

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**  
**CRR No.2188/2019**  
**(Kailash vs. State of M.P.)**

**Indore, Dated: 30/05/2019**

Shri Nilesh Manore, learned counsel for the petitioner.

Shri Sandeep Mehta, learned Public Prosecutor for the respondent-State.

Heard on I.A. No.4301/2019, an application for early hearing and hearing during summer vacation.

On due consideration of the reason assigned in the application, the same is allowed.

Arguments heard.

**ORDER**

1. Being aggrieved by confirmation of his conviction and sentence under Section 279, 337 (21 counts) and 338 (1 count) vide judgment dated 24/04/2019 passed in Criminal Appeal No.588/2017 by Additional Sessions Judge and Special Judge, Electricity No.7, Indore, the petitioner has preferred this petition. The petitioner was convicted vide judgment dated 28/10/2017 by Judicial Magistrate First Class, Depalpur, Indore for the aforesaid offences and has been awarded 1/1 month Rigorous Imprisonment for the offence under Section 337 (21 count) and 3 months RI for the offence under Section 338 (1 count) IPC. He is further directed to pay compensation of Rs.3,500/- under Section 357(3) of the Cr.P.C. Out of compensation deposited by the petitioner, Rs.350/- have been awarded to injured Farooq and Rs.150/- each to other injured persons. All the sentences are directed to run concurrently.

2. Case of the prosecution in brief is that on 10/05/2008, all the injured persons were travelling by bus No.M.P.09-F.A.0163 from Betma to Indore. The petitioner was driving the bus. He

drove the bus rashly and negligently due to which the bus turned turtle near *Murgi Dana Factory*. The matter was reported to the Police Station Betma. Crime No.154/2008 under Sections 279, 337 of IPC was registered and investigated. After the investigation, charge-sheet was filed against the petitioner.

3. The petitioner is charged, tried, convicted and sentenced as stated in para-1 above.

4. The petitioner has preferred this petition on several grounds but during argument, learned counsel submitted that he does not want to press the petition on merits. His only grievance is that his imprisonment may be reduced to the period already undergone as he has already served out more than one month imprisonment and he is facing trial since 2008 and the trial Court and the appellate Court itself has observed that he diligently attended and cooperated the trial. It is further submitted that in lieu thereof, some fine may be imposed. It is further submitted that the petitioner is a Driver, belongs to a poor family and is the only breadwinner of his family. The petitioner has no criminal record. No other criminal case prior or after the incident have ever been registered against him. Therefore, his sentence may be reduced to the period already undergone while the fine amount may be increased to a reasonable amount.

5. Learned Public Prosecutor has opposed the prayer.

6. I have considered rival contentions of the parties and have perused the record and the evidence produced by the petitioner.

7. The facts that the petitioner-Kailash is a poor driver and he is only breadwinner of his family. There is no criminal record attributed to him. The incident took place all of a sudden. In view of the facts and circumstances of the case, in its totality, I deem it proper to accede the prayer of the learned counsel for the petitioner.

8. Considering the nature of the incident and other facts and circumstances of the case, in my considered opinion, the ends of justice would be sub-served if some fine is imposed/increased to some extent, therefore, this petition is partly allowed. While maintaining the conviction of the petitioner for the offence under Section 279, 337 and 338 of IPC, sentence awarded for the offence under Sections 279, 337 & 338 of IPC is reduced to the period already undergone and besides the compensation directed by the learned trial Court and affirmed by the appellate Court, the petitioner is imposed fine of Rs.300/- per injured, total Rs.6,300/- for the offence under Section 337 of IPC and Rs.1,000/- for the offence under Section 338 of IPC.

9. With the aforesaid modification, the present petition is partly allowed and disposed of.

10. The petitioner be set at liberty forthwith if not required in any other case.

11. Order of the learned trial Court regarding disposal of the property is hereby confirmed.

**(Virender Singh)  
Judge**

soumya

**Soumya  
Ranjan  
Dalai**

Digitally signed by Soumya  
Ranjan Dalai  
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Madhya Pradesh Bench Indore,  
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