

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 187 of 2016**

- Bhagwat Ram Patel S/o Krishna Kumar Patel Aged About 29 Years R/o Post & Village Nikumb, P.S. Anda, Tahsil & District Durg Chhattisgarh

---- Petitioner**Versus**

- Ashok Kumar Sharma S/o Manohar Lal Sharma Aged About 47 Years R/o Shanichari Bazar, Durg, Tahsil & District Durg Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Malay Bhaduri, Advocate
For Respondent	:	Mr. Jitendra Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV JUDGMENT****Reserved on 18/10/2016****Delivered on 11/11/2016**

1. The present Revision Petition has been preferred invoking provision of Section 397 read with 401 of the Cr.P.C. by the Petitioner against the judgment passed by the Vth Additional Sessions Judge, Durg in Criminal Appeal 147/2012 dated 20.01.2016 and also judgment dated 21.06.2012 passed by Judicial Magistrate, First Class, Durg in Complaint Case number 824 / 2011.
2. The brief facts relevant for the adjudication of the present Revision Petition is that the Respondent had filed complaint case under Section 138 of the N.I. Act before the JMFC Durg in respect of dishonouring of a cheque of ICICI Bank dated 28.05.2010 amounting Rs. 84,000/- drawn infavour of the Respondent. Subsequently, the formalities as is required under Section 138 of the N.I. Act was completed and the Court below registered the

complaint case as Complaint Case No. 824/11 and issued summons to the Petitioner accused. The matter in due course of time was put to trial and after conclusion of the trial the Court below found the Petitioner accused guilty of having committed offence punishable under Section 138 of the N.I. Act sentenced him to undergo S.I. 6 months and compensation amounting to Rs. 50,000/- vide the judgment dated 21.06.2012.

3. The said judgment of conviction and sentence was assailed by the Petitioner accused in an appeal which was registered as Criminal Appeal No. 147/2012.
4. The lower appellate Court also after considering the contentions put forth by the Petitioner Appellant found that the conviction of the Appellant by the Court below was proper, legal and justified however while upholding the conviction the sentence part was interfered by reducing the sentence part to, till rising of the Court in place of S.I. of 6 months as awarded by the J.M.F.C. and the penalty / compensation part was not interfered with. It is this judgment which is under challenged before this Court.
5. The Petitioner has assailed judgment only to the extent of the compensation that has been awarded. According to the Petitioner reading of the trial Court judgment itself clearly reflects that the compensation part has been awarded by the Court below invoking Section 357(3) of the Cr.P.C. According to the Counsel for the Petitioner firstly the compensation part awarded is highly disproportionate and that the Court should not have imposed compensation of Rs. 50,000/-. When the cheque which allegedly got dishonoured was for an amount of only Rs. 84,000/-.
6. Similarly, it was contended that the fine amount is different from the compensation. The provision of 138 of the N.I. Act provides for the payment of fine where Section 357(3) Cr.P.C. prescribes payment of

compensation and the Magistrate in the instant case has invoked provision under Section 357(3) Cr.P.C. while granting compensation. It is also contended by the Counsel for the Petitioner that before saddling the liability of the payment of compensation upon the Petitioner the Court below ought to have granted an opportunity of hearing before fixing the amount of compensation to be paid. In absence of such opportunity of hearing being provided the compensation part is bad in law. It was also contended by the Counsel for the Petitioner that the dispute between the parties was already thrashed out in civil proceeding in Civil Suit No. 13B/11 and which stood decided on 8.5.2012 whereby the Civil Court passed judgment and decree in favour of the Respondent complainant of the Petitioner to pay the Respondent an amount of Rs. 60,000/- with 6% interest on it from the date of filing of the suit till realization. According to the Petitioner since the matter has already been thrashed out in the civil suit the subsequent petition under Section 138 Cr.P.C. would not be sustainable for the reason that the enforceable debt against the Petitioner already stood decided by in the civil suit. Counsel for the Petitioner in addition relied upon decision of Madhya Pradesh High Court in case of **Krishna Janardhan Bhat v. Dattatraya G. Hegde** reported in **2008 (3) MPLJ 109**.

7. According to the Petitioner the Court did not appreciate the fact that there is difference between the legally enforceable debt and recoverable debt. So far as the recoverable debt is different is concerned the same has been adjudicated upon in civil suit and as such nothing further remains to be recovered. If at all there was anything to be recovered the same could not have been recovered invoking provisions of Section 138 of the N.I. Act.

8. Further it was also contended by the Petitioner that the compensation of Rs. 50,000/- is on higher side. The cheque amount itself was only Rs. 84,000/- and therefore it should have been fair and reasonable and much less than Rs. 50,000/-.
9. Per contra Counsel for the Respondent Sh. J. Gupta submits that the present Revision Petition is devoid of merit and deserves to be rejected for the reason that the Petitioner has not been able to make out a strong case calling for interference with the two orders.
10. According to the Respondent all the submissions and the arguments put forth by the Petitioner-Revisioner are beyond the scope of the Revisional Court exercising its power under Section 397 of the Cr.P.C. According to the Counsel for the Respondent Revisional Power of the high Court is entirely different from the appellate powers while exercising revisional powers the Court would not threadbare consider the entire case on its factual matrix. In the instant case since the appellate power has already been exercised by the appellate court and the sentence has already been reduced, there is no further scope of any further interference with the impugned judgment, therefore, the Revision Petition deserves to be rejected.
11. Having considered the rival contentions put forth on either side and on perusal of record what is explicit is the fact that the issuance of the cheque by the Petitioner to the Respondent is not in dispute and signature on the cheque being that of the Petitioner is also not in dispute. Further on presentation of the cheque for realization the said cheque getting dishonoured for insufficiency of the funds which also by now is well established and not in dispute.

12. On perusal of the record it would also reflect that there is an admission on part of the Petitioner accused himself of having taken some money on loan from the Respondent. Thus, on the basis of the said admission it has been presumed that the cheque has been issued by the Petitioner towards repayment of the said loan. Further, from the perusal of the record it would reveal that the loan of 60,000/- amount of which cheque has been issued was in respect of earlier transaction and there was another loan transaction between the Petitioner and Respondent. Whereas it is alleged that the Petitioner had taken an amount for the second time of Rs. 84,000/- and the cheque involved in the present dispute is in respect of the subsequent transaction and therefore the judgment and decree passed in the civil suit would not have much bearing in the complaint case which has been lodged at the instance of the Respondent under the provision of Section 138 of the N.I. Act.

13. The fact that the Petitioner has admitted the issuance of the cheque and signature on the cheque by itself attracts the provision under Section 138 of the N.I. Act and forces the Court to draw an inference against the Petitioner of having issued cheque for the enforcement of the legally enforceable debt and there is no strong rebuttal brought on record by the Petitioner accused in the instant case. Further, from the document which has been also brought by the parties it also reflects that there have been correspondence made between the parties which establishes loan to have been taken by the Petitioner accused and there are correspondences on his part assuring repayment.

14. Thus, in the opinion of this Court in the factual matrix as narrated in the preceding paragraph and considering the judicial pronouncements of the Supreme Court in the case of **Koushlya Devi Masand v. Roop kishore**

[2011 A.C.D. 581 (S.C.)]and **Baswaraj v. M/s Dhan Laxmi Finance Company** [2011 A,C,D, 585 (S.C.)] which has been also relied upon by the lower Appellate Court, this Court does not find any infirmity or illegality on part of the Court below in modifying the sentence and reducing the period till rising of the Court and at the same time maintaining the amount of compensation which has been awarded in favour of the Respondent. In the given facts and circumstances of the case this Court does not find any strong case made out on behalf of the Petitioner calling for interference with the orders passed by the Court below in exercise of the Revisional jurisdiction conferred upon the High Court.

15. The present Revision Petition thus being devoid of merits, the same deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE