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

+ **CRL.REV.P. 297/2019**

M/S GURUJI FOODS PRODUCTS & ANR

.....Petitioners

Through: Mr. Dharam Raj Ohlan, Mr. O.P.
Sharma, Mr. Krishan Kant Kaushik,
Advs.

versus

THE STATE (GOVT OF NCT DELHI) & ANR

....Respondents

Through: Mr. Amit Ahlawat, APP for State
Mr. Mukesh Gupta, Praver Singh
Rahul Prashant Abhay Chauhan,
Chirag Chaturvedi & A B Singh,
Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

04.10.2024

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1. This petition is filed setting aside the impugned order dated 27th August 2018 convicting petitioner in proceedings under Section 138 NI Act and order on sentence dated 30th August 2018. The proceedings were initiated for a dishonour of a cheque of Rs. 36 lakhs. Legal demand notice was sent on 28th June 2012, served upon the accused through registered post but the accused failed to give any reply to the same and did not pay the amount as well.

2. A perusal of the order of Trial Court would show that the principal defence which was taken by the accused was that the cheque had been stolen from his office in his absence. Application under Section 145 NI Act was also allowed. The complainant was extensively cross-examined. Complainant produced evidence with respect to his financial capability and



the same was not controverted in his cross examination. It was noted in the Trial Court order that the instalments of Rs.15 lakhs, Rs.10 lakhs, Rs.5 lakhs and Rs.6 lakhs were withdrawn by the complaint from the bank account of his firm. The said issue was also corroborated by CW2 Gautam with respect to Rs. 15 lakhs and Rs.10 lakhs.

3. As regards the defence of the accused that the cheque-in question was stolen from his office and there was a blank signed cheque, the same was not supported by any complaint which had been filed nor by a reply to the legal notice which had been received by him. The said assertion was considered as untenable by the Court and therefore the statutory presumption was not discharged by the petitioner-accused, except for the bald averments which had been made.

4. Accordingly, the said evidence was also traversed by the Sessions Court in appeal, which has considered all contentions of the petitioner.

5. Reliance is placed on the following decisions by the counsel for the petitioner in support of his arguments:

- i. *Vipul Kumar Gupta v Vipin Gupta* 2012:DHC:5195;
- ii. *K. Prakashan v. P.K. Surenderan*, (2008) 1 SCC 258;
- iii. *P.N. Piplani v. Sham Lal*, 2014 SCC OnLine P&H 4288;
- iv. *G. Pankajakshi Amma v. Mathai Mathew*, (2004) 12 SCC 83;
- v. *S.K. Jain v. Vijay Kalra*, 2014:DHC:1244;
- vi. *B. Sunitha v. State of Telangana*, (2018) 1 SCC 638; and
- vii. *Kulvinder Singh v. Kafeel Ahmed in CRL.L.P. 478/2011* decided on 04th January 2011.

6. The assertion by the counsel of the petitioner herein that it was the complainant who had to prove his financial credibility, has already been considered by various judgments in this regard, where it is clearly stated that the presumption of liability is for the accused to dislodge and not for



the complainant to prove their financial capability. In any event, it was already noted by the Trial Court that the complainant was fully cross-examined.

7. This Court in ***Amit Jain v. Sanjeev Kumar Singh & Anr.*** 2024:DHC:6207 has while reversing an acquittal dealt with issues of statutory presumption and burden of proving financial liability by the complainant.

8. In any event in a revision petition the Court is not sitting in appeal and reliance in this regard is made of ***Malkeet Singh v. State of Chhattisgarh*** (2022) 8 SCC 204 where the Supreme Court has stated that in a revisional jurisdiction the court does not have to dwell on facts and evidence, or indulge in reappraisal.

9. The Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*** (supra) while summarizing the scope of a revisionist court's jurisdiction under section 397 of the Criminal Procedure Code, 1973, has held as follows,

“10. Before advertting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”



11. *This Court in Manju Ram Kalita v. State of Assam [Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330 : (2010) 1 SCC (Cri) 1015] , while dealing with the scope of reappreciation of evidence by higher Court in criminal revision, observed in paras 9, 10 and 11 of the judgment as under : (SCC pp. 333-34)*

“9. So far as Issue 1 is concerned i.e. as to whether the appellant got married with Smt Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.

10. This Court would not ordinarily interfere with the concurrent findings on pure questions of fact and review the evidence again unless there are exceptional circumstances justifying the departure from the normal practice.

‘9. ... The position may undoubtedly be different if the inference is one of law from [the] facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure.’ (Vide Srinivas Ram Kumar v. Mahabir Prasad [Srinivas Ram Kumar v. Mahabir Prasad, 1951 SCC 136] , SCC p. 139, para 9)

11. Thus, it is evident from the above that this Court being the fourth court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material. Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this count is required to be interfered with.”

12. As per the settled legal position and after conviction by the trial court and the appellate court on filing the revision the High Court maintained the conviction upholding the findings of the two courts.



The High Court found the finding recorded by the two courts to serve the sentence consecutively by the appellant and the other co-accused were not correct, hence set aside and directed to run such sentence concurrently.”

(emphasis added)

10. A co-ordinate bench of this Hon’ble court in **Taron Mohan v. State**, 2021 SCC OnLine Del 312, succinctly described the jurisdiction of the court under section 397 of the Code of Criminal Procedure, 1907 as follows,

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

(emphasis added)

11. The Court has perused the same and does not find any infirmity or illegality or impropriety in the said order.

12. In this view of the matter, the petition is dismissed.

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

ANISH DAYAL, J

OCTOBER 4, 2024/sm