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

\+ CRL.REV.P. 103/2022 CRL.M.(BAIL) 214/2022

CHANCHAL MEHTA .....Petitioner

Through: Ms. Somya Gupta and Mr. Dhananjay Yadav, Advs.

versus

STATE OF NCT OF DELHI & ANR. .....Respondent

Through: Mr. Hemant Mehla, APP for the State
Mr. Parvesh Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **08.10.2024**

1. This petition has been filed assailing the impugned order dated 09th February 2022, by which the Additional Sessions Judge dismissed the appeal against the judgment of conviction and sentence passed by the Metropolitan Magistrate ("**MM**") in proceedings under Section 138 of the Negotiable Instrument Act, 1888 ("**NI Act**").

2. The cheque in question was of Rs.5 Lacs, which was dishonoured. Pursuant to the trial, the MM passed an order dated 03rd February, 2020 convicting the appellant, and 07th February, 2020 sentenced the appellant for SI for 1 year and fine of Rs.8,60,000/- and sentence of six months in default thereof.

3. Counsel for the petitioner contends that the aspect of financial capability of complainant was raised, forming part of the cross-examination of the complainant as CW-1. Furthermore, as regards the reason for

furnishing the cheques is concerned, he asserts that the said cheques were misused as they were misplaced during construction.

4. The impugned order notes that no police complaint was lodged concerning the missing cheques above and, therefore, the defence mounted by the petitioner was baseless and untenable.

5. Further, concerning the financial capability of the petitioner, this Court has already ruled in ***Amit Jain v. Sanjeev Kumar Singh & Anr.*** 2024:DHC:6207 and ***Arun Kumar Gupta (D) THR-LRS v. Tama Jawahar*** 2024:DHC:7222, that such considerations may not be relevant in light of the statutory presumption under Section 139 of the NI Act, which must be initially overcome by the accused.

6. In ***Amit Jain v. Sanjeev Kumar Singh & Anr.*** (*supra*), the Court held that a mere averment of a friendly loan does not assist the accused in discharging the presumption; relevant paragraphs of are extracted as under:

> "*17. We often find that acquittals in Section 138 NI Act proceedings place the burden of proving the existence of the debt on the complainant, which is diametrically opposite to the presumption placed on the accused under Section 139 NI Act. <u>The accused often gets away with an acquittal, despite having tendered and even admitting to the cheque, merely because the complainant is unable to produce documents to support the existence of the debt (usually in the form of a friendly loan provided in cash, which does not have any document trail). It would be unwise for the court to not acknowledge that friendly cash loans are provided by parties, sometimes based on small savings of the lender. In these circumstances rather than focusing on the question as to why the accused gave the cheque in the first place (which he or she admits), the</u>*

complainant is left unhinged for inability to provide any documentation. Often when accused is asked by the court, as to for what purpose they gave the cheque in the first place, a cogent and rational answer is not forthcoming.

18. Presumption under Section 139 read with Section 118 of the NI Act is essentially based on pure common sense. Instead of having the accused prove to the contrary, the accused is acquitted, as in this case, without having led any defence evidence and purely relying upon the inconsistencies in the affirmative proof provided by the complainant. The law and its application, is therefore turned on its head."

(emphasis added)

7. In ***Arun Kumar Gupta (D) THR-LRS v. Tama Jawahar*** *(supra)*, this Court has observed as under:

"*22. The insistence of the respondent to deny the MoU which seems prima facie validly executed with reasonable detail, followed by tendering of 10 cheques of a total of Rs. 2.6 crores, seem untenable and not believable. If therefore, the MoU subsisted, then the basis for liability of balance amount calculated as Rs. 85 lakhs, would be alive. Once the cheques were tendered for Rs. 85 lakhs, the statutory presumption, would apply against the respondent under Section 139 of NI Act.*
23. For this to be rebutted, it would require a plausible explanation from the respondent, that the cheques were not rendered for any liability. The respondent in this effort simply and boldly just denies the MoU itself, which to this Court, is not digestible.
24. Considering that respondent is denying execution of MoU, this Court finds his assertion

that Rs. 2.6 crores was given on an 'understanding' is not tenable or with any modicum of truth. A huge amount of Rs. 2.6 crores being advanced without any written understanding or agreement, particularly when it was backed by a commercial transaction, is a contention that seems unmerited and unbelievable. Moreover, the respondent's contention that the amount was given only as security cheques, is also untenable in light of various decisions of this Court and other Courts in this regard. It is well settled, that a mere assertion that a cheque was given as security amount, must be proved by the accused under Section 138 NI Act proceedings, as statutory presumption works against the accused…"

(emphasis added)

7. In this, a perusal of the MM's order as well as the impugned order shows that the evidence has been well considered and correctly applied.

8. The defence asserting that the cheques was fabricated and not signed was raised at the tail end of the trial.

9. However, the FSL opinion confirmed that the specimen signatures on this cheque matched those provided by the accused. Various other pleas were made, as evident from the impugned orders, which lacked merit; consequently, the appeal was dismissed.

10. This Court does not find any infirmity or illegality in the said order.

11. Accordingly, the petition is dismissed.

12. Respondent is at liberty to take steps before the Trial Court considering the sentence which has already been passed.

13. A plea is made for reducing the sentence to a fine of Rs.8 Lacs only as

opposed to Rs.8,60,000/- along with custody.

14. In view of the plea made and in the interest of justice, the sentence is reduced to payment of Rs.8 Lacs to be done within a period of six weeks, failing which, the petitioner shall undergo simple imprisonment for 1 year. This reduction is granted upon the specific request made by the counsel for the petitioner.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 8, 2024/MK/tk