

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

Date of Reserve: 6<sup>th</sup> August, 2010

Date of Order: 16<sup>th</sup> August, 2010

**+CRL. REV. P. NO. 403/2010,**  
**+Crl. M. (Bail) No. 1087/2010 and**  
**+ Crl. M.A. No. 13272/2010**

%

**16.08.2010**

**RAJESH RANA**

**... Petitioner**

Through: Mr. A.J. Khan, Advocate

Versus

**STATE & ANR**

**... Respondents**

Through: Mr. O.P. Saxena, Addl. PP for the State.

**JUSTICE SHIV NARAYAN DHINGRA**

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|--------------------------------------------------------------------------|------|
| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not?                                | Yes. |
| 3. Whether judgment should be reported in Digest?                        | Yes. |

**JUDGMENT**

1. This revision petition has been preferred by the petitioner against the judgment 17<sup>th</sup> July, 2010, of the Appellate Court, whereby the conviction of the Appellant under Section 138 of Negotiable Instrument Act was upheld and the sentence of the Appellant awarding him Simple Imprisonment for six months and compensation of Rs. 80,000/-, in default, to further undergo SI for two months was also upheld.

2. In the grounds of Revision, the Petitioner has alleged that the Trial Court and the Appellate Court, both, failed to appreciate the defence

evidence resulting into miscarriage of justice and both the Courts failed to appreciate that the cheques were not issued by the Petitioner against any liability and both the Courts below failed to appreciate factual matrix and the order passed by the Trial Court and the Appellate Court, therefore, were liable to be set aside.

3. It is settled law that as per Section 393 Cr.P.C., the judgment and order passed by the appellate court in an appeal shall be final except in cases provided under Sections 377, 378 and 384 (4) or Chapter XXX. Section 377 Cr.P.C. provides for appeal by State Government against sentence, Section 378 provides for appeal in case of acquittal and Section 384 (4) is in respect of the jail appeals dismissed summarily. The case of the petitioner does not fall under these three cases. Thus, the judgment of appellate court has attained finality and the High Court can interfere under Section 397 Cr.P.C. only if there was an issue of correctness, legality or propriety of any finding, sentence or order recorded or passed by the Sessions Court or there was any irregularity of the proceedings of the Sessions Court. The High Court in its power under Section 397 cannot act as a court of second appeal and cannot re-appreciate the entire evidence to substitute its own opinion against the opinion of the appellate court. The scope of revision against the concurrent finding of fact is very limited and ordinarily the concurrent finding of fact cannot be challenged unless and until a gross misreading of evidence or manifest error of law or

miscarriage of justice is pointed out by the revisionist/petitioner. The revisional jurisdiction does not confer power on the revisional Court to re-appreciate the evidence and arrive at a different conclusion. The revisional Court can examine the record only to satisfy itself that the court below had conducted the proceedings in an appropriate manner and had taken into account entire evidence before passing the judgment. The remedy of revision can not to be resorted to as a second appeal.

4. The two Courts below had given concurrent finding on the issue of fact that the Appellant had issued cheques against a liability and the cheques were dishonoured and the Petitioner failed to pay the amount despite a demand notice. Both the Courts had considered the defence taken by the Petitioner that the cheques were not issued against any liability and found the defence of the Petitioner to be false. This Court while entertaining Revision Petition cannot re-appreciate the evidence and cannot act as a Court of second Appeal.

5. I find no force in this Revision Petition. The same is hereby dismissed.

**SHIV NARAYAN DHINGRA, J.**

**August 16, 2010**

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