

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

+ **CRL.REV.P.668/2015**

Date of Decision: June 13th, 2016

SURRENDER KUMAR MEHRA Petitioner

Through: Mr.Tarun Arora, Adv.

versus

STATE & ANR. Respondents

Through Mr.Izhar Ahmad, APP.

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

P.S.TEJI, J.

1. The present revision petition has been filed under Section 397 and 401 of Cr.P.C, 1973 for setting aside the order passed by the Appellate Court vide order dated 17.09.2015 in Crl.Appeal No.08/2015 upholding the order passed by the Trial Court vide order dated 11.03.2015.

2. The brief facts of the case are that a complaint case No.33/1/12 was filed by the respondent No.2 before the Trial Court on the ground that he had advanced a friendly loan of Rs.5 lakhs to the petitioner in two installments viz. one amounting to Rs.3 lakhs on 12.11.2008 and other amounting to Rs.2 lakhs in January, 2009. The loan was to be repaid within a period of six months from the date of advancement of

loan. After expiry of the said period, the petitioner tendered a cheque bearing No.146362 dated 15.09.2009 for an amount of Rs.5 lakhs, Ex CW1/1, which on presentment on 16.11.2009, was dishonoured with the remarks “Insufficient Funds” vide return memo dated 16.11.2009 Ex.CW1/2. Subsequently, at the request of the petitioner, the cheque was again presented, but it was again dishonoured with the same remarks on 23.12.2009 vide cheque returning memo Ex.CW1/3. Thus, the respondent No.2 issued legal notice dated 29.12.2009 Ex.CW1/4, which was duly served upon the petitioner.

3. The Trial Court after following due process of law, convicted the petitioner under Section 138 N.I. Act, 1881 and sentenced the petitioner to pay compensation of Rs.5,50,000/- to the respondent No.2 and in default to undergo imprisonment for one year vide impugned judgment dated 11.03.2015 and order on sentence dated 25.03.2015. Feeling aggrieved, the petitioner filed an appeal which was also dismissed vide order dated 17.09.2015 wherein the order dated 23.03.2015 was modified to the extent that the petitioner was directed to pay compensation of Rs.6 lakhs within one month from the date of the order and in default to undergo 18 months’ imprisonment. Hence, the present petition.

4. I have heard the learned counsel for the parties and gone through the record.

5. Argument advanced by the learned counsel for the petitioner is that the Trial Court has mechanically passed the impugned order without application of judicial mind. It was further argued that the respondent No.2/complainant has failed to prove his case before the

courts below beyond reasonable doubt. It was further argued that the Trial Court failed to appreciate that the petitioner had succeeded in bringing on record his defence with regard to the complainant giving alleged loan of Rs.5,00,000/- to the petitioner and if for the sake of arguments, it is assumed that the complainant had extended a loan to the petitioner, admittedly as per his own cross examination, he extended a loan of Rs.4,70,000/- and not Rs.5,00,000/- thereby meaning that there was no alleged liability existed to the tune of cheque amount as on date of the alleged insurance of cheque.

6. With respect to the liability of the petitioner/accused to repay the loan amount to the respondent No.2/complainant is concerned, there is a concurrent finding on the questions of fact by the courts below that the respondent No.2/complainant has proved his case beyond reasonable doubt and the same does not require to be gone into by this Court. In *State of A.P. v. Pituhuk Sreeinvasa Rao (2000) 9 SCC 537* the Hon'ble Supreme Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

7. The revisional jurisdiction of the High Court is to be exercised when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. Else, it is not open to the High Court to interfere with the concurrent findings of the courts below especially by re-appreciating the evidence

in its revisional jurisdiction.

8. Learned counsel for the petitioner has argued that the Appellate Court has committed an error while enhancing the punishment to the petitioner. It is further submitted that the Trial Court awarded sentence of payment of compensation of Rs.5,50,000/- and in default of payment of compensation, the petitioner was to undergo imprisonment for one year, however the Appellate Court enhanced the amount of compensation to Rs.6,00,000/- and in default of payment of same, the petitioner is to undergo simple imprisonment for 18 months. The Appellate Court also directed the petitioner to pay interest @ 12% per annum if the petitioner fails to pay the compensation within one month of the order.

9. Perusal of record shows that the Appellate Court enhanced the amount of compensation from Rs.5,50,000/- to Rs.6,00,000/- and also enhanced the sentence of default payment from one year to 18 months. It is nowhere the case of the complainant/respondent no.2 that any appeal was filed by him for enhancement of sentence awarded to the petitioner. Even in the present case, it is not contended by the respondent no.2 that the punishment awarded to the petitioner-herein was not just and proper and needs to be enhanced.

10. Keeping in view the above mentioned facts and circumstances, this Court is of the considered opinion that the orders/judgments passed by the Courts below with regard to conviction of the petitioner are based on cogent evidence and material available on record. However, there was no justification in enhancing the punishment by the Appellate Court which was awarded to the petitioner by the Trial

Court. Consequently, the order passed by the Appellate Court on the quantum of sentence is set aside and the order on sentence passed by the Trial Court is upheld.

11. The stay granted by this Court vide order dated 16.10.2015 stands vacated. The petitioner would be at the liberty to pay the amount of compensation to the complainant/ respondent no.2 on or before 31.07.2016. The petitioner is directed to surrender before the Trial Court on 31.07.2016 to undergo the period of sentence in default of payment of compensation.

12. The present revision petition and applications, if any, are accordingly disposed of.

JUNE 13, 2016
dm

(P.S.TEJI)
JUDGE

