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

+ **CRL.REV.P. 220/2022**

JEETENDER PAL

..... Petitioner

Through: Mr. G.P. Singh, Adv.

versus

THE STATE & ORS.

..... Respondent

Through: Mr. Hemant Mehla, APP for State
and SI Geniffer Lalnunthieng, PS
Vasant Vihar.

Mr. Ranvir Singh, Ms. Amal Merin
Kurian, Mr. Mohd. Absar Ahmed,
Adv. for R-2

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Date of Decision: 21.07.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral))

1. The present petition has been filed under Section 397 Cr.P.C. challenging the order dated 10.01.2022 and 19.01.2022 passed by learned ASJ-02, Central District, Tis Hazari Court, New Delhi.
2. Briefly stated the facts of the case are that vide the impugned order dated 10.01.2022, the learned Additional Session Judge disposed of two appeals bearing No. 187/2020 and 02/2021. The said appeals were filed assailing the judgment of conviction and order on sentence dated 12.10.2020 passed by learned Trial Court whereby Mr. K. Thomas was convicted in complaint case bearing No.511898/2016 filed under

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Section 138 of NI Act.

3. Learned Trial Court vide order on sentence dated 12.10.2020 sentenced Mr. K. Thomas SI for a period of One year and also directed to pay compensation to the tune of Rs. 9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) at 9% simple interest on cheque amount to the petitioner herein. In default of payment of compensation Mr. K. Thomas was directed to undergo further SI for 3 months.
4. The appeal bearing number 02/21 was filed by the complainant on the limited ground that the compensation to the tune of Rs. 9,50,000/- at 9% simple interest on the cheque amount which was awarded by learned Trial Court by way of order on sentence is inadequate. Another appeal no.187/2020 was filed by convict challenging the order of conviction and order on sentence passed by the learned Trial Court.
5. Learned Appellate Court after considering the entire material on the record disposed both the appeals. Learned counsel for the petitioner submits that however the learned Sessions Court has fallen into error by not enhancing the compensation amount while modifying the order on sentence. Learned counsel for the petitioner submits that the learned Appellate Court waived the imprisonment without enhancing the compensation amount.
6. It is pertinent to mention here that vide order dated 19.01.2022 learned Appellate Court clarified that there was clerical / typographical error and *inter alia* held that the compensation to the tune of Rs.9,50,000/- was inclusive of interest on cheque amount to the petitioner.
7. Learned Counsel for the petitioner submits that the order of the learned



Appellate Court is liable to be set aside in view of the fact that without any prayer being made by the convict, the learned Sessions Court modified the order on sentence and waived of the imprisonment. Learned counsel for the petitioner has also submitted that learned Trial Court misinterpreted the judgment of ***Kaushalaya Devi Massand V. Roopkishore*** (2011) 4 SCC 593.

8. Learned counsel for the petitioner further submitted that Section 117 of the NI Act has also not been followed by the learned Trial Court and learned Appellate Court. It has been submitted that therefore the impugned order is liable to be set aside.
9. Learned counsel also submitted that the compensation be enhanced to the tune of Rs. 14 lakhs in place of Rs.9,50,000/-. It has further been submitted that the additional compensation to the tune of Rs. 14 lakhs (double of the cheque amount) in view of waiving of the one-year imprisonment be also granted in terms of Judgment of ***Kaushalaya Devi Massand V. Roopkishore*** (supra).
10. Learned counsel for the respondent submits that the petitioner has invoked the revisional jurisdiction of this court. It has been submitted that bare reading of Section 397 Cr.P.C. makes it clear that the Revisional Court can only interfere into the order challenged if there is any illegality or perversity in the order challenged.
11. Learned counsel for the respondent states that the court in its revisional jurisdiction cannot substitute its opinion with the opinion of the learned Appellate Court.
12. Learned counsel has also submitted that the law with regard to the



award of compensation has not been settled in ***Kaushalaya Devi Massand V. Roopkishore (supra)***. It has been submitted that rather it has been settled in ***R. Vijayan vs. Baby and Another*** (2012) 1 SCC 260. Learned counsel has invited the attention to Para 18 of this judgement which reads as under:

“18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a “victim” in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.”

13. It has further been submitted that the respondent himself is a senior citizen of 73 years of age and has no source of income. Learned



counsel submits that he is totally dependent on his daughter. Learned counsel submits that there is no ground to interfere in the order of the learned Trial Court.

14. This Court has considered the submissions made by learned counsel.
15. Section 386 Cr.P.C defines the powers of Appellate Court which reads as under:

“ After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may---

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction---

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same---

(c) in an appeal for enhancement of sentence---

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;



(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

16. The bare perusal of this provision makes it clear that the appellate court has all the powers of, with or without altering the finding, alter the nature and extent of the sentence.
17. The ASJ-02, vide impugned order dated 10.01.2022 had observed that while imposing compensation for fine, the Court has to see that no one is made to enrich himself unjustly. It was further observed that the compensation awarded by the Ld. Trial Court to the tune of 9,50,000 and 9% interest in cheque amount, does not require any interference as the compensation is neither harsh nor lenient but reasonable. Learned ASJ further modified the sentence of imprisonment for one year awarded to the petitioner by Ld. MM to the extent that, in case the above compensation together with the interest awarded by the Court is paid by the accused to the complainant within 30 days then the sentence of imprisonment shall be waived off. While observing so the Ld. ASJ placed reliance on ***Kaushalaya Devi Massand v. Roopkishore (supra)*** wherein it has been stated that gravity of an offence u/s 138



N.I. Act cannot be equated with the provisions of IPC or other criminal offences.

18. The Learned ASJ-02 vide impugned order dated 19.01.2022 clarified that the total compensation awarded to the complainant in Rs.9,50,000/- which is inclusive of interest on the cheque amount. It clarified that neither the trial court nor the appellate court has awarded interest at the rate 9% per annum to the complainant and that there was some inadvertent clerical/typographical error in the order dated 10.01.2022.
19. The scope of revisional jurisdiction as provided for under section 397 Cr.P.C has been well defined by the Apex court in ***Amit Kapoor v. Ramesh Chander and Another (2012) 9 SCC 460*** wherein it was *inter-alia* held as under: -

“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....”

20. The coordinate bench of this court in ***Taron Mohan v. State and Another (2021) SCC OnLine Del 312*** with respect to the powers



conferred under section 397 Cr.PC also *inter alia* held as under:

“The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

21. Thus, it is well settled that Revisional Court can interfere in the order of challenge only if there is any illegality, impropriety or perversity in the said order. The Revisional Court has passed a detailed reasoned order. There is no illegality, infirmity or perversity in the impugned order. This Court in its revisional jurisdiction cannot substitute its view only because another view is possible. There is no ground to say that the learned Revisional Court has executed its jurisdiction in any manner.
22. Having gone through the impugned orders, this court does not find any perversity or illegality or impropriety displayed by the learned Trial Court in passing the impugned order.
23. Accordingly, the petition stands dismissed.



DINESH KUMAR SHARMA, J

JULY 21, 2023/AR