)

and Anr. AIR 2002 Supreme Court 2907 to contend that the revision court is not to re-appreciate the evidence on record and come to a different conclusion. Of course, in that case, the revision was directed against the acquittal of a private party.

13. The courts below have examined the case of the appellant on merits. It is not in dispute that the cheques bore the signatures of the petitioner and the amount was also written in writing of the petitioner. Thus, if some part of the instructions were left blank, the provisions of Section 20 of the said Act would squarely apply to the facts of the present case. The petitioner does not dispute issuance of the cheques but only sought to make out a case that only Rs.15,000/- was advanced in cash to him and the balance amount of Rs.35,000/- was not given as loan and that is the reason, the cheques were not released on presentation. This is hardly a plausible defence as there is no reason given why the cheques of Rs.50,000/- were handed over when only Rs.15,000/- had been received. Not only that, no such defence was set up prior to the petitioner making a statement when he was summoned in pursuance to the proceedings in question.

14. I find no merit in the petition.

15. Dismissed.

February 26, 2008
dm

SANJAY KISHAN KAUL, J.