

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

Date of hearing and Order: 10th May 2016

+ CRL.REV.P. 278/2016, CrI. M. (Bail) No.749/2016
SUNIL KUMAR GUPTA

..... Petitioner

Through: Mr. A.K. Pandey, Advocate

versus

THE STATE & ANR

..... Respondent

Through: Mr. Izhar Ahmad, Additional Public
Prosecutor for the State
Mr. Ravi Verma, Advocate for
respondent No. 2

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J. (ORAL)

1. By this petition filed under Section 397/401 of Cr. P.C., the petitioner seeks to challenge the order of conviction dated 15.12.2015 and order on sentence dated 07.01.2016 passed by learned Metropolitan Magistrate, Tis Hazari, Delhi, whereby the petitioner was sentenced to undergo simple imprisonment for a period of four months. The petitioner also seeks to challenge the orders dated 17.03.2016 passed by learned Additional Sessions Judge, Central, Tis Hazari Courts, Delhi, passed in Criminal Appeal No.09/2016, whereby

the learned Additional Session Judge has dismissed the appeal filed by the petitioner and upheld the impugned orders passed by the learned Metropolitan Magistrate, Central, Tis Hazari, Delhi.

2. The facts of the case as mentioned in the impugned judgment are that on 14.08.2011 the petitioner requested the complainant to provide him with a friendly loan of Rs.2.65 lacs and the complainant advanced the said loan amount which the petitioner promised to pay back within a period of two months. At the time of advancing loan, the petitioner issued cheque No.403313 dated 14.08.2011 drawn on Oriental Bank of Commerce, Chawri Bazar, Delhi. The petitioner could not repay the said amount within the stipulated time. After a year, petitioner issued another cheque No.409580 dated 14.12.2012 for Rs.3,49,800/- drawn on Oriental Bank of Commerce, Chawri Bazar, Delhi with assurance that the same will be honoured on its presentation. However the cheque got dishonoured with the remarks “funds insufficient” vide cheque memo dated 31.12.2012. Legal notice dated 21.10.2013 was sent to the petitioner but he failed to pay the amount.

3. Trial commenced, evidences were lead on behalf of both the sides and after conclusion of the trial, the petitioner was convicted for the offence committed under Section 138 of Negotiable Instruments Act, 1881 and accordingly sentenced to undergo simple imprisonment for a period of four months. He was also directed to pay compensation of Rs.5 lac.

4. Aggrieved by the aforesaid order of conviction and sentence, the petitioner filed an appeal before the learned Additional Sessions Judge, which was also dismissed vide impugned order and the order of conviction and sentence was upheld. Now the petitioner has preferred the present revision petition.

5. The learned counsel for the petitioner restricts his arguments on sentence passed by learned Metropolitan Magistrate and submits that the petitioner has already undergone the sentence for a period of about two months and he has already deposited the compensation amount. Counsel for the petitioner further contended that the petitioner has family to support and he is not a previous convict in any other case, therefore, some leniency in order on sentence be granted to the petitioner.

6. Mr. Izhar Ahmad, Additional Public Prosecutor appearing for the State contended that the impugned orders passed by learned Metropolitan Magistrate as well as order passed in appeal by learned Additional Session Judge are well reasoned orders and they do not call for any interference therefore the present revision petition is liable to be dismissed.

7. I have heard learned counsel for the parties and have also gone through the impugned judgments and orders and the nominal roll of the petitioner.

8. After considering the submissions advanced by both the sides

and upon perusal of the impugned order, evidence on record and the decisions cited, I find that there is no illegality or infirmity in the impugned conviction of petitioner-accused. However, on the quantum of sentence, this Court observes that the petitioner has family to support, he is not a previous convict in any other case and in the considered opinion of this Court, the petitioner has already faced agony of these proceedings for last about 3 years. Nominal roll of the petitioner is also perused by this Court, according to which the petitioner has already remained behind the bars in this case for about 2 months.

9. This Court further observes that the petitioner is sentenced for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, which does not prescribe any minimum sentence. Therefore, after considering the facts that the petitioner is not a previous convict, has family to support and has already undergone the agony these proceedings for the last about 3 years, this Court is of the opinion that ends of justice would be met if petitioner's substantive sentence is reduced from 4 months to 2 and a half months.

10. In view of the aforesaid discussion, the present revision petition is partly allowed on the quantum of sentence to the extent indicated above.

11. Trial Court be apprised of this order forthwith by sending copy of this order.

12. Copy of this order be also sent to the Jail Superintendent for information.

13. This revision petition as well as application are disposed of in aforesaid terms.

P.S.TEJI, J

MAY 10, 2016
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