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

RESERVED ON : FEBRUARY 28, 2018
DECIDED ON : APRIL 05, 2018

\+ **CRL.REV.P. 841/2017 & Crl.M.B.1988/2017**

SHIV SHAKTI METAL WORKS

..... Petitioner

Through : Mr.Roshan Santhalia with Mr.Ankit Miglani, Advocates.

versus

M/S THUKRAL STEEL CORP.

..... Respondent

Through : Mr.Sanjay Abbot with Mr.Ankit Agarwal, Advocates.

\+ **CRL.REV.P. 842/2017 & Crl.M.B.1989/2017**

M/S R K INDUTRIES

..... Petitioner

Through : Mr.Roshan Santhalia with Mr.Ankit Miglani, Advocates.

versus

M/S THUKRAL STEEL CORP

..... Respondent

Through : Mr.Sanjay Abbot with Mr.Ankit Agarwal, Advocates.

\+ **CRL.REV.P. 846/2017 & Crl.M.B.1955/2017**

SHIV SHAKTI METAL WORKS

..... Petitioner

Through : Mr.Roshan Santhalia with Mr.Ankit Miglani, Advocates.

versus

M/S THUKRAL STEEL CORP.

..... Respondent

Through : Mr.Sanjay Abbot with Mr.Ankit Agarwal, Advocates.

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

S.P GARG, J.

1. Revision petitions No.841/2017 and 846/2017 have been preferred by the petitioner-Shiv Shakti Metal Works through its proprietor Rajesh Chaudhary to challenge the legality and correctness of judgments dated 30.10.2017 of learned Addl. Sessions Judge in CA Nos.92/17 and 93/2017 respectively whereby findings of the learned Metropolitan Magistrate in CC Nos.22287/16 and 22185/16 regarding conviction under Section 138 Negotiable Instruments Act were upheld.

2. Revision petition 842/2017 has been filed by the petitioner-M/S R.K.Industries through its proprietor Rajesh Chaudhary to impugn the legality and correctness of a judgment dated 30.10.2017 of learned Addl. Sessions Judge in CA No. 96/2017 endorsing the findings of the learned Metropolitan Magistrate in CC No.22229/16 regarding conviction under Section 138 Negotiable Instruments Act.

3. The revision petitions are contested by the respondent.

4. I have heard the learned counsel for the parties and have examined the file. The petitioners were convicted under Section 138 Negotiable Instruments Act by the learned Metropolitan Magistrate and they were awarded various prison terms with fine.

5. Petitioners' counsel urged that the trial court did not appreciate the evidence in its true and proper perspective. The respondent was unable to establish or prove if cheques in question were issued by the petitioners towards discharge of any liability. The respondent did not produce any document, whatsoever, to show if any goods or articles were ever delivered to the petitioners pursuant to the issuance of the cheques. It is further urged that the cheques in question were issued as 'security' and the respondent failed to return them despite demand.

6. Learned counsel for the respondent urged that no sound reasons exist to interfere in the concurrent findings of the courts below.

7. It is not in dispute that the cheques in question were issued by the petitioners in favour of the respondent. These cheques were of various dates and amounts. Nothing has come on record to show if these cheques were issued by the petitioners in favour of the respondent as 'security'. It has come on record that there were business transactions between the petitioners and the respondent for the last about more than four years. It is further admitted that the respondent used to deliver goods to the petitioners on their placing orders for that. Rajesh Chaudhary in the examination admitted that certain amount was due from him and his wife. He volunteered to add that approximately one or two lacs were due towards him. Apparently, the petitioners had

business dealings with the respondent and pursuant to that the cheques in question were issued by him.

8. It has come on record that the respondent was in possession of relevant documents and had offered to produce them if so required. The petitioners did not insist for production of those documents. Adverse inference is to be drawn against the petitioners for not insisting for the production of those documents. Moreover, the petitioners themselves did not produce any document, whatsoever, to show as to how and in what manner the cheques in question were issued in favour of the respondent. The petitioners have admitted about the receipt of legal notice and no response to it was given by them. The courts below have rightly relied upon presumption under Section 118 of Negotiable Instruments Act in favour of the issuance of cheques in question towards the legal liability.

9. The findings of the courts below based upon fair appreciation of evidence deserve no intervention and are confirmed.

10. In revision petition No.841/2017 the petitioner has been sentenced to undergo simple imprisonment for six months with compensation amount of twice the cheque amount i.e.₹60,00,000/-; default sentence being simple imprisonment for six months.

11. In revision petition No. 842/2017 the substantive sentence is simple imprisonment for six months and the compensation amount is ₹20,00,000/-; default sentence is simple imprisonment for six months.

12. In revision petition No.846/2017 the petitioner has been sentenced to undergo simple imprisonment for six months with

compensation to the tune of ₹2,00,000/-; default sentence being simple imprisonment for six months.

13. On perusal of the sentence order it reveals that while awarding the sentence the courts below did not apply judicial mind. The business transactions were between the same parties; impugned orders under Section 138 Negotiable Instruments Act were passed on the same day by the trial court as well as by the appellate court. All the cheques were of different dates and on presentation they were dishonoured. It has further come on record that petitioner's wife in similar circumstances, was also convicted under Section 138 Negotiable Instruments Act. However, on her making payment of the compensation amount, the said matter was settled/compounded and she was acquitted of the charges.

14. In all the cases of different valuation of cheques, the substantive sentence for six months each has been awarded by the trial court. Again, the default sentence for the compensation amount which varies from ₹60,00,000/- to ₹2,00,000/- is simple imprisonment for six months each. This approach of the trial court to award default sentence without considering the compensation/cheque amount cannot be sustained.

15. Considering the facts and circumstances of the case, the sentence orders are modified. The substantive sentences awarded by the learned trial court in the revision petitions referred above are ordered to be run concurrently. While upholding the compensation amount being twice of the amount of the cheques which were dishonoured; the default sentence for non-payment of the compensation amount is altered to three months, one month and ten days in revision petition Nos.841/17, 842/17 and 846/17 respectively.

16. The revision petitions stand disposed of in the above terms.

17. Trial court record be sent back forthwith.

18. Copy of the order be sent to the Jail Superintendant for information.

S.P.GARG
(JUDGE)

APRIL 05, 2018/sa