

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

Date of Order: August 08, 2019

+ **CRL.REV.P. 424/2018**

SANJEEV CHANANA

.....Petitioner

Through: Mr. Ashish Upadhyay, Advocate

Versus

SANDEEP CHAUDHARY

.....Respondent

Through: Mr. Kishan Nautiyal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

In proceedings under Section 138 of Negotiable Instruments Act, 1881 trial court vide judgment of 3rd February, 2017 has held petitioner guilty for the dishonour of four cheques of ₹10,00,000/- each. Vide order of 1st April, 2017, trial court has sentenced petitioner to simple imprisonment of one year and fine of ₹62,50,000/- with default clause. Out of the fine imposed, amount of ₹62,00,000/- is to be paid to respondent-complainant and ₹50,000/- is to be deposited in the *Prime Minister National Relief Fund*.

Appellate Court vide impugned judgment of 27th April, 2018 has upheld petitioner's conviction and sentence. The facts noticed by the Appellate Court in the judgment of 27th April, 2018 are as under:-

“Facts of the case are mentioned in the impugned judgement and therefore, I shall not repeat the same. It is an admitted fact that property bearing no. J-282 Saket, New Delhi was constructed by the appellant and third floor of the property was sold to the respondent/complainant. Sh. Satish Chand Jain was the registered owner of the property. The appellant who is a developer, reconstructed the property under a collaboration agreement with the registered owner. As the developer of the property, appellant had the right to sell certain portions of the property.

According to the respondent, the property was to be handed over to him by 31.05.2008. There was delay in handing over the property and the work was also not complete. Therefore, the parties entered into the MOU dated 21.04.2010 Ex. CW1/A. It was agreed that the respondent would pay a sum of Rs. 16 lacs to the registered owner of the property. This amount was actually to be paid by the appellant to the registered owner. The appellant agreed to pay a sum of Rs. 46 lacs to the respondent to return the said amount of Rs. 16 lacs to the respondent, to compensate him towards the interest on the amount of Rs. 1.33 crores already paid towards the consideration of the property and on account of the incomplete work. The appellant issued five cheques as detailed at internal page 6 of the MOU. The first cheque bearing no. 165821 dated 20.06.2010 was for Rs. 6 lacs. The remaining four cheques all dated 30.08.2010 were for Rs. 10 lacs each.

The appellant was tried in respect of four cheques of Rs. 10 lacs each. On being asked, the respondent informed the Court that the first cheque which was for Rs. 6 lacs was not presented by him as it had become stale.”

It is matter of record that the cheques in question have been dishonoured on account of ‘insufficient funds’ and these cheques relate to ‘Memorandum of Understanding’ of 21st April, 2010, wherein it is

recorded that these cheques have been issued as compensation for not handing over the possession of the subject property for 22 months and the post-dated cheques were handed over by petitioner to respondent for not carrying out work/repairs as mentioned in the '*Memorandum of Understanding*'. The evidence led by the parties comprises of deposition of petitioner and respondent and the documents relied upon by them.

The stand taken by petitioner before the courts below was that the aforesaid "*Memorandum of Understanding*" was got executed forcibly in police post, Saket. The concurrent finding returned by the courts below is that petitioner had not taken any action to get aforesaid Memorandum of Understanding declared annulled.

To assail the concurrent findings returned by the courts below, learned counsel for petitioner has urged that the sale consideration for the property in question was ₹27,00,000/- and it is beyond any logic that on the said property, repair work of ₹46,00,000/- was to be done. It is submitted that respondent has not placed on record the '*Agreement to Sell*' of 26th April, 2010. It is further submitted that respondent has been cross-examined in detail on the sale transaction aspect and respondent has not been able to show from his Income Tax Returns about the sale transaction in respect of property in question being of ₹1.40 Crore. It is pointed out that respondent in his evidence has admitted that the amount stated in the '*Agreement to Sell*' (Ex. CW/I/DA) is the final amount of sale consideration. It is thus submitted that respondent has failed to prove that there was any debt or liability and so, the conviction and sentence awarded to petitioner deserved to be set aside.

