* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of Decision:09th December, 2016***

CRL.REV.P. 853/2015 & CRL.M.(Bail) Nos. 8439/2015,1563/2016, CRL.M.A.No. 13241/2016

DEEPAK AGGARWAL ..... Petitioner/Revisionist

Through: Mr. Arjun Dewan and Mr. A.K. Pathak, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Mr. Izhar Ahmad, APP for State. Mr. Rajiv K. Garg and Mr. Ashish Garg, Advocates for R-2/complainant.

AND

CRL.REV.P. 302/2016 & CRL.M. (Bail) 823/2016

DEEPAK AGGARWAL ..... Petitioner/Revisionist

Through: Mr. Arjun Dewan and Mr. A.K. Pathak, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Mr. Izhar Ahmad, APP for State. Mr. Rajiv K. Garg and Mr. Ashish Garg, Advocates for R-2/complainant.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. The instant revision petitions, i.e., Crl.Rev.P. 853/2015 and Crl.Rev.P. 302/2016, preferred by the revisionist under Section 397 read with Section 401 of Cr.P.C. are arising out of a complaint filed under Section 138 of the Negotiable Instruments Act,1881 by the respondent no.2- M/s Sood & Sood Builders Pvt. Ltd. wherein the learned Metropolitan Magistrate convicted the revisionist vide judgment dated 04.09.2015 and order on sentence dated 07.09.2015. Aggrieved by the aforesaid conviction judgment and order on sentence both the present parties preferred to file appeals before the learned District and Sessions Judge/ Additional District & Sessions Judge who vide order/judgment dated 22.12.2015 passed the impugned order/ judgment. Thereafter the revisionist aggrieved from the impugned order dated 22.12.2015 passed by the learned ASJ preferred the instant revision petitions.

2. The brief facts stated are that the respondent no.2- M/s Sood & Sood Builders Pvt. Ltd. had filed a complaint under Section 138 of the Negotiable Instrument Act, 1881*(hereinafter referred to as NI Act*) through its Director Mr. A.P. Sood against Mr. Deepak Aggarwal, the present revisionist, who was the Director of M/s Avenue Holding Pvt. Ltd. It is alleged in the complaint that both Mr. A.P. Sood and the revisionist were known to each other and in the month of June, 2010 the revisionist herein requested the respondent

for a short term financial assistance for a sum of Rs. 51,00,000/- (Rupees Fifty One Lakhs Only) subject to return with interest at the rate of 36% p.a. to meet uncalled exigency. On the request of the revisionist, the respondent gave Rs. 51 lakhs to the revisionist vide cheque no. 299237, dated 14.06.2010, drawn on HSBC Bank. Against the said payment the revisionist herein executed a promissory note for a sum of Rs. 51 lakhs in favour of the respondent.

3. It is further alleged in the complaint that again in the month of August, 2010, the revisionist approached the respondent and requested for further financial help. The respondent again gave Rs. 19 lakhs to the revisionist through RTGS. Against the payment of Rs. 19 lakhs, the revisionist executed another promissory note in favour of the respondent. After due deductions, the revisionist issued two following cheques, first cheque no. 246320 of Rs. 70 lakhs and second cheque no. 246321 of Rs. 20 lakhs both dated 15.05.2011 drawn on Axis Bank Limited, to repay the said amount along with the interest at the rate of 36% p.a. to the respondent.

4. However, when both the aforementioned cheques were presented for encashment by the respondent, the same were dishonoured vide dishonour memo dated 19.05.2011 with the remarks "Account Blocked". Thereafter, the respondent issued a legal demand notice dated 02.06.2011 which was duly served upon the revisionist. However, when the revisionist failed to make the payment despite expiry of 15 days notice period, the respondent was constrained to file a complaint under Section 138 of NI Act in the

Court of Additional Chief Metropolitan Magistrate, Patiala House Court, Delhi on 12.07.2011.

5. On 14.09.2012, the learned Metropolitan Magistrate framed notice under Section 251 Cr.P.C. against the revisionist- Mr. Deepak Aggarwal and thereafter, vide judgment dated 04.09.2015 and order on sentence dated 07.09.2015 the learned Metropolitan Magistrate convicted the petitioner for the offence under Section 138 NI Act and sentenced him to undergo three months of rigorous imprisonment with the direction to pay a fine of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only), respectively, out of which Rs.5,00,000/- (Rupees Five Lakhs Only) to be deposited in the Court and Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) to be paid to the respondent as compensation.

6. Aggrieved from the aforesaid judgment and order on sentence the revisionist filed an appeal under Section 374(3) of Cr.P.C. before the learned District & Sessions Judge/ Additional Sessions Judge, i.e. CA No. 31/15, and the respondent/complainant filed a revision petition, i.e. CA No. 33/15, under Sections 397/377(3) of Cr.P.C. for enhancement of sentence. Both, the appeal as well as the revision was disposed of by the learned Additional Sessions Judge vide judgment/order dated 22.12.2015. Subsequently, the revisionist filed two revision petitions, i.e. Crl.Rev.P. 853/2015 and Crl.Rev.P. 302/2016, qua against the single common order passed by the learned Additional Sessions Judge dated 22.12.2015.

Hence the present revision petitions.

7. The learned counsel for the revisionist has submitted that the Court below did not appreciate the evidence on record properly, i.e., the onus to prove the liability always lies on the respondent no.2/ complainant, whereas the respondent No.2/complainant failed to discharge this onus. The learned counsel for the revisionist has further submitted that the respondent No.2/complainant has admitted during the cross-examination that the amount of Rs.51 lakhs paid by the revisionist was in the same transaction for which the share purchase agreement was executed however the same was subject to due diligence being observed by the revisionist.

8. The learned counsel for the revisionist has further submitted that even if, the factum of execution of promissory notes is accepted as it is, the same goes in view of the Article 22 of the Share Purchase Agreement which is later in point of time and the same supersedes any prior understanding between the parties.

9. The learned counsel for the revisionist has further submitted that the RTGS form by which the respondent no.2/complainant advanced money to the revisionist herein itself shows that the payment was given for the purpose of property which itself contradicts the very case of the respondent no.2/complainant and the respondent no.2/complainant has failed to prove its case on the point of due liability and, therefore, the case of the respondent no.2/complainant *ipso facto* goes and the Court below reached to the wrong conclusion.

10. In support of his arguments, learned counsel for the revisionist has relied upon the decision of the cases- ***Charanjit Gauba vs. Arjun Lal Ahuja & Anr.*** reported in ***2015 SCC OnLine Del 8030***, ***Vikal***

Business Corporation vs. Bishan Das & Anr. reported in ***(2013) 201 DLT 189***, ***Sam Daniel vs. John*** reported in ***2007 2 BC 102***, ***Anil Aggarwal vs. State & Anr. Crl.L.P. 535/2013***, decided on ***12.08.2015***, ***Delhi High Court***, ***Vijayraj vs. Githeyon Raj & Anr.*** reported in ***2004 (2) MWN (Cr.) DCC 18 (Mad.), Col. S S Chaudhary vs. State & Anr Crl. Rev.P. 666/2007*** decided on ***09.04.2009*** and ***Shri Vinay Parulekar vs. Shri Pramod Meshram*** reported in ***2008 Cri LJ 2405***.

11. The learned counsel for the respondent no.2/complainant, on the other hand, vehemently opposes the contentions raised on behalf of the revisionist and submits that the Court below has rightly appreciated the evidence on record and reached to the right conclusion and there is no interference required by this Court.

12. The learned counsel for the respondent no.2/complainant has pointed out three dates, i.e., payment of Rs.51 lakhs was made on 14.06.2010 and the other payment of Rs.19 lakhs was made on 16.08.2010 against which promissory notes were executed by the revisionist herein. He further submits that the Share Purchase Agreement, entered into by the parties on 22.06.2010 was never given effect too, i.e., never acted upon by either of the parties, and no shares were issued against this Share Purchase Agreement. The learned counsel for the respondent no.2/complainant further submits that the revisionist admits in his statement recorded under Section 313 of Cr.P.C. that this Share Purchase Agreement was annulled.

13. The learned counsel for the respondent no.2/complainant has pointed out to the statement of the revisionist recorded under Section

313 of Cr.P.C., wherein the revisionist has admitted his liability in the instant case, therefore nothing remains to be adjudicated upon and the statement *ipso facto* is sufficient to dispel the false plea taken by the revisionist.

