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

\+ CRL.REV.P. 1205/2023 & CRL.M.A. 30585/2023

MUNEEV UR REHMAN .....Petitioner
Through: Mr. Sourav Kumar, Advocate.

versus

TAUFIQ UR REHMAN .....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>
% **08.08.2024**

1. The petitioner *inter alia* challenges the judgment dated 28.08.2023 (hereafter '**the impugned judgment**'), passed in Criminal Appeal No. 222/2019, passed by the learned Additional Sessions Judge ('**ASJ**'), South District, Saket Courts, New Delhi, by which the challenge of the petitioner to the judgment of conviction dated 10.04.2019 and order on sentence dated 06.05.2019, passed in CC No.466990/2016, was dismissed.

2. By judgment of conviction dated 10.04.2019, the learned Trial Court convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881 ('**NI Act**'). By order on sentence dated 06.05.2019, the petitioner was sentenced to undergo simple imprisonment for a period of six months and to pay a compensation of ₹1,10,00,000/- within one month, and in default of payment of compensation, to further undergo simple imprisonment for a period of six months.

3. The appeal filed by the petitioner was dismissed by the

impugned judgment dated 28.08.2023. The learned Trial Court was directed to enforce the order on sentence dated 06.05.2019.

4. Fine amount of twenty per cent that had been deposited by the petitioner before the learned Trial Court which was subsequently released to the respondent and the amount of ₹10,00,000/- that had been paid by the petitioner to the respondent during the pendency of the appeal were also directed to be taken into account while enforcing the order on sentence.

5. The present petition was thereafter filed on 27.10.2023.

6. It is relevant to note that the order of sentence was not stayed by this Court at any stage. On being asked, the learned counsel for the petitioner submits that the petitioner has not surrendered since he is pursuing his remedies.

7. It appears that the petitioner is not surrendering under the garb of the pendency of the proceedings. The same is also evident from the fact that he had also not been appearing before the learned Appellate Court. The learned Appellate Court, before directing enforcement of the order on sentence dated 06.05.2019, had also recorded in the impugned judgment that the petitioner had not been appearing in Court since many dates despite repeated directions.

8. It is apparent that despite the fact that the order on sentence dated 06.05.2019 was not suspended, the petitioner has still not surrendered.

9. The present petition has been filed under Section 397 of the CrPC read with Section 482 of the CrPC. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the order of conviction or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law

[Ref. ***Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke***: **(2015) 3 SCC 123]**. It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders [Ref. ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*** **: (1999) 2 SCC 452**].

10. In the present case, while the complainant had alleged that he had loaned a sum of ₹85,00,000/- to the petitioner, the petitioner had argued that even though the respondent had invested a sum of ₹85,00,000/- in his property business, the cheques in dispute were given as security for a deal of purchase of property. The petitioner had denied taking any loan from the respondent. It was further contested that the respondent had failed to prove that the cheques were issued in discharge of any legally enforceable debt or liability.

11. The learned Appellate Court correctly appreciated that the cheques in question admittedly bear the signatures of the petitioner. It is trite law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque/ respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*** **: (2010) 11 SCC 441**].

12. It was also noted that the sum of ₹85,00,000/- was admittedly received by the respondent and he had repaid a sum of ₹25,00,000/- to the respondent. Further, it was claimed that another sum of ₹7,00,000/- was repaid by way of cash as well. It was rightly noted that no suggestions was put to the complainant regarding the payment of ₹7,00,000/- or about the sum of

₹85,00,000/- being paid for purchase of some other land. It was also noted that no documentary evidence was adduced to substantiate the defence of the money being taken from the respondent for purchase of land. The learned Appellate Court had also adequately taken note of the discrepancies and contradictions in the version of the petitioner. Thus, in the opinion of this Court, the learned Appellate Court rightly affirmed the view of the learned Trial Court that the petitioner had failed to rebut the presumptions under Sections 118 and 139 of the NI Act and upheld the conviction of the petitioner.

13. In view of the aforesaid discussion and considering the conduct of the petitioner, this Court does not consider it to apposite to entertain the present petition.

14. The petition is therefore dismissed.

AMIT MAHAJAN, J

AUGUST 8, 2024

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