Petitioners' counsel places reliance upon Supreme Court's decision in *Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan* (2013) 5 SCC 722 to submit that the conviction cannot be based solely on the statement under Section 313 of Cr. P.C. Attention of this Court is also drawn to decision of a Coordinate Bench of this Court in *Anil Aggarwal Vs. State & Anr.* 2015 IX AD (DELHI) 377 to submit that to discharge the burden, accused need not examine himself and can seek to do so on the basis of material already brought on record. Reliance is also placed by petitioner's counsel upon decisions of Coordinate Benches of this Court in *Devender Kumar Vs. Khem Chand* 223 (2015) DLT 419; *Satish Kumar Vs. State NCT of Delhi & Anr.* 204 (2013) DLT 289 and *Amul Urhwareshe Vs. State (NCT of Delhi) and Anr.* 2013 (2) Crimes 80 (Del.) in support of above submissions. Thus, acquittal of petitioner is sought while asserting that necessary ingredients of the offence alleged do not exist.

On the contrary, learned counsel for respondent supports the impugned judgment and submits that conviction and sentence awarded to petitioner is well merited and the decisions relied upon are distinguishable on facts.

Upon hearing and on perusal of impugned judgment, evidence on record and the decisions cited, I find that the issuance of cheques and the 'Memorandum of Understanding' of 21st April, 2010 are not disputed by petitioner. During the course of hearing, the whole emphasis of petitioner's counsel is on the ground that there was no legally enforceable debt or liability and the case of respondent of petitioner agreeing to pay

₹46,00,000/- for not carrying out repair work and for the delay in handing over possession of the subject premises, is without any substance. What was the total sale consideration of '*Agreement to Sell*' being not proved on record, is of no consequence, as the basic question of existing debt or liability is required to be considered in the light of "*Memorandum of Understanding*" of 21st April, 2010, which is an admitted document. Petitioner's stand of this document being obtained under duress remains unsubstantiated. Upon bare perusal of aforesaid "*Memorandum of Understanding*", I find that petitioner had issued the cheques in question for not carrying out repair works in the subject premises and for the delay in handing over the possession of the subject premises to the respondent. In the considered opinion of this Court, the sale consideration aspect pales into insignificance, as the cross-examination of respondent-complainant in respect of the "*Memorandum of Understanding*" is inconsequential and the petitioner has not led any evidence to show that the aforesaid "*Memorandum of Understanding*" was obtained under duress. In any case, petitioner had not taken any steps to get the aforesaid "*Memorandum of Understanding*" annulled. Not only this, petitioner has not led any evidence before the trial court.

Reliance placed by petitioner's counsel upon Supreme Court's decision in *Raj Kumar Singh (Supra)* does not advance the case of petitioner because the conviction of petitioner is not based on contents of his statement under Section 313 Cr.P.C. In *Raj Kumar Singh (Supra)*, the ambit of Section 313 Cr.P.C. has been dwelt upon. A statutory presumption arises against petitioner, which petitioner fails to rebut. In

Anil Aggarwal (Supra), it has been reiterated that the statutory presumption can be rebutted on the basis of material on record. There is no dispute with this proposition of law. However, I find that in the instant case, petitioner has failed to rebut the statutory presumption raised against him, as issuance of cheques in question by petitioner remains undisputed.

Whether the quantum of sale consideration in respect of subject premises is reflected in income tax returns or not, is inconsequential, as the quantum of sale consideration is not the subject matter of consideration in this petition. It is a settled legal position that concurrent findings of the court below are not to be interfered by the Revisional Court unless the error/ lacuna pointed out goes to the root of the matter. That is to say, unless there is palpable error apparent on the face of record, the concurrent findings of the courts below are not required to be disturbed. It has been so reiterated by Supreme Court in its recent decision in *T. Ramalingeswara Rao (Dead) Through Legal Representatives & Anr. Vs. N. Madhava Rao & Others* (2019) 4 SCC 608, which reads as under:-

“11. When the two courts below have recorded concurrent findings of fact against the plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High Court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be wholly perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

Upon finding conviction of petitioner to be fully justified, I find that the sentence awarded to petitioner needs to be modified.

In the facts and circumstances of this case, while upholding petitioner's conviction, the sentence awarded to him is modified to the extent that the substantive sentence awarded to petitioner is set aside. However, sentence of fine is maintained, which is rounded off to ₹62,00,000/-.

The substantive sentence awarded to petitioner was stayed during pendency of this petition, subject to his depositing ₹62,00,000/- with the Registrar General of this Court. It appears from the order of 22nd October, 2018 that the fine has been deposited with the Registrar General of this Court. The fine deposited with interest accrued thereupon, if any, be remitted to respondent-complainant forthwith.

Consequently, this petition is partly allowed to the extent indicated above and is accordingly disposed of.

AUGUST 08, 2019
v/r

(SUNIL GAUR)
JUDGE