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

\+ CRL.REV.P. 117/2023, CRL.M.A. 3671/2023 & CRL.M.(BAIL) 179/2023

NEELAM MANOCHA .....Petitioner

Through: Mr. Sahil Kakkar, Advocate.

versus

JAI SINGH .....Respondent

Through: Mr. Praveen Narayan, Mr. Inder Shokeen, Ms. Renu, Mr. Gagan Kumar, Mr. Ashok Kumar & Mr. Yogesh Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **13.09.2024**

<u>CRL.REV.P. 117/2023</u>

1. The present petition is filed against the order dated 03.12.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), South West District, Dwarka Courts, New Delhi in CA No. 41/2021 titled *Neelam Manocha vs. Jai Singh.*

2. By impugned order, the learned ASJ upheld the order of conviction dated 27.09.2019, and the order on sentence dated 05.02.2020 passed by the learned Metropolitan Magistrate ('**MM**') whereby the petitioner was convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**'), and was sentenced to undergo imprisonment till the rising of the Court, and was directed to pay compensation for a sum of ₹2,50,000/- to the respondent, and in default to undergo simple imprisonment for a period of four months.

3. The seminal facts leading to filing of the present petition

are as follows:

4. It is alleged that the petitioner had friendly relations with the respondent, and in October 2016, the petitioner had taken a friendly loan for a sum of ₹2,10,000/- from the respondent for a period of 6 months. It is alleged that after the expiry of 6 months, the respondent requested the petitioner to return the loan amount. It is alleged that thereafter on 18.05.2017, the petitioner issued a cheque for a sum of ₹2,10,000/- in discharge of her liability. It is alleged that upon presentation, the subject cheque returned dishonoured with the remarks "*Funds Insufficient.*" It is alleged that the respondent issued a legal demand notice dated 06.06.2017 to the petitioner which was duly served, however, despite the service of notice, neither any reply was filed not any money was repaid by the petitioner. Respondent thereafter filed a complaint under Section 138 of the NI Act.

5. The petitioner in her examination under Section 313 of the Code of Criminal Procedure, 1973 ('**CrPC**') stated that she had not taken any loan for a sum of ₹2,10,000/- from the respondent, and that she had not filled the particulars of the cheque in question. The petitioner, however, admitted her signatures on the impugned cheque. The petitioner stated that she had not received any legal notice personally, and the same was received at her shop. She stated that she ran a shop of children clothes after the death of her husband, and that she used to keep some blank signed cheques at her shop for business. The petitioner further stated that neither she nor her children issued the subject cheque to the respondent. She stated that she did not even know the respondent or how the respondent got the possession of her cheque. Petitioner further stated that the respondent had misused the subject cheque.

6. The learned MM *vide* order of conviction dated 27.09.2019, and the order on sentence dated 05.02.2020 convicted the petitioner for an offence under Section 138 of the NI Act and sentenced the petitioner to undergo imprisonment till the rising of the Court, and directed the petitioner to pay compensation for a sum of ₹2,50,000/- to the respondent, and in default to undergo simple imprisonment for a period of four months.

7. The learned counsel for the petitioner submits that the learned ASJ erred in upholding the order of conviction, and order on sentence passed by the learned MM thereby convicting the petitioner under Section 138 of the NI Act. He submits that the respondent failed to prove that the impugned cheque was issued in discharge of any legally enforceable debt. He submits that the respondent had failed to establish that he had the means to advance the said loan in question. He submits that there is no reason why the respondent would advance loan to the petitioner given that they were not related, and that too without executing any document. He submits that

8. *Per contra,* the learned counsel for the respondent submits that the learned ASJ rightly upheld the conviction of the petitioner under Section 138 of the NI Act. He submits that petitioner failed to rebut the presumption against him under Sections 139 read with Section 118 of the NI Act.

9. Since the present revision petition has been filed under Section 397 of the CrPC, challenging the concurrent findings of both lower courts, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned judgment.

10. It is trite law that the High Court is required to exercise restraint and should not interfere with the findings in the

impugned orders or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law (Ref. ***Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke*** **: (2015) 3 SCC 123**). It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Court in the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*** **: (1999) 2 SCC 452** discussed the scope of revisional jurisdiction and held as under:

> "*5. …… 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 reappreciate 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....*** *"*

11. At the outset, it is relevant to note that the signature of the petitioner on the subject cheque have not been denied. It is trite law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque/ respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*** **: (2010) 11 SCC 441**]

12. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh*** **: (2023) 10 SCC 148**, while discussing the appropriate approach in

dealing with presumption under Section 139 of the NI Act, observed the following :

> *"54. …. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.*
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> *55. <u>At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption)</u> : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?*
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> *xxx xxx xxx*
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> *57. Einstein had famously said:*
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> *"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."*
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> *Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.*
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> *58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.*
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> *xxx xxx xxx*
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> *61. <u>The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have</u>*

instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."

(emphasis supplied)

13. On a perusal of the impugned order, it is seen that the arguments of the petitioner have been extensively dealt with by the learned MM and the learned ASJ. The learned ASJ noted that the respondent had discharged his burden of showing that there existed a *prima facie* case by leading evidence satisfying the basic ingredients of Section 138 of the NI Act. Once the signatures on the subject cheque had been admitted, the presumption under Sections 118 and 139 of the NI Act operated in the favour of the respondent, and against the petitioner. As was rightly noted by the learned ASJ, the onus was on the petitioner to rebut the presumptions raised against him under Sections 118 and 139 of the NI Act.

14. It is seen that the petitioner at the time of framing of notice under Section 251 of the CrPC, and during the examination under Section 313 of the CrPC, had admitted her signatures upon the subject cheque. The defence of the petitioner was that she had never issued the subject cheque to the respondent, and that the respondent was not known to the petitioner. The petitioner deposed that she used to keep some blank cheques bearing her signature at the shop for the purpose of making payment in business. She further deposed that the said cheque had been misused by the respondent. The learned ASJ noted that there was nothing on record to indicate that the cheque was misused by the respondent. It was noted that the petitioner in her cross-examination admitted that she had not filed any police complaint regarding any theft or misuse of her cheque. It was further noted

that the petitioner herself admitted that she did not file any police complaint even after she got notice of the Court. Merely denying liability does not suffice to dislodge the presumptions raised under Section 118 and 139 of the NI Act.

15. A contention was also taken up by the petitioner that the cheque in question only contained her signatures, and the particulars of the cheque were not filled by the petitioner. The law in this regard is no longer *res integra.* In terms of the dictum of the Hon'ble Apex Court in ***Bir Singh v. Mukesh Kumar*** **: (2019) 4 SCC 197**, mere admission of the signature of the drawer on the cheque is sufficient to activate the presumption under Section 139 of the NI Act. It is not a pre-requisite that the drawer must also admit the execution of the entire contents of the cheque.

16. Consequently, in terms of the dictum of the Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh (supra),*** the onus was on the petitioner to raise a probable defence by either leading direct or circumstantial evidence to show that there existed no debt/liability in the manner as pleaded in the complaint/ demand notice/ affidavit-evidence. The petitioner was not liable to rebut the presumptions raised against him beyond reasonable doubt. The petitioner was merely required to controvert the presumptions by raising a probable defence on a preponderance of probabilities to show that there existed no debt/liability in the manner pleaded in the complaint/ demand notice/ evidence.

17. On a perusal of the impugned order, it is seen that the petitioner had merely denied her liability. In that regard, the learned ASJ rightly noted that merely stating that the impugned cheque was not given by the petitioner is not sufficient to rebut the presumption raised in favour of the respondent. It was noted

that no complaint regarding theft of the impugned cheque was made by the petitioner prior to or after the filing of the complaint case. In that light, the learned ASJ rightly noted that the petitioner had failed to raise a probable defence in her favour.

18. Much emphasis had been placed by the learned counsel for the petitioner that the respondent failed to show that the subject cheque was issued in discharge of any legally enforceable debt or that the respondent had the means to advance the said loan in question. It is well settled that once the signatures on the cheque stood admitted, the presumption under Sections 118 and 139 of the NI Act operated in favour of the respondent, and stood against the petitioner. The onus was on the petitioner to rebut the presumptions. It was not for the respondent to establish that he had the means to advance the loan, or that the impugned cheque was issued in discharge of any legally enforceable debt. Having failed to rebut the presumptions raised against her, the contentions of the petitioner that the burden was on the respondent to establish his financial means or that it was on the respondent to show that the impugned cheque was issued in discharge of a legally enforceable debt, do not bolster the case of the petitioner.

19. In view of the aforesaid, this Court does not find any infirmity in the impugned order, and the same cannot be faulted with.

20. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 13, 2024

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