



2024:DHC:6908



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

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Judgment delivered on: 09.09.2024

+ **CRL.REV.P. 128/2023, CRL.M.(BAIL) 192/2023,  
CRL.M.A. 3958/2023, CRL.M.A. 3959/2023, CRL.M.A.  
8217/2023, CRL.M.A. 8327/2023 & CRL.M.A. 8715/2024**

**ANITA**

..... Petitioner

versus

**STATE (NCT OF DELHI) AND ANR.**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Vinay Pandey, Adv.

For the Respondent : Mr. Pradeep Gahalot, APP for the State for  
the State along with Adv. S. Kaur & Adv.  
Shankar.  
Mr. Avtar Singh & Mr. Amrik Singh, Adv.  
for R2.

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petition is filed under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of judgment dated 17.01.2023 (hereafter '**the impugned judgment dated 17.01.2023**'), passed by the learned Additional Sessions Judge-05 ('**ASJ**'), Saket Courts, Delhi whereby the Criminal Appeal No. 101/2021 filed by the petitioner was dismissed.

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**CRL.REV.P. 128/2023**

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2. In the present case, the petitioner *vide* judgment dated 06.04.2021 was convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 (hereafter '**NI Act**') by the learned Metropolitan Magistrate ('**MM**'), NI Act, Saket Courts, Delhi in CT No. 4581/2018. Further, *vide* order on sentence 26.07.2021, the petitioner was sentenced to pay a fine of ₹5,50,000/- to the complainant and in default of payment of same, to undergo simple imprisonment for one and a half months.

3. Briefly stated, the case of the complainant was that in July 2017, the complainant extended a friendly loan of ₹4,25,000/- to the accused/petitioner in cash for her business purposes for a period of six months. It was averred that after the expiry of six months period, in the discharge of her liability, the petitioner had issued two cheques bearing number - 143251 dated 12.01.2018 for a sum of ₹2,50,000/- and 143252 dated 07.01.2018 for a sum of ₹1,75,000/-, both drawn on SBI, Saket C&P Branch, Delhi, from the account maintained in her name and assured the complainant that the said cheques would be honoured/encashed on their presentation.

4. Thereafter, since the petitioner had failed to repay the loan amount, the complainant presented the cheques for encashment but they were dishonoured and returned with remarks "Funds Insufficient".

5. The complainant, thereafter, had issued the statutory legal notice to the petitioner demanding repayment of the loan amount, and



upon her failure to do so, the complainant filed the subject complaint before the learned MM.

6. During the course of the trial, the complainant was examined as CW-1. He also proved the other documents such as his affidavit, the cheques in question and their return memos, the legal notice issued to the petitioner as well as the postal receipts of the same.

7. After hearing the arguments and appreciating the evidence of record, the petitioner herein was convicted under Section 138 of the NI Act by the impugned judgment dated 06.04.2021, the operative portion of which reads as under:

*“9. Thus, it stands proved that the cheques no. 143251 and 143252 were issued by the accused in discharge of the legally enforceable friendly loan taken by her. The said cheques were dishonoured for insufficiency of funds in her account as proved by the return memo. The service of legal demand notice also stands proved by way of postal receipts. The fact that the accused did not pay the cheque amount within 15 days of service of notice and even within 15 days of service of summons, proves the commission of the offence for which the accused was tried.”*

8. Aggrieved by the decision of the learned MM, the petitioner preferred an appeal before the learned ASJ, who was pleased to dismiss the appeal noting that the learned Trial Court had rightly observed that the petitioner had failed to rebut the presumptions by raising any probable defences, thereby upholding the judgment and order on sentence passed by the learned MM. The operative portion reads as under:

*“13.1. Ld. Counsel argued that the cheques were filled-in in different languages which could not have happened. I am of*



*the view that this argument does not help the appellant. She is well versed with the english and hindi. No law prohibits here from filling the cheques in her desired language. Even the law does not say stop the bank from encashing the cheque on the ground of language. It is not the case of the appellant that had her cheques been written in one language, the same would have been cleared by the bank. In any event, the payee of the cheque could not get his amount upon presentation of the cheques. The appellant without honouring the issued cheques cannot escape the liability.*

*13.2. Until the presumption (available under Section-118 and 139) is rebutted by the accused in a NI Act case, the complainant cannot be asked to show his financial capacity or to produce any witness of loan transaction. Even the law does not require such a loan agreement to be in writing.*

*13.3. For the aforesaid reasons, I do not find any merits in the averments pleaded in the appeal nor I find any force in the contentions of the Ld. Counsel for the appellant.*

*14. Judgments relied upon by the Ld. Counsel for the accused/appellant do not advance the case as they are clearly decided on their own facts and none of the judgments go to take a view contrary to the view taken by aforementioned four judges decision or three judges decisions, rather they could not have done so being pronounced by a lesser strength benches.*

*15. So far dishonour of cheques is concerned, there has not been any dispute at all. Accused has tried to dispute the service of legal demand notice saying that the address belongs to her mother. It seems that the address mentioned on the legal demand notice is of Pushp Vihar. The same address was given by the accused when she was examined as DW1. In her cross examination, the accused stated "I am residing at the said address currently but it is my mother's address. My mother is residing on the said address from past 30 to 35 years". This court is of the view that the accused has clearly lied about non-service of legal demand notice.*



16. *Clearly, all the ingredients of Section 138 NI Act are satisfied in the present case.*

17. *In view of the above discussion, it is held that the accused has not been able to rebut the mandatory presumption of law and the complainant has been able to prove that the accused had issued the cheques against legal liability. All ingredients of the provision being satisfied, the accused is held to be guilty of offence punishable under Section-138 NI Act. As such, the order of conviction passed by the Ld. Trial Court is upheld.*

18. *So far as sentence is concerned, the Ld. Trial Court has imposed Rs.5,50,000/- as fine payable as compensation to the complainant and in default of payment of fine, eighteen months' simple imprisonment has been granted. The cheques pertain to the year 2018 and the accused was convicted in the year 2021. Total amount of cheques is Rs.4,25,000/-. The Ld. MM has already shown sufficient leniency in not passing any substantive imprisonment. The Ld. MM has imposed a reasonable fine. I do not find any illegality in the same and therefore, the order on sentence passed by the Ld. Trial Court is also upheld."*

9. Aggrieved by aforesaid decisions passed by the learned MM and learned ASJ, the present revision has been preferred by the petitioner.

10. The learned counsel for the petitioner submitted that the Trial Court as well as the learned Appellate Court have failed to appreciate the evidence correctly and have wrongly convicted the petitioner for offence under Section 138 of the NI Act. It is stated that the complainant had failed to prove that any loan had been advanced by him to the petitioner as no dates or particulars of the loan, alleged to have been given in cash, had been provided and neither the income tax



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returns nor any committee receipts were placed on record. It is also argued that Respondent No.2 neither examined his wife nor disclosed the names of his relatives from whom the loan amount was arranged.

11. He submitted that the petitioner has only admitted her signatures on the cheques in question and not filling the details therein. The petitioner in her defence stated to have taken a loan of ₹75,000/- from the wife of the complainant and that the cheques in question were given in blank signed condition as security for the same.

12. He submitted that the petitioner had thus rebutted the presumption under Sections 118 and 139 of the NI Act.

13. *Per Contra*, the learned counsel for Respondent No.2 submitted that the learned MM and the learned ASJ have passed comprehensive judgments covering every aspect of the defence of the petitioner and after thoroughly examining the evidence on record, they have rightly convicted the petitioner for offence under Section 138 of the NI Act.

14. He submitted that once the petitioner admitted her signatures on the cheques in question, the presumption under Section 118(a) and Section 139 of the NI Act arises against the petitioner.

15. He submitted that no proof had been furnished by the petitioner to establish her defence that the cheques were issued as security for loan of an amount of ₹75,000/-, and that she had repaid the same. Thus, on mere averment unsubstantiated by any cogent evidence, it cannot be said that the loan was not for an amount of ₹4,25,000/- but for ₹75,000/-.



16. He submitted that the contentions qua filling up of some details in cheques, financial capacity of the complainant, and all other contentions raised before this Court have already been considered and answered by both the Courts below and, thus, there is no reason to interfere with the impugned judgments.

### **Conclusion**

17. 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.

18. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappraise 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....”*

(emphasis supplied)

19. It is argued that the cheques in dispute had not been given in discharge of any liability and the respondent had misused the cheques given as security. It is further argued that the cash receipt of the acknowledgment of the loan is forged and the respondent had also misused the petitioner's signatures taken on blank pages. The main thrust of the petitioner's arguments in the present case is on the financial capacity of the respondent to extend a loan to the tune of ₹4,25,000/-.

20. On perusal of the judgment on conviction dated 06.04.2021 and the impugned judgment, it is seen that the arguments of the petitioner have been extensively dealt with by the learned Trial Court and the learned Appellate Court respectively.

21. At the outset, it is relevant to note that the signature of the petitioner on the cheques in dispute 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**].

22. 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.*

*55. 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) : 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”?*

**xxx**

**xxx**

**xxx**

**57. Einstein had famously said:**

*“If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions.”*

*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.*

**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.**

**Xxx**

**xxx**

**xxx**

**61. 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 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.**



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(emphasis supplied)

23. While it is argued that the said presumptions have been rebutted by the petitioner by proving through her own testimony and that of DW1 that the cheque in dispute had been given by him to the respondent as a mere security cheque and not in discharge of any liability, however, as rightly appreciated by the Courts below, no documentary or direct evidence has been adduced by the petitioner to this effect. Furthermore, the learned Appellate Court has rightly noted that DW1, who stated that she had taken a loan of ₹75,000/- from Respondent No.2's wife in November, 2017 (for 6 months) in lieu of which she gave the cheques as security, did not produce any evidence to substantiate her claim. The Court further noted that since the burden of proof does not shift to the complainant, there is little need for the complainant to provide additional material to support the liability associated with the cheques.

24. The petitioner has also contested that the respondent had not established his financial capacity to extend a loan of ₹4,25,000/- and he had also not filed his ITR. It is relevant to note that the respondent had stated in his testimony that he arranged the said amount from the committee in which his wife was a member, borrowed from his relatives and his savings.

25. It is trite law that despite the presumption under Section 139 of the NI Act, if the accused challenged the capacity of the complainant to extend the loan, especially in cases where the complainant has extended a loan by way of cash, the onus shifts to the complainant to



lead evidence to prove his financial capacity [Ref. *APS Forex Service Private Limited v. Shakti International Fashion Linkers* : AIR 2020 SC 945].

26. The Hon'ble Apex Court in the case of *Tedhi Singh v. Narayan Dass Mahant* : (2022) 6 SCC 735 had observed as under:

*“10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”*

(emphasis supplied)

27. In the present case, no such averment regarding financial ability of the respondent was made by the petitioner in her statement under Section 313 of the CrPC or during the course of trial. Moreover,



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Respondent No.2 examined no independent material and led no evidence to showcase the inability to extend the loan either.

28. It is stated that Respondent No.2, during the trial, was only asked about his profession and was not asked as to what his income was. During the cross-examination, Respondent No.2 categorically stated that loan which was advanced to the petitioner was taken from the committee in which his wife was a member. He further stated that he had few savings in his Bank account and the remaining amount was taken on loan from relatives.

29. In the absence of any evidence led by the petitioner to showcase the inability of Respondent No.2 to extend the loan, merely because the petitioner made a bald assertion regarding the financial capacity of Respondent No.2 cannot be construed to contend that the petitioner had raised a probable defence. The courts below have correctly applied the legal presumptions under Sections 118 and 139 of the NI Act, which stand unrebutted by the petitioner.

30. In view of the aforesaid discussion, in the opinion of this Court, there is no manifest illegality to warrant any interference in the concurrent findings of the Courts below.

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

**AMIT MAHAJAN, J**

**SEPTEMBER 9, 2024**

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