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

\+ **CRL.REV.P. 882/2018 & CRL.M.(BAIL) 1612/2018**
CRL.M.A. 11794/2019 & CRL.M.A. 2798/2020

Date of decision: 8th March, 2021

IN THE MATTER OF:

PRAHALD SINGH ..... Petitioner

Through Mr. Yash Karan Jain, Advocate

versus

THE STATE & ANR ..... Respondents

Through Ms. Kusum Dhalla, APP for the State.
Mr. Divyakant Lahoti with
Mr. Parikshit Ahuja, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition under Section 397 Cr.P.C is directed against the judgment and order dated 09.03.2018 passed by the Additional Session Judge, Karkardooma Courts, New Delhi, in CRL. Appeal No.194/2017. The Additional Session Judge by the impugned judgment affirmed the order dated 29.06.2017, passed by the Additional Chief Metropolitan Magistrate, East, Karkardooma Court, Delhi, convicting the petitioner for an offence under Section 138 of Negotiable Instruments Act, 1881 (hereafter referred as 'The NI Act') and the Order on sentence dated 17.10.2017 directing the petitioner to pay a compensation of Rs.1,75,000/- and in default the petitioner herein has to undergo simple imprisonment for three months.

2. On 01.11.2019, the counsel for the petitioner on instructions from the petitioner, who was present in person, submitted that the petitioner is ready

and willing to settle the disputes with respondent No.2. It was agreed that the petitioner will make the payment of Rs.1,70,000/- to respondent No.2 in four monthly instalments. The first three instalments of Rs.50,000/- each were to be paid on or before 01.12.2019, 01.01.2020 and 01.02.2020 respectively. The fourth and final instalment of Rs.20,000/- was to be paid on or before 01.03.2020. The petitioner also undertook to deposit fine of Rs.5,000/- with the Delhi High Court Legal Services Committee within four weeks. The petitioner further undertook to deposit 15% of the compensation amount with the Delhi High Court Legal Services Committee in view of the decision of Supreme Court in Damodar S.Prabhu vs. Saved Babalal H., **(2010) 5 SCC 663** within four weeks thereafter. The said amount has not been paid.

3. On 07.02.2020 the counsel for the petitioner submitted that the petitioner is willing to pay the amount, provided some more time is given to him and prayed that six months time be granted and he also stated that an undertaking in this regard will be filed by him within one week. Even though time was granted, the amount has not been paid.

4. A perusal of the above orders would show that the petitioner is only using dilatory tactics to postpone the matter and is not willing to pay the amount which the petitioner had undertaken to pay vide Order dated 01.11.2019. This Court is therefore inclined to hear and dispose of the revision petition on merit.

5. Shorn of details the facts leading to this revision petition are:

a) The respondent No.2 instituted a complaint under Section 138 of NI Act stating that he had lent a sum of Rs.1,00,000/- (Rs.50,000/- in cash and Rs.50,000/- by way of cheque) to the petitioner as friendly

loan. For the repayment of the said loan, the petitioner had issued a cheque bearing No. 795471 dated 25.07.2013, drawn on State Bank of India, in favour of the respondent No.2. The cheque was returned as dishonoured with the remarks "*funds insufficient*". A Legal notice as contemplated under Section 138 of NI Act was sent to the petitioner on 20.08.2013 which returned back with the report "*left without address*".

b) A complaint being C.C. No. 934/13/15 under Section 138 N.I. Act was instituted against the petitioner on 04.10.2013, in the Court of Chief Metropolitan Magistrate, (District East) Karkardooma Courts, Delhi.

c) The petitioner took a defence that he did not take any loan of Rs.1,00,000/- from the respondent No.2. He also stated that a blank cheque had been given by him to one Mahesh from whom the petitioner had taken loan. It is stated that the said Mahesh has given the cheque to the complainant which has been misused.

d) Mahesh was examined as DW-2 and in his cross examination he stated that the cheque in question had never been given to him by the accused/petitioner herein.

e) The petitioner stated that he did not receive the notice under Section 138 NI Act and therefore the complaint ought to be dismissed.

f) The learned Metropolitan Magistrate by the judgement dated 29.06.2017 held that the petitioner/accused had not been able to rebut the presumption under Section 139 NI Act. The Metropolitan Magistrate noted that the petitioner/accused had miserably failed to prove his defence as DW-2, Mahesh Kumar, examined by him in

support of his defence, has not supported his case. Rather DW-2 specifically stated that he had seen the cheque in question for the first time in court.

g) The Metropolitan Magistrate also found that the Notice was sent to the address C-13, Ground Floor, DLF Colony, Dilshad Extension-2, Shahibabad, Ghaziabad and was returned back with endorsement "*house found lock after repeated visits*". The Metropolitan Magistrate found that the accused who was examined as DW-1 never deposed that the said address was not in his possession. The Metropolitan Magistrate noted that in his cross-examination the petitioner/accused has stated that he had shifted to Hari Nagar in 2012, but interestingly in the personal bond furnished by the petitioner, after receiving the summons on 20.02.2014, he has mentioned his address as C-13, Ground Floor, DLF Colony, Dilshad Extension-2, Shahibabad, Ghaziabad, U.P., to which address the notice was sent. The Metropolitan Magistrate therefore held that the legal notice had been duly served on the accused/petitioner herein. The petitioner was therefore held guilty of an offence under Section 138 N.I. Act.

