

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 533 of 2006

Mahesh Kumar Sharma, aged about 52 years, S/o Ramanand Sharma, House No.183, resident of Jawahar Nagar Durg, Chhattisgarh.

---- Applicant

Versus

1. Ram Sewak, S/o Koduram, aged about 60 years, resident of Aditya Nagar, Housing Board Colony, House No.CH 110, Tituridh, Durg, Tahsil and District Durg, Chhattisgarh. (**Died**)

2. State of Chhattisgarh

--- Respondent/s

For Applicant : Mr. Praveen Dhurandhar on behalf of Mr. N.S. Dhurandhar, Advocate.

For Respondent : Mr. Anand Verma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

26.11.2020

Being cordially related to each other, the complainant Ramsewak is said to have given Rs.30,000/- to the accused/applicant on credit for meeting out business related expenses. The accused/applicant is also said to have made a promise to the complainant for returning the money within 2-3 months therefrom. When the period promised rolled by without any payment received from the accused, the complainant contacted him, on which the accused gave him a cheque No.548832 dated 10.07.2003 of Jila Sahkari Kendriya Bank, Durg (Chhattisgarh) (Ex.P-1) which he presented for encashment on 11.08.2003 vide Ex.P-2 in Dena Bank where he was having the account. On 19.08.2003 the said cheque got dishonoured for insufficient funds vide Ex.P-3, intimation to this effect was given to the applicant on 22.08.2003 under Ex.P-4. Subsequently, on 03.09.2003 the complainant issued a registered notice (Ex.P-5) through registered post under receipt Ex.P-6 and acknowledgment thereof was received by him on 05.05.2009 which is evident from Ex.P-7. However,

when the accused/applicant did not respond to the legal notice nor made payment, the complainant filed a complaint duly supported by the affidavit.

2. Learned Magistrate vide judgment dated 17.03.2006 passed in Criminal Case No.904/2003 found the accused/applicant guilty under Section 138 of the Negotiable Instrument Act and imposed the sentence of 6 months RI with fine of Rs.5000/-. On appeal also the findings recorded by the learned Magistrate came to be confirmed vide judgment impugned dated 30.08.2006 passed in Criminal Appeal No.51/2006. Hence this revision.

3. Learned counsel for the accused/applicant at the threshold made a submission that he is not pressing the conviction part of the judgment impugned and would confine his prayer to the sentence part of the judgment impugned only. He submits that taking a sympathetic view the sentence imposed on the applicant may be reduced to the period already undergone. State counsel however assisted this Court.

4. From the correspondence made by the SHO, Police Station Mohan Nagar, Durg the complainant Ram Sewak is reported to have expired on 05.12.2012. This fact is taken on record.

5. Though a prayer has been made on behalf of the accused/applicant regarding reduction of sentence to the period already undergone only, this Court is required to look into the case on merit also.

6. From the evidence of the complainant and two bank officials examined by him it is manifest that the accused/applicant had issued a cheque of Rs.30,000/- to the complainant which however remained dishonoured on presentation by him in the bank. The factum of issuance of cheque and then getting dishonoured for insufficient funds

has been duly supported by all the witnesses in categorical terms. Mere technical lacuna as regards mismatch of cheque number at some places and absence of date on the complaint, does not make any difference because the complainant admittedly being a rustic villager is not suppose to be aware of such niceties. Even no denial has been put by the accused regarding issuance of cheque to the complainant. The evidence clearly speaks about the foul play on the part of the accused/applicant and therefore, there is no error in concurrent findings recorded by both the Courts below holding him guilty under Section 138 of Negotiable Instrument Act. The conviction is hereby maintained.

7. However, looking to the facts and circumstances of the case, the sentence is reduced to the period already undergone by the accused/applicant by enhancing the fine amount by another Rs.5000/-. To clarify, this amount would be in addition to the one imposed by the Courts below.

8. Revision is thus allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge