



2024:DHC:6905



IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 09.09.2024*

+ **CRL.REV.P. 541/2024 & CRL.M.(BAIL) 669/2024**

ANANT RAO

..... Petitioner

versus

**STATE OF NCT OF DELHI
AND ANR**

..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Ravindra Narayan & Mr. Madhav
Narayan, Advs. with petitioner in person

For the Respondent : Mr. Utkarsh, APP for the State.
Mr. Nilanjan Bose (DHCLSC), Adv. for R2

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

AMIT MAHAJAN, J

1. The present petition is filed against the judgment dated 18.03.2024 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Saket Courts, New Delhi whereby the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') was upheld and his sentence was modified.

2. By impugned order, the learned ASJ upheld the order of conviction as passed by the learned Metropolitan Magistrate ('**MM**')

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vide judgment dated 29.04.2023. The learned ASJ, however, modified the order on sentence dated 11.05.2023 passed by the learned MM, and set aside the sentence of imprisonment, and only directed the petitioner to pay a fine of ₹1,75,000 along with simple interest at 9% per annum from the date of filing of the complaint till the making of the actual payment, as imposed by the learned Trial Court.

3. The seminal facts leading to filing of the present petition are as follows:

4. The complaint in the present case was filed at the behest of Respondent No. 2, alleging that the petitioner had approached him on 16.04.2020, for advancing a friendly loan for a sum of ₹1,75,000/- on the ground of illness of the petitioner's wife. It is alleged that Respondent No. 2, on 17.04.2020, advanced a sum of ₹75,000/- from his bank account, and the balance sum of ₹1,00,000/- for a period of 2-3 months, after arranging the amount from his brother-in-law.

5. It is alleged that thereafter on demand, the petitioner issued a cheque dated 22.07.2020 for a sum of ₹1,75,000/-, in order to discharge his liability. It is alleged that on presentation, the said cheque was returned unpaid with the following remark: "referred to drawee branch." It is alleged that thereafter, the cheque was presented again, however, *vide* return memo dated 21.10.2020, the cheque once again returned unpaid. It is alleged that pursuant to the dishonour of the cheque, Respondent No. 2 sent a statutory demand notice through speed post and WhatsApp, requiring the petitioner to make the payment within 15 days. It is alleged that since the petitioner failed to make the payment even after the demand notice was sent, Respondent No. 2 filed the complaint.



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6. The learned MM *vide* judgment dated 29.04.2023 convicted the petitioner of the offence under Section 138 of the NI Act, while noting that the case of the petitioner was full of inconsistencies and contradictions. While getting his plea recorded, the petitioner had admitted his signature on the cheque, however he claimed that the same was handed over only for ₹75,000/-, and the cheque in question had been manipulated by Respondent No. 2.

7. The learned MM noted that the petitioner had only denied his liability without leading any evidence, and had failed to rebut the presumption against him. It was noted that the petitioner did not request for any expert evidence with regard to the manipulation of the said cheque, or led any evidence to dislodge the presumptions against him. Consequently, the learned MM *vide* order on sentence dated 11.05.2023, sentenced the petitioner to undergo simple imprisonment for a period of 2 months and directed a payment of compensation of ₹1,75,000/- with simple interest thereon at 9% per annum from the date of filing the complaint till he makes the payment, within 30 days. On default of the payment of the said compensation, the petitioner was to further undergo simple imprisonment for a period of 1 month.

8. The learned ASJ, by impugned order, upheld the conviction of the petitioner under Section 138 of the NI Act, while specifically noting that the onus was upon the petitioner to take all the steps to dislodge the presumptions. The learned ASJ, however, modified the sentence and set aside the sentence of imprisonment. The petitioner was directed to only pay the fine as imposed by the learned Trial Court, that is, ₹1,75,000 along with simple interest at 9% per annum from the date of filing of the complaint till making the actual payment,



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and in default, to undergo simple imprisonment for a period of 1 month.

9. This led to filing of the present petition.

10. The learned counsel for the petitioner submitted that the complaint made by Respondent No. 2 is false, and liable to be dismissed. He submitted that the petitioner does not owe any legal liability to the tune of ₹1,75,000/- to Respondent No. 2. He submitted that Respondent No. 2 has manipulated the cheque by adding the numeral “1” in the amount written in figures on the cheque. He submitted that the learned Trial Court failed to take into account that the cheque was dishonored for the reason “refer to drawee branch”, however, Respondent No. 2 failed to show why the said cheque was referred to the drawee branch.

11. He submitted that even though legal notices were admittedly sent, the same was not shown to be served upon the petitioner. He submitted that the learned Trial Court failed to take into account the fact that the tracking report filed by Respondent No. 2 clearly showed that the petitioner was not found at the given address.

12. He submitted that according to Respondent No. 2's own submissions, Respondent No. 2 failed to show how and when he handed over a sum of ₹1,75,000/- to the petitioner. He submitted that the learned Trial Court failed to consider that there are discrepancies in Respondent No. 2's own submissions which creates a doubt over his entire complaint, and is liable to be dismissed.

13. The learned counsel for Respondent No. 2 submitted that the learned Trial Court has rightly convicted the petitioner of the offence under Section 138 of the NI Act. He submitted that the petitioner has

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failed to rebut the presumption under Section 139 read with Section 118(a) of the NI Act.

Conclusion

14. 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.

15. It is trite law that this Court is required to 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



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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)

16. In the present case, the petitioner has also admitted his signature on the cheque, and has also admitted the issuance of the cheque. The petitioner, however, disputes the amount for which the cheque was issued. It was argued that the cheque was issued for only a sum of ₹75,000/-, and that Respondent No. 2 had manipulated the cheque in question. It was also contended that the cheque was dishonored, and returned with the endorsement ‘referred to drawee branch’, however Respondent No. 2 failed to show why the cheque was referred to the drawee branch. It was argued that notice was not served upon the petitioner since the tracking report clearly stated that the petitioner was not residing at the given address, and the notice sent on WhatsApp was not shown as to when the same was ‘seen’ by the petitioner. It was argued that there were discrepancies with regard to the date on which Respondent No. 2 borrowed the amount from his brother-in-law, and how the sum of ₹1,75,000/- was handed over to the petitioner.

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

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discharge of a legally enforceable debt or liability are raised against the accused [Ref. **Rangappa v. Sri Mohan** : (2010) 11 SCC 441].

18. The Hon'ble Apex Court in **Rajesh Jain v. Ajay Singh** : (2023) 10 SCC 148, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

54. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?

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57. Einstein had famously said:

“If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions.”

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque.

(emphasis supplied)

19. It is seen that the learned MM observed that while the petitioner had alleged that Respondent No. 2 manipulated the cheque by adding the '1' in amount written in figures on the cheque, he never requested for any expert opinion on manipulation of cheque, except for the bald assertions of the petitioner. It was observed that Respondent No. 2 had proved the source of arrangement of ₹1,75,000/-, and there were only



minor contradictions with regard to the dates on which Respondent No. 2 borrowed the money, which could be overlooked, given that the other claims were substantiated.

20. Further, it is seen that on appeal, the learned ASJ observed that the guiding criteria was not the endorsement “referred to drawee branch” but is the fact that the payment was not made on the presentation of the cheque. It was observed that even otherwise, the right to prosecute arose since the payment was not made even after 15 days of receipt of legal notice. The learned ASJ further observed that the petitioner was in receipt of the statutory notice, since Respondent No. 2 had posted the notice through registered post at the correct address, and the petitioner, though alleged that he was not residing at the said address, failed to lead any evidence to prove the same.

21. In the present case, since the signature of the petitioner on the cheque is admitted, the presumptions under Section 139 and 118 of the NI Act stood against the petitioner, and in favour of Respondent No. 2. In line with the observations of the Hon’ble Apex Court in ***Rajesh Jain v. Ajay Singh (supra)***, the petitioner was liable to adduce evidence to the satisfaction of the Court, to show that on a preponderance of probabilities, there existed no debt/liability in the manner pleaded in the complaint/demand notice/affidavit evidence.

22. In the present case, it has firstly been argued that the cheque was dishonoured for the reason ‘referred to drawee branch’, and Respondent No. 2 failed to show why the said cheque was referred to the drawee branch. The learned ASJ, however, rightly noted that the material factor to attract liability under Section 138 of the NI Act is the fact that upon presentation of the cheque, the payment had not



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been made. In fact, the learned ASJ further noted that the right to prosecute arose only when the payment was not made even till 15 days of the receipt of legal notice.

23. It is pertinent to mention that the Hon'ble Apex Court in the case of *Yogesh Upadhyay and Anr. Vs. Atlanta Limited: Transfer Petition (Cri) Nos. 526-527/2022* reiterated that the offence under Section 138 of the NI Act is complete once the cheque is dishonoured, however, prosecution in relation to such offence is deferred by way of the provisos provided therein, and till the failure of the drawer to make the payment within 15 days of receiving the demand notice. In the present case as well, as was rightly observed by the learned ASJ the right to prosecute arose since the petitioner failed to make the payment even till 15 days of the receipt of legal notice. Even if the argument of the petitioner is taken at the highest, there is still no justification as to why he did not make the payment within 15 days of the receipt of demand notice, or why he did not set up his defense at the earliest possible occasion, that is, at time of receipt of demand notice, especially when the said cheque, upon presentation, was returned with the said endorsement on two occasions.

24. It has also been contended that the petitioner did not receive the demand notice since the tracking report stated that the petitioner was not found at the given address. It is pertinent to mention that the law with regard to service of notice under the NI Act is amply clear. Once the notice is sent on the correct address of the petitioner, by a registered post, then notice is deemed to be served. In that light, defences such as one raised by the petitioner, that is, he was not found at the given address, does not aid the case of the petitioner. The

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Hon'ble Apex Court in the case of *N Parameswaran Unni vs. G. Kannan and Another* : (2017) 5 SCC 737 observed as under:

“15. This Court in a catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed [Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647; State of M.P. v. Hiralal, (1996) 7 SCC 523 and V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774 : 2005 SCC (Cri) 393] . Though in the process of interpretation right of an honest lender cannot be defeated as has happened in this case. From the perusal of relevant sections it is clear that generally there is no bar under the NI Act to send a reminder notice to the drawer of the cheque and usually such notice cannot be construed as an admission of non-service of the first notice by the appellant as has happened in this case.”

(emphasis supplied)

25. In the instant case, as was observed by the learned ASJ, two addresses of the petitioner had been mentioned in the complaint, and notice was sent at one of the addresses where the petitioner, as admitted during his cross-examination, was residing previously. It was further observed that the petitioner had contended that he had left the said address on which the notice was sent, however, had led no evidence/document to corroborate the same. In view of the same, the learned ASJ, rightly observed that due service is presumed to have been effected since Respondent No. 2 had posted the notice through a registered post, and at the correct address. The onus to rebut the same was on the petitioner, who having failed to do so, cannot claim that notice had not been served upon him.

26. It is pertinent to mention that the petitioner has also argued that notice cannot be deemed to have been served upon him through



WhatsApp since Respondent No. 2 failed to show when such notice was 'seen' on WhatsApp. Such a contention of the petitioner has no force in the eyes of law. Reference may be had to Section 13 of the Information Technology Act, 2000 ('IT Act'), which is reproduced as under:

“13. Time and place of despatch and receipt of electronic record.—

(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resources of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,—

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) “usual place of residence”, in relation to a body corporate, means the place where it is registered.”



27. In accordance with Section 13 of the IT Act, once the notice in an electronic form, enters a computer resource so as to be outside the control of the originator (herein Respondent No.2), the said notice is deemed to have been dispatched. Further, the moment the said notice enters the computer resource of the petitioner, the same is deemed to have been received, and consequently been served. If the argument of the petitioner that it was not shown when the said notice was 'seen' on WhatsApp, and hence there was no service of notice, is accepted, then it would tantamount to stating that while one had 'received' the statutory notice through post, since he did not 'read' it, there was improper service. From a perusal of record, thus, it is apparent that notice was duly served upon the petitioner.

28. It has consistently been emphasised by the petitioner that the cheque in question was manipulated, however, as has rightly been observed by the learned ASJ, barring the bald claims and assertions of the petitioner, no evidence was led to controvert the same. Mere denial, and assertions do not suffice to dislodge the presumption under Section 118 and 139 of the NI Act.

29. Lastly, it had also been argued that there were discrepancies in the dates on which Respondent No. 2 claims to have borrowed the amount from his brother-in-law to lend it to the petitioner, and when the loan amount was advanced to the petitioner. The minor discrepancies in the dates cannot cast a blow to the case of the prosecution, especially when as has been observed by the learned ASJ, considering the overall evidence, the allegations against the petitioner stood substantiated.



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30. From a perusal of the record, it is apparent that the petitioner had not led any evidence to controvert the presumptions against him under Section 118 and Section 139 of the NI Act. Once the signature on the cheque was admitted, it was for the petitioner to rebut, and establish a probable defence to show that on a preponderance of probabilities, there existed no debt/liability in the manner pleaded in the complaint/demand notice/affidavit evidence. In the opinion of this Court, the said burden had not been discharged.

31. In view of the above discussion, the learned ASJ rightly upheld the conviction of the petitioner under Section 138 of the NI Act, and the same cannot be faulted with.

32. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

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