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

Date of decision: 14.10.2019

+ CRL.M.C. 5210/2019

RAM LAKHAN SHARMA

..... Petitioner

Through Mr.Pramod Tyagi, Adv.

versus

THE STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. Hirein Sharma, APP for State.
Mr.Farahim Khan, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

Crl. M.A. 38046/2019

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

Crl.M.C.5210/2019 & Crl.M.(Bail) 1791/2019

3. Vide the present petition, the petitioner seeks direction to quash/ set-aside the impugned Judgment dated 04.10.2019, passed by Sh. A.K. Mendiratta, Ld. District and Session Judge, North-East, Karkardooma Courts, Delhi, in C.A. Bearing No. 70/2019, title as "Ram Lakhan Sharma Versus Rambeer Singh" and judgment dated 06.06.2019 and order on

sentence dated 28.06.2019, passed by Sh. Devender Kumar Garg, Ld. CMM, North-East, Karkardooma Courts, Delhi, in complaint case bearing no. 179/2016, under section 138 of NI Act.

4. The brief facts of the case are that the petitioner/convict requested the complainant/respondent No.2 for loan of Rs. 4,00,000/- to solemnise the marriage of his daughter. He could not repay the loan and in discharge of his legal liability, the petitioner/convict issued one post dated cheque bearing no.000017, dated 20.07.2016, drawn on Bank of Baroda, Karawal Nagar, Delhi for Rs.4,00,000/- in favour of complainant/respondent No.2. The petitioner also executed an acknowledgement of aforesaid loan transaction and handed over to respondent No.2, the said cheque was presented for encashment before the bank of respondent No.2 and the same was returned unpaid with remarks "Payment stopped by drawer". Thereafter, after completion of statutory requirement, respondent no.2 filed complaint and after trial, the Ld. Trial Court convicted and sentenced the petitioner to pay an amount of Rs.4,00,000/- with interest at the rate of 9% p.a. from 21.07.2016. He further suffered SI for 6 months and a sum of Rs.5,000/- and imposed litigation charges of Rs.5,000/- vide order dated 28.06.2019.

5. Being aggrieved, the petitioner appealed before the Appellate Court

and the same was also dismissed on 04.10.2019.

6. The present petition has been filed on the ground that the petitioner and respondent no.2/complainant has settled their disputes and pursuant to the settlement, the petitioner has paid an amount of ₹3 lacs which has been accepted by respondent no.2/complainant without any protest.

7. The complainant/respondent no.2 is present in person with her counsel and has produced Voter I-Card issued by Election Commission of India on 04.02.2010 bearing No.XCNO266142 (original seen and returned)

8. Counsel for respondent no.2 submits that the petitioner has taken loan to perform marriage of his daughter, therefore, he being very poor person could not repay the amount and respondent no.2 has good means in the society, therefore, he has just forgiven him and accepted an amount of ₹3 lacs and submits that he has no objection if the present petition is allowed.

9. Keeping in view the settlement arrived at between the parties and the poor financial condition of the petitioner, I hereby allow the present petition.

10. In addition to above, as per the guidelines enshrined in decision rendered in ***Damodar S.Prabhu vs Sayed Babalal H, (2010) 5 SCC 663*** by the Hon'ble Supreme Court, the petitioners are required to pay 10% of the cheque amount to be deposited as a condition for compounding with the

Delhi Legal Services Authority, Patiala House Courts Complex, New Delhi.

11. However, keeping in view the poor financial condition of the petitioner, I hereby waive off the cost.

12. Consequently, the judgment dated 04.10.2019, 06.06.2019 and sentence order dated 28.06.2019 are hereby set aside.

13. Accordingly, the petitioner is acquitted from case complaint bearing no.179/2016 filed under section 138 of the NI Act.

14. I hereby direct the concerned Jail Superintendent to release the petitioner forthwith.

15. Order *dasti* under the signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 14, 2019
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