

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 774/2018 & CRL.M.(B).1392/2018

Date of decision: 03rd February, 2021

IN THE MATTER OF:

G D KATARIA Petitioner

Through Mr. Medhanshu Tripathi, Advocate

versus

AVL LEASING & FINANCE LTD Respondent

Through Mr. Anuj Soni, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant revision petition is directed against the order dated 27.08.2018, passed by the Additional Session Judge/Special Judge (NDPS), West District, Tis Hazari Court, Delhi, in Criminal Appeal being CA No. 153/2018, whereby the Additional Session Judge has dismissed the appeal and has affirmed the order dated 26.04.2018, passed by the Metropolitan Magistrate in CC No.8073/2016, convicting the petitioner herein for offences punishable under section 138 of Negotiable Act, 1881 (hereinafter referred as 'The N.I. Act'). The petitioner has also challenged the order dated 12.07.2018 in the said Criminal Appeal whereby the Metropolitan Magistrate has sentenced the petitioner to undergo simple imprisonment for a period of two months and also directed the petitioner to pay an amount of

Rs. 13 Lakhs as fine payable as compensation to the respondent herein as per the provisions of Section 143(1) (Provisio) of N.I. Act read with Section 357(1)(3) of Cr.P.C.

2. The facts leading to the instant revision petition are as under:

- a) The respondent is a leasing and financing company. The respondent financed a bus for the petitioner by giving a loan. In discharge of the liability the petitioner handed over three cheques drawn on Bank of Punjab Limited. Rajouri Garden, Delhi bearing number 327226 dated 13.04.2003 for an amount of Rs. 1 lakh, number 327227 dated 28.07.2003 for an amount of Rs. 3 lakhs and number 327338 dated 27.07.2003 for an amount of Rs. 2,84,000 in favor of the respondent.
- b) When the respondent deposited these cheques they were returned as unpaid/dishonored for the reason "*Funds Insufficient*".
- c) Notice as required under Section 138 of the N.I. Act was issued by the respondent calling upon the petitioner herein to make the payment within 15 days of receipt of the notice. The payment was not received and a complaint was filed under Section 138 of the N.I. Act before the court of the Metropolitan Magistrate, West District, Tis Hazari Court, Delhi.
- d) Before the Metropolitan Magistrate it was contended by the petitioner herein that he took a loan for purchasing a bus with registration number DL1 PA 5798 and at the time of taking the loan 36 blank signed cheques were given as security towards

the repayment of the loan. It is stated that in October, 2002 the petitioner herein handed over the vehicle to the respondent company for getting the vehicle converted to CNG and entered into a new lease agreement, but neither was the said vehicle returned to the petitioner herein nor were the accounts related to the hire purchase agreement settled. It was stated before the Metropolitan Magistrate that as the vehicle is in the possession of the respondent herein and the cheque given by the petitioner/accused had been misused.

- e) It was stated before the Metropolitan Magistrate that the bus No.DL1 PA 5798 was re-possessed by the respondent. It was also stated the a No Objection Certificate dated 30.08.2003 along with form 35 was issued by the issuing authority and the respondent herein had given a No objection with regard to the bus bearing No.DL1 PA 5798.
- f) The Metropolitan Magistrate after examining the documents found that the deposition of the accused/petitioner herein is inconsistent with the evidence on record. The Metropolitan Magistrate also found that in relation to bus number DL1 PA 5798, accused/petitioner herein had deposed that the complainant/respondent herein has already sold the bus, but officer from Transport Department (DW-2), Delhi placed on record the RC which shows that the accused/petitioner herein is the owner of the bus. As per the RC, bus number DL1 PA 5798 is registered in the name of the accused and NOC has been issued by hypothecatee on 10.09.2003. The Metropolitan

Magistrate held that the averments of the accused/petitioner herein in relation to the sale of this vehicle despite payment of 13 installments is incorrect as the ownership of the vehicle still vests with the accused/petitioner herein.

- g) The Metropolitan Magistrate after examining the documents came to the conclusion that this case pertains to the bus bearing registration number DL1 P 7279.
- h) The Metropolitan Magistrate found that the accused/petitioner herein and the complainant/respondent herein had dealings in relation to two buses. It was found that the petitioner had another bus bearing No. DL1 P 7279 which was under the loan of the Motor & General Finance Ltd. Company (hereinafter referred as 'The MGF Ltd.') in the year 1995. The loan was taken over by the respondent company.
- i) The Metropolitan Magistrate held that AR of the complainant deposed that a sum of Rs. 8 Lakhs was lent to the accused in the year 2001 wherein certain payments were made to the accused and the remaining payment was made to MGF India Limited. The Metropolitan Magistrate held that this was consistent with the testimony of the accused wherein he has admitted that he cleared his loan with MGF India Limited in 2001, CW-1 also deposed that one bus was in the name of the accused and the other bus was financed and the amount deposited by the complainant company was against the bus which was already in the name of the accused (i.e. DL1P7279 as admitted by the accused). It was also deposed by him that

for the other bus, payments were made to some other company. Therefore the AR of the Complainant has clearly deposed that payments were made to MGF India Limited on the behalf of the accused for bus bearing No DL1P7279.

- j) The Metropolitan Magistrate also found that the contention of the accused/petitioner herein that no payments were made to the MGF Ltd. Company were also not correct.
- k) The Metropolitan Magistrate therefore held that the accused/petitioner herein has not been able to rebut the presumption that the cheques had been paid for discharge of any liability.
- l) The Metropolitan Magistrate by an order dated 26.04.2018 convicted the petitioner herein for offences under Section 138 of the N.I. Act.
- m) The above said judgment was challenged before the Additional Session Judge in CA No. 153/2018. After going through the records the Additional Session Judge upheld the judgment dated 02.07.2018 passed by the Metropolitan Magistrate, (N.I. ACT) West District, Tis Hazari Courts, Delhi in CC No.8073/2016 convicting the petitioner and also the order on sentence dated 12.07.2018, passed by the Metropolitan Magistrate, (N.I. ACT) West District, Tis Hazari Courts, Delhi in CC No.8073/2016, imposing simple imprisonment for two months period and fine of Rs. 13 Lakhs.
- n) The Additional Session Judge after going through the material on record found that the three cheques were issued by the

petitioner towards legally enforceable debt, due to respondent.

3. Heard Mr. Medhanshu Tripathi, learned counsel appearing for the petitioner and Mr. Anuj Soni, learned counsel appearing for the respondent.

4. Mr. Medhanshu Tripathi, learned counsel for the petitioner contends that the failure on part of the respondent to submit their books of accounts is fatal to the case of the respondent. He would contend that the courts below ought to have drawn adverse inference against the respondent when the respondent deliberately did not produce the books of accounts even though the respondent had undertaken to produce the books of accounts.

5. Mr. Medhanshu Tripathi, learned counsel for the petitioner would rely on the judgment of the Supreme Court in M.S. Narayana Menon v. State of Kerala, reported as (2006) 6 SCC 39 to contend that it was for the complainant/respondent herein to produce the books of accounts and without producing the books of accounts it cannot be said that there was a debt due and subsisting and the cheques have been issued for discharge of debt.

6. Mr. Tripathi would further contend that the Metropolitan Magistrate had erred in relying upon the improved testimony of the respondent company. He would further contend that the vehicle had been re-possessioned and sold and therefore nothing was due and payable.

7. On the other hand, Mr. Anuj Soni, learned counsel for the respondent would support the judgments of the courts below to contend that all the points now being raised have already been dealt with by the Metropolitan Magistrate in his judgment and which has not been disturbed by the appellate Court.

8. Section 118 of the N.I. Act raises a presumption that a cheque is issued for consideration until the contrary is proved. It is well settled

position that the initial burden in this regard lies on the accused to prove the non-existence of debt by bringing on record such facts and circumstances which would lead the court to believe the non-existence of debt either by direct evidence or by preponderance of probabilities.

9. In the present case other than mere *ipse dixit* of the petitioner that there was no debt due and payable nothing is on record to show that the cheques were not issued for discharge of liability for the bus. The second bus bearing registration No. DL 1 PA 5798 stood in the name of the accused. There is nothing to show that the liability for the first bus bearing registration No. DL1 P 7279 has been discharged.

10. The purpose of introducing Section 138 of the N.I. Act was to bring sanctity in commercial transactions.

11. In Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd., reported as **(2001) 6 SCC 463**, the Supreme Court observed as under:

“3. The Act was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day world, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to

another. To achieve the objectives of the Act, the legislature has, in its wisdom, thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country.” (emphasis supplied)

12. Two courts below have looked into the entire records of the case and have come to the conclusion that the cheques have been given in discharge of debt. The petitioner only seeks to take advantage of the fact that the respondent did not produce the books of accounts to rebut the initial presumption which was for the petitioner to show that the amount of loan taken by him and the amount that should be repaid in order to discharge the initial burden and the petitioner has failed to discharge the initial onus of proof.

13. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is extremely narrow. In State v. Manimaran, reported as **(2019) 13 SCC 670**, the Supreme Court observed as under:

“16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , ordinarily it would not be appropriate

for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.” (emphasis supplied)

In State of Haryana v. Rajmal, reported as (2011) 14 SCC 326, the Supreme Court observed as under:

“14. In State of A.P. v. Pituhuk Sreeinvasa Rao [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

It has been also held by this Court in Amar Chand Agarwalla v. Shanti Bose [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC 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 a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)” (emphasis supplied)

In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, reported as (1999) 2 SCC 452, the Supreme Court observed as under:

“5. Having examined the impugned judgment of the High

*Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. **In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.***

(emphasis supplied)

14. Having gone through the material on record this court does not find that the judgment of the courts below require any interference. The learned counsel for the petitioner has not been able to demonstrate that the findings of the courts below are perverse. The fact that the respondent did not file the books of accounts is not fatal to the case of the respondent. It was open to the petitioner to produce his books of accounts to rebut the presumption and bring out a *prima facie* case that there was no debt due and payable on the date the cheques were dishonoured. The petitioner has not been able to discharge the initial burden on him to rebut the presumption under Section 118 of the N.I. Act. The fact that the petitioner took financial assistance from the respondent is admitted. The petitioner has not been able to show as to how there was no subsisting debt on the date when the cheques were dishonoured due to insufficiency of funds.

15. No case has been made out which would warrant interference under Section 397/401 Cr.P.C.

16. Accordingly, the revision petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J.

FEBRUARY 03, 2021

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