

\$~28

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

+ **CRL.REV.P. 933/2019**

VIKAS ARORA

..... Petitioner

Through: Mr Vikram Aggarwal, Advocate
along with the petitioner in person.

versus

PRACHI ARORA & ANR

..... Respondents

Through: Ms Kusum Dhalla, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

04.02.2020

1. The petitioner has filed the present petition impugning an order dated 31.07.2009 passed by the learned ASJ, Dwarka Courts, whereby the petitioner's appeal (Criminal Appeal No.12/2018) preferred against a judgment dated 09.11.2017 and order on sentence dated 14.11.2017 passed by the learned MM was rejected.
2. Admittedly, the petitioner had issued a cheque bearing no.105363 dated 25.05.2014 for a sum of ₹3,000/- drawn on Dena Bank, Branch Navada, Uttam Nagar, Delhi-110059 in terms of the settlement arrived at with his wife (respondent no.1 herein). Respondent no.1 filed a complaint alleging that she had presented the cheque through her bankers and the same was returned dishonoured on presentation.
3. The said cheque was returned by a memo dated 31.05.2014, which

was duly placed on record. Respondent no.1 issued a legal notice under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) which was admittedly received by the petitioner.

4. The petitioner responded to the said notice but did not pay the amount of ₹3,000/-. Aggrieved by the same, respondent no.1 filed a complaint before the learned MM. After she had led pre-summoning evidence, notice was issued to the petitioner. It was put to him that the cheque issued by him in favour of complainant (respondent no.1), was in discharge of his legal liability towards the complainant and had been dishonoured with remarks “drawers signatures differ”. The same was reflected in the cheque return memo dated 31.05.2014. It was also put to him that a legal demand notice had been served upon him and despite receipt of the said notice he had failed to pay the amount within a period of fifteen days and therefore, had committed an offence under Section 138 of the NI Act. The petitioner pleaded not guilty. He admitted that he had issued the cheque and had received a notice under Section 138 of the NI Act; but, asserted that the said cheque was neither presented to his bank nor was dishonoured by the said bank.

5. Respondent no.1 examined herself and was cross-examined by the counsel for the petitioner. The petitioner examined three witnesses in his defence. The Trial Court examined the evidence and had found that the evidence on record established that the cheque was presented by respondent no.1 was dishonoured indicating the reason for such dishonour as “the drawer’s signature differ”.

6. It is relevant to note that before the Trial Court, the petitioner stated that he was ready and willing to make the requisite payment. The Trial Court, however, held the petitioner guilty of the offence under Section 138 of the NI Act. The petitioner was, thereafter, directed to pay a fine of ₹6,000/- and was also sentenced till the rising of the Court.

7. Aggrieved by the same, the petitioner preferred an appeal before the learned ASJ, which was also dismissed by the impugned order. The learned ASJ examined the documents on record including those exhibited by witnesses for the defence and found that the signatures used by the petitioner in signing the cheques were different from the one on the record of the bank inasmuch as, the alphabet 'V' as used in the signature was completely dissimilar to the signatures on the record of the bank. The learned ASJ also reasoned that the petitioner's challenge his conviction was without merit, in the given facts of this case, as the petitioner had failed to pay the amount even though it was admitted that the cheque in question was issued by him and it was established that the same was dishonoured. The Court also observed that the petitioner could pay the amount on receipt of notice or summons. However, the petitioner had insisted on contesting the complaint. In view of the above, the learned ASJ dismissed the appeal preferred by the petitioner while noting that the sentence awarded to the petitioner was on the lower side (describing the same as a fleabite sentence).

8. The learned counsel appearing for the petitioner submitted that the courts below had erred as they had not appreciated that the cheque in question was never presented to the petitioner's bank. This contention is unmerited as the respondent no.1 had produced the cheque returning memo

and it was established that the cheque was presented and returned.

9. This Court concurs with the view expressed by the learned ASJ and finds no reason to interfere with the order impugned herein.

10. Accordingly, the petition is dismissed.

VIBHU BAKHRU, J

FEBRUARY 04, 2020

MK