

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 395 of 2017**

Central Bank of India, Through the Senior Manager, Branch Ganj Para Durg, G. E. Road, Near Polytechnic College, Police Station & Tahsil- Durg District- Durg (C.G.)

---- Petitioner

Versus

Sarabjeet Singh, S/o Late Shri Preethvi Pal Singh, R/o Near Maan Hotel, Motipara, Durg, Tahsil & District- Durg (C.G.)

---- Respondent

For Petitioner : Mr. Tridib Bhattacharya, Advocate.

For Respondent : Mr. Tarun Dansena, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

28/11/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, the delay of 294 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 29.02.2016 passed by 6th Additional Sessions Judge, Durg, District- Durg (C.G.) in Criminal Appeal No. 306/2013, wherein the said court convicted the respondent for commission of offence under Section 138 of the Negotiable Instrument Act, 1881 (For

short “the Act, 1881”) and sentenced to compensation of Rs. 20,000/-.

5. Learned counsel for the petitioner submits that the appellate court has modified the sentence and awarded only fine sentence which is not in fitness of the procedure. He placed reliance in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H.** reported in **(2010) 5 SCC 663**. He further submits that the provision provides a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques.
6. From record of the trial court, it is clear that the respondent has not been acquitted by the said court. Conviction of the appellant rendered by the trial court is maintained by the said court.
7. In view of this Court, the object of bringing Section 138 of the Act, 1881 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Though, there is provision for jail sentence, but plain reading of provisions of Section 138 of the Act, 1881 goes to show that corporal punishment is not compulsory. When the said court has maintained conviction and sentenced only fine, it cannot be said that the said court has acquitted the respondent. When jail sentence is not compulsory, argument advanced on behalf of the petitioner is not sustainable.

8. On overall assessment, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge