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

\+ CRL.REV.P. 109/2017 & Crl.M.A.1842/2017 & Crl.M.B.192/2017

SATISH KUMAR ..... Petitioner

Through : Dr. L. S. Chaudhary, Mr. Ajay Chaudhary, Ms. Reema Bhola and Mr. Parambir Singh, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR ..... Respondents

Through : Mr. Tarang Srivastava, APP for R-1.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

<u>O R D E R</u>

% 02.02.2017

Petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 ('the Act', for short) by the trial court and sentenced to undergo simple imprisonment of six months and to pay double the amount of the cheque involved to respondent no.2 towards compensation and in default of payment to further undergo three months simple imprisonment.

Petitioner preferred an appeal before the Learned Additional Sessions Judge, Delhi, which has been dismissed vide judgment dated 28th January, 2017. That is how petitioner is before this Court by this revision petition under Section 397 of the Code of Criminal Procedure.

There are concurrent findings of two courts based on the appreciation of evidence, which, in my view, cannot be interfered with by this Court in exercise of its supervisory jurisdiction under Section 397 of the Cr.P.C., by re-appreciating the evidence. It is trite to note here that High Court will interfere only if the judgment suffers from any flagrant violation of any legal principle or any grave perversity is pointed out during the course of hearing.

Respondent no.2 alleged in the complaint that he had extended a loan of ₹1,25,000/- to petitioner in the month of December, 2004. Petitioner assured to repay the loan on or before 1st December, 2005. In discharge of the debt, petitioner issued the cheque bearing no.317301 dated 15th December, 2005 for ₹1,25,000/- drawn on Karur Vysya Bank Limited, Sant Nagar, East of Kailash, New Delhi favouring respondent no.2. Upon presentation, the said cheque was returned unpaid vide memo of the bank dated 21st December, 2005 with the remarks “Funds Insufficient”. Despite service of the legal notice dated 10th January, 2006, petitioner did not pay the cheque amount, hence, the complaint.

After pre-summoning evidence, trial court summoned the petitioner and notice under Section 251 Cr.P.C. for the offence under Section 138 of the Act was framed against the petitioner, who pleaded not guilty.

Respondent no.2 examined himself as CW-1. He was also cross- examined by the petitioner's counsel. After respondent no.2 closed evidence, the entire incriminating material, which had come on record, was put to petitioner, who denied the same. Petitioner stated that he had taken a loan of ₹1,25,000/- from one Shri Gopal Aggarwal on 10th July, 2004; the loan was arranged through the father of respondent no.2; transaction was reduced in hand writing of Mr. N. K. Sharma in presence of Mr. Badri Prasad (father of petitioner), Mr. Rajender Kumar (brother of petitioner) and Mr. N. K. Garg. Cheque No.317301 was issued towards security to Mr. Gopal Aggarwal. He repaid the total loan to Mr. Gopal Aggarwal, who in turn returned the written agreement along with cheque to father of respondent no.2. Written agreement was returned to petitioner by the father of respondent no.2 but the cheque was not returned on the pretext that same was not traceable. Subsequently, respondent no.2 has misused the said cheque for filing the complaint under Section 138 of the Act. Petitioner examined himself as DW-1 and his brother as DW-2.

On scrutiny of evidence, trial court has concluded that petitioner had admitted his signatures on the cheque,also the fact that the amount was filled in his handwriting. Respondent no.2 had claimed that the cheque was issued to Mr. Gopal Aggarwal as security. However Mr. Gopal Aggarwal was not produced. The defence remained unproved. Trial court has also concluded that issuance of cheque was not in dispute. The cheque in question Ex.CW-1/A was dishonoured vide banker's return memo Ex.CW-1/B. The amount was not paid despite legal notice, thus, the ingredients of the offence under Section 138 of the Act stood proved. It has also been noted that presumption under Section 139 of NI Act also arose in favour of the holder of the cheque which petitioner had failed to rebut. Appellate court has also concurred with the view taken by the trial court.

It was contended before the appellate court that cheque was filled in two different inks which indicated manipulation and fabrication of the cheque. Appellate court has held that Section 20 of NI Act creates a bar to such contentions because once a person has handed over the negotiable instrument after signing the same and leaving the other particulars thereof, then, he delegates his authority to the other person to fill up the other particulars. It was also contended that legal notice was not served. By placing reliance on the Supreme Court judgment appellate court has held that where the accused takes a plea of non-receipt of the legal notice, the date of service of summons issued by the Court upon him, can be considered and construed as the date of service of notice and in that eventuality as well, he is liable to pay the amount within 15 days of receipt of summons. Appellate court has also considered the depositions of the DW-1 and DW-2. It has been held that DWs had claimed to have handed over the cheque in question to Gopal Aggarwal at the instance of the father of respondent after obtaining cash loan of ₹1,25,000/- from him. However, none of them had claimed to had seen said Gopal Aggarwal handing over the cheque in question along with copy of an agreement to N. K. Sharma, father of respondent. It has been further noted that petitioner had not lodged any complaint with the police when cheque was allegedly not returned on payment of alleged loan to Mr. Gopal Aggarwal, nor did the petitioner instruct the bank to stop the payment in respect of the said cheque. It has also been concluded that testimony of DW-2 did not inspire confidence being an interested witness. Gopal Aggarwal was not produced which also goes against the petitioner.

I do not find the concurrent findings to be perverse and without any evidence. Learned counsel for the petitioner has placed reliance on Ex.CW-1/D2; however, it may be noted that same is signed by the petitioner, his father Shri Badri Prasad and one Shri N. K. Garg. This document has not been signed by respondent no.2 or his father. Respondent no.2 has not admitted, in his cross examination, that hand writing , appearing in Ex.CW-1/D2, was of his father. It may also be noted that Rajender Kumar (DW-2) has not signed Ex.CW-1/D2, though, he has claimed that this document was written in his presence. His deposition, thus, is of no value so far as alleged loan transaction between petitioner and Shri Gopal Aggarwal is concerned. Badri Prasad and N. K. Garg have not been produced. The defence taken appears to be improbable. Surprisingly, no receipt was taken regarding repayment of loan, as alleged by the petitioner. Shri Gopal Aggarwal was not produced in the witness box. It is also highly improbable that petitioner would have repaid ₹1,25,000/- to Shri Gopal Aggarwal without any written document and without return of the cheque. The conduct of the petitioner in not stopping the payment of the cheque, after it was not returned, as alleged by him, on the pretext of having been misplaced also goes against him.

For the foregoing reasons, petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

FEBRUARY 02, 2017/dk