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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4929/2024 & CRL. M.A. 18865/2024**
JITENDER KUMAR TOMAR Petitioner
Through: Mr. Rakesh Kumar, Advocate.
versus

JITENDER SINGH Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

% **ORDER**
02.07.2024

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns order dated 18.04.2024 made by the learned Additional Sessions Judge (FTSC) (RC), Dwarka Courts South-West District, New Delhi in Criminal Revision Case No. 62/2023, arising from order dated 05.12.2022 made by the learned Metropolitan Magistrate, Dwarka Courts, New Delhi in Complaint Case No. 14661/2020 under section 138 of the Negotiable Instruments Act, 1881 ('N.I. Act').

2. Mr. Rakesh Kumar, learned counsel appearing for petitioner submits, that the learned ASJ has erred in dismissing the criminal revision petition even though the respondent (complainant before the learned Magistrate) had failed to establish that there was any *legally enforceable debt* against which the subject cheque was issued.
3. Counsel submits that though the petitioner does not dispute that he had issued to the respondent a cheque which cheque bore his signature, it is the petitioner's contention that he owed no debt or liability to the respondent.



4. Counsel argues that the petitioner had therefore *successfully rebutted* the presumption under section 139 of the N.I. Act, by having disputed that he owed any liability to the respondent; and therefore the respondent had failed to prove the existence of any legally enforceable debt. It is accordingly argued, that the learned Magistrate had erred in directing the petitioner to pay 20% of the cheque amount viz. about Rs. 1.2 lacs, towards interim compensation to the respondent in the matter, which matter is still pending trial before the learned Magistrate.
5. After hearing learned counsel for the petitioner and perusing the record, it is observed that by way of impugned order dated 18.04.2024, the learned ASJ has dismissed the revision petition based on the following reasons :

“5. *It has been argued by the Counsel for the revisionist that the learned trial Court had failed to appreciate the arguments of the revisionist and had passed the order in an arbitrary order. It is argued that learned Trial Court has not taken into consideration the defence raised by the revisionist that there is no legally enforceable debt or liability against the revisionist. It is further submitted that the learned trial court has based its decision on the ground (sic) admitted signatures of the revisionist on the cheque and the letter of consent. It is further contended that mere admission of signatures cannot be considered as an admission of liability against the revisionist. It is further submitted that the learned trial court has not taken into account the fact that the respondent has not produced any agreement pertaining to running of a Chit Fund Committee by the respondent or that the revisionist was a subscriber to the same.*

“6. *Respondent has argued that the order passed by the learned trial court is well reasoned and has already considered the submissions raised by the revisionist and requires no further*



intervention. It is submitted in the reply filed by the counsel for the respondent that the revisionist did not appear before the learned trial court despite receipt of summons. Bailable warrants had to be issued against him to secure his presence. It is submitted that due to delay caused by the revisionist notice was framed after nearly 1.5 years from the receipt of summons. It is further contended that once issuance of a cheque and signatures are admitted, the presumption of a legally enforceable debt in favor of the holder of the cheque arises. It is further submitted that the admitted signature of the revisionist on the cheque and on the letter of consent give rise to the presumption of a legally enforceable debt in favor of the holder of cheque. It is further contended by the counsel for the respondent in the reply that the revisionist would still be liable if there is an outstanding liability of the revisionist towards the respondent at the time of presentation of the cheque. It is submitted that the letter of consent specifically mentions that revisionist took Rs.6,00,000/- from the respondent and he would return the same in lieu of that he was issuing cheque of Rs.6,00,000/- in favour of the respondent and the said of consent bears the signatures of three witnesses.”

(emphasis supplied)

6. As a sequitur to the above observations, and noting that the revisional power of the court under section 397 of the Code of Criminal Procedure 1973 ('Cr.P.C.') is limited to correcting a patent defect of jurisdiction or law; and citing certain rulings of the Supreme Court, the learned ASJ has proceeded to direct as follows :

“12. In the instant matter, trial court record has been perused. The reply filed by the revisionist before the trial Court has also been seen. The contentions raised therein find mention in the order so passed. It is not for a revision court to replace the discretion of the learned Trial Court if rightly exercised, with that of its own.”

“13. In view of the above findings, there is no infirmity, irregularity or impropriety in the impugned order passed by the



learned Trial Court which calls for interference by this Court. Accordingly, the revision petition is without merits and is hereby dismissed.”

(emphasis supplied)

7. Upon a conspectus of the foregoing, this court finds no basis or reason to exercise its inherent powers under section 482 of the Cr.PC to interfere with impugned order dated 18.04.2024 made by the learned ASJ.
8. The petition is accordingly dismissed.
9. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 2, 2024

V.Rawat