IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:11.11.2024

\+ **CRL.REV.P. 682/2023**

SATISH KUMAR JAIN ..... Petitioner

versus

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

Advocates who appeared in this case:

For the Petitioner : Mr. Mohit Rana & Ms. Manjula Khatri, Advs.

For the Respondent : Mr. Rajkumar, APP for the State with Mr. Vinay Kumar, Mr. Tushant, Mr. Rajiv Kumar Dubey & Mr. Dipanshu Aggarwal, Advs.
SI Naveen, PS- Palam Village

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') against the judgment dated 24.05.2023 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), South West, Dwarka

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

Courts, Delhi in CA No. 101/2021 titled *Satish Kumar Jain vs. Jugal Kishore & Anr.*

2. By impugned order, the learned ASJ dismissed the appeal filed by the petitioner against the judgment dated 07.03.2020 and order on sentence dated 28.08.2021, passed by the learned Metropolitan Magistrate ('MM'), Dwarka Courts, Delhi whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

3. The subject complaint was filed under Section 138 of the NI Act at the behest of the complainant/Respondent alleging that the petitioner and respondent were well known to each other. It is alleged that the respondent advanced a friendly loan for a sum of ₹1,50,000/- to the petitioner who allegedly promised to repay the same in September 2016. It is alleged that thereafter the petitioner, in discharge of the liability, advanced two cheques for a sum of ₹1,00,000/- and ₹50,000/- by way of cheques being cheques no. 712377 and 712378 dated 22.10.2016 and 28.10.2016 respectively, with the assurance that the same would be honoured upon presentation.

4. It is alleged that, upon presentation, the said cheques were returned unpaid with remarks "*funds insufficient*" *vide* return memo dated 19.01.2017. It is alleged that thereafter the respondent served a legal notice dated 15.02.2017 upon the petitioner through a counsel demanding the said amount. Thereafter, upon the failure of the

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

petitioner to repay the amount within the statutory period, the respondent filed a complaint under Section 138 of the NI Act.

5. The learned MM *vide* order dated 07.03.2020 convicted the petitioner for an offence under Section 138 of the NI Act. The learned MM observed that the petitioner admitted his signatures on the cheques in question, not only in the notice under Section 251 of the CrPC but also in his statement under Section 313 of the CrPC and in defence evidence. Consequently, there arose a rebuttable presumption in favour of the respondent. It was observed that the petitioner could have rebutted the presumptions by leading direct evidence or from the case set out by the respondent in the averments made in the complaint, statutory notice and evidence adduced by the respondent during the trial.

6. It was noted that the principal defence taken by the petitioner in his statement under Section 313 of the CrPC, and his examination in chief, was that he did not know the respondent and had no transactions with him. It was contended that the petitioner had advanced the cheques in question to one Vinod Tiwari as blank signed security cheques. It was the petitioner's case that he had in fact taken a loan for a sum of ₹1,00,000/- from Vinod Tiwari, and had also given a blank signed paper to Vinod Tiwari. It was also the petitioner's case that he repaid ₹74,000/- to Vinod Tiwari in cash. The petitioner, in addition, denied any liability towards the respondent, or how the respondent came in possession of the petitioner's cheques.

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

7. The learned MM, however, noted that the petitioner failed to lead any evidence to corroborate any of his contentions. It was noted that the petitioner himself stated that he did not have any receipt regarding any repayment made to Vinod Tiwari in cash. It was noted that the petitioner not only failed to produce any agreement regarding the alleged loan taken from Vinod Tiwari but the petitioner also failed to examine Vinod Tiwari or any other person in this regard. It was also noted that the petitioner failed to file any complaint against Vinod Tiwari or any other person claiming the misuse of his cheques.

8. The learned MM further noted that the testimony of the respondent regarding the loan transaction in question, and the issuance of the subject cheques remained unrebutted at the trial since no cross examination of the respondent was conducted. It was noted that while the petitioner challenged the receipt of statutory demand notice, he failed to bring any evidence on record to show that he was not residing at the address at the time of legal notice. It was noted that the petitioner had failed to raise any defence with regard to non receipt of notice during his testimony and also failed to cross examine the respondent on the said aspect. In that light, the learned MM, noting that the petitioner failed to dislodge the presumptions raised against him, convicted the petitioner for an offence under Section 138 of the NI Act. Consequently, *vide* order on sentence dated 28.08.2021, the petitioner was sentenced to undergo imprisonment till the rising of the Court, and was directed to pay compensation to the respondent for a sum of ₹2,00,000/-. Further, in default of the payment, the petitioner

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

was directed to undergo simple imprisonment for a period of 3 months.

9. The learned ASJ, by impugned order, dismissed the petitioner's appeal while specifically noting that the petitioner failed to either cross examine the respondent or bring any material on record to suggest that there was no loan transaction between the petitioner and respondent. It was noted that the petitioner failed to summon Vinod Tiwari or file any document to suggest that the petitioner had taken a loan for a sum of ₹1,00,000/- from Vinod Tiwari. It was noted that the petitioner failed to explain or lead any evidence to indicate why the petitioner did not ask his bank to stop payment if the cheques were not returned to the petitioner even after the petitioner, as claimed by him, had repaid a substantial amount of the loan to Vinod Tiwari. Consequently, the learned ASJ dismissed the appeal against the order of conviction, and order on sentence passed by the learned MM.

