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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ CRIMINAL REVISION PETITION NO. 590/2022 &
CRL.M.As. 18373-74/2022

Between:-

ROOTS PRODUCTION PRIVATE LIMITED
THROUGH ITS AUTHORISED SIGNATORY
HAVING ITS OFFICE AT HOUSE NO. 55,
PANCHSHEEL COLONY,
MAHAVIR ENCLAVE,
NEW DELHI – 110045

.....REVISIONIST

(Through: Mr. Rohit Rattu, Advocate)

AND

MS. AARTI MALHOTRA
W/O SH. RAVINDER MALHOTRA
R/O 164, SAINI ENCLAVE, VIKAS MARG,
NEW DELHI-110092

ALSO AT:

B-71, B.K. DUTT COLONY,
NEAR SAFDARJUNG AIRPORT,
LODHI ROAD, NEW DELHI-110003

..... RESPONDENT

(Through: None)

+ CRIMINAL REVISION PETITION NO. 591/2022 &
CRL.M.As.18375-76/2022

Between:-



**ROOTS PRODUCTION PRIVATE LIMITED
THROUGH ITS AUTHORISED SIGNATORY
HAVING ITS OFFICE AT HOUSE NO. 55,
PANCHSHEEL COLONY,
MAHAVIR ENCLAVE,
NEW DELHI – 110045**

.....REVISIONIST

(Through: Mr. Rohit Rattu, Advocate)

AND

**MS. AARTI MALHOTRA
W/O SH. RAVINDER MALHOTRA
R/O 164, SAINI ENCLAVE, VIKAS MARG,
NEW DELHI-110092**

ALSO AT:

**B-71, B.K. DUTT COLONY,
NEAR SAFDARJUNG AIRPORT,
LODHI ROAD, NEW DELHI-110003**

..... RESPONDENT

(Through: None)

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Pronounced on : 21.09.2022

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The revision being CrI. Rev. P. No.590/2022 under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the order dated 04.08.2022 passed by the Additional Sessions Judge-08, West District, Tis Hazari Courts, Delhi, whereby, the appeal being CrI. A. No.36/2021 preferred by the petitioner for enhancement of sentence has been dismissed. Another revision being CrI.



Rev. No.591/2022 in Criminal Appeal No.36/2021 whereby the appeal preferred by the respondent against the conviction under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) and order on sentence has been allowed. Since both the revisions are against the common order, therefore, they are being decided analogously.

2. The facts of the case are that the petitioner/complainant is a private limited company which claims to be providing to its customers a strong foundation of seamless and flawless backend operations to ensure a definite success in every event and activation services. According to the petitioner/complainant, the respondent placed an order for stall fabrication work at Ludhiana. The total amount for work was agreed for Rs. 8,40,000/-, out of which, a sum of Rs. 3,43,000/- stated to have been paid by cheque no. 512396 dated 08.10.2014 drawn on State Bank of India, Anand Vihar, Delhi. On 10.10.2014, the petitioner was informed by his bank that the cheque in question is not encashed and dishonoured with the reason 'payment stopped'. The cheque returning memo is dated 10.10.2014. The petitioner/complainant company issued legal notice dated 08.11.2014. Since no payment was made by the respondent and reply dated 09.12.2014 was sent denying the liability, therefore, the petitioner company filed complaint case against the respondent under Section 138 of the NI Act. The learned Metropolitan Magistrate after recording pre-summoning evidence, took cognizance and directed for issuance of summons against the respondent. The respondent after entering her appearance was served with notice under Section 251 Cr.P.C. and she pleaded not guilty and claimed trial. The respondent in her application under Section 145(2) of the NI Act took defence that a formal agreement was to be entered between her and the



petitioner/complainant but the petitioner/complainant did not turn up and did not do any work owing to which the payment qua the cheque in question was stopped. According to her, no order was ever placed with the petitioner/complainant and there was no certificate of work completion. After recording the evidence of the petitioner/ complainant and the respondent/accused, the learned Magistrate vide judgment dated 21.08.2020 convicted the respondent for the offence punishable under Section 138 of the NI Act. By separate order dated 06.01.2021, the respondent was sentenced to undergo simple imprisonment till rising of the court and she was also directed to pay compensation of Rs. 3,43,000/- to the petitioner/ complainant within 30 days from the date of the order.

3. Both the orders were challenged by the respondent before the Additional Sessions Judge in appeal. The appeal preferred by the respondent was registered as Criminal Appeal No.80/2021. The petitioner/complainant also preferred appeal praying for enhancement of sentence which was registered as CrI. Appeal No.36/2021. The appeal preferred by the respondent has been allowed and the judgment on conviction and order on sentence has been set aside, whereas, the appeal preferred by the petitioner/complainant has been dismissed, therefore, the petitioner/complainant has preferred two revision petitions before this court.

4. I have heard learned counsel appearing for the revisionist and perused the record.

5. The learned counsel appearing for the petitioner submits that the impugned order is illegal and improper and the same has been passed in ignorance of the settled legal position. According to him, the respondent



kept on changing her defence. He also stated that during recording of the statement under Section 313 of the Cr.P.C., the respondent alleged that an order was placed with the revisionist but at the stage of filing of an application under Section 145(2) of the NI Act and during cross-examination, her defence was that no order was placed with the revisionist. According to him, since no documents were produced with respect to placement of the order, on this ground, the order of conviction and sentence would not have been set aside. He further submitted that the offence under Section 138 of the NI Act is primarily a civil wrong and the burden of proof is on accused in view of presumption under Section 139 of NI Act.

6. A perusal of the facts show that the cheque in question was issued on 08.10.2014 and it was dishonoured on the third day i.e. on 10.10.2014. It is a matter of record that there is no agreement between the parties for execution of any work. No bill is produced by the petitioner qua incurring any expenditure in execution of the contract. The respondent has successfully discharged the onus to prove that there was no admitted liability against her. There is no evidence on record to establish that there was any legal debt or liability against the respondent/accused. The learned Appellate Court has found that the agreement for providing services was terminated immediately and, therefore, the demand was made for return of the cheque to the petitioner/ revisionist.

7. Having considered the entire material available on record, the Appellate Court has rightly found that the judgment on conviction and sentence was unsustainable and, therefore, the same has rightly been set-



aside. This court does not find any merit in the submissions made by learned counsel for the petitioner in Crl. Rev. P. No.591/2022 and therefore, this revision stands dismissed.

8. So far as the Crl. Revision Petition No. 590/2022 for enhancement of sentence is concerned, since the conviction and sentence itself has been set aside by the learned Additional Sessions Judge and the order of Additional Sessions Judge has been affirmed in Crl. Revision Petition No.591/2022, therefore, Crl. Rev. P. No.590/2022 is dismissed for the reasons recorded hereinabove.

9. Accordingly, both the revision petitions are hereby dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 21, 2022
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