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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : OCTOBER 06, 2016
DECIDED ON : NOVEMBER 16, 2016

+ **CRL.REV.P. 160/2016 & CRL.M.B. 1804/16**

JASPAL SINGH

..... Petitioner

Through : Mr.Sajan K.Singh, Advocate.

Versus

THE STATE (GOVT OF NCT OF DELHI) & ANR.

.... Respondents

Through : Mr.Kamal K.Ghei, APP.
Mr.Dinesh Priani, Advocate with
Mr.Bishan Dass, Advocate for R2.

AND

+ **CRL.REV.P. 162/2016 & CRL.M.B. 1805/16**

JASPAL SINGH & ANR

..... Petitioners

Through : Mr.Sajan K.Singh, Advocate.

Versus

THE STATE (GOVT OF NCT OF DELHI) & ANR.

.... Respondents

Through : Mr.Kamal K.Ghei, APP.
Mr.Dinesh Priani, Advocate with
Mr.Bishan Dass, Advocate for R2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Cri.Rev.P.160/2016 and Cri.Rev.P.162/2016 have been preferred by the petitioner(s) to challenge the legality and correctness of judgments dated 22.08.2015 of learned District and Sessions Judge in Cri.A.No.58/2015 and Cri.A.No.57/2015 by which the conviction and sentence recorded by the learned Metropolitan Magistrate in the judgments dated 07.07.2015 and the order on sentence dated 13.07.2015 were endorsed.

2. The petitions are contested by the complainant. It is relevant to note that in Cri.Rev.P.No.160/2016, the petitioner was sentenced to undergo Rigorous Imprisonment for eighteen months with compensation of ₹2,40,000/-; the default sentence for non-payment of compensation being simple imprisonment for six months. Similar sentence was awarded to the appellant in Cri.Rev.P.No.162/2016 with compensation of ₹4,00,000/-.

3. I have heard the learned counsel for the parties and have examined the file. In Cri.Rev.P.No.160/2016, in the complaint case under Section 138 Negotiable Instruments Act it was averred by the complainant that in the second week of May, 2007, he had advanced a loan of ₹1,20,000/- to the petitioner on his assurance to discharge it within a year. In discharge of liability, the petitioner issued three cheques (Ex.CW-1/1 to CW-1/3) detailed therein for a total sum of ₹1,20,000/-. On presentation, these cheques were dishonored with the remarks "insufficient funds" vide returns memo (Ex.CW1/7 to Ex.CW1/9). Legal notice (Ex.CW-1/13) was

served upon the petitioner which remained uncomplished. Affidavit (Ex.CW-1/A) in post-notice evidence was filed and proved. In the statement under Section 281 read with Section 313 Cr.P.C. recorded on 7.12.2012, the petitioner claimed that the cheques in question were issued in blank towards security of loan of ₹40,000/- taken by Ms.Ravinder Kaur Sodhi from the complainant. The petitioner examined himself in defence. Upon hearing the arguments, the Trial Court came to the conclusion that the petitioner was guilty of the offence under Section 138 Negotiable Instruments Act. The findings were endorsed by the appellate court.

4. Similarly, in CrI.Rev.P.No.162/2016, the complainant Chander Prakash in complaint case No.130/01/08 averred that he had advanced funding of ₹2,00,000/- to the petitioner in the third week of June, 2007 with the assurance to return it by 30.06.2008. The petitioner had issued three cheques for the total sum of ₹2,00,000/- as detailed in the complaint. These cheques were dishonored on presentation. Legal demand notice was served on 26.07.2008 but it had no impact. The petitioner did not lead any evidence in defence and it was closed on 16.02.2015. After appreciating the evidence on record, the Trial Court found the petitioner guilty of the offence under Section 138 Negotiable Instruments Act. The appeal against the findings resulted in its dismissal.

5. Issuance of cheques in both the petitions is not in controversy. The Trial Court and the Appellate Court have clearly noted that defence taken by the petitioner for issuance of cheques in question was conflicting. At one stage, he had claimed that these cheques were issued as a security for different loans taken by Ravinder Kaur Sodhi from the complainant. However, in applications under Section 145(2) Negotiable Instruments Act

filed by him in both the petitions, he took an inconsistent defence stating that he had lost these cheques and had lodged a complaint in that regard. It was noted by the Trial Court that the petitioner was unable to substantiate the defence in either way. He was unable to prove if any loan was ever taken by Ms.Ravinder Kaur Sodhi from the complainant or he had stood surety and had issued the cheques in question as a 'security'. Ms.Ravinder Kaur Sodhi was not even examined by the petitioner. No documents, whatsoever, have been placed on record to show if any loan was taken from the complainant or any proceedings were initiated by him against her. It was also not proved beyond doubt that the petitioner had lost the cheque book and these cheques were issued in blank by him.

6. The Trial Court further observed that the petitioner was unable to rebut the presumption in favour of the complainant either on the basis of material available on record or by adducing any defence evidence.

7. The findings of the courts below are based on fair appreciation of the evidence and deserve no intervention. I find no substance in the petitioner's contention that the cheques issued by him were 'blank' and its other particulars were filled up subsequently. The position has been explained in the judgment of the Division Bench of Kerala High Court in *lillykutty vs.Lawrance* 2003 (2) DCR 610 in the following words:

“In the instant case, signature is admitted. According to the drawer of the cheque, amount and the name has been written not by the drawer but by somebody else or by the payee and tried to get it encashed. We are of the view, by putting the amount and the name there is no material alteration on the cheque under Section 87 of the Negotiable Instruments Act. In fact there is no alteration but only adding the amount and the date. There is no rule in banking business that payee's

name as well as the amount should be written by drawer himself.

The above judgment was quoted with agreement by the Hon'ble Delhi High Court in *Ravi Chopra vs.State & Anr.*2008 (2) JCC (NI) 169 and it was held that if the signatures on the cheque are admitted by the accused, it matters little if the name of the payee, date and amount are filled up at a subsequent point in time.

In view of the above judgments, the contention raised by the petitioner that the amount and name of the drawee were not filled in by the petitioner, does not have any force in the eyes of law.”

8. The findings of the court below can't be faulted and are affirmed.
9. Regarding sentence, it has come on record that the petitioner has been sentenced to undergo simple imprisonment for eighteen months each with total compensation amount of ₹6,40,000/- and the default sentence for non-payment is one year in all. The sentence awarded appears to be excessive. Nominal roll dated 18.07.2016 reflects that the petitioner has undergone ten months and twenty six days incarceration besides remission for one month and twenty days in complaint case No.130/01/08 (Crl.Rev.P.No.160/2016) as on 18.07.2016. The sentence in other complaint case No. 237/1/08 (in Crl.Rev.P.162/2016) is yet to start. Nominal roll further reflects that the petitioner is not a previous convict and is not involved in any other criminal case. His overall conduct in jail is satisfactory. Considering the facts and circumstances of the case, the sentence order requires modification.

10. Sentence in complaint case No. 130/01/08 (Crl.Rev.P. No.162/2016) under Section 138 Negotiable Instruments Act is reduced to simple imprisonment for six months and default sentence for non-payment of compensation amount of ₹4,00,000/- shall be simple imprisonment for three months.

11. In complaint case No. 237/01/08 (Crl.Rev.P.160/2016), sentence shall be simple imprisonment for six months and default sentence for non-payment of compensation amount of ₹2,40,000/- shall be simple imprisonment for two months.

12. The petitions stand disposed of in the above terms. All pending application(s) also stand disposed of. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

NOVEMBER 16, 2016/sa