

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.Rev.P. Nos.336/08**

Shailender Saxena

Date of Decision : 30.07.2010

.....Petitioner

Through: Mr. A.P. Srivastava, Proxy
Counsel

Versus

State & Another

..... Respondents

Through: Nemo

AND

Crl.Rev.P. No. 388/08

Vinod Sharma

.....Petitioner

Through: Mr. A.P. Srivastava, Proxy
Counsel

Versus

State & Another

..... Respondents

Through: Nemo

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the Reporter or not ? | NO |
| 3. Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

1. There are two Criminal Revision Petition under Section 397 read with 401 of the Code of Criminal Procedure against judgment dated 11th March, 2008 passed by the Additional Sessions Judge, Karkardooma Courts, Delhi in Crl. Appeal No.33/2007 The Criminal Revision bearing No. 336/2008 has been filed by the accused challenging the judgment dated 11.03.2008 passed by ASJ, Patiala House Courts and

the judgment of conviction dated 17th August, 2004 and the order of sentence dated 23rd August, 2004 passed by the learned Trial Court in a case bearing No.1596/2003 convicting the petitioner for an offence under Section 138 of Negotiable Instruments Act and sentencing him for a period of one year simple imprisonment with a fine of Rs.20.00 lakhs. In default of payment of fine, simple imprisonment for one year was imposed. The learned ASJ had converted the fine amount of Rs. 20 lacs into a compensation amount of Rs.8 lacs to be recovered from the petitioner by resorting to Section 421 Cr.P.C. So far as second Revision bearing No. 388/2008 is concerned that has been filed by the complainant for enhancement of the compensation amount of Rs. 8 lacs.

2. Briefly stated, that facts of the case are that the respondent no. 2 was known to the present petitioner/accused since their fathers were friends. It was stated in the complaint that the petitioner was a proprietor of M/s Shail Steel Company located at Rishikesh and he asked the respondent No.2 for a loan for a short period. The said loan was allegedly given by way of three drafts for a sum of Rs.1.00 lakh each and a cheque for Rs.40,000/- and Rs.6.00 lakh. In all, a sum of Rs.9.40 lakh is alleged to have given by the respondent No.2 to the present petitioner. The petitioner in order to discharge the liability of said loan had issued a cheque No.938538 dated 16th

June, 1998 for a sum of Rs.12,91,213/- drawn on Oriental bank of Commerce, Rishikesh Branch in favour of the respondent No.2. It is alleged that the said amount was actually inclusive of the interest on the principal amount of Rs.9.40 lakh and was paid to the respondent no.2 towards the full and final settlement of his entire liability. It is this cheque which was dishonoured. After a prolonged trial, the learned Trial Court passed a judgment finding the petitioner guilty of the offence under Section 138 Negotiable Instruments Act and then sentenced him to one year of simple imprisonment apart from fine of Rs.20.00 lakh. The judgment was passed on 17th August, 2004 and the order of sentence on 23rd August, 2004.

3. Petitioner feeling aggrieved by his conviction and the sentence chose to file a criminal appeal bearing No.33/2007 against the order of the learned Magistrate. In the appeal, all the pleas, factual as well as legal, pertaining to vitiating the trial on account of non-service of notice, presumption and various other points were taken. The learned Appellate Court passed a detailed order rejecting all the contentions, both factual as well as legal, urged by the petitioner and upheld his conviction, however as the petitioner during the pendency of his appeal had actually paid the principal amount, the learned Appellate Judge taking into consideration this as a mitigating factor reduced the payment of fine from Rs.20.00 lakh to Rs.8.00 lakh

converted the same into compensation. It is further observed that since the principal amount had been paid, therefore the custodial sentence would not serve any purpose and therefore, the additional amount of Rs.8.00 lakh by way of fine be recovered by resorting to recovery process as envisaged under Section 421 of the Code of Criminal Procedure. With this modification of sentence, the conviction of the petitioner was upheld.

4. Petitioner still feeling aggrieved has chosen to file the present revision petition both against the Appellate Court's order dated 11th March, 2008 as well as against the judgment and order dated 17th August, 2004 and 23rd August, 2004 respectively passed by the learned Trial Magistrate. The arguments in this case were heard in stages as repeatedly the learned counsel for the petitioner for one reason or the other sought adjournment and consequently written submissions were obtained from the respondent No.2 while as petitioner chose not to file written submissions but his synopsis which has been annexed to the petition has been treated as the written submissions. I have gone through the written submissions of both the parties and perused the record.
5. At the outset, it must be pointed out that the filing of the present revision petition against the order dated 11th March, 2008 is an attempt by the petitioner to raise all those pleas which are factual as if he has a right of second

appeal against the judgment of both the Appellate Court and the Trial Court. It may be pertinent here to refer to Section 397 (3) of the Code of Criminal Procedure which clearly lays down that there is a prohibition of preferring two revision petitions meaning thereby as the power of revision is a concurrent power both with the Sessions Court and the High Court, the Legislature has rightly restricted the right to file a revision only in one forum so as to avoid the repetitive and multiplicity of litigation against an impugned order. While dealing with the aforesaid provision of Section 397(3) and the powers of revision of the High Court, there are catena of authorities which lay down that if a party has preferred an appeal and still feels aggrieved, then the revision cannot be filed by him so as to invite the High Court to go into the question of merit or question of fact meaning thereby that the High Court in exercise of its revisional powers will interfere with the finding of the Trial Court and the first Appellate Court which will amount to re-examination of the entire evidence so as to upset the concurrent finding of the Trial Court and the first Appellate Court. A reliance in this regard can be placed on only one of the number of authorities which is titled ***State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand & Ors*** 2004 (7) SCC 659.

6. In the light of this parameter which has been set by the Apex Court on the exercise of powers of revision by the

High Court, I feel all points which have been raised in the petition of petitioner with regard to the vitiating of the trial on account of non-service of notice, procedure for investigation not properly being followed or the complainant/respondent No.2 having violated Section 3(b) (ii) of the Punjab Registration of Money Lenders Act, 1938 are not at all relevant at the stage of revision. These are all factual points which are urged or ought to have been urged before the learned Trial Court or at best before the first Appellate Court. The learned counsel for the petitioner has failed to show that there is any jurisdictional error or lack of exercise of jurisdiction or exercise of excess jurisdiction or material irregularity of the decision of the learned Appellate Court. On the contrary, the very fact that the finding of the Trial Court has not only been confirmed by the Appellate Court but also the fact that the petitioner has actually paid the amount of Rs.12.00 lakh being the principal amount to the respondent No.2 is in fact admission of his guilt that he had committed an offence and this forecloses the right of the petitioner to raise all these factual points now in the present petition. A perusal of the operative portion of the learned Sessions Court's order shows that a very lenient view has been taken and it has reduced the amount of fine from Rs.20.00 lakh to compensation of Rs.8.00 lakh and dispensed with the custodial sentence in default of payment of the same which

is sufficient enough to have made the present petitioner satisfied the operative portion of the learned Sessions Judge's order is quoted as under :

“Appellant submits that during pendency of this appeal, he has made payment of cheque amount to the complainant. He further presents that his house has been sold, when money was arranged to make payment of the cheque amount. He projects that he has suffered agony of trial for a period of 10 years. According to him, all these mitigating factors may be taken into account, while awarding sentence to him. Admittedly, appellant has made payment of the cheque amount during pendency of this appeal. It was impressed upon the appellant as well as to complainant to withdraw litigations pending between them, so that they may revive their relations. Efforts made by the Court proved futile. However, mitigating circumstances, referred above, persuade me to think that it is not a fit case, where custodial sentence should be awarded to the appellant. Since he has utilized the cheque amount for a period of ten years, his pocket should be taxed to make a balance between factors of crime and circumstances surrounding the appellant. Taking into account all these situations, it is ordered that appellant shall make payment of Rs.8,00,000/- as compensation to the complainant, besides the cheque amount already paid. In case amount of compensation is not paid, it would be recovered by the Trial Court in view of provisions of Section 421 of the Code. With this modification of sentence, appeal stands disposed of. Trial Court record be sent back.”

7. In the light of the fact that the learned Sessions Judge has already given a considerable relief to the petitioner by reducing the fine amount from Rs.20.00 lakh to Rs.8.00 lakh, one cannot lose sight of the fact that the present petitioner had paid this amount of Rs.12.00 lakhs to the complainant/respondent No.2 almost after enjoying the said amount for a decade and even if the rate of interest is

taken to be 6% on the principal amount would have doubled. Therefore, in the light of this, to give any further relief to the present petitioner by reducing the amount of compensation from Rs.8.00 lakh to any lesser amount would be only showing a misplaced sympathy to the present petitioner. This is more so in the light of the fact that there are lakhs of cases which are pending under Section 138 of the Negotiable Instruments Act in different forums of Delhi and it is in a very minuscule percentage that the conviction is recorded. Therefore, even such cases where an order of conviction is obtained by a party after a considerable length of time to show a sympathy to the convict, would be only showing a misplaced sympathy which will not be proper.

8. In the light of the aforesaid facts, I feel that there is no jurisdictional error or material irregularity which may warrant interference by this Court. Accordingly, the revision petition bearing Crl.Rev. P.No.336/2008 is dismissed and the order of conviction and sentence imposed by the learned Magistrate has been upheld, I find no justification for allowing the Crl.Rev.P. No.388/2008 and thereby set aside the judgment dated 11th March, 2008 passed by the learned ADJ so far as the payment of compensation amount is concerned. Normally, payment of compensation is a matter of discretion and once that discretion has been judicially exercised by the forum on

which it has been conferred, unless and until a material irregularity or gross illegality is shown, the said discretion should not be tampered with by the superior court merely because it feels or comes to a different conclusion keeping in view the facts and circumstances. Accordingly, the Crl.Rev.P. No.388/2008 is disallowed.

V.K. SHALI, J.

July 30, 2010
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