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

Judgment delivered on: 19.10.2022

+ **CRL. REV.P. 171/2022, CRL.M.(BAIL) 340/2022**

SH. RATTAN SINGH Petitioner

Through: Mr.Rajpal Singh, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

& ANR.

..... Respondents

Through: Mr.Aman Usman, APP for State with
Inspector Naveen Dahiya, PS: EOW.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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JUDGMENT

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Criminal Revision Petition has been preferred on behalf of the petitioner under Section 397/401 Cr.P.C. against judgment dated 09.08.2019 passed by learned ASJ, East District, Karkardooma Courts, Delhi, whereby the order on sentence passed by the learned Trial Court was modified in FIR No.556/2005, under Sections 420/406/120B/34 I.P.C. registered at Police Station: New Ashok Nagar (Crime Branch).

2. Petitioner was convicted by learned CMM, Karkardooma Courts vide judgment dated on 13.02.2019 and sentenced vide order dated 03.04.2019 to undergo RI for 2 years with fine of Rs.50,000/- (in default of payment of fine, to undergo SI for 6 months) for offence punishable under Sections 420/34 IPC.

In an appeal preferred by the petitioner against judgment passed by the learned Trial Court, the sentence was modified and petitioner was sentenced

to the period already undergone by him with fine of Rs.2 lacs (in default of payment of fine, to undergo SI for 1 year).

3. Learned counsel for the petitioner submits that case pertains to the year 2005 and at the relevant time, the petitioner was aged about 42 years. It is further submitted that pursuant to the judgment passed by the learned Appellate Court, the petitioner has been in custody in default of payment of fine, for about seven and a half months. It is further urged that petitioner belongs to a disadvantaged section of the society and is not capable to pay the fine amount. It is prayed that without challenging the merits of the judgment passed by the learned Appellate Court, the sentence in default of fine may be reduced to period already undergone.

4. Learned APP for the State submits that on merits, the petitioner does not deserve leniency. However, considering the fact that the proceedings are pending since year 2005, the prayer made by learned counsel for the petitioner for reduction can be considered in accordance with law instead of remanding back the case.

5. At the outset, reference may be made to observations of the Hon'ble Supreme Court of India in '*Sahab Singh & Ors. vs. State of Haryana*', 1990 **SCR (1) 512** on the procedure to be followed prior to enhancement of sentence:

"Section 386 Cr.P.C. enumerates the powers of the appellate court. The first proviso to that section states that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement. Section 397 Cr.P.C. confers revisional powers on the High Court as well as the Sessions Court. It is clear from a conjoint reading of Section 377, 386, 397 and 401 Cr.P.C. that if the State Government is aggrieved about the

inadequacy of the sentence it can prefer an appeal under Section 377(1) of the Code. The failure on the part of the State Government to prefer an appeal does not, however, preclude the High Court from exercising suo motu power of revision under Section 397 read with Section 401 of the Code since the High Court itself is empowered to call for the record of the proceeding of any court subordinate to it. Sub-section 4 of Section 401 operates as a bar to the party which has a right to prefer an appeal but has failed to do so but that sub-section cannot stand in the way of the High Court exercising revisional jurisdiction suo motu. But before the High Court exercises its suo motu revisional jurisdiction to enhance the sentence, it is imperative that the convict is put on notice and is given an opportunity of being heard on the question of sentence either in person or through his advocate. The revisional jurisdiction cannot be exercised to the prejudice of the convict without putting him on guard that it is proposed to enhance the sentence imposed by the Trial Court.

Reverting back to the facts of the present case, it may be observed that though the sentence of substantive imprisonment imposed by the learned Trial Court was reduced by the Appellate Court to imprisonment undergone but for the purpose of enhancement of fine from Rs. 50,000/- to Rs. 2,00,000/-, no show cause notice for enhancement of sentence/fine was issued. Further, no appeal for enhancement of sentence/fine was preferred by the State. In the facts and circumstances, the Appellate Court should have issued notice to appellant in the first instance prior to enhancement of fine.

Accordingly, the order enhancing the sentence of fine by the learned Appellate Court without following the procedure is without jurisdiction to the extent of enhancing the fine from Rs. 50,000/- to Rs. 2,00,000/-. The order is accordingly liable to be set aside. However, since the proceedings are pending since 2005, no purpose would be served by remanding back the

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proceedings. The petitioner be released on the imprisonment already undergone in default of payment of fine and be released, in case, he is not required in any other case.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.

**ANOOP KUMAR MENDIRATTA
(JUDGE)**

OCTOBER 19, 2022/R