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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 27th August, 2024***+ **CRL.REV.P. 1059/2024, CRL.M.A. 25371-25372/2024****M/S A AND B TOUR TRAVELS**

Through Its Partners

M/s Bhavna Chopra & Mr. Anil Chopra

R/o J-5/94, Nehru Market, Rajouri Garden,

New Delhi-110027.

.....Revisionist

Through: Ms. Sanigdha Sood and Mr. Sumit
Madan, Advocates

versus

M/S APPEAL FOOTWEAR PVT.LTD

Through Its Director

Utsav Sabharwal,

Office at Plot No.39, Sector-17,

HSIIDC, Bahadurgarh,

Haryana-124507.

.....Respondent

Through: Counsel(Appearence not given)

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. Criminal Revision Petition under Section 442 BNSS read with Section 438 BNSS read with Section 528 BNSS arises from the Judgment and Sentence dated 04.01.2023 and 21.01.2023 respectively *vide* which the petitioner has been convicted for the offence under Section 138 Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act"*) and has been



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sentenced to undergo Simple Imprisonment for a period of two months and to pay a compensation to the complainant for an amount of Rs.4,80,000/- and in default of payment of compensation to further undergo Simple Imprisonment for a period of fifteen days, which has been upheld by the learned ASJ by judgement dated 25.07.2024 with the modification of the Order on Sentence to the extent that the appellants were directed to pay a sum of Rs. 4 lacs as compensation to the respondent, within one month from the date of the Order i.e. 25.07.2024.

2. *Briefly stated*, the respondent/complainant booked a Holiday Tour package for Australia for two persons, which was scheduled for departure on 12.03.2014 at the cost of Rs.1,20,000/- per person, i.e., for a total sum of Rs.2,40,000/-. According to the complainant the sum of Rs.1,36,340/- was paid in cash while the balance amount had been paid by cheque and thereby the complete amount of Rs.2,40,000/- was paid by the complainant to the Revisionists for the tour.

3. However, subsequently, the tour package was not arranged but the amount of Rs.2,40,000/- was retained by the Revisionists. Consequently, the complainant sought refund of the aforesaid amount of Rs.2,40,000/- and eventually the Revisionist Bhavna Chopra issued a cheque No.474613 for Rs.2,40,000/- dated 13.03.2014 drawn on ICICI Bank, Paschim Vihar Branch, New Delhi.

4. However, the respondent/complainant filed a complaint on 13.03.2014 under *Section 138 N.I. Act* by alleging that the cheque on presentation was dishonoured with the remarks “*Funds Insufficient*” on 15.03.2014. On the assurance of the Revisionist, the Complainant again presented the cheque on 12.06.2014, but was dishonoured for the same



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reason on the same date.

5. The complainant then sent the *Legal Notice dated 01.07.2014* which was duly served upon the petitioner, despite which no payment was made. Consequently, the Complaint under Section 138 N.I. Act read with Section 142 N.I Act was filed against the Revisionist/accused. Notice under Section 251 Cr.P.C. was framed on 25.01.2018 to which the Revisionists pleaded not guilty.

6. The evidence was led by both the parties. The respondent/complainant as CW1, had tendered his evidence by way of affidavit Ex.CW1/1.

7. The Revisionists admitted that they had booked a Tour package for Australia for the respondent and his wife for a sum of Rs.2,40,000/- but claimed that only a sum of Rs.1,03,660/- was paid. For the payment of the balance amount, the complainant kept gaining time and in the meantime on the account of fluctuation in exchange rate, the cost of the tour package escalated by Rs.70,000/- and the proposed tour had to be cancelled.

8. However, against the repayment of Rs.1,03,660/-, the complainant forcibly under duress took a blank cheque signed by Revisionist Bhavna Chopra and subsequently filled in the amount as Rs.2,40,000/-. The Revisionist further claimed that from the amount of Rs.1,03,660/-, Rs.73,660/- had been repaid to the mother of the complainant in cash after deducting a sum of Rs.30,000/-. There was no amount that was due and liable to be returned by the respondents.

9. The statement of the Revisionist was recorded under Section 313 read with Section 281 Cr.P.C, Amit Chopra admitted that the signatures on the cheque were of his wife, but claimed that the cheque was taken away from the table of Bhavna Chopra by the brother-in-law of the respondent. It



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was also claimed that no Legal Notice had been served upon the Revisionists.

