

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 25<sup>th</sup> March, 2015  
Judgment Pronounced on: 21<sup>st</sup> April, 2015

CRL.REV.P. 702/2007

**SHRI RAM KHILARI**

**..... Petitioner**

Through: None

versus

**STATE GOVT. NCT DELHI & ANRS.**

**..... Respondent**

Through: Mr. P.K. Mishra, APP for the State  
Mr. Davinder Kumar, Adv. for R-2

CORAM:  
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 03.10.2007 and order on sentence dated 04.10.2007 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo simple imprisonment for a period of three months and compensation of Rs.60,000/- to be paid by the petitioner to the respondent under Section 138 of the Negotiable Instrument Act and upholding the judgment of conviction and sentence by the learned Additional Sessions Judge vide judgment dated 05.11.2007, the present revision petition has been filed by the petitioner.

2. Factual matrix, as emerges from the record, is that the complainant/respondent-herein had filed a complaint under Section 138 of the Negotiable Instrument Act against the petitioner-herein with the allegations that the petitioner was well known to the respondent being a colleague of his brother and through a close friend. The petitioner had approached the respondent for a friendly loan of Rs.60,000/- for a period of two months for his personal work. The respondent advanced Rs.60,000/- to the petitioner. In order to discharge his liability, the petitioner issued a cheque No.536286 dated 08.09.2003 for a sum of Rs.60,000/-. In the first week of September, 2003, the respondent approached the petitioner and requested him to return the amount of Rs.60,000/-, on which he asked the respondent to present the cheque with the assurance that the cheque would be encashed. The respondent presented the cheque on 11.09.2003, but the cheque was returned uncashed with the remarks “insufficient funds”. On the assurance of the petitioner, the respondent again presented the said cheque but it was again returned with the remarks “insufficient funds”. A demand notice was sent to the petitioner, but the petitioner failed to discharge his legal liability despite its service.
3. After pre-summoning evidence, the petitioner-herein was summoned. Notice under Section 251 Cr.P.C. was framed for offence under Section 138 read with section 142 of the Negotiable Instrument Act. The petitioner pleaded not guilty and claimed trial.
4. To prove its case, the respondent-herein examined 3 witnesses.

After conclusion of complainant evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The petitioner opted not to lead any defence evidence. The learned Metropolitan Magistrate vide judgment dated 03.10.2007 held the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instrument Act and convicted him for the said offences. The order on sentence was passed on 04.10.2007.

5. Thereafter, the petitioner filed criminal appeal bearing Criminal Appeal No.39/2007. The learned Additional Sessions Judge vide judgment dated 05.11.2007 upheld the conviction and sentence awarded to the petitioner.
6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.
7. Learned counsel for the petitioner has submitted that the petitioner was and is ready to make the full and final settlement amount of Rs.50,000/- to the respondent; the petitioner was not granted proper opportunity of hearing; no opportunity to cross examine the complainant was given; non payment of settled amount does give right to continue the criminal proceedings and any default thereof ought to have been taken to the civil court; cheque in question was not issued to the respondent rather it was delivered to the elder brother of the respondent; cheque was manipulated and forged by

the respondent; a sum of Rs.20,000/- was borrowed from the brother of the respondent and petitioner has already paid Rs.45,000/-.

8. The respondent appeared as CW1 before the trial court and deposed that he gave Rs.60,000/- to the petitioner who assured him to return the said amount within two months; the petitioner issued a cheque No.536286 dated 08.09.2003 for a sum of Rs.60,000/- in order to discharge his legal liability; in September 2003 he approached the petitioner to return the amount on which he asked the complainant to present the cheque which would be encashed; on presentation, the cheque in question returned unpaid with remarks “insufficient fund”; on the assurance of the petitioner, cheque was again presented which and returned unpaid with the remarks “insufficient fund”; he proved the cheque as Exh. CW1/A; deposit slip dated 11.09.2003 and bank memo dated 13.09.2003 as Exh. CW1/B & C; deposit slip dated 15.09.2003 and bank memo dated 16.09.2003 as Exh. CW1/D & E; copy of legal notice as Exh. CW1/F; postal receipt as Exh. CW1/G; U.P.C. as Exh. CH1/H and AD Card as Exh. CW1/J.
9. There is no cross examination of the respondent by the petitioner which makes the testimony of the respondent unchallenged and uncontroverted. The petitioner has taken the ground that he was not given opportunity to cross examine the complainant but the fact remains that the complainant was examined in the presence of the petitioner. The petitioner chose not to cross examine the

complainant and sought adjournment which was declined by the learned trial court. There was ample opportunity with the petitioner to cross examine the complainant but despite availing the same he did not cross examine the complainant.

10. The respondent also examined the CW2 Shri B.C. Parashar, Record Clerk, UCO Bank who deposed that the petitioner was having a savings bank account with their Bank; a cheque No.536286 dated 08.09.2003 was drawn on account of the petitioner, which was dishonoured for want of sufficient funds vide returning memo Exh. CW1/E; he proved the certified copy of the cheque returning registered as Exh. CW2/A and statement of account as Exh. CW2/B.
11. CW3 Shri Jagdish Chand, Record Keeper, PNB Radhey Puri stated that their bank had account of respondent Raman Kumar; he proved the statement of account as Exh. CW3/A & B; cheque of Rs.60,000/- was received for clearance but the same was returned dishonoured.
12. As per the uncontroverted and unchallenged testimony of the respondent/complainant, a sum of Rs.60,000/- was taken as friendly loan by the petitioner from the respondent and in discharge of the legal liability, he issued the cheque in question. As per the testimony of the complainant coupled with the testimony of bank officials, when the cheque in question was presented for encashment, the same was dishonoured. Thus, it has duly been

established that the cheque in question was issued by the petitioner in discharge of his legal liability and he failed to discharge the same despite receipt of legal notice issued by the respondent. It is not in dispute that the legal notice Ex.CW1/F issued by the respondent was duly received by the petitioner, but he failed to make the payment of money to the respondent within the stipulated period.

13. The plea taken by the petitioner is that he had taken only Rs.20,000/- and that is too from Devinder Kumar, brother of the complainant and the cheque in question has been manipulated and forged by the complainant. The petitioner had not cross examined the complainant/respondent-herein to substantiate his plea, which makes the testimony of the complainant trustworthy. Even the petitioner had not examined any evidence in his defence to support the plea that he had taken Rs.20,000/- from the brother of the complainant and not Rs.60,000/- from the complainant for which the cheque in question was issued by him. The petitioner has also not placed any material to show any manipulation and forgery in the cheque in question.
14. Section 118 and 139 of the Negotiable Instrument Act provides for raising a presumption, which the petitioner had failed to rebut that the cheque in question was not issued by him or that he had no legal liability towards the respondent-herein.
15. I have gone through the ratio of judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC***

**665** in which it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. *This Court is of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.*

16. Perusal of record shows that vide order dated 04.12.2007, the sentence of imprisonment awarded to the petitioner was suspended provided the deposit of Rs.60,000/- as compensation by the petitioner. On 26.09.2008, it was submitted that the petitioner had already deposited Rs.60,000/-. The amount of Rs.60,000/- deposited by the petitioner was ordered to be released to the complainant/respondent-herein on 31.03.2009.
17. In the present case, it is apparent from the record that complaint was filed on 30.10.2003; notice under Section 251 Cr.P.C. was framed on 31.07.2004; judgment of conviction was passed on 03.10.2007; order on sentence was passed on 04.10.2007; criminal

appeal filed by the petitioner was dismissed on 05.11.2007 and now we are in the year 2015. The petitioner has already faced the proceedings for about 11½ years and remained behind the bar for about one month.

18. In view of discussion made above, the judgments passed by the Courts below are upheld. However, this Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. Accordingly, the sentence of imprisonment is modified to the period already undergone by the petitioner. The amount of compensation has already been deposited by the petitioner and the same has been ordered to be released to the complainant.
19. The present revision petition is disposed of accordingly. File of the trial Court be sent back.

**P.S.TEJI, J.**

April 21, 2015

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