

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

+ CRL.Rev.P.No.515/2011 & Crl.M.A.No.2905/2011

% Judgment reserved on :20th March, 2012
Judgment delivered on:11th April, 2012

L N CHATURVEDI Petitioner
Through : Mr.Manish Aggarwal & Ms.Vinny
Shangloo, Advs.

versus

STATE & ORS. Respondents
Through: Ms.Rajdipa Behura, APP for
State/R-1.
Mr.D.Hasija & Ms.Sandhavi B. Saikia, Advs
for respondent Nos.2 & 3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition being filed under Section 397 Cr. P.C., while challenging the impugned order dated 05.10.2011 passed by learned Additional Sessions Judge, Saket Courts, New Delhi whereby the Criminal Appeal No.108/2010 preferred by petitioner was dismissed.

2. Further, the impugned judgment dated 29.06.2010 passed by learned Additional Chief Metropolitan Magistrate, New Delhi and order on sentence dated 26.07.2010 has also been challenged.

3. The facts in brief are that towards the partial discharge of

liability, the petitioner issued the cheque bearing No.173787 dated 31.08.2008 drawn on Canara Bank, East Patel Nagar, New Delhi for an amount of ₹1,50,000/- in favour of respondent Nos.2 & 3. The said cheque, on presentation was dishonoured on 08.09.2008 by the banker of the petitioner on account of 'Insufficient Funds'. The petitioner kept on avoiding the payment of the cheque and ultimately, resulted into issuance of legal demand notice which was served upon the petitioner on 20.10.2008. Since, the legal notice was not complied by the petitioner, respondent Nos.2 & 3 instituted a Criminal Complaint Case No.50/1/2008 under Section 138 Negotiable Instrument Act, 1881 (hereinafter referred as the said Act) against the petitioner before learned Trial Court.

4. Before proceeding further, it would be in place to mention here that since the matter concerning the liability and transactions between the petitioner and respondent Nos.2 & 3 is pending trial, before learned Additional District Judge; Delhi in CS No.145/2010. It is hereby make it clear, this order is not referring to the respective stands and contentions of both the parties. Since, the same are not being looked into and the same is subject matter of learned Civil Court.

5. Finding *prima facie* case against the petitioner, learned Trial Court issued summons against him vide order dated 04.12.2008.

6. On conclusion of trial, learned Additional Chief Metropolitan Magistrate, New Delhi vide judgment dated 29.06.2010 held that the petitioner is guilty for the offence under Section 138 of the said Act in respect of said cheque for ₹1,50,000/-. Vide order on sentence dated

26.07.2010 the petitioner was sentenced to undergo imprisonment for one year and fine of ₹15,000/- with compensation of ₹2,85,000/- to the complainant. In default of payment of fine, simple imprisonment for 30 days.

7. Being aggrieved from the above judgment and order on sentence respectively, petitioner has preferred Criminal Appeal No.108/2010 before learned Additional Sessions Judge. Vide order dated 05.10.2011 the appeal preferred by the petitioner was dismissed and he was taken into custody.

8. It is how the petitioner has filed instant petition wherein the findings of learned Trial Court as well as Appellate Court have been sought to be reviewed.

9. At this juncture, it would be in place to mention that learned counsel for the petitioner does not dispute the finding of learned Trial Court regarding the conviction which was affirmed by learned Appellate Court. As regards the quantum of sentence, fine and compensation have been agitated before this Court and it is submitted that the petitioner may be released on considering the period that is already undergone, or the remaining imprisonment portion may be modified into fine and compensation. Alternatively, he could be released on good conduct by giving him the benefit as provided in the Probation of offenders Act.

10. Learned counsel for the petitioner has relied upon the provisions contained in Section 357 Cr.P.C. For the convenience same is

reproduced as under:-

“357. Order to pay compensation:-

(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied-

(a) In defraying the expenses properly incurred in the prosecution,

(b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion, of the court, recoverable by such person in a Civil Court;

(c) When, any person is convicted of any offence for having caused the death of another person or of having abetted the commission of shelf all offence, in paying in, compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) When any person is convicted of any offence which includes theft, criminal, misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the

appeal his elapsed, or if an, appeal be presented, before the decision of the appeal.

