

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Revision Application No.113 of 2012
With
Criminal Writ Petition No.677 of 2012**

* Dipak Madanlal Gugale,
Age 42 years,
Occupation : Business,
R/o. Apurva Apartment,
Nandanwan Colony,
Aurangabad. **.. Petitioner.**

Versus

- 1) Ajay Padmakar Dhaneshwar,
Age Major,
Occupation : Business,
R/o. 3808, Ghumare Lane,
Ahmednagar.
- 2) The State of Maharashtra. **.. Respondents.**

Shri. N.C. Garud, Advocate, for petitioner.

Shri. S.G. Jadhavar, Advocate, for respondent No.1.

Shri. S.A. Ambad, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 16th JUNE 2015

JUDGMENT:

- 1) The revision is admitted. Rule in the writ
petition. Rule made returnable forthwith. Heard both the
sides by consent for final disposal.

2) Both the proceedings are filed by the original complainant and same point is involved in both the matters. The learned Judicial Magistrate had convicted and sentenced the respondent, accused for offence under section 138 of the Negotiable Instruments Act (for short, "the Act"). When cheque amount was of Rs.1.5 lakh, sentence of three months simple imprisonment was given and fine amount of Rs.3000/- was imposed. In default of payment of fine amount, simple imprisonment of 15 days was given by the learned Judicial Magistrate. This judgment was challenged by filing appeal and revision bearing Nos.97/2006 and 151/2006. Both the proceedings were decided by common judgment by the learned Additional Sessions Judge Ahmednagar. The learned Additional Sessions Judge modified the sentence and has directed the accused to undergo imprisonment till rising of the Court and to pay fine amount of Rs.53,000/-. In default of payment of fine amount 15 days simple imprisonment is given by the Additional Sessions Judge.

3) It is the grievance of the original complainant that the sentence given by both the Judicial Magistrate

and the Additional Sessions Judge was not in accordance with the object behind the provisions of section 138 of the Act. He placed reliance on a recently decided case of the Supreme Court in the case of **H. Pukhraj v. D. Parasmal** reported as **2014(4) Crimes 464 (SC)**. In this case when cheque amount was of Rs. 6,19,488/- the Supreme Court held that proper sentence would be 6 months imprisonment and compensation of Rs.10 lakh. Accordingly the decision given by the High Court was modified by the Supreme Court. In view of the object behind the provision of section 138 of the Act, this Court holds that both the Courts below have committed error in directing the accused to pay amount which is much less than the cheque amount. In the same case the Supreme Court has held that both civil and criminal remedies are available to the complainant in such a case. There cannot be dispute that both civil and criminal remedies are available to the complainant but the Court cannot compel the complainant to go to Civil Court. If in the Act itself some remedy is given the Court is expected to use that provision and give relief. In view of this position of law, this Court holds that the decision given needs to be

modified to make it in conformity with the object behind the provisions of section 138 of the Act.

4) In the result, both the proceedings are allowed. The respondent-accused is convicted for offence punishable under Section 138 of the Act. He is sentenced to undergo imprisonment till rising of the Court which is already undergone. He is to pay compensation Rs.1,60,000/- under section 357(3) of the Code of Criminal Procedure. Out of this amount, amount of Rs.1,50,000/- is to be paid to the complainant and the remaining amount of Rs.10,000/- is to be used as the cost of the proceeding which the State is required to incur in the proceedings and that amount is to be credited to the Government. Amount of Rs.50,000/- is already paid and this amount needs to be deducted from the amount of compensation of Rs.1,60,000/-. The amount of Rs.1,10,000/- is to be deposited within four weeks from today. In default to deposit of this amount within four weeks, the accused is to undergo sentence of simple imprisonment of four weeks. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)