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

+ **CRL.REV.P. 1054/2019 CRL.M.(BAIL) 1754/2019**

SUBHASH CHAND

.....Petitioner

Through: Mr. Sumit Kumar, Mr. Sudhir Chand
Srivastava, Mr. Harsh Goyal, Ms.
Jyoti Singh and Mr. Nand Kishor Jha,
Advocates.

versus

STATE & ANR.

.....Respondent

Through: Mr. Vibhor Garg, Ms. Diksha Kachar,
Advocates for R-2.

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CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

04.11.2024

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1. By this revision petition, the revisionists have challenged the order dated 05th September, 2019, passed by ASJ in Crl. Appeal nos. 180/2019 and



181/2019 arising out of proceedings under Section 138 of Negotiable Instruments Act. By the said order, the appeals under the conviction and sentencing of the petitioner were dismissed.

2. The basic factual background is based on the complaint by the complainant that he had purchased two flats from Mr. Ashwani Chandra, son of the petitioner and had paid Rs. 16 lacs to the petitioner son.

3. The two flats were found to be sold to some other person and consequently, the FIR was registered under Section 448/380 of IPC dated 21st September, 2017.

4. Subsequently, a settlement took place between petitioner and the respondent where the petitioner had agreed to pay Rs. 16 lacs to the respondent/complainant. The said document is exhibited as Ex. CW-1/2.

5. As per the settlement which was signed by both the parties, three cheques were tendered. Two, out of the said three cheques when presented, were dishonoured. These cheques which were dishonoured, were of Rs. 5 lacs each. The essential argument of counsel for petitioner is that the settlement was executed under coercion before the police, therefore, shall not be considered.

6. In the opinion of this Court, this assertion is untenable considering that the settlement agreement itself is admitted to have been executed and would amount to a contract; therefore, arose a legal liability. If the said settlement agreement had to be challenged, it could have been done either through a complaint asserting coercion on behalf of the police or through a civil suit at best seeking to declare the said agreement void; neither step was taken.

7. Counsel for petitioner has tried to focus on the elements of the FIR, however, that may not have a bearing in the matter since the cheques were



issued basis an admitted liability in the settlement agreement. Petitioner, additionally argues that from the complaint itself no liability is made out against the son of the petitioner nor the petitioner himself.

8. However, these submissions are untenable and therefore is no requirement to look behind the settlement, once it is admitted it has been executed, with no step taken to set it aside. Accordingly, the presumption under Section 139 of NI Act read with Section 118 arises against the petitioner which the courts below held that they have failed to rebut. The Appeal Court, therefore, rightly holds that the petitioner has been justifiably convicted in both these cases.

9. By the impugned order, the sentence was reduced from SI of 6 months imprisonment and Rs. 10 lacs (*twice of the cheque amount*) in both the cases to SI for 6 months and fine of Rs. 5,75,000/- (*in each of the case*).

10. This Court does not find any illegality, infirmity or inappropriateness in the said order, after perusal of the records before the Court and hearing submissions.

11. Petition is, accordingly, dismissed in the above terms.

ANISH DAYAL, J

NOVEMBER 4, 2024/RK

Click here to check corrigendum, if any