

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 45 of 2005

1. Bimal Krishna Chakravorti, aged about 73 years, son of Shri Harinath Chakravorti, Proprietor, Shakti Coal Product, Resident of Rajendra Nagar, Raipur, District Raipur, CG

--- Applicant

Versus

1. State of Chhattisgarh
2. Mahesh Kumar Chhabariya, aged about 50 years, son of Shyam Das Chhabariya, Resident of Devendra Nagar, Raipur, CG - **(Deleted)**

--- Respondent

For Applicant	-	Shri Shashi Bhushan, Advocate.
For Respondent/State	-	Smt. M. Asha, PL

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

10.12.2018:

Judgment under challenge in this revision petition is dated 23.11.2004 passed by Additional Sessions Judge (FTC) Raipur in Criminal Appeal No. 125/2004 whereby the findings recorded by Judicial Magistrate First Class, Raipur convicting the accused/applicant under Section 138 of the Negotiable Instruments Act and sentencing him to undergo RI for six months and pay fine of Rs. 3000/- with default stipulation, have been affirmed.

2. Facts of the case in short are that the accused/applicant – the proprietor of Shakti Coal Products, had borrowed Rs. 25,000/- from the deceased-respondent No.2 herein in connection with his business. When the accused/applicant failed to repay the said loan amount on oral demand made by the respondent No.2 (since

dead), the latter gave a registered notice of demand to the former. Acting upon that, the former issued a cheque No. 2069935 dated 31.01.1998 drawn at Bank of Maharashtra, Branch Bairanbazar, Raipur for Rs. 25,000/- in favour of the latter. However, when respondent No.2 presented the said cheque on 02.02.1998 in the bank, it stood dishonored and thus returned to the latter for want of sufficient fund. Subsequent to this, respondent No.2 gave a notice to the accused/applicant through his advocate asking him to make the payment of borrowed amount of Rs. 25,000/- but even then he did not make the payment without assigning any reason whatsoever. On complaint being made by deceased- respondent No.2, the accused/applicant was prosecuted under Section 138 of the Negotiable Instruments Act (hereinafter referred to "NI Act" for brevity).

3. After examining the material available on record and the evidence of the witnesses, the trial Court convicted the accused/applicant under Section 138 of the NI Act and imposed the sentence as described above. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that he is not pressing this revision as far as conviction part of the judgment challenged therein is concerned, and would confine his argument to its sentence part only. He submits that as the incident had taken place in the year 1998, that the applicant is a handicapped old man aged about 86 years as of now, that he has undergone spinal

and brain surgery and that he has already remained in jail for about two months and seven days, the sentence imposed on him may be reduced to the period already undergone.

5. On the other hand, counsel for the respondent/State supports the judgment impugned as a whole.

6. Heard counsel for the parties and perused the evidence on record.

7. Having heard counsel for the parties and perused the material available on record including the evidence of deceased-respondent No.2 examined in the Court as (PW-3) as also that of Deputy Manager of the concerned Bank being (PW-1), it is apparent that the findings recorded by the Courts below convicting the accused/applicant under Section 138 of the NI Act are just and proper and do not suffer from any illegality or infirmity warranting interference by this Court. Conviction is accordingly maintained.

8. As regards sentence, keeping in mind the fact that the incident had taken place in the year 1998 thereby leading to passage of 20 long years since thereafter, that the applicant, as of now, is in his late eighties suffering from various diseases and that he has already remained in jail for about two months and seven days, this Court thinks it just and proper and in the interest of justice to reduce the same to the period already undergone. Order accordingly. Fine sentence is however kept as it is.

9. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge