

\$~R-178

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

Date of Decision: May 05, 2015

+ CRL.M.C. 1581/2014

ANIL SAINI

..... Petitioner

Through: Counsel (appearance not given)

versus

VIKESH KUMAR SINGH & ANR.

..... Respondents

Through: Mr. Harpreet Uppal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In respect of dishonour of a cheque of ₹3.8lacs, petitioner stands convicted for the offence under Section 138 of *The Negotiable Instruments, 1881* by the trial court and the substantive sentence imposed upon him is till the rising of the Court. Fine of ₹7,00,000/- with default clause has been awarded to petitioner, which was challenged by him by way of an appeal. The learned Appellate Court vide impugned judgment has upheld the conviction and the sentence awarded to the petitioner.

In this petition, petitioner challenges his conviction and sentence awarded to him on the ground that there was no existing debt or liability. At the hearing, learned counsel for petitioner had not disputed that the cheque in question is not only signed by petitioner but the date thereon is

also in the hand of petitioner. However, it is submitted that along with the cheque in question, petitioner had lost two other cheques and a complaint to the police was made about it and petitioner had also asked his banker to *stop payment* in respect of cheque in question and other two cheques. Thus, it was submitted by learned counsel for petitioner that the impugned conviction of petitioner is unsustainable and the order on sentence awarded to petitioner deserves to be quashed.

To the contrary was the submission of learned counsel for respondent who submitted that the plea of petitioner of making a complaint to the local police regarding loss of cheque in question does not stand proved, as petitioner's so called application to the police does not bear any daily diary number. Regarding petitioner informing his banker about *stop payment* of cheque in question, it was submitted that it is evident from the evidence on record that petitioner had conspired to cheat respondent-complainant, as from the evidence on record it is amply clear that petitioner had taken a friendly loan for a short term and had given the cheque in question with date written thereon. It was submitted by learned counsel for respondent that petitioner is a clever person, who had deliberately issued instructions to his banker to *stop payment* in order to cheat the petitioner. Thus, it was submitted that the conviction and sentence awarded to petitioner is just and proper and calls for no interference.

Upon hearing and on perusal of the evidence on record, it becomes apparent that the assertion of petitioner of lodging the complaint with police does not stand proved and merely because petitioner had asked his banker to *stop payment* prior to the dishonour of cheque in question by

itself is not sufficient to cast any grave doubt on the version of respondent- complainant regarding issuance of cheque in question towards a friendly loan for a short term. This appears to be quite probable because petitioner had admittedly put the date on the cheque in question.

During the course of hearing, it could not be satisfactorily explained by petitioner's counsel as to why he had put the date on the cheque in question. This renders the version of the respondent-complainant quite probable and acceptable. Both the courts below have rightly relied upon the version of respondent-complainant and discarded the version of petitioner.

Finding no glaring or palpable error in the impugned order, this petition is dismissed.

(SUNIL GAUR)
JUDGE

MAY 05, 2015

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