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THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 287/2012

Date of Decision: 30.05.2012

HARPREET SINGH

..... Petitioner

Through: Petitioner in person with Mr.Sunil
Tiwari, Advocate.

versus

HARJEET SINGH & ANR.

..... Respondent

Through: Ms.Fizani Husain, APP for
R2/State.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This criminal revision petition under Section 397/401 read with Section 482 CrPC is filed assailing the order dated 25.4.2012 of learned ASJ whereby the appeal against the judgment dated 17.2.2011 and order on sentence dated 21.2.2011 passed by the M.M. against the petitioner under Section 138, N.I.Act was dismissed.

2. A complaint under Section 138, N.I.Act was filed against the petitioner by the respondent for the dishonour of cheque dated 24.7.2006 for Rs. 1.56 lakhs on account of 'insufficient funds'. The

petitioner having failed to pay the cheque amount despite service of legal notice dated 31.7.2006 and also having failed to prove his defence, was held guilty under Section 138, N.I.Act and convicted therein. The matter was carried in appeal which came to be dismissed vide the impugned order. The present petition is filed assailing the order of the learned ASJ.

3. I have heard learned counsel for the petitioner and gone through the record. It was not disputed that the cheque in question was issued by the petitioner and that the same, on presentation, was dishonoured on account of “insufficient funds”. It is also not in dispute that he received a legal notice of demand from the complainant and neither replied the same, nor made the payment of cheque amount.

4. The defence that was taken by the petitioner was that he had given four blank cheques with blank papers and some stamped papers to the complainant as security and which were not returned by him. It was also his defence that he had taken loan of Rs. 15,000/- from the complainant in July 2004, January 2005 and March 2005 and each time, the complainant demanded two blank cheques as security. In his statement recorded as witness (DW1) before learned M.M., he stated that he had taken loan of Rs. 40000/- from the complainant in three installments on interest in the year 2004 and that the principal amount was returned through bearer cheques and interest was paid on monthly basis and also that four blank cheques and other blank plain/stamp papers were taken by the complainant as security. From the defence that

was taken by the petitioner, it would be noted that in his statement, he has stated about his having taken loan of Rs. 15000/- on three occasions, whereas in his statement as DW1, he stated the loan amount to be Rs. 40000/-. Neither in the cross examination of complainant nor in his own evidence, the petitioner was able to rebut the presumption of his having issued cheques in question to the complainant in discharge of his legal liability. The plea that was taken that he had returned the loan amount by bearer cheques was unbelievable as he could not be presumed to have given the loan amount in this manner without asking for any receipt etc. In any case, no evidence has been led in this regard even by way of preponderance of probabilities. I could not see any infirmity or illegality in the impugned order of the ASJ nor could find any fault in the judgment and order on sentence passed by the M.M. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

MAY 30, 2012/akb