

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Application No. 5354 Of 2014.

SHRI MAHENDRA MADHUKAR BHAVSAR.

Versus.

SHRI SAMARATH SAHAKARI PAT SANSTHA MARYADITM DHULE
AND OTHERS.

Appearance =>

Mr. V.D. Sapkal, Advocate for the Applicant.

Mr. N.B. Suryawanshi, Advocate for Respondent Nos. 1 and 3.

Mr. A.D. Sonar, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 11th FEBRUARY, 2015.

Per Court :-

Rule. Rule returnable forthwith. Taken up for final hearing, by consent of both the parties.

[2] Heard Mr. V.D. Sapkal, learned counsel for the Applicant, Mr. N.B. Suryawanshi, learned counsel for Respondent Nos. 1 and 3.

[3] The present applicant is the original Complainant. He has filed complaint under Section 138 of the Negotiable Instruments Act, 1881 against the present Respondents. The learned Judicial Magistrate, F.C., Dhule (Court No.IV) vide his Judgment and Order dated 21st July, 2011 passed in S.T.C.No.3995 Of 2007 recorded the findings of guilt against the present respondents. Though the Respondents were held guilty and

convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the applicant / original complainant was aggrieved by the quantum of sentence imposed upon them. Therefore, he filed Criminal Revision Application No.120 Of 2011 in the Court of the Sessions Judge, Dhule, for enhancement of the sentence. This court is informed that, the respondents also preferred Criminal Appeal challenging their conviction and said is still pending.

[4] Criminal Revision Application No.120/11 filed on behalf of the original complainant was dismissed in default on 6th May, 2014 on the ground that present applicant has not taken steps to serve Respondent No.2.

[5] The learned revisional court ought not to have dismissed the Criminal Revision Application in default. Criminal matters, especially when revisional court was seisin of Revision, in which the prayer is made for enhancement of the sentence, ought not to have decided the matter in such a fashion. Further the impugned order shows that present applicant has not taken steps to serve Respondent No.2. If that be so, the Criminal Revision Application ought to have dismissed only against Respondent No.2. However, the revisional court has dismissed the entire Criminal Revision Application.

[6] In that view of the matter, following order is passed :-

ORDER

(i) Order dated 6th May, 2014 passed by the Additional Sessions Judge, Dhule in Criminal Revision Application No.120 Of 2011 is hereby set aside, on the payment of costs of Rs.1000/- [Rs.One Thousand only.] to be paid to the Library,

Bar Association, High Court of Judicature at Bombay, Bench at Aurangabad.

(ii) Criminal Revision Application No.120 Of 2011 filed by the present applicant is restored to the file.

(iii) It is expected from the learned Sessions Judge, Dhule to decide Criminal Revision Application No.120 Of 2011 alongwith the Criminal Appeal preferred on behalf of the Respondents.

(iv) With these observations, Criminal ~~Revision~~ Application is allowed. Rule made absolute.

(V.M. DESHPANDE, J.)