

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 18<sup>th</sup> OF NOVEMBER, 2022**

**CRIMINAL REVISION No. 3615 of 2022**

**Between:-**

**SHAKIL S/O ISHA  
AGED ABOUT 21 YEARS,  
OCCUPATION: BUSINESS,  
R/O: IMLI ROAD, MANPUR, TEHSIL  
MHOW, DISTRICT INDORE (M.P.)**

**.....APPLICANT**

***(BY SHRI YASHPAL RATHORE ADV.)***

**AND**

**STATE OF MADHYA PRADESH,  
THROUGH P.S. MHOW, TESHIL MHOW,  
DISTT. INDORE (M.P.)**

**.....NON APPLICANT**

***(BY SHRI VISHAL SANOTHIYA, GA)***

**CRIMINAL REVISION No. 3637 of 2022**

**Between:-**

**1/ ARIF S/O ISHA  
AGED ABOUT 30 YEARS,  
OCCUPATION: PRIVATE JOB,**

**2/ MUSSALIM S/O RUSTAM  
AGED ABOUT 32 YEARS,  
OCCUPATION: PRIVATE JOB**

**BOTH R/O: IMLI ROAD, MANPUR, TEHSIL  
MHOW, DISTRICT INDORE (M.P.)**

**.....APPLICANTS**

**(BY SHRI YASHPAL RATHORE ADV.)**

**AND**

**STATE OF MADHYA PRADESH,  
THROUGH P.S. MHOW, TESHIL MHOW,  
DISTT. INDORE (M.P.)**

**.....NON APPLICANT**

**(BY SHRI VISHAL SANOTHIYA, GA)**

*These criminal revisions coming on for hearing this day, the court passed the following:*

### **ORDER**

1/ Both these criminal revisions have been preferred by the applicants under Section 397 & 401 of the Criminal Procedure Code, 1973 (in short "Cr.P.C.") being aggrieved by the impugned judgment dated 1.9.2022 passed by the 2<sup>nd</sup> Addl. Sessions Judge, Dr. Ambedkar Nagar, District Indore in Criminal Appeal No.60/2022, whereby the appeal has been dismissed by confirming the judgment dated 9.7.2022 passed by the Judicial Magistrate First Class, Dr. Ambedkar Nagar, Indore in Criminal Case No.322/2020, by which the applicants/accused have been convicted for the offence punishable under Section 420 read with Section 120-B of IPC and Section 43/66 of the Information Technology Act and sentenced to 3 years R.I. with fine of Rs.1000/- and one year R.I. with fine of Rs.1000/- respectively with default stipulation of 1-1 months R.I.

2/ Brief facts of the case are that complainant Manish Parashar has made a written complaint at P.S. Mhow by stating that he is the manager of the Financial Software and System Pvt. Ltd. Company. His company is engaged in management of ATM of State Bank of India along with other Banks. Since last few days some unknown persons are going to ATM and using Bank's card for taking the money from ATM and as the money comes out, at the same moment other person accompanying the withdrawer goes to lobby behind ATM machine and interrupts the power and power supply goes off. The first person gets the money and on screen power interruption is shown and message of power interruption is generated. Then the card holder makes complaint to the Bank that he has not received the money and making online complaint used to get the same money transferred to his account from one bank to other, as the bank among themselves used to transact with each other. Through this act of cheating and forgery a huge loss is caused to Banks and his company. CCTV footage and videography of CCTV camera installed in ATM was received, which showed that on 16.7.2020 unknown persons entered the State Bank of India, Gokulganj Branch and used ATM card of Axis Bank and withdrew Rs.10,000/- and as money was generating at ATM machine, other person interrupted power. The said person took the money and complained to the Bank that due to power failure his transaction could not be generated and got the money again transferred in his account. On the basis of the complaint, FIR was registered at P.S. Mhow.

3/ After completion of the investigation, charge sheet has been filed before the Judicial Magistrate First Class, Dr. Ambedkar Nagar, District Indore. Charges have been framed against the applicants. Applicants abjured their guilt and took the plea that they have been falsely implicated in this matter. They have examined 3 defence witnesses. Prosecution examined as many as 9 witnesses, who were duly cross-examined by the defence counsel. The trial Court after considering the submissions advanced by learned counsel for both the parties and scrutinizing the entire evidence on record, convicted and sentenced all the applicants as described above. Being aggrieved by the said conviction and sentence, applicants have preferred Criminal Appeal before the 2<sup>nd</sup> ASJ, Dr. Ambedkar Nagar, District Indore. The same was dismissed vide judgment dated 1.9.2022 and judgment and order passed by the learned JMFC, Dr. Ambedkar Nagar has been confirmed. Being aggrieved by the conviction and sentence passed by both the courts below, the applicants have preferred these Criminal Revisions before this Court.

4/ Learned counsel for the applicants has preferred both the criminal revisions on several grounds, but during the course of the argument he did not press both the revisions on merit. He did not assail the finding part of the judgment. He has confined his arguments to the quantum of sentence part only and his sole prayer is that the jail sentence of the applicants be reduced to the period already undergone by them, as they have already suffered more than 2 and half years jail incarceration and they are facing trial since last two and half years.

5/ During the trial as well as during pendency of the appeal and this revision, the applicants have duly cooperated. It is further submitted that all the applicants are poor persons and they have no criminal past. Therefore, their sentence be reduced to the period already undergone.

6/ Per contra, learned GA for respondent/State has opposed both the criminal revisions and prayed for its rejection by submitting that both the courts below have rightly convicted and sentenced the applicants and the given sentence in question is sufficient, therefore, same does not call for any interference.

7/ Heard learned counsel for all the applicants, considered their arguments and also perused the record of both the courts below with due care.

8/ In view of the above submissions although the conviction has not been challenged, but perusal of the record also justified the judgment of conviction of the applicants passed by both the courts below.

9/ So far as the quantum of sentence is concerned, the submission made by learned counsel for the applicants appears to be just and proper. The applicants have already suffered more than 2 and half years jail incarceration during the trial and after their conviction, therefore, it would be appropriate to reduce their sentence to the period already undergone.

10/ Having regard to the aforesaid, both the Criminal Revisions are **partly allowed** by maintaining the conviction of the applicants, but

reducing the jail sentence to the period already undergone by the applicants. Applicants are in jail, they be released forthwith if not required in any other criminal case.

11/ The order regarding disposal of the property as pronounced by the trial Court is affirmed.

12/ Office is directed to send a copy of this order along with the record of both the courts below to the concerned trial Court for necessary compliance.

C.C. as per rules.

**(ANIL VERMA)**  
**JUDGE**

Trilok/-