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

+ **CRL.Rev.P.490/2011 & Crl.M.A.No.17453/2011(Stay)**

% *Judgment delivered on:22nd March, 2012*

K L MADAN Petitioner
Through : Mr.N.K.Nanda, Adv.

versus

SATYAM FINLEASE PVT
LTD & ANR Respondents
Through : Mr.Hari Kishan, Adv for R-1 with
Sh.Sunil Batra, director of respondent No.1 in
person.
Ms.Rajdipa Behura, APP for State/R-2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the petitioner has sought to set aside his conviction and he may be acquitted by dismissing the complaint filed by respondent No.1.
2. Though, in the revision petition, the facts of the case need not be discussed; however, in the present case it is imperative because of the fact that the grounds taken by the petitioner are not sufficient, as required in revision petition.
3. The petitioner has approached respondent No.1/complainant company

and borrowed a sum of ₹ 01.00Lac on 21.04.2006. The acknowledgment letter which has been duly signed and attested by two witnesses is Ex.CW1/4 and receipt of ₹ 01.00Lac is Ex.CW1/5. In consideration to absolve the liability arising out of the said loan amount, petitioner issued the cheque bearing NO.143904 dated 20.11.2006 drawn on Punjab National Bank, Punjabi Bagh, New Delhi for the loan amount mentioned above. Same was returned unpaid with remarks 'insufficient funds' vide returning memo dated 21.11.2006 i.e. Ex.CW1/9. Thereafter, respondent No.1 did all the rituals required under law.

4. Testimony of CW1 tendered by way of evidence and reiterated the contents of complaint and relied upon the documents filed at the stage of pre-summoning evidence. In his cross-examination, he stated that there was no written request on behalf of petitioner/accused, when he desired to avail the loan. He further stated that the petitioner had signed all the necessary documents at the time of taking aforementioned loan. He admitted that petitioner had issued one post dated cheque in his own handwriting to repay the loan.

5. Statement of petitioner under Section 313 Cr.P.C. has been recorded wherein he stated that he did not borrow any money from the complainant / respondent No.1, but had in fact issued the cheque in question for investment purposes and that he had given a notice to the complainant company that he was not interested in investing any money with them and; hence, his cheque should not have been presented for encashment.

6. In reply to the legal notice, petitioner submitted that he made to sign

on some of the documents and that he was not aware about the contents of the aforementioned documents at the time of putting his signatures thereon.

7. On being moved an application under Section 315 Cr. P.C., he was examined on Oath as DW1 on 21.04.2011.

8. Learned Metropolitan Magistrate recorded in the judgment dated 25.08.2011 that the petitioner had taken a loan – as mentioned above, which has been proved by acknowledgment dated 21.04.2006 Ex.CW1/4 duly signed by the petitioner and has been attested by two witnesses.

9. As stated by the petitioner that he was not aware of the documents which had had signed at the time of availing of the loan. The Trial Court has recorded that the petitioner is a retired officer from MTNL, Delhi and the defence taken by him that he signed whatever documents as was asked by the respondent No.1, is not believable. More so, the petitioner did not place any record to show that he had initially issued the cheque of ₹ 01.00Lac for investment purposes in favour of respondent No.1. He has also not been able to show as to what kind of investment business does the respondent No.1 was dealing with. He even failed to show the original acknowledgment, receipt, promissory note placed on record by respondent No.1 which contains his signature are false or fabricated one. No witness has been examined by petitioner in his defence.

10. Accordingly, vide judgment dated 25.08.2011, petitioner was convicted for the offence punishable under Section 138 Negotiable Instrument Act, 1881.

11. Vide order on sentence dated 02.09.2011, he was sentenced to TRC and directed to pay compensation amount ₹ 01.20Lac to the respondent No.1 which includes the litigation charges till 03.10.2011, failing which to undergo simple imprisonment for two months.

12. I note that learned Trial Judge considered overall the financial condition of petitioner and his age and capacity to pay the said amount, therefore, taken lenient view.

13. Despite, petitioner challenged the above conviction and sentence, by filing an appeal before Sessions Court and same has also been dismissed vide order dated 21.10.2011, but with observations that Section 138 Negotiable Instrument Act, 1881 was introduced in the statute book for lending credibility to the cheque transactions and smooth functioning of the banking transactions. The punishable of imprisonment for a period of upto two years and fine up to twice the cheque amount has been provided in order to deter the public from issuing the cheques, which are not to be honoured on presentation. Therefore, the persons guilty of the offences under Section 138 Negotiable Instrument Act, 1881 must be dealt with sternly in order to send a strong message to the public at large.

14. In the present case, petitioner has been sentenced to imprisonment till rising of the Court with further direction to pay a sum of ₹ 01.20Lac as compensation to the respondent No.1; whereas the cheque amount is to the tune of ₹ 01.00Lac – meaning thereby the amount of penalty is just ₹ 20,000/- which by no stretch of imagination can be termed as appropriate.

15. Ld. Appellate Court has further observed that keeping in view the age of petitioner / appellant, who is 69 years, it would not have been in the interest of justice to send him to prison for a longer period, where, the cheque has been issued in the month of November, 2006. The petitioner / appellant did not make any attempt to pay the cheque amount during all these 5 years and he malafidely contested the complaint of the respondent company before the trial court just to gain time. He did not stop at that but even challenged his conviction and sentence before the Appellate Court. Therefore, while maintaining the conviction and his imprisonment, till rising of the court has been upheld. However, the compensation amount of Rs.1,20,000/- awarded by the trial court has been enhanced to Rs.2,00,000/-.

16. It is further directed that if the petitioner / appellant does not pay a sum of Rs.2,00,000/- as compensation to the respondent company within two weeks from that day, he shall undergo simple imprisonment for a period of 6 months.

17. The respondent company has informed this Court that the direction issued by the Appellate Court vide its order dated 21.10.2011 has not been complied with by the petitioner and prayed that he does not deserve for any leniency or sympathy, therefore, instant petition may be dismissed.

18. Vide the instant petition, the petitioner could not establish his case and failed to point out any procedural error, perversity or any mistake apparent on the face of records in the findings of two courts below.

19. Therefore, I am not inclined to interfere with the view taken by the

trial court and Appellate Court as well.

20. Accordingly, instant revision petition is dismissed.

21. In view of above order, Crl.M.A.No.17453/2011 does not require further adjudication and accordingly stands disposed of.

22. Before parting with the instant petition, keeping in view the age of the petitioner / appellant i.e. 69-70 years, I am of the considered opinion that he shall pay Rs.2,00,000/- as compensation awarded by the Appellate Court within 4 weeks as last opportunity, failing which, order passed by ld. Appellate Court shall prevail. In that eventuality, ld. Trial Court is expected to comply with the same in accordance with law.

23. Lower Court Record be remitted henceforth for compliance.

SURESH KAIT, J

MARCH 22, 2012

Mk/jg