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

+ CRL.REV.P. 285/2009

DHARAM RAJ MISHRA Petitioner
Through: Mr.Ashesh Lal, Advocate

versus

STATE & ANR. Respondent
Through: Mr.M.P.Singh, APP for State.
Mr.U.S. Khator, Adv. for respondent
no.2**CORAM:**
HON'BLE MR. JUSTICE G.S.SISTANI**ORDER**
15.10.2009

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1. Present petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure and is directed against the order dated 27.9.2008 passed by learned Metropolitan Magistrate and the order dated 5.3.2009 passed by learned Additional Sessions Judge in the appeal filed by the petitioner, by virtue of which the order dated 27.09.2008 passed by learned Metropolitan Magistrate was confirmed.
2. Brief facts, as noticed by the learned Metropolitan Magistrate and which have led to filing of the present petition, are that the petitioner had approached respondent no.2 (Prem Shankar Singh) for a friendly loan, as his economic condition was not good. Respondent no.2 assured the petitioner of every possible help and advanced a loan of Rs.51,730/-. On 10.1.2003, respondent no.2 approached the petitioner for return of the

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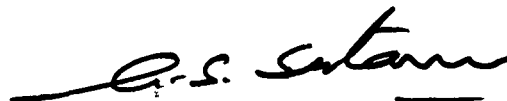
loan amount, but petitioner showed his inability in paying the whole amount and issued a post dated cheque bearing No.293678 dated 19.6.2003 for Rs.51,730/- in favour of respondent no.2 which was presented for encashment on 10.11.2003, but was returned as dishonoured by the bank with the remarks "Insufficient Funds". A legal notice dated 17.11.2003 was issued to the petitioner, however, the same was received back as undelivered. Thereafter, it is alleged that the respondent no.2 got issued another notice through UPC which was not returned, and which shows that the notice was duly served to the petitioner. As no payment was made, a complaint under section 138 of the Negotiable Instruments Act was filed by respondent no.2 vide order dated 27.9.2008, learned Metropolitan Magistrate held the petitioner guilty for the offence under section 138 of the Negotiable Instruments Act and he was convicted and subsequently released on probation for a period of three months, subject to the condition to pay an amount of Rs.52,000/- as compensation to the complainant, failing which he was to appear before the Court and to serve the sentence.

3. Aggrieved by the aforesaid order, the petitioner filed an appeal in the Court of learned Additional Sessions Judge, which was dismissed by an order dated 5.3.2009. Counsel for petitioner submits that the order of learned ASJ is perverse and against the law. He further submits that the learned Additional Sessions Judge as well as learned Metropolitan Magistrate have failed to appreciate that there was no transaction between the

parties and the cheque in question was given to one Sandeep Srivastava for installation and purchase of a television and rest of the cheques in the series have got honoured for Rs.1,730/-. It is submitted that the cheque in question was illegally filled up and misused by respondent no.2 in connivance with the said Sandeep Srivastava.

4. Notice in this matter was issued. I have heard counsel for the parties. The scope of revision petition is narrow and limited. A court exercising revisional jurisdiction cannot go into intricate details as regards the merits and appreciation of evidence is concerned and may interfere only when there is any illegality or material irregularity or impropriety in the order passed by the lower Court. Sections 118 and 139 of the Negotiable Instruments Act deal with presumption in favour of the holder of the cheque, unless the same is proved contrary. I find that the petitioner herein has neither examined any witness in defence nor produced any documentary evidence in support of the defence sought to be raised by him. The petitioner has not even examined the said Sandeep Srivastava, to show that the cheque was in fact given to him. The petitioner was unable to raise any probable defence sufficient to rebut the presumption which arose in favour of the complainant/respondent no.2. In my considered opinion, counsel for the petitioner has been unable to show as to how concurrent findings of the two Courts are perverse or illegal or that the courts below have exceeded their jurisdiction. Accordingly, I find no infirmity in the order dated 27.9.2008 passed by the learned Metropolitan Magistrate and the order dated 5.3.2009 passed in appeal.

5. At this stage Counsel for petitioner submits that FDR in the sum of Rs.52,000/- together with interest accrued thereupon shall be released in favour of respondent no.2, without any further notice to the petitioner. Counsel for the petitioner also submits that the impugned order on sentence may be modified and time for making payment be extended upto the date when the payment of FDR was deposited with the Registrar General of this Court. Counsel for respondent submits that respondent no.2 has no objection to the same.
6. Accordingly, in view of the stand taken by the parties it is clarified that the order on conviction dated 27.09.2008 passed by learned Metropolitan Magistrate, by virtue of which the petitioner was to deposit the amount within three months, is extended uptill, 30.7.2009. The petitioner shall, however, be released on probation and the deposit of Rs.52,000/- with the Registrar General of this Court would amount to compliance of the order of the Metropolitan Magistrate.
7. Petition stands disposed of.
8. DASTI.


G.S. SISTANI, J.

October 15, 2009
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