



2024:DHC:2898



\$~62 to 71

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 08.04.2024

(62)+ CRL.REV.P. 457/2024

(63)+ CRL.REV.P. 458/2024

(64)+ CRL.REV.P. 459/2024

(65)+ CRL.REV.P. 460/2024

(66)+ CRL.REV.P. 461/2024

(67)+ CRL.REV.P. 462/2024

(68)+ CRL.REV.P. 463/2024

(69)+ CRL.REV.P. 464/2024

(70)+ CRL.REV.P. 465/2024

(71)+ CRL.REV.P. 466/2024

ZAHIR ABBAS ANSARI

..... Petitioner

Through: Mr.Pramod Kr. Shrivastava,
Adv.

versus

VINOD KUMAR JAIN

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 10601-03/2024 (Exemption) in CRL.REV.P. 457/2024

CRL.M.A. 10605-07/2024 (Exemption) in CRL.REV.P. 458/2024

CRL.M.A. 10610-12/2024 (Exemption) in CRL.REV.P. 459/2024

CRL.M.A. 10615-17/2024 (Exemption) in CRL.REV.P. 460/2024

CRL.M.A. 10619-21/2024 (Exemption) in CRL.REV.P. 461/2024

CRL.M.A. 10622-24/2024 (Exemption) in CRL.REV.P. 462/2024

CRL.M.A. 10625-27/2024 (Exemption) in CRL.REV.P. 463/2024

CRL.M.A. 10628-30/2024 (Exemption) in CRL.REV.P. 464/2024

CRL.M.A. 10631-33/2024 (Exemption) in CRL.REV.P. 465/2024



2024:DHC:2898



CRL.M.A. 10634-36/2024 (Exemptions) in CRL.REV.P. 466/2024

1. Allowed, subject to all just exceptions.

CRL.REV.P. 457/2024 & CRL.M.(BAIL) 584/2024

CRL.REV.P. 458/2024 & CRL.M.(BAIL) 570/2024

CRL.REV.P. 459/2024 & CRL.M.(BAIL) 571/2024

CRL.REV.P. 460/2024 & CRL.M.(BAIL) 572/2024

CRL.REV.P. 461/2024 & CRL.M.(BAIL) 573/2024

CRL.REV.P. 462/2024 & CRL.M.(BAIL) 574/2024

CRL.REV.P. 463/2024 & CRL.M.(BAIL) 575/2024

CRL.REV.P. 464/2024 & CRL.M.(BAIL) 576/2024

CRL.REV.P. 465/2024 & CRL.M.(BAIL) 577/2024

CRL.REV.P. 466/2024 & CRL.M.(BAIL) 578/2024

2. These petitions have been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the judgment(s) dated 13.03.2024 passed by the learned Principal District and Sessions Judge, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'PD&SJ') in the Criminal Appeals bearing nos. 215/2019, 208/2019, 207/2019, 209/2019, 213/2019, 211/2019, 212/2019, 210/2019, 205/2019 and 206/2019 respectively, all titled ***Zahir Abbas Ansari v. Vinod Kumar Jain*** (hereinafter collectively referred to as the 'Criminal Appeals'), dismissing the appeal(s) filed by the petitioner herein.

3. The above appeal(s) had been filed by the petitioner herein against the judgment(s) dated 22.10.2019 passed by the learned Metropolitan Magistrate (NI Act), East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in the complaint cases filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being Ct. Cases



2024:DHC:2898



No. 919/2019, 59896/2016, 58947/2016, 510/2017, 2022/2017, 2560/2017, 3948/2017, 802/2018, 3593/2018 and 1904/2018, all titled ***Vinod Kumar Jain v. Zahir Abbas Ansari*** (hereinafter collectively referred to as the 'Complaint Cases'), convicting the petitioner for the offence under Section 138 of the NI Act, and against the Order on Sentence dated 30.11.2019 passed by the learned Trial Court, sentencing the petitioner to undergo simple imprisonment for five months and to pay compensation of Rs.2,30,000/- to the complainant and fine of Rs.3000/- to be deposited with the State in each of the complaint cases, within 30 days, and in default, to undergo further simple imprisonment for two months. The sentence of imprisonment was to run concurrently for all the complaint cases.

Factual Matrix:

4. It is the case of the Complainant/respondent herein that he is the proprietor of M/s Shruti Trade Nexus engaged in the business of trading of fabrics and sewing thread. The petitioner herein is the proprietor of M/s Ansari Garments and used to purchase sewing threads from the complainant regularly on credit basis.
5. It was alleged that as on 01.04.2015, the petitioner owed a sum of Rs.19,54,420/- to the respondent. To discharge the said liability, the petitioner issued four cheques, which got dishonoured on their presentation for encashment. Thereafter, the respondent sent a legal/demand notice dated 02.02.2016 to the petitioner for the dishonour of the said cheques.
6. The parties then entered into a settlement Agreement dated



2024 : DHC : 2898



26.02.2016. In terms of the said settlement, the petitioner issued 37 cheques in question, each of Rs.50,000/-, totalling Rs.18,50,000/- starting from 20.03.2016 to 20.03.2019. The said cheques also got dishonoured on their presentation for encashment.

