

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 238/2015**

MS SAVITA

Date of Decision : April 26th, 2016

.....Petitioner

Through Mr.P.Bashista & Mr.Mukesh Kumar,
Advs.

versus

STATE & ANR

.....Respondents

Through Mr.M.P. Singh, APP.
Mr.Pawan Kumar Mittal, Adv. for R-2

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

P.S.TEJI, J.

1. The present revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner against the judgment dated 28.02.2015 passed by the learned Additional Sessions Judge, Karkardooma Court, Delhi vide which the appeal against the conviction has been dismissed.

2. The facts, in brief, are that the complainant-Rajesh Garg (respondent no.2-herein) filed a complaint against the accused/petitioner-herein under Section 200 Cr.P.C. for commission of offence under Section 138 of the Negotiable Instrument Act, 1881. It was alleged in the complaint that Sh.Vikas Yadav, late husband of the petitioner approached the complainant and offered to sell his land. The complainant agreed to purchase the plot of land for a sum of Rs.60,50,000/-. An agreement to sell was executed on 13.06.2007 and

Rs.15.5 lakh was paid as earnest money. The sale deed was to be executed on or before 26.06.2007. Sh.Vikas Yadav asked the complainant to come to the office of Sub Registrar on 26.06.2007 but he did not come there. After two days, Sh.Vikas Yadav expressed his inability to honour the deal and promised to pay back the earnest money and penalty of Rs.One Lakh. In order to discharge his liability, two cheques dated 28.07.2007 and 01.08.2007 for a sum of Rs.10.5 lakh and Rs.5 lakh respectively were issued by him. Cheque for Rs.10.5 lakh was signed by Vikas Yadav, whereas cheque for Rs.5 lakh was signed by the petitioner-herein and her husband Vikas Yadav. The said cheques were returned unpaid when the same were presented for encashment with the remarks "account closed". Thereafter, a notice dated 16.08.2007 was sent to the petitioner to make the payment.

3. Notice of accusation under Section 251 Cr.P.C. was served on the petitioner to which she pleaded not guilty and claimed trial. Both the parties adduced evidence in support of their case. The learned MM vide judgment dated 27.11.2013 convicted the petitioner for offence under Section 138 of the N.I. Act. Vide order on sentence dated 27.11.2013, the petitioner was sentenced to TRC (Till the Rising of the Court) and ordered to pay fine of Rs.7,00,000/-, out of which Rs.6,50,000/- was ordered to be paid to the complainant as compensation and remaining amount was ordered to be deposited with the State within two months. In default of payment of fine, the petitioner was directed to undergo simple imprisonment of two months.

4. Thereafter, the petitioner filed a criminal appeal before the Court of Sessions which was dismissed vide judgment dated 28.02.2015. The learned ASJ upheld the conviction of the petitioner, however the sentence was modified to the extent of directing the petitioner to pay fine of Rs.5,00,000/- and the entire amount was awarded as compensation to be paid to the complainant. The petitioner was directed to pay the fine within two months from the date of judgment and in default of payment of fine, the petitioner shall undergo simple imprisonment for two months.

5. I have heard the learned counsel for the petitioner, learned Additional Public Prosecutor for the State as well as learned counsel for the respondent no.2.

6. During the course of arguments, learned counsel for the petitioner confined his arguments only on the quantum of sentence. Argument advanced by the counsel for the petitioner is that the petitioner is a widow and she was thrown out of her matrimonial house by her in-laws. All the property of late Sh.Vikas Yadav is in the possession of his parents. It is further argued that the sentence awarded to the petitioner is very harsh. The counsel for the petitioner has prayed for taking a lenient view and releasing the petitioner on probation as under Section 360 Cr.P.C. or under Section 4 of the Probation of Offenders Act, 1958. Further argument advanced is that the amount of fine imposed upon the petitioner may be recovered as civil liability instead of compensation under Section 357 Cr.P.C.

7. So far as the punishment of imprisonment awarded to the petitioner is concerned, already a lenient view has been taken by the

Trial Court. The Trial Court sentenced the petitioner till the rising of the Court and also to pay fine of Rs.7,00,000/- which was reduced to Rs.5,00,000/- by the appellate Court. There is no need to further modify the sentence awarded to the petitioner as the Courts below have already taken a lenient view while awarding punishment to the petitioner, keeping in view her familial circumstances. The submission made by the counsel for the petitioner that the petitioner may be given the benefit of Section 360 Cr.P.C. or of Section 4 of the Probation of Offenders Act, 1958 and in consequence of the same, the amount of the compensation may be treated as civil liability is neither permissible under the law nor acceptable. Therefore, this Court do not find any force in this argument advanced by the counsel for the petitioner and no ground is made out to release the petitioner on probation as provided under Section 360 Cr.P.C. or under Section 4 of the Probation of Offenders Act, 1958.

8. In view of the above discussion, this Court finds no illegality or infirmity in the impugned order. The petitioner has failed to show any exceeding of jurisdiction by the learned ASJ or the failure to exercise the jurisdiction vested in him.

9. Consequently, the present revision petition is hereby dismissed.

(P.S.TEJI)
JUDGE

APRIL 26, 2016
dd