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

Date of Decision: 05.12.2018

+ **CRL.REV.P. 1061/2018**

VIJAY KUMAR PETITIONER
Through Mr.Tarun Gupta, Adv. with wife of
petitioner in person.

versus

ANIL KUMAR GUPTA & ANR RESPONDENT
Through Mr.Nitendra Kumar, Adv. for R-1.
Ms.Manjeet Arya, APP for the State.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

**Crl.M.A. No.48943/2018 (for treating the present Criminal
Revision Petition as Criminal Miscellaneous Case)**

1. The present application has been filed by the petitioner stating therein that in view of the settlement arrived at between the parties, he is seeking quashing of the complaint case and all consequential orders passed by the Courts below. He, therefore, prays that the present petition filed as a Criminal Revision Petition be treated as a Criminal Miscellaneous Case. Learned counsel for the petitioner submits that since he is not challenging the impugned orders on merits, the proceedings and the subsequent orders be quashed in view the settlement arrived at by the parties.

2. Issue notice. Mr.Nitender Kumar, Advocate accepts notice on behalf of respondent no.1 and Ms.Manjeet Arya, learned APP accepts

notice on behalf of respondent no.2/State and neither of them opposes the present application.

3. However, keeping in view the fact that the petitioner stands convicted by the courts below, even though he does not impugn the said orders of conviction on merits and confines his prayer to the reduction of the quantum of sentence, this Court cannot at this stage when the petitioner already stands convicted, quash the FIR proceedings on the basis of a settlement.

4. I find that the prayer sought by the petitioner seeks modification of the order on sentence as awarded by the Court below which can be considered only under revisional jurisdiction.

5. For the aforesaid reasons, the application is not maintainable and is accordingly dismissed.

CRL.REV.P. No.1061/2018

1. Vide the present petition, the petitioner seeks quashing/setting aside of the order of conviction dated 30th January, 2018 and order on sentence dated 18th April, 2018 passed by the learned Trial Court in CT Case No.466006/2016, holding the petitioner guilty under Section 138 of the Negotiable Instruments Act and convicting him to undergo simple imprisonment for ten months and to pay a fine of Rs.3,00,000/- out of which Rs.2.95 lacs is to be paid to the complainant as compensation and Rs.5000/- is to be deposited in PM Relief Fund. In default of payment of fine, the petitioner was ordered to undergo simple imprisonment for a further period of six months and the fine was ordered to be recovered as per the provisions of Section 421 Cr.P.C. The petitioner also impugns the judgment dated 20th November, 2018 passed by the Appellate Court, dismissing his appeal

and upholding the orders passed by the learned Trial Court.

2. Learned counsel for the petitioner submits that the petitioner is closely related to the respondent no.1 and had requested him for financial help to purchase a “Tavera” old car bearing No.DL-IVB-5737. He submits that at the time of taking loan, the petitioner had no doubt undertaken to return the same within one year, but due to his financial problem, he could not do so and, therefore, issued a post dated cheque No.000006 dated 9th September, 2013 for a sum of Rs.2,00,000 but when the said cheque was presented for encashment, the same was dishonoured as the saving account of the petitioner from where the said cheque had been issued already stood closed. It is stated that the petitioner has been in custody for the last fifteen days. He submits that due to financial problems being faced by the petitioner, the matter could not be settled either before the learned Trial Court or before the learned Appellate Court. After the dismissal of his appeal on 20.11.2018 and the petitioner having been taken in custody on the very same date, his wife who is present in Court, borrowed money from her relatives and has paid the entire amount of Rs.2.95 lacs to the respondent no.2 and thereby settled the matter with the respondent no.1 by not only paying the principal amount but also the further amount as directed by the Courts below. He submits that the fine of Rs.5000/- has also been deposited with the Prime Minister’s Relief fund and therefore prays on instructions from the petitioner’s wife who is present in Court that he does not challenge the order of conviction passed by learned Trial Court as upheld by the learned Appellate Court but prays that keeping in view the subsequent settlement between the parties, the sentence of imprisonment awarded

to the petitioner be reduced to the period already undergone.

3. The petitioner's wife as also the respondent no.1 are present in Court and have been identified by the Investigating Officer. The respondent no.1 is also represented by a counsel. I have interacted with the respondent no.1 who states that he has entered into a settlement with the petitioner of his own free will and without any coercion. He states that keeping in view the fact that the petitioner is closely related to him and he has received his entire amount as directed by the Courts below, he does not oppose the petitioner's prayer for reduction of the sentence awarded to him.

4. Ms.Arya, learned APP also fairly does not oppose the said prayer made by learned counsel for the petitioner for reducing the sentence to the period already undergone.

5. I have carefully considered the submissions of the parties and perused the record. Though there is no doubt that the petitioner stands convicted and has been sentenced to ten months simple imprisonment by the Courts below, keeping in view the fact that there is no minimum sentence provided under Section 138 NI Act and the petitioner has already undergone fifteen days Simple Imprisonment as also the fact that the complaint case and the consequential convictions arose out of a private dispute between relatives which already stands amicably resolved and the entire amount along with fine as ordered by the learned Trial Court admittedly stands paid to the petitioner, in my considered opinion the prayer of petitioner deserves to be allowed and his sentence ought to be reduced to the period already undergone.

6. Accordingly, while upholding the conviction of the petitioner under Section 138 of NI Act order on sentence dated 18th April, 2018

as upheld by the Appellate Court, is modified and the sentence of the petitioner is reduced to the period already undergone. Unless, wanted in any other case, the petitioner be released forthwith.

7. The petition is disposed of in the aforesaid terms.

8. A copy of this order be sent forthwith to the concerned Jail Superintendent for compliance.

9. Dasti under signatures of Court Master.

(REKHA PALLI)
JUDGE

DECEMBER 05, 2018/aa