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

\+ CRL.REV.P. 601/2024, CRL.M.A. 13470/2024

JOGINDER PAL AHUJA .....Petitioner
Through: Mr. Prateek Kumar, advocate

versus

KANWAL NAIN HASIJA .....Respondent
Through: Mr. Ravi Bassi, Mr. Sanyam Malik., Mr Vikas Shkeen, Mr Nitin Kumar, advocates

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% 26.07.2024

1. The present revision petition has been filed challenging the order dated 29.02.2024 passed by the learned Additional Sessions Judge in Crl.A.No.118/2023 vide which the appeal was disposed of with the direction that the appellant to pay Rs.10 lakhs i.e. cheque amount with the interest of 9% per annum on the same from the date of filing of the date of the filing of the complaint till its realization as compensation.
2. The appellant is aggrieved of the order passed by the learned additional session judge as the learned session judge modified the order on sentence dated 28.02.2023. Learned MM after convicting the accused for the offence under section 138 Negotiable Instruments Act on pleading guilty vide order on sentence dated 28.02.2023 sentenced the respondent with a fine of ₹20 lakhs. It was further directed that the

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entire amount shall be payable as compensation to the complainant i.e. petitioner herein within 45 days. The order on sentence dated 28.02.2023 indicates that the learned M.M. took into account the fact that the accused has been delaying the matter on one pretext or the other. The respondent accused assailed the order on sentence in Crl.A.118/2023 titled as *Kanwal Nain Hasija vs. Joginder Pal Ahuja*. The appellate court after taking into account all the facts passed the impugned order vide which the order on sentence was modified to the extent that appellant shall pay a sum of Rs.10 lakhs i.e. the cheque amount with the interest of 9 % per annum on the same from date of the filing of the complaint till its realization as compensation.

3. Learned counsel for the petitioner submits that the appellate court has fallen into grave error by modifying the order on sentence dated 28.02.2023 passed by learned MM. Learned counsel for the petitioner submits that the respondent has been delaying the matter on one pretext or other and learned M.M., therefore had rightly awarded a compensation of ₹20 lakhs. Learned counsel for the petitioner submits that the petitioner on having pleaded guilty was convicted for the offence under section 138 Negotiable Instruments Act vide order dated 27.01.2023.

4. Learned counsel submits that since beginning the respondent accused had been delaying the matter as reflected in the orders dated 19.01.2023, 03.03.2022 and 17.05.2022. Learned counsel submits that even when the matter was listed for arguments on the quantum of sentence, the accused absented and the matter was adjourned to 13.02.2023. Learned counsel submits that again on 14.02.2023, when

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the matter was taken up, the accused sought an exemption and the matter was adjourned to 16.02.2023. Learned counsel submits that finally the order on sentence was passed on 28.02.2023. Learned counsel submits that the award of compensation in the sum of ₹20 lakhs was totally justifiable and learned additional sessions judge has passed an illegal order, which needs to be set aside and order on sentence dated 28.02.2023 passed by landed MM is to be restored.

5. *Per contra,* learned counsel for respondent submitted that the learned Sessions Judge has passed the detailed and reasoned order. Learned counsel submits that scope of the revisional jurisdiction is very limited. The court can interfere only if there is any illegality or impropriety in the impugned order. Learned counsel submits that on the identical facts, this court had dismissed the Criminal Revision Petition 220/2022 vide order dated 21.07.2023 titled as ***Mr. Jeetender Pal vs. The state and Ors.***

6. 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*

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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…."

7. 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."

8. Thus, it is well settled that while exercising the revisional jurisdiction, the court can only examine the correctness, legality or propriety of an order. It is no longer *res integra* that this jurisdiction can be exercised only if there is a palpable error, non-compliance of the provisions of law or the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. It is also a settled proposition that in the revisional jurisdiction, the court is not required to dwell at length upon the facts and evidence of the case. The jurisdiction is confined only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion.

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This Court in it's revisional jurisdiction cannot substitute it's view only because another view is possible.

9. The learned Appellate Court while appreciating the evidence on record inter alia held as under:

> *"11. In view of the aforesaid judgment, it is to be seen whether the sentence of the fine of Rs. 20 lakhs i.e. double of the cheque amount is warranted and justified. The record reveals that the complaint was filed on 23.09.2020. The order on sentence was passed on 28.02.2023 which is approximately two and half years from the date of filing of the complaint. The Ld. Trial Court observed the delay on the part of the appellant which delay happened on the point of sentence only. The Ld. Trial Court failed to observe that even if the respondent is granted 9 % interest on the cheque amount, the said would be much lesser than the twice of the cheque amount. It is needless to mention here that the cheque amount in this case was Rs. 10 lakhs. This Court finds that the Ld. Trial Court was not justified by imposing the fine amounting to the double of the cheque amount. This Court further finds that a 9 % interest on the cheque amount of Rs. 10 lakhs from the date of the filing of the complaint till the actual payment is appropriate in the facts and circumstances of the case. The said in-terest on the cheque amount shall be payable as compensation to the respondent."*

10. I consider that the learned appellate has taken a reasonable view. The criminal complaint dated 09.09.2020 was filed in the present case. It is correct that certain adjournments were taken by the respondent. However, the court in its wisdom, had given the short dates and this fact cannot be ignored that the respondent accused pleaded guilty at the stage of notice itself. Further, the court while passing the order on sentence, in cases under section 138 N.I. Act should take into account the totality of the facts and circumstances of the case.

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11. I consider that the learned trial court has rightly taken a view that uniformity should be maintained in such cases and the grant of the cheque amount along with the interest @ 9% per annum is a reasonable view. I consider that the view taken by the learned additional session judge is palpable and do not find any reason to any interference.

12. The petition is accordingly dismissed.

DINESH KUMAR SHARMA, J

JULY 26, 2024
rb/aj/ht...

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