

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 7th OF NOVEMBER, 2023

CRIMINAL REVISION No. 4717 of 2019

BETWEEN:-

**DEVENDRA PATEL PATEL FIRM PATEL MEDICOSE
NEAR ARVINDO HOSPITAL SANWER ROAD VILLAGE
BHORASALA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A.R. KHAN, ADVOCATE)

AND

**SMT. NEENA W/O UTTAM SINGH KADAM, AGED ABOUT
58 YEARS, OCCUPATION: SERVICE 89, GOPAL BAUG
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI R.R. BHATNAGAR, ADVOCATE)

Heard on: 12.10.2023

Delivered On: 07.11.2023

.....

This revision coming on for hearing this day, the court passed the following:

ORDER

This Criminal Revision has been filed under Section 397 of Cr.P.C. against the judgement passed by learned Second ASJ, Indore in Criminal Appeal No.340/2018 by which the learned Sessions Court partly allowed the appeal by modifying the order dated 25.10.2018 passed by the learned JMFC, Indore in Criminal Case No.33025/2024 whereby the petitioner has been convicted for the offence punishable under Section 138 of N.I. Act and penalized for Rs.72500/- as compensation with default stipulation of two

months R.I.

2. Brief facts of the case are that, the complainant filed a complaint under Section 138 of N.I. Act against the petitioner by submitting that their were cordial relations between the complainant and the respondent. The petitioner received Rs.50000/- from the complainant and thereafter, for payment of the said amount, the petitioner has given a cheque to the complainant bearing No.641460 dated 20.05.2014 having seal of the firm of petitioner. On being presented, the same was dishonored with a note "funds insufficient". The complainant issued a notice through advocate and on being non-payment, complaint was filed. Hence, the complaint was registered and cognizance was taken against the petitioner and he has been convicted as aforesaid.

3. Having analyzed the oral and documentary evidence, the learned trial Court has convicted the appellant under Section 138 of N.I. Act. and sentenced to under for One year R.I. with fine. But in appeal, the learned 2nd ASJ, Indore has modified the order of conviction and set aside the imprisonment of one year by reducing the compensation to Rs.72,500/- from Rs.80000/-. Hence, the present appeal.

4. Counsel for the petitioner submits that the learned trial Court as well as the appellate court have committed grave error of law in not considering that the cheque in question was issued by Patel Medicos not by the present petitioner, hence, notice should be issued to Patel Modicos not to the present petitioner in individual capacity. It is further submitted that neither he has issued the cheuqe nor signed the same, but in spite of that the petitioner has been punished by both the Courts below. It is also submitted that there is no financial transaction between the petitioner and respondent and the petitioner has transacted only with the son of respondent (Suryaveer), but he was not

produced by the prosecution before the Court in support of its case while he was the main witness of the case.

5. In support of his contention, counsel for the petitioner placed reliance over the judgement of Hon'ble Apex Court passed in the case of **Aneeta Hada vs. Godefather Travels and Tours Private Limited [(2012) 5 SCC 661]** whereby the Hon'ble Apex Court has settled that when a cheque has been issued by a company, the company should be a party of the complaint. In the present case, the cheque was issued by the proprietor of the firm, on behalf of the firm, it is mandatory to array the company as party. On these grounds, counsel for the petitioner prays for setting aside the impugned orders. Counsel for the petitioner further placed reliance on the judgment of this Court passed in the case of **Sarfaraj Khan vs. Hindusingh & Another [CRA No.10136/2022]** as well as on **L.K. Chouhan vs. Munija Akeel [MCRC No.8210/2023]**. The petitioner also relied on a judgement of Punjab & Haryana High Court passed in the case of **Sardar Bhpinder Singh vs. M/s Green Feeds Through Its Partner Vipin Kumar [CRM-M-5411/2021]**.

6. In reply, counsel for the respondent submits that the said cheque was issued by the petitioner in individual capacity, hence, the said firm of the petitioner is not required to be made a party to the complainant as per Section 141 of the N.I. Act. The petitioner has never taken such type of defence that the said cheque was not related to his bank account. The account is directly related to the name of the petitioner and there is no endorsement of the bank that the said bank account is not related with the petitioner, but rather it was returned with a memo only endorsed as "funds insufficient". It is also submitted that the petitioner has never raised objection regarding his signature on the cheque in

question nor admitted to verify the same signature by any of hand writing expert. It is further submitted that so far as the financial transaction with the son of respondent Suryaveer is concerned, since the petitioner himself taken the money from the respondent and in lieu of that amount, cheque was issued by the petitioner, therefore, he is liable for the offence. Therefore, neither learned trial Court nor learned appellate Court has committed any error of law and facts in convicting the present petitioner, hence, prays for dismissal of the petition.

7. I have heard the counsel for the parties, perused the record as well as impugned orders.

8. For the sake of convenience, it is propitious to consider the provisions of Section 141 of N.I. Act which reads as under:-

141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9. The Hon'ble Apex Court in para no.22 of **Aneeta Hada (supra)** has considered the issue involve in the present case. Para no.22 reads as under:-

"22. On a reading of the said provision, it is plain as day that if a person who commits offence under Section 138 of the Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Sub-section (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth noting that in both the provisions, there is a 'deemed' concept of criminal liability."

10. Having perused the aforesaid provisions and enunciations , it is crystal clear that when the cheque is issued by the company then the incorporation of company is necessary as a party alongwith the person who has issued the cheque. The Hon'ble Apex Court in para no.58 of **Aneeta Hada**

(supra) has considered this aspect. Para no.58 reads as under:-

"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted"

11. As such, the aforesaid ratio depicts that the cheque should be issued only on behalf of the company/firm and not in an individual capacity for application of provisions of Section 141 of N.I. Act. Whereas, in the case at hand, the said cheque was issued in individual capacity by the petitioner and the petitioner is unable to establish the fact that the said cheque was issued on behalf of the company.

12. In this regard, learned counsel for the petitioner, in support of his contention, placed his reliance upon **Sarfaraj Khan (supra)**, **L.K. Chouhan (supra)** & **Sardar Bhpinder Singh (supra)**. However, since the cheque was issued in direct capacity by the petitioner in the case at hand, these citations are not applicable. Hence, they are distinguished.

13. So far as the contention of counsel for the petitioner that the petitioner has not signed the cheque in question is concerned, firstly, he has not

raised this objection before the Courts below and secondly; he has not dare to compare his signatures on the said cheque. Further, no hand writing expert's report has been produced in his defence. So, the petitioner has failed to establish his case and failed to prove that the cheque in question has been issued by him on behalf of company, even no transaction with his firm has also been proved by the petitioner.

14. Now, the scope of revisional jurisdiction is also required to be ruminated. On this aspect, In **Kaptan Singh and others vs. State of M.P. and another**, AIR 1997 SC 2485, (1997) CCR 109 (SC), the Hon'ble Supreme Court considered a large number of its earlier judgments, particularly **Chinnaswami vs. State of Andhra Pradesh**, AIR 1962 SC 1788 ; **Mahendra Pratap vs. Sarju Singh**, AIR 1968, SC 707; **P.N. G. Raju vs. B.P. Appadu**, AIR 1975, SC 1854 and **Ayodhya vs. Ram Sumer Singh**, AIR 1981 SC 1415 and held that revisional power can be exercised only when "there exists a manifest illegality in the order or there is a grave miscarriage of justice".

15. Further, in **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri** (1999) 2 SCC 452, the Hon'ble Apex Court held as under:

"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 re-appreciate 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.

16. In State of **A.P. vs. Rajagopala Rao (2000) 10 SCC 338**, the Hon'ble Apex Court held as under:

“The High Court in exercise of its revisional power has upset the concurrent findings of the Courts below without in any way considering the evidence on the record and without indicating as to in what manner the courts below had erred in coming to the conclusion which they had arrived at. The judgment of the High Court contains no reasons whatsoever which would indicate as to why the revision filed by the respondent was allowed. In a sense, it is a non-speaking judgment.”

17. In conspectus of the aforesaid proposition, this Court while using its revisional jurisdiction has examined as to whether there is a manifest illegality in the judgement of learned Courts below or there is miscarriage of justice. Both the Courts below have assigned clear, cogent and convincing reasons for convicting the appellant, therefore, in absence of any perversity, this Court in its limited revisional jurisdiction, cannot intervene with the conclusion rendered by the Courts below.

18. In upshot of the aforesaid analyses and discussion in entirety, it can be safely held that the findings of conviction adjudicated by learned Courts below have no infirmity or illegality. Hence, the impugned judgement passed by learned appellate Court warrants no interference. Resultantly, the petition is liable to be and is hereby dismissed.

(PREM NARAYAN SINGH)
JUDGE

amit