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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 465/2011

SHYAM SUNDER KHURANA

..... Petitioner

Through:

versus

BIJENDER SINGH & ORS

..... Respondent

Through:

Ms. Jasbir Kaur, APP.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

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30.11.2011

This revision petition has been preferred by the petitioner assailing an order dated 26.8.2011 passed by learned District Judge, North East, Karkardooma Courts, Delhi whereby she dismissed two appeals being 10/11 and 11/11 arising out of the two judgments and orders passed by learned MM in Criminal Case No.3019/1 and 3020/1. The aforesaid two complaints were filed against the petitioner herein under Section 138 of Negotiable Instruments Act (NI Act for short). The Complaint 3019/01 was filed by Raj Air Conditioners through Mr. Bijender Singh. This complaint was decided by learned MM vide judgment dated 20.5.2011 and order on sentence dated 30.5.2011. The petitioner herein was found guilty of offence under Sections 138 of NI Act and was sentenced to undergo SI for one year and he was also ordered to pay compensation of Rs.11 lac to the complainant. The complaint 3020/01 was filed by the complainant Bijender Singh which came to be decided by the learned MM vide judgment dated 14.5.2011 and order on sentence dated 30.5.2011 whereby the petitioner was held guilty under Section 138 of NI Act and was sentenced to undergo SI for one year and was also ordered to pay compensation of Rs. 4 lac to the complainant.

The petitioner herein assailed both these judgments and orders of learned MM which came to be dismissed by learned District Judge by the impugned judgment dated 26.8.2011. This judgment of learned District Judge which has

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been assailed by the petitioner by way of present petition.

It is the admitted case of the parties that the petitioner herein had given two cheques of Rs.2,50,000/- and Rs.3 lac dated 12.9.2003 and 29.9.2003 respectively. These cheques on presentation by the complainant got dishonoured on account of insufficient funds. These cheques formed the subject matter of complaint no.3019/01 before the learned MM. There was another cheque dated 18.9.2011 given by the petitioner herein for Rs.2,33,000/- to the complainant (respondent herein) which also on presentation got dishonoured on account of insufficiency of funds. This was subject matter of criminal complaint number 3020/01 before the learned MM. The plea of the complainant was that the petitioner had taken a sum of Rs. 5,50,000/- at one time as friendly loan because of his business problems and the aforesaid two cheques of Rs.2,50,000/- and Rs.3,00,000/- were given by him towards discharge of that loan. Similar was the plea of the complainant that Rs.2,33,000/- were also taken by the petitioner because of his business problems in business and that the cheque of Rs.2,33,000/- was given by him towards discharge of loan. On the other hand, petitioner admitted having given the aforesaid three cheques of those amount, but he pleaded that the matter was settled with the respondent/ complainant for a total sum of Rs.1,50,000/- and a receipt in this regard was executed by respondent/ complainant on 30.8.2008. His further plea was that though the matter was settled for a total sum of Rs.1,50,000/- with the complainant / respondent, but the later did not return the four blank cheques and has misused the same for oblique motive of filing the present complaints.

Both the parties led evidence before the learned MM. Complainant examined himself in both the cases, but the petitioner did not choose to examine himself in any case and instead examined an officer of the bank Mr. K.P. Sharma as DW1 and handwriting expert Mr. S.P. Singh as DW3. In the complaint bearing number 3020/01, he also examined his brother Raj Kumar ad DW2.

The petitioner herein also filed a civil suit for permanent and mandatory injunction against the respondent /complainant, inter alia, stating therein that he

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had friendly and commercial relations with the complainant/ respondent and a sum of Rs.1,50,000/- was due towards him and for which he handed over four blank cheques along with stamp papers to the complainant/ respondent and the matter was finally settled on payment of Rs.1,50,000/- by him on 30.9.2003 against a receipt executed by the complainant/ respondent. It was averred that despite complainant having been paid settled amount of Rs.1,50,000/-, he had failed to return the blank cheques and the papers. It is worthwhile to note that in the said case he examined himself as a witness and had admitted that neither he purchased any goods from the complainant nor the later purchased anything from him. Further, he also examined handwriting expert Mr. S.P. Singh to prove that the receipt was executed by the complainant. The report of Mr. S.P. Singh was not believed by the learned Civil Judge and the said suit came to be dismissed by learned Civil Judge and an appeal filed by the petitioner before the learned ADJ also came to be dismissed.

