



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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 988/2018 & CRL.M.(BAIL) 1766/2018**

SH. LALLAN SAH

.....Petitioner

Through: Mr. Sharad Malhotra (DHCLSC),
Advocate.

versus

SH. RAVI KUMAR PASI

.....Respondent

Through: Mr. Tahir Ashraf Siddiqui (DHCLSC)
and Mr. Kartikey Sahai, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner/accused in CC No. 8423/2016 has challenged the Order dated 16.10.2018 passed by learned Additional Sessions Judge, Tis Hazari Courts, Delhi in Criminal Appeal No.10/2/18 upholding the Judgement of conviction dated 31.08.2017 and the Order of Sentence dated 08.01.2018 passed by learned Metropolitan Magistrate convicting the Petitioner for offences under Section 138 of the NI Act.
2. By the Order on Sentence dated 08.01.2018, the Petitioner has been sentenced to undergo simple imprisonment for a period of two months along with payment of Rs.97,720/- as compensation to the Complainant under Section 143(1) of the NI Act within one month from the date of the said order. In default of the payment of compensation in time, the Petitioner shall further undergo simple imprisonment for a period of one month.



3. Material on record indicates that out of Rs.97,720/-, this Court on 15.11.2018 at the time of issuing notice on the application for suspension of sentence had directed the Petitioner to deposit Rs.60,000/- with the Registrar General of this Court and personal bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court. This order has not been fully complied with by the Petitioner and only Rs.30,000/- has been deposited with the Registry of this Court.

4. Material on record indicates that the Petitioner has undergone the sentence. The material on record indicates that the Petitioner and the Complainant are related to each other. It is the allegation of the Complainant that he had given Rs.48,860/- to the Petitioner/accused at his request. It is stated that in discharge of the said liability, the Petitioner/accused issued a post-dated cheque bearing No. 233012 dated 23.03.2002 for the sum of Rs.48,680/- drawn on Central Bank of India, Badarpur.

5. It is stated that when the said cheque was deposited by the Complainant with the bank, the same got dishonoured with remarks "funds insufficient" by a return memo dated 12.07.2002. It is stated that a legal notice dated 20.07.2002 was issued by the Complainant to the Petitioner/accused but the Petitioner herein failed to make the payment in terms of the said legal notice which lead to filing of the instant complaint being CC No. 8423/2016 before the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi.

6. It was the case of the Petitioner/accused that he did not issue the cheque in question to the Complainant and the cheque was forcibly obtained from him. It is stated that the cheque in question was a self drawn cheque and the Complainant has fabricated his initials by writing his name in the



name of payee. It is also stated by the Petitioner/accused that apart from his signatures, all other particulars have been filled in by the Complainant himself. The Petitioner/accused also denied receiving of the legal demand notice.

7. Evidence is led by the parties. The learned Trial Court relied on the presumption under Section 139 of the NI Act and held that the Petitioner/accused did not dispute his signatures on the cheque. The learned Trial Court was of the opinion that though an FIR being FIR No. 371/2001 was registered at Police Station Badarpur by the Petitioner herein against the Complainant, however, the Complainant has been discharged of the offences in the said FIR as the Petitioner herein did not lead any evidence. The learned Trial Court further held that no intimation had been given by the Petitioner/accused to the bank to stop the payment.

8. The Trial Court held that it was for the Petitioner herein to prove that he was forcibly made to fill in the cheque for the Complainant but no evidence has been adduced on his behalf. The Trial Court held that the assertion of the Petitioner is highly unnatural. The Trial Court also held that the fact that the accused is the husband of the sister of the Complainant and therefore the complaint is a motivated complaint is not tenable for the reason that the Petitioner had been taking loans on various occasions from the Complainant which has not been denied by the Petitioner/accused and the Petitioner/accused has not stepped into the witness box to substantiate his case.

9. By the Judgment dated 31.08.2017 passed by the learned Metropolitan Magistrate, the Petitioner/accused has been held guilty for offences under Section 138 NI Act and *vide* Order on Sentence dated



08.01.2018, the Petitioner was directed to pay compensation of Rs.97,720/- to the Complainant. The Petitioner/accused has also been directed to undergo simple imprisonment for a period of two months. The said order was challenged by the Petitioner by filing Criminal Appeal No. 10/2/18 before the learned Additional Sessions Judge, Tis Hazari Courts, Delhi.

10. The Appellate Court also came to the conclusion that it is not disputed that the Petitioner herein has signed the cheque and the cheque has been returned as “funds insufficient”. The Appellate Court upheld the findings of the Trial Court that since the Petitioner herein had not given any instructions to the bank to get the payment of the cheque stopped. The Appellate Court also held that the accused has not been able to prove the allegations of the FIR. The Appellate Court therefore confirmed the findings of the learned Trial Court.

11. Learned Counsel for the Petitioner contends that the ingredients of Section 138 NI Act have not been satisfied. He states that the Trial Court has failed to appreciate that the cheque was a self cheque which has been cut and the name of the Complainant had been inserted. He states that the name of the payee has been written in English and the amount has been written in Hindi. He further states that the Complainant is the brother-in-law of the Petitioner and there are matrimonial disputes going on between the sister of the Complainant and the Petitioner herein and the complaint is a motivated one. He states that there is no documentary evidence to show that any loan was advanced to the Petitioner.

12. *Per contra*, learned Counsel for the Respondent states that in view of the concurrent findings by two courts below, the revision petition deserves to be dismissed.



13. Heard learned Counsel for the parties and perused the material on record.

14. As rightly pointed out by the two courts below, it is admitted case that the Petitioner/accused has signed the cheque. The case of the Petitioner that the cheque was forcibly taken from the Petitioner and an FIR No. 371/2001 has been lodged cannot be accepted for the reason that the Complainant has been discharged in the said FIR because the Petitioner herein could not lead any evidence.

15. In any event, it is also open for the Petitioner to substantiate that in the present case, the cheque had been forcibly taken from him and no material has been produced by the Petitioner to substantiate his case that the cheque was forcibly taken from him. In fact he has chosen not to step into the witness box. It is well settled that there is legal liability envisaged under Section 139 NI Act even if a blank cheque is duly filled by the drawer. [Refer:- Moideen v. Johnny, **2006 (2) DCR 421**].

16. The revisional jurisdiction of the High Court while interfering with the concurrent findings of the two courts below is narrow and can only be done if a situation arises wherein the impugned order is replete with legal infirmities and is unconscionable to the rule of law.

17. The Apex Court in Amit Kapoor v. Ramesh Chander, **(2012) 9 SCC 460**, has observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be



appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. ***If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.*** These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an



order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

18. Similarly, in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Apex Court has observed as under:

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be



perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

19. The judgment of the courts below is based on sound reasoning applying the correct principles of law. The Petitioner has not been able to rebut the presumption raised against him which no doubt is based on the preponderance of probabilities. As rightly pointed out by the courts below, merely stating that the cheque has been forcibly taken from him could not be sufficient and as rightly pointed out that the Petitioner has not issued any ‘stop payment’ notice to his bank. As noted above, the FIR lodged by the Petitioner has failed. It was always open for the Petitioner to lead evidence in this case to substantiate his case which he has failed to do so. The fact that the Petitioner is the brother-in-law of the Complainant, i.e., he married the sister of the Complainant and there are matrimonial disputes would not rebut the presumption under Section 138 NI Act. All the ingredients of Section 138 NI Act are therefore satisfied. This Court is not inclined to interfere with the judgment passed by the courts below.

20. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

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