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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 25/2018

PARVESH SHARMA

..... Petitioner

Through

Mr. Satyawan Atri, Adv.

versus

RAM KUMAR GUPTA

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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09.01.2018

Petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for 8 months with fine of ₹2.50 lacs and in default of payment of fine to undergo simple imprisonment of 60 days. Petitioner preferred appeal before the learned Additional Sessions Judge which has been dismissed vide judgment dated 27th October, 2017.

That is how petitioner is before this court by way of present petition under Section 397 Cr.P.C. read with Section 401 Cr.P.C.

There are concurrent findings of fact returned by the trial court and appellate court against the petitioner, on appreciation of evidence adduced before the trial court.

It is trite law that the revisional jurisdiction of the High Court under Section 397 Cr.P.C. is to be exercised only in an exceptional case when there is a glaring defect in the procedure or there is a manifest error on the part of law resulting in a flagrant miscarriage of justice. High Court, in exercise of its revisional jurisdiction, has not to sift and weigh the evidence on record and return finding of fact, as if hearing an appeal.

Respondent alleged in the complaint that he advanced friendly loan of ₹1,50,000/- to petitioner. Petitioner handed over three cheques of ₹50,000/- each to him, in discharge of the loan liability. On presentation, the cheques were returned dishonoured for want of sufficient funds. Cheque amount was not paid within the prescribed period despite service of legal notice, hence, petitioner had committed offence under Section 138 of the NI Act.

Trial court as well as appellate court have noted that signatures on the cheques were not disputed in response to the notice under section 251 CrPC. Defence taken by the petitioner was that around 15-16 cheques were signed and kept by him in the cheque book. His wife had given cheques to respondent without his prior consent and

knowledge and same were misused by the respondent. Trial court has noted that no such suggestion was given to complainant when he stepped in the witness box as CW1. A presumption arises in favour of complainant under Section 118 and Section 139 of the NI Act which petitioner had failed to rebut. Cheque amount was not paid within the prescribed period after service of notice, hence petition had committed offence under section 138 of N.I. Act.

Appellate court has noted that petitioner had taken a defence in his statement under Section 313 Cr.P.C. that respondent's wife was running a committee of which his wife was one of the member. His wife had given cheques to the wife of respondent which were misused. CW1 had denied running of any committee business by his wife in his cross examination. Petitioner had taken inconsistent defence.

In response to the notice under Section 251 Cr.P.C. he also stated that loan of ₹50,000/- was taken from the respondent and was repaid him in cash. Petitioner had stated that his wife had given cheques to respondent that he did not examine his wife in the witness box. Petitioner also did not issue any notice for return of the cheques

nor made any complaint to any authority that cheques were illegally retained by the respondent no.2. Petitioner also did not produce any evidence to show that he had paid ₹50,000/- to respondent in cash, findings of fact have been returned on appreciation of evidence. It cannot be said that findings returned by the trial court and appellate court are perverse, that is, having been reduced without any evidence.

Petitioner has failed to point out any violation of procedure of law, in the concurrent findings of fact returned by the trial court and appellate court, which may require interference by this court, in exercise of its revisional jurisdiction. I am of the view that concurrent findings of the two courts, that is, trial court and appellate court, that petitioner has been rightly convicted under section 138 of the N.I. Act not be interfered.

However, in the facts of this court the substantive sentence of imprisonment is reduced to five months from eight months. Sentence of fine is maintained.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

JANUARY 09, 2018

r.bararia