

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 195 OF 2013
WITH
CRIMINAL APPLICATION NO. 6474 OF 2014

Shashikant s/o. Nana Raut **....Petitioner.**

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. D.R. Jayabhar, Advocate for petitioner.

Mr. P.N. Mule, APP for State.

Mr. S.S. Bora, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 12th June, 2015.

ORDER :

1. The revision is filed by accused from S.T.C. No. 4982/2004 which was pending in the Court of Judicial Magistrate, First Class, Ahmednagar. The petitioner is convicted for offence punishable under section 138 of Negotiable Instruments Act and this decision of J.M.F.C. is confirmed by the Sessions Court in appeal. Both the sides are heard.

2. It is the case of complainant that on 15.12.2003 accused approached him and requested for hand loan of Rs. 31,000/-. It is contended that promise was given by the accused

to return the amount within six months and after the period of six months as the amount was not returned, the accused gave the cheque of amount due, dated 15.6.2004. It is contended that the cheque was presented for encashment, but it bounced. It is contended that statutory notice was given by the complainant, but the accused did not make payment of the cheque amount. The complaint was then filed.

3. Before J.M.F.C., complainant examined himself and he produced the documents like cheque, bank memo, copy of statutory notice, acknowledgment in respect of notice. After recording the evidence of complainant, the statement of the accused was recorded under section 313 of Cr.P.C. The accused did not lead defence evidence.

4. During the cross examination and by filing written say under section 313 of Cr.P.C., the accused took the defence that he had taken loan of Rs. 5,000/- only and at that time, he had given two blank cheques to the complainant by way of security. He contended that he repaid the amount by selling his articles and furniture. He contended that he was having one shop and when he closed the shop, he sold furniture and articles worth Rs. 25,000/- to complainant. He contended that the

amount of Rs. 5,000/-, which was due from the accused, was adjusted in the price and the complainant was to give Rs. 25,000/- to him as the price of furniture. It is contended that the complainant did not make the payment of the amount of Rs. 20,000/- and he misused the cheque which was already given by the accused. These suggestions given in the cross examination are denied by the complainant. The accused did not dare to enter in to the witness box and give evidence on oath. In view of these circumstances and in view of the provisions of N.I. Act, the learned J.M.F.C. held that the offence punishable under section 138 of N.I. Act is proved. In view of the nature of defence, it was necessary for the accused to examine himself and to lead some evidence. Admittedly, he has no record to show that he sold articles and furniture worth Rs. 25,000/- to the complainant and the amount due was adjusted in the price of the articles. During arguments in this proceeding, the learned counsel for petitioner submitted that he wants to examine now two witnesses to prove that in their presence the aforesaid transaction of returning of money took place.

5. The scope of revision is limited. Even in a statement given under section 313 of Cr.P.C., the names of witnesses were not mentioned and the date of sale of the articles and furniture

was not mentioned. In such circumstances, even opportunity could not have been given to the accused to lead the evidence in appeal. In any case, such prayer was not made in the appeal. In the present proceeding, such prayer cannot be considered.

6. The learned J.M.F.C. has sentenced the petitioner to pay fine only of Rs. 33,000/-. Out of this amount, the amount of Rs. 31,000/- is to be given to the complainant as compensation and remaining amount is to be credited to the Government as a fine amount. The complainant did not challenge this decision of J.M.F.C. Lenient view is already taken by the Courts below in favour of the accused. Thus, there is no possibility of interference in the decision.

7. It appears that this Court had directed the appellant to deposit Rs. 20,000/- more. Thus, the accused deposited the amount of Rs. 53,000/- in the Court. As the complainant did not challenge the decision of the Trial Court, he can get only amount of Rs. 31,000/-. In view of the order of J.M.F.C., out of the amount of Rs. 53,000/-, the amount of Rs. 33,000/- can be kept in the Court and it needs to be disbursed as per the order made by J.M.F.C. The remaining amount needs to be returned to the accused.

8. In the result, the revision is dismissed. The amount of Rs. 33,000/- (Rupees thirty three thousand) is to be kept in the Court and the payment and disbursement of this amount is to be made as per the order of J.M.F.C. If the accused has deposited more amount than Rs. 33,000/- (Rupees thirty three thousand), which is probably Rs. 20,000/- (Rupees twenty thousand) more, it is to be returned to the accused/present petitioner.

9. In view of dismissal of the revision, criminal application is disposed of accordingly.

[T.V. NALAWADE, J.]

ssc/