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

+ CRL.REV.P. 641/2017 & Crl.M.B.1568/2017

Y N MALHOTRA

..... Petitioner

Through Mr.P.P. Khurana, Sr. Adv. with
Mr.Rajesh Lathigare, Adv.

versus

SURENDER KUMAR JAIN & ANR

..... Respondents

Through Mr.Surender Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **29.08.2017**

Crl.M.A. 14036/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Crl.Rev.P.641/2017 & Crl.M.A. 14037/2017 (directions)

The petitioner was convicted by the Trial Court in seven different complaint cases under section 138 of the Negotiable Instrument Act, 1881 vide judgment dated 30.07.2016. The sentence was pronounced on 19.08.2016 whereby the petitioner was directed to suffer SI for one year and was required to pay a fine to the tune of 50% of the total cheque amount in all the respective complaints.

It was further directed that for failure to pay the aforesaid compensation amount, the petitioner will have to undergo SI for two months. The sentences were, however, ordered to run concurrently.

The petitioner thereafter preferred appeals against all the judgments of the Trial Court. Out of the seven appeals, one appeal was disposed of by the Appellate Court vide judgment dated 24.08.2017 in Crl.A. No.47/2016 whereby the sentence of the petitioner was reduced to SI for six months and the order of compensation granted by the Trial Court was set aside.

The other appeals are still pending consideration before the Trial Court.

It has been submitted on behalf of the petitioner and which assertion has been affirmed by the learned counsel for the respondent that a settlement has been arrived at between the parties and the petitioner has agreed to pay a total amount of Rs.40 lakhs in all, for all the seven cases and that is to the satisfaction of the complainant in all the cases. Out of the aforesaid amount of Rs.40 lakhs, Rs.10 lakhs has already been deposited before the Trial Court on 16.09.2016. The petitioner would have no objection if the amount is released in favour of the respondent.

Out of the balance amount of Rs.30 lakhs, 3 pay orders/banker's cheque (Pay order nos.006648, 006649 & 006650 dated 28.08.2017 of Rs.5,00,000/- each drawn on IDBI Bank) of Rs.15 lakhs has been given to the respondent today in Court which has been accepted by learned counsel for the respondent.

Photocopy of the aforesaid banker's cheques have been preserved in the file.

Now, the amount which is left is only Rs.15 lakhs which the petitioner has agreed to pay before the Appellate Court, where six of the other appeals are pending, on or before 07.09.2017. This promise/offer of the petitioner has been accepted in totality by the learned counsel for the respondent.

It has been urged that, so far as this revision petition is concerned, the case relates to the cheque of Rs.11 lakhs which was dishonoured. Since bankers cheque/pay order of Rs.15 lakhs has been paid, though towards the entire amount which has been settled to be paid, there is no reason why this revision be not allowed.

Since the offence under section 138 of the NI Act is compoundable and the petitioner has agreed to pay the entire amount and has actually paid as on date, more than half of the agreed amount, this Court is inclined to accept the submission of the learned counsel for the petitioner.

Mr.Khurana, learned senior counsel appearing for the petitioner has further submitted that the petitioner is 80 years old and has now been shifted to ICU because of his ailment.

Considering the age and the ailment of the petitioner, Mr.Khurana has urged this Court not to impose 15% of the cheque/compensation amount as the settlement has been arrived at only at the stage of the revision before this Court, as directed by the Supreme Court in **Damodar S. Prabhu vs. Sayed Babalal H.:** (2010) 5 SCC 663.

Taking into consideration the aforesaid facts, the present revision petition is allowed accordingly.

The judgment and order of conviction by the Trial Court as well as Appellate Court so far as the complaint case no. 526169/2016 is concerned is set aside and the petitioner is acquitted of the charges.

However, the petitioner shall, as in duty bound, because of his undertaking before this Court, pay an amount of Rs.15 lakhs on or before 07.09.2017 before the Appellate Court in the other six pending appeals.

Since the orders of the courts below have been set aside so far as the

complaint case no.526169/2016 is concerned, the petitioner is directed to be released from jail forthwith.

The order be communicated to the concerned jail for compliance of the same.

Dasti under the signatures of the Court Master.

ASHUTOSH KUMAR, J

AUGUST 29, 2017/ab