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

\+ CRL.REV.P. 172/2022 & CRL.M.(BAIL) 343/2022

DARA SINGH .....Petitioner

Through: Mr. Rajbir Bansal (D/498/04), Advocate.

versus

SMT DEEPA .....Respondent

Through: Mr. Kshitiz Mahipal, Ms. Khairun Nisa, Mr. Devvrat Sharma, Mr. Vikram Pratap Singh and Mr. Sarthak Mannn, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

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

% **11.09.2024**

1. Petitioner has approached this Court challenging the Order dated 10.02.2022, passed by the learned Additional Sessions Judge – 03, Tis Hazari Courts, in Criminal Appeal No.44/2021, upholding the Judgment dated 09.12.2020 & 18.02.2021, passed by the learned Metropolitan Magistrate, convicting the Petitioner herein for an offence under Section 138 NI Act and sentencing the Petitioner to undergo Simple Imprisonment for six months and awarding compensation of Rs.2,25,000/- to the Complainant.

2. The facts of the case reveal that the Respondent herein filed a complaint under Section 138 NI Act against the Petitioner herein stating that the Petitioner herein approached her seeking financial assistance in the sum of Rs.1,50,000/- for a period of four months. It is stated that the Respondent

gave a cash loan of Rs.1,50,000/- to the Petitioner herein on 12.05.2016 and the Petitioner herein issued a cheque bearing No. 000010 dated 15.09.2016 in the sum of Rs. 1,50,0001- drawn on 'Bank of India, Dilshad Garden Branch) F-9 Dilshad Colony, Delhi-110095, in favour of the Respondent herein towards repayment of the said loan amount. It is stated that when the Respondent herein presented the said cheque for clearance, it was returned vide Memo dated 21.09.2016 with endorsement "*funds insufficient*". It is stated that the Respondent herein sent a demand notice to the Petitioner herein on 26.09.2016. However, despite receipt of the notice, the Petitioner failed to make the payment and, therefore, the complaint was filed by the Respondent herein under Section 138 NI Act.

3. On the basis of the material before the Trial Court, the Petitioner was convicted for offences under Section 138 NI Act. The said Order has been upheld by the Appellate Court vide Order dated 10.12.2022. It is this Order which has been challenged in the present Petition.

4. A perusal of the Material on record discloses that the ingredients of Section 138 NI Act are satisfied against the Petitioner inasmuch as the cheque in question has been signed by the Petitioner and upon presentation of the cheque, the same has been dishonored and, therefore, the requirements provided for in the proviso to Section 138 NI Act stands satisfied.

5. Material on record also discloses that the Petitioner had filed an application under Section 145(2) of the NI Act stating that he wanted to cross-examine the Respondent herein/Complainant on the following grounds:

a. The complainant never advanced any loan or any amount of money, as alleged by him;

b. The complainant forged the said cheque;

c. The complainant has filed several complaints against several innocent persons, which are pending before different Courts, to extort money from them; and

d. The appellant has no legal liability to pay the cheque amount, as alleged by the complainant.

6. The Appellate Court, vide the impugned Judgment, has examined these aspects. The Appellate Court has relied on the question put to the Petitioner herein under Section 313 Cr.P.C. wherein in response to a specific question as to whether a cheque had been issued by the Petitioner or not, the Petitioner has answered in positive and has stated that he has signed and issued a blank cheque to the Complainant. To a specific question as to whether the Petitioner had given any reply to the demand notice sent by the Respondent herein/Complainant denying the liability, the Petitioner has answered that he did not receive any such demand notice, however, when it was put to the Petitioner that as to whether the demand notice was sent to the Petitioner at his address, the Petitioner has answered in affirmative. The Petitioner has volunteered to state that his mother had taken a loan of Rs.50,000/- from the Respondent herein on the interest @ 10% per month and the Petitioner had given a blank cheque to his mother bearing only his signatures and the mother of the Petitioner has given the said cheque to the Complainant. It was also volunteered by the Petitioner that cheque in question was only given as a security and the entire amount of Rs.50,000/- has already been paid to the Respondent herein/Complainant.

7. Material on record discloses that the Petitioner had not lead any

evidence in the Courts below. Since the onus of proof of all the issues which have been raised by the Petitioner was on the Petitioner to prove to be positive, in the absence of any evidence, the contentions raised by the Petitioner could not have been accepted by the Courts below and, therefore, this Court does not find any infirmity in the Orders passed by the Courts below.

8. Regarding the allegation of the Petitioner on the modus operandi of the Respondent herein, that she in the habit of giving small loans and getting blank cheques from the lendee and later on filing cases under Section138 NI Act against them by filling up the amount, it was for the Petitioner to lead evidence to prove the same as it was the Petitioner who had to ascertain the said allegation. Since the Petitioner has failed to lead evidence now it is not open for the Petitioner to raise those grounds without substantiating the same.

9. In view of the above, this Court is not inclined to interfere with the concurrent findings of the two Courts below.

10. Accordingly, the Petition is dismissed, along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER 11, 2024**
*Rahul*