



2024:DHC:412



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

Date of decision: 18.01.2024

(120)+CRL.REV.P. 773/2022

(121)+CRL.REV.P. 204/2023

MOHD AKIL

..... Petitioner

Through: Mr.Pinaki Addy, Adv.

versus

MOHD FAREED

..... Respondent

Through: Mr.Asim, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 5208/2023 (Exemption) in Crl.Rev. P. 204/2023

1. Allowed, subject to all just exceptions.

CRL.M.A. 5209/2023 (Delay) in Crl.Rev. P. 204/2023

2. For the reasons stated in the application, the delay of 145 days in filing the petition is condoned.

3. The application is allowed.

CRL.REV.P. 773/2022 & CRL.M.(BAIL) 1389/2022

CRL.REV.P. 204/2023 & CRL.M.(BAIL) 296/2023

4. These petitions have been filed challenging the order dated 28.09.2022 passed by the learned Additional Sessions Judge-03, Central District, Tis Hazari Court, Delhi (hereinafter referred to as the 'ASJ') in Crl. Appeal nos.133/2019 and 134/2019, both



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titled *Mohd. Akil v. Mohd. Fareed*.

5. By the Impugned Order, the learned ASJ has been pleased to dismiss the appeals filed by the petitioner herein, which challenged the orders dated 07.02.2019 passed by the learned Metropolitan Magistrate-01 (NI Act), Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in CC nos.512356/2016 and 513961/2016, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), and orders dated 25.02.2019, sentencing the petitioner to undergo Simple Imprisonment for a period of three months and pay fine of Rs.16,10,000/- in CC no.512356/2016, and Simple Imprisonment for a period of three months and a fine of Rs.4,10,000/- in CC no.513961/2016, respectively.
6. The respondent had filed the above-mentioned complaint cases against the petitioner herein, contending that he was the registered owner of the property bearing Khasra No.733, Block—A, Gali No.1, Inam Vihar, Hadbast Colony, Loni Tehsil, District Ghaziabad, Uttar Pradesh, vide a registered sale deed dated 14.03.2002. He entered into an agreement to sell with the petitioner herein in respect of the said property admeasuring 300 sq. yards for a total sale consideration of Rs.27,00,000/- vide *Iqrarnama* dated 22.02.2014. The respondent paid a sum of Rs.50,000/- to the petitioner, and the balance amount of Rs.26,50,000/- was to be paid at the time of the execution of the sale deed on or before 10.11.2014.



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7. It was further contended that in the meantime, the respondent executed a sale deed in respect of 100 sq. yards from the total 300 sq. yards of the said plot of land in favour of one Mohd.Saddam, allegedly on the instructions of the petitioner and claiming Mohd.Saddam to be the nominee of the petitioner, vide sale deed dated 16.04.2014. The respondent alleged that on 14.05.2014, the petitioner paid to the complainant an amount of Rs.11,00,000/-, which included Rs.50,000/- already received, and the balance amount of Rs.16,00,000/- was acknowledged to be paid on or before November 2014 by way of two post-dated cheques dated 20.07.2014 for Rs.2,50,000/-, and dated 10.11.2014 for Rs.13,50,000/-, drawn on Bombay Mercantile Co-operative Bank Ltd., Darya Ganj, New Delhi.
8. The Power of Attorney in respect of 200 sq. yards of land was also executed by the respondent in favour of the petitioner, with the condition that the same shall come into effect only on the encashment of the said post-dated cheques. The possession of the subject property was also handed over to the petitioner herein on the condition that the said cheques would be duly honoured and encashed on their presentation.
9. It is an admitted case of the petitioner that the abovementioned two post-dated cheques were returned dishonoured with the remark 'funds insufficient', however, even prior thereto, the petitioner sold the 200 sq. yards of the plot of land on the basis of Power of Attorney executed by the respondent in his favour.
10. Based on the above averments, the respondent filed the above



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complaints before the learned MM, who, on considering the evidence led by the parties, by the order dated 07.02.2019, convicted the petitioner for having committed an offence under Section 138 of the NI Act.

11. The learned MM in the above order observed that the petitioner does not dispute his signatures on the two cheques; he also admits that the execution of the *Iqrarnama* and the endorsement made on the back side of the same, which *inter alia* records that Rs.11,00,000/- has been received by the respondent with respect to the sale of the 300 sq. yards of the plot of land on 14.05.2014, and that the petitioner has issued two cheques totalling Rs.16,00,000/- for the balance amount to be paid for the 300 sq. yards of the plot of land, as a full and final payment, and that the respondent has executed a Power of Attorney in favour of the petitioner for 200 sq. yards of the plot of land, which was to be valid only on the clearance/encashment of the said two cheques.
12. The learned MM further observed that the plea of the petitioner herein that the Power of Attorney was executed in consequence of Rs.11,00,000/- paid by him, is in contradiction to the contents of the handwritten endorsement on the back of the *Iqrarnama* which has been duly admitted by the petitioner.
13. It was further held that the petitioner herein acted on the Power of Attorney and, in fact, went ahead and sold 200 sq. yards of plot of land on the basis of the same. The learned Trial Court observed that the petitioner cannot enjoy the fruit of the Power of Attorney while disputing the conditions on the basis of which it



had been executed.

14. Aggrieved of the above order, the petitioner challenged the same by way of the appeals, which have been dismissed by the learned ASJ vide the Impugned Order dated 28.09.2022 observing as under:

“35. It is admitted case of the parties that they entered into an iqrarnama Ex.CW1/2 in respect of 300 sq. yards of plot for sale consideration of Rs. 27,00,000/-.

36. Iqrarnama Ex.CW1/2 is an admitted document. Clause 2 of the said iqrarnama Ex.CW1/2 provided that the complainant shall have no objection to execution of sale deed in favour of the appellant or any nominated person by him. It is the precise case of the complainant that he executed sale deed in respect of 100 sq. yards of plot in favour of Mohd. Saddam, Ansar and Mohd. Azam, at the instance of the appellant, on 16.04.2014 vide sale deed Mark DW1/A. The appellant did not examine the said buyers to disprove veracity of deposition of the complainant, on this aspect.

37. This Court does not find any force in contention of the appellant that an amount of Rs. 11,00,000/- was paid towards execution of General Power of Attorney Ex.CW1/3 in respect of 200 sq. yards of plot and two post-dated cheques worth Rs.16,00,000/- were issued towards sale consideration of 100 sq. yards of constructed plot.

38. It is admitted case of the parties that on 14.05.2014, the appellant paid an amount of Rs. 11,00,000/-, including amount of Rs 50,000/-, already paid at the time of execution of iqrarnama Ex.CW1/2, vide endorsement on rear page of iqrarnama Ex.CW1/2. A perusal of the said endorsement would show that on 14.05.2014, the said amount of Rs. 11,00,000/-



was received by the complainant towards sale consideration of plot of 300 sq. yards situated in Inam Vihar and not towards plot of 200 sq. yards. It further shows that balance amount of Rs. 16,00,000/- was received vide Cheque No. 536293 dated 20.07.2014 in the sum of Rs. 2,50,000/- and Cheque No. 536295 dated 10.11.2014 in the sum of Rs.13,50,000/-, both drawn on 'Bombay Mercantile Co-operative Bank Ltd., Darya Ganj, Delhi' by the complainant towards full and final payment of sale consideration of plot of 300 sq. yards. It also provided that General Power of Attorney in respect of 200 sq. yards plot is already executed and it would be valid after clearance of the said cheques. It is admitted case of the parties that General Power of Attorney Ex.CW1/3 in respect of 200 sq. yards of plot was executed on 16.04.2014.

39. It is admitted case of the appellant that he entered into an iqrarnama Ex.CW1/2 regarding purchase of a plot measuring 300 sq. yards. It is admitted case of the appellant that the complainant executed a General Power of Attorney Ex.CW1/3 qua 200 sq. yards of plot on 16.04.2014. It is admitted case of the appellant that he paid an amount of, Rs.11,00,000/- to the complainant. However, the appellant contended that the said cheques worth Rs. 16,00,000/- were issued qua 100 sq. yards of plot. In order to strengthen his case, Ld. Counsel for the appellant contended that the said 100 sq. yards of plot is a 'constructed plot'. This fact is also deposed by the appellant in his evidence. It has never been the case of the appellant that plot of 300 sq. yards consisted of 200 sq. yards 'vacant plot' and 100 sq. yards 'constructed plot'. The appellant did not take such plea in his response to substance of accusations under Section 251 Cr.P.C. He has not taken such contention in his application under Section 145 (2) NI Act. No such description of the subject plot of 300 sq. yards is mentioned in iqrarnama



Ex.CW1/2. There is no such bifurcation of the amount qua plot of 200 sq. yards and 100 sq. yards in back side of iqarnama Ex.CW1/2. The contention that the said cheques worth Rs. 16,00,000/- were issued to the complainant as 100 sq. yards of plot was a 'constructed plot' is an afterthought. Moreover, sale deed Mark DW1/A would show that the complainant sold a 'vacant plot' of 100 sq. yards at sale consideration of Rs. 7,53,000/- on 16.04.2014.

