

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

% Reserved on: 27th February, 2023
Pronounced on: 14th March, 2023

+ **CRL.M.C. 810/2018**

ASHOK KUMAR KHATTAR Petitioner

Through: Mr. Sermon Rawat, Mr. Vikas
Rathee, Advocates for the
petitioner.

versus

SUDHIR BAJAJ Respondent

Through: Mr. Anirudh Mehrotra, Adv.

+ **CRL.M.C. 826/2018**

ASHOK KUMAR KHATTAR Petitioner

Through: Mr. Sermon Rawat, Mr. Vikas
Rathee, Advocates.

versus

SUDHIR BAJAJ Respondent

Through: Mr. Anirudh Mehrotra, Adv.

+ **CRL.M.C. 843/2018**

ASHOK KUMAR KHATTAR Petitioner

Through: Mr. Sermon Rawat, Mr. Vikas
Rathee, Advocates for the
petitioner.

versus

SUDHIR BAJAJ Respondent

Through: Mr. Anirudh Mehrotra, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT

ANISH DAYAL, J.

1. By these petitions, the petitioner seeks to set aside the impugned order dated 30th October 2017, passed by the learned ASJ, Patiala House Courts in Crl. Revision Petition No. 35/2017. The petitioner is the complainant in CC No. 2985/2017, 2986/2017, and 2988/2017, filed against the respondent under Section 138 of the Negotiable Instruments Act for dishonor of cheques for a sum of Rs. 1.2 crores, Rs. 70 lakhs and Rs. 1 crore, totaling up to Rs. 2.9 crores, all dated around November-December 2016.

2. As per the learned counsel for the petitioner, the petitioner is a Chartered Accountant and shared a professional-client relationship with the respondent. The petitioner had advanced a loan for financial assistance to the respondent, at his request, for a sum of Rs. 2.9 crores which was given in various tranches between the years 2013 to 2015. The cheques in question were thereafter issued by the respondent towards discharge of the liability for return of loan. However, when these cheques drawn on Allahabad Bank, East Patel Nagar, New Delhi were presented on various dates, they were dishonored for reason “*account closed*”. The petitioner sent a legal notice under Section 138 of the Negotiable Instruments Act on 26th January, 2017 in respect of the said dishonor and demanded payment. The respondent sent a reply denying that there was any loan transaction between the parties and took a plea that the petitioner had taken blank cheques from the respondent and misused the said cheques. Pursuant thereto the said complaints were filed, and pre-summoning evidence was led before the learned MM, Patiala House Courts. By order dated 09th March, 2017, the learned MM summoned the respondent for offences punishable under Section 138 of the Negotiable Instruments Act.

3. The respondent thereafter filed a Revision Petition bearing No. 35/2017 before the learned ASJ *inter alia* on the ground that there was no loan transaction between the parties and learned MM had not appreciated the said plea. While the Revision Petition was still pending, the learned MM on 17th August, 2017 framed notice under Section 251 Cr.P.C., against the respondent and at that stage the respondent pleaded “not guilty” on the plea that he had not taken any loan from the petitioner. However, by the impugned order passed by the learned ASJ, the summoning order was set aside on the ground that a purported settlement had been arrived at between the petitioner and the respondent on 31st December 2016, by which payment of the loan was rescheduled and due to such rescheduling, the respondent was not required to make payment in compliance of the legal notices. The petitioner has therefore assailed the said order on the ground that the learned ASJ presumed facts which were never pleaded before the learned MM nor before the learned ASJ himself. It was quite evident, as per the petitioner, that the respondent both in his reply to the legal notice as well as at the stage of framing of notice under Section 251 Cr.P.C., pleaded that he had never taken a loan from the petitioner. Therefore, the presumption by the learned ASJ that there was a settlement and there was rescheduling of payment terms is out of context. It was contended that the Revisional Court ought to have restricted itself to the record before the learned MM and not assume a different factual matrix, not pleaded by the parties. Further, the summoning order which had been challenged had ultimately concluded in framing of notice under Section 251 Cr.P.C., and the relief sought in the original revision petition was infructuous.

4. The learned counsel for the respondent refuting these contentions er contended that the petitioner had failed to mention the date, month and year of making the payments towards the loan and did not disclose any receipt or any other document to prove the payment of Rs. 2.9 crores, especially when the petitioner himself is a Chartered Accountant. The alleged loan as per the petitioner is of sometime in August 2013 while the cheques in question were given in November and December 2016. Accordingly, the recovery of the said loan amount, even as per the allegations of the petitioner, was beyond the limitation period. Besides, the orders by the learned Revisional Court were based on documents provided by the petitioner himself in the complaint and the said order had taken the same facts into account. It was categorically stated by the respondents that they do not admit the documents filed by the petitioner in the complaint. However, notwithstanding the same, the respondent does not find any fault in the impugned order.

5. For a proper assessment of these rival contentions, it would be important to advert to the facts and circumstances as are evident from the record before this Court *inter alia* as under:

- (i) The complaints which were filed of the dishonored cheques, note specifically that the respondent had approached the complainant in August, 2013 for seeking financial assistance. The background facts relating to the said financial assistance sought by the respondent are also stated in detail, in that the respondent was constructing a spa health care project near Gurugram and had invested more than Rs. 10 crores but had fallen short of money. The petitioner was reluctant to give

the said assistance. However, in the original documents a residential flat was given as collateral and the loan was extended at an interest of 1.75 percent per month. Further financial assistance was sought by the respondent for which property document of another agricultural land belonging to a company, in which the respondent and his wife were directors, was given as collateral. Accordingly, a total loan amount of Rs. 2.9 crores stood against the respondent. Against the same, the said cheques were drawn out, which were presented and were dishonored on the basis of account closed. Further, it came as a shock to the petitioner, that the property given in collateral was also sold out to some unknown person.

(ii) The legal notices issued prior to the complaint by the petitioner dated 23rd January 2017 would also show that the same facts as stated above had been asserted and a demand had been made to repay the amount of the said cheques within a period of 15 days. The reply to the said notices from the respondent took the specific plea that there were no details as regards the loan amount given and that the notices were issued as a counterblast to some notices which the respondents had sent. It was specifically denied that any loan or financial assistance had been taken from the petitioner. In this context, the respondent denied repayment of the said amounts.

6. It is therefore surprising that considering that the respondent had clearly pleaded that no financial assistance had been taken from the petitioner and had stated in no uncertain terms that there was no liability on that account, the learned ASJ, however, proceeded on the basis that while the cheque was dishonored around January 2017 *vide*

the bank return memo, but prior to that a settlement had been arrived at between the parties which was on record as Exhibit CW-1/F. Learned ASJ relied upon the document to underscore that in that purported meeting the respondent had agreed to return the said amount of Rs. 2.9 crores in a staggered payment schedule amounting to Rs. 2.7 crores and that *“it seems that he had already paid Rs. 20 lacs or whatsoever it may be”*. Based upon this purported settlement, learned ASJ concluded that when the cheque was presented, there was already an agreement to reschedule the repayment of the loan amount and therefore, there was a novation of the contract and any payments made prior to the said date would therefore not be pursuant to any enforceable liability. This conclusion by the learned ASJ, in the considered opinion of this Court, is outside the factual matrix which has been pleaded by the party and ignores the categorical denial of the loan by the respondent. Even in the submission before this Court, while arguing these petitions for quashing, the respondent has categorically stated that they do not admit the documents filed by the petitioner in the complaint on the basis of which the learned ASJ passed the revisional order. Further, it is also not denied that respondent does not admit the factum of having taken the financial assistance / loan from the petitioner. The reply to the legal notice and the denial of liability before the learned MM is also not controverted. Having simply and clearly taken the stand of denying factum of the loan itself, the question of adverting to a possible loan settlement document to wriggle out of liability at the threshold does not arise. The loan settlement document must have been presented by the petitioner in order to support their contention that there was indeed a loan given and there were discussions between the parties for

repayment. The document cannot be held to be against the petitioner considering that the respondent was not admitting the loan itself and therefore the question of repayment, as per the respondent also would not arise. Once having denied the liability of the loan itself, the question of getting the benefit of a purported settlement to repay cannot possibly accrue to the benefit of the respondent.

7. In fact, the said exhibit CW-1/F on which the learned ASJ chooses to rely upon is also a mere handwritten scribbled note and cannot be interpreted in any manner in favor of the respondents to state that they had agreed to repay or that they admit the factum of the loan. The respondent cannot stand in two different boats each of which is divergent to the other. On one hand, the respondent denies the loan agreement and it may therefore ultimately be up to the complainant/petitioner to prove the underlying liability once the presumption is successfully rebutted by the respondent. On the other hand, the respondent cannot take the benefit of purported repayment settlement of repayment which would amount to an admission of the liability of the loan amount. Section 139 of the Negotiable Instruments Act creates a presumption that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. In ***Kishan Rao v. Shankargouda***, (2018) 8 SCC 165 the Hon'ble Supreme Court has explained that:

“As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is,

the cheque was not issued for consideration and in discharge of any debt or liability.”

Further in para 20, the Apex Court has clarified “*that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose.*”

8. Nowhere in the reply to the legal notice has the respondent stated that cheques are not signed by him. He merely takes the plea that there were blank cheques given which have been misused. Accordingly, the issue of underlying liability as per the Negotiable Instruments Act would be presumed and if rebutted would need to be proved by the complainant. The quashing of the summoning order itself by the learned ASJ was premature, and not sustainable in fact and in law.

9. In any event, the learned ASJ was exercising revisional jurisdiction and it is settled law that the scope of interference in a revision petition is extremely narrow. This Court in ***Taron Mohan v. State***, 2021 SCC OnLine Del 312 in para 9 has observed that:

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

(emphasis added)

The Hon’ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh***, (2022) 8 SCC 204 has also on similar lines held that:

“The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-

founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

(emphasis added)

10. Therefore, the impugned order is hereby set aside and the proceedings in respect of the Complaint Cases No. 2985/2017, 2988/2017 and 2986/2017 are hereby revived before the learned MM.

11. Order/Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 14, 2023/RK



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