

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH
CRIMINAL REVISION No. 4071 of 2023**

BETWEEN:-

**MUKESH S/O LAXMINARAYAN RATHORE,
AGED ABOUT 48 YEARS,
OCCUPATION: BUSINESS
75 SUBHASH MARG, KACHROD
DISTRICT UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(SHRI RITU RAJ BHATNAGAR - ADVOCATE)

AND

**ROHIT S/O KESHRIMAL RATHORE,
AGED ABOUT 42 YEARS,
OCCUPATION: BUSINESS
R/O. 70 SUBHASH MARG,
KACHORD DISTRICT UJJAIN
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI MITESH JAIN - ADVOCATE)

.....
*Reserved On: 19.03.2024
Delivered On: 03.04.2024*
.....

*This revision petition having been heard and reserved for judgment,
coming on for pronouncement this day, the court passed the following:*

ORDER

Present revision has been filed against judgment dated 25.05.2023 passed by First Additional Sessions Judge, Badnawar in Criminal Appeal No.07/2021 whereby learned Sessions Court partly allowed the appeal by affirming the conviction under Section 138 of Negotiable Instruments Act, 1881 and modified the sentence by reducing the period of sentence from six months R.I to till rising of the Court so also enhanced the compensation amount under

Section 357(3) of Cr.P.C to Rs.2,05,042/-against the order passed by Judicial Magistrate First Class, Indore in SCNIA No.01/2017 wherein the applicant has been convicted under Section 138 of Negotiable Instruments Act, 1881 and sentenced him to undergo 6 months rigorous imprisonment and compensation of Rs.1,64,000/.

2. Prosecution story in brief is that the respondent who happens to be the nephew of the applicant took cash loan of Rs.1,27,300/- from the applicant and furnished cheque bearing no.49453 dated 04.10.2016 for Rs.1,27,300/- towards repayment. The aforesaid cheque was presented before the Bank, however, the same was returned with memo "Insufficient funds". Applicant sent a legal notice to the respondent which was received by him, but he has not filed any reply nor returned the money to applicant. Applicant filed a private complaint against the respondent for offence under Section 138 of N.I. Act, which is registered as SCNIA No.01/2017. Learned trial Court after taking the evidence of both the parties and perusing record convicted the respondent for offence under Section 138 of N.I. Act and sentenced to undergo 6 months R.I and to pay compensation of Rs.1,64,000/-.

3. The complainant/revisionist preferred an appeal which was registered as Criminal Appeal No.07/2021 and by judgment dated 25.05.2023 Sessions Judge maintained the conviction and reduced the sentence till rising of Court by enhancing the compensation amount to Rs.2,05,042/- and in default further 3 months R.I. Hence being aggrieved the applicant has preferred this revision petition.

3. Learned counsel for the petitioner submitted that appellate Court has committed grave error in modifying the sentence awarded by learned trial Court against the established principles of law. Section 138 of N.I. Act prescribes

punishment of 2 years and fine of double of the cheque amount, which may be awarded as compensation to the complainant, but learned appellate Court has reduced the sentence of the respondent till rising of the which cannot be considered as an adequate punishment in any manner.

4. Learned counsel relied upon the Judgement of Hon'ble Apex Court in the case of *H. Pukhraj V.D Parasmal reported as (2015)17 SCC 368* wherein it has been held that punishment awarded to the accused under Section 138 of N.I. Act must be adequate and consonance of crime committed by him. Therefore, counsel prayed that this revision may be kindly allowed and the sentence so also the compensation awarded by learned Appellate Court in Cr.A. No. 07/2021 be modified and enhanced.

5. Learned counsel for the respondent submitted that the compensation amount along with interest has been paid to the applicant hence he supported the impugned judgment and prayed for dismissal of this revision.

6. Having considered the rival submissions and on perusal of the record, the submission of the learned counsel for the petitioner appears to be just and proper.

7. However, the learned trial Court as well as the learned Appellate Court has not committed any error in appreciation of evidence available on record. **Further, it is found that both the courts below considered the evidence available on record and correctly found that the case is well supported by the evidence placed on record.**

8. Having heard the learned counsel for the parties, the question for determination is as to whether this Court in exercise of revisional jurisdiction can enhance the sentence and compensation amount as prayed by learned

counsel for the petitioner?

9. From the face of record, it is an admitted position that the sentence of the respondent has been reduced till rising of the Court by modifying the order passed by the JMFC. Being crestfallen by that judgment, this criminal revision has been filed before this Court under Section 397 r/w 401 of Cr.P.C.

10. Now, the scope of revisional jurisdiction is also required to be ruminated. On this aspect, In ***Kaptan Singh and others vs. State of M.P. and another***, AIR 1997 SC 2485, (1997) CCR 109 (SC), the Hon'ble Supreme Court considered a large number of its earlier judgments, particularly ***Chinnaswami vs. State of Andhra Pradesh***, AIR 1962 SC 1788; ***Mahendra Pratap vs. Sarju Singh***, AIR 1968, SC 707; ***P.N. G. Raju vs. B.P. Appadu***, AIR 1975, SC 1854 and ***Ayodhya vs. Ram Sumer Singh***, AIR 1981 SC 1415 and held that revisional power can be exercised only when "there exists a manifest illegality in the order or there is a grave miscarriage of justice".

11. In ***State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*** (1999) 2 SCC 452, the Hon'ble Apex Court held as under:

"In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

12. In State of **A.P. vs. Rajagopala Rao (2000) 10 SCC 338**, the Hon'ble Apex Court held as under:

“The High Court in exercise of its revisional power has upset the concurrent findings of the Courts below without in any way considering the evidence on the record and without indicating as to in what manner the courts below had erred in coming to the conclusion which they had arrived at. The judgment of the High Court contains no reasons whatsoever which would indicate as to why the revision filed by the respondent was allowed. In a sense, it is a non-speaking judgment.”

13. In upshot of the aforesaid prepositions, this Court while using its revisional jurisdiction, has to examine that whether there is a manifest illegality in the judgment of the learned Courts below or there is miscarriage of justice.

14. **In the case at hand, the findings of learned trial Court as well as learned appellate Court are based on proper appreciation of evidence. Both the courts below have assigned clear, cogent and convincing reasons for acquitting respondent No. 1, therefore, in absence of any perversity in such findings, this Court, in its limited revisional jurisdiction, cannot interfere with the conclusions rendered by the Courts below. So far as the request for remanding back the case is concerned, this matter relates to the incident happened in the year 2016 almost more than 7 years ago, therefore, at this stage where the learned Appellate Court after analysing the evidence in proper perspective reduced the sentence of the respondent from the aforesaid offences, therefore, it would not be propitious to remand back the matter for further litigation. Be that as it may, the petitioner is also unable to point out any such infirmity or irregularity or illegality in the judgment of both the Courts below by which the sentence and compensation amount be enhanced. Hence, the request of enhancing the sentence and the compensation amount being sans of merit**

deserves to be rejected.

15. Accordingly, Criminal Revision No.4071/2023 stands dismissed and the order passed by learned appellate Court is hereby affirmed.

16. Pending I.As, if any stands disposed of.

(PREM NARAYAN SINGH)
JUDGE

sumathi

