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

\+ CRL.REV.P. 891/2024, CRL.M.A. 20431/2024 (stay), CRL.M.(BAIL) 1156/2024 (for Regular Bail)

PREM SINGH .....Petitioner

Through: Mr. Aditya Viikram, Advocate (DHCLSC) with Mr Ayushman Sharma, Advocate.

versus

STATE (NCT OF DELHI) & ANR .....Respondents

Through: Mr. Satinder Singh Bawa, APP for the State.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>O R D E R</u>

% 15.07.2024

<u>CRL.M.A.20432/2024 (Exemption)</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>CRL.REV.P. 891/2024</u>

3. The Revision Petition under Section 397 Cr.P.C. read with Section 401 of Cr.P.C., has been filed on behalf of the petitioner to challenge the Judgment dated 08.04.2024, vide which the learned ASJ has dismissed the Appeal preferred against the Judgment dated 24.12.2022 vide which the petitioner has been convicted under *Section 138 of the Negotiable Instruments Act, 1881* ('NI Act', hereinafter) and has been sentenced on

24.03.2023 to pay a fine of Rs.2,50,000/- and in default to undergo simple imprisonment for 45 days. Though, the learned ASJ has reduced the default sentence of 45 days to 30 days.

4. **Submissions heard.**

5. Briefly stated the respondent No. 2 Mr. Gaurav Singh had filed the complaint under Section 138 of the NI Act against the Revisionist Mr. Prem Singh herein on the averments that the revisionist had taken a friendly loan of Rs. 2,00,000/- for a period of one year from the respondent No. 2 for the purpose of his daughter's marriage. In discharge of his liability he had issued a cheque bearing No. 000021 dated 10.03.2018 for a sum of Rs.2,00,000/- drawn on Bank of India. On presentation, the same got dishonoured on account of insufficiency of funds vide return memo dated 21.04.2018.

6. A Legal Notice was sent to the appellant despite which he failed to make the payment. Consequently, the complaint under NI Act was filed. After giving the Notice under Section 151 Cr.P.C. evidence was led both by the appellant as well as the respondent No. 2.

7. The learned Trial Court after appreciation of the evidence as led by both the parties gave detailed findings that the revisionist had failed to rebut the presumption raised against him or to put forth a probable defence. Hence the revisionist was convicted under Section 138 and was sentenced to pay a fine of Rs.2,50,000/- in the Court and to undergo 45 days of simple imprisonment ('SI').

8. The Revisionist preferred a CRL.A. No. 199/2023 against his Order of Conviction and sentence dated 24.12.2022 and 24.03.2023 respectively. The learned Sessions Judge observed that Section 118 of NI Act provides

that presumption shall be raised against the accused unless contrary is proved:

a. as to consideration,
b. as to Date of Instrument,
c. as to Time of Acceptance,
d. as to an Appropriate Stamp, or
e. as to holder being a holder in due course.

9. Section 139 of NI Act provides that it shall be presumed unless the contrary is established, that the cheque had been issued in discharge of existing debt or liability.

10. The Apex Court in the case of ***Kumar Exports vs. Sharma Carpets*** (2009) 2 SCC 513 has held that there are two options to rebut the presumption. The accused should be able to either prove that the consideration and the debt did not exist or there existed such circumstances which made it improbable for any prudent person to accept that the debt existed.

11. ***On the facts of the case***, it was held that the genuineness of cheque was admitted by the appellant thereby giving the rise to the presumption under Section 118 and 139 NI Act, against him. The burden thus, shifted upon the appellant to prove that their existed no debt or liability. He took the defence that it had been issued as a security for loan of Mr. Rajesh Kumar who in fact had taken the loan from the complainant. However, it was concluded that the appellant failed to produce this Mr. Rajesh Kumar as a witness or adduce any other cogent evidence to prove that it was a security cheque or that there existed no debt or a consideration against which the cheque was issued.

12. After due appreciation of the evidence, the learned Sessions Judge held that the offences under Section 138 NI Act was proved and consequently, the Appeal against the Judgement was dismissed, though, the default sentence was reduced from 45 days to 30 days.

13. In the present Revision Petition, the Revisionist has again not been able to point out any jurisdictional error or miscarriage of law or wrong appreciation of facts or law.

14. There is no merit in the present Revision Petition which is hereby dismissed.

NEENA BANSAL KRISHNA, J

JULY 15, 2024/PT