

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

Date of decision: 10th DECEMBER, 2021

IN THE MATTER OF:

+ **CRL.REV.P. 13/2021 & CRL.M.A. 618/2021**

MOHD. AFTAB

..... Petitioner

Through Mr. R.S. Rathi, Advocate.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR. Respondent

Through Ms. Meenakshi Chauhan, APP for the State.

Mr. Adnan Ahmed, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition under Section 397 Cr.P.C. read with Section 482 Cr.P.C. is directed against the judgment dated 24.12.2020 passed by the learned Additional Sessions Judge-03, East Karkardoom Courts, Delhi, passed in Criminal Appeal No. 27/2020.

2. The facts, in brief, leading up to this petition are as follows:

a) On 02.07.2013 and on 08.08.2013, Respondent No.2 had borrowed sum or Rs. 1,50,000/- and Rs. 1,00,000/-, respectively, from the Petitioner/Complainant, for the purpose of constructing a house. It is stated that for repayment of the loan, Respondent No.2 issued cheque no. 365655 dated 01.11.2014 for a sum of Rs. 2,50,000/-, and this cheque was dishonoured on presentation. On failure of payment, the Petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, (*hereinafter*, "N.I.

Act”) bearing old case C.C. No. 70/2015, and new C.C. No.2512/2017 before the Ld. Metropolitan Magistrate, Karkardooma Courts, Delhi.

- b) It is stated that after Respondent No.2 failed to comply with settlement agreement, that was borne out of the reference of the matter for settlement by the Ld. Trial Court, the matter was heard, and Respondent No.2 was subsequently convicted *vide* Order of the Ld. Trial Court dated 19.12.2019. *Vide* Order dated 16.01.2020, Respondent No.2 was sentenced to rigorous imprisonment for a period of 6 months and was directed to pay a sum of Rs. 3,00,000/- to the Petitioner/Complainant within a period of 30 days.
- c) It is stated that on 14.02.2020, Respondent No. 2 preferred Crl. Appeal No. 27/2020 before Ld. Trial Court assailing the judgements dated 19.12.2019 and 16.01.2020. It is stated that the same was admitted, subject to the condition that an amount of Rs. 60,000/-, i.e. 20% of the compensation and fine amount imposed by the Trial be deposited through bank draft/DD in favour of Ld. District & Sessions Judge (East) by the next date of hearing. It is stated that thereafter, the matter was referred for settlement as per which Respondent No.2 was directed to pay Rs. 3,00,000/- to the Petitioner/Complainant in four instalments.
- d) It is stated that after repayment of the compensation amount, the matter was disposed of *vide* impugned Order dated 24.12.2020 wherein it was held that sentence that had been awarded by the Ld. Trial was hereby modified and the amount of Rs. 60,000/- that had

been deposited at the time of admission would be forfeited towards the imprisonment sentence and thus, transferred to the account of Delhi Legal Services Authority (East), Delhi.

e) Being aggrieved with the Order dated 24.12.2020, the Petitioner/Complainant has approached this Court by filing the instant revision petition with the following prayers:

“(i) Set aside the impugned order dated 24.12.2020 passed by Ld. Adell. Sessions Judge, KKD Court in Crl. Appeal No.27 /2020 and allow the Petitioner to recover the amount of 20% i.e. Rs.60,000/- as deposited through Bank Draft/DD in favour of Ld. District & Sessions Judge (East) at the time of admission of the said appeal In lieu of suspensions of 6 months R.I. sentence of Respondent No.1.

(ii) Enhance fine in lieu of suspension of the sentence of the Respondent No.1 along with the aforesaid deposited amount in favour of the Petitioner for the end of justice.

(iii) Pass any other order as this Hon'ble Court may deem fit and proper in the interest of justice.”

3. Mr. R.S. Rathi, learned Counsel for the Petitioner, argues that the amount of 20% of the total compensation, i.e. Rs. 60,000/- that was directed by the Ld. Trial Court to be deposited at the time of admission of the appeal and subsequently forfeited towards the imprisonment sentence of Respondent No.2, should be allowed in favour of the Petitioner. Mr. Rathi relies on Section 357(3) Cr.P.C. to submit that this Court has the power to order the accused person to pay, by way of compensation, such amount as may be specified in the Order to the person who has suffered any loss or

injury. He further cites the judgement of P. Ramdas v. State of Kerala and Anr., (2018) 3 SCC 287 to showcase that the Supreme Court had passed a similar Order wherein the amount that had been deposited before the Trial Court during admission of appeal was directed to be paid to Respondent No.2 therein.

4. In addition to seeking for the aforementioned compensation, i.e. Rs. 60,000/-, to be paid to the Petitioner, the learned Counsel for the Petitioner has further sought for an enhancement of the same, along with the amount that has been deposited in favour of the Petitioner.

5. Heard Mr. R.S. Rathi, learned Counsel for the Petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

6. Section 138 of the N.I. Act stipulates the punishment for dishonour of cheque for insufficiency, etc. of funds in the account. As per Section 147 of the N.I. Act, notwithstanding anything contained in the Cr.P.C., every offence punishable under the N.I. Act is deemed to be compoundable. Therefore, the offence of dishonouring of a cheque is a compoundable offence. The facts of the instant case indicate that in pursuance of Order dated 14.02.2020 of the Ld. Trial Court, a Mediation Settlement dated 22.09.2020 was signed by both the parties as per which Respondent No.2 was directed to pay a sum of Rs. 3,00,000/- by way of cash against receipt/DD/account transfer in four instalments. This settlement agreement was signed by both the parties out of their own volition.

7. Flowing from the above, it can safely be said that when the offence under Section 138 N.I. Act is compounded in accordance with Section 147 N.I. Act, the question of imposition of a sentence on Respondent No.2 does

not arise. Section 357(3) Cr.P.C. states that when a Court imposes a sentence, of which fine does not form a part, the Court may order the accused person to pay, by way of compensation any amount that the Court deems fit to the person who has suffered any loss or injury. However, as there is no longer any situation in this matter that warrants imposition of a sentence, there is no question of the person who has suffered any loss or injury being compensated. Therefore, the said Section 357(3) does not apply in the instant case.

8. The petitioner is therefore not entitled to any compensation after compounding the offence. This Court also does not find any weight in the judgment cited by the learned Counsel for the Petitioner [P. Ramdas v. State of Kerala (supra)] as that case pertains solely to waiver of the sentence related to imprisonment and does not interfere in the finding of conviction of the Appellant therein. Furthermore, the directions rendered in the same regarding compensation that was deposited before the Ld. Trial Court being transferred to the Appellant therein in lieu of suspension of sentence form the *obiter dicta* of that judgement. Those directions, passed in the facts of that case, cannot be said to be the law of the land that are to be followed in every case, and therefore, are not binding under Article 141 of the Constitution of India. This Court finds it unfortunate that precious judicial time is wasted in adjudication of such petitions that are meant to wholly subserve the avarice of a few individuals.

9. Furthermore, the scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. The Supreme Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, has observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality

or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

Similarly in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Supreme Court observed as under:

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional

jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

10. This Court, therefore, finds no legal infirmity in the impugned Order dated 24.12.2020 of the Ld. Trial Court, and is of the opinion that the decision rendered by the Ld. Trial Court is well-considered and showcases application of judicial mind. This application is completely misconceived and only demonstrates the avarice of the petitioner who wants compensation after settling the dispute. This application is nothing but an abuse of the process of law. This Court, therefore, deems it fit to impose a cost of Rs. 10,000/- on the Petitioner. This amount is directed to be deposited in favour of *Armed Forces Battle Casualties Welfare Fund* within a period of one week from the date of this Order. Copy of the receipt be filed with the Registry to show compliance of the Order

11. Accordingly, this petition is dismissed with the aforementioned observation, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

DECEMBER 10, 2021/Rahul