



2024:DHC:6880



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**IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 13<sup>th</sup> August, 2024*

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**CRL.REV.P. 331/2023 & CRL.M.(BAIL) 443/2023****MANOJ PRASAD**

.....Petitioner

Through: Mr. Manoj Kumar Roy,  
Adv.

versus

**STATE & ANR.**

.....Respondent

Through: Mr. Sunil Kumar Gautam,  
APP for the State  
Mr. Manjit Singh Chauhan  
& Ms. Sandhya Mahato,  
Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order dated 19.12.2022 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**), Dwarka Courts, Delhi (hereafter '**Appellate Court**'), in Criminal Appeal No. 144/2019.

2. The learned Appellate Court, by the impugned order, has upheld the judgment on conviction dated 10.12.2018 and modified the order on sentence dated 23.02.2019, passed by the learned Metropolitan Magistrate-01, NI Act, Dwarka Courts, Delhi (hereafter '**Trial Court**') in CC No. 4991179/2016, to the extent that the petitioner was directed to pay compensation in the sum of ₹2,10,000/- within two months of the order and in default,

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By: SHIKHA KHEGAL  
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to further undergo simple imprisonment for a period of seven days.

3. By the judgment on conviction dated 10.12.2018, the learned Metropolitan Magistrate (**MM**) (NI Act)-01, South-West District, Delhi (**Trial Court**) had convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 (**'NI Act'**). By the order on sentence dated 23.02.2019, the petitioner was sentenced to undergo simple imprisonment for a period of seven days and to pay compensation of ₹2,80,000/- to the complainant.

4. The brief facts of the case are as follows:

- 4.1. It was alleged that the in January, 2015, the petitioner approached the complainant with an offer that the petitioner would take the car of the respondent bearing number DL-1L-S-6794 on rent for a period of eleven months and in consideration, he would pay a sum of ₹13,000/- per month as rent. In this regard, an agreement dated 30.01.2015 was executed between them.
- 4.2. It was alleged that the petitioner subsequently failed to fulfill his obligation of making the agreed monthly payment of ₹13,000/-. In March 2015, the petitioner gave the assurance that he would pay the entire outstanding amount of ₹1,43,000/- (₹13,000/- per month for eleven months) in three instalments.
- 4.3. After the expiry of eleven months period, the petitioner, in an attempt to settle his outstanding liability, handed over a cheque bearing no. 052946 dated 17.12.2015 for a sum of



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₹1,40,000/-, drawn on Allahabad Bank, Bindapur to the respondent. However, on presentation, the same got dishonoured and was returned with the endorsement-“Funds Insufficient”. Consequently, a legal notice dated 04.01.2016 was served upon the petitioner. Petitioner did not pay even after the notice and the same led to the filing of the subject complaint.

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

5. The learned Trial Court convicted the petitioner for the offence punishable under Section 138 of the NI Act *vide* judgment dated 10.12.2018. The learned Trial Court noted that the petitioner had not disputed that he taken the vehicle of the complainant on rent of ₹13,000/- per month. The defence of the petitioner that he had paid the rent for a period of three months is not corroborated with any evidence. The petitioner did not dispute his signatures on the cheque in question and had also admitted that the cheque had been drawn on his bank account whereby the presumption under Sections 118(a) and 139 of the NI Act was automatically invoked. It was noted that the petitioner had failed to rebut the said presumptions.

6. The learned Trial Court rejected the defence of the petitioner that the cheque in question was handed over to the



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complainant as a blank signed cheque in respect of future/contingent liability by observing that the petitioner had failed to bring on record any documentary evidence to substantiate the plea. It was noted that the petitioner had admittedly received the legal demand notice and not replying to the same is to be marshalled against him.

7. The learned Appellate Court by the impugned order dismissed the appeal filed by the petitioner and upheld the conviction of the petitioner and noted that the learned Trial Court had rightly observed that the petitioner had failed to rebut the presumptions by raising any probable defences.

8. The learned counsel for the petitioner submits that the cheque in dispute was not given by the petitioner in discharge of any security and had been misused by the respondent. He submits that it was erroneously observed that the petitioner's defence in this regard had not been proved on the scale of preponderance of probabilities.

9. He submits that the learned Trial Court failed to appreciate the fact that the eleven months of the agreement dated 30.01.2015 was to be completed on 30.12.2015 making the liability as premature liability which is not enforceable by law. He states that the cheque in question dated 17.12.2015 was presented and returned unpaid for the reason "Funds Insufficient" much before the expiry of the term of the agreement dated 30.01.2015.



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10. He submits that the petitioner had thus rebutted the presumption under Sections 118 and 139 of the NI Act as there was no legally enforceable debt.

11. *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.

### **Analysis**

12. 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.

13. It is trite law that the High Court while exercising power under Section 397/401 of the CrPC especially when the same is in the nature of second appeal must 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....”***

(emphasis supplied)

14. It is argued that the cheque in dispute had not been given in discharge of any liability and the respondent had misused the said cheque in question. It is further argued that the cheque in question was in the nature of security cheque and on the date of presentation of the cheque, liability to pay the cheque amount did not arise. It is argued by the learned counsel for the petitioner that in terms of the car rental agreement, the agreement commenced with effect from 30.01.2015 and the cheque in question was dated 17.12.2015, and thus, the liability to pay ₹1,40,000/- did not arise.

15. On perusal of the judgment on conviction dated 10.12.2018 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.

16. At the outset, it is relevant to note that the signature of the petitioner on the cheque in dispute have not been denied. It is



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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**].

17. While it is argued that the said presumptions have been rebutted by the petitioner by proving through his own testimony 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 and that he had paid the rent for three months, however, as rightly appreciated by the Courts below, no documentary or direct evidence has been adduced by the petitioner to this effect.

18. The learned Appellate Court, by the impugned order, fairly noted the contention of the petitioner that he had no liability to pay the cheque amount of ₹1,40,000/- on the date when the cheque was presented is factually incorrect in as much as, the period of car rent began from 30.01.2015 and as per the complainant, the petitioner did not pay him any rent, hence, the petitioner had the liability to pay ₹1,43,000/- as on 01.12.2015 – that is, on the commencement of the eleventh month. The defence of the petitioner was thus rightly rejected by the learned Trial Court and the learned Appellate Court.

19. In such circumstances, this Court finds no reason to disturb the findings of the Courts below. In view of the aforesaid discussion, in the opinion of this Court, there is no manifest



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illegality in the impugned order to warrant any interference in the concurrent findings of the Courts below.

20. The present petition is therefore dismissed. Pending application(s), if any, also stand disposed of.

**AMIT MAHAJAN, J**

**AUGUST 13, 2024**  
**"SS"**