

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 860 of 2017**

Order Reserved on : 24/07/2019

Order Delivered on : 30/08/2019

- Ajay Kumar, son of Brijmohan Agrawal, Proprietor Ajay Tractor, aged about 41 years, R/o Danipara Raigarh, Tahsil & District – Raigarh.

----Petitioner**Versus**

- Agni Kumar Nayak, S/o Mukund Nayak, aged about 50 years, R/o Bade Jampali, Post Office – Jampali, District – Raigarh (C.G.)
- State of Chhattisgarh, Through District Magistrate Raigarh, District Raigarh (C.G.)

---- Respondent.

For Petitioner	:	Shri Priyank Rathi, Adv.
For Respondent No.1	:	Shri Abhishek Saraf, Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****30/08/2019**

01. Present revision is directed against the impugned order dated 18.08.2017 passed in Criminal Appeal No.29/2017 by learned 2nd Additional Sessions Judge, Raigarh, whereby the appeal preferred by the applicant for enhancement of sentence and punishment against the order dated 31.01.2017 passed in Criminal Case No.58/2004 by the learned Judicial Magistrate First Class, has been rejected.

02. Brief facts of the case are that the respondent No.1 (accused) had purchased two Mahindra Gujarat Tractors and hydraulic trolley amounting to Rs.10,00,000/- (Rs. Ten Lac only) against credit invoice No.A/01 and A/02 dated 28.02.2004 and received the delivery of the same after voluntary accepting and signing the conditions of credit invoice to the satisfaction of the authorised dealer (the applicant) in presence of the power of attorney holder of the applicant namely Brijmohan Agrawal and for discharging the loan amount, issue a cheque bearing No.961481 dated 25.08.2004 amounting to Rs.10,00,000/- (Rs. Ten Lac only) of State Bank of India main Branch Raigarh in favour of applicant/complainant against the principal sum and executed a consent letter. Further case of the prosecution is that when the applicant submitted a cheque before his banker, the same got dishonored on account of insufficient fund. The applicant, through his advocate, sent a legal notice informing about the dishonor of cheque and asked for the outstanding amount but the respondent No.1 (accused) did not repay the amount, hence, the applicant/complainant filed a complaint against accused/respondent No.1.

03. The learned trial Court, by the judgment and order dated 31.01.2017, convicted the respondent No.1 under Section 138 of the Negotiable Instrument Act and sentenced him to undergo 30 days imprisonment and also directed the accused/respondent No.1 herein to pay compensation of

Rs.10,90,000/- to the applicant. The applicant filed an appeal for enhancement of conviction and fine amount but the learned Appellate Court rejected his appeal and affirmed the conviction and sentence passed by the learned trial Court. Hence, this revision.

04. Learned counsel for the applicant submits that both the Courts below failed to consider the provisions of Negotiable Instrument Act and awarded the sentence, which is on lesser side. He further submits that the offence under Section 138 of the Negotiable Instrument Act has been intentionally committed by the respondent No.1 making him liable for much severe punishment. Both the Courts below erred in not awarding appropriate sentence in the matter where the respondent No.1 fraudulently not only committed the act of offence under Section 138 of Negotiable Instrument Act but also his act amounts to cheat and fraud. He also submits that the complaint against respondent No.1 has been filed so early, which remained pending for last several years and then present order has been passed which is highly improper. Both the Courts below failed to consider that the transaction between the applicant and accused/respondent No.1 was more than 13 years old and the loan was pending since then, which has not been paid deliberately by respondent No.1. Next submission of learned counsel for the applicant is that the provision of Section 138 N.I. Act wherein the punishment as provided is for imprisonment of a term which may extend to

two years or with fine which may extend to twice the amount of cheque or with both, which itself shows the intention of legislature in drafting strict provision of law, but the Courts below erred in appreciating the provision of compensation under Section 357 (3) of Cr.P.C. and passed the impugned judgment of conviction and order of sentence. He also submits that both the Courts below have failed to appreciate part of delay accrued from the date of loan to the date of realization of amount. It is settled position of law that the provisos of Chapter XVII of the Act strongly lean towards grant of reimbursement of loss by way of compensation and in all cases of conviction, uniformly the power is to be exercised in awarding fine twice the cheque amount and simple interest thereon and same should be awarded as compensation. Therefore, the punishment as awarded by the learned trial Courts be suitably enhanced in terms of Section 138 of Negotiable Instrument Act. In support of his contention, he placed reliance on the decision of Hon'ble Supreme Court in the matter of **H Pukhraj V. D Parasmal**¹ and **Suganthi Suresh Kumar V. Jagdeeshan**².

05. Learned counsel for respondent No.1 supporting the impugned order submits that respondent No.1 has undergone whole sentence and proceeding for attachment of his property is going on before the learned trial Court and he is not in a position to pay fine amount of Rs.10,90,000/-.

1 2014 LawSuit(SC) 938

2 (2002) 2 SCC 420

06. I have heard learned counsel for the parties and perused the material on record.

07. The Hon'ble Supreme Court in the matter of **Suganthi (supra)**, held that the imprisonment till rising of court and fine of Rs.5000/- would not be justifiable when the amount (over 4 lakh) had not been paid by accused to complainant during pendency of the case before trial Court or High Court. Further in **H. Pukhraj (supra)**, it has been held by Hon'ble Supreme Court that High Court cannot award flea-bite sentence to direct the accused either to pay compensation of Rs.2 Lakh or to undergo imprisonment for two months, in case of cheque amount of Rs.6.19 lakhs returned back without being encased.

08. In the case in hand, the amount covered by cheque is of Rs.10,00,000/-. The applicant/complainant had filed a complaint case before the learned trial Court on 25.10.2004 and the order was passed on 31.01.2017 i.e. after 13 years and during pendency of the case, the accused/respondent No.1 did not pay this amount before the trial Magistrate or before Appellate Court and recovery proceeding is still pending before the learned trial Court. Certified copies of order sheets of recovery proceeding have also been filed in this case. The trial Magistrate, after more than 13 years, only sentenced 30 days imprisonment and directed the accused/respondent No.1 to pay compensation of Rs.10,90,000/-, though, the cheque amount in this case is

over 10,00,000/-, which shows that the trial Court awarded flea-bite sentence.

09. Thus, in view of the aforesaid discussion and applying the principles of law laid down in **Suganth (Supra)** and **H Pukhraj (Supra)** to the facts of the present case, the impugned order needs to be modified. Hence, this Court sentence the accused/respondent No.1 to undergone simple imprisonment of 30 days for offence under Section 138 of the NI Act, which he has already undergone. Considering the fact that the cheque amount is Rs.10,00,000 (Rs. Ten Lakh only), it is directed that the accused/respondent No.1 to pay compensation of Rs.16,00,000/- (Rs. Sixteen Lakh only) to the applicant. In default of payment of compensation, the accused/respondent No.1 will have to undergo S.I. for six months.

10. The revision is thus allowed.

Sd/-

(Rajani Dubey)

JUDGE