10. Aggrieved by the impugned order, the petitioner filed the present petition.

11. The learned counsel for the petitioner submitted that the learned ASJ erred in upholding the order of conviction, and order on sentence passed by the learned MM thereby convicting the petitioner under Section 138 of the NI Act. He submitted that the learned ASJ did not appreciate the fact that the respondent was not known to the petitioner, and the petitioner had in fact given the subject cheques to Vinod Tiwari. He submitted that the petitioner did not receive any legal

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

notice. He submitted that the petitioner and respondent were not known to each other, and that the respondent misused the subject cheques.

12. *Per contra,* the learned counsel for the respondent submitted that the learned ASJ rightly upheld the conviction of the petitioner under Section 138 of the NI Act. He submitted that the petitioner failed to rebut the presumptions raised against him under Section 139 read with Section 118 of the NI Act.

Conclusion

13. Since the present revision petition has been filed under Section 397 of the CrPC, challenging the concurrent findings of both lower courts, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned order.

14. 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:

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

> *"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 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)

15. In the present case, the petitioner has sought to prove his case by controverting that the cheques in question were not issued in discharge of any legally enforceable debt. It has been contented that the subject cheques were in fact advanced to one Vinod Tiwari as blank signed security cheques since the petitioner had taken a loan for a sum of ₹1,00,000/- from Vinod Tiwari. It has further been contended that the petitioner did not know the respondent, and the respondent had misused the subject cheques. It is the petitioner's case that no liability was owed towards the respondent.

16. It is seen that no police complaint of the subject cheques being misused by Vinod Tiwari or the respondent was made by the petitioner.

17. At the outset, it is relevant to note that the signature of the petitioner on the subject cheques have not been denied. It is trite law that once the execution of the cheque is admitted, the presumption

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

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

18. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh*** **: (2023) 10 SCC 148**, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following:

> *"**54.** …. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.*
>
> ***55.** At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?*

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

xxx *xxx* *xxx*

57. *Einstein had famously said:*

> *"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."*

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

58. *Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.*

xxx *xxx* *xxx*

61. *The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."*

(emphasis supplied)

19. On a perusal of the order on conviction dated 07.03.2020, and the impugned order, it is seen that the arguments of the petitioner have been extensively dealt with by the learned MM and the learned ASJ. Once the signatures on the subject cheque had been admitted, the presumption under Sections 118 and 139 of the NI Act operated in the favour of the respondent, and against the petitioner. As was rightly noted by the learned ASJ, the onus was on the petitioner to rebut the

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

presumptions raised against him under Sections 118 and 139 of the NI Act.

20. In the present case, the petitioner did not deny his signatures on the subject cheques. It is seen that the petitioner sought to controvert the presumptions raised against him by raising a defence that he did not know the respondent, and had not taken any loan from the respondent. It is the petitioner's case that he had given the blank signed subject cheques to one Vinod Tiwari as security for the loan advanced by Vinod Tiwari for a sum of ₹1,00,000/-. It is further the case of the petitioner that he had repaid a sum of ₹74,000/- to Vinod Tiwari in cash. It is also the case of the petitioner that he did not know the cheques in question came into possession of the respondent.

21. In terms of the dictum of the Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh (supra)***, the onus was on the petitioner to raise a probable defence by either leading direct or circumstantial evidence to show that there existed no debt/liability in the manner as pleaded in the complaint/ demand notice/ affidavit-evidence. The petitioner was not liable to rebut the presumptions raised against him beyond reasonable doubt. The petitioner was merely required to controvert the presumptions by raising a probable defence on a preponderance of probabilities to show that there existed no debt/liability in the manner pleaded in the complaint/ demand notice/ evidence.

22. On a perusal of the impugned order, it is seen that the petitioner had merely stated that he had not taken any loan from the respondent,

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

and that the cheques were given as security to Vinod Kumar. Petitioner not only failed to lead any evidence to substantiate his claims but he also did not cross-examine the respondent to raise a probable defence. The petitioner did not adduce any material to suggest that there was no loan transaction between the petitioner and the respondent, or even summon any person to show that the loan existed between the petitioner and one Vinod Tiwari. Merely reiterating the contentions, and making bald assertions do not suffice to dislodge the presumptions raised against the petitioner.

23. In this regard, the learned ASJ rightly observed that there existed no explanation why the petitioner did not approach his bank and gave instructions to the bank to stop payment since it is the petitioner's case itself that the blank signed cheques were given as security and that the petitioner had already repaid ₹74,000/- to Vinod Tiwari. It was noted that the petitioner himself admitted that he had not filed any police complaint against the respondent or Vinod Tiwari claiming the misuse of his cheques.

24. In terms of the dictum of the Hon'ble Apex Court in ***Bir Singh v. Mukesh Kumar*** **: (2019) 4 SCC 197**, mere admission of the signature of the drawer on the cheque is sufficient to activate the presumption under Section 139 of the NI Act. It is not a pre-requisite that the drawer must also admit the execution of the entire contents of the cheque.

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51

25. In the instant case, upon a consideration of the totality of circumstances, it is evident that the petitioner had failed to rebut the presumptions raised against him under Sections 118 and 139 of the NI Act.

26. In view of the aforesaid discussion, this Court finds no infirmity in the impugned order, and the same does not merit any interference.

27. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 11, 2024

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:12.11.2024 18:10:51