h) By a separate order dated 17.10.2017, the Metropolitan Magistrate sentenced the petitioner to pay a compensation of Rs. 1,75,000/- in default the petitioner was to undergo SI for 3 months. Out of the compensation of Rs.1,75,000/-, Rs. 1,70,000/- was to be paid as compensation to the complainant and Rs. 5,000/- was to be deposited with State.

i) Aggrieved by the said order the petitioner filed an appeal being

CRL. Appeal No.194/2017 before the Additional Session Judge, Karkardooma Courts. The Additional Session Judge by the impugned judgement dismissed the Appeal. The Additional Session Judge after going through the material on record held that the petitioner has not been able to prove his defence inasmuch as Mahesh Kumar, to whom the petitioner had alleged to have given the cheque, stated that the cheque in question was not handed over to him by the petitioner. The Additional Session Judge relied on a judgement of the Supreme Court in C.C. Alavi Haji v. Palapetty Muhammed**, (2007) 6 SCC 555** and held that even assuming that the legal notice was not served on the petitioner herein, the service of the summons of the complaint can be treated as service of notice to the appellant/petitioner herein and the accused ought to have made the payment in time as stipulated under the N.I. Act. The Additional Session Judge upheld the compensation and sentence imposed on the petitioner.

6. It is this order which is under challenge in the present petition.

7. Mr. Yash Karan Jain, learned counsel for the petitioner contends that the petitioner had not given the cheque to the complainant/respondent No.2 herein and the cheque has been misused to frame him. He states that a perusal of the bank statement would show that the complainant has shown only two transaction in his bank statement, the first transaction dated 27.12.2010, is for an amount of Rs.49,500/- and the second transaction dated 28.01.2011, is for an amount of Rs.30,000/- and the total amount comes to Rs.79,500/- then how is it possible that the petitioner has given a cheque of Rs.1,00,000/- to the complainant. He states that this shows that the version of the complainant/respondent No.2 that a cheque was given for repayment

of loan is incorrect and the complainant has misused a blank cheque which came to his possession. He would also contend that the petitioner did not reside on the address to which the notice was sent.

8. *Per Contra,* Mr. Divyakant Lahoti, learned counsel for the respondent No.2 would contend that two Courts after going through the entire records have held that the petitioner is guilty for an offence under Section 138 NI Act. Mr. Divyakant Lahoti, learned counsel for the respondent No.2 has taken this Court through various documents to substantiate that the address to which the Notice was sent was the address of the petitioner. He would also states that the cheque bearing No. 795471 dated 25.07.2013, has been signed by the petitioner, the cheque is in the name of the complainant and is for a sum of Rs.1,00,000/-. Mr. Divyakant Lahoti, learned counsel for the respondent No.2 submits that the respondent No.2 has filed his Bank Statement to substantiate his contention that a sum of Rs.1,00,000/- had been given to the accused. In the Bank Statement there are three transactions which are as follows:

i. The first transaction dated 27.12.2010, is a cheque withdrawal for an amount of Rs.49,500/-.

ii. The second transaction dated 28.01.2011, is a cheque withdrawal for an amount of Rs.30,000/-.

iii. The third transaction dated 18.04.2011, is a cheque transaction in favour of Prahalad for an amount of Rs.50,000/-.

Mr. Divyakant Lahoti, learned counsel for the respondent No.2 states that out of the sum of Rs.49,500/- which was withdrawn on 27.12.2010, Rs.20,000/- was given to the petitioner in cash, Rs.30,000/- withdrawn on 28.01.2011, was also given to the petitioner in cash and a cheque for a sum

of Rs.50,000/- was also given to the petitioner which was encashed on 18.04.2011 by the petitioner. He would therefore state that Rs.1,00,000/- was given to the petitioner by the respondent No.2.

9. Section 139 of the N.I. Act raises a presumption in favour of the holder. Section 139 of the N.I. Act reads as under:

> ***"The Negotiable Instruments Act, 1881***
>
> *139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."*

10. No doubt the presumption is rebuttable. To rebut the presumption the petitioner has raised two fold contentions. The first contention he has raised is that he gave a cheque to one Mahesh Kumar and that the said Mahesh Kumar has misused the cheque by giving it to the complainant, who filled the cheque. The contention that the cheque has been given to Mahesh Kumar, who was examined as DW-2, is not acceptable as he deposed against the petitioner. Mahesh Kumar in his cross-examination has stated as under:

> *"It is correct that the cheque in question had never been handed over to me by Sh. Prahlad Singh"*

The first contention therefore cannot be accepted.

11. The second contention raised by the petitioner to rebut the presumption is that the bank statement given by the complainant does not substantiate the case of the complainant that Rs.1,00,000/- has been given by him to the accused as loan. A perusal of the judgements of two courts below

does not indicate that this issue was ever raised by the petitioner before the subordinate Courts. Mr. Divyakant Lahoti, learned counsel for the respondent No.2/complainant states that the onus is on the petitioner to rebut the presumption by leading evidence. The fact that the cheque has been signed by the petitioner raises a presumption unless the contrary is proved that the holder of the cheque has received the cheque for the discharge, in whole or in part, of a debt or other liability. Mr. Divyakant Lahoti states that the petitioner has not led any evidence to rebut the same. This Court is inclined to accept the contention of Mr. Divyakant Lahoti, learned counsel for the respondent No.2.

12. The submission of the petitioner is that he did not receive Rs.1,00,000/- and the Bank Statement shows that only Rs.79,500/- has been received. Nothing has been shown by the petitioner to substantiate that Rs.79,500/- has been repaid. The cheque has been signed by the petitioner and there is nothing to show that the sum of Rs.79,500/- has been repaid and it cannot be said that the cheque was not given to the respondent No.2 to repay the loan amount. The presumption under Section 139 cannot be said to have been rebutted.

13. The Notice under Section 138 NI Act was sent to C-13, Ground Floor, DLF Colony, Dilshad Garden, Extension-2, Sahibabad, Ghaziabad. In the petition it is stated that the petitioner is residing at 48A, DA-Block, Type - III, Hari Nagar. The Metropolitan Magistrate found that the address given by the petitioner in his personal bond shows that the address of the petitioner is C-13, Ground Floor, DLF Colony, Dilshad Garden, Extension-2, Sahibabad, Ghaziabad to which the Notice was sent. What is interesting is that even in the *vakalatnama* which was filed before the Metropolitan Magistrate

(Annexure-R2/4) the address of the petitioner is mentioned as C-13, Ground Floor, DLF Colony, Dilshad Garden, Extension-2, Sahibabad, Ghaziabad. As noted by the Additional Session Judge, the petitioner has received the summons and he appeared in the Court in response to summons.

14. The Supreme Court in C.C. Alavi Haji v. Palapetty Muhammed**, (2007) 6 SCC 555,** observed as under:

> *"17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of criminal law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act....."*

Therefore the finding of the Court below that the Notice has been sent to the correct address cannot be found fault with.

15. The Supreme Court has time and again examined the scope of Section 397/401 of Cr.P.C and the ground for exercising the revisional jurisdiction by the High Courts.

16. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, **(1999) 2 SCC 452,** the Supreme Court observed as under:

> *"**5**. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned*

counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. 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. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence."

Similarly in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, **(2015) 3 SCC 123,** the Supreme Court 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."

17. There is no perversity in the orders of the Courts below warranting interference by this Court under Section 397/401 Cr.P.C.

18. Power to grant compensation has been provided under Section 357(3) Cr.P.C. Section 357(3) Cr.P.C reads as under:

"The Code Of Criminal Procedure, 1973

Section 357

.....(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

19. The Supreme Court in Kumaran v. State of Kerala, **(2017) 7 SCC 471,** observed as under:

> ***"24. With the Code of 1973 came an interesting change. Sub-section (3) was added to Section 357, which was an entirely new provision making it clear that the court may, when passing judgment, order the accused to pay by way of compensation such amount as may be specified in the order to the person who has suffered loss or injury by reason of the act for which the accused person has been sentenced****. This is provided that the court imposes a sentence of which fine does not form a part. Another important change was made in Section 421(1). The proviso to the said sub-section was altered because the 41st Law Commission Report, in recommending amendments to the old Section 386 stated, after noticing the Bombay High Court judgment in Digambar case [Digambar Kashinath Bhawarthi v. Emperor, 1934 SCC OnLine Bom 56 : ILR (1935) 59 Bom 350 : AIR 1935 Bom 160 : 1935 Cri LJ 1034] as follows:*
>
> > *"28.10. Fine should be recoverable when compensation has been ordered.—We notice that in the above judgment the fact that the complainant has been allotted part of the fine was not considered a relevant special reason for purposes of the proviso as it stands. A contumacious offender should not, in our opinion, be permitted to deprive the aggrieved party of the small compensation awarded to it by the device of undergoing the sentence of imprisonment in default of payment of the fine. When an order under Section 545 has been passed for payment of expenses or compensation out of the fine, recovery of the fine should be pursued, and in such cases, the fact that the sentence of imprisonment in default has been fully undergone should not be a bar to the issue of a warrant for levy of the fine. We recommend that the proviso to Section 386(1) should make this clear."*
>
> (emphasis supplied)

20. In view of the above this Court does not find any infirmity in the amount of compensation imposed on the petitioner. The petitioner has abused the indulgence granted by this Court. On 01.11.2019, the petitioner undertook to pay the amount of compensation in 4 instalments. He has gone back on the undertaking given to this Court which amounts to contempt. The petitioner is therefore not entitled to any indulgence from this Court.

21. Accordingly, the revision petition is dismissed along with the pending applications.

SUBRAMONIUM PRASAD, J.

MARCH 08, 2021
Rahul