

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1111 of 2019

Satish Kumar Agrawal, S/o. Late Shri Bhagat Narayan Agrawal, Aged About 64 Years, (Now 69 Years), R/o. K.K. Ward, Bhatapara, Police Station and Tahsil Bhatapara (City), District Baloda Bazaar Bhatapara Chhattisgarh.

---- Applicant

Versus

Manmahendra Chawla, S/o. Shri Kalyan Singh Chawla, Aged About 47 Years, R/o. Hatri Bazaar, Bhatapara, Police Station and Tehsil Bhatapara (City), District Baloda Bazaar Bhatapara Chhattisgarh.

-----Respondent

For Applicant	: Mr. Surfaraj Khan, Advocate
For Respondent	: Mr. Sumit Singh Rathore & Mr. Rahul Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/12/2019

1. This revision petition has been brought challenging the legality, propriety and correctness of the judgment dated 09.08.2019, passed in Criminal Appeal No.H-39/2018, by the learned Additional Sessions Judge, Bhatapara, District – Baloda Bazar – Bhatapara (C.G.), in which the sentence of imprisonment imposed upon the respondent by the trial Court has been reduced to the period already undergone in detention and enhanced the compensation only of Rs.10,000/-.
2. It is submitted by the learned counsel for the applicant that on complaint filed by the applicant against the respondent, the learned

trial Court has found the respondent guilty for commission of offence under Section 138 of Negotiable Instrument act, which has also been upheld by the learned appellate Court. The learned trial Court imposed sentence of four months simple imprisonment and also ordered for payment of compensation of Rs.1.00 lakh to the applicant under Section 357 (3) of Cr.P.C., against which an appeal was preferred by the respondent. The appellate Court has though reduced the sentence of imprisonment, but has not enhanced the compensation sufficiently as it would have been appropriate.

3. It is further submitted that the incident of dishonor of cheque is of the year 2012, therefore, the respondent has enjoyed the fruits of that amount for about almost 8 years without paying any interest on the same. The applicant has suffered harassment and also financial burden to prosecute complaint, then appeal and then this revision petition. Therefore, he has entitlement to receive compensation to suit the suffering he has undergone. Relied on the judgment of Coordinate Bench of this Court in case of **Ajay Kumar Vs. Agni Kumar Nayak**, passed in **Cr.R. No.860 of 2017** decided on **30.08.2019**, it is submitted that in this case Coordinate Bench has placed reliance on the judgment of Supreme Court in **H. Pukhraj Vs. D. Parasmal**, reported in **2014 LawSuit (SC) 938**, in which the Supreme Court has held that in such cases the Court should not award flea-bite sentence to the accused. Hence it is prayed that, even if the sentence of imprisonment is not enhanced at least, the order of compensation part be enhanced sufficiently.

4. Counsel for the respondent submits that respondent has already complied with the order by the appellate Court. Respondent is suffering hardship because of loss of business and he is not a man of means, therefore, any enhancement in the order of compensation against him, will cause further hardship upon him. Therefore, it is prayed that the revision petition be dismissed.
5. I have heard the learned counsel for both the parties and perused the documents placed on record.
6. As the revision petition has been brought only on the point of quantum of compensation, therefore, there appears to be no challenge against the conviction of the respondent under Section 138 of Negotiable Instrument Act. This provision provides for punishment in three parts. Firstly, sentence of imprisonment. Secondly by imposing fine, which may be double the amount of cheque and thirdly when the Court does not find it sufficient to punish the accused only with sentence of fine or with the imprisonment, the Court can punish the accused on both counts.
7. Learned trial Court has considered and imposed punishment upon the respondent on both kind with sentence of imprisonment as well as sentence of fine. The appellate Court has though considered and reduced the sentence of imprisonment against the respondent, but the order for compensation has been enhanced only of Rs.10,000/-, which does not appear to be justified with reduction of sentence of imprisonment. As a ordinary practice, if the, sentence of imprisonment is reduced, usually the sentence of fine is enhanced. In this case there is no sentence of fine but there is order of

compensation under Section 357 of Cr.P.C., therefore, learned appellate Court should have considered of enhancing the compensation sufficiently in favour of the applicant keeping in view the length of time during which the applicant has prosecuted the respondent for the relief for which he has been found entitled by both the Courts below. Therefore, I am of this view that the learned Court below has not enhanced the compensation as it was required in this case, therefore, I feel inclined to allow this revision with modification.

8. Accordingly, the revision is allowed. The sentence of imprisonment as ordered by the appellate court is upheld, however, the compensation as ordered by the appellate Court is further enhanced to Rs.1,50,000/-. As it is informed that respondent has already paid Rs.1,10,000/- in the Court below, therefore, the respondent is now required to make deposit remainder enhanced amount within a period of 30 days. In case of non-payment of enhanced amount, the applicant shall be required to under go simple imprisonment of one month.
9. Accordingly, the revision petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge