IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 24th OF APRIL, 2024

CRIMINAL REVISION No. 2057 of 2022

BETWEEN:-

VIKRAM SINGH AANJANA D/O SHRI PADAMSINGH AANJNA, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURE GRAM ERWAS (MADHYA PRADESH)

.....PETITIONER

(BY SHRI UMESH SHARMA, ADVOCATE)

AND

PRAKASHCHANDRA SOLANKI S/O LATE GANGARAMJI SOLANKI, AGED ABOUT 56 YEARS, 64/1, URDUPURA, UJJAIN (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ANIL OJHA, ADVOCATE)

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

ORDER

The present revision is filed under section 397/401 of Cr.P.C.. The applicant has been convicted under section 138 of Negotiable Instruments Act (in short 'the N.I. Act') and sentenced to undergo RI for 1 year and to deposit Rs. 20,50,730/- as compensation with default stipulation vide judgment dated 9.6.2022 passed by IX ASJ, Ujjain in Criminal Appeal No. 90/2021 affirming the judgment dated 29.09.2021 passed by JMFC, Ujjain in complaint case No. 590/2012.

2. The judgment of conviction and sentence has been challenged mainly

on the ground that complainant has failed to prove the transaction between the complainant and the accused. Thus he could not establish existence of legally recoverable debt or other liability in order to establish offence under section 138 of N.I. Act. It is also submitted that in regard to payment of amount, there are material contradictions in the complaint, cross-examination of complainant and other witnesses to establish transaction between the parties. It is also submitted that both the courts have convicted the applicant only on the ground of presumption under section 139 of N.I. Act without considering that complainant has failed to prove the existence of legally recoverable debt or liability. He argued that though provision of section 118 and 139 of N.I. Act provides for presumption in favour of cheque holder, still the burden is on the complainant to establish the transaction and existence of legally recoverable debt or liability. In support of his submission, he has placed reliance on the following judgments - ***M.S. Narayana Menon @ Mani Vs. State of Kerala and another, AIR 2006 SC 3366, Krishna Janardhan Bhat Vs. Dattatraya G.Hegde, (2008) 4 SCC 54, Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513*** and also the judgment passed by this Court in the case of ***Pankaj Vs. Anil Kumar Jain, 2009(2) DCR 730***. He also relied on the judgment passed by Apex Court in the case of ***Ramdas Vs. Krishnjanand, 2014(3) DCR 774***. Learned counsel for applicant relying on the judgment of ***Krishan Janardhan Bhat Vs. Dattatraya G. Hegde A.I.R. 2008 SC 1325*** contends that Section 139 of Negotiable Instrument Act provides for presumption of debt or other liability in favour of holder of a cheque. There is no presumption with regard to existence of legally recoverable debt or other liability, therefore, in order to establish offence under Section 138 of Negotiable Instrument Act, the complainant has to

prove the existence of legally recoverable debt or liability beyond doubt. He further submits that in case of ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513*** the Supreme Court examined the application of above mentioned statutory presumptions and 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.
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> 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.
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> 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." (emphasis added)

The Supreme Court in case of ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441*** held that Section 139 of the Act is an example of a reverse onus and imposes an evidentiary burden on the accused which can be discharged by establishing preponderance of probabilities of the defence. After referring to the catena of judgments, the Supreme Court held that the presumption mandated by Section 139 of the Act includes the existence of a legally enforceable debt or liability. In para 26, it was laid down-

> "26. In light of these extracts, we are in agreement with the respondent- claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."(emphasis added)

3. Per contra, counsel for the respondent submitted that both the courts have meticulously considered the entire oral and documentary evidence and thereafter found that there is existence of legally recoverable debt and since the applicant had chosen not to adduce any evidence in rebuttal of presumption

under section 118 and 139 of N.I. Act, convicted the applicant. The concurrent findings have been recorded by both the courts below and no interference is called for in exercise of revisional jurisdiction.

4. Before adverting to the merits of the case, it is apposite to reproduce the relevant provisions of section 118 and 139 of N.I. Act.

Chapter XIII of the Negotiable Instruments Act, 1881 provides for "Special Rules of Evidence". Section 118 provides for presumptions as to negotiable instruments as follows:

> Presumptions as to negotiable instruments.— Until the contrary is proved, the following presumptions shall be made:
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> (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date : that every negotiable instrument bearing a date was made or drawn on such date;"

Section 139 of the Act, 1881 provides for presumption in favour of holder as under-

> 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."

5. The Supreme Court in the case of ***Basalingappa Vs. Mudibasappa, AIR 2019 SC 1983*** summarised the principles regarding application of presumption under section 118(a) and 139 of the Act as under :-

> *25.1. 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.*

25.2. 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.

25.3. 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.

25.4. 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.

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

6. In the light of aforesaid enunciation of law, the facts of the present case are examined.

7. In regard to first submission of learned counsel for applicant that complainant could not prove the transaction and the existence of legally recoverable debt or liability, the complainant (PW-1) on affidavit deposed that complainant and accused are close friends and for the purpose of upgradation of agriculture, to purchase agricultural equipments and buffaloes and to discharge the liability of debt, the accused had taken money from time to time from him. Total amount given to the applicant/accused is Rs.12,21,000/-. The aforesaid amount was given to the applicant on his assurance that whenever the amount would be demanded by the complainant, the same shall be refunded. The complainant demanded the said amount and appellant in discharge to the aforesaid debt, issued cheque No. 002615 of Rs.6,48,000/- and also cheque No. 002616 of Rs. 4,85,000/- of Bank of India, branch Ujjain which were

signed by him and he assured that on presentation of those cheques, the payment will be made. On the assurance of applicant, he submitted those cheques in his account of Bank Paraspar Sahkari Bank Maryadit, Dewas Gate Ujjain on 12.11.2011. Both the cheques were dishonoured with a note that account has already been closed by the applicant/accused vide memorandum dated 12.11.2011. The complainant further deposed that on 15.11.2011, through his Advocate he sent a registered notice on the address of the applicant but despite service of notice, the applicant neither replied to the said notice nor refunded the said amount. Thereafter within the limitation period he presented the complaint. In support of his case, he produced copy of aforesaid two cheques as Ex.P/1 and P/2 which bears the signature of applicant from 'A' to 'A'. The copy of notice was marked as Ex.P/3 and its registered AD is Ex.P/5. The envelope was produced as Ex.P/6 which contains note that applicant had refused to accept the notice. He further examined Purshottam Prajapati (PW-2) who deposed that he had given 85,000 bricks @ Rs.3500/- per thousand brick to the applicant and the said amount was paid to him by the complainant. Vishal Gahlot (PW-3) also stated that complainant had given him Rs. 5 Lacs to give to the accused for preparation of Kisan Credit Card.

8. Counsel for the applicant referred certain paragraphs of cross-examination of the complainant to show that there is some discrepancy in the amount mentioned in the complaint and in the affidavit. He further referred certain paragraphs of PW-1, PW-2 and PW-3 to contend that there are contradictory statements which demolishes the entire case of complainant. On the basis of aforesaid, it is argued that complainant has failed to discharge his burden to prove the existence of legally recoverable debt or liability.

9. In the present case, admittedly the applicant neither filed any reply to the

legal notice issued by the complainant nor adduced any evidence in his defence in rebuttal. It is further pertinent to note that signature of the applicant on the cheques have not been disputed. Mere minor contradictions in respect of amount in the statement of complainant in the complaint or complainant's witnesses, would not be sufficient to dismiss the complaint when he has specifically proved that the aforesaid amount was given for the purpose of purchase of agricultural equipments and buffaloes and he also got paid certain amount to the accused from his friend, Vishal Gahlot (PW-3). Thus, on the basis of averment in the complaint and testimony of complainant- P.C. Solanki (PW-1), Purshottam Prajapati (PW-2) and Vishal Gahlot (PW-3), the complainant has dicharged his initial burden regarding existence of legally recoverable debt or liability. Once the recovery of legally recoverable debt is established by the complainant, the presumption under sections 118-A and 139 of the N.I.Act attracts and the burden to rebut the presumption is on the accused/applicant. In the present case, the applicant has not disputed his signature on the cheque and also did not lead any evidence to rebut the presumption.

10. So far as the judgments cited by applicant in the aforesaid cases are concerned, the same would not render any assistance in the facts of the present case as in the case of Narendra Dhakad Vs. Anand Kumar, AIR 2009 1309 it has been held that once the signature on the cheque is admitted, handwriting on the cheques is not requird to be proved. The proceedings under N.I. Act are summary in nature. In the case of M.S.Narayana Menon @ Mani (supra), that was a case where the complainant could not prove existence of legally recoverable debt. Since the transaction was not proved, therefore the conviction was set aside. In the case of K.J.Bhat (supra), the Court held that section 139

merely raises a presumption in favour of holder of cheque that said cheque was issued in discharge of legally recoverable debt. Existence of legally recoverable debt is not a matter of presumption. It is further held that attraction of principles of presumption under section 139 of N.I. Act depends on factual matrix of the each case.

11. In the present case, the complainant has prima facie established the presence of legally recoverable debt and both the courts below have rightly convicted the applicant. The judgment passed in the case of Kumar Exports (supra) would not apply to the facts of the present case as in the present case the complainant has discharged his initial onus to establish the existence of legally recoverable debt. The judgment passed in the case of Pankaj (supra) was a case against acquittal and appeal was dismissed as the complainant has clearly failed to prove his allegation.

12. Apart from aforesaid discussion, the scope of revision is limited. The High Court, in revision, exercises supervisory jurisdiction of a restricted nature. It cannot re-appreciate the evidence, as Second Appellate Court, for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. Recently, in case of Malkeet Singh Gill v. State of Chhattisgarh, reported in (2022) 8 SCC 204, the Supreme Court observed as under-

> "10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the Appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the

> regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings."

In view of foregoing, the present revision *sans merit* and is hereby dismissed.

(VIJAY KUMAR SHUKLA)
JUDGE

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