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

Date of Decision:- 11.12.2018

+ CRL.REV.P. 1111/2018 & CRL.M.B.1905/2018 & CRL.MA.49315-16/2018

SHRI SANDEEP REHANI

..... Petitioner

Through

Mr.Narender Bhandari, Adv. with
petitioner in person.

versus

STATE & ANR

..... Respondents

Through

Ms.Manjeet Arya, APP for the State.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner seeks setting aside of the order of conviction dated 31st July, 2018 passed by the learned Trial Court in C.C. No.466367/2016, holding the petitioner guilty under Section 138 of the Negotiable Instruments Act and sentencing him to undergo six months simple imprisonment with a further direction to pay a fine of Rs.25,00,000/- as compensation to the complainant/respondent no.2. In default of payment of fine, the petitioner was ordered to undergo simple imprisonment for a further period of six months. The petitioner also impugns the order dated 14th November, 2018 passed by the learned Appellate Court, dismissing his appeal, thereby upholding

the orders of conviction and sentence passed by the learned Trial Court.

2. Learned counsel for the petitioner submits that the petitioner had approached the respondent no.2 in December, 2014 with one of his old clients, namely, Shri Darshan Shorie for some legal advice whereafter the parties started negotiating regarding purchase of a property. He submits that in these circumstances, the petitioner had given two cheques to the respondent no.2, for a total sum of Rs.25,00,000/- lakhs only as advance for purchase of property but since the said property deal did not materialize, the cheques were to be returned back to him by respondent no.2. He states that since the respondent no.2 did not return back the same to him, the petitioner was compelled to give instructions to his bank not to honour the cheques in favour of the respondent no.2 and accordingly the cheques upon presentation, were returned unpaid with the remarks “payment stopped by drawer”.

3. Upon dishonour of the two cheques, the respondent no.2 filed a complaint under Section 138 of the Negotiable Instruments Act before the learned Trial Court and the same was registered as C.C. No.466367/2016. The learned Trial Court after considering the evidence brought on record under its impugned judgment dated dated 31st July, 2018, convicted the petitioner u/s 138 NI Act and sentenced him to undergo simple imprisonment for a period of six months with a further direction to pay a fine of Rs. 25,00,000/- as compensation to the complainant/respondent no.2.

4. The petitioner unsuccessfully challenged his conviction and order

of sentence before the learned ASJ. The petitioner's appeal was dismissed on 14th November, 2018 and he was directed to surrender before the learned Trial Court by 26th November, 2018. Learned counsel for the petitioner submits that after the dismissal of his appeal, the petitioner could not surrender as he was trying to make arrangements for raising funds in order to make payments to the respondent and enter into a settlement with him. He submits that the petitioner has now paid a sum of Rs.5,00,000/- to the respondent no.2 towards the amount payable to him, who has thereafter given up all his claims against the petitioner as a part of the settlement. He, therefore, states that while the petitioner does not challenge the order of conviction passed by the learned Trial Court as upheld by the learned Appellate Court, he prays that keeping in view the subsequent settlement between the parties, the sentence of imprisonment awarded to the appellant be waived.

5. The petitioner as also the respondent no.2 are present in Court. Their identity cards have been duly examined by Ms.Arya, learned APP. I have interacted with the respondent no.2 who states that he has entered into a settlement with the petitioner out of his free will and without any coercion. He states that keeping in view the fact that he has amicably resolved his disputes with the petitioner, he also does not oppose the petitioner's prayer for waiver of sentence.

6. Issue notice. Ms.Manjeet Arya, learned APP accepts notice and also fairly does not oppose the said prayer made by learned counsel for the petitioner. She, however, states that keeping in view the fact that the

petitioner has not surrendered before the learned Trial Court even though specifically directed to do so by 26th November, 2018, at least one day's sentence be awarded to him. She further points out that the learned Trial Court has also issued Non-Bailable Warrants against the petitioner on account of his not surrendering before the Court on 26th November, 2018.

7. I have carefully considered the submissions of the parties and perused the record. Though there is no doubt that the petitioner upon his conviction u/s 138 NI Act has been sentenced to six months simple imprisonment by the Courts below, it is also an admitted position that the respondent no.2 has settled the matter with the petitioner after receipt of Rs.5,00,000/- as against the cheque amount of Rs.25,00,000/-. It is thus evident that there was indeed some controversy between the parties regarding the amount payable by the petitioner to the respondent no.2. In these circumstances, once the respondent no.2/complainant himself is satisfied with the amount received by him, the petitioner is entitled to some leniency specially since there is no minimum sentence provided under Section 138 of the Negotiable Instruments Act.

8. Accordingly, while upholding the conviction the petitioner under Section 138 of the Negotiable Instruments Act, the order on sentence dated 29th August, 2018 as passed by the learned Trial Court and upheld by the appellate court is modified and the petitioner is sentenced to remain in Court till the rising of the Court. The remaining sentence of the petitioner is waived subject to his paying costs of Rs.1,00,000/- to the

Delhi Police Martyr's Fund, A/c No.18200110036907, UCO Bank, Delhi, IFSC Code UCBA0001820 within four weeks from today.

9. The petition alongwith pending applications is disposed of in the aforesaid terms.

DECEMBER 11, 2018/aa

**(REKHA PALLI)
JUDGE**

