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

+ CRL.REV.P. 1284/2023

SH. VIPIN KUMAR LAKHANPAL

.....Petitioner

Through: Mr. Sanjeev Rawat and Mr.
Yashpreet Singh, Advocates.

versus

SMT. PRAMOD KUMARI GUPTA

.....Respondents

Through: Mr. Satinder Vohra, Advocate
(Proxy)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **06.02.2025**

1. This matter is being taken up today as 5th February, 2025 was declared as a holiday on account of the General Election to Legislative Assembly of the NCT of Delhi-2025.

2. The instant revision petition under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C") filed on behalf of the petitioner/revisionist seeking the following reliefs –

“i) Set aside the impugned order dated 30.10.2023 passed by the Hon’ble Court of Shri Vikram, Ld. ASJ, (Special Judge), NDPS, North West District, Rohini Courts, New Delhi in Criminal Appeal No.229/2023, whereby the order passed by Hon’ble Court of Ms. Mansi Malik, Ld. M.M., North West District, Rohini Courts, New Delhi, was not set aside and the petitioner was directed to pay a sum of Rs.24,60,000/- (Rupees Twenty Four Lakhs and Sixty Thousand) including 8% interest from the date of institution of the case to the respondent within one month from the judgment and in default simple imprisonment for six months, in the interest of justice, fair play and equity;



ii) Call for the records and proceedings of Complaint Case No.5020/2016 from the file of Ld. Metropolitan Magistrate, North West District, Rohini Courts, New Delhi.”

3. The brief facts of the case are that in September, 2011, the petitioner borrowed a loan of Rs. 15,00,000/- from the husband of the respondent (hereinafter “complainant”). The said loan was borrowed at the rate of 24% interest per annum on the principal amount with the promise that the same shall be returned within a period of two years. In lieu of the security, the petitioner had also given a promissory note dated 15th November, 2011 to the complainant.

4. After two years, when the petitioner did not return the loan amount to the complainant on his own, the complainant repeatedly insisted to return the same. After repeated requests from the complainant, the petitioner handed over a Cheque bearing no. 900984 dated 15th November, 2013 which was drawn on Indian Bank, Rohini Branch, New Delhi, in lieu of the outstanding amount.

5. The petitioner deposited the said cheque on 4th December 2013, which was returned unpaid with the remark “Account Closed” and thereafter, the complainant sent a legal notice to the petitioner on 16th December, 2013, demanding payment of the outstanding cheque amount within 15 days of the receipt of the said notice, which was subsequently not paid by the petitioner.

6. On the petitioner’s failure to comply with the requirement of the said notice, the instant complaint dated 30th January, 2014, was filed against the petitioner under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”). Thereafter, the learned



Metropolitan Magistrate, Rohini Courts, Delhi (hereinafter “MM”) in CC No. 5020/2016 *vide* judgment dated 17th November, 2022, convicted the petitioner for the commission of the offence under Section 138 of the NI Act and subsequently, the learned MM passed an order on sentence dated 26th November, 2022. The said judgment dated 17th November, 2022 and the order on sentence dated 26th November, 2022 were appealed before the Court of the learned Additional Sessions Judge, Rohini Courts, Delhi (hereinafter “ASJ”) in CA No. 229/2022 and the said appeal was dismissed *vide* impugned judgment dated 30th October, 2023. Aggrieved by the same, the instant revision petition has been filed by the petitioner.

7. Learned counsel appearing on behalf of the petitioner submitted that in September, 2011, the petitioner had borrowed a loan limited to the amount of Rs.1,15,000/- from the complainant, which was not taken into consideration by the learned ASJ in the impugned judgment.

8. It is submitted that for the purpose of security, the petitioner had issued a blank signed cheque bearing no. 900984 drawn on Indian Bank, Rohini Branch, New Delhi. It is also submitted that the said cheque was filled up and used by the complainant after a period of two years following the issuance of the said cheque. It is further submitted that the complainant had deposited the said cheque without informing the petitioner.

9. It is submitted that a sum of Rs. 1,15,000/- was taken as a loan by the petitioner, which was repaid to the complainant. It is further submitted that the complainant acted in bad faith by not issuing any receipt of repayment of the said loan was issued by the complainant.

10. It is submitted that the complainant had misused the cheque which was issued by the petitioner as security. It is further submitted that the



complainant did not return the said cheque to the petitioner despite repayment of the dues.

11. It is submitted that the petitioner had to close his account as the cheques given by the petitioner were misplaced by the complainant and were not returned to him despite repayment of the loan amount.

12. It is submitted that the above submitted aspects of the instant case have not been properly considered by the learned MM in the judgment dated 17th November, 2022 as well as the learned ASJ in the impugned judgment dated 30th October, 2023.

13. In view of the foregoing submissions, it is prayed that the instant revision petition may be allowed.

14. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the petitioner had taken a loan of Rs. 15,00,000/- at the rate of 24% interest per annum and promised to return the amount to the complainant within two years.

15. It is submitted the learned MM and the learned ASJ, while adjudicating the matter, took all the evidence on record into thorough consideration.

16. It is submitted that the petitioner failed to make out a convincing case and no evidence has been led by the petitioner for substantiating the arguments made by him.

17. It is submitted that in spite of receiving the legal notice, the petitioner did not reply to the same and acted in bad faith by not paying the amount as demanded in the said notice.

18. It is submitted that there is no illegality or error in the orders passed by the learned MM and the learned ASJ and there are no cogent reasons for



this Court to exercise its revisional jurisdiction, which has a very limited scope for interference, as per the posited law.

19. In view of the foregoing submission, it is prayed that the instant revision petition may be dismissed for being devoid of any merit.

20. Heard learned counsel for the parties and perused the material placed on record.

21. At this stage, it is important to discuss the impugned judgment dated 30th October, 2023, passed by the learned ASJ. The impugned judgment upheld the judgment dated 17th November, 2022 and the order on sentence dated 26th November, 2022 passed by the learned MM, as per which the petitioner was convicted for the commission of the offence under Section 138 of the NI Act.

22. Adverting to the merits of the present case, this Court notes that it is an admitted fact that the cheque in question was issued and signed by the petitioner. It is also an undisputed position that the said cheque was returned unpaid due to the closure of the concerned bank account.

23. The present case has arisen in the context of the prosecution initiated against the petitioner under Section 138 of the NI Act. The said provision is reproduced as under:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed



an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

24. In the case of ***K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510***, the Hon'ble Supreme Court held that all the essential elements of the offence under Section 138 must be satisfied for the commission of the offence. The relevant portion of the judgment is reproduced as under:

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”



25. From the above judgment, it is clear that the offence under Section 138 of the NI Act can only be said to be committed after all the ingredients of the offence under the said provision are satisfied, i.e., when the drawer fails to make the payment within 15 days of the receipt of the notice demanding payment of cheque amount following the return of the said cheque unpaid by the drawee bank.

26. In the present case, it is clear that the payment of the cheque amount was not made by the petitioner within 15 days of the receipt of the notice dated 16th December, 2013, which led to the filing of the instant complaint against the petitioner under Section 138 of the NI Act.

27. Section 139 read with Section 118 of the NI Act creates a presumption in favour of the holder of a cheque of the nature referred to in Section 138 of the NI Act. It is well-established in law that the said presumption is rebuttable in nature and the burden to rebut the same is on the accused. The standard of proof to rebut the same is not that of beyond reasonable doubt but of preponderance of probabilities which can be satisfied based on the facts and circumstances of the case.

28. Therefore, it is for the petitioner to show that there existed no debt in pursuance of which the cheque in question was issued. In the present case, there is nothing placed on record to rebut the presumption that there existed a debt or liability to be repaid by the petitioner in pursuance of which the said dishonoured cheque was issued by the petitioner.

29. It is the petitioner's case that the loan amount was already repaid by the petitioner to the complainant when the said cheque was presented by the complainant. It is observed by this Court that the petitioner has not produced



any evidence to render support to his claim regarding the repayment of the cheque amount. There is no repayment receipt that has been produced by the petitioner supporting the said claim. Therefore, this Court is unable to conclude in light of the material placed before it that the said loan amount was repaid by the petitioner.

30. It is also the petitioner's case that the said cheque was a blank cheque, signed by him, and the details were filled up by the complainant. It is well-settled in law that if a signed blank cheque is voluntarily presented to a payee, he may fill up the particulars of the said cheque and doing so does not invalidate the cheque. Therefore, even if the petitioner's contention is taken at its best case, the cheque cannot be rendered invalid merely because the particulars of the said signed blank cheque were filled up by the complainant. The burden would still rest on the petitioner to prove that the said cheque was not in discharge of a debt or a liability, which in the present case, could not be established by the petitioner.

31. During the course of arguments, learned counsel appearing on behalf of the petitioner submitted that since the cheques were misplaced by the complainant and were not returned to the petitioner after the loan amount was repaid by the petitioner to the complainant, the petitioner had to close his Indian Bank account. However, this Court has noted that the petitioner has failed to produce any documents such as an FIR or any letter written to the bank which substantiates his contention regarding the reason for the closure of his bank account. Therefore, this Court is unable to accept the petitioner's contention that the said cheques were liable to be returned to the petitioner and that the said bank account was closed because the same were misplaced by the complainant.



32. Learned counsel for the petitioner vehemently contended that the said loan amount was limited to Rs.1,15,000/-. However, the promissory note dated 15th November, 2011 issued by the petitioner to the complainant as security and the Receipt for the said loan amount was of Rs. 15,00,000/-. There is no reason for this Court to believe that the petitioner would issue a promissory note and sign a loan receipt of Rs. 15,00,000/- if the said loan amount was limited to Rs.1,15,000/- Therefore, this Court is unable to accept the aforementioned contention of the petitioner.

33. This Court has thoroughly perused the material placed on record, including the impugned judgment, and considered the contentions raised by the learned counsel for the parties. In view of the discussion above, this Court finds that a clear case is made out against the petitioner for the commission of the offence under Section 138 of the NI Act and the same was correctly observed by the learned ASJ in the impugned judgment.

34. Therefore, this Court does not find it a fit case to exercise its revisional jurisdiction to set aside the impugned judgement dated 30th October, 2023 passed by the learned ASJ in CA No. 229/2022 whereby, the judgment dated 17th November, 2022 and the order on sentence dated 26th November, 2022 passed by the learned MM in CC No. 5020/2016 were upheld, as there is no error or illegality in the said impugned judgment.

35. Accordingly, the impugned judgment is upheld and the instant revision petition along with pending application(s), if any, stands dismissed.

CHANDRA DHARI SINGH, J

FEBRUARY 6, 2025
pr/rk/st

Click here to check corrigendum, if any