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

% ***Date of Decision: November 26, 2025***

\+ **CRL.REV.P. 557/2023**

M/S IMPACT FIRE AND SAFETY APPLIANCE PVT LTD & ANR. .....Petitioners

Through: P2 in person

versus

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

Through: Mr. Raj Kumar, APP for the State
Mr. Vineet Kumar Singh, Adv. for R-2 (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present petition has been filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC'**) seeking setting-aside of the judgment dated 01.02.2023 (hereinafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ'**), in Criminal Appeal No. 95/2020, whereby the judgment of conviction dated 11.03.2020 and order on sentence dated 24.09.2020 were upheld.

2. Petitioner No. 2/Sh. Gireesh Arora is the director of Petitioner No. 1/Company.

3. *Vide* judgment of conviction dated 11.03.2020, the Petitioners were convicted by the court of learned Additional Chief Metropolitan Magistrate ('**ACMM'**), KKD Courts Complex, Delhi, for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

4. Subsequently, *vide* order on sentence dated 24.09.2020, the Petitioner No. 2 was sentenced to simple imprisonment for a period of twelve months and a fine in the sum of Rs.2,50,000/- and in the default in payment of fine, to undergo further simple imprisonment for a period of six months. Similarly, the Petitioner No. l company was also sentenced to pay a fine in the sum of Rs.2,00,000/- to Respondent No. 2/Complainant.

5. Succinctly stated, the facts leading to the present dispute are in August 2014, Petitioner No. 2 purchased certain firefighting equipment, safety products and industrial products from Respondent No. 2, against Tax Invoice under Book No. 8. Serial No. 366 dated 04.09.2014 for a sum of Rs. 1,48,084/- (Rupees One Lakh Forty-Eight Thousand Eighty-Four Only).

6. Thereafter, the Petitioner No. 2 issued a cheque in the favour of Respondent No.2 Company bearing Cheque No. 000178 dated 12.10.2014 for a sum of Rs. 1,46,734/-, drawn on HDFC Bank, Kalka Ji, New Delhi for payment against the aforementioned invoice and deducted Rs. 1,350/- from the total invoice amount, against cartage charges.

7. The Respondent No. 2 presented the aforesaid cheques for encashment on 18.11.2014 but the said cheque got dishonoured

and was returned unpaid *vide* Bank Return Memo dated 19.11.2014, with the remarks *"Payment stopped by Drawer"*.

8. The Legal Demand Notice dated 24.11.2024 was served upon the Petitioners on 26.11.2024, demanding the payment of the aforesaid amount and upon their failure to do so, the Respondent No. 2 filed the subject complaint under Section 138 of the NI Act.

9. After hearing arguments and appreciating the evidence on record, the learned ACMM convicted and sentenced the Petitioners for the offence under Section 138 of the NI Act.

10. Aggrieved, by the same, the Petitioners assailed the judgment of conviction and order on sentence before the learned ASJ, which was dismissed *vide* the impugned judgment. The learned ASJ noted that the learned MM had rightly observed that the petitioners failed to rebut the presumptions by raising any probable defence.

11. Petitioner No. 2, who appears in person, submits that the learned ACMM as well as the learned ASJ failed to appreciate that the cheque issued did not represent a legally enforceable debt at the time of encashment.

12. He further submits that the liability against the cheque amount did not arise as defective goods worth Rs. 57,530/-, were retuned by the Petitioners through the field and dispatch man of Petitioner No. 1 Company, DW-2/Mr. Vinod Mondal through delivery challan dated 16.10.2014 and the said delivery challan was duly signed by DW-1/Rajiv Kumar, the marketing executive

of Respondent No. 2, on 21.10.2014.

13. He further submits that the Legal Notice dated 24.11.2014 was never received by Petitioner No. 2 and thus, the essential ingredients of Section 138 NI Act were not made out.

14. He further submits that the petitioners were able to rebut the presumptions under Sections 118 and 139 of the NI Act. Hence it is prayed that the present petition be allowed.

15. *Per contra*, the learned counsel for Respondent No. 2 vehemently opposes the present petition and submits that the learned ACMM 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. It is consequently prayed that the present petition be dismissed.

16. Submissions heard and record perused.

Analysis

17. It is pertinent to note that since the petitioner has preferred a revision petition before this Court thereby challenging the concurrent findings of the learned ASJ and learned CMM, the role of this Court is limited to assessing the correctness, legality and propriety of the impugned judgment.

18. It is well settled that this Court ought to exercise restraint, and should not interfere with the findings of the impugned orders or reappreciate evidence solely 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 Apex 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 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)

19. In the present case, the petitioners have sought to prove their case by controverting that the cheque in questions was not issued to discharge any legally enforceable debt.

20. Upon a perusal of the impugned judgment as well as the judgment on conviction, it can be seen that the arguments of the

petitioners have been extensively dealt by the learned ACMM as well as the learned ASJ respectively.

21. At the outset, it is apposite to note that the Petitioner No. 2 has admitted his signature on cheque No. 000178 dated 12.10.2014 for ₹1,46,734/- drawn on HDFC Bank, Kalkaji and has also admitted that the cheque particulars are in his handwriting. It is also undisputed that the cheque was issued towards the fire-fighting equipment supplied under Tax Invoice dated 04.09.2014 and the dishonour of the cheque is also admitted.

22. 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].**

23. 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"?*

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***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)

24. In the present case, the main defence raised by the Petitioner is with respect to his liability of the cheque amount in question. It has been stated that certain defective goods worth Rs. 57,530/- were returned to the respondent. To prove the same, the appellant had relied upon the delivery challan dated 16.10.2014 (*Ex. DW1/A*) and had examined DW-1/Rajiv Kumar, the alleged employee of the respondent no. 2 who had allegedly received the defective goods and DW-2/Vinod Mondal, the alleged dispatch man who had delivered the defective goods.

25. However, it is evident from the record that both the witnesses have not supported the case of the Petitioner.

26. A perusal of the deposition of DW-1/Rajiv Kumar, who was a summoned witness, reveals that he has categorically denied having any knowledge of the any transaction between the parties, or of the return of any goods, or of the challan process. He was unable to remember if petitioner had returned the material to the Respondent No. 2 and stated that he never had any direct dealing with the customers.

27. The evidence of DW-2/Vinod Mondal, who had allegedly delivered the defective goods on behalf of the Petitioners, reveals that he has failed to prove his employment with the petitioner. He had denied having any knowledge of the articles supplied by him and even admitted that delivery challan dated 16.10.2014 was not prepared by him.

28. The learned ASJ as well as the learned ACMM have rightly observed that the there is no document on record to prove

that the goods delivered by the Respondent No. 2 were defective.

29. It is noteworthy that even the delivery challan (*Ex. DW1/A*) is dated 16.10.2014, which is after the issuance of the cheque on 12.10.2014. Even the delivery challan nowhere states that goods were being returned due to defects; rather, it contains a typed endorsement: *"Please receive the following goods in good condition."* Further, no complaint regarding defective goods was raised between the date of issuance of Tax Invoice i.e. 04.09.2014 and the date of issuance of cheque i.e. 12.10.2014.

30. Pertinently, when DW-2 had denied that the delivery challan was not made by him, even the employee who purportedly prepared the alleged delivery challan was never examined and the Respondent No. 2 was also never cross-examined on delivery challan though the document was available with the petitioner.

31. Hence, it has been rightly observed that there is no documentary or oral evidence on record to prove that defective goods were returned by the petitioner to the respondent.

32. Therefore, in the opinion of this Court, the contention of the petitioner that the learned ACMM as well as the learned ASJ failed to appreciate that the subject cheques were not issued to discharge any legally enforceable debt, is bereft of any merit.

33. Even the plea of non-service of Legal notice is untenable. Although the petitioner claims non-receipt of legal notice *(Ex. CW1/D)*, he has not disputed the address on which it was delivered. Further, the Respondent No. 2 has proved dispatch on

the address of Petitioner No. 1, through postal receipt *(Ex. CW1/E)* and tracking report *(Ex. CW1/G)*. It is well settled that a notice properly addressed and sent by registered post is deemed to be served. Moreover, service of court summons cures any alleged defect in service of notice.

34. To conclude the defence of return of goods is unsupported and service of legal notice stands duly proved. 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.

35. In view of the above discussion, this Court finds no infirmity in the impugned judgment passed by the learned ASJ, and the same does not warrant any interference.

36. The present petition is hereby dismissed, along with pending application(s), if any.

AMIT MAHAJAN, J

NOVEMBER 26, 2025
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