

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved dated- 27.01.2020
Order delivered dated- 20.05.2020
CRR No.633 of 2019

1. Akhilesh Pathak, S/o Kanti Kumar, aged about 43 years, R/o Village Nawagaon, P.S.-Pandatarai, Tahsil-Pandariya, District-Kabirdham, Chhattisgarh.

---Applicant

2. Hiramani Chandravanshi. S/o Late Ramsharan Chandrawanshi, aged about 40 years, R/o Raitapara, P.S.-Pandatarai, Tahsil-Pandariya, District-Kabirdham, Chhattisgarh

---- Respondent

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CRR No.347 of 2019

1. Hiramani Chandravanshi. S/o Late Ramsharan Chandrawanshi, aged about 40 years, R/o village-Raitapara, P.S.-Pandatarai, Tahsil-Pandariya, District-Kabirdham, Chhattisgarh

---Applicant

2. Akhilesh Pathak, S/o Kanti Kumar, aged about 43 years, R/o Village Nawagaon, P.S.-Pandatarai, Tahsil-Pandariya, District-Kabirdham, Chhattisgarh.

---- Respondent

<u>For Applicant</u>	:Mr. Dev Ashish Biswas, Advocate in CRR No.633/2019 & for respondent in CRR No.347/2019.
<u>For Respondent</u>	:Mr Badruddin Khan, Advocate in CRR No.633/2019 & for applicant in CRR No.347/2019

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

20/05/2020

1. As the above two revision petitions arise out of the judgment dated 23.2.2019 passed by the learned Additional Sessions Judge (FTC), Kabirdham in Criminal Appeal No.111/2018, therefore, the same are being decided by this common order.

2. For the sake of convenience, applicant-Akhilesh Prasad in CRR No.633/2019 shall be referred hereinafter as 'the applicant', whereas respondent-Hiramani Chandrawanshi, who is applicant in CRR No.347/2019, shall be referred hereinafter as 'the respondent' in this order.

3. Applicant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of IPC against the respondent. The trial Court convicted the respondent under Section 138 of the Act and sentenced him to undergo simple imprisonment for 6 months and to pay fine of Rs.5,000/-, with usual default stipulation. Against the judgment of conviction and sentence, the applicant preferred an appeal being Criminal Appeal No.111/2018 before the appellate Court and the same was dismissed vide impugned judgment upholding conviction and sentence of applicant.

4. Learned counsel for applicant in CRR No.633/2019 submits, that respondent had issued a cheque of Rs.6 lakhs in favor of the applicant on account of his liability to make such payment to the applicant. The learned trial Court as well as the appellate Court both have committed error by not imposing fine sentence upon the respondent i.e. double the amount of dishonored cheque, and as such, the applicant has not at all been compensated. It is submitted that in the case of **H. Pushraj v. D. Parasmal**, reported in **(2015) 17 SCC 368** the Supreme Court has held that order of making payment of compensation is for practical and realistic purpose so that the amount covered by the cheque, which has been dishonored, is restored to the complainant. In that case the accused was liable to pay a sum of Rs.6,19,482/- and the Supreme Court has ordered to pay

compensation of Rs.10 lakhs. In another judgment passed by Supreme Court in **Rohitbhai Jivan Lal Patel v. State of Gujrat & another**, reported in **(2019) Cri.LJ 2400** the Supreme Court has held and ordered similarly. Therefore, the impugned judgment suffers from infirmity which may be corrected in this revision by enhancing sentence of imprisonment as well as fine against the respondent.

5. Learned counsel for respondent opposed the petition and submissions made in this respect. It is submitted that firstly, the complainant had failed to prove his case beyond reasonable doubt. It was the defence of the respondent that firstly, he had not given any cheque to the applicant and secondly, that he had given one unsigned blank cheque to his brother-in-law which might have been handed over to the applicant, who after forging signature of respondent on the said cheque, presented the same for encashment and thereafter misused for prosecuting the respondent. In support of this defence, the respondent had examined his brother-in-law. The trial Court and the appellate Court both have not appreciated this evidence and passed erroneous judgment of conviction against the respondent. The respondent had also taken a defence that he has already returned the amount of Rs.3 lakhs but the cheque that was given towards security to the applicant was not returned to him.

Reliance has been placed on the judgment delivered in the matter of **Jagdish v. Satya Narayan, reported in (2009) 4 BC 74** wherein learned Single Judge of High Court, in similar circumstances, has held that the documents on which the complainant had relied are unbelievable. Reliance has also been placed on the judgment of Madras High Court dated 21.6.2019 passed in Second Appeal No.740/2015, parties being Mrs. M. Mallika v. Mr. Kasi Pillai, wherein it has been held that any material alteration made in the cheque renders the same void in accordance with Section 87 of the NI Act. The facts of this case are also similar, therefore, the trial Court as well as appellate Court both should have disbelieved the complainant's case. The respondent has also advanced similar arguments in CRR No.347 of 2019 and prayed for acquittal of respondent of the charge.

6. In alternative, it is also submitted that the sentence of imprisonment imposed upon respondent in this case was unnecessary and if this Court is not inclined to set aside the conviction, then the sentence of imprisonment may be set aside and the respondent is ready to pay the cheque amount as compensation.

7. Learned counsel for the applicant in Cr. Rev/ No.633 of 2019 rebuts the arguments advanced by the counsel for respondent in Cr. Rev. No.347 of 2019.

8. I have heard both the parties and perused the documents on record.

9. On perusal of the evidence brought by the applicant side in support of the complaint, the learned trial Court as well as the appellate Court both have held that Cheque bearing No.61831 dated 18.4.2016 for an amount of Rs.6 Lakh was issued by the respondent in favor of the applicant, which was presented to the banker but was dishonoured for insufficient funds. Statement of defence witness Lakshman Chandrawanshi has been appreciated and rejected by the trial Court and similar is the finding of the appellate Court. The applicant side brought specific evidence mentioning the description of the cheque etc., whereas the defence evidence is vague, in which defence witness Lakshman Chandrawanshi (DW-1) had stated that he has borrowed Rs.3 lakhs of the applicant and for the same had given a blank cheque to the applicant for security purpose. In the applicant evidence, applicant Akhilesh Pathak CW-1 himself has clearly denied all the suggestions made on this basis. A presumption is available to the holder of cheque under Section 139 of NI Act. Although the said presumption is rebuttable by bringing evidence to prove the contrary. To rebut such presumption, the evidence of defence should be of such nature which should inspire confidence of the Court. In the case at hand, the evidence of defence brought by the respondent side was not found convincing by both the Courts below. I am of this view that the trial Court as well as the appellate Court both have not committed any error in coming to the conclusion against the respondent.

10. On the basis of this observation and conclusion, no reason is found for interference in the conviction against the applicant under Section 138 of NI Act. However, another statement made by the

respondent is to be taken into consideration along with the prayer for enhancement of fine amount made by the applicant side.

11. In the matter of Kaushalya Devi Masand Vs. Roop Kishore reported in AIR 2011 SC 2566 the Supreme Court has held in Para No.9 that the offence under Section 138 of the N.I. Act is almost in the nature of civil wrong which has been given criminal overtone, and imposition of fine payable as compensation is sufficient to meet the ends of justice. The offence U/s 138 of NI Act is punishable with imprisonment or with fine or both. Thus, imprisonment is not compulsory in the discretion of the Court. Therefore, it is not necessary to impose sentence of imprisonment upon an accused convicted under Section 138 of NI Act, because it will not serve any purpose with respect to the complainant, who is otherwise entitled to be restored in the position which existed prior to transaction with the respondent along with sufficient compensation for the harassment, pain and hardship caused to him in litigation.

12. Hence, with these observations, it can be concluded that sentence of imprisonment or enhancing of the same is not going to serve any purpose, however, the order for payment of compensation to the applicant would certainly in the benefit of the applicant/complainant and also be a relief to the respondent side.

14. In conclusion, both the revision petitions [CRR No.633/2019 and CRR No.347/2019] are allowed in part. Conviction of respondent the under Section 138 of the NI Act is maintained but the sentence of imprisonment of 6 months and fine of Rs.5,000/- are set aside. The respondent is now ordered to pay a compensation of Rs. 7 lakhs to the applicant within a period of 2 months from today, in default of payment of compensation, the respondent shall undergo simple imprisonment for 6 months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge