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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06.02.2024

+ CRL.M.C. 921/2024

SANJAY GULATI

..... Petitioner

Through: Mr. Shashi Ranjan Kumar Singh,
Advocate.

versus

HARPREET SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 3710/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 921/2024

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner/applicant for setting aside/quashing of order dated 21.11.2023 passed by learned ASJ-06, South District, Saket Courts, New Delhi, thereby dismissing the Revision Petition for enhancement/modification of order on sentence dated 30.06.2023, passed by the learned Trial Court, whereby, respondent was sentenced to pay fine of Rs.14 lacs within four months commencing from 21.07.2023 (in default of payment of fine to undergo SI for 04 months) in proceedings under Section 138 of NI Act. Further, 15% of the fine amount was directed to be paid to



DLSA (South), while the remaining amount was directed to be paid as compensation to the revisionist / petitioner under Section 357(3) Cr.P.C.

2. As per the case of the petitioner, respondent was extended financial assistance / loan by way of two cheques in the sum of Rs. 5 lacs and Rs. 3 lacs dated 20.04.2016 and 09.05.2016 respectively. In discharge of the liability, respondent issued two cheques amounting Rs.5,00,000/- and Rs. 3,00,000/- dated 08.01.2019, which were dishonoured by return memo dated 14.01.2019 with remarks 'Funds insufficient'. A complaint under Section 138 of NI Act was preferred before learned Trial Court. After completion of necessary pleadings and trial, respondent was convicted under Section 138 of NI Act vide judgment dated 06.06.2023. Further, vide order on sentence dated 30.06.2023, respondent was directed to pay fine amount as noticed above.

3. Learned counsel for the petitioner contended before the learned Revisional Court that entire fine amount be directed to be paid to the petitioner and also sentence awarded to the respondent be enhanced.

4. Learned Revisional Court vide impugned order observed that fine payable to the revisionist as compensation is about Rs.11,90,000/- after deducting 15% from the fine amount of Rs.14,00,000/-. Apparently, the payment of compensation to the petitioner factors in simple interest @ 9% *per annum* from the date of issue/dishonor of cheques as held in **R. Vijayan v. Baby, (2012) 1 SCC 260**.

On the point of sentence, it was noticed that default sentence for a maximum period of six months could have been awarded, since Section 138 of NI Act provides for punishment with imprisonment for a term, which may extend to two years or with fine, which may extend to twice the amount of



cheque or with both. It was held that since offence under Section 138 NI Act is primarily a civil wrong and the punitive element is just to enforce the compensatory element, the sentence needs no modification.

5. Learned counsel for the petitioner has reiterated the contentions which were raised before the learned Revisional Court.

6. In **R. Vijayan v. Baby** (*supra*), the Hon'ble Apex Court held that as the provisions of Chapter XVII of NI Act strongly lean towards grant of reimbursement of the loss by way of compensation, the Court should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto 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. The directions to pay the compensation by way of restitution in regard to the loss on account of dishonour of cheque should be practical and realistic which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. It was also observed that uniformity and consistency in deciding similar cases by different Courts would not only increase the credibility of cheque as a negotiable instrument but also the credibility of the Courts of justice.

7. This Court is of the considered opinion that the order passed by the learned Revisional Court duly takes note of the contentions raised on behalf of the petitioner and has rightly observed that the payment of compensation of Rs.11,90,000/- after deducting 15% from the fine amount of Rs.14,00,000/- duly factors simple interest @ 9 % *per annum* in terms of **R. Vijayan v. Baby** (*supra*).

8. The gravity of a complaint under Negotiable Instruments Act cannot



be equated with offences under the provisions of Penal Code, 1860 or other criminal offences. The gravamen of proceedings under Section 138 of NI Act though couched in a language making the act complained of an offence but is really in order to get back the amount through summary proceedings in respect of the dishonoured cheque together with interest and costs. Reference in this regard may be made to ***P. Mohanraj and Others v. Shah Brothers Ispat Private Limited***, (2021) 6 SCC 258.

In the facts and circumstances, since 85% of the fine amount has been directed to be paid as compensation after factoring the simple interest @ 9% *per annum*, the case does not call for enhancement of sentence.

For the foregoing reasons, no grounds are made out to interfere with the impugned order passed by the learned Revisional Court. Petition is accordingly dismissed.

A copy of this order be forwarded to the learned Trial Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 06, 2024/R/sd