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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 19th July, 2024*+ **CRL.REV.P. 1363/2023 & CRL.M.A. 20957/2024**

MANORANJAN SINGH

.....Petitioner

Through: Mr. Arman Sharma,
Mohd. Aman Khan
Afgani, Mr. Varun
Khattar, Ms. Medhavee,
Mr. Raja & Mr. Vipin
Rawal, Advs.

versus

VED PRAKASH KAUSHIK

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. At the request of the learned counsel for the petitioner, the matter is taken up for final arguments.
2. Arguments heard.
3. The date already fixed, that is, 16.08.2024, stands cancelled.
4. The present petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 against the order dated 25.11.2023 (hereafter '**the impugned order**'), passed by the learned Appellate Court, in Criminal Appeal No. 200/2022.



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5. The learned Appellate Court, by the impugned order, has upheld the judgment on conviction dated 30.06.2022 and order on sentence dated 11.07.2022, passed by the learned Trial Court, in CC No. 346/2020.

6. By the judgment on conviction dated 30.06.2022, the learned MM had convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). By the order on sentence dated 11.07.2022, the petitioner was sentenced to undergo simple imprisonment for a period of two months and to pay a fine of ₹8,00,000/- along with simple interest at the rate of 6% per annum from the date of cheque (12.10.2020) till the date of judgment, and in default of the payment of fine, to further undergo simple imprisonment for a period of three months.

7. The brief facts of the case are as follows:

7.1. It was alleged that the complainant and the petitioner were family friends who had been acquainted with each other for about 20 years prior to the incident. It was alleged that the petitioner was the sole proprietor of a firm, namely, M/s. Savitri Security and Allied Services, which was engaged in the business of providing security guards, house maids and allied services to other establishments. It was alleged that the petitioner was responsible for the day-to-day affairs of the said firm.

7.2. It was alleged that the petitioner had approached the complainant for a friendly loan of ₹8,00,000/- on 11.03.2020 as he was facing a financial crisis. The



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petitioner had also assured the complainant that he would return the amount within 6 months. On the basis of the petitioner's assurance, the complainant had extended the friendly loan to the petitioner.

7.3. It was alleged that on 15.03.2020, the complainant had handed over the sum in cash to the petitioner at his residence in Molarband village, Badarpur, New Delhi, in the presence of his brother, namely, Manoj Kumar Kaushik. It was stated that the complainant had withdrawn ₹5,00,000/- from his bank account and a sum of ₹3,02,000/- was kept at his home. It was alleged that the petitioner had also executed a cash receipt cum acknowledgement in favour of the complainant acknowledging the loan.

7.4. It was alleged that after expiry of six months, the cheque in dispute was issued by the petitioner in favour of the complainant against the aforesaid liability.

7.5. However, on presentation, the same got dishonoured and was returned with the endorsement- "Funds Insufficient".

The same led to the filing of the subject complaint.

8. The learned Trial Court convicted the petitioner for the offence punishable under Section 138 of the NI Act *vide* judgment dated 30.06.2022. The learned Trial Court noted that the petitioner had not disputed his signatures on the cheque in question and had also admitted that the cheque had been drawn on his bank account whereby the presumption under Sections 118(a) and 139 of the NI Act was automatically invoked. It was



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noted that the petitioner had failed to rebut the said presumptions.

9. The learned Trial Court rejected the defence of the petitioner that the cheque in question was handed over to the complainant as a blank signed cheque in relation to a committee business by observing that the petitioner had failed to bring on record any documentary evidence to substantiate the plea. It was noted that no evidence was led to show that the cheque in question was issued towards a committee transaction.

10. The learned Appellate Court by the impugned order dismissed the appeal filed by the petitioner and upheld the conviction of the petitioner and noted that the learned Trial Court had rightly observed that the petitioner had failed to rebut the presumptions by raising any probable defences.

11. The learned counsel for the petitioner submits that the cheque in dispute was not given by the petitioner in discharge of any security and had been misused by the respondent. He submits that it was erroneously observed that the petitioner's defence in this regard had not been proved on the scale of preponderance of probabilities.

12. He submits that the learned Trial Court and the learned Appellate Court failed to appreciate that the respondent had refused to produce the ITR and not submitted any evidence to showcase his financial capacity to extend a loan of ₹8,00,000/-. He submits that the respondent had thus failed to disclose the source of the funds for the loan.



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13. He submitted that the respondent had failed to prove that a sum of ₹8,00,000/- was ever handed to the petitioner.

14. He submits that the respondent was running a committee business and the Courts below had failed to appreciate the evidence of DW2 who had stated in his examination in chief that the respondent used to run a committee business and take security cheques as assurances.

15. He submits that the petitioner had thus rebutted the presumption under Sections 118 and 139 of the NI Act.

16. At the outset, it is relevant to note that the petitioner has filed the present case by invoking the revisional jurisdiction of this Court. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders 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. The Hon'ble Court in the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri : (1999) 2 SCC 452*** discussed the scope of revisional jurisdiction and held as under:

“5. 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



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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....”

(emphasis supplied)

17. It is argued that the cheque in dispute had not been given in discharge of any liability and the respondent, who used to run a committee business, had misused the cheques given as security to the respondent. It is further argued that the cash receipt of the acknowledgment of the loan is forged and the respondent had also misused the petitioner's signatures taken on blank pages. The main thrust of the petitioner's arguments in the present case is on the financial capacity of the respondent to extend a loan to the tune of ₹8,00,000/-.

18. On perusal of the judgment on conviction dated 30.06.2022 and the impugned judgment, it is seen that the arguments of the petitioner have been extensively dealt with by the learned Trial Court and the learned Appellate Court respectively.

19. At the outset, it is relevant to note that the signature of the petitioner on the cheque in dispute have not been denied. 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



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enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan* : (2010) 11 SCC 441**].

20. While it is argued that the said presumptions have been rebutted by the petitioner by proving through his own testimony and that of DW2 that the cheque in dispute had been given by him to the respondent as a mere security cheque and not in discharge of any liability, however, as rightly appreciated by the Courts below, no documentary or direct evidence has been adduced by the petitioner to this effect. Furthermore, the learned Trial Court has rightly noted that DW2, who had deposed that the respondent used to run a committee business, was unable to name the members in the committee at the relevant period. It was also noted that it could not be ignored that DW2 was the friend of the petitioner. It was rightly observed that even if the testimony of DW2 was assumed to be correct and it was believed that the respondent was involved in committee business, the petitioner had still failed to establish that the cheque in dispute had been given as a security towards committee transaction. The said defence was thus rightly rejected by the learned Trial Court and the learned Appellate Court.

21. The petitioner has also contested that the respondent had not established his financial capacity to extend a loan of ₹8,00,000/- and he had also not filed his ITR for the relevant time period. It is relevant to note that the respondent had stated in his testimony that out of the total loan amount of ₹8,00,000/-, he had withdrawn a sum of ₹5,00,000/- from his bank account and ₹3,02,000/- were lying at his home in cash. A minor discrepancy



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in the amount withdrawn from the account is pointed out. The complainant deposed that he had withdrawn ₹5,00,000/- from his bank account while the complaint mentions that a sum of ₹4,98,000/- was withdrawn from the bank account. The same appears to be an inadvertent error as also clarified by the complainant during cross-examination. The bank statement/passbook of the respondent was also produced by him as evidence. It is further relevant to note that the respondent had stated in his evidence that he was earning ₹1,00,000/- to ₹1,25,000/- per month.

22. It is trite law that despite the presumption under Section 139 of the NI Act, if the accused challenged the capacity of the complainant to extend the loan, especially in cases where the complainant has extended a loan by way of cash, the onus shifts to the complainant to lead evidence to prove his financial capacity [Ref. *APS Forex Service Private Limited v. Shakti International Fashion Linkers* : AIR 2020 SC 945].

23. The Hon'ble Apex Court in the case of *Tedhi Singh v. Narayan Dass Mahant* : (2022) 6 SCC 735 had observed as under:

"10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and



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producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

(emphasis supplied)

24. The learned Trial Court extensively dealt with the petitioner's argument regarding non-disclosure of source of funds and observed as under:

“Perusal of record shows that not even once the accused has challenged the financial capacity of the complainant or given the suggestion to the complainant that he did not have capacity to extend the loan. Further, the complainant has in fact annexed his Statement of Accounts Ex CW1/G which shows that complainant has indeed withdrawn Rs 5,00,000/- from his Bank Account on 11.03.2020. Thus, the contention of the accused is liable to be rejected partly on the ground that the accused had never disputed the financial capacity of the complainant and that this defence was raised for the first time at the stage of final arguments and partly on the grounds that complainant has duly proved its financial capacity by annexing Statement of Account Ex CW1/G.”

(emphasis supplied)

25. In the present case, no such averment regarding financial ability of the respondent was made by the petitioner in his statement under Section 313 of the CrPC or during the course of trial. Moreover, the respondent examined no independent material and led no evidence to showcase the inability of the respondent to extend the loan either.

26. The onus cannot be said to shift on the respondent to prove his financial capacity merely because the petitioner makes a



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vague bald assertion to the said effect at the time of final arguments.

27. The learned Trial Court and the learned Appellate Court had also weighed in the duly signed cash receipt cum acknowledgment (Ex. CW1/C) that was executed in the presence of one Shri Manoj Kumar Kaushik to hold that the respondent had proved that he had extended the loan to the petitioner.

28. It is contended that the cash receipt was forged and the respondent had misused the petitioner's signatures that were obtained by him on blank papers on the pretext of helping the petitioner to get the name of his company registered.

29. The learned Appellate Court and the learned Trial Court have emphasised that the petitioner had signed across the revenue stamp and he had adduced no evidence to prove that the receipt was misused or forged. It was noted that the petitioner had not chosen to cross-examine the attesting witness to the cash receipt cum acknowledgement either. It was also noted that he had not initiated any police complaint against the respondent.

30. In such circumstances, this Court finds no reason to disturb the findings of the Courts below that while the respondent had not furnished his ITR for the relevant period, however, he had duly proved the cash receipt signed by the petitioner for receipt of the loan amount.

31. In view of the aforesaid discussion, in the opinion of this Court, there is no manifest illegality in the impugned order to warrant any interference in the concurrent findings of the Courts below.



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32. The present petition is therefore dismissed.
33. The interim orders stand vacated.

AMIT MAHAJAN, J

JULY 19, 2024