$~78 to 82

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

\+ CRL.REV.P.(NI) 25/2024 , CRL.M.A. 29385/2024 & CRL.M.(BAIL) 1617/2024

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\+ CRL.REV.P.(NI) 26/2024 CRL.M.A. 29386/2024 CRL.M.(BAIL) 1618/2024

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\+ CRL.REV.P.(NI) 27/2024 CRL.M.A. 29387/2024 CRL.M.(BAIL) 1619/2024

81

\+ CRL.REV.P.(NI) 28/2024 RL.M.A. 29410/2024 CRL.M.(BAIL) 1620/2024

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\+ CRL.REV.P.(NI) 29/2024 CRL.M.A. 29411/2024,

CRL.M.(BAIL) 1621/2024

BIRENDRA SHUKLA .....Petitioner

Through: Mr. Mohit Mahtur, Sr. Adv. with Mr,. Aditya Raj & Mr. Pratham Diwakar, Advocates

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. D S Dager, APP for State

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **27.09.2024**

1. This petition has been filed seeking to set aside impugned order dated 12th September 2024 passed by the ASJ, South East District, Saket Courts,

New Delhi in CA/77/2019. By the said order, the appeal filed by the petitioner in proceedings under Section 138 NI Act was dismissed.

2. The Metropolitan Magistrate ("MM") convicted the petitioner by order dated 20th December 2018 in relation to dishonour of 5 cheques of Rs.10 lakhs, each drawn on Punjab National Bank in favour of the complainant.

3. By order on Sentence dated 3rd January 2019, petitioner was awarded SI for one year and directed to pay fine of Rs.15 lakhs out of which Rs.14.5 lakhs were to be paid to the complainant and Rs. 50,000/- was to be deposited with the Court.

4. The appeal against said order of conviction and sentence were dismissed by the ASJ as well. Instant petition seeks to challenge these orders.

5. The factual matrix of the complaint is that the complainant and his wife advanced a friendly loan of Rs. 50 lakhs to the petitioner, Rs. 25 lakhs in cash and Rs. 25 lakhs by way of cheques; on assurance of one Mr. John who was the mutual friend *vide* agreement dated 17th May 2013.

6. The said agreement, was drawn on a stamp paper and mentions said fact of payment of loan by way of cheque and in cash. In terms of the said agreement, the petitioner issued 5 cheques of Rs.10 lakhs. The agreement stated that the petitioner was bound to pay Rs.6 lakhs after every 45 days as interest on the said loan amount till repayment of the whole loan amount would conclude. One instalment of Rs.6 lakhs was paid and thereafter, no amount was paid by the petitioner.

7. Clause 4 of the agreement also stipulated that petitioner shall be liable under Negotiable Instruments Act, if any of the post-dated cheques is dishonoured, for any reason whatsoever.

8. Senior Counsel for petitioner essentially contends that they have challenged the said agreement in civil proceedings. He further contends that complainant has not been able to prove that the amount of Rs.25 lakhs was paid in cash.

9. The Court has perused both the order passed by the MM and the ASJ where the evidence has been traversed in detail. Considering that the agreement was categorical in scope, it cannot be disbelieved, particularly, considering the provisions under Sections 91 and 92 of the Indian Evidence Act. Further, testimony of DW-2 was also found to be not creditworthy, as contradictory statements were given.

10. The statutory presumption shall clearly run against the accused in this matter where under the agreement, the cheques were given by him, and were dishonoured. This Court does not find any infirmity or impropriety or illegality with the said orders which have assessed the evidence in fair amount of detail and addressed the arguments raised by accused-petitioner.

11. The scope of revisional matters is extremely limited, as stated by the Supreme Court *inter alia* in ***Malkeet Singh Gill v. State of Chhatisgarh*** (2022) 8 SCC 204.

12. Accordingly, this petition is dismissed along with pending applications.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 27, 2024/sm