

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 555 of 2013

Anand Kumar Mesram ... Petitioner

Versus

The State of Jharkhand Opposite Party

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. P.A.S. Pati , Advocate

For the State : Mr. S.S. Prasad, APP

12/Dated: 25/10/2019

The instant application has been preferred challenging the judgement dated 30.04.2013, passed by the learned Principal Sessions Judge, East Singhbhum, Jamshdepur, in Criminal Appeal No.134/11, whereby the appeal preferred by the petitioner was dismissed and the judgment of conviction and order of sentence dated 20.07.2011, passed by the learned Judicial Magistrate 1st Class, Jamshedpur in C/1 Case No.1147/2007, has been confirmed, whereby the petitioner was convicted and sentenced to undergo RI for one year and pay fine of Rs.2,00,000/- as compensation to the complainant under Section 138 of the Negotiable Instrument Act.

The case of the complainant is that the complainant and the accused are well known to each other. The accused took a sum of Rs.4,31,000/- from the complainant by way of friendly loan to meet his urgent requirements with assurance to return the said amount. The accused issued three cheques being cheque no.346304 of Rs.37,000/-, cheque no.346306 of Rs.16,000/- and cheque no.778031 of Rs.3,78,000/- in favour of the complainant in lieu of the said loan. All the cheques were presented in the bank for encashment but, were dishonoured and returned by the bank mentioning the reason "Fund Insufficient". Thereafter, legal notice was sent and when the amount was not paid then the case was filed.

At the outset learned counsel for the petitioner confines his argument on the question of sentence only. He

further submits that the learned trial court has committed an error in passing the order of imprisonment in as much as Section 138 NI Act is a case of civil nature as such the learned court should have only awarded the compensation. Even the learned appellate court did not consider this aspect of the matter and sustained the conviction and did not interfere with the sentence also. The learned counsel for the petitioner further submits that he can pay the disputed amount with interest but he needs some time.

Per contra, the learned counsel for the O.P. No.2 fairly submits that the O.P. No.2 is not much interested in the imprisonment of the petitioner rather he is interested that the amount of cheque with bank interest may be paid to the complainant.

On a query by this Court to the effect that whether the petitioner can pay a lumpsum amount of Rs.8,00,000/- (Principal Rs.4,31,000 + interest for 12 years), both the parties agreed to a term that the petitioner shall pay a lumpsum amount of Rs.8,00,000/- within a reasonable period.

In view of the aforesaid facts and circumstances of the instant case, the learned counsel for the petitioner is hereby directed to pay an amount of Rs.8,00,000/- within a period of seven months from today.

Thus, the sentence passed by the Court below is, hereby, modified to the extent that the petitioner is sentenced to undergo for the period already undergone, subject to the payment of compensation of Rs.8,00,000/-.

The petitioner is at liberty to pay the entire amount even prior to the stipulated date, however, the entire payment must be paid on or before 30th May, 2020. If the petitioner fails to comply with this order and pay the entire amount as agreed then he shall surrender before the learned trial court to serve rest of the sentence.

With the aforesaid modifications and directions, this revision application is disposed of.

The petitioner shall be discharged from the liability of his bail bonds, subject to fulfillment of the aforesaid condition.

Let the lower court record be sent to the court concerned forthwith.

Let a copy of this order be communicated to the court concerned through 'FAX'.

(Deepak Roshan, J)

Pramanik/