

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 375 of 2014****Order Reserved on 09/05/2019****Order delivered on 08/07/2019**

Gyaneshwar Namdeo S/o Namdeo Maruti Bhagat, Aged about 54 years, R/o A-263, Vasant Vihar Colony, Bilaspur Tahsil and Civil & Rev. Distt. Bilaspur (C.G.)

--- Applicant**Versus**

M/s Sonwane Constructions Through Its Proprietor Lakhan Bhojraj Sonwane 34 Shree Apartment, Jal Vihar Colony, T-point, Hingana Road, Nagpur, Police Station Ranapratap Nagar, (Sahar Vibhag), Nagpur (M.H.)

---- Respondent

For Applicant	:	Mr. Ravi Ranjan Sinha, Advocate.
For Respondents	:	Mr. Rajat Agrawal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**CAV Order**

1. Vide judgment dated 25/01/2012 passed in Criminal Case No. 382/2010, the learned Judicial Magistrate First Class, Bilaspur has convicted the Respondent herein for the offence punishable under Section 138 of the Negotiable Instrument Act and sentenced him to undergo SI for 1 year and to pay fine compensation of Rs. 1,00,000/- with default stipulation. However, in appeal the learned Appellate Court i.e. Fourth Additional Sessions Judge to the Court of First Additional Sessions Judge, Bilaspur vide judgment dated 07/09/2012 passed in Criminal Appeal No. 60/2012 affirmed the conviction of the Respondent, but reduced the jail sentence from SI 1 year to till rising of the Court. Thus, being aggrieved by the said

order, this revision has been filed by the Applicant/Complainant.

2. Facts of the case are that the Applicant/Complainant had signed an agreement with the Respondent for purchase of a flat that was proposed to be constructed at Nagpur. The Applicant had given two cheques of Rs. 1,00,000/- and Rs. 50,000/- to the Respondent. As per condition of the agreement, the Respondent had to handover the possession of the flat to the Applicant by December, 2006. Since, the Respondent had not handed over the Flat to the Applicant on due date, therefore, another agreement was signed between both the parties. As per new agreement, the Respondent had to give possession of the said flat to the Applicant on 31/12/2007, however, the Respondent once again failed to deliver the possession of the said flat. Therefore, the Applicant demanded his money back and on such demand, the Respondent had given three cheques of Rs. 50,000/- each. He deposited the said cheques for encashment on 30/04/2008 and on 28/04/2008, the cheques were returned with remark of insufficient fund. Subsequently, a legal notice was issued on 20/05/2008 to the Respondent, but despite of that the amount was not given by the Respondent to the Complainant. Thereafter, a complaint under Section 138 of the Negotiable Instrument Act was filed before the Judicial Magistrate First Class, Bilaspur. After perusal of record and consideration of evidence, the learned Trial Court has convicted the Respondent under Section 138 of Negotiable Instrument Act and sentenced to undergo SI for 1 year and to pay compensation of Rs. 1,00,000/-. Thereafter, in an appeal preferred before the Additional Sessions Judge, Bilaspur, the Appellate Court also affirmed the judgment of conviction, however,

quashed the sentence of SI 1 year and affirmed the compensation amount vide order dated 07/09/2012 passed in Criminal Appeal No. 60/2012. Being aggrieved with the said order, the Applicant/ Complainant filed a revision before this High Court and the High Court vide order dated 11/12/2013 remitted back the matter with a direction to decide the matter afresh in accordance with law. Thereafter, vide impugned order dated 14/04/2014, the learned Additional Sessions Judge again affirmed the conviction of the Respondent and passed the judgment as mentioned in paragraph one of this order. Thus, this revision.

3. Learned counsel for the Applicant submits that the judgment finding and order of imprisonment till rising of the Court is illegal, improper and incorrect and thus liable to be set-aside. He further submits that the learned Sessions Judge mis-appreciated the intent of Hon'ble High Court and evidence on record and has erred to an erroneous finding. He further submits that reducing the simple imprisonment of 1 year to till rising of the Court for an offence under Section 138 of the N.I. Act will be defeated the very purpose of making the offence punitive. He prays that the judgment of the Sessions Judge may be set-aside.
4. Learned counsel for the Respondent supported the impugned judgment of the Appellate Court. He further submits that while passing the sentence, the learned Appellate Court has considered the fact that the Respondent appeared before the said Court regularly and during pendency of the appeal and has already paid the compensation amount, therefore, the Appellate Court has reduced the sentence of SI for 1 year to till rising of the Court, which looking to the circumstances is proper.

5. I have heard counsel for the parties and perused the record.
6. At earlier round of litigation in Criminal Revision No. 663/2012, it was observed by this Court that the Appellate Court has neither affirmed, modified or reduced the sentence imposed nor proceeded under the provisions of the Probation of Offenders Act, 1958 and thereby the Appellate Court has committed illegality. For this reason, the judgment dated 07/09/2012 passed by the Appellate Court was quashed and the matter was remitted back to the Appellate Court for deciding the case in accordance with law. From perusal of the impugned judgment passed by the Appellate Court, it is clear that the learned Sessions Judge has affirmed the conviction and reduced the sentence of SI for 1 year to till rising of the Court. The Appellate Court has given the proper reasons for that purpose and has exercised its discretionary power while passing the said order. Thus, the finding in this regard is in accordance with law and there is no illegality and infirmity in the same.
7. For the foregoing reasons, I do not find any merit in this revision. The revision is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge