IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 4th OF DECEMBER, 2023

CRIMINAL REVISION No. 1277 of 2015

BETWEEN:-

KAILASH NARAYAN S/O RAMBAGAS, R/O VILLAGE - LASUDIYA MAHARAJA, TEHSIL - BIAORA, DSTT. RAJGARH (MADHYA PRADESH)

.....APPLICANT

(BY SHRI NILESH DAVE - ADVOCATE)

AND

BRANCH MANAGER, DISTRICT SAHKARI KRISHI AND GRAMIN VIKAS BANK, BRANCH MALAWAR, DISTT. RAJGARH (MADHYA PRADESH)

.....RESPONDENT

This revision coming on for direction this day, the court passed the following:

ORDER

The applicant has preferred this criminal revision under Section 397/401 of Code of Criminal Procedure, 1973 (in short "Cr.P.C.") being aggrieved by the impugned judgment of conviction and sentence dated 28/09/2015 passed by II Additional Sessions Judge, Biaora, District Rajgarh (M.P.) in Criminal Appeal No.169/2015, whereby the judgment dated 06/05/2015 passed by Additional Chief Judicial Magistrate, Biaora District Rajgarh in Criminal Case No.41/2006 has been affirmed, whereby the applicant has been convicted under Section 138 of Negotiable Instruments Act, 1881 (in short, 'NI Act') and sentenced to undergo 01 year Rigorous Imprisonment with compensation amount of

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Rs.2,59,780/- along with interest @ 9% per annum with usual default stipulation.

2. The prosecution story in brief is that respondent / complainant was posted as Branch Manager of District Sahkari Krishi and Gramin Vikas Bank, Branch Malawar, District Rajgarh and applicant / accused had obtained a loan from the respondent Bank and for payment of the aforesaid loan amount a cheque bearing number 40301 dated 18/11/2006 for an amount of Rs.2,59,780/- was issued by the applicant in favour of the respondent Bank, but when the cheque was presented for realization, the same got dishonoured for want of sufficient fund. Thereafter, complainant served a legal notice upon the applicant / accused but despite that loan amount has not been paid, therefore, a complaint under Section 138 of NI Act has been filed.

3. The trial Court after considering the submissions advanced by both the parties scrutinized the entire evidence available on record and convicted the applicant / accused under Section 138 of NI Act and sentenced him to undergo 01 year Rigorous Imprisonment with compensation amount of Rs.2,59,780/- along with interest @ 9% per annum with usual default stipulation. Being aggrieved by the said judgment of conviction, the applicant has preferred a Criminal Appeal before the II ASJ, Biaora, District Rajgarh, but the same was also dismissed affirming the judgment passed by the trial Court. Being aggrieved by the aforesaid conviction and the sentence passed by both the Courts below, the applicant has preferred present criminal revision before this Court.

4. The applicant has preferred the present revision on several grounds, but during the course of arguments, learned counsel for the applicant submits

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that he is facing trial since 2006. He has already deposited compensation amount of Rs.1,30,000/- and Rs.12,000/- towards interest totaling to Rs.1,42,000/- before the trial Court on 15/10/2015. Now he is ready to deposit the rest of the amount along with interest on the remaining amount. He submits that he does not want to press this criminal revision on merits and he is not assailing the conviction part of the judgment but he confined his argument only to the extent of quantum of sentence part. His only prayer is that imprisonment of the applicant be reduced to the period already undergone as the applicant has suffered some period of jail incarceration during the pendency of the revision. He is regularly marking his presence before the Court. He is a poor person and is not having any criminal background. Therefore, his sentence may be reduced to the period already undergone by him.

5. Heard learned counsel for the applicant and considered his argument and perused the record and evidence available on record.

6. In view of the above submissions, although the conviction has not been challenged, but perusal of the evidence available on record also justifies the judgments of conviction passed by both the Courts below.

7. So far as the quantum of sentence is concerned, the submissions made by the learned counsel for the applicant appears to be just and proper. The applicant has already suffered jail incarceration from 28/09/2015 to 13/10/2015 during the pendency of this revision. He is now turned about 68 years of age. He is not having any criminal background. He is facing trial since 2006. Therefore, it would be appropriate to reduce the jail sentence awarded to him.

8. Considering the aforesaid, I deem it proper to reduce the jail sentence of applicant Kailash Narayan from 01 year to the period already undergone by him. The sentence of applicant is modified to the aforesaid extent. The amount

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of compensation imposed by both the Courts below is hereby affirmed. The applicant is directed to deposit the remaining amount of compensation of Rs.1,29,780/- along with an interest @ 9% per annum within two months from today before the trial Court, otherwise the trial Court shall be free to proceed ahead against the applicant for recovery of compensation amount with interest. It is also made clear that if the applicant fails to deposit the aforesaid amount of compensation with interest within the time bound period, he shall be liable to suffer 03 months RI.

9. Consequently, the present criminal revision is partly allowed to the extent as indicated above. The applicant Kailash Naryan is on bail. His bail bond and surety bond stand discharged. Disposal of the property shall be as per the order of the trial Court.

10. Let a copy of this order along with record of both the Courts below be sent back to the concerned Courts for information and necessary compliance.

Certified copy as per rules.

(ANIL VERMA)
JUDGE

Tej

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