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

+ CRL.REV.P. 569/2018, CrI. M.A. No. 12220/2018 & CrI. M.B. no. 1079/2018

KAPIL DUA

..... Petitioner

Through Mr. Harish Kohli and Mr. Brij  
Bhushan Solanki, Advs.

versus

STATE & ANR

..... Respondents

Through Mr. M.S. Oberoi, APP

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

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**09.07.2018**

Petitioner has been convicted by the trial court under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”, for short) and sentenced to face imprisonment till rising of the Court. He was also directed to pay compensation of ₹3,50,000/- to respondent no. 2 (complainant). It was further argued that in case of default of payment of compensation, petitioner shall undergo simple imprisonment for two months.

Petitioner preferred an appeal before the Sessions Judge, which has been dismissed by the Appellate Court, vide order dated 8<sup>th</sup> May, 2018. That is how, petitioner is before this Court by way of present petition under

Section 397 Cr.P.C.

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.

In any case signatures on the cheque were not disputed. Petitioner admitted that amount as reflected in the cheque was in his handwriting. However, it was further stated that petitioner's name and date were not filled in by him. Plea taken by the petitioner was that cheque was given to one Shri Vijender Kumar Singhal as security against the loan of ₹6,00,000/- taken by him. It was further stated that Shri Ashok Budhiraja and Shri Vinod Budhiraja were the mediators. Dispute arose between him on the one hand and Shri Ashok Budhiraa, Shri Vinod Budhiraja and Shri Vijender Kumar Singhal on the other, inasmuch as litigations are pending between them. Security cheque handed over to Shri Vijender Kumar Singhal has been misused by the petitioner. This bald statement is not sufficient to discredit the statement of complainant which is supported by the document,

that is, cheque in question. No evidence was led by the petitioner to prove his defence, which otherwise appears to have been taken as an afterthought. Petitioner did not summon any of these persons in the witness box, inasmuch as did not even issue any notice to Shri Vijender Kumar Singhal to return the alleged security cheque. It is also noted that legal notice under Section 138 of the Act was issued by the respondent no. 2 to the petitioner and receipt whereof has been admitted by the petitioner. However, petitioner even did not care to reply to the same, which fact also goes against the petitioner. Since signatures on the cheque have been admitted, presumption under Section 139 read with Section 118 of the NI Act arises, which has remained unrebutted as no cogent evidence was led in defence.

Petition is dismissed with costs of ₹10,000/- to be deposited with Delhi High Court Legal Services Committee. Miscellaneous applications are disposed of as infructuous.

**A.K. PATHAK, J.**

**JULY 09, 2018**  
*r.bararia*