IN THE HIGH COURTOF DELHIAT NEW DELHI

% Judgment delivered on:19.09.2025

\+ **CRL.REV.P. 652/2014 & CRL.M.A. 3570/2016**

M/S SSM ENGINEERS PVT LTD & ANR .....Petitioners

versus

STATE (GNCT) OF DELHI & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. T.N.Raydan and Mr.YaduvenRao, Advs.

For the Respondent : Ms. Kiran Bairwa, APP for the State.
Ms. Meera Kaura Patel, Ms. Zainab Hussain, Mr. Vikash Vadit and Mr. S.K. Gupta, Advs. for R-2.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed by the petitioners under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') challenging the judgment dated 11.09.2014 (hereafter '**impugned judgment**'), passed by the learned Additional sessions Judge ('**ASJ**'), Central District, Tis Hazari Courts, Delhi in Criminal Appeal No. 36/2014.

2. In the present case, the petitioners *vide* judgment dated 31.01.2014 were convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') by the learned Metropolitan Magistrate ('**MM**'), Central District, Tis Hazari Courts, Delhi in Complaint Case No. 219/2012. Further, *vide* order on sentence dated 07.02.2014, Petitioner No. 2 was sentenced to simple imprisonment for a period of one year and a fine of ₹25,00,000/- and in default of payment of same, to undergo simple imprisonment for three and a half months. Petitioner No. 1 company was sentenced to payment of fine of ₹25,00,000/- to Respondent No. 2/complainant.

3. Dismissal of the appeal against the orders passed by the learned MM led to filing of the present petition.

4. Briefly stated, the case of Respondent No. 2 was that it used to supply aluminum sections to the petitioners on credit basis. It is alleged that on 31.03.2009, the petitioners had an outstanding payment of ₹37,87,641/- due to Respondent No. 2.

5. It is alleged that after acknowledging the said liability, Petitioner No. 1 company through its Director, Petitioner No. 2 issued three cheques bearing numbers numbers – 002602 dated 08.05.2009 for a sum of ₹10,00,000/-, 002603 dated 12.05.2009 for a sum of ₹10,00,000/- and 002607 dated 18.05.2009 for a sum of ₹5,00,000/-, all drawn on Union Bank of India, Indira Puram Branch, Ghaziabad, Uttar Pradesh and assured Respondent No. 2 that the said cheques would be honoured on their presentation.

6. It is alleged that on 06.11.2009, Respondent No. 2 presented the aforesaid cheques for encashment, however, all the cheques were dishonoured and returned *vide* return memo dated 09.11.2009 with remarks "*Funds Insufficient*".

7. Respondent No. 2, thereafter, issued a statutory legal demand notice dated 07.12.2009 to the petitioners, demanding payment of the aforesaid amount, and upon their failure to do so, Respondent No. 2 filed the subject complaint before the learned MM.

8. The learned MM *vide* order dated 02.02.2010 summoned the petitioners in the present case.

9. In the statement recorded under Section 313 of the CrPC, Petitioner No. 2 denied all the evidence that was put against the petitioners and claimed trial.

10. After hearing arguments and appreciating the evidence on record, the learned MM by judgment dated 31.01.2014 convicted the petitioners for the offence under Section 138 of the NI Act and the appeal against the said order, as noted above was dismissed by the learned ASJ by way of the impugned judgment.

11. The learned ASJ noted that the learned MM had rightly observed that the petitioners failed to rebut the presumptions by raising any probable defence.

12. The learned counsel for the petitioners submitted that the learned MM as well as the learned ASJ failed to appreciate the fact that the subject cheques were not issued to discharge any legally

enforceable debt and the same had been issued by the petitioners as advanced cheques.

13. He submitted that the ledgers/statement of accounts produced by the petitioners during the course of trial clearly show that the transactions between the petitioners and Respondent No. 2 was never on credit basis, to the contrary, was always through advance payments.

14. He submitted that Petitioner No. 2 had sent a letter to Respondent No. 2 to cancel the subject purchase order and return the disputed cheques back to the petitioners. He submits that the aforesaid letter had been duly received by one of the employees of Respondent No. 2 namely Mr. Kamal. He submits that the petitioners had even sent a letter to the bank asking them not to encash the subject cheques.

15. He further submitted that the petitioners were able to rebut the presumptions under Sections 118 and 139 of the NI Act.

16. *Per contra*, the learned counsel for Respondent No. 2 submitted that the learned MM as well as the learned ASJ have passed comprehensive judgments covering every aspect of the defence of the petitioners and after thoroughly examining the evidence on record, have rightly convicted the petitioners for the offence under Section 138 of the NI Act.

17. She submitted that the petitioners during the course of trial have failed to summon Mr. Kamal who allegedly received the intimation from the petitioners regarding the cancellation of the purchase order and return the subject cheques back to the petitioners.

18. She submitted that the petitioners had failed to prove their own documents during the course of trial and thus made their case devoid of any merit.

19. She consequently prayed that the present petition be dismissed.

20. I have heard the learned counsel for the parties and perused the record.

Analysis

21. 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 judgment.