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by all Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.”

11. He further submitted that learned Trial Court erred while imposing fine and compensation. In fact, a part or whole of the fine amount may be awarded as compensation to the respondent Nos.2 & 3. As such, the compensation amount has to be deducted from the fine amount and ordered to be paid as compensation; and not otherwise as has been done in instant case.

12. In addition, learned counsel has submitted that he was ready to compound the matter with respondent Nos.2 & 3 at the time of pending the matter before learned Trial Court which was dismissed vide order dated 06.04.2009 while observing inter-alia, that respondent Nos.2 & 3 were not ready for compounding.

13. On the other hand, learned counsel for the respondent Nos.2 & 3 refuting the contentions of the petitioner, submitted that instant petition under Section 397 Cr. P.C. is not maintainable.

14. He relied upon the provisions of Section 397 Cr.P.C; which runs as under:-

“397. Calling for records to exercise powers of revision:-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 398.

(2) The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to

the Sessions Judge, no further application by the same person shall be entertained by the of the of them.”

15. Relying upon the above provision, he submitted that the revision could be allowed, if the higher court finds an illegality, improper, or any incorrectness in the order passed by learned Trial Court or learned Appellate Court.

16. Learned counsel has relied upon **Badal Gomes v. Martin Arinda & Ors** : 1997 CrL L J 561 wherein it has been held as under:-

“4. Under the Criminal Rules and Orders there is no bar to move a revisional application challenging orders more than one but that must be of the same Court; but in the instant case, two orders have been challenged under this revision. One is the order of the learned Magistrate and another is the order of the learned Sessions Judge. That is not permissible under the law.”

17. He also relied upon **Sant Lal v. Krishan Lal** : 1976 CrL L.J. 215 wherein this Court has observed as under:-

“The petitioner there upon filed a revision petition in the Court of Sessions which was dismissed by the Additional Session Judge, Delhi, by his order dated 28-02-1974. The petitioner thereupon filed a revision petition in this court for quashing the orders of the learned Magistrate dated 30-03-1973 and 09-07-1973. Safeer J., before whom this revision petition came up for hearing on 26-04-1974, noticed that the petitioner had filed a single revision petition against two separate orders of the learned Magistrate and the learned Judge expressed his view that the two impugned orders of the learned Magistrate could not be challenged by a single revision petition. The

petitioner thereupon withdrew the revision petition and the same was dismissed as withdrawn with liberty to the petitioner to invoke any other remedy open to him.”

18. Reverting back to the instant case, learned counsel has submitted the ingredients of Section 138 NI Act and in contrast thereof, he has numerated the facts of instant case.

19. The accused is maintaining an account with a bank.

(i) The petitioner / accused was maintaining the Account No.18756 in Canara Bank, East Patel Nagar, New Delhi

20. A cheque has been drawn on the said account.

(ii) The petitioner / accused in partial discharge of their debt issued a cheque bearing No.173787 dated 31.08.2008 for sum of ₹1,50,000.00 from his account No.18756 of Canara Bank, East Patel Nagar, New Delhi.

21. The drawing of the said cheque is for making payment of any amount of money to another person from out of that account.

(iii) The cheque has been drawn by the petitioner / accused “L N Chaturvedi” in favour of the respondent / complainant “Kanwal Kishore” for partial discharge of rent of the property bearing No.24/69-70, West Patel Nagar, New Delhi, which was taken by him and his wife on rent from the respondent / complainant vide registered rent deed dated 5th August, 2003.

22. There is a legally enforceable debt or other liability of the person.

(iv) The petitioner/accused has to pay a sum of ₹3.8 Lakh as arrears of rent on the date of issuance of the cheques in

question. The same is still due and payable as such, the petitioner / accused is not paying the rent of the aforesaid property.

23. The drawing of the cheque is for the discharge (in whole or in part) of the said debt or other liability.

(v) The petitioner / accused had issued the aforesaid cheque in partial discharge of his liability to pay the arrears of rent.

24. The said cheque is presented in the bank for encashment within the period of its validity.

(vi) The said cheque has been presented on 06th of September, 2008, that is within the prescribed period of time.

