



2024:DHC:6302



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 16th August, 2024+ CRL.REV.P. 1000/2024, CRL.M.(BAIL) 1285/2024

DEVENDER AGGARWAL

.....Petitioner

Through: Mr. Arun K Srivastava, Mr. G.S.
Panwar and Ms. Akansha Jha,
Advocates.

versus

THE STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Satinder Singh Bawa, APP for
the State.
Mr. Sameer Chandra, Mr. Vineet
Jindal, Mr. Shubham Parashar and
Mr. Ryan Tomar, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.REV.P. 1000/2024 (under Section 397 of CrPC filed by the
petitioner for setting aside the impugned Order/Judgment dated
16.08.2022 and the impugned Order on Sentence dated 24.08.2022)

1. The Criminal Revision Petition under Section 397 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC, 1973') has been filed on behalf of the petitioner for setting aside the impugned Order/Judgment dated 16.08.2022 and the impugned Order on Sentence dated 24.08.2022, passed by the learned Metropolitan Magistrate, Delhi vide which the petitioner has been convicted and sentenced in CT Case No. 4137/2017 for



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the offence under Section 138 of the Negotiable Instrument Act.

2. ***Briefly stated***, the petitioner took a loan of Rs.15,00,000/- in cash, in the month of July, 2016, from the respondent No. 2, with whom he had long relationships. The petitioner issued cheque bearing Nos. 682924, 682925 and 682929 of Rs.5,00,000/- each, all dated 24.07.2017, drawn on UCO Bank, Model Town Branch, Delhi, to repay the loan amount which on presentation, were dishonoured due to *insufficiency of funds*. The Legal Notice dated 05.08.2017 was served upon the petitioner and thereafter, the complaint under Section 138 of the Negotiable Instrument Act was filed against him.

3. The respondent No. 2, the complainant examined himself as his witness and the petitioner appeared as a witness in his defence. Learned *Metropolitan Magistrate held the petitioner guilty under Section 138 of N.I. Act vide Judgment dated 24.08.2022 and awarded him a sentence of SI of six months and also imposed a fine of Rs.30,00,000/-*.

4. **The petitioner filed his Appeal before the Sessions Court, which also got dismissed *vide* Order dated 31.05.2024.**

5. The aforesaid Orders of conviction in sentence have been challenged on the ground that the Judgment is contrary to law resulting in gross miscarriage of justice; that the Judgment is based on conjectures and surmises; that the contradictions in the Complaint and the evidence, have not been noticed by the learned Court; that the Income Tax Act does not permit a loan transaction in cash of Rs.15,00,000/- as loan in excess of Rs.20,000/- is an offence punishable under Section 269 SS of the Income Tax Act. Furthermore, the loan amount had been given to the petitioner in cash by the respondent No. 2, in the presence of his son Sahil Bansal, as admitted in his



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cross-examination but the son has not been examined by the respondent. Furthermore, the respondent No. 2 had claimed that he had arranged the funds of Rs.15,00,000/- at an interest of 24% but has failed to disclose the source from where he arranged the loan amount for the petitioner. *It is further claimed that the petitioner has already paid the loan amount within three months as promised by him though, no acknowledgement receipt was given by the respondent.* He had demanded the cheques issued by him from the respondent No. 2 after he had made the cash payment, but the respondent refused to return them on the ground that they were not available with him.

6. The petitioner has placed reliance on Kumar Export vs. Sharma Carpets, 2009 II AD (S.C) 117, to submit that the petitioner has successfully discharged the presumption against him that the cheques had not been issued in discharge of any legal debt or liability. Therefore, the Judgment and Order on sentence are liable to be set-aside.

7. Submissions heard.

8. It is an admitted case of the petitioner that he had taken a cash loan of Rs.15,00,000/- from the respondent No. 2 and had even volunteered to pay the interest while agreeing to return the same in three months. He has further admitted having issued three cheques in discharge of his loan liability, which admittedly got dishonoured due to insufficiency of funds.

9. The only defence that has been put forth by the petitioner is that he had returned the loan amount in cash though, without any acknowledgment. The learned Metropolitan Magistrate as well as the learned ASJ, have rightly observed that though a plea of having return the amount in cash, has been taken but the petitioner has not able to prove it by any cogent evidence. He admittedly has no acknowledgement of repayment of loan from the



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respondent and has also not been able to explain why he did not take back the cheques from the respondent No. 2, at the time when he made the alleged repayment. It has been rightly held that the petitioner has not been able to discharge the presumption against him under Section 139 of N.I. Act read with Section 118 of the Indian Evidence Act.

10. So far as the objection taken in regard to the loan being taken in cash being violative of the Income Tax Act is concerned, it is the respondent No. 2 may be liable for prosecution under Income Tax Act but in view of the categorical admissions of the petitioner of having taken a cash of Rs.15,00,000/-, he cannot avoid his liability under Section 138 of N.I Act.

11. The petitioner had accordingly been rightly convicted and sentenced the Appeal dismissed by Ld. ASJ *vide* Order dated 31.05.2024.

12. The *petitioner in the present Revision Petition*, has not been able to agitate any ground which entitles him to any interference in his conviction and sentence. There is no merit in the present Revision, which is hereby dismissed. The pending application also stands disposed of. The Order be sent to the Court of learned Metropolitan Magistrate for execution of the sentence.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 16, 2024/RS