

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

Date of Decision: September 05th, 2016

+ CRL.REV.P. 818/2015

RAMBHOO L SINGH

..... Petitioner

Through: Mr.Biswajit Kumar Patra, Advocate.

versus

STATE & ANR.

..... Respondent

Through: Mr.G.M.Farooqui, APP.

Mr.S.K.Sethi, Advocate for R-2 with
Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition has been filed under Section 401 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) against judgment dated 19.08.2015 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 26.02.2015 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 25.03.2015, he was sentenced to undergo simple imprisonment for six months and to pay the compensation of Rs.4 lakhs to the complainant. In default

of payment of compensation, the petitioner shall further undergo simple imprisonment for six 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 they were having family relations. The petitioner asked the respondent no.2 for a friendly loan of Rs.3,45,000/-. The respondent no.2 advanced the loan in two installments of Rs.1,00,000/- and Rs.2,45,000/- in the presence of witnesses Satender Kumar and Jitender Kumar on 21.12.2004 and 25.02.2005. The petitioner signed a promissory note for a sum of Rs.3,45,000/- and promised to return the loan amount till 21.05.2005. To repay the loan amount, the petitioner issued a cheque bearing No.739923 dated 01.02.2006 for a sum of Rs.3,45,000/-. When the said cheque was presented for encashment, the same was dishonoured with the remarks "funds insufficient". The respondent no.2 sent a legal notice dated 19.06.2006 to the petitioner, but the petitioner did not make the payment. Hence, the complaint was filed.

3. The complainant/respondent no.2 examined herself to prove her case. The complainant was cross-examined by the petitioner. The Trial Court vide judgment dated 26.02.2015 convicted the petitioner and passed the order on sentence on 25.03.2015. Thereafter, the petitioner filed an appeal which was dismissed by the Court below vide judgment dated 19.08.2015. 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 were 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 her case beyond reasonable doubt and the petitioner is entitled for benefit of doubt. There were material discrepancies in the testimony of complainant witness. There was no proof that any liability accrued against the petitioner. The petitioner took the loan of Rs.1,00,000/- from the husband of the complainant and said loan was duly returned back in April, 2006 in the presence of DW1 Chhattarpal. At the time of advancing loan, Satender had taken 20 blank security cheques and out of those cheques, the cheque in question was misused by the complainant. It was further argued that the complainant in her cross-examination admitted that her husband had given Rs.1 lacs to her and the said amount was given by the complainant to the petitioner. The complainant did not remember the date of execution of pronote. It was further argued that the petitioner is behind the bars since 24.08.2015.

6. Per contra, it was argued that the complainant had duly established her case beyond reasonable doubt that loan of Rs.3,45,000/- 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 her case, the respondent no.2/complainant had examined herself and proved her affidavit as Ex.CW1/A, cheque in question as Ex.CW1/2, promissory note as Ex.CW1/1, cheque returning memo as Ex.CW1/3, advice slip of the bank as Ex.CW1/4, legal demand notice as Ex.CW1/5, postal receipts as Ex.CW1/6 & Ex.CW1/7 and reply to the legal notice as Ex.CW1/8.

8. By proving her 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. On the other hand, it is an admitted case of the petitioner himself that the cheque in question bore his signatures. He also admitted the issuance of cheque.

9. The plea of the petitioner is that the cheque in question was not issued towards any legally enforceable liability rather it was issued as a security of the loan of Rs.1 lacs which was already paid. The petitioner had not placed any material on record to show that he had ever demanded the cheques including the cheque in question from the husband of the complainant after the alleged repayment of loan.

10. 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.

11. 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.”

12. 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.

13. 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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