25. The said cheque is returned unpaid by the bankers of the said person either:-

(vii) due to insufficiency of funds in the account maintained with the bank; or

(viii) it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

26. The payee / holder of the cheque makes a demand of the amount of the cheque by giving a notice in writing, within thirty days of the receipt of the information of dishonour of the said cheque.

(ix) The respondent/complainant demanded the cheque amount vide legal notice dated 06.10.2008 which was duly served to the petitioner / accused.

27. The drawer of the cheque fails to make the payment of the said amount of the cheque within fifteen days of the receipt of the said notice of demand and whereby cause of action arises.

(x) The petitioner / accused did not pay the cheque amount within the prescribed period of 15 days.

28. A complaint is made in writing to the Court within one month of the date on which the cause of action arises.

(xi) The complaint has been filed well within the prescribed period of limitation i.e. within one month of the date on which the cause of action arises.

29. Learned counsel for the respondent Nos.2 & 3 submitted that the petitioner has issued the cheque in question towards the part discharge of his liability and learned Trial Court has imposed only one year while taking a lenient view whereas the maximum punishment provided in the said Act is two years imprisonment.

30. He further relied upon the basic ingredients of Section 138 of the said Act and the facts pleaded and proved during the evidence before learned Trial Court.

31. Learned counsel appearing on behalf of respondent Nos.2 & 3 submitted, there is a legally enforceable debt or other liability of the accused towards the complainant. The petitioner/accused was a tenant of the respondents No.2 & 3/complainants who had given their premises on rent to the petitioner/accused vide rent deed dated 1st of August, 2003. The petitioner/accused did not pay the rent to the

respondents No.2 & 3/ complainants from 1st of June, 2006 onwards. Ultimately, when the respondent Nos.2 & 3/complainant insisted the petitioner/accused to vacate the tenanted premises, in partial discharge of their liabilities, the petitioner/ accused had issued to the respondent Nos.2 & 3/ complainants a cheque bearing No. 173787, dated 31st of August, 2008 for a sum of ₹1,50,000/-, drawn on A/c No.18756 of Canara Bank, East Patel Nagar Branch, New Delhi-110008, which is the subject matter of the present case.

Though note relevant but necessary to mention here that Ex.DW1/X-1, legal notice dated 24.04.2007 issued by the respondents No.2 & 3/complainants for vacating the tenanted premises.

32. Learned counsel relied upon the testimony of the petitioner before learned Trial Court wherein he deposed as under:-

“I am residing in this house since 05.08.2003, this agreement was for a period of 11 months only. Thereafter I remained in the tenanted property and I am in the said property even till today. My rent agreement was extended for a further period of 10 years. It was an oral extension of agreement. I have not vacated the tenanted property in response to notice Ex.DW1/X-1. I had handed over the cheque in question of ₹1,50,000/- on 31.08.2008 to the complainant.”

33. Learned counsel further submitted that in discharge to his aforesaid liability, the petitioner/accused had issued the cheque in question bearing No.173787, dated 31st August, 2008, drawn on account No. 18756 of the Canara Bank, East Patel Nagar, New Delhi;

and the same had dishonored upon the presentation for encashment due the reason “funds insufficient”

The original cheque bearing No.173787, dated 31.08.2008 is Ex.CW1/A, deposit slip dated 06.09.2008 is Ex.CW1/B, return memo is Ex.CW1/C.

34. He further submitted that after the dishonor of the cheque, the respondents No.2 & 3/complainants had issued a notice dated 06th October, 2008, demanding therein the amount of the cheque. The said notice was sent through registered post dated 08.10.2008 as well as through UPC and through couriers. Despite the receipt of the notice the petitioner/accused failed to make the payment of the cheque amount within the stipulated period of time.

Legal demand notice is Ex.CW1/D, regd. post receipts are Ex.CW1/E & Ex.CW1/E-2, the courier receipts are Ex.CW1/F-1 & Ex.CW1/F-2 & the acknowledgement cards are Ex.CW1/G-1.

35. Learned counsel for the respondent Nos.2 & 3 also submitted that learned trial court has duly appreciated the above mentioned facts and after satisfying/relying on the documents placed on record, and rightly convicted the petitioner/accused for the commission of offence under Section 138 of the said Act and the accused has been sentenced to pay a compensation of ₹2,85,000/- to the respondents No.2 & 3/complainants and also to undergo simple imprisonment for a period of one year.

36. On the grounds for dismissal of instant petition, he submitted as under:-

Ground-1 The accused has not denied the issuance of the cheque and the tenancy but tried to raise unnecessary and illegal disputes. However, even till date the petitioner/accused has not cleared his debt and liability and is living in the tenanted premises of the respondents No.2 & 3/ complainants without paying any rent to the respondents No.2 & 3/ complainants.

(i) The above said contention was duly appreciated by the learned trial court at page No.5 of the Judgment dated 29.06.2010, as under:-

“In the present case, it is not disputed that the cheque was issued for a sum of ₹1,50,000/- and in evidence no document of alleged debts were placed on record despite their alleged existence as per accused himself. Hence, the court can presume that accused was liable to pay a sum of ₹1,50,000/- to the complainant.”

“He stated that he had delivered rent to the complainant through court but he could not place any document in this regard and having regard to these facts, I do not hesitate in believing what the complainant is saying is true.”

37. Learned counsel relied upon the evidence of the petitioner as under:-

“I have cleared and paid my rent of the tenanted property to the complainant till October 2008. I had tendered the rent to the complainant through court. I do not remember the name of the court through which I had tendered to the complainant the rent.”

38. He submitted, the petitioner/accused has failed to pay the cheque amount within 15 days of the receipt of the legal notice, but has tried to raise unnecessary dispute by issuing the false and frivolous reply to the legal notice dated 06.10.2008. The reply of legal notice dated 06.10.2008 is Ex.DW1/1.

39. Learned counsel further submitted that the respondents No.2 & 3/ complainants had made a complaint with respect to the dishonor of the aforesaid cheque well within one month of the date on which the cause of action had arisen. The respondents No.2 & 3/ complainants has placed on record all the documents before the Ld. Trial court to prove his case beyond reasonable doubts. The petitioner/accused did not make any objection on the said documents during the cross examination of the complainant i.e. CW1.

40. Learned counsel also submitted that there is no illegality or impropriety in the findings of the learned Trial Court as well as of learned Appellate Court. Moreover, the petitioner/accused has not raised any legal error either in the judgment passed by the learned Trial Court or by the learned Appellate Court. Hence, in the situation, where the impugned orders does not suffer from failure of justice or error but are based on materials on record, the revisional powers cannot be invoked to interfere with it.

41. He also submitted regarding the sustainability of orders passed by learned Trial Court that the Trial Court, after hearing of the arguments of both the parties and seeing the conduct of the petitioner/accused, has rightly sentenced the petitioner / accused to pay

a compensation for a sum of ₹2,85,000/- to the respondents No.2 & 3 / complainants equivalent to double the amount of the cheque and also to undergo simple imprisonment for a period of one year. As such, despite knowing his defaults petitioner/accused did not pay even a single penny to the respondents No.2 & 3 / complainants and even illegally residing in the property of the respondents No.2 & 3 / complainants as a trespasser without paying any rent/money to the respondents No.2 & 3 / complainants.

42. The order on sentence dated 26.07.2010 of the Ld. Trial Court is based on the well settled law of the Hon'ble Supreme Court and High courts; and the conduct of the petitioner/accused in the following facts:-

(a) The petitioner/accused has not paid rent of even a single month from 01.06.2007 to till date.

(b) The petitioner/accused is illegally occupying the property of the respondents No.2 & 3 / complainants even after the termination of tenancy.

(c) As on date, the petitioner/accused is liable to pay ₹11,85,687/- to the respondent.

(d) Vide order on sentence dated 26th of July, 2010, the learned trial Court had sentenced the petitioner/accused to undergo imprisonment for one year and to deposit ₹2,85,000/- as compensation to the complainant and fine of ₹15,000/- IDSI 30 days. However, till date the

respondent/accused has neglected and failed to deposit the compensation amount to the respondents No.2 & 3 / complainants.

(e) The respondents No.2 & 3 / complainants have filed a suit for ejectment and recovery of rent and mesne profits against the petitioner / accused and the same is pending before the Court of Sh. Pankaj Gupta, ADJ& ASJ, Tis Hazari Courts, Delhi. However, the petitioner / accused is deliberately delaying the proceedings of the said case as he is enjoying the possession of the suit property. Due to the mischievous conduct of the petitioner / accused, the learned court was constrained to impose cost upon the petitioner / accused on several occasions. On 08.02.2012, learned Additional District Judge had passed a detailed order, which clearly reflects the conduct of the petitioner / accused.

43. Controverting the plea of the petitioner for probation, he submitted that no benefit of probation could be exceeded to the petitioner because the plea as to grant of probation is to be taken at the earliest opportunity. However, in the instant case the petitioner/ accused had neither pleaded the benefit of probation at the time of arguments on sentence before the learned trial Court nor before the learned Appellate Court. Even otherwise, the discretion provided by the proviso has to be exercised according to the circumstances of each case. Misplaced leniency and sympathy for the petitioner/ accused shall defeat the very object for which punishments are provided. Further, the “conduct” of the petitioner/ accused is one of the important factor which has to be considered while granting the benefit of probation to

the petitioner / accused. In the instant case, the conduct of the petitioner cannot be considered appropriate for the grant of probation.

44. To strengthen his contentions, he relied upon **Gautam Sood v. State(National Capital Territory of Delhi): 2007 (138) DLT 30** wherein it has been held as under:-

“6. This Court in revisional jurisdiction under section 397 is not expected to sit as a second Appellate Court and scrutinize minutely findings. Its jurisdiction is of a limited and circumscribed nature and more concerned with the approach of the Courts and the regularity of the proceedings. Upon a consideration of the materials on record, I am satisfied that no interference is called for in the exercise of such jurisdiction”

45. In **State of Uttar Pradesh v. Chandrika** :(1999) 8 SCC 638, the Hon’ble Apex has held as follows :-

“8. ...If the accused confesses his guilt, an appropriate sentence is required to be imposed. Further, the approach of the court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of the evidence on record. If he is guilty, an appropriate sentence is required to be imposed or maintained. If the petitioner or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the court’s conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. In such cases, sentence commensurate with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for

reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty, the sentence be reduced.”

46. Learned counsel also relied upon **State of U.P. v. Kishan : 2004 (3) JCC 1875**, wherein it has been observed as under:-

“7.....any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and lengthened by string of deterrence interest in the sentencing system”.

8. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and victim belong punishment to be awarded for a crime must not be irrelevant but it should confirm to and be consistent with the atrocity and brutality with the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should response to the society’s cry for justice against the criminal.”

47. In **Shailesh Jasvantbhai and Another v. State of Gujarat and Others : (2006) 2 SCC 359**, the Apex Court has held as follows:-

“8.....undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having

regard to the nature of the offence and the matter in which it was executed or committed, etc.”

48. He submitted that in **Suganthi Suresh Kumar v. Jagdeeshan :** (2002) 2 SCC 420, the Hon’ble Supreme Court has held as follows :-

“12. ...in case where the amount covered by the cheque remained unpaid it should be the lookout of the trial magistrates that the sentence for the offence under section 138 should be such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonor of the cheque issued by him light-heartedly. The very object of enactment of the provisions like section 138 of the act would stand defeated.”

49. After hearing both learned counsel for parties, I am of the view that the petitioner deserves no leniency as he has been dousing the respondents throughout. Even otherwise, the discretion of the Court has to be exercised according to the circumstances of each case. Unnecessary leniency and sympathy shall defeat the very object for which the punishments are provided. The conduct of the petitioner / accused is one of the important factor which has to be considered while extending the benefit of Probation of Offenders Act or the period already undergone, as prayed before this Court by the petitioner.

50. Neither he did deposit the cheque amount, during trial nor before the Appellant Court. He continued to enjoy the amount till date and the respondent Nos.2 & 3 are chasing him throughout. This Court is third court for them. Firstly, they could not get their due amount; secondly for the same contested the litigation before three Courts. Therefore,

petitioner do not deserve for any leniency.

51. Consequently, Revision Petition is hereby dismissed.

52. In view of above order, Crl.M.A. No.2905/2012 does not require further adjudication and accordingly stands disposed of.

53. Trial Court Record be remitted back henceforth.

54. No order as to costs.

SURESH KAIT, J

APRIL 11, 2012

Mk