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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27.08.2019

+ CRL.REV.P. 272/2019 and CRL.M.A. 5131/2019

IMRAN

..... Petitioner

Through: Mr. Mohammad Sajid and Mr. Arun
Saxena, Advs.

versus

STATE (NCT) OF DELHI & ANR

..... Respondents

Through: Mr. Hirein Sharma, APP for State.
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 34359/2019

1. Vide the present application, the applicant seeks direction thereby to waive of the costs liable to be paid by the petitioner to the Delhi State Legal Services Authority.
2. It is stated in the application that the applicant is a poor person whose monthly income is less than ₹7000/- . He is the only bread-earner of the family and driving auto rickshaw. The petitioner is the only person in the entire family to look after the needs of the family members which includes his wife who is suffering from several diseases, his mother and two school going children. It is further submitted that due to the execution of the sentence, awarded to the petitioner, his entire family has already suffered for

no fault of theirs. To this effect, the medical documents of the wife of the petitioner are annexed herewith as Annexure-P9 (Colly).

3. The respondent No.2/complainant is present in Court. He has no objection if the present application is allowed.

4. In case of *Damodar S. Prabhu vs. Sayed Babalal H: (2010) 5 SCC 663*, the Hon'ble Supreme court considered the case of *M P State Legal Services Authority vs. Prateek Jain: [2014 (10) Scale 407]* and held that it is the discretion of the competent authority to reduce the cost in certain cases, where the circumstances demands so.

5. Accordingly, considering the financial condition of the applicant, this Court hereby waive off the amount to be paid to the Delhi State Legal Services Authority by the applicant, in view of the judgment of Hon'ble Supreme Court in *Damodar S. Prabhu (Supra)*.

6. Application is allowed and disposed of.

CRL.REV.P. 272/2019

7. Vide the present petition, the petitioner seeks direction thereby setting aside the order dated 28.01.2019 passed by the learned ASJ in Criminal Appeal no. 267/2018 titled as "*Imran vs. Charan Sethi*" and also set aside the judgment/order on sentence dated 29.05.2018 passed by learned

Metropolitan Magistrate (Central) 01 in complaint case No. 2870/2015 titled as "*Charan Sethi vs. Imran*" under Section 138 of the Negotiable Instrument Act, 1882, consequently, acquit the petitioner in the complaint case No. 2870/2015.

8. A criminal complaint under section 138 NI Act bearing no.2817/2015 was filed by the respondent no.2/complainant stating therein that petitioner had taken a friendly loan of ₹3,75,000/- (Three Lakhs Seventy Five thousand only) from the respondent no.2. But allegedly the petitioner failed to repay the loan amount within the stipulated period, however, the petitioner issued a cheque bearing no.002889 dated 15.09.2013 drawn on HDFC bank for an amount of ₹3,75,000/- (Three Lakhs Seventy Five thousand only). When the respondent no.2 presented the cheque in his bank account, the said cheque was dishonoured with remarks "*funds insufficient*" vide return memo dated 10.10.2013.

9. Accordingly, after going through the statutory procedure, the respondent No. 2 filed a complaint case under Section 138 of the Negotiable Instrument Act in which the petitioner was convicted by the trial Court.

10. Learned counsel appearing on behalf of the petitioner submits that on 28.06.2018, the petitioner preferred an appeal against the order of conviction

dated 23.05.2018 and order on sentence dated 29.05.2018. The said appeal filed by the petitioner was dismissed by the Ld. Sessions court vide its order dated 28.01.2019 and presently the petitioner was in custody since 18.02.2019.

11. Learned counsel further submits that the petitioner has paid the amount of ₹3,75,000/- to the respondent No.2/complainant which he accepted without any protest.

12. Respondent No.2/complainant is personally present in Court and submits that the petitioner is a poor person and he has paid the amount of ₹3,75,000/- which has been accepted and prayed before this Court that the present petition be allowed.

13. Keeping in view the dictum of the Hon'ble Supreme Court in *Damodar S. Prabhu vs Sayed Babalal H: (2010) 5 SCC 663*, I hereby set aside the order on conviction and sentence and consequently, the petitioner is acquitted from the charges mentioned above.

14. Petition is accordingly allowed.

15. Pending application is also disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 27, 2019/PB