

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

Date of Decision: September 05th, 2016

+ **CRL.REV.P. 394/2016**

RAJINDER PRASAD Petitioner

Through: Mr.Ashish Dixit, Advocate.

versus

STATE OF DELHI & ANR.

..... Respondent

Through: Mr.Izhar Ahmad, APP.

Mr.Ravinder Singh, Advocate for R-2.

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

P.S.TEJI, J.

1. The present revision petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) against judgment dated 20.05.2016 passed by the learned Additional Sessions Judge whereby the conviction and sentence of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act) was upheld. Vide judgment dated 26.02.2016 passed by the learned Metropolitan Magistrate the petitioner was convicted for offence under Section 138 of the N.I. Act and vide order on sentence dated 16.03.2016, he was sentenced to undergo simple imprisonment for four months and to pay the compensation of Rs.2,20,000/- to the complainant. In default of payment of

compensation, the petitioner would further undergo simple imprisonment for two months.

2. The facts in brief are that a complaint was filed by the complainant/respondent no.2 against the accused/petitioner with the allegations that both of them were friends. The petitioner approached the respondent no.2 in December, 2008 for a friendly loan of Rs.1.5 lacs. The respondent no.2 advanced the loan of Rs.1.5 lacs to the petitioners on 25.12.2008. The petitioner signed a promissory note on 25.12.2008. To repay the loan amount, the petitioner issued a cheque bearing No.463757 dated 26.12.2010 for a sum of Rs.1,50,000/-. When the said cheque was presented for encashment, the same was dishonoured with the remarks “account closed”. The respondent no.2 sent a legal notice dated 28.02.2011 to the petitioner. Hence, the complaint was filed.

3. The complainant/respondent no.2 examined himself to prove his case. The complainant was cross-examined by the petitioner. Opportunity was given to the petitioner to adduce his defence evidence, but despite the same no defence evidence was led by the petitioner. The Trial Court vide judgment dated 26.02.2016 convicted the petitioner and passed the order on sentence on 16.03.2016. Thereafter, the petitioner filed an appeal which was dismissed by the Court below vide judgment dated 20.05.2016. Feeling aggrieved of the orders passed by the Courts below, the present revision petition has been preferred by the petitioner.

4. Arguments advanced by the counsel for the parties have been heard. I have gone through the arguments advanced and the

material available on record.

5. Argument advanced by the counsel for the petitioner was that the respondent no.2 had not proved any legally enforceable debt for which the cheque in question was issued. It was further argued that the case of the respondent no.2 was not proved beyond reasonable doubt and there were contradictions in his case. The presumption of Section 118(g) of the N.I. Act has wrongly been placed by the Courts below. The judgments have been passed on the basis of presumptions only. An adverse inference has been drawn against the petitioner for not producing Sukhbir, but the fact remained that Sukhbir was related to respondent no.2/complainant. It was further argued that the petitioner is behind the bars since 03.05.2016.

6. Per contra, it was argued that the complainant had duly established his case beyond reasonable doubt that loan of Rs.1.5 lacs was taken by the petitioner from the respondent no.2/complainant and to discharge his liability, he had issued the cheque in question. It was further argued that the cheque was issued towards discharge of legally enforceable debt and the same was dishonoured when presented for encashment. It was further argued that the petitioner had failed to make the payment of cheque amount despite receipt of legal notice.

7. To prove his case, the respondent no.2/complainant had examined himself and proved his affidavit as Ex.CW1/1, cheque in question as Ex.CW1/A, promissory note as Ex.CW1/B, cheque returning memos as Ex.CW1/C & Ex.CW1/E, demand notice as

Ex.CW1/G and postal receipts/returned envelope as Ex.CW1/H to Ex.CW1/K.

8. It is worthwhile to note that the petitioner took the stand before the Courts below that he had no acquaintance with the respondent no.2/complainant. He had taken the plea that the cheque in question along with five other cheques were issued by him to one Sukhbir Singh against loan of Rs.50,000/- taken from him and the said amount was already paid to Sukbir Singh.

9. By proving his case by way of leading the oral as well as documentary evidence, the respondent no.2/complainant had duly proved all the essential ingredients of his case under Section 138 of the N.I. Act. The respondent no.2/complainant has also placed on record the promissory note signed by the petitioner. On the other hand, it is an admitted case of the petitioner himself that the cheque in question bore his signatures. Section 139 of the N.I. Act provides for raising of presumption to the effect that the holder of the cheque has received it in discharge of liability. The plea of the petitioner that he had issued the cheque in question to one Sukhbir Singh has not been established as Sukhbir Singh was never examined by the petitioner. The petitioner was given opportunity to lead his defence evidence. Despite availing the said opportunity, the petitioner had not produced any defence evidence to establish his plea that he had given the cheque in question to one Sukhbir Singh.

10. The Hon'ble Apex Court in the case of ***Vijay v. Laxman and Anr. (2013) 3 SCC 86*** has observed that once the cheque has

been issued and the signatures thereon has been admitted by the accused, then it is not available to the accused to take the defence that the cheque was not issued by him. Relevant portion reads as under :

“Having heard the learned counsels for the contesting parties in the light of the evidence led by them, we find substance in the plea urged on behalf of the complainant-appellant to the extent that in spite of the admitted signature of the respondent-accused on the cheque, it was not available to the respondent-accused to deny the fact that he had not issued the cheque in favour of the complainant for once the signature on the cheque is admitted and the same had been returned on account of insufficient funds, the offence under Section 138 of the Act will clearly be held to have been made out and it was not open for the respondent-accused to urge that although the cheque had been dishonoured, no offence under the Act is made out.”

11. The present revision petition has been filed assailing the judgments/orders passed by the Courts below. After going through the record and the submissions made by the parties, this Court is of the considered opinion that there is no apparent illegality or infirmity in the judgments/orders passed by the Courts below. This Court is not sitting in appeal and is dealing with the revision petition. It is a settled law that while exercising the revisional jurisdiction the Court cannot re-appreciate the evidence. Even otherwise, there are concurrent findings of fact by the Trial Court

as well as by the appellate Court.

12. In view of the above mentioned facts and circumstances, this Court does not find any irregularity, illegality or impropriety in the judgments/orders passed by the Courts below. Consequently, the present revision petition is dismissed. Application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 05, 2016
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