

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 222 of 2013

- Meghnath Nayak, S/o Parasram Nayak, Aged About 40 Years, R/o Village Rajpalpur, Thana - Basna, Distt. Mahasamund, Chhattisgarh

---- Applicant

Versus

1. Tejpal Singh @ Punni, S/o Inder Singh, Aged About 38 Years, R/o Village Basna, Thana - Basna, Distt. Mahasamund, Chhattisgarh
2. State of Chhattisgarh Through - The District Magistrate Mahasamund, District : Mahasamund, Chhattisgarh

---- Respondent

For Applicant	:	Shri Sunil Sahu, Adv.
For Respondent No.1	:	Shri Ravindra Sharma, Adv.
For Respondent/State	:	Shri Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Order On Board

12.07.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 23.03.2013 passed by the learned First Additional Sessions Judge, Mahasamund, District – Mahasamund, C.G. in Cr. Appeal No. 71/2012, whereby the learned appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Judicial Magistrate First Class, Saraipali, District – Mahasamund, vide its judgment dated 23.08.2012 in Cr. Complaint Case No. 172/2005 for the offence under Section 138 of the Negotiable Instrument Act and sentenced him to undergo RI for six months and to pay fine of Rs.10,000/-, with default stipulations.

2. Brief facts of the case are that the complainant/Respondent No.1

filed a complaint case against the applicant/accused with the averment that the applicant has obtained loan of Rs. 1,60,000/-, from the complainant, for the purpose of marriage of his relative and he has given a cheque of Bilaspur Raipur Kshetriya Gramin Bank Branch Basnam for repayment of the loan, which has been dishonored due to insufficient fund in the account of the applicant/accused. Thereafter, a report was lodged against the applicant in the police station by the complainant. After completion of investigation, charge-sheet was filed and charges were framed against the accused/applicant under Section 138 of the Negotiable Instrument Act by the trial Court.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 03 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 23.08.2012, learned Judicial Magistrate First Class has convicted the accused/applicant under Section 138 of the Negotiable Instrument Act and sentenced him to undergo RI for six months and to pay fine of Rs.10,000/-, with default stipulations. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as far as it relates to the conviction part of the judgment and

would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2004 and thereby about 15 years have rolled by since then, he is aged about 50 years, the applicant has already remained in jail for about more than 10 days and no useful purpose would be served in again sending him to jail. Therefore, it would be appropriate in the interest of justice if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the respondents has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses including Complainant Tejpal Singh (PW-1), Shobha Prakash Das (PW-2) and Rajendra Prasad Tiwari (PW-3) established the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section 138 of the Negotiable Instrument Act and sentenced him to undergo RI for six months and to pay fine of Rs.10,000/- being so it is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2004 and further that the applicant has already remained in jail for about more than 10 days, no useful purpose would be served in again sending him to jail at this stage and the ends of justice would serve if he is sentenced to the period already undergone by him with a direction to pay additional fine of Rs.15000/-.

10. In view of the above, the revision is partly allowed. While maintaining the conviction of the applicant, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay

an additional fine of Rs.15000/- within six months from today, failing which he shall have to undergo RI for two months. The fine amount so deposited by the applicant before the Trial Court be paid to the complainant Tejpal Singh @ Punni, after due verification by the trial Court. The applicant is reported to be on bail. His bail bond shall stand discharge.

yasmin

Sd/-
(Rajani Dubey)
Judge