

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

Reserved on: March 07, 2013

Pronounced on: April 02, 2013

+ CRL.REV.P.480/2008

VINOD KUMAR

.....Petitioner

Through: Mr. Charan Jeet, Advocate

versus

PREM PAL

....Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned order of 26th May, 2008 upholds petitioner's conviction and sentence for the offence under Section 138 of *The Negotiable Instruments Act, 1881*. While entertaining this revision petition, it stands noted in the order of 12th February, 2009 that petitioner has already served sentence of 11 months out of substantive sentence of one year imposed upon him. However, the sentence of compensation of ₹1,12,000/- imposed was stayed vide aforesaid order.

2. Finding returned in the impugned order is as under: -

"Having heard the arguments and after perusal of the case file I do not find any infirmity or illegality in the order of ld. MM for the reasons that complainant has proved his case and accused also does not dispute having given cheques to the complainant but his only defence is that it was given on account of complainant being successful in bid of committee. Original agreement as per complainant is in custody of accused so there is no question of producing the same by the complainant. However, DW2 and DW3 simply mentions that accused gave a cheque of Rs.56,000/-.

They do not refer that three cheques of different amount were given. Had there been any committee secured by the complainant there would not have been any necessity to give three cheques dated 5.10.02, 10.10.02 and 12.10.02 and only one cheque of last date 12.10.02 would have been given. DW3 could not even give the exact month and year of giving of such cheque to the complainant. No such suggestion to complainant that cheques were given in presence of the committee members including DW2 and DW3. The defence witnesses are not believable. There is no suggestion was given to complainant that on what account Rs.6000/- were encashed by him so no benefit can be given to accused on this count. Had, there being any committee organized for releasing remaining monthly instalments, accused would have taken advance cheques from complainant, as is the usual practice. In the obtaining

facts and circumstances I uphold the judgment and order on sentence."

3. During the course of hearing, learned counsel for petitioner had drawn attention of this Court to the answer given by petitioner in his statement under Section 281 of *the Cr. P.C.*, which reads as under: -

"I had to give a sum of Rs.56000/- to the complainant. I had given a cheque of Rs.6000/- to the complainant which had been encashed. I was running a committee and the complainant was a member. The complainant took the 8th committee in a bid. The complainant has to give a sum of Rs.27,002/-. I have to give a balance of Rs.22,998/- to the complainant. I have sent the reply to the legal notice."

4. Petitioner had led evidence in his defence before the trial court to show that petitioner had infact paid ₹ 6,000/- by way of cheque. Attention of this Court was also drawn to the deposition of *Mr. Sanjay Kochar* (DW-1), from petitioner's bank, who had deposed in respect of certified copy of cheque Ex. DW-1/1 to show that the cheque for a sum of ₹6,000/- was issued by petitioner in favour of respondent-complainant herein. Attention of this Court was also drawn to statement of account Ex. CW-1/C of petitioner to show that an amount of ₹6,000/- was debited from his account in favour of respondent on 18th September, 2002.

5. At the hearing, the contention advanced on behalf of petitioner is that the liability of petitioner was for lesser amount than the cheque amount and so no enforceable debt or liability was there and ingredients of Section 138 of *The Negotiable Instruments Act, 1881* were not satisfied and so, impugned conviction and sentence imposed upon the appellant is illegal and liable to be set aside. Respondent's counsel had chosen not to contest this petition at final hearing.

6. In support of above submissions, reliance was placed by petitioner's counsel upon decisions in *Krishan Janardhan Bhat v. Dattatraya G. Hegde* (2008) 4 SCC 54; *Suman Sethi v. Ajay K. Churiwal and Anr.* AIR 2000 SC 828; *M/s. Alliance Infrastructure Project Pvt. Ltd. And Ors. V. Vinay Mittal and Sanjeev Kapur II* (2010) BC 203, 2010(2) Crimes 672; *M/s. BSI Ltd. & Anr. V. Gift Holdings Pvt. Ltd. & Anr.* AIR 2000 SC 926 and *Angu Parameswari Textiles (P) v. Sri Rajam & Co.* in CrI. O.P. No. 24075 of 2000 rendered on 24th January, 2001 by Madras High Court.

7. After considering the submissions advanced, the evidence on record and the decisions cited, I find that there can be no quarrel with the proposition of law enunciated in the above cited decisions, but what is required to be seen is that whether the ratio of the decisions cited has any application to the facts of the case in hand. No doubt, criminal prosecution under Section 138 of *The Negotiable*

Instruments Act, 1881 is neither for recovery of money nor for enforcement of any security etc., but, in the instant case, evidence on record does not go to show that there was any kind of transaction as alleged by petitioner-accused, who is bound by his own Affidavit (*Mark-A*) which reveals that there was an existing debt/liability attracting the provisions of *The Negotiable Instruments Act, 1881*. So, the ratio of the decisions cited does not apply to the instant case.

8. As regards payment of ₹6,000/- by cheque to respondent-complainant by petitioner is concerned, I find that there is no cross-examination of respondent-complainant on this aspect. However, the evidence of *Sanjay Kochar (DW-1)* substantiates the stand taken by petitioner regarding his paying ₹6,000/- to respondent-complainant on 18th September, 2002. It is so evident from petitioner's bank statement Ex.CW1/C. But petitioner's counsel had not addressed any meaningful argument during the course of hearing to discredit petitioner's Affidavit (*Mark-A*), which clearly proves that it was a loan transaction. Therefore, even if petitioner had paid ₹6,000/- to respondent-complainant, still petitioner is liable to pay the balance loan amount of ₹50,000/- to respondent-complainant. In the ultimate analysis, impugned orders stands modified to the aforesaid extent.

9. At the hearing before this Court, it was urged by petitioner's counsel that petitioner is a tailor by profession, who is earning just

₹10,000/- per month and has wife and two school going children to support and is living in rented accommodation and has already faced the agony of these proceedings since the year 2003 and so, a lenient view be taken on point of sentence.

10. It has to be kept in mind that petitioner has already faced these proceedings for more than one decade and that he has already remained behind bars in this case for 11 months as noted in this Court's order of 12th February, 2009. In the above background, this Court finds that ends of justice would be met, if the substantive sentence imposed upon petitioner-accused is reduced to the period already undergone by him. On the quantum of compensation awarded, I find that there is no scope for taking a lenient view as petitioner-accused had settled this matter before the Mediation Centre and then had backed out before the trial court and has contested this matter before this Court in spite of his admitting his liability to pay respondent-complainant in his Affidavit (Mark-A). Such a conduct of an accused cannot persuade any court to take a lenient view. So, now the compensation payable to respondent-complainant would be double the existing liability i.e. ₹1,00,000/- (Rupees One Lac). It is ordered accordingly.

11. To the above extent, order on sentence passed against petitioner stands modified while directing petitioner to deposit the

compensation amount of ₹1,00,000/- (Rupees One Lac) with the trial court within 12 weeks from today failing which petitioner shall undergo simple imprisonment for three months. Trial court be apprised of this decision forthwith to ensure its compliance.

12. This petition is disposed of in the aforesaid terms.

(SUNIL GAUR)
Judge

APRIL 02, 2013

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