

\$
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th November, 2013

+ **CRL.REV.P. 760/2010**
OM PRAKASH HANS Petitioner
Through: Mr. Shashi Shankar, Advocate.

versus

COL.P. N. PANDEY & Anr. Respondents
Through: Mr. Hasan Anzar, Advocate for R-1.
Mr.Kshitij Mittal, Advocate for R-2.

+ **CRL.REV.P. 761/2010**
OM PRAKASH HANS Petitioner
Through: Mr. Shashi Shankar, Advocate.

versus

Col.P.N. PANDEY & Anr. Respondents
Through: Mr. Hasan Anzar, Advocate for R-1.
Mr. Kshitij Mittal, Advocate for R-2

+ **CRL.REV.P. 762/2010**
OM PRAKASH HANS Petitioner
Through: Mr. Shashi Shankar, Advocate.

versus

COL.P.N. PANDEY & Anr. Respondents
Through: Mr. Hasan Anzar, Advocate for R-1.
Mr. Kshitij Mittal, Advocate for R-2.

AND

+ **CRL.REV.P. 763/2010**
OM PRAKASH HANS Petitioner
Through: Mr. Shashi Shankar, Advocate.

versus

COL.P.N. PANDEY & Anr. Respondents

Through: Mr. Hasan Anzar, Advocate for R-1.
Mr. Kshitij Mittal, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common order, I shall dispose of four Criminal Revision Petitions No.760/2010, 761/2010, 762/2010 & 763/2010 as all the four revisions are between the same parties and substantially similar facts are involved in all the cases except that same has been filed on the basis of different dishonoured cheques. For the sake of convenience, the factual background appearing in Criminal Revision Petition No. 760/2010 is taken up.

2. A complaint under Section 138 r/w Section 142 of Negotiable Instruments Act r/w Section 420 IPC was filed by the respondent/complainant against the petitioner/accused, *inter alia*, on the allegation that the complainant has rented a house situated at Ajay Kutir, 2034, Sector 7, Block D, Faridabad by virtue of a registered agreement dated 3rd May, 2005. It was agreed that the accused shall be paying monthly rent of Rs.7,000/- per month. In order to gain confidence and faith of the complainant, accused raised post dated cheque bearing No. 435465 of Rs.7000/- dated 18th October, 2005 for payment of rent for the month of October. On presentation, the cheque was

returned dishonoured on account of “insufficient funds”. Legal notice dated 22nd April, 2006 was sent though registered post, thereby calling upon the accused to make payment of cheque amount. Despite service, the accused did not send any reply nor made payment of cheque within 15 days, as such, the complaint was filed.

3. After summoning the accused, notice was served upon him. Complainant examined himself. Accused was examined under Section 281 Cr. P.C. He also filed his affidavit and examined another witness Sh. Girja Kant Pandey as DW-1 and he examined himself as DW-2.

4. After meticulously examining the evidence led by the parties, learned Metropolitan Magistrate observed that the accused did not dispute the correctness of the agreement dated 3rd May, 2005 (Ex. CW-1/A) entered into between the parties. He also admitted that cheque of Rs.7,000/- per month was given in respect of aforesaid agreement and that the agreement bears his signatures. However, in his defence, he took another plea that one agreement dated 6th April, 2005 was executed between him and the complainant and he had issued 12 cheques regarding interest of the loan amount, which was received by the accused from the complainant. However, the complainant refuted that any such agreement was arrived at between the parties or that the cheques in question were issued for interest as per terms of agreement dated 6th April, 2005. The accused did not dispute the service of notice upon him

after dishonour of the cheque and that he did not send any reply to the notice. Despite service, he also did not make payment of the cheque amount. Under the circumstances, it was held that the complainant had fully proved his case and the defence of the accused, although not proved, is a kind of admission that he had taken a loan from the complainant and in lieu of interest, the cheques were given. The witness examined by him did not support his version, as such, the accused was held guilty under Section 138 of NI Act. He was sentenced to undergo simple imprisonment for a period of one year and was also directed to pay fine of Rs.5000/- , in default of payment of the same, he was to undergo simple imprisonment for 30 days. He was also directed to pay compensation of Rs.20,000/- to the complainant within a period of two months.

5. Feeling aggrieved by this order, the accused preferred the appeal. The same was dismissed by the learned Additional Sessions Judge, Delhi.

6. Thereafter, the present revision petition has been filed. During the course of arguments, learned counsel for the Revisionist did not challenge the order of conviction, however, he only prayed for a lenient view on the ground that he had already deposited the amount of compensation awarded to the complainant and in fact, it is alleged that he has deposited more than the compensation amount. He is the sole bread earner of the family and has the responsibility to maintain his wife, son and daughter. Moreover, he remained

in jail for a period of one month. Reliance was placed on ***B. Chandramathi vs. N. Prakash***, (2012) 2 SCC 783 for contending that he be released on the period already undergone.

7. Per contra, learned counsel for the complainant/respondent submitted that the petitioner does not deserve any leniency. He referred to the conduct of the petitioner for submitting that he has dragged the complainant in litigation since the year 2005. Not only that, a false plea was taken by him during the trial, which was disbelieved. The appeal was also dismissed. He has also referred to his conduct after filing of the revision for submitting that after he was released on bail, he failed to appear, as such, the petition was dismissed for non-prosecution. After more than one year, he got the revision restored. Already a liberal view has been taken, as such, no further leniency is warranted.

8. So far as the conviction of the petitioner under Section 138 of NI Act is concerned, rightly the same was not challenged during the course of arguments, inasmuch as, the orders passed by the learned MM and affirmed by the learned Additional Sessions judge does not suffer from any perversity which calls for interference. As such, conviction of the petitioner is upheld.

9. As regards the quantum of sentence is concerned, ***B. Chandramathi*** (*supra*) relied upon by the petitioner does not help him, inasmuch as, in that case, the appellant was a widow who had the responsibility to maintain two

children and was earning her livelihood by making jowar rotis and selling them. She also suffered from depression. She had undergone the sentence for a period of about 2½ months before she was released on bail. Considering the totality of facts and circumstances, the sentence already undergone by her was treated as a sentence for the offence under Section 138 of the NI Act.

10. However, in the instant case, due to dishonour of cheque by the petitioner, the complainant was constrained to file as many as four complaints in the year 2006. Till date, the dispute has not been set at rest and the complainant has been compelled to file the litigation. Moreover, after the appeal was dismissed and this revision was filed, on the very first date, it was brought to the notice of the petitioner that the revision is without merit. Concurrent findings have been given by two courts below that the cheques in question were issued for a liability. Even no reply to the notice of demand of the complaint was given. In case, he intends to compromise with the respondent then he should negotiate for compensating the respondent adequately for making respondent rush to three Courts for the recovery of such paltry sum. Thereafter, he was directed to deposit the compensation amount with the Registrar General which was deposited and was ordered to be released in favour of the respondent. On deposit of the amount, the sentence was suspended and he was ordered to be released on bail.

Thereafter, the petitioner absented himself for subsequent dates and ultimately, the revision was dismissed for non-prosecution on 24th January, 2012.

11. After a lapse of one year, the petitioner moved an application for restoration of the petition, which was, however, allowed subject to costs. All these goes to show that the petitioner has dragged the complainant in litigation to the maximum. That being so, his conduct does not warrant any leniency in the matter. However, keeping in view his family responsibility, since he has been sentenced to undergo simple imprisonment for a period of one year in each of the cases, it is ordered that this sentence of simple imprisonment for a period of one year in all the four cases will run concurrently. He is directed to deposit the fine, if not already deposited, within a period of seven days. With these observations, all the revision petitions stand disposed of.

12. Petitioner is directed to surrender before the learned Trial Court for serving the sentence within seven days, failing which learned Trial Court to take necessary steps to get the petitioner arrested for serving the remainder of the sentence.

13. Copy of this order along with Trial Court record be sent back.

SUNITA GUPTA
(JUDGE)

NOVEMBER 13, 2013/rs