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

+ CRL.REV.P. 1169/2023 & CRL.M.(BAIL) 1533/2023

SUNDER

..... Petitioner

Through: Mr. Sanjay Soti, Adv. with
petitioner in person

versus

STATE & ANR.

..... Respondents

Through: Mr. Hitesh Vali, APP for
the State
Mr. Sachin Kumar & Mr.
Rupesh, Advs. for R2 with
R2 in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.02.2024

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 against the judgment dated 18.10.2023 passed by the learned ASJ-03 (N/E), Karkardooma Courts, Delhi in Criminal Appeal No. 86/2023 titled as *Sunder v. Vikas Tomer*. The petitioner also challenges the judgment dated 22.06.2023 and order on sentence dated 21.08.2023, passed by the learned Metropolitan Magistrate.
2. By the order on sentence dated 21.08.2023, the petitioner was convicted for committing an offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**'). The petitioner was awarded to undergo sentence of simple imprisonment for one year and to pay a fine of ₹2,00,000/-, which was double the cheque amount, as compensation to the complainant under Section 357(1)(a) of the Code of Criminal Procedure, 1973



(‘CrPC’).

3. The learned counsel for the Respondent No. 2, at the outset, on instructions, submits that if the petitioner pays the amount of ₹2,00,000/-, the Respondent No. 2 would not insist on the petitioner undergoing the sentence of simple imprisonment of one year.

4. The learned counsel for the petitioner submits that the petitioner is willing to pay the sum of ₹2,00,000/-, out of which, ₹1,00,000/- as was directed to be deposited with the Registry of this Court by order dated 02.11.2023 can be released in favour of respondent and the balance of ₹1,00,000/- has already been paid to the respondent.

5. The offence under Section 138 of the NI Act is compoundable. Even though the petitioner has been convicted in the present case, and his appeal has also been dismissed by the Appellate Court, however, keeping in mind the fact that the Respondent No. 2 is not insisting on the punishment of simple imprisonment to be imposed for the reason that the sum of ₹2,00,000/- has been agreed to be paid, this Court considers it apposite to compound the offence and set aside the imprisonment awarded by the order on sentence dated 21.08.2023.

6. In view of the above, the judgment dated 22.06.2023 and the order on sentence dated 21.08.2023 in 49 CC NI Act 745/2021, are set aside.

7. The Registry is directed to forthwith release the sum of ₹1,00,000/- deposited with the Registry of this Court pursuant to order dated 02.11.2023 in favour of the Respondent No. 2. The said amount be directly transferred to the bank account of Respondent No. 2, the details of which, be provided by the learned counsel for the Respondent No. 2 to the Registrar



General of this Court.

AMIT MAHAJAN, J

FEBRUARY 7, 2024/“SS”