

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 301 of 2005**

- Sanjay Choudhary S/o Jagdish choudhary, Aged about 48 years, R/o Kotdi Bazar, Akila (Maharashtra)-Partner of Mukul Enterprises.

---- Applicant**Versus**

- Laxman Das Laxman Das S/o Jiyandram, Aged about 42 years- Proprietor of Laxman Poha Mill, Lakholi Road, Lakholi, Rajnandgaon (C.G.)

---- Respondent

For Applicant	:	Mr. H. P. Agrawal, Advocate.
For Respondent	:	Mr. Wasim Miyan, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****26.08.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 11.07.2005 passed by the learned Additional Sessions Judge, Rajnandgaon, in Cr. Appeal No. 133/2003 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Rajnandgaon, vide its judgment dated 24.11.2003 in Criminal Case No. 802/2002 for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo R.I. for one year with fine of Rs. 5000/-, plus default stipulation.

2. Brief facts of the case are that the complainant Laxman Poha Mill filed a complaint under section 138 of Negotiable Instruments Act on this ground that accused/applicant gave a cheque of Rs. 38,840/- on 10.07.1997, which was returned by the bank saying that there was no signature of the other partner. A notice was given to the accused/applicant and thereafter, a complaint case filed against the applicant/accused. Charges were framed against accused/applicant under Sections 138 of Negotiable Instruments Act.

3. So as to hold the accused/applicant guilty, the complainant has examined as many as 2 witnesses. Statement of the accused/applicant was

also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 24.11.2003, learned Judicial Magistrate has convicted and sentenced the accused/applicant for the offence punishable under Section 138 of NI Act and sentenced him to undergo R.I. for one year and to pay fine of Rs. 5,000/-, with default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the appellant. Hence, the present revision.

5. Learned Counsel for the applicant submits that the Courts below have failed to see that the basic ingredients of Section 138 of NI Act are missing from the present case. The notice was not given in time and thereafter even the complaint has not been filed within the limitation as prescribed under the law. The signature of the applicant has not been recorded by the complainant. Complainant has falsely implicated the applicant. He further submits that, the incident is said to have taken place in the year 1997, and thereby more than 22 years have rolled by since then. The applicant is aged about 60 years and he has already remained in jail for more than 7 days, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

6. Learned counsel for the respondent has no objection to this proposition.

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

8. Having gone through the material on record and the evidence of the complainant witnesses Laxman Das (PW-1) and Kamal Jeet Khanna (PW-2), 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 Courts below as regards conviction of the applicant under Section 138 of NI Act being so it is hereby maintained.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 1997, and further that the appellant had already remained in

jail for about 7 days, no useful purpose would be served in again sending him to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him with a direction to pay additional fine of Rs. 10,000/-.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him. However, he is directed to pay an additional fine of Rs. 10,000/- within eight months from today, failing which he shall have to undergo RI for two months. The fine amount of (Rs. 10,000/-) so deposited by the applicant before the trial Court be paid to the complainant, after due verification by the trial Court. The applicant is on bail. His bail bond shall stand discharged.

**Sd/-
(Rajani Dubey)
JUDGE**