10. The Revisionist **Bhavna Chopra appeared as DW1** and deposed on similar lines as the defence disclosed in statement under Section 313 Cr.P.C. The learned M.M did not find the defence put forth by the Revisionist to be convincing and convicted the Revisionist vide judgement dated 04.01.2023 and Order on Sentence dated 21.01.2023. The Revisionist was *sentenced on 21.01.2023 to undergo Simple Imprisonment for a period of two months and to pay a compensation to the complainant for an amount of Rs.4,80,000/- and in default of payment of compensation to further undergo SI for a period of fifteen days.*

11. *An Appeal was preferred before the learned ASJ, but the same was dismissed vide judgment dated 25.04.2024 upholding the conviction, though the sentence was modified to the extent that the appellant Bhavna Chopra and Amit Chopra were directed to pay Rs.4,00,000/- to the respondent as compensation within one month from the date of Order failing which they shall undergo Simple Imprisonment for a period of three months.*

12. *Aggrieved by the said judgment, the present Revision has been filed on the grounds that the impugned conviction and sentence is bad in law and facts and is liable to be set aside. The complainant alleged to have paid a sum of Rs.2,40,000/-, but it is a concocted story as there is no reason why only a certain amount would be given by cheque, while the balance amount in cash as has been asserted by the complainant. It is claimed that the complainant's assertions were neither supported by any document, Agreement, letter nor any email communication. Even the date on which this alleged Agreement was entered into has not been stated. It is evident*



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that the Complainant has not approached the Court with clean hands. The complainant in fact had paid a sum of Rs.1,03,660/-, but the Revisionist/accused was coerced into issuing a cheque of Rs.2,40,000/-.

13. It is further submitted that the complainant during the evidence, had relied upon a Pay-in slip dated 11.06.2014 which does not bear any stamp of the bank. The pay-in slip is not the Cheque Return Memo as has been asserted and there is no proof of the cheque having been dishonoured on account of *insufficiency of funds*. The complainant has alleged that the cheque was presented the second time, but was dishonoured on 12.06.2014 and no Return Memo has been filed in support thereof. The complainant has admitted in his cross-examination that the Return Memo dated 12.06.2014 Ex.CW1/C does not mention the cheque number or the date in respect of the dishonour of cheque in question. These vital aspects have been completely overlooked by the learned Trial Court.

14. The date of dishonour of the cheque is of utmost significance in order to calculate the limitation for filing the Complaint under Section 138 N.I. Act. The complainant is alleged to have intentionally and fraudulently presented Bank slip unrelated to the cheque in question, whereby the first ingredient of Section 138 N.I Act is not satisfied. It is evident that no offence under Section 138 N.I. Act is made out in the Complaint.

15. The Revisionist has further asserted that *Amit Chopra* was never the signatory of the cheque, despite which the criminal liability has been imposed upon him. It is only the drawer of the Cheque who is liable for penal action as has been repeatedly held by the Apex Court in various judgments. Reliance has also been placed on the case of Mrs. Aparna A. Shah vs. M/s Sheth Developers Pvt. Ltd. & Anr. Criminal Appeal



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No.813/2013 decided on 01.07.2013 in support of her contentions.

16. The learned Trial Court has also ignored the cash paid back and the Trip cancellation receipts which were duly signed by the complainant which is crucial part of the defence evidence of the Revisionist. The cheques have been filled by the complainant himself and false evidence has been created to take an unfair advantage against the Revisionist. The Revisionist has also been consistent in claiming that the blank cheques were taken away from her under duress.

17. It is further argued that Legal Notice dated 01.07.2014 was never served upon the Revisionist as is evident from the admissions of the respondent in the cross-examination wherein he has stated that he had not sent any written intimation about the dishonour of the cheque which was otherwise conveyed to the accused persons. Admittedly, no written intimation in regard to dishonour of the cheques had been sent to the Revisionist and the service of Legal Notice has been manipulated by the complainant.

18. It is further submitted that the Revisionist Amit Chopra is unwell and is having a 70% heart issue and had not signed the cheque in question. There is no evidence whatsoever, to connect the Revisionist with the commission of offence. The impugned conviction and the sentence is, therefore, liable to be set aside. In addition, the Revisionist is entitled to compensation of Rs.10 lakhs for having been made to suffer mental anxiety, stress and trauma.

19. The respondent had put in appearance through the counsel today on advance Notice.

20. **Submissions heard and record perused.**



21. The complainant had filed the Complaint against the revisionist under S.138 NI Act in regard to dishonour of the Ch persuasion the Revisionist Bhavna Chopra issued a cheque in the sum of Rs.2,40,000/- dated 13.03.2014 which was presented twice on the request of the Revisionist, but both the times it was dishonoured for insufficiency of funds.

22. The *main contention of the revisionist* is that the Revisionists has claimed that only a sum of Rs.1,03,660/- had been paid by the complainant while the cheque amount has been claimed to be Rs.2,40,000/- which was taken by the Complainant under duress. ***There was no legally payable debit supporting the cheque and, therefore, the complaint was not tenable.***

23. In Kumar Exports vs. Sharma Carpets (2009) 2 SCC 513, the Apex Court had observed that the accused in a trial under Section 138 of the Act has two options viz. either to prove that the consideration/debt did not exist or that under the facts and circumstances of the case the non-existence of consideration and debt was so probable that no prudent person would suppose that there was a consideration or the debt that existed.

24. Similar observations had been made in M.S. Narayana Menon vs. State of Kerala (2006) 6 SCC 39, wherein the Apex Court had observed that the *standard of proof is preponderance of probabilities and such an inference can be drawn not only from the material on record, but also with reference to the circumstances upon which the parties reply. The standard of reasonability is that of a prudent man.*

25. The learned M.M. had observed that the Revisionist Bhavna Chopra had admitted her signatures on the cheque in question which was also not disputed by the co-revisionist Amit Chopra. The only defence taken was



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that only a sum of Rs.1,03,660/- had been paid by way of cheque and no balance amount in cash was paid by the Complainant as alleged. The tour had to be cancelled because the cost of the tour escalated by Rs.70,000/-. It was also claimed that Bhavna Chopra had returned the sum of Rs.73,660/- to the mother of the complainant after deducting Rs.30,000/- towards the cancellation charges.

26. However, in the Notice under Section 251 Cr.P.C. and in the Statement under Section 313 Cr.P.C. read with Section 281 Cr.P.C., the Revisionist had stated that the complainant had forcibly and under duress taken the cheque in question which only had the signatures of Bhavna Chopra. The exact amount was not known as the cancellation and other charges were not determined. The complainant and his brother-in-law started abusing Bhavna Chopra and during this altercation, the brother-in-law of the complainant took away the cheque in question from the table of Bhavna Chopra. Pertinently, the Revisionist had failed to explain as to why the amount of Rs.73,660/- had been returned to the mother of the complainant and if so was the defence, how and the manner in which the money was handed over to the mother. Aside from bald assertions, no cogent evidence has been led. The easiest way was to produce the account statement to show the debit in the name of the mother but no evidence whatsoever has been produced by the Revisionist.

27. The Revisionist has further contended that from the bare perusal of the Cheque, it is apparent that there were different pens used for the signatures and the other details filled in the cheque, which created serious doubt about the cheque being genuinely given by the Revisionist.

28. No complaint in regard to the cheques having been taken by the



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Revisionist was made to any Authority. Moreover, the payment against this cheque was stopped by the Revisionists, which any prudent person would do in the alleged circumstances of duress.

29. It was also observed that even if the defence that blank cheque had been handed over to the complainant was to be accepted, the presumption under Section 139 N.I. Act would be attracted. In the absence of any cogent evidence and any contradictory stands taken by the Revisionist, it has to be concluded that the cheques had been issued in discharge of legal liability.

30. Before this Court as well, the Revisionists have not been able to agitate any ground creating a doubt in the case of the complainant about the manner in which the cheque had been issued by the Revisionists in discharge of their existing liability. It would not be out of place to observe that admittedly the cost of tour per person was Rs.1,20,000/- which explains why Rs.2,40,000/- were paid to the Revisionists, in respect of which the cheque was issued on account of the tour having been cancelled.

31. It is thus, concluded that the Ld. MM and Ld. ASJ have rightly observed that the Revisionist failed to rebut the presumption under Section 139 and held that the cheque had been duly issued by Bhavna Chopra for and on behalf of the Revisionist Firm, in discharge of the Legal Liability.

32. The *second aspect* agitated by the Revisionists is that Amit Chopra had no concern with the cheque in question. However, it is not in dispute that M/s A & B Tour & Travels was a partnership Firm of which both the Revisionists were partners. The cheque had been issued by Bhavna Chopra as one of the partners of the Firm; the liability being of the Firm. Therefore, the cheque issued by Bhavna Chopra is binding on the other partner of the partnership Firm. Amit Chopra cannot, therefore, avoid the liability under



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the Cheque issued for and on behalf of the Firm, being a partner of the Firm on behalf of which the cheque was issued by asserting that he was not a signatory to the cheque. Since the cheque was issued for and on behalf of the Firm of which both the Revisionists are admittedly the partners, Amit Chopra cannot avoid his liability. The judgments relied upon by the Revisionists are not applicable to the present facts in so far as the cheque in question was signed by an authorized partner, for and on behalf of the Firm which is binding on all the partners of the Firm.

33. The *third ground* on which the impugned judgment has been challenged is that no valid Cheque Return Memo has been produced by the complainant. The perusal of the record shows that the cheque in question Ex.CW1/A dated 13.03.2014 got deposited in ICICI Bank by pay-in slip dated 11.06.2014 Ex.CW1/B. The cheque got rejected *vide* Rejection Memo Ex.CW1/C. It is correct that the said Rejection Memo neither mentions the cheque number nor the date, but it bears the stamp of the ICICI Bank. It is but natural that if the cheque got deposited on 11.06.2014, the dishonour had to be subsequent to it.

34. The date of dishonour has been stated by the complainant in his testimony as 12.06.2014. This also finds corroboration from the Legal Notice dated 01.07.2014 Ex.CW1/D sent by the complainant wherein it had been explained that the cheque had been presented twice i.e. on 13.03.2014 and again on 11.06.2014 on the request of the Revisionist, but on both occasions it got dishonoured for insufficiency of funds.

35. The Legal Notice got duly served on 09.07.2014. It has been explained in the complaint that the Legal Notice Ex.CW1/D had been sent through registered post, the original receipt of which is dated 09.07.2014,



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but the registered cover was returned back with the remarks “*left without address*”. It is quite evident that the Notices had been sent on the last known address of the Revisionists, though it had to be returned because of the Revisionists having left the address without any address.

36. Moreover, even if it is accepted that the Legal Notice was not received by the Revisionist, still on receiving the summons of the present complaint, they came to know about the dishonour of the cheque, despite which the cheque amount has not been tendered to the complainant. For this, reference be made to the case of C.C. Alavi Haji vs. Palapetty Muhammed and Anr. (2007 AIR SCW 3578), wherein it was observed that even if the service of the Legal Notice was not sufficient, the filing of the Complaint under Section 138 N.I. Act was a sufficient Notice giving an opportunity to the accused to tender the cheque amount.

37. The fourth aspect agitated on behalf of the Revisionists is that in the absence of the date of service of Legal Notice, it cannot be said that the complaint has been filed within the *time frame* as provided under Section 138 N.I Act.

38. However, as detailed above, the Legal Notice had been dispatched through registered postal receipts dated 09.07.2014. The present complaint has been filed on 07.08.2014 which is within the period of one month. There is nothing which has been brought on record on behalf of the Revisionists to show that the complaint has been filed beyond the period of limitation. Pertinently, these aspects were not even agitated before the learned ASJ.

39. In view of the aforesaid discussion, it is held that there is no jurisdictional error in the judgment of the learned ASJ in upholding the



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conviction of the Revisionist under Section 138 of N.I. Act. Learned ASJ has already taken a lenient view by reducing the compensation amount to Rs.4 lakhs and sentencing them to only a default sentence of three months in case of payment of compensation not been made within one month.

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

41. One month's time is given to the Revisionists to pay the compensation in terms of the Sentence given by learned ASJ in its Order dated 25.07.2024 failing which the learned M.M shall get the sentence executed in accordance with law.

42. The Revision Petition is accordingly disposed of along with the pending applications.

43. The Copy of this Order be sent to the Court of Ld. M.M. for compliance.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 27, 2024

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