The learned counsel for the petitioner assailed the impugned judgment mainly on the ground that since it was a business transaction between the petitioner and the respondent/ complainant, the matter was settled finally on payment of Rs.1.50 lac. He also submitted that there was no cogent evidence led by the complainant to prove the source of aforesaid amount of Rs.5,50,000/- and Rs.2.33 lac. Based on the evidence led by the parties as narrated above, both the learned MM and the learned ASJ came to the conclusion that the petitioner herein had taken a friendly loan of Rs.5.50 lac [Rs.3 lac and Rs.2.50 lac] and Rs.2.33 lac and had given the aforesaid cheques in discharge of these loans. It was recorded by the courts below that there was no settlement arrived at between the parties and that the receipt of Rs.1.50 lac was not genuine, but a forged one. The statement of Mr. S.P. Singh, handwriting expert was not believed by the learned Civil Judge. Mr.S.P. Singh was also examined by the petitioner before the learned MM. In his examination he categorically admitted that he did not examine any document in the present case. Both the courts below did not believe the testimony of Rakesh

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DW2, brother of the petitioner inasmuch as he did not know anything about the transaction between the petitioner and the complainant and also that he was living separately from the petitioner since childhood. He expressed complete ignorance with regard to most of the questions put to him. It was recorded by learned District Judge that the conduct of this witness made it clear that he was not worth credence and he had come to depose being brother of the petitioner herein.

The petitioner herein did not choose to examine himself as a witness in both the cases. Learned counsel appearing for the petitioner, however, submitted that he had denied the case of the complainant/ respondent in his statement under Section 313 Cr.P.C. It is trite that the statement under Section 313 Cr.PC or under Section 281 Cr.PC of the accused cannot be read as evidence of the accused and has to be looked into only as explanation of incriminating circumstances and not as evidence. From the testimony of the witnesses examined by the petitioner it could not be proved that the aforesaid cheques were given by him to the complainant only in terms of business liability of Rs.1,50,00/- and also that the settlement was arrived at with the complainant/ respondent for a sum of Rs.1.50,000/-. In any case, it was neither probable nor believable that the petitioner would give aforesaid cheques against his liability of Rs.1,50,000/-.

From the above, it would be seen that the ingredients of Section 138 NI Act were fulfilled. That being so, there was a presumption under Section 118A of the Act in favour of the complainant/ respondent that the aforesaid cheques were given by the petitioner for consideration i.e. in discharge of loan liability. Further Section 139 of the Act also provides for presumption in favour of the holder. As per this Section, it was to be presumed, unless contrary is proved, that the holder of the cheque received the cheque of the nature referred in Section 138 for discharge of the liability, in whole or in part, or any debt or other liability.

A conjoint reading of sections 138, 118(A) and 139 of the Negotiable Instruments Act goes to show that once a cheque is issued there is presumption in favour of holder of the cheque that he has received the same for discharge in

whole or in part of a debt or other liability. Under Section 139 of the NI Act, there is legal presumption that cheque was issued for discharging the debt or liability and that presumption can be rebutted only by the person, who drew the cheque. The aforesaid presumption is in favour of holder of the cheque. The presumption available under Section 139 of NI Act can be shifted by the accused by adducing evidence. So the burden of proof is on the appellant and evidence available on record will have to be appreciated by bearing in mind the above fact regarding burden of proof.

The petitioner herein has miserably failed to rebut the presumption by any means.

I consider that the learned trial court rightly came to the conclusion that the complainant was able to prove all the ingredients of Section 138 of NI Act and the petitioner herein failed to rebut the presumption that goes against him. I do not see any infirmity or illegality in the impugned judgment of learned ASJ as also in the judgment of learned MM.

With regard to the quantum of sentence also, I do not see any illegality or impropriety inasmuch as the cheque bouncing cases are on the rise and the offenders of such offences are succeeding in abusing the process of law. In the case in hand, the cheques were given in the year 2003 and it is more than 8 years when the friendly loan was given to the petitioner without interest. He has succeeded in prolonging the matter for such a long time by taking frivolous pleas while contesting the cases. The petitioner does not deserve any leniency.

Consequently, I also do not intend to interfere in the order of sentence as passed by learned MM and confirmed by learned District Judge. The petition is hereby dismissed. No costs.


M.L. MEHTA, J

NOVEMBER 30, 2011
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