

2022 LiveLaw (Del) 240

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
CRL.REV. P. 326/2021 & CrI. M. (Bail) 1244/2021; 24.03.2022
SANJAY GUPTA versus THE STATE & ANR.

Negotiable Instruments Act, 1881 - Once a cheque is issued by a person, it must be honored and if it is not honored, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. (Para 7)

Revisionist Through: Mr. Sudhanshu Palo and Mr. Surendra Kr. Roy, Advs; Respondents Through: Ms. Manjeet Arya, APP for the State. Ms. Seema Sharma, Adv. for complainant.

ORDER

1. The present revision petition under Section 401 read with Section 482 Cr.P.C. has been filed by the revisionist with the following prayers:

"a) Call for the record of the Ld. Courts below and set aside/quash/annul the judgment dated 26.03.2021 passed by Sh. Sandeep Yadav, Ld. ASJ-02, South East District, Saket Courts, New Delhi in CrI. Appeal bearing Cr. No. 525/2019 which was filed against impugned judgment dated 29.07.2019 passed by Sh. Anubhav Jain, Ld. MM, South East District, Saket Courts, New Delhi in C.C. No. 2618/2017 U/s 138 NI Act whereby the Ld. MM was pleased to hold the petitioner guilty and sentenced him to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 7,00,000/- which completely shall be paid as compensation to the complainant, by which the Ld. ASJ-02, dismissed the appeal of the petitioner and modified the sentence and directed to pay fine of Rs. 7,00,000/- to the complainant/respondent No. 2 and in default of payment of fine within 4 weeks, he shall undergo simple imprisonment for 3 months.

b) Pass any other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the revisionist/petitioner, in the interest of justice."

2. Briefly stated, the facts of the case are that the respondent no. 2 filed a complaint under Section 138 NI Act against the revisionist stating that on 15.12.2016, the revisionist had taken a friendly loan of Rs. 4,80,000/- from the respondent for a period of one month. The revisionist issued the cheque bearing No. 000176 dated 13.02.2017 drawn on Kotak Mahindra Bank for a sum of Rs. 4,80,000/- in favour of the respondent. The said cheque was presented for encashment by the respondent which was returned by the banker with remark "fund insufficient." Thereafter, the respondent issued legal notice dated 20.02.2017 calling upon the revisionist to make payment of the cheque amount within 15 days of the receipt of the legal notice. However, the payment of the cheque in question was not made by the revisionist within the stipulated period which resulted in the filing of the complaint case No. 2618/2017 under Section 138 of NI Act.

3. Vide judgment dated 29.07.2019, the Ld. MM convicted the revisionist under Section 138 NI Act and vide order on sentence dated 09.09.2019, the revisionist was sentenced to simple imprisonment for 3 months and fine of Rs. 7 Lakh to be paid completely as compensation to the respondent. The revisionist challenged this

judgment and order on sentence, by filing criminal appeal No. 525/2019 before the Ld. ASJ and the Ld. ASJ vide impugned judgment dated 26.03.2021 disposed of the appeal filed by the revisionist and modified the sentence to the extent that a fine of Rs. 7,00,000/- shall be paid as compensation to the respondent No. 2 and if the fine of Rs. 7,00,000/- is not paid within 4 weeks, the revisionist shall undergo simple imprisonment for three months. This judgment dated 26.03.2021 passed by the Ld. ASJ is under challenge in the present revision petition.

4. I have heard the Ld. counsel for the petitioner, State is the proforma party so arguments were advanced by the Ld. counsel for the respondent No. 2. I have also perused the records of this case.

5. It is submitted by the Ld. counsel for the revisionist that the revisionist is a stranger to the respondent No. 2 and that he has no legal liability towards him. It is further submitted that he had lost his signed blank cheques and a complaint in this regard was also filed in the year 2014. It is further submitted that the cheque in question is stated to have been given in February 2017 which is much later than the date of his complaint preferred in 2014. It is further submitted that demonetization was announced on 08.11.2016 and therefore, it is for the respondent No.2 to elaborate and explain as to how he was able to arrange huge sum of Rs. 4,80,000/- on 15.12.2016 i.e., within a week of demonetization. It is further submitted that no document was executed by respondent No. 2 against the advancement of huge loan of Rs. 4,80,000/-. It is further submitted that the respondent in his complaint has mentioned that the cheque in question was given on 13.02.2017, whereas in cross examination, it was stated that the aforesaid cheque was given on 15.02.2016.

6. On the other hand, the Ld. counsel for the respondent No. 2 submitted that he had duly placed on record the original cheque signed by the revisionist, the bank return memos, the legal notice issued under Section 138 NI Act and the postal receipt showing service of the legal notice on the revisionist. It is further submitted that the revisionist has taken the defence that his cheques got lost and he filed a complaint in this regard in 2014, however, no such complaint has been placed on record by the revisionist before the Ld. Trial Court. It is further submitted that the revisionist has not denied that the cheque in question bears his signature and that the revisionist led different stories regarding the cheque in question i.e., on one hand he stated that the cheque was handed over to one Pankaj Bhalla and the same got stolen whereas on the other hand, he stated that the cheque was given as a security cheque and the same was misused by the complainant/respondent No. 2 after committing forgery.

7. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.P.C. which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honored and if it is not honored, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences.

8. It is trite law that once issuance of a cheque and signature hereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant, however, mere statement of the accused may not be sufficient to rebut the said presumption.

9. While imposing sentence on the accused after his conviction, it is to be kept in mind that the sentence for offence under Section 138 of NI Act should be of such nature as to give proper effect to the object of legislation and no drawer of the cheque can be allowed to take dishonour of cheque issued by him light heartedly. The Magistrate can alleviate the grievance of the complainant by making resort to Section 357(3) Cr.P.C. wherein no limit of compensation to be awarded by the Magistrate has been mentioned and, thus, the Magistrate is empowered to impose a reasonable amount of compensation payable to complainant. Reliance can be placed upon **Suganthi Suresh Kumar vs. Jagdeeshan, Appeal (crl.) 65-66 of 2002** and **K. Bhaskaran vs. Sankaran Vaidhyan Balan, [(1999)7 SCC 510]**.

10. In the instant case, the revisionist has taken different stands with regard to the cheque in question. It was stated that the cheque in question was lost and a complaint in this regard was also lodged in the year 2014 but the original complaint has not been placed on record by the revisionist. The revisionist neither informed the concerned bank about the cheque in question, which got stolen nor requested the bank to get the payment stopped against the said cheque, which shows his malafides. The revisionist has also taken the plea that the cheque in question was handed over to one Pankaj Bhalla and the same got stolen. However, the said fact was not revealed by the revisionist at the time of framing of notice on 19.02.2018. In his statement recorded under Section 313 Cr.P.C. also, the revisionist neither stated that he had handed over the cheque in question to Pankaj Bhalla nor that the cheque in question went missing from the possession of Pankaj Bhalla. The said Pankaj Bhalla in his deposition has also failed to state as to when the cheque in question was handed over to him by the revisionist and when and how the same got stolen. As far as the contention of the Ld. counsel for the revisionist that he is a stranger to the respondent No. 2 and that he has no legal liability towards him, is concerned, the revisionist has failed to rebut the presumption in favour of the complainant and the mere statement by the revisionist in itself is insufficient to raise suspicion with regards to the entire case of prosecution.

11. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned Judgment dated 26.03.2021 passed by the Ld. Trial Court, the same is, therefore, upheld. Consequently, the revision petition is dismissed and Crl. M. (Bail) 1244/2021 is also disposed of accordingly.