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

+ **CRL.A. 339/2013**

RAJ KUMAR MADAAN

.....Appellant

Through: Mr. Abhisumat Gupta, Ms. Vaishali Sharma, Mr. Rinku and Mr. Gautam Chaubey, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the State.
Mr. Rajiv Ranjan Mishra and Ms. Suruchi Yadav, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
21.02.2025

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By way of the present appeal filed under section 372 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the appellant (complainant) impugns judgment dated 25.08.2012 passed by the learned Sessions Court, Rohini District Court, Delhi in Crl.A. No. 46/2012, by which the learned Sessions Court has disposed-of his challenge to order dated 07.10.2020 passed by the learned Magistrate for the offence under section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), on the ground of inadequacy of sentence.

2. Notice on this appeal was issued *vide* order dated 20.05.2013 and *vide* order dated 28.07.2015 the appeal was directed to be listed in 'due course'. Pursuant to the notice issued, reply dated 26.07.2022 has also been filed on behalf of respondent No.2 (convict).



3. The court has heard Mr. Abhisumat Gupta, learned counsel appearing on behalf the appellant; as well as Mr. Rajiv Ranjan Mishra, learned counsel for respondent No.2.
4. Since the matter arises from proceedings under section 138 of the NI Act, Mr. Digam Singh Dagar, learned APP appearing on behalf of the State submits that the State has no role in the matter.
5. The case relates to the dishonour of 03 cheques, in all amounting to a sum of Rs.4,41,664/-.
6. *Vide* the impugned order, the learned Sessions Court has disposed-of the appeal with the following observations :

“According to TCR, cheque dated 08/12/08, for the sum of Rs. 41317/-, cheque dated 30/03/2009 for the sum of Rs. 139515 and cheque dated 31/03/09 for Rs. 139515/- along with cheque dated 15/09/08 for the sum of Rs. 1,21,317/- were issued total amounting to Rs. 4,41,664/-. The cheques were of the year 2008 and 2009, whereas accused has pleaded guilty in October 2010, so in my view awarding compensation to the tune of Rs. 4,41,664/- only i.e. the collective cheque amount of all these cheques by Ld Trial Court is erroneous. Atleast for the sufferings of the complainant, Ld Trial court should have granted more compensation in comparison to the actual cheque amount, so this part of order of Ld Trial Court is not sustainable in the eyes of law, being unreasonable, to the fact and circumstances of the case.

In view of the fact that accused had pleaded guilty after about one and a half year of filing of the case and he was let off merely with the TRC, compensation as awarded u/s 357 of Cr.P.C. is required to be enhanced. Accordingly, the same is enhanced u/s 357 Cr.P.C. to the tune of Rs. 6 lacs, which will meet the ends of justice and in default of payment of compensation, accused shall undergo six months SI.

Ld Trial court has further awarded litigation expenses of Rs. 20,000/- alongwith compensation amount u/s 357 of Cr.P.C.



The appellant has filed three separate cases hence the litigation expenses are also required to be enhanced, according to each case, so the same is also enhanced to the tune of Rs. 60,000/-. Ld Trial Court has dealt with the accused in a more lenient view then (sic) required and did not consider the sufferings of complainant, who had filed three separate cases for such harassment.

With these observations, criminal appeal is disposed off.”

(emphasis supplied)

7. Mr. Gupta submits, that the sentence imposed as well as compensation awarded by the learned Magistrate, though subsequently enhanced by the learned Sessions Court, is *still inadequate*; and the present appeal is restricted only to challenging the quantum of compensation awarded.
8. On the other hand, Mr. Mishra raises a preliminary objection, arguing that the present appeal is not maintainable. In this behalf, learned counsel draws attention to the opening para of the present appeal itself, where the appellant has stated the following :

“1. That the present appeal has been filed by the appellant feeling aggrieved by the inadequate sentence and compensation being passed/ordered by the court of Ld. ASJ in appeal No.46/12.”

9. Mr. Mishra submits, that the present appeal purportedly filed under section 372 of Cr.P.C. is a *second appeal* against the learned Magistrate’s order, which is not permissible in law. It is argued that the present appeal is barred by the proviso to section 372 of Cr.P.C., which provision reads as follows :



372. No appeal to lie unless otherwise provided. — *No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:*

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

10. Mr. Mishra argues that the proceedings filed by the appellant before the learned Sessions Court were an ‘appeal’; an order judgment dated 25.08.2012 passed in that appeal cannot be challenged by filing another appeal before this court, since *no second appeal is provided* in the Cr.P.C. It is also submitted that, even if the present proceedings were to be treated as a criminal revision petition, it must be noted that the learned Sessions Court has in any case enhanced the compensation as well as the litigation expenses awarded to the appellant. It is argued that for both these reasons, the present appeal is not maintainable.
11. Upon being queried, learned counsel submits that the entire amount of Rs. 6,00,000/- awarded as compensation as well as Rs. 60,000/- awarded as litigation expenses, already stands deposited before the learned Sessions Court.
12. A bare reading of the contents of the present appeal, as well as of section 372 of Cr.P.C., bear-out the submissions made on behalf of respondent No.2.
13. Besides, as also correctly pointed-out by respondent No. 2, by way of the impugned judgment the learned Sessions Court has in any case enhanced the compensation payable to the appellant from Rs.



4,41,664/- (that is the aggregate amount of the 03 cheques awarded by the learned Magistrate) to Rs. 6,00,000/-; and has also enhanced the litigation expenses awarded by the learned Magistrate from Rs.20,000/- to Rs.60,000/-.

14. Upon an overall consideration of the foregoing aspects, this court finds no merit in the present appeal, which is accordingly *dismissed on maintainability as well as on merits*.
15. Furthermore, it is directed that the appellant shall be at liberty to apply for release of the compensation amount and litigation expenses lying deposited before the learned Sessions Court.
16. The appeal stands disposed-of.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 21, 2025/ak