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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 690/2010
SATYA NARAYAN SAHU Petitioner
Through: Mr. Shahid Ali, Advocate.
versus

MEHTAB SINGH & ANR. Respondent
Through: Ms. Fizani Husain, APP.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

% ORDER
28.11.2011

This is a revision petition under Section 397 CrPC against the order dated 05th October, 2010 of ASJ whereby she dismissed the appeal against the order of learned M.M. dated 10.06.2009 whereby the petitioner was convicted for the offence under Section 138, N.I.Act and was sentenced to SI for six months and ordered to pay compensation of Rs. 1,45,000/- to the complainant.

In the complaint filed under Section 138, N.I.Act by Mehtab Singh, the respondent herein, the allegations against the petitioner are that the later approached him and demanded a loan of Rs. 1,25,000/- in the month of July, 2005 with the assurance to return the same by end of August, 2005. Since they both had friendly relations, the complainant extended the loan of Rs. 1,25,000/- in cash to him. Since there were cordial relations between two, no documents with regard to the loan was executed. The petitioner returned the loan by way of cheque dated

Signature Not Verified

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06th March, 2006 duly signed by him and also assured that the same on presentation, would be honoured. However, the cheque on presentation was returned with the remarks 'funds insufficient'. The respondent/complainant after giving the necessary notice etc. filed a complaint wherein he examined himself and his witnesses. In his statement under Section 313 CrPC, the petitioner denied the entire case of the respondent/complainant including the denial of issue of cheque. He stated that said cheque was lost and had consequently got the payment stopped by writing to the bank. In support of his defence, the petitioner proved only one certificate from the Punjab & Sind Bank and the statement of accounts for the year 2005.

I have heard learned counsel for the petitioner and perused the record.

It is recorded by the learned M.M. as also by the learned ASJ and rightly so that the issue of cheque by the petitioner was not disputed. That being so, there was a presumption under Section 139, N.I.Act in favour of the respondent/complainant. The said presumption has not been rebutted by the petitioner. From the evidence of the complainant and his witnesses, the learned M.M. recorded the finding of the fact that the complainant knew the accused/petitioner for the last 8-10 years and that this fact was not denied by the petitioner. From the testimony of the complainant as recorded by the learned M.M., it stood proved that the cheque was issued by the petitioner to the complainant in December, 2005. The petitioner had not stated as to when he had lost the cheque or when he made the report to the police. In fact, no such report

was proved by him in accordance with law. The only suggestion which was given to the complainant in his cross examination was that no loan was given by the respondent/complainant to the petitioner. What was sought to be produced by the petitioner was only certificate dated 19th October, 2005 of the bank, which was to the effect that the bank has debited Rs. 25 in the account of M/s. Sahu Sewing Machine repairing on account of cheque stop payment charges. The letter alleged to have been written to the bank for stopping the payment had cutting on the number of the cheque and also mentioned the date 19th October, 2005, whereas the cheque in question does not bear the said date. Not only this, the reason for dishonour of the cheque was 'insufficient funds' and not 'stopped payment'. The learned M.M. has rightly drawn the presumption under Section 139, N.I.Act in favour of the complainant/respondent that the cheque was issued in discharge of the liability and that the said presumption could not be rebutted by the petitioner.

From the judgment of the learned M.M. and that of the ASJ, it is seen that both the courts have recorded finding of fact that the plea taken by the petitioner that the cheque was lost on his way to the bank was unbelievable in the absence of their being any cogent or reliable evidence in this regard.

On the other hand, both the courts have also recorded finding of the fact that the cheque was given by the petitioner in discharge of his liability of loan and the same on presentation was dishonoured on account of 'insufficient funds'. I do not see any infirmity or illegality in the findings recorded by the M.M. as well as ASJ and also do not see any reason to interfere in the order of sentence passed by

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the M.M. and confirmed by ASJ.

Petition is accordingly dismissed.



M.L. MEHTA, J

NOVEMBER 28, 2011

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