

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved for Order on : 18.02.2020**

**Order Passed on : 20/05/2020**

**CR.R. No. 895 of 2019**

Fateh Singh Bhatia, S/o. Late Ranjit Singh, Aged About 55 Years, R/o. Barai Para, Police Station - City Kotwali, Durg, District - Durg Chhattisgarh.

**---- Applicant**

**Versus**

Shailendra Kumar Tandi, S/o. Nityanand Tandi, aged about 55 years, R/o. Qr. No. 13 - A, Street No. 26, Sector, 10, Bhilai, District - Durg Chhattisgarh.

**-----Respondent**

**AND**

**CR.R. No. 456 of 2019**

Shailendra Kumar Tandi, S/o. Nityanand Tandi, aged about 55 years, R/o. Quarter No. 13/A, Street No. 26, Sector-10, Bhilai Nagar, District- Durg, Chhattisgarh.

**---- Applicant**

**Versus**

Fateh Singh Bhatia, S/o. Late Ranjeet Singh Bhatia, aged about 52 years, R/o. Barai Para Durg, P.S. City Kotwali, Durg, Tehsil and District- Durg, Chhattisgarh.

**-----Respondent**

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| For Applicant<br>(in Cr.R.No.895/2019)  | : Mr. M.P.S. Bhatia, Advocate |
| For Respondent<br>(in Cr.R.No.895/2019) | : Mr. Anmol Sharma, Advocate  |
| For Applicant<br>(in Cr.R.No.456/2019)  | : Mr. Anmol Sharma, Advocate  |
| For Respondent<br>(in Cr.R.No.456/2019) | : Mr. M.P.S. Bhatia, Advocate |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**C A V ORDER**

**20/05/2020**

1. Both the revision petitions arises out of the common order, passed by the 7<sup>th</sup> Additional Sessions Judge, Durg in Criminal Appeal No. 82/2018 and Cr.A. No.74 of 2018 on 30.01.2019.
2. The applicant in Cr.R. No. 895/2019 is the respondent in Cr.R. No.456/2019 shall be referred to as the applicant and the respondent in Cr.R. No. 895/2019 is the applicant in Cr.R. No. 456/2019, shall be referred to as the respondent in this order.
3. Cr.R. No. 895/2019 has been brought by the applicant against the impugned order praying for enhancement of sentence against the respondent and Cr.R. No.456/2019 has been brought by the respondent praying for setting-aside the conviction against him and passed order of acquittal in his favour.
4. A complaint case was filed by the applicant – Fateh Singh Bhatia against respondent, which was registered as Complaint Case No.2702/2014, under Section 138 of the Negotiable Instrument Act. It was stated in the complaint that respondent had borrowed Rs.2,50,000/- from the applicant and for payment of same, he had issued cheque No. 603734 dated 03.03.2014 of Rs.2,50,000/- from his account in Indian Overseas Bank, Durg. The cheque was presented for payment on 04.03.2014, which was dishonored. Thereafter, legal notice was served upon the respondent. The complaint was filed by the applicant within time limit.

5. The learned trial Court has by the judgment dated 13.04.2018 convicted the respondent under Section 138 of the Negotiable Instrument Act and sentenced him with simple imprisonment of 2 months and fine of Rs.2,52,000/-.
6. The respondent filed Criminal Appeal No.74/2018 praying for acquittal and the applicant filed Criminal Appeal No. 82 of 2018 praying for enhancement of sentence.
7. Both the appeals were decided by the common order dated 30.01.2019. The Criminal Appeal No.82/2018 filed by the applicant was dismissed, however, the Criminal Appeal No. 74/2018 filed by the respondent was partly allowed, in which the sentence of simple imprisonment of two months was modified to sentence till rising of the Court and the fine of Rs.2,52,000/- was modified to compensation with default stipulations.
8. Counsel for the applicant in Cr.R. No. 895/2019 submits that the applicant has proved his case and therefore, there is a concurrent finding of the Courts below against the respondent that is guilty for commission of offence under Section 138 of the Negotiable Instrument Act. The trial Court has committed an error by not punishing the respondent with sufficient jail sentence and also the fine amount has not been imposed sufficiently, which could have been twice the amount of cheque. It is submitted that Section 117 of the Negotiable Instrument Act, 1881 provides for rules as to compensation that holder of the cheque is entitled for the amount of cheque as well as the expenses properly incurred in prosecuting a complaint case.