14. The learned counsel for the respondent further submits that once the revisionist admits the liability in his statement under Section 313 of Cr.P.C., then it is for the revisionist to explain as to what were the circumstances under which the said amount was taken from the respondent No.2/complainant.

15. The learned counsel for the respondent no.2/complainant has further pointed out that the revisionist in response to the question no.4 in the statement under Section 313 of Cr.P.C. also admits the correctness of the documents. He further submits that on an oral demand made on behalf of the respondent no.2/complainant, the revisionist issued two cheques in the sum of Rs.70 lakhs and Rs.20 lakhs totalling to Rs.90 lakhs and the said cheques were returned unpaid, therefore, the respondent No.2/complainant issued demand notice to the revisionist demanding the aforesaid amount and the aforesaid facts have been admitted by the revisionist. So, the material evidence available on record makes it crystal clear to attract the provisions of Negotiable Instruments Act, 1881 in the present case and the Court below has reached to the right conclusion and has rightly passed the sentence against the revisionist.

16. The learned counsel for the respondent No.2/complainant has further referred to the receiving of demand notice by the revisionist

which finds mention in his statement recorded under Section 313 of Cr.P.C. and the revisionist has not replied to the said notice.

17. In the instant case a complaint was filed by the respondent/complainant, i.e., M/s Sood & Sood Builders Pvt. Ltd., under Section 138 read with Sections 140/141 of the NI Act which is Ex.CW1/A. As per the complaint, Mr. A.P. Sood, Managing Director of M/s Sood & Sood Builders Pvt. Ltd. advanced an amount of Rs. 51 lakhs in favour of M/s Avenue Holding Pvt. Ltd., the accused company which is Ex. PW1/2, vide cheque no.299237 dated 14.06.2010 drawn on HSBC Bank.

18. The revisionist- Mr. Deepak Aggarwal, Managing Director of M/s Avenue Holding Pvt. Ltd., executed a promissory note of Rs. 51 lakhs which is Ex. PW1/3 on 14.06.2010 on the same date, in consideration thereof.

19. It seems that the revisionist again sought loan from the respondent/complainant of Rs. 19 lakhs through RTGS. The request to banker is dated 16.08.2016 which is Ex.PW1/4. The confirmation letter for the aforesaid amount of Rs. 19 lakhs is Ex.PW1/5 dated 16.08.2010. The promissory note qua against the loan amount of Rs. 19 lakhs is Ex.PW1/6 dated 16.08.2010. The total loan amount granted to the revisionist and his company comes to around Rs. 70 lakhs.

20. The interest as agreed between the parties as per promissory notes, i.e. Ex. PW1/3 and Ex. PW1/6, was 36% p.a. Consequently, the revisionist issued first cheque no. 246320 of Rs.70 lakhs dated 15.05.2011, i.e., Ex.PW1/10 and the second cheque no. 246321 of

Rs. 20 lakhs dated 15.05.2010, i.e., Ex.PW1/8 qua against the interest in favour of the respondent/complainant.

21. Both the aforesaid cheques, i.e. Ex. PW1/10 and Ex. PW1/8, on presentation were dishonoured with remarks 'Account blocked' (situation covered 21-25), which are Ex.PW1/7 and Ex.PW1/9 dated 19.05.2011.

22. When the aforementioned cheques were returned back unpaid, the respondent/complainant issued legal notice dated 02.06.2011 which is Ex.PW1/11 qua against the revisionist bringing into his notice about the dishonouring of the said cheques and to make payment of the aforesaid two cheques amount.

23. The revisionist examined himself as DW1, wherein he has admitted receiving of Rs.51 lakhs by cheque and Rs.19 lakhs through RTGS from respondent/complainant during his cross-examination, which is reproduced hereunder:

> *"...It is correct that we have received RS.51 lac by cheque and against Rs.19 lac to RTGS from the complainant..." (underlining supplied)*

24. The revisionist/DW1 further admits in his cross-examination, the issuance of two cheques amounting to Rs.70 lakhs and Rs.20 lakhs in lieu of discharging the liability, which is reproduced hereunder:

> *"...Q1. Have you issued in discharged of aforesaid liability of Rs. 70 lacs two cheques amounting to Rs 70 lacs and 20 lacs towards interest in aforesaid amount 15.05.2011?*

