

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

CRIMINAL REVISION APPLICATION NO.104 OF 2003

Shivaji s/o Anandrao Falke,
Age 45 years, Occ: Business,
R/o. Koregaon, Taluka Karjat,
Dist. Ahmednagar.

...Applicant

versus

Shankar s/o Maruti Adsul,
Age: 40 years, Occ: Labourer,
R/o. Karjat, Taluka Karjat,
Dist. Ahmednagar.

...Respondent

None for the applicant

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Mr. A.M. Gholap, Advocate for respondent

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CORAM : N.W. SAMBRE, J.

DATE : 1st SEPTEMBER, 2015

ORAL ORDER :

Learned Counsel for the applicant is absent. Heard Mr. Gholap, learned Counsel for the respondent sole appointed by Legal Aid Committee.

2. Present proceedings are arising out of the judgment and order passed by learned Adhoc Additional Sessions Judge, Ahmednagar in Criminal Appeal No.88 of 1996 on 31/12/2002 imposing punishment of fine for the offence punishable under Section 138 of the Negotiable Instruments Act. The facts as are necessary for deciding the present revision are as under.

3. The present applicant initiated Summary Criminal Case No.242 of 1995 alleging therein dishonour of cheque of Rs.20,000/- issued by present respondent. Learned Magistrate held that issuance of cheque of Rs.20,000/- by accused-respondent was proved and same was dishonoured for insufficient funds. Learned Magistrate then having noticed the compliance of Section 138 of the Negotiable Instruments Act and proceeded to analyze the evidence brought before it and ordered conviction of respondent pursuant to provisions of Section 255 of the Code of Criminal Procedure for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced the respondent to suffer R.I. for six months and fine of Rs.500/-, in default to suffer R.I. for one month.

4. The appeal by present respondent-accused against conviction referred supra before learned Adhoc Additional Sessions Judge, Ahmednagar vide Criminal Appeal No. 88 of 1996 resulted into modification of sentence. Learned Sessions Judge modified the sentence by awarding the sentence of fine Rs. 2000/-, in stead of sentence of R.I. for six months ordered by the Magistrate. It was also ordered by learned Sessions Judge to pay to the complainant the amount of Rs.1000/- towards compensation.

5. Feeling aggrieved by the order of learned Sessions Judge, on 31/12/2002, original complainant has preferred present revision.

6. With the assistance of Mr. Gholap, learned Counsel appointed by the Legal Aid Committee for and on behalf of the respondent-accused, I have perused the entire record.

7. Learned Sessions Judge, while modifying the sentence awarded by the Magistrate, has noted that long transaction in between the complainant and accused and financial condition of the accused being labour, cannot be ignored.

8. If the provisions of Section 138 of the Negotiable Instruments Act, particularly I part is perused, it is required to be noted that the Court while ordering punishment is empowered to order the imprisonment for a term which may be extended upto two years or with fine which may extend twice amount of the cheque or both.

9. In the present case, learned Sessions Judge has awarded fine of Rs.2000/- and compensation of Rs.1000/-.

10. In my opinion, the provisions of Negotiable Instruments Act cannot be taken recourse to for recovery of the outstanding dues, as appropriate remedy lies before the competent Civil Court.

11. The punishment ordered by learned Sessions Judge is within ambit of Section 138 of the Negotiable Instruments Act. No case for interference is made out. The revision fails, same stands dismissed. Rule discharged.

12. Fees payable to Mr. Gholap, learned Counsel is quantified at Rs.2500/- (Rs. Two thousand five hundred only).

[N.W. SAMBRE, J.]