9. It is submitted that as there is specific provision present under Section 138 of the Negotiable Instrument Act to impose fine to the extent of double the amount of cheque, which could have been done accordingly. It is also submitted that there is no specific reason assigned for the reduction of the jail sentence of the respondent in the impugned judgment. Hence, on this basis, it is prayed that the revision petition be allowed and the respondent be sentence with sufficient punishment.
10. Counsel appearing for the respondent rebuts the arguments submitted in Cr.R. No.895/2019 and submits that the applicant had misused the cheque that was given for security of the loan. Respondent had obtained the loan from the applicant and he has also repaid the same in full. The applicant has not produced any documents regarding the loan transaction, so as to hold that the respondent had any liability to make payment of the same. It is also submitted that fine sentence imposed upon the respondent by the trial Court was improper. The Judicial Magistrate First Class is not empowered to impose fine of more than Rs.10,000/- as it is provided under Section 29 of the Code of Criminal Procedure. The grounds in defence raised by the respondent was not at all appreciated by the trial Court as well as by the appellate Court. Hence, the judgment of conviction and order of compensation by the appellate Court against the respondent both are unsustainable. Reliance has been placed on the judgment of Supreme Court in case of **Basalingappa Vs. Mudibasappa**, reported in **(2019) 5 SCC 418** and in case of **K. Subramani Vs. K. Damodara Naidu**,

reported in **(2015) 1 SCC 99**. It is prayed that the respondent be acquitted.

11. I have heard the learned counsel for both the parties and perused the documents placed on record.
12. It is admitted by the respondent that he had given a cheque to the applicant. The statement of the applicant that amount was borrowed by the respondent has been partly admitted by the respondent side. Similarly, the dishonor of cheque by the Bank is also not disputed in any manner.
13. The claim of the respondent that he had already repaid the amount borrowed and the cheque given was only for the purpose of security, which has been misused by the applicant is needed to be considered.
14. The applicant – Fateh Singh Bhatia (C.W.-1) has proved his case in his examination-in-chief and denied the suggestions given by the respondent and stated that respondent had obtained loan of Rs.2,50,000/- on 05.03.2013. He has also denied that he has received blank cheque from respondent. He has also denied other suggestions given in that respect. The question put by the defence that respondent had repaid the borrowed amount has been answered in denial.
15. Respondent Shailendra Kumar Tandi (D.W.-1) has stated in his examination-in-chief that on 22.08.2011, he has borrowed Rs.1,00,000/- from the applicant and it was at that time, he had earlier given him three blank cheques of SBI signed by him. On

subsequent date on demand made by the applicant, he had again given three blank cheques of Indian Overseas Bank to the applicant. He has stated that he has repaid the amount borrowed on 20.01.2014 with interest and on his demand blank cheques were not return to him. In cross-examination, he has denied the question put to him by the applicant side in support of the compliant case and admitted that he has not made any complaint to police regarding cheques being retained by the applicant and misused by him.

16. There is no other witnesses to support the claim made by the respondent. On the other hand, the evidence of the applicant is supported with documents i.e. the cheque and dishonor of the same. Hence, I am of this opinion that the learned trial Court as well as by the learned appellate Court has not committed any error in holding that respondent had liability to make payment of Rs.2,50,000/- to the applicant and in that respect he had drawn the cheque in favour of the applicant, which was dishonored. Therefore, the conviction against the respondent under Section 138 of the Negotiable Instrument Act is well founded.
17. Considered on the prayer made by the applicant in Cr.R. No.895 of 2019, whether there is any need of enhancement of sentence. It has been held in case of **Smt. Meena Bai Vs. Rameshvar Prasad Chauhan**, passed in **Cr.R. No. 583/2012 dated 18.09.2015**, that the purpose of complaint under Section 138 of Negotiable Instrument Act is not particularly to punish the person responsible for dishonor of cheque. On the contrary purpose is to realize the amount in cheque, therefore, the purpose of the applicant gets

served, when he is compensated sufficiently.

18. The amount of cheque was Rs.2,50,000/-, therefore, for this amount, the applicant had acquired entitlement. Further he had to prosecute the respondent and also spent time and money for the same, for which he is required to be further compensated, therefore, the amount of Rs.20,000/- would be sufficient to be paid as compensation apart from the amount of cheque in favour of the applicant.
19. As regards the revision petition filed by the respondent i.e. Cr.R. No.456/2019, I am of this view that it is without any substance. Hence, the revision petition No. 456 of 2019 is dismissed. The revision petition filed by the applicant Cr.R. No.895/2019 is allowed in part. Compensation ordered under Section 357 (3) of Cr.P.C. of Rs.2,52,000/- is enhanced to Rs.2,72,000/-. In default of payment of compensation amount, the applicant shall be required to under go simple imprisonment of six months.
20. Accordingly, both the revision petitions are disposed off.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge

Balram