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

% ***Date of Decision: 14.05.2024***

\+ CRL.REV.P. 222/2024

RAJESH KUMAR JAIN ..... Petitioner

Through: Mr.Raghav Vasishth and Ms.Aashi Jain, Advocates.

versus

J.C. TRADING ..... Respondent

Through: Mr. Himanshu Verma, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Criminal Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner against judgment dated 16.12.2023 passed by learned Special Judge (NDPS), Central District, Tis Hazari Courts, Delhi in CA No.164/2022 upholding the conviction of the petitioner by learned Trial Court vide judgment dated 08.07.2022 and order on sentence dated 23.07.2022 in proceedings under Section 138 N.I. Act, 1881.

2. Vide judgment dated 08.07.2022, petitioner (accused) stands convicted in proceedings under Section 138 N.I. Act for dishonour of cheque of Rs.5,26,785/- and vide order dated 23.07.2022, has been sentenced to simple imprisonment for four months and fine of Rs.8,50,000/- (in default of payment of fine, to undergo simple imprisonment for two months). The

entire amount has been further directed to be paid to respondent/complainant in proceedings under Section 138 N.I. Act.

3. In brief, complaint under Section 138 N.I. Act was preferred on behalf of the respondent/complainant alleging that 'paper and board' was supplied to the petitioner through bill dated 12.08.2014 for Rs.5,26,728/-. The goods were duly received by the petitioner and in discharge of the legal liability, petitioner issued a cheque dated 09.09.2014 for Rs.5,26,785/-, which was dishonoured on presentation with remarks 'insufficient funds' vide return memo dated 10.09.2014. A legal notice dated 07.10.2014 was accordingly forwarded to the petitioner but despite service, petitioner failed to make the payment. Proceedings under Section 138 N.I. Act were accordingly instituted.

4. In response to the notice framed under Section 251 Cr.P.C., petitioner took a stand that the cheque was issued by him to the employee of the complainant's firm which bears his signatures but particulars were filled by the clerical staff. Further, he issued a Post-Dated-Cheque (PDC) in August, 2014 towards purchase of material i.e. paper and board but the material supplied by the respondent/complainant was defective and the same was returned by him in September, 2014. Hence, there was no liability towards the complainant.

5. The respondent/complainant in support of the complaint examined himself as CW1 and tendered Partnership Deed (Ex.CW1/1), Bill dated 12.08.2014 (Ex.CW1/2), Cheque dated 09.09.2014 (Ex.CW1/3), Bank Return Memo dated 10.09.2014 (Ex.CW1/4), Legal Notice dated 07.10.2014 (Ex.CW1/5), Postal Receipt (Ex.CW1/6), Account Ledger from 01.04.2014

to 12.11.2014 (Ex.CW1/7), Return Envelope (Ex.CW1/7) and Stock Register (Ex.CW1/9).

6. Petitioner/accused in statement under Section 313 Cr.P.C. took defence on the lines as stated in notice under Section 251 Cr.P.C. Further, he examined himself as DW1 and relied upon Goods Return Challan dated 08.09.2014 (Ex.DW1/1), Letter issued by the Bank (Ex.DW1/2), Ledger Account (Ex.DW1/3) and Certificate under Section 65 of the Indian Evidence Act (Ex.DW1/4).

7. Learned Trial Court after consideration of evidence observed that cheque in question (Ex.CW1/3) issued by the petitioner bears his signatures and though the petitioner denied having received any legal demand notice, the same was dispatched on the address of the petitioner as per Postal Receipt (Ex.CW1/6) and 'Return Envelope' (Ex.CW1/7). The service of notice as such can be presumed under Section 27 of the General Clauses Act. It was further observed that since the petitioner despite service of notice failed to make the payment, a presumption under Section 138 NI Act is drawn in favour of the complainant to the effect that the cheque in dispute was issued for a legally enforceable debt.

Learned Trial Court was further of the opinion that the petitioner had failed to rebut the mandatory presumption of law by probabilizing his defence since the material was duly supplied to the petitioner and the same was received by him. It was further observed that as per Ex.DW1/1 relied by the petitioner, defective supplied material was returned to the transporter Mr. Kalim, but the petitioner failed to examine the said transporter in support of his defence. Learned Trial Court further held that execution and authenticity

of said document has not been substantiated by any reliable evidence and it could not be said that material was returned by the petitioner against Bill No.0358 dated 12.08.2014. It was also observed that meticulous examination of Account Ledger reveals that the aforesaid cheque was issued against invoice No.0358 dated 12.08.2014 which was dishonoured on presentation. Further, in case material supplied had been returned by the petitioner, as a prudent person, he would have stopped the payment of respect to the PDC than permitting the same to be dishonoured for want of 'Insufficient Funds'.

8. An appeal preferred on behalf of the petitioner was dismissed and the judgment and order on sentence passed by learned Trial Court was upheld. Learned Appellate Court also noticed that as per the case of the petitioner, the said material was supplied to him vide Bill dated 12.08.2014 but the same is claimed to have been returned since the goods were defective vide Goods Return Challan dated 08.09.2014 (Ex.DW1/1). It was observed that as per the case of the petitioner, the transporter was of the complainant/respondent but no proof in this regard was brought on record and neither the transporter Mr. Kalim had been examined. The contention of the petitioner that the goods were transported on sheer trust was not accepted. It was also noticed that no e-mail, letter etc. has been proved on record to show that goods supplied were defective. The contention on behalf of the petitioner that Ledger produced by the complainant/respondent could not be accepted since it was maintained in electronic form in computer, was also not accepted since the supply of goods was admitted by the petitioner.

Another contention raised on behalf of the petitioner that goods ordered were 'paper and board' but only 'board' was supplied, was also not

accepted. It was observed that the complainant/respondent had duly explained in the cross-examination that he had supplied 'paper and board' whereas corresponding bill only states 'board', because in VAT there is one code for 'paper and board'.

9. The contentions raised before the learned Trial Court as well as learned Appellate Court have been reiterated.

Learned counsel for the petitioner contends that it is open to the accused/petitioner to not only rely on the evidence led by him but may also rely on the materials submitted by the complainant in order to raise a probable defence. It is urged that the cheque cannot be treated to have been issued in discharge of any debt or other liability since the goods delivered by the respondent were returned back. Reliance is further placed upon ***S. Murugan v. M.K. Karunagaran***, Criminal Appeal No.003461 of 2023 decided on October 31, 2023, ***M/s Indus Airways Pvt. Ltd. & Ors. v. M/s Magnum Aviation Pvt. Ltd. & Anr.***, Crl. Appeal No.830 of 2014 decided on April 7, 2014, ***Anvar P.V. v. P.K. Basheer and Others***, Civil Appeal No.4226 of 2012 decided on September 18, 2014 and ***Rangappa v. Sri Mohan***, Criminal Appeal No.1020 of 2010 decided on May 07, 2010.

10. There is no dispute as to the principles of law referred to in the judgments relied upon by learned counsel for the petitioner i.e. ***Rangappa v. Sri Mohan*** (supra), ***S. Murugan v. M.K. Karunagaran*** (supra) and ***Anvar P.V. v. P.K. Basheer and Others*** (supra), which are well settled. Further, the principles in relation to the presumption raised under Section 118(a) read with Section 139 have been settled by Hon'ble Supreme Court in

Basalingappa v. Mudidasappa, AIR 2019 SC 1983 and observations in paras 17 & 23 may be beneficially reproduced:

> *"17. In Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513, this Court again examined as to when complainant discharges the burden to prove that instrument was executed and when the burden shall be shifted. In paragraph Nos. 18 to 20, following has been laid down:-*
>
> > *"18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.*
> >
> > *19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.*
> >
> > *20. ...The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to*

the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.....".

18. .....

19. .....

20. .....

21. .....

22. .....

23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

v) It is not necessary for the accused to come in the witness box to support his defence."

11. Hon'ble Apex Court in ***Bir Singh v. Mukesh,*** (2019) 4 SCC 197**,** further held that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment, the same would attract a presumption under Section 139 N.I. Act, in absence of any cogent evidence to show that cheque was not issued in discharge of the debt.

12. Applying the aforesaid principles of law, since the signature on the cheque has been admitted by petitioners, a presumption can be raised against petitioner/accused under Section 139 of N.I. Act that cheque was issued in discharge of debt or liability. The question for consideration is whether any probable defence has been raised by petitioner/accused.

13. The defence of the petitioner is that the cheque in question was issued against the supply of goods which were delivered to the petitioner but since the goods supplied were not as per description, the same were returned back to the respondent/complainant. However, it may be observed that in case the goods were not upto the mark or disputed and returned on 08.09.2014 by the petitioner in terms of bill dated 12.08.2014, the petitioner could have stopped the encashment of cheque dated 09.09.2014 issued by him. However, the petitioner did not stop the payment of cheque and the same was dishonoured for 'insufficient funds'. Further, the petitioner thereafter failed to respond to legal notice dated 07.10.2014, to confirm the return of goods, if any. In the facts and circumstances, the defence taken by the petitioner appears to be hollow.

It may further be observed that the goods are stated to have been returned by the petitioner vide 'goods return challan' dated 08.09.2014 but no cogent evidence qua the return of the goods has been led on record. Petitioner failed to examine the transporter 'Mr. Kalim' through whom the goods are stated to have been returned. A bald statement of return of goods by the petitioner cannot be accepted. In the aforesaid background, since the initial receipt of goods by the petitioner is admitted, the stand taken by him that the supply of goods by respondent has not been proved, since the ledger

produced by the complainant/respondent was maintained in electronic form in computer, loses significance.

14. Learned counsel for petitioner placing reliance upon ***M/s Indus Airways Pvt. Ltd. and Ors.*** (supra) has also vehemently contended that if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied, the cheque cannot be held to have been drawn for an existing debt or liability. It is emphasized that the dishonour of cheque was only in the nature of advance payment and since the goods were returned, there was no existing liability on the date of dishonour.

15. There is no dispute to aforesaid proposition of law laid down in ***M/s Indus Airways Pvt. Ltd. and Ors.*** (supra). However, it may be noticed that in ***M/s Indus Airways Pvt. Ltd. and Ors.*** (supra), the post-dated-cheques had been issued by way of advance payment for the purchase orders and the same were dishonoured as the **payment had been 'stopped'** by the purchaser. **A request was also made by the purchaser vide separate letter to the supplier for return of the cheques.**

The factual position in present case is clearly distinguishable, since the goods were duly delivered by the respondent and received by petitioner/accused. The payment of cheque was not stopped but was dishonoured for 'insufficient funds'. Also, no response was made to the legal notice claiming return of goods by the petitioner. The stand taken by petitioner that goods were returned has not been proved on record. Also, at

no point of time any objection as to quality or mis-description of goods supplied was taken prior to institution of complaint.

16. In exercise of revisional jurisdiction, in absence of any perversity or cogent evidence, there does not appear to be any reason to upset the concurrent findings of fact. Neither there appears to be any jurisdictional error to re-analyse or re-interpret the evidence, as suggested by learned counsel for petitioner/accused.

For the foregoing reasons, the present revision petition is without any merits and the same is dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and for the purpose of compliance of order on sentence, as passed by the learned Trial Court.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MAY 14, 2024*/v/sd*