40. It is admitted case of the appellant that General Power of Attorney Ex.CW1/3 regarding 200 sq. yards of plot was executed on 16.04.2014. It is further admitted case of the appellant that he executed a sale deed of the said 200 sq. yards of plot on 12.05.2014. It is admitted case of the parties that an amount of Rs. 11,00,000/- was paid to the complainant and the said cheques worth Rs. 16,00,000/- were issued in favour of the complainant on 14.05.2014. If the said cheques worth Rs.16,00,000/- were issued in favour of the complainant regarding 100 sq. yards of 'constructed plot', there is no explanation as to why the appellant did not ask the complainant to return the said cheques. He did not issue any notice to the complainant to return the said cheques or not to present the said cheques for encashment. He did not 'stop payment' of the said cheques which were due for payment on 20.07.2014 and 10.11.2014. There is no explanation as to why the appellant maintained stoic silence for 2 months since 14.05.2014. He had not taken any action even after dishonour of cheque No. 536293 due for encashment on 20.07.2014. The second cheque No. 536295 was due for encashment on 10.11.2014. The said cheques were not returned unpaid with remark 'stop payment'. The said cheques were returned unpaid with the reason 'funds insufficient'. It shows that the said cheques were not issued towards 100 sq. yards of plot. The said cheques were issued towards payment of balance sale



consideration of Rs.16,00,000/- qua the entire 300 sq. yards of plot.

41. As regards contention of the appellant that the appellant is not an attesting witness to sale deed Mark DW1/A and the complainant concealed the fact that he had already sold 100 sq. yards of plot on 16.04.2014 vide sale deed Mark DW1/A, it can be stated that General Power of Attorney Ex.CW1/3 in respect of 200 sq. yards of plot was executed on 16.04.2014 and the appellant had already sold the said 200 sq. yards of plot on 12.05.2014. However, he did not disclose this fact to the complainant on 14.05.2014 while making payment of Rs. 11,00,000/- including Rs. 50,000/- to the complainant. It is relevant to note that General Power of Attorney Ex.CW1/3 had to come into force on clearance of the said cheques whereas the appellant had already sold 200 sq. yards. of plot on 12.05.2014. It is further relevant to note that it is admitted case of the appellant that he had already sold 200 sq. yards of plot pursuant to General Power of Attorney Ex.CW1/3 on 12.05.2014. It does not stand to reason that he was not aware of sale of 100 sq. yards of plot vide sale deed Mark DW1/A.

42. As regards contention that the complainant has received an amount of Rs. 7,53,000/- from the buyers of 100 sq. yards of plot vide Mark DW1/A and therefore, the complainant is seeking amount in excess of the amount of the said cheques, it can be stated that the appellant has not led any evidence that the said amount was in fact received by the complainant and the said amount did not form part of amount of Rs. 10,50,000/-, as paid to the complainant on 14.05.2014.”

15. The learned counsel for the petitioner submits that the learned Trial Court as also the learned ASJ have erred in placing the



burden on the petitioner of proving that the sale deed in respect of 100 sq. yards of plot of land was not executed by the respondent in favour of the nominee of the petitioner. He submits that the burden of proving the same has to be on the respondent; the petitioner cannot be asked to prove the negative. He further submits that the total sale consideration of Rs.27,00,000/- was for the 300 sq. yards of plot of land. Admittedly, 100 sq. yards out of the said plot of land has been sold by the respondent to a third party and therefore, the respondent cannot claim payment of Rs.16,00,000/- which is the amount of the cheque.

16. He submits that in fact, the learned Trial Court has also erred in holding that the Power of Attorney could not have been executed for a consideration of Rs.11 lacs. He submits that the Court cannot enter into the commercial wisdom of the parties.
17. He further submits that the respondent has received a consideration of Rs.7,53,000/- for the sale of the 100 sq. yards of plot of land. The said amount, in any case, deserves to be adjusted against the total sale consideration payable under the *Iqrarnama*.
18. On the other hand, the learned counsel for the respondent reiterates that the sale deed for 100 sq. yards of plot of land was executed by the respondent on 16.04.2014 in favour of the nominee of the petitioner. The consideration received therein was part of Rs.11,00,000/-, which was shown on the back side of the *Iqrarnama* to have been received by the respondent. He submits that in any case, the Power of Attorney executed by the



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respondent was conditional and would only have been effective on the encashment of the two cheques totaling Rs.16,00,000/-. As the petitioner has admittedly acted on the basis of the said Power of Attorney and has executed a sale deed in favour of a third party for the 200 sq. yards of plot of land, he cannot today be heard to contend that the payment under the two cheques was not payable.

19. He submits that in any case, this Court is not to act as a Court of Appeal against the orders passed by the learned Trial Court or by the learned ASJ or enter into a detailed examination of the evidence of the parties.
20. I have considered the submissions made by the learned counsels for the parties.
21. At the outset, I would remind myself of the limited jurisdiction that this Court exercises under Section 397 of the Cr.P.C. while testing orders passed by the learned Trial Court and as upheld by the learned Appellate Court. This Court cannot act as a Court of appeal, but is only to look into any jurisdictional error that may have been committed by the Trial Court or by the Appellate Court.
22. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452, the Supreme Court has held as under:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional



jurisdiction. 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 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....”

23. In ***Amit Kapoor v. Ramesh Chander***, (2012) 9 SCC 460, the Supreme Court has reiterated the ambit and scope of the power under Section 397 and Section 482 of the Cr.P.C., while holding as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no



compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. ...

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....”

24. Having considered the submissions made by the learned counsels for the parties, and having perused the orders passed by the learned Trial Court and by the learned ASJ, I do not find any ground being made out for exercising the revisional jurisdiction under Section 397 or 401 of the Cr.P.C.
25. In the present case, the endorsement on the back of the *Iqrarnama* is admitted by the petitioner. The same is reproduced hereinbelow:



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one for the 300 sq. yards of plot of land and one specifically only for 200 sq. yards of the plot of land.

27. It is an admitted case of the petitioner that based on the Power of Attorney, the petitioner went ahead and sold 200 sq. yards of the plot of land to a third party, while the cheques in question were returned unpaid with the remark 'funds insufficient'.
28. In my view, the learned Trial Court and the learned ASJ have, therefore, rightly concluded that the offence under Section 138 of the NI Act has been made out against the petitioner.
29. As far as the adjustment of Rs.7,53,000/- is concerned, again, this is not a matter relevant to the Complaint filed by the respondent under Section 138 of the NI Act as it does not relate to the GPA or the two cheques. Even otherwise, I find no merit in the said submission of the learned counsel for the petitioner. The sale deed for the 100 sq. yards of land had been executed by the respondent prior to the date of the said endorsement on the *Iqrarnama*. It was for that reason that the GPA was executed only for the remaining 200 sq. yards of land. Even otherwise, the petitioner has not shown the mode and manner of the payment of Rs. 11,00,000/- to the respondent. This lends credence to the submission of the learned counsel for the respondent that Rs. 7,53,000/- shown as consideration of the sale deed for 100 sq. yards of land, was included in Rs. 11,00,000/-, reflected in the *Iqrarnama*.
30. On the issue of sentence, I again find that the same is reasonable and does not warrant any interference of this Court.



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31. In view of the above, the present petitions are found to be without any merit and are, accordingly, dismissed.
32. This Court by its interim order dated 21.02.2023 passed in Crl.Rev.P. No.773/2022 had stayed the operation of the sentence, subject to the petitioner depositing 20% of the aggregate amount of the cheque and fine, that is, Rs.3,22,000/-, before the learned Trial Court. As the said petition has now been dismissed, the said amount shall be released to the respondent, to be adjusted against the fine otherwise payable by the petitioner, in terms of the Impugned Orders.
33. Similarly, by the order dated 27.07.2023 passed in Crl.Rev.P. No.296/2023, the petitioner was directed to deposit an amount of Rs.2,00,000/- as a condition for stay on the operation of the sentence order in the said case. The petitioner has, however, not complied with the said condition.
34. Be that as it may, as the petition itself is now dismissed, no further orders are required to be passed in this regard.
35. The petitions are, accordingly, dismissed. The pending applications are also disposed of as having been rendered infructuous. There shall be no order as to costs.
36. The accused shall surrender before the learned Trial Court within a period of four weeks from today.

NAVIN CHAWLA, J

JANUARY 18, 2024
RN/AS

Click here to check corrigendum, if any