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

\+ CRL.REV.P. 824/2024 CRL.M.A. 19076/2024 CRL.M.(BAIL) 1076/2024

RAM SHANKAR PANDEY .....Petitioner

Through: Mr. Nishant Bhardwaj, Adv. (thru VC)

versus

M/S NOBLE ELECTRICALS .....Respondent

Through: Mr. Dhananjay Mehlawat, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGEMENT (ORAL)

% **05.11.2024**

1. This petition has been filed challenging the impugned judgment dated 19th January 2022 and order on sentence dated 4th March 2022 passed by the Metropolitan Magistrate, Rohini Courts, in CC No. 8432/2016 arising out of proceedings under Section 138 NI Act.

2. It may be noted that on 14th October 2024, settlement had been arrived at between the parties, after deliberations *inter se* the counsels, and was recorded in the said order. The petitioner had agreed to pay Rs. 12,80,000/- as full and final settlement, payable in agreed instalments.

3. After a couple of further opportunities, petitioner's counsel stated that they had no instructions for purposes of settlement. Accordingly, the matter is being considered on merits.

4. The issue arose out of dishonour of two cheques, one for

Rs.10,54,238/- dated 27th July 2015 and the other for Rs.45,000/- dated 23rd July 2015.

5. The complainant firm deals in trade of electrical goods and accused had regular business dealings with the complainant firm. Accused approached complainant and requested for supply of electrical goods, which were duly supplied. Accused placed orders from time to time; invoices were raised by the complainant. A ledger was maintained by complainant with regard to monies which were owed by accused, to it, against supplies made by complainant. As per the ledger, there was a debit balance of Rs.10,99,238/- and in discharge of this liability, two cheques in question were issued by the accused-petitioner, however, they got dishonoured on presentation and complaint was filed.

6. Signatures on cheques were admitted by accused-petitioner, however, the defence was taken that they were furnished as security. Accused examined himself as DW-1, the only defence witness, and no other document or any other proof was submitted for discharge of his burden, that cheques were given as security. Moreover, in cross examination, accused, as DW-1, stated that "*it is correct that I never raised any protest against any of the invoices collectively exhibited as Ex. CW1/B.*"

7. Statutory presumption having arisen under Section 139 read with Section 118 of NI Act, the petitioner, has a burden to rebut the presumption, but the same was not discharged. The MM has rightly appreciated the conspectus of facts and contentions.

8. Counsel for petitioner-accused has raised the issue that cash amounts had been paid to complainant, however, neither is there any proof placed on record in support of the same nor any ledger account were supplied by

petitioner/ accused to controvert the aspect of liability, in course of business transactions.

9. Counsel for petitioner further points out to cross examination of CW-1, raising issues on complainant's testimony and stating that they did not prove that invoices had been received by employees of accused/ petitioner, and that they he did not remember for how much amounts the invoices had been filed in the present case.

10. In the opinion of this Court, these aspects are not necessary and are not relevant to the gravamen of the issue, which relates to dishonour of cheques in question, admittedly issued by petitioner/accused.

11. Counsel for respondent has rightly relied upon the following decisions in support of his contentions:

i. The Supreme Court in, ***K.N. Beena v. Muniyappan*** (2001) 8 SCC 458, discussed the burden of proof to be discharged by the accused, para 7 of the said decision, is extracted hereunder for ease of reference:

> "*7. In this case admittedly the 1st respondent has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21-5-1993 were sufficient to shift the burden of proof on to the appellant complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. <u>The 1st respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct</u>. The High Court erroneously set aside that conviction.*"

(emphasis supplied)

ii. The Supreme Court in ***Tomaso Bruno v. State of U.P.*** (2015) 7 SCC 178, discussed the presumption under NI Act, as under:

> "*27. As per Section 114 Illustration (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 Illustration (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of the Negotiable Instruments Act, where the court has no option but to draw a statutory presumption, under Section 114 of the Evidence Act, the court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 Illustration (g) of the Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.*"

(emphasis supplied)

iii. This Court in ***Shankar Lal Aggarwal v. Balram Luthra*** 2007 SCC OnLine Del 1894, stated in para 6 as under:

> "*6. It is an undisputed fact that the appellant had taken loan from the complainant by way of cheques and this loan was duly accounted for. He even took the stand that he was paying the profit on this loan to the complainant and he mentioned about few cheques which were issued by him to the complainant as profit. This would only show that the loan was accounted for in the books of account of the appellant's proprietorship firm. The appellant failed to produce his books of accounts in the Court to show that in his books of accounts he had paid back any part*

of the loan or discharged his liability towards the loan taken by him. He could not have paid any unaccounted money to the complainant nor he could have paid money to the complainant without a valid receipt/voucher. Failure on the part of the appellant to produce any books of accounts in the Court or any receipt of payment in discharge of liability of his loan amount, disproved the defence taken by the appellant. The complainant's case of dishonour of the cheques, receipt of the notice under Section 138 of the Act after dishonour and non-payment of the amount, despite receipt of notice, was admitted by the appellant. In fact, complainant had nothing to prove beyond that. The trial Court, therefore, rightly convicted the appellant under Section 138 of the Act."

(emphasis supplied)

12. It is well settled, that a mere assertion that a cheque was given as security amount, must be proved by the accused under Section 138 NI Act proceedings, as statutory presumption works against the accused. The following judgments are referred to in this regard.

13. Division Bench of this Court in ***Chuni Lal Anand v Dr. Narendra*** 2000 SCC OnLine Del 761 held that the onus was upon the respondents to prove that amount was given by respondent to the appellant by way of security. The relevant paragraphs are extracted as under:

> *"8. ..The allegation of the respondents in the written statement was that the amount of Rs. 20,000/- was given by respondent No. 2 to the appellant as security in cash. However, the respondents have not been able to prove the payment of the security amount given to the appellant. In the cross-examination, respondent No. 2 admitted that he did not get any receipt from the appellant for this amount but stated that his father i.e. respondent No. 1 had obtained signatures of the appellant. However, no such receipt is produced evidencing the payment of Rs. 20,000/- allegedly given by the respondent No. 2 to the appellant by way of security money. Although the respondent No. 1 had also*

deposed as DW-2 but his testimony is totally silent about the alleged receipt. Since the receipt of the amount of Rs. 20,000/- by way of cheque by respondent No. 2 from the appellant was admitted by the respondents, the onus was upon the respondents to prove that any amount was given by respondent No. 2 to the appellant by way of security and this cheque was for repayment of the security amount. Onus of proof of issue No. 1 was clearly on the respondents. No evidence is led by them to discharge this onus…

…

11… It is held that cheque in question was issued by appellant by way of loan to the defendant/respondent No. 2 and it was not towards refund of any security. The appellant is held to be entitled to the amount in question given by him to defendant/respondent No. 2 by way of loan as defendant/respondent No. 2 failed to repay the same. Since, as per the agreement defendant/respondent No. 1 also undertook to repay the loan with interest in case of default by defendant/respondent No. 2, defendant/respondent No. 1 is also liable for repayment…"

(emphasis added)

14. A Coordinate Bench of this Court in ***Jal Singh Malik v Om Prakash*** 2023 SCC OnLine Del 8130 held that it was not understandable as to why the respondent issued the cheque in question in favour of the appellant as a security cheque and that the respondent was to understand that an instrument like a cheque, should not be issued in a casual manner. The relevant paragraphs are extracted as under:

"18…The defence as taken by the respondent is appearing to be highly probable. It is not understandable that why the respondent issued the cheque in question Ex. CW1/B in favour of the appellant in December, 2015 even as security cheque once amount of Rs. 6 lacs was not paid by the appellant as his share for purchase of the property. The

defence of the respondent does not inspire any confidence appears to be sham and without any basis. The respondent was needed to understand that instrument like cheque should not be issued in such casual manner as once cheque is issued it carries serious legal consequences...

...

21…The trial court shifted the entire burden on the appellant to prove issuance of cheque in question Ex. CW1/B for discharge of legally enforceable debt even the respondent admitted issuance of cheque in question Ex. CW1/B in favour of the respondent. The trial court also misread and misunderstood document Ex. CW2/D1 to the benefit of the respondent and did not consider defence of the respondent. The defence taken by the respondent in cross examination of CWs, statement under section 313 and by leading defence evidence does not inspire any confidence and cannot be accepted. The impugned judgment is not legally sustainable and is set aside…"

(emphasis added)

15. The High Court of Karnataka in ***Maheshwari Constructions Private Limited, Bangalore v Lords Palace and Resorts Limited, Bangalore and Anr.*** 2006 SCC OnLine Kar 699 held that the Court must presume the negotiable instrument to be for consideration unless the existence of consideration is disproved and held that respondents failed to disprove that the cheques were issued as a security. The relevant paragraphs are extracted as under:

"17. ...So under Sections 118(a) and 139 of the N.I. Act, it is for the respondents to rebut the evidence of the complainant. It is the quality of the evidence which required to be considered, whether those three cheques were issued as a security or a legally enforceable debt or otherwise…

18. Taking into consideration the facts and circumstances of the case, <u>the Trial Court ought to have presumed the negotiable instrument to be for consideration unless the existence of the consideration is disproved. But the respondents failed to disprove that the cheques issued by them not for cost of the construction work carried out by the appellant, but they were issued as a security</u>.

19. …Therefore, the Trial Court is wrong in believing the version of the respondents. The issuance, of said three cheques were issued as a security after the execution of the Power of Attorney in favour of the Bank does not arise. The findings recorded by the Trial Court is totally perverse, illegal. Therefore, taking into consideration the facts and circumstances of the case this Court comes to the conclusion that the order of acquittal passed by the Trial Court is liable to be set aside and the respondents are to be convicted for the offence punishable under Section 138 of N.I. Act…"

(emphasis added)

16. In this view of the matter, this Court does not find any impropriety or illegality in the decision taken by the MM.

17. Accordingly, this petition is dismissed and disposed of accordingly.

18. Pending applications are rendered infructuous.

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

ANISH DAYAL, J

NOVEMBER 5, 2024/sm/*kp*