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

+ **CRL.REV.P. 749/2015**

**ANIL KALRA**

..... Petitioner

Through: Mr. Amit Kumar Jhakar,  
Mr. Satyendra Kumar Singh,  
Mr. Kamlesh Kumar Jha, Advocates

versus

**THE STATE ( GOVT OF NCT OF DELHI) & ANR ..... Respondents**

Through: Mr. Izhar Ahmad, Additional Public  
Prosecutor for the State  
Mr. R.K. Singh, Advocate for  
respondent No. 2

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

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**ORDER**  
**22.04.2016**

**P.S. Teji (Oral)**

1. By this revision petition filed under Section 397/399, of Cr.P.C., the petitioner seeks to challenge the order dated 05.11.2015 passed by learned Additional Session Judge, NDPLS-02, Tis Hazari Courts, Delhi, passed in Criminal Appeal No.03/2015, whereby the learned Additional Session Judge, while confirming the conviction, reduced the sentence passed by the learned Metropolitan Magistrate from one year to three months.

2. The learned Metropolitan Magistrate has held the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and the petitioner has been sentenced to undergo simple imprisonment for the period of one year and fine of Rs.3 lacs was also imposed upon petitioner.

3. The brief facts leading to the present revision petition are that complainant/respondent No.2 had filed a complaint under Section 138 of NI Act against the petitioner alleging therein that petitioner started a group of committee and he was the organizer of the said committee group and respondent No.2 was one of the members of the said committee. The respondent No.2 always deposited and paid the contribution in the said committee as per his share. The respondent No.2 was entitled for the amount and as such petitioner issued three cheques bearing Nos. 861637 dated 12.01.2006, cheque no. 861638 dated 30.01.2006 and 861639 dated 12.02.2006 for a sum of Rs.1 lakh each, drawn on Punjab and Sind Bank. The respondent No.2 presented the cheques in bank but the same were dishonoured. Complainant led evidence and petitioner was summoned under Section 138 of NI Act. Trial concluded and the petitioner was convicted for the offence punishable under Section 138 of NI Act and was sentenced to undergo simple imprisonment for a period of one year with fine/compensation of Rs.3 lakhs and in default thereof, the petitioner was directed to undergo further period of simple imprisonment for three months.

4. Thereafter, petitioner filed appeal before the learned Additional Session Judge, who after considering the facts and circumstances of the case and the fact that the petitioner had already deposited the fine/compensation amount of Rs.3 lakhs before the Trial Court, reduced the sentence awarded to the petitioner to the period of three months. Being aggrieved by the order passed by learned Additional Session Judge, the petitioner has preferred the present revision petition.

5. At this stage, Mr. Amit Kumar Jhakar, 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 1 months and 23 days. Counsel for the petitioner further contended that the petitioner has four minor children who are studying and a wife. Apart from his family the petitioner also has old aged parents. It is further contended that the petitioner is earning his livelihood and maintaining the entire family through a small grocery shop (Kirana store) from a rented shop and in case the petitioner was sent to custody, the said shop will remain closed which would ultimately lead to great hardship to the family of the petitioner. Therefore, it is prayed that the purpose of filing the present revision petition would be achieved if the sentence imposed upon the petitioner be reduced to the period already undergone by him.

6. Mr. Izhar Ahmad, Additional Public Prosecutor for the State

contended that there is no merit in the averments made in the present revision petition and there is no illegality or infirmity in the order passed by learned Additional Session Judge. Nominal roll of the petitioner is also placed on record.

7. I have heard the aforesaid submissions of learned counsel for the petitioner and also perused the material on record. I have also gone through the impugned judgments and orders passed by learned Metropolitan Magistrate as well as learned Additional Session Judge. Nominal Roll of the petitioner is also perused.

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 is a sole bread-earner of his family having four minor children and a wife and old aged parents to look after them and in the considered opinion of this Court, the petitioner has already faced agony of these proceedings for more than two 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 1 months and 07 days.

9. This Court further observes that the petitioner is sentenced for offence punishable under Section 138 of NI Act, 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 if these proceedings for the last more than 2 years, this Court is of the opinion that ends of justice would be met if petitioner's substantive sentence is reduced from 3 months to the period already undergone by him. Petitioner is already on bail. His bail bonds are cancelled and sureties are discharged.

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. The present revision petition is disposed of in the aforesaid terms. Dasti.

**APRIL 22, 2016**  
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**P.S.TEJI, J**