22. 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. ***SanjaysinhRamrao Chavan v. DattarayGulabrao 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 Supreme Court in the case of ***State of Kerala v. PuttumanaIllathJathavedanNamboodiri* : (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 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....***"
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> (emphasis supplied)

23. In the present case, the petitioners have sought to prove their case by controverting that the cheques in questions were not issued to discharge any legally enforceable debt and the same had been issued as advance payment.

24. It was contended that the petitioners had sent a letter to Respondent No. 2 intimating cancellation of their purchase order and to return the disputed cheques back to them. It was contended that the said letter had been duly received by one employee of Respondent No. 2 namely Mr. Kamal. It was further contended that they had subsequently written a letter to the bank asking them to stop the encashment of the subject cheques.

25. Upon a perusal of the judgment dated 31.01.2009 and the impugned judgment, it can be seen that the arguments of the petitioners have been extensively dealt by the learned MM as well as the learned ASJ respectively.

26. At the outset, it is relevant to note that the signature of Petitioner No. 2 on the cheques in dispute has 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 enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*** **: (2010) 11 SCC 441**].

27. 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.*
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> ***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"?*
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> ***xxx xxxxxx***

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.*

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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)

28. In the present case, the subject cheques were addressed as "*self*". The petitioners during the course of trial had examined DW-1, one official from the Union Bank of India, Indira Puram branch from where the disputed cheques had been drawn from.

29. He had stated that when a "*self*" drawn cheque is presented for encashment by the account holder then he is required to sign on the back side of the cheque and further one more signature is required at the time of disbursement of cash.

30. He deposed that when a "*self*" drawn cheque is presented for encashment by a third person, then that individual is required to sign twice on the back side of the cheque as well as write their name, mobile number and address on the back of the cheque.

31. He further stated that the account maintained by the petitioners was an overdraft account and at the time of presentation of cheque for encashment the drawee is not required to sign on the back side of the cheque if the same is addressed as "*self*".

32. From a perusal of the disputed cheques, it can be seen that the signature of Petitioner No. 2 appears on the back side of the subject cheques. Further, no details of the complainant as required were present on the back side of the disputed cheques.

33. The learned ASJ as well as the learned MM noted that the petitioners during the course of trial failed to give any explanation or lead any evidence as to why the signature of Petitioner No. 2 appear on the back side of the disputed cheques, which as per the testimony of DW-1 was not required.

34. It is pertinent to note that CW-1, complainant during his cross-examination denied the suggestion that the aforesaid cheques had been given as advance cheques. He further stated that he himself had presented the disputed cheques after seeking consent of the petitioners for the same.

35. The learned MM as well as the learned ASJ noted that the ledgers/statement of accounts produced by the petitioners during the course of trial had not been maintained in a proper manner.

36. It is apparent from a perusal of the said ledgers/statement of accounts, that no entry has been made by the petitioners in the said documents after 21.02.2009, whereas, the subject cheques had been issued by the petitioners in May 2009.

37. It is also relevant to note that the difference between the credit and debit entries in the aforesaid ledgers/statement of accounts does not appear to be very clear.

38. Further, the petitioners failed to produce any other financial document either before this Court or the Courts below to show that the transactions between the petitioners and Respondent No. 2 were never on credit basis, but the same were always through advanced payment.

39. Therefore, in the opinion of this Court the contention of the petitioner that the learned MM as well as the learned ASJ failed to appreciate that the subject cheques were not issued to discharge any legally enforceable debt or that the transactions between the petitioners and Respondent No. 2 were never on credit basis, but were always through advanced payment is bereft of any merit.

40. The learned counsel for the petitioners argued that they had issued a written communication to Respondent No. 2 to cancel their purchase order and return the subject cheques back to the petitioners. He argued that the said communication had been duly received by one employee of Respondent No. 2 namely Mr. Kamal. It was further argued that the petitioners had addressed a letter to the bank asking them to stop the encashment of the subject cheques.

41. During the course of trial, the aforesaid communication addressed to Respondent No. 2 was Mark A. The complainant during his cross-examination, denied receiving any such communication from the petitioners. He further disputed the signatures of Mr. Kamal on the same.

42. It is undisputed that the petitioners had failed to summon Mr. Kamal who had allegedly received the aforesaid communication as a witness. The petitioners had also not led any evidence to prove the said fact.

43. Further, the petitioners during the course of trial had failed to examine either any of their own employee or any official from the bank to prove the receipt of the letter asking the bank to stop the encashment of the disputed cheques.

44. In view of the aforesaid discussion, I do not find any merit in the contention of the petitioners that the learned ASJ as well as the learned MM failed to appreciate the written communication that had been issued by the petitioners to Respondent No. 2 regarding cancellation of purchase order and return of the subject cheques as well as the letter addressed to the bank to stop the encashment of the subject cheques.

45. Therefore, in the instant case, upon a consideration of the totality of circumstances, it is evident that the petitioners have failed to rebut the presumptions under Sections 118 and 139 of the NI Act.

46. In view of the aforesaid discussion, this Court finds no infirmity with the impugned judgment passed by the learned ASJ, and the same does not warrant interference.

47. The present petition is dismissed in the aforesaid terms. Pending Application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 19, 2025
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