Ans. <u>I had issued the aforesaid cheques for securing the payment of the complainant which was invested through my company approximately 1 year after the 1st amount was received I am confused about the year been 2011or 2012</u>..." (underlining supplied)

25. The revisionist/DW1 further admits receiving of legal demand notice, which is reproduced hereunder:

"Ans. <u>I had received the legal notice for bouncing of cheques which was premature as per our agreement</u>." (underlining supplied)

26. The revisionist/DW1 further admits in his cross-examination that legal notice was not replied too, which is reproduced hereunder:

"Q6. Have you given any reply to the legal notice received by you?
Ans. <u>No, I have not given any reply</u>." (underlining supplied)

27. The revisionist/DW1 further admits its liability through his conduct that the amount received was to be repaid, which is reproduced hereunder:

"Q7. You have appeared on 2.12.2011 before this court an agreed to settle by making the payment of aforesaid cheques and interest?
Ans. <u>Yes, I had agreed to settle on the moral grounds rather than on legal ground as the money was invested through my company. I had wished to reimburse the complainant even if the money was not forthcoming from the project</u>." (underlining supplied)

28. It seems that the revisionist tried his best to run away from its liability by showing the cards of Share Purchase Agreement, i.e.

Ex.CW1/D2, dated 22.06.2010 as well as profit sharing project. So far as the acting upon the agreement Ex.CW1/D2 is concerned, the same is not acted upon by the parties. The said admission by the revisionist/DW1 is reproduced hereunder:

> *"...We have not issued any share to the complainant against the aforesaid money." (underlining supplied)*

29. There is nothing proved on record by the revisionist in rebuttal to say that the money received by them was not in consideration of the loan amount but was an investment on profit sharing basis and the following judgments relied by the revisionist. i.e., ***Charanjit Gauba***(supra), ***Vikal Business Corporation vs. Bishan Das***(supra), ***Sam Daniel vs. John*** (supra), ***Anil Aggarwal vs. State*** (supra), ***Vijayraj vs. Githeyon Raj*** (supra) and ***Shri Vinay Parulekar vs. Shri Pramod Meshram,*** are not helpful to him in the present facts and circumstances of the case

30. The respondent/complainant has proved the complaint, i.e. Ex.CW1/A, the cheques nos. 246320 and 246321, i.e. Ex. PW1/10 and Ex.PW1/8 respectively, both dated 15.05.2011 and the legal demand notice dated 02.06.2011. It is pertinent to mention, that the defence of the revisionist is sham having no roots to see the twilight of the day.

31. Consequently, the order on conviction passed by learned Metropolitan Magistrate dated 04.09.2015 is upheld and does not require any interference.

32. So far as the enhancement of sentence awarded by the learned Additional Session Judge, i.e. rigorous imprisonment for three months to rigorous imprisonment for one year, is concerned the learned appellate Court has rightly appreciated the facts on record as the revisionist at the initial stage has admitted its liability and despite admitting the liability the revisionist kept on taking undue benefit of the legal process and harassed the respondent/complainant and backed out many times during the court proceedings too as per the order sheet of the learned Metropolitan Magistrate dated 29.03.2012 and 15.05.2012. The judgment relied by the revisionist in the case ***Col. S. S. Chaudhary*** (supra) is not applicable in the present facts and circumstances of the case. Therefore, nothing special circumstance arise in the instant case to interfere with the order passed by the learned Additional Sessions Judge dated 22.12.2015.

33. Consequently, the order on conviction dated 04.09.2015 passed by the learned Metropolitan Magistrate and the subsequent order of enhancement of sentence passed by the learned Additional Sessions Judge dated 22.12.2015 remains upheld and requires no interference by this Court.

34. As discussed above, this Court finds no merit in the contentions of the learned counsel for the revisionist. Consequently, the revision petitions, i.e. Crl.Rev.P. 853/2015 and Crl.Rev.P. 302/2016, are dismissed .

Let one copy of this judgement be placed on the file of Crl.Rev.P.302/2016. No order as to costs.

LCR files be sent back to the concerned Courts.

I.S.MEHTA

(JUDGE)

DECEMBER 09, 2016