

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

CRIMINAL REVISION APPLICATION NO. 259 OF 2014

Rajendra Shankar Mule,
age 43 years, occ.business,
R/o Athawade Bazar,
Utensil Shop, Bhusawal,
Dist. Jalgaon

...Applicant

VERSUS

1] The State of Maharashtra,

2] Devidas Phalk Urban Co-op.Credit
Society Ltd., Bhusawal

...Respondents

.....

Shri Shaikh Mohammad Naseer A, advocate for applicant

Shri V.D.Godbharle, A.P.P. for respondent no.1

Shri A.R.Sayyed, advocate for respondent no.2

.....

CORAM : V.M.DESHPANDE, J.

DATED : 16th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing.

2] Heard Shaikh Mohammad Naseer A, learned counsel for the applicant, Shri V.D.Godbharle, learned Additional Public

Prosecutor for respondent no.1 and Shri A.R.Sayyed, learned counsel for respondent no.2.

3] Proceedings under Section 138 of the Negotiable Instruments Act were taken against the present applicant by the non-applicant no.2 Devidas Phalk Urban Co-operative Credit Society Limited, Bhusawal. The said proceedings were registered as Summary Criminal Case No. 61 of 2005. On 25.2.2008, the learned Judicial Magistrate, First Class, Bhusawal convicted the applicant for the said offence and directed to suffer two months simple imprisonment.

4] Feeling aggrieved thereby, an appeal was carried before the Sessions Court. The case was registered as old Criminal Appeal No. 29 of 2008, which was re-registered as Criminal Appeal No. 39 of 2014 and was made over to the file of Additional Sessions Judge, Bhusawal. On 15.11.2014 the learned lower appellate court dismissed the appeal and confirmed the judgment and order of conviction passed by the learned Magistrate.

5] During the pendency of the present Revision, applicant/accused has repaid the entire amount along with the interest to the society. Today, Smt. Rajni Pardeshi is present in the court. She has filed an affidavit on behalf of respondent

no.2. In the affidavit, it has been stated that she is authorized to file affidavit by the Resolution No. 299 of 2015, dated 14.1.2015 of the society. The affidavit is taken on record.

6] The affidavit shows that the applicant obtained loan of Rs.50,000/- from respondent no.2 on 4.3.2002. A cheque, dated 25.8.2004 for Rs.5,000/- towards the part repayment of Rs.50,000/- was given by the present applicant, which was dishonoured and for that present applicant was prosecuted and convicted as described in the preceding paragraph of this judgment.

7] The affidavit shows that respondent no.2 society has received the entire loan amount along with the interest and in fact no dues certificate to that effect is also filed on record along with the affidavit. Further the affidavit shows that since the society has received the entire outstanding amount along with the interest, the society is not interested in sending the present applicant behind the bars.

8] Offence punishable under Section 138 of the Negotiable Instruments Act is compoundable. In the present case, for an amount of Rs.5,000/- which was given by the present applicant towards the part payment of loan, the cheque was dishonoured, and therefore, he suffered the

conviction. However, now since the society has already received entire amount and the society is not interested in sending the applicant behind the bars, the society, in fact, has shown willingness to compound the matter.

9] In the result, the Criminal Revision Application is allowed.

The judgment and order, passed by the Judicial Maistrate, First Class, Bhusawal, dated 25.2.2008 passed in Summary Criminal Case No. 61 of 2005, together with the judgment and order, passed by the Additional Sessions Judge, Bhusawal in Criminal Appeal No. 39 of 2014 are hereby quashed and set aside.

The applicant is acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act.

[V.M.DESHPANDE, J.]

dbm/crra259.14