7. The respondent again sent legal demand notices to the petitioner.

8. On the failure of the petitioner to pay the demanded amount, the respondent filed the abovementioned complaint cases.

9. Notice under Section 251 of the Cr.P.C. was framed on 27.04.2019. The petitioner admitted his signatures on the cheques. He stated that the said cheques were given as security for the goods (clothes), which the respondent used to supply for stitching to the petitioner. He stated that after stitching, he used to return the said goods to the respondent. He denied his liability to pay.

10. Both the parties led their respective evidence, with the respondent examining himself as CW1, and the petitioner examining himself as DW1. The statement of petitioner/accused under Section 313 of the Cr. P.C. was also recorded on 02.09.2019.

11. After hearing the final arguments advanced by the learned counsels for the parties, the learned Trial Court, by its judgment dated 22.10.2019, convicted the petitioner herein for the offence under Section 138 of the NI Act, and thereafter, vide Order dated 30.11.2019, sentenced the petitioner to undergo the abovementioned sentence.

12. Aggrieved of the said judgment and order, the petitioner challenged the same by way of the above criminal appeals before the



2024:DHC:2898



learned PD&SJ. The said criminal appeals were, however, dismissed by the learned PD&SJ by the Impugned Judgment dated 13.03.2024.

Submissions of the learned Counsel for the petitioner:

13. The learned counsel for the petitioner submits that the learned PD&SJ and the learned Trial Court have erred in not considering the fact that the respondent has failed to place on record any document to prove the alleged transaction and the alleged delivery of goods. He submits that the respondent has himself admitted in his cross-examination that he has not prepared any challan/receipt or invoice for the alleged supply of goods.

14. He further submits that the respondent has failed to prove the turnover of his proprietorship concern and has further failed to give any explanation as to why any person from the transport company did not come forward to prove the alleged supply of goods.

15. He submits that in the absence of any proof of liability, the petitioner cannot be convicted of an offence under Section 138 of the NI Act. In support, he places reliance on the judgment of this Court in *M/s Total Finaelf India Limited v. Rashmi Parnami*, 2013 SCC OnLine Del 1772; of the Kerala High Court in *M/s Ashwin Papers v. B.G. Kalathil, Managing Partner, Surabhi Publication*, Neutral Citation no.2012:KER:2900; and of the High Court of Judicature at Bombay in *Rakesh Chajjer v. The State of Maharashtra & Anr.*, 2013 SCC OnLine Bom 1855.

16. Placing reliance on the judgment of the High Court of Gujarat in *Amit Chandbhan Sigla v. Rehman Mohammad Ishahak Shaikh &*



Anr., 2012 SCC OnLine Guj 6225, he submits that the presumption under the NI Act against the accused, is rebuttable and when the accused has to rebut the presumption, the standard of proof for doing so is that of preponderance of probabilities. He submits that, therefore, where the accused is able to raise a probable defence, which creates a doubt about existence of a legally enforceable debt or liability, the prosecution must fail.

Analysis & Findings:

17. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

18. At the outset, it is to be noted that in his statement before the learned Trial Court, the petitioner has not denied his signatures on the cheques in question. He also admitted that he has filled up the details and gave the cheques in question to the respondent. The petitioner also does not deny issuance of the earlier four cheques in favour of the respondent, and further the receipt of the legal notices. The petitioner also admits his signatures on the Settlement Agreement dated 26.02.2016, though he states that he had signed blank documents on which the Agreement was then made.

19. In the present case, the petitioner admits that there were business relationship between him and the respondent. The petitioner further contends that under this business relationship, the respondent used to supply clothes to the petitioner, which, on stitching, the petitioner used to return to the respondent. The petitioner, however, has placed no evidence on record in this regard.

20. The petitioner admits that it had issued four cheques totalling to



2024:DHC:2898



a sum of Rs.19,50,000/- in favour of the respondent. He also admits that on their presentation, the said cheques were returned dishonoured, and the respondent had issued a legal notice dated 02.02.2016 seeking payment of the said cheques. The petitioner admits the receipt of the said notice. It is not shown by the petitioner that if this amount was not payable by the petitioner to the respondent, what action the petitioner took against the respondent for presenting the said cheques for encashment.

21. On the other hand, the respondent has placed reliance on the Settlement Agreement dated 26.02.2016 executed between the parties, wherein there is an admission on the part of the petitioner of the amount due; the bouncing of the four cheques; issuance of fresh cheques in discharge of the said liability. The petitioner admits his signatures on this document.

22. Though the petitioner submits that a blank document has been given to the respondent which was later fabricated in the alleged Settlement Agreement, apart from him saying so, no other evidence in this regard has been led by the petitioner.

23. As noted hereinabove, the petitioner admits his signatures on the cheques in question and even to the filling of the details in the cheques in question.

24. Section 139 of the NI Act is reproduced herein below:

“139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”



2024:DHC:2898



25. In similar facts, the Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers & Ors.***, (2020) 12 SCC 724, considering the presumption that arises under Section 139 of the NI Act read with Section 118 of the NI Act, and placing reliance on the earlier judgments of the Supreme Court in ***K.N.Beena v. Muniyappan***, (2001) 8 SCC 458; ***Rangappa v. Sri Mohan***, (2010) 11 SCC 441; ***Kumar Exports v. Sharma Carpets***, (2009) 2 SCC 513 and ***Kishan Rao v. Shankargouda*** (2018) 8 SCC 165, held as under:

“9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption, the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both, the learned trial court as



well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.”

26. In ***M/s Total Finaelf India Limited*** (supra), the appeal had been filed against the order of acquittal of the accused therein. The Court found that the complainant had not specified the exact date when the cheques in question therein were given and how much debt/ liability was there on any specific date prompting the respondent to issue the cheques in question therein. The Court also found that the cheques were in one sequence and have not been presented for encashment soon after the issuance; they were presented to the bank on the same day and were dishonoured. The Court also took note of the fact that the complainant did not examine the official who received the Purchase Order or raised Invoices. The said judgment, therefore, is on totally different facts and cannot come to the aid of the petitioner herein.

27. In ***M/s Ashwin Papers*** (supra), the witness produced by the complainant had stated that the cheques were not issued/signed by the accused persons but were given in the name of the staff. The accused therein had also moved an application seeking production of the bills



raised by the complainant corresponding to the cheques, lorry receipt signed by the accused, etc. However, the complainant did not produce these documents and, therefore, the learned Trial Court therein had drawn an adverse inference against the complainant therein. It was on those facts that the Court refused to convict the accused therein only on the basis of the presumption under Section 139 of the NI Act. The facts of the said case are, therefore, again totally distinguishable from those of the present case.

28. In ***Rakesh Chajjer*** (supra), the Court, in fact, found that the complainant was not sure as to whether goods were delivered to the accused or to one Ms. Bharti Shah. Coupled with this, were other factors and after considering the same, the Court, therefore, came to the conclusion that the accused has rebutted the presumption on the basis of admission of the complainant himself, the same cannot be so in the present case. The respondent has produced documents, signatures on which are admitted by the petitioner. The onus of proof was, therefore, on the petitioner to rebut the same, which he has miserably failed to do.

29. In ***Amit Chandbhan Sigla*** (supra), the Court found that the demolition work was given to one Mr. Gupta, who then entered into a deal with the accused on behalf of the complainant. The prosecution however, did not examine Mr. Gupta to prove the Agreement. Therefore, the Court held that it was doubtful that the work of demolition and lifting of materials was assigned to the accused therein and the cheque was given towards liability arising out of the said work. The Court held that the accused therein was, therefore, able to



2024 : DHC : 2898



raise a probable defence, which creates a doubt about the existence of legally recoverable debt or liability. The Court, therefore, found that the presumption under Section 139 of the NI Act would not come to the aid to the petitioner therein.

30. Coming back to the facts of the present case, as noted herein above, the petitioner has admitted the business relationship between himself and the respondent; the issuance of earlier four cheques; the dishonour of those cheques on their presentation; receipt of the legal notice with regard to the dishonour of those cheques; the signatures on the Settlement Agreement; the signatures on the cheques in question; and to the filling up of the details in the cheques in question. The respondent, therefore, has discharged the initial burden of proving the transaction and the petitioner, thereafter, has miserably failed to rebut the presumption that arose under Section 139 read with Section 118 of the NI Act.

31. It is to be noted that this Court does not sit as a Court of Appeal on the findings of the learned Trial Court or the learned PD&SJ. The scope of interference in a petition under Section 397 of the Cr.P.C. is rather limited and, especially, in the case where there are concurrent findings of two Courts, that is, the learned Trial Court and the learned Appellate Court, it is extremely narrow and has to be exercised with circumspection. The Court cannot re-appreciate the evidence and re-open the trial where two courts have already considered and adjudicated upon the same. Reference in this regard can be made to the judgments of the Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204; *Amit Kapoor v. Ramesh Chander*,



2024:DHC:2898



(2012) 9 SCC 460 and *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452. I find that cogent reasons have been given by the learned Trial Court as also the learned Appellate Court for convicting the petitioner for the offence under Section 138 of the NI Act. The sentence awarded to the petitioner is also found to be reasonable.

32. In view of the above, I find no merit in the present petitions. The same are, accordingly, dismissed along with the pending applications. There shall be no orders as to costs.

NAVIN CHAWLA, J.

APRIL 8, 2024/Arya/AS

Click here